

Before the Hearings Commissioners

Under the Resource Management Act 1991 (the **RMA**)

In the matter of a submission by KiwiRail Holdings Limited (submitter 408 and FS72) on the Hearing Stream 7 Open Space, Natural Open Space, Sports and Active, and Wellington Town Belt zones and Signs

and in the matter of Wellington City Proposed District Plan

**Primary statement of evidence of Catherine Lynda Heppelthwaite for
KiwiRail Holdings Limited regarding Wellington City Proposed
District Plan Hearing Stream 7**

Dated 5 March 2024

1 INTRODUCTION, QUALIFICATIONS AND EXPERIENCE

- 1.0 My full name is Catherine Lynda Heppelthwaite. I am a principal planner for Eclipse Group Limited. I am presenting this planning evidence on behalf of KiwiRail Holdings Limited (**KiwiRail**).
- 1.1 I hold a Bachelor Degree in Resource Studies obtained from Lincoln University in 1993. I am a full member of the New Zealand Planning Institute, a member of the Resource Management Law Association and the Acoustical Society of New Zealand. I have more than 25 years' experience within the planning and resource management field which has included work for local authorities, central government agencies, private companies and private individuals. Currently, I am practicing as an independent consultant planner and have done so for the past 20 years.
- 1.2 I have extensive experience with preparing submissions and assessing district plans provisions, most recently in relation to the New Plymouth, Upper Hutt, Porirua and Whangarei District Plans.

2 CODE OF CONDUCT

- 2.0 I have read the Environment Court's Code of Conduct for Expert Witnesses (2023) and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my areas of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

3 SCOPE OF EVIDENCE

- 3.0 My evidence will address the following:
- a. The statutory and higher order planning framework;
 - b. KiwiRail submissions and further submissions in relation to Open Space, Natural Open Space, Sports and Active and Wellington Town Belt zones and Signs;
 - c. Council's s42A recommendations; and
 - d. Further amendments required.

- 3.1 In preparing my evidence, I have considered the following Section 42A Hearings Reports:
- a. Stream 7 – Open Space, Natural Open Space, Sports and Active and Wellington Town Belt zones prepared by Mr Jamie Sirl dated 20 February 2024; and
 - b. Stream 7 –Signs prepared by Mr Josh Patterson dated 20 February 2024.

4 THE STATUTORY AND HIGHER ORDER PLANNING FRAMEWORK

- 4.0 In preparing this evidence I have specifically considered the following:
- a. The purpose and principles of the RMA (sections 5-8);
 - b. Provisions of the RMA relevant to plan-making and consenting;
 - c. National Policy Statement on Urban Development 2020; and
 - d. Wellington Regional Policy Statement (**RPS**) with specific reference to:
 - i. Chapter 3.3 Introductory Text:
 - Recognising rail as a significant physical resource¹;
 - *The efficient use and development of such infrastructure can be adversely affected by development. For example, **land development can encroach on infrastructure or interfere with its efficient use**. Infrastructure can also have an adverse effect on the surrounding environment. For example, the operation or use of **infrastructure can create noise which may adversely impact surrounding communities**. These effects need to be balanced to determine what is appropriate for the individual circumstances².**[bold added]***
 - ii. Objective 10: *The social, economic, cultural and environmental, benefits of regionally significant infrastructure are recognised and protected³.*

¹ Greater Wellington Regional Council "Regional Policy Statement for the Wellington Region" (15 December 2023) Greater Wellington <www.gw.govt.nz> at [3.3].

² At [3.3].

³ At [3.3], Table 3.

- iii. Policy 8: *Protecting regionally significant infrastructure – regional and district plans*⁴. *District and regional plans **shall include policies and rules** that protect regionally significant infrastructure from incompatible new subdivision, use and development occurring under, over, or adjacent to the infrastructure*⁵. [bold added]
- iv. Policy 8 Explanation: *Incompatible subdivisions, land uses or activities are those which **adversely affect the efficient operation of infrastructure**, its ability to give full effect to any consent or other authorisation, restrict its ability to be maintained, or restrict the ability to upgrade where the effects of the upgrade are the same or similar in character, intensity, and scale. **It may also include new land uses that are sensitive to activities associated with infrastructure.***

*Protecting regionally significant infrastructure **does not mean that all land uses or activities under, over, or adjacent are prevented.** The Wellington Regional Council and city and district councils will need to ensure that **activities provided for in a district or regional plan are compatible** with the efficient operation, maintenance, and upgrading (where effects are the same or similar in character, intensity, and scale) of the infrastructure and any effects that may be associated with that infrastructure. Competing considerations need to be weighed on a case by case basis to determine what is appropriate in the circumstances*⁶. [bold added]

- v. Method 1 (for Policy 8) identifies District plans as an implementation method⁷.

4.1 Council's *Section 32 Evaluation Report Part 1: Context to s32 evaluation and evaluation of proposed Strategic Objectives*⁸ has (particularly at Section 5) identified the relevant statutory, planning and strategic document provisions with which I generally agree and will not repeat here.

⁴ At [3.3].

⁵ At 96.

⁶ At 96.

⁷ at [3.3], Table 3.

⁸ "Section 32 Evaluation Report Part 1: Context to s32 evaluation and evaluation of proposed Strategic Objectives" Wellington City Council <www.wellington.govt.nz>.

4.2 The Emissions Reduction Plan⁹ is a matter to be had regard to by Council; of particularly relevance within the Emissions Reduction Plan (for rail) is *Action 10.3.1: Support the decarbonisation of freight* which includes as a key initiative:

- *Continue to implement the New Zealand Rail Plan and support coastal shipping.*

4.3 For completeness, the New Zealand Rail Plan (NZRP) lists as strategic investment priorities¹⁰ :

- *Investing in the national rail network to restore rail freight and provide a platform for future investments for growth; and*
- *Investing in metropolitan rail to support growth and productivity in our largest cities.*

4.4 While the Emissions Reduction Plan is *to be had regard to*, its support for the NZRP (among other things) illustrates a strategic forward plan to generally improve and increase train services over time.

5 KIWIRAIL SUBMISSIONS AND FURTHER SUBMISSIONS

5.0 In summary, KiwiRail's primary submission seeks:

Open Space and Natural Open Space Zones

- a. A new building setback rule and matter of discretion for the Open Space Zone (**OSZ**)¹¹ and Natural Open Space Zone (**NOSZ**)¹² to provide a boundary setback of 5m from the rail corridor to provide a safety buffer and allow for maintenance of buildings without the need to access the rail corridor.

Signs

- b. Retain SIGN-P3¹³ and SIGN-S7(4) and (5)¹⁴ as notified.

⁹ Minister of Climate Change "Te hau mārohi ki anamata Towards a productive, sustainable and inclusive economy" (June 2022) <www.environment.govt.nz> at [3.2.3].

¹⁰ New Zealand Government "The New Zealand Rail Plan, Part B" (April 2021) at 25 and 38.

¹¹ Submission 408.132.

¹² Submission 408.131.

¹³ Submission 408.114.

¹⁴ Submission 408.115.

5.1 KiwiRail has also made the following further submissions which generally support its primary submissions:

Signs

- a. Support for Waka Kotahi in making an amendment to SIGN-S8¹⁵ restricting signs from being located within 100m of an intersection which includes level crossings¹⁶;
- b. Support for Waka Kotahi to retain SIGN-R1¹⁷; and
- c. Support for Waka Kotahi to retain parts of the definition¹⁸ of *official sign* that aligns with the NPS-UD.

6 ASSESSMENT – SIGNS

6.0 Mr Patterson¹⁹ recommends the definition of *official sign* is retained as notified. The notified definition aligns with the National Planning Standards and I agree with Mr Patterson’s approach.

6.1 Mr Patterson²⁰ proposes changes to Policy SIGN-P3 to remove reference to Heritage Guidelines. I have no concerns with this change.

6.2 No changes to SIGN-R1 or SIGN-S7 (Traffic Safety) (4) and (5) are recommended by Mr Patterson²¹ thus addressing KiwiRail’s submission.

6.3 I have no recommended changes in relation to the Signs provisions.

7 ASSESSMENT – BOUNDARY SETBACK

7.0 Mr Sirl has acknowledged KiwiRail’s submission for a 5m setback and matter of discretion within the OSZ and NOSZ zones. He adopts the position of Mr Patterson (Hearings Stream 2 reporting planner) and recommends a 1.5m setback and matter of discretion²².

¹⁵ Submission FS72.84.

¹⁶ Submission 408.115.

¹⁷ Submission FS72.83.

¹⁸ Submission FS72.4.

¹⁹ Section 42A report – Hearing Stream 7 (Open Space, Natural Open Space, Sports and Active, and Wellington Town Belt zones and Signs) at [46].

²⁰ At [139].

²¹ At [157] and [273].

²² At Appendix A: rules NOSZ-S5 and NOSZ-S6.

- 7.1 For ease of reference, Mr Patterson, for Hearing Stream 2 (**HS2**) recommends:
- a. a 1.5m setback (instead of KiwiRail's preferred 5m) in the High Density²³ and Medium Density²⁴ residential zones and considers this provides sufficient space to maintain buildings safely and is consistent with Porirua District Plan recommendations; and
 - b. a new matter of discretion is required in the High Density²⁵, Medium Density²⁶ and Large Lot²⁷ residential zones to address where setbacks are not met.
- 7.2 Mr Patterson's HS2 evidence did not provide any technical assessment of actual maintenance methods available for buildings or the space needed to install / use maintenance equipment.
- 7.3 For HS2, Mr Brown (for KiwiRail), provided evidence²⁸ which explained the WorkSafe Guidelines for scaffolding including dimensional requirements. This evidence was not addressed in Mr Patterson's HS2 right of reply²⁹ nor is considered in Mr Sirl's S42A Report.
- 7.4 While HS2 addresses the residential zones which enable buildings of a more significant height, the same principle applies to maintenance for buildings in the OS and NOS zones which, based on the S42A recommended provisions can have a height of 4m (NOSZ) or 8m (OSZ).
- 7.5 I have reviewed the interface between the OSZ and NOSZ and the rail corridor. At present this occurs in seven locations. However, community health and safety is a strong RMA Section 5 imperative and these safety matters should be addressed in these locations. Good planning is also future focussed, especially looking at the timeframes for a whole of plan review, it needs to account for future development / redevelopment in those areas, as well as the potential for other areas interfacing with the rail corridor to be rezoned OSZ or NOSZ.

²³ Section 42A report – Hearing Stream 2 (High Density Residential Zone) at [547].

²⁴ Section 42A report – Hearing Stream 2 (Medium Density Residential Zone) at [759].

²⁵ Section 42A report – Hearing Stream 2 (High Density Residential Zone) at [401].

²⁶ Section 42A report – Hearing Stream 2 (Medium Density Residential Zone) at [537].

²⁷ Section 42A report – Hearing Stream 2 (Large Lot Residential Zone) at [142].

²⁸ Statement of Evidence of Michael Brown on behalf of KiwiRail Holdings Limited, dated 16 March 2023 at [4.7]–[4.10].

²⁹ Stream 2 Reporting Officer Right of Reply of Josh Patterson on behalf of Wellington City Council dated 29 May 2023.

- 7.6 As with HS2, Mr Brown's evidence³⁰:
- a. describes the risk to persons both accessing the rail corridor (to undertake adjoining property maintenance) and rail corridor users (train operators and passengers); and
 - b. describes why a 5m metre setback is necessary and Mr Sirl's recommended 1.5m is not sufficient.
- 7.7 In addition to Mr Brown's evidence, it is not uncommon for District Plans to include provisions which limit uses of land to protect the operation of infrastructure and also to provide safe and healthy environments for people.
- 7.8 For example, Transpower has included in a range district plans³¹ a national grid corridor overlay which restricts activities within a specified spatial extent of its network. Airports and ports are another common infrastructure type which restricts activities on surrounding private land³².
- 7.9 I have undertaken an analysis of the Proposed District Plan objective and policy framework in the context of KiwiRail proposed building setback controls³³ for the OS and NOS zones and draw the Panel's attention to:
- NOSZ-02 Managing effects
Adverse effects of activities undertaken in the Natural Open Space Zone
at the zone interface and surrounding area are managed effectively.*
- 7.10 A very similar objective is reflected in OSZ-02.
- 7.11 For completeness, I have considered other methods (no setback and extending existing designation widths) to provide for building maintenance and safety of adjoining occupants. This is assessed in the format of Section 32AA and included as **Attachment B** and I conclude that a setback is the most efficient outcome. I have relied on the evidence of Mr Brown as to the extent of that setback.
- 7.12 Overall, I agree with Mr Sirl's approach but not the extent of setback; I consider this should reflect the evidence of Mr Brown and be 5m.

³⁰ Statement of Evidence of Michael Brown on behalf of KiwiRail Holdings Limited dated 5 March 2024 at section 4.

³¹ For example: Auckland Unitary Plan, chapter D26.

³² For example: Auckland Unitary Plan, chapters D24–D25.

³³ Proposed inclusion of a 5m setback from the rail designation boundary within rules HRZ-S4, MRZ-S4 and LLRZ-S6.

8 CONCLUSION

8.0 In conclusion I support the building setback and matter of discretion within OS-S5 and NOS-S6 recommended by Mr Sirl except, based on Mr Brown's evidence, a 5m setback is considered appropriate (rather than Mr Sirl's 1.5m) to ensure safe building maintenance within the OS and NOS zones. My recommended changes are set out in **Attachment A**.

Cath Heppelthwaite
5 March 2024

Attachment A: Proposed Changes

Base text is taken from Appendix A – Planners recommendation with changes accepted. All changes are in red text. New text is underlined and proposed deletions in ~~strike through~~.

Open Space Zone

OSZ-S5	Building setback	
1. Buildings or structures (excluding fences) must be setback a minimum of 4.5m <u>5m</u> from a rail corridor boundary.		Assessment criteria where the standard is infringed: 1. The location and design of the building as it relates to the ability to safely use, access and maintain buildings without requiring access on, above or over the rail corridor.

Natural Open Space Zone

NOSZ-S6	Building setback	
1. Buildings or structures (excluding fences) must be setback a minimum of 4.5m <u>5m</u> from a rail corridor boundary.		Assessment criteria where the standard is infringed: 1. The location and design of the building as it relates to the ability to safely use, access and maintain buildings without requiring access on, above or over the rail corridor.

APPENDIX B – S32AA

Effectiveness and efficiency

1. The proposed changes will be more efficient and effective than other methods (such as designating a wider corridor to provide setback) as it provides flexibility of use by resource consent allowing for situations where building within the setback is acceptable. Applying a wider designation means land will not be available for use, the setback could allow future use by way of resource consent. This fits RPS Objective 10 and Policy 8 in providing development which can be, with mitigation, compatible within reasonably close proximity to infrastructure.
2. Providing a limited setback will not support an efficient outcome generally as incursions can lead to disruption to the rail network/ inefficient operation and endanger safety.

Costs/Benefits

3. The recommended amendments may limit building in some locations (cost), although this will depend on range of matters including topography, design, amenity and presence of geotechnical constraints/hazards.
4. The benefits are providing for a safer and more efficient rail network which supports passenger transport (being itself a significant supporting factor for residential intensification). The proposed standard will also enable greater certainty around a safe environment for owners and occupiers to undertake maintenance activities on buildings .
- 5.
6. If parties could develop up to the boundary, the potential costs are greater in terms of the risk to safety arising from inadvertent conflict and the need to use the permit to enter system to access the rail corridor for maintenance activities.

Risk of acting or not acting

7. Evidence has been provided of the risks to public safety and network efficiency if no action is taken. Not acting could result in an inefficient operation of nationally significant infrastructure due to unexpected shutdowns.

Decision about most appropriate option

8. The recommended amendments as set out in my evidence are therefore considered to be more appropriate in achieving the purpose of the RMA rather than the notified provisions.
9. The recommended amendments enable people and communities to provide for their social, economic, and cultural well-being and for their health and safety, while avoiding, remedying or mitigating adverse effects on nationally significant infrastructure.