BEFORE INDEPENDENT COMMISSIONERS

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	a submission by KiwiRail Holdings Ltd ("**KiwiRail**") (submitter 408 and FS72) on Hearing Stream 4 - Residential to the Wellington City Proposed District Plan ("**Proposed District Plan**")

LEGAL SUBMISSIONS ON BEHALF OF KIWIRAIL HOLDINGS LIMITED IN RELATION TO HEARING STREAM 4 TO THE WELLINGTON CITY PROPOSED DISTRICT PLAN

20 JUNE 2023

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1. SUMMARY

1.1 KiwiRail is a State-Owned Enterprise responsible for the management and operation of the national railway network. Its role includes managing railway infrastructure and land, as well as freight and passenger services within New Zealand. This infrastructure is of regional and national significance.

1.2 KiwiRail is a requiring authority under the RMA and is responsible for designations for railway purposes throughout New Zealand, including the North Island Main Trunk line ("**NIMT**") which passes through Wellington City.

1.3 KiwiRail supports urban development around transport nodes. However, such development must be planned and managed carefully and prudently, with the safety and wellbeing of people and the success of the national rail network in mind.

1.4 KiwiRail has submitted on the Proposed District Plan to ensure the safe and efficient operation of the rail network by ensuring that development near the rail corridor is appropriately managed to minimise adverse effects on health and amenity of adjoining landowners and reverse sensitivity effects on KiwiRail's operations.

1.1 KiwiRail seeks that a 5m setback be included in the Proposed District Plan for all new buildings and structures adjoining rail corridor.

2. QUALIFYING MATTER

2.1 The RMA includes a list of qualifying matters that may make the MDRS and the relevant building height or density requirements under Policy 3 of the National Policy Statement on Urban Development 2020 ("**NPS-UD**") less enabling of development in relation to an area in a relevant residential zone.[1]

2.2 The Proposed District Plan has not recognised matters to ensure the safe or efficient operation of the rail corridor as a qualifying matter. This approach does not align with a number of other councils around the

[1] RMA, s77I. Section 77O of the RMA provides that qualifying matters may modify the requirements of Policy 3 of the NPS-UD in an urban non-residential zone.

country which have provided for rail as a qualifying matter in their plans, including Porirua, Selwyn, Waipā and Auckland. KiwiRail seeks that the Wellington City Council recognise matters to ensure the safe or efficient operation of rail network as a qualifying matter in the Proposed District Plan and include the setback described further below.

2.3 Under Sections 77I(e) and s77O(e) of the RMA, a qualifying matter includes "a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure".[2] The New Zealand rail network is nationally significant infrastructure.[3]

2.4 Matters to ensure the safe or efficient operation of KiwiRail's rail network in the Wellington Region are clearly a qualifying matter.

2.5 In our submission, the setback controls sought by KiwiRail are matters to ensure the safe or efficient operation of the rail network and therefore constitute qualifying matters as expressly contemplated by the RMA. The evidence of Mr Brown and Ms Heppelthwaite for KiwiRail provides evidence for the need for these controls.

3. SETBACKS

3.1 Setbacks are a common planning tool used to ensure the safe and efficient operation of the rail network, particularly when it may come into conflict with adjacent land uses. They are not novel.

3.2 KiwiRail's submission on the Proposed District Plan sought an increase in the minimum setback from the rail corridor in the City Centre Zone, Metropolitan Centre Zone, Local Centre Zone and Mixed Use Zone.

3.3 Activities that comply with this control would be permitted, while activities that do not comply would require resource consent as a restricted discretionary activity. KiwiRail is not opposed to intensification near the rail corridor, providing the interface between noise sensitive activities and the rail corridor are carefully managed. The proposed setback controls would not create a "no build zone", but rather provide a nuanced approach to development along the rail corridor.

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2 Section 77I(e) and s77O(e).

3 See definitions in the National Policy Statement for Urban Development at https://environment.govt.nz/assets/publications/National-Policy-Statement-Urban-Development-2020-11May2022-v2.pdf

3.4 Providing a physical setback for buildings adjacent to the railway corridor boundary is a safety control to manage the interface between operations within the railway corridor and activities on adjoining sites. A building setback acts to reduce the potential conflict between the safe enjoyment and maintenance of buildings on adjacent properties and the operational rail corridor. This has safety benefits for: users of the land adjoining the rail corridor; the users of the rail corridor; and efficiency benefits for rail operations (and passengers who use rail services including those living in the intensified housing), by mitigating against the risk of train services being interrupted by unauthorised persons or objects entering the rail corridor.

3.5 A District Plan framework which enables developments as permitted activities that cannot be built or maintained safely and lawfully adjacent to the rail corridor is not in accordance with the purpose of the RMA to enable people and communities to provide for their social, economic, and cultural well-being and their health and safety. It therefore breaches Council's obligations under s 74(1)(b) of the RMA.

3.6 The Reporting Planner considers a setback of 1.5m sufficient but provides no technical basis for this.[4] The risks associated with the rail corridor are very different from property used for residential or other uses - if a person or object encroaches on the rail corridor there is a risk of electrocution where there are electrified lines and / or risk of injury or worse from rail activities.[5]

3.7 As set out in the evidence of Mr Brown, 5 metres is an appropriate distance for buildings and structures to be set back from the boundary of the railway corridor.[6]

3.8 A setback of 5 metres ensures that there is sufficient space for landowners and occupiers to safely conduct their activities, and maintain and use their buildings, while minimising the potential for interference with the rail corridor. This allows for the WorkSafe Guidelines on Scaffolding in New Zealand to be complied with, as well as accommodating other mechanical

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4 Section 42A report – Hearing Stream 4 (Overview and General Matters) at [224]; Section 42A report – Hearing Stream 4 (Metropolitan Centre Zone) at [378]; Section 42A report – Hearing Stream 4 (Local Centre Zone) at [482]; Section 42A report – Hearing Stream 4 (General Industrial Zone) at [200] and [201] and Section 42A report – Hearing Stream 4 (Mixed Use Zone) at [305].

5 Statement of Evidence of Michael Brown dated 12 June 2023 at [4.12].

6 Statement of Evidence of Michael Brown dated 12 June 2023 at [4.5] – [4.12].

access equipment required for maintenance, and space for movement around the scaffolding and equipment.[7]

3.9 Ms Heppelthwaite also considers that the setback is the most efficient outcome from a planning perspective.[8] The 5 metre setback proposed by KiwiRail protects people from the potential safety risks of developing near the railway corridor and allows for the continued safe and efficient operation of nationally significant infrastructure.

4. CONCLUSION

4.1 The relief sought by KiwiRail is the most appropriate way to provide for the safe and efficient operation of nationally significant infrastructure as intended by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

DATED: 20 June 2023

K L Gunnell
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7 Statement of Evidence of Michael Brown dated 12 June 2023 at [4.8] – [4.10].

8 Statement of Evidence of Catherine Heppelthwaite dated 12 June 2023 at [8.2].