BEFORE THE INDEPENDENT COMMISSIONERS

IN THE MATTER	of the Resource Management Act 1991 ("RMA")
AND	
IN THE MATTER	a submission by KiwiRail Holdings Ltd (" KiwiRail ") (submitter 408) on Hearing Stream 10 – Designations to the Wellington City Proposed District Plan (" Proposed Plan ")

MEMORANDUM OF COUNSEL ON BEHALF OF KIWIRAIL HOLDINGS LIMITED – PROVIDING INFORMATION IN RESPECT OF RAIL TUNNELS

13 AUGUST 2024



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MAY IT PLEASE THE PANEL:

- On 17 July 2024, the Wellington City Proposed District Plan Hearings Panel issued Minute 52 ("Minute") in response to an application made by KiwiRail to defer the hearing of matters relating to the KiwiRail designations.¹ The Minute directed KiwiRail to provide a status report of progress in clarifying the matter on or before 30 July.
- 2. KiwiRail provided a memorandum of counsel on 30 July 2024 advising the Panel of its progress in reviewing the relevant information and indicating that it would be able to provide the Panel with its findings and KiwiRail's proposal to regarding the appropriate designation for the rail tunnels within Wellington on or before 13 August 2024. This memorandum of counsel provides that information.

District plans / schemes

- 3. KiwiRail has reviewed the provisions of:
 - (a) Wellington City District Plan 2000 ("2000 Plan") relevant extracts included in Annexure A;
 - (b) Wellington City District Plan 1985 ("**1985 Plan**") relevant extracts included in **Annexure B**; and
 - (c) City of Wellington District Scheme 1959 ("1959 Scheme") relevant extracts included in Annexure C.
- 4. The 1959 Scheme references the area of railway but does not include any designations or comment regarding rail tunnels. The land tenure plans from the time, also set out in **Annexure C**, show a continuous rail corridor (including tunnels) as being Crown land, ie, there are no gaps.
- 5. The 1985 Plan shows "designated" or "identified areas", including the railway. There is no description of the rail designation within the 1985 Plan (that KiwiRail was able to locate).² The mapped rail corridor in the 1985 Plan does not appear to include the area where the tunnels are located.
- 6. The 2000 Plan includes the rail designation with context and further information for the first time. The comments for the R1 and R5 designations state the

¹ Memorandum of Counsel on behalf of KiwiRail in relation to the deferral of the hearing of KiwiRail's submissions on Hearing Stream 10, dated 12 July 2024.
² The Ordinance etterhead to the 1085 Plan are a summary of the relevant statutary.

The Ordinances attached to the 1985 Plan are a summary of the relevant statutory requirements relating to designations, public works and public utilities (Ordinance 5).

designations "includes tunnels and bridges". The 2000 Plan maps do not appear to include the area where the tunnels are located.

- 7. KiwiRail sought to ensure that the planning maps captured the designation description that included tunnels and bridges when the Council formally contacted it in 2022 as a relevant requiring authority under Clause 4, Schedule 1 of the Resource Management Act 1991. KiwiRail's rollover (as sought) was notified in the Proposed Plan by the Council in 2022.
- KiwiRail also reviewed information contained in the Hutt City archives (as parts of what are currently Wellington were formerly part of the Hutt area), but these did not provide any additional information.

Property information

- 9. KiwiRail reviewed a sample of properties upon which a tunnel is located to identify available information in relation to the tunnels. Examples of records of title for properties located above a tunnel are set out in Annexure E. These examples show three different ways that the presence of a tunnel is shown on a title:
 - (a) The first record of title dates from 1990 and records the following as an interest on the title: "Lot 1 DP 65535 is restricted to airspace from a reduced level of 165.62 metres above mean sea level (Wellington City Datum) and over".
 - (b) The second record of title dates from 1993 and also records as an interest on the record of title "within Fee-Simple is above a reduced level of 63.00 metres in terms of the Wellington City Datum (M.S.L)". The scheme plan attached to the record of title shows the centre line of the Johnsonville branch railway.
 - (c) The third record of title dates from 1928 and records the following as an interest on the title: "such portion of the sub soil as lies below a plane parallel to and distant forty feet above the railway lines".
- 10. **Annexure D** contains a Gazette Notice for the vesting of a tunnel confirming that the sub soil situated below a plane 40 feet in vertical height above the centre-line of the roof of a tunnel is included in the taking.
- 11. The sample of the property information above, as well as the land tenure plans set out in **Annexure C**, make it clear the tunnels are owned by KiwiRail and

that property owners would be aware of the presence of the tunnel through information recorded on the records of title.

KiwiRail's Proposal

- 12. KiwiRail's review of the historical material has not provided clear evidence that the surface above the rail tunnels in the Wellington district has been designated. However, it is clear that the tunnels themselves have been. This aligns with Council's understanding.³ KiwiRail therefore proposes that the rail tunnels be recorded in the Proposed Plan as being subject to a strata designation.
- 13. In order to ensure it is very clear to a reader of the plan that the tunnels are designated, KiwiRail seeks that the district plan maps show a continuous rail corridor designation, ie there are no gaps within the mapped corridor for the tunnels. The designation description would then provide detail that the designation between specific co-ordinates relates to a tunnel and is a strata designation. KiwiRail's proposed wording is shown in **Annexure F**.
- 14. KiwiRail's proposal of the maps showing the designated tunnels with the description providing further detail as to the nature of the designation as a strata designation and the location of the tunnels reflects the approach taken in the Auckland Unitary Plan to the rail tunnels located within Auckland City, for example the Parnell tunnel.
- 15. KiwiRail would be very happy to provide further information and answer any questions the Panel may have.

DATED: 13 August 2024

Klunnell

A A Arthur–Young / K L Gunnell Counsel for KiwiRail Holdings Limited

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Footnote 5, legal submissions on behalf of Wellington City Council Hearing Stream 10 dated 10 July 2024.

Annexure A: Operative Wellington City District Plan 2000



Snip from the Operative Wellington City District Plan 2000 eplan in relation to Tunnels 1-5 on the Johnsonville line which shows breaks in the mapped designation. The designation has references of R1-R5. All of the KiwiRail tunnels were mapped in this manner.

The schedule of designations held in Chapter 24 of the Plan is set out as follows:

Tranz Rail Limited (R)

Desig No.	Map Ref	Designation Title	Location of Site	Legal Description and Gazette	Comments/Conditions
R1	15, 21 & 23	Railway Purposes	Johnsonville Branch Railway Starting at Thorndon Quay, proceeding on the South side of Ngaio gorge, through Ngaio, Khandallah to Johnsonville Station	Railway land pursuant to various proclamations, gazettes, & statutory ownership	Includes tunnels and bridges
R2	15	Railway Purposes	Wellington Rail Ferry Terminal	Railway land pursuant to various proclamations, gazettes, & statutory ownership	
R3	2	Railway Purposes - Radio Station	Te Kopahao, Hawkins Hill	Land within gazette 1972, p733	
R4	17 & 18	Railway Purposes	Wellington Railway Station	Part Lot DP 10 550	For conditions refer to Appendix P
R5	15, 18, 21, 22, 24, 26, 30 & 31	Railway Purposes	North Island Main Trunk Railway. Starting at the Wellington Railway Station, through Kaiwharawhara, through number 1 & 2 tunnels emerging at Glenside, Tawa and Northwards and including the Waiarapa line from Kaiwharawhara to the city boundary at Horokiwi.	Railway land pursuant to various proclamations, gazettes, & statutory ownership	Includes tunnels and bridges

Annexure B: Wellington City District Plan 1985



Snip from the Operative Wellington City District Plan 1985 in relation to Tunnels 1-6 on the Johnsonville line which shows breaks in the mapped designation over the tunnels. The designation reference in this plan was '38'. All of the KiwiRail tunnels were mapped in this manner.

40. W.C.C.

CODE NUMBERS FOR DESIGNATED OR IDENTIFIED AREAS

- 1. Religious Purposes
- 2. Place of Assembly
- 3. Child Care Facilities
- 4. Community Centre
- 5. Library
- 6. Tollets
- 7. Electricity Purposes
- 8. Police Purposes
- 9. Post Office Purposes
- 10. Private Recreation
- 11. Car Park
- 12. Offices
- 13. Housing or Hostels
- 14. Depot or Workshop
- Depot, Workshop, Concrete or Asphalt Plant, or Quarry and related processing of materials
 Kindergarten 33. Telephone Exchange 34. Museum
 51. Private Hostel 52. Broadcasting Purposes 53. University Purposes materials
- 16. Water Supply
- 17. Drainage
- 18. Refuse Disposal & Associated Works

- 19. Health 20. Milk Depot
- 21. Bus Depot
- 22. Cable Car 23. Airport
- 24. Defence
- 25. Justice
- 25. Justice 26. N.Z. Electricity Dept. 27. Hospital 46. Private Reserve
- 27. Hospital
- 28. Fisheries Office and Laboratory
- 29. School
- 30. Dental School

- 34. Museum 35. Radio Station
- 36. Fire Station
- 37. Harbour
 - 38. Railway

- 41. Proposed Motorway
- 42. Cemetery

39. Proposed Railway Stn.

- Abattoir & related processing
- 44. Government House

 - 47. Place of Worship
 - Salvation Army Territorial Headquarters
 - 49. Social Service Purposes
- 31. Special School 50. Community Purposes 32. Kindergarten 51. Private Hostel

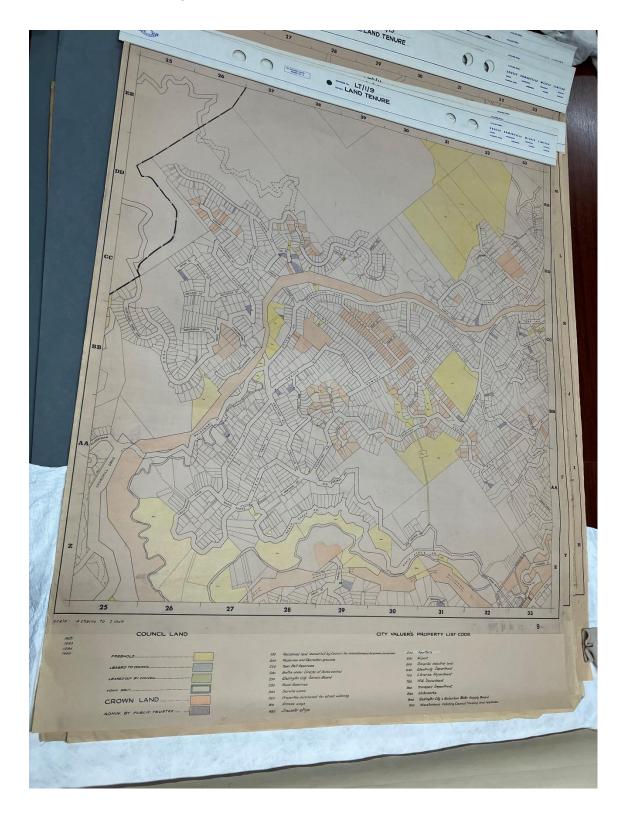
 - 54. University Purposes (Student Accommodation)
 - 55. University Purposes (Recreation & Minor Works)

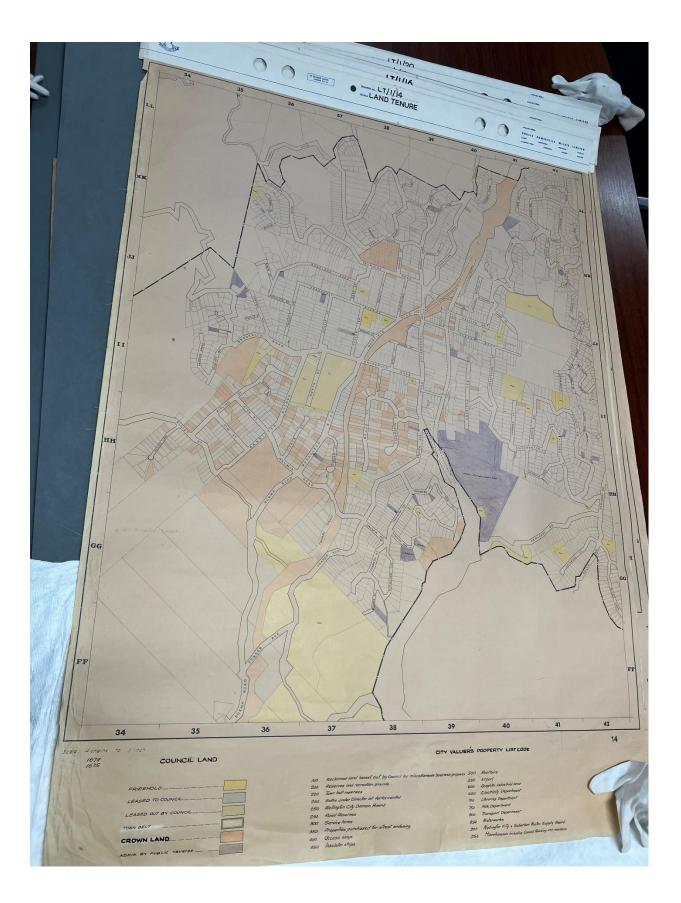
 - 56. Tertiary Education

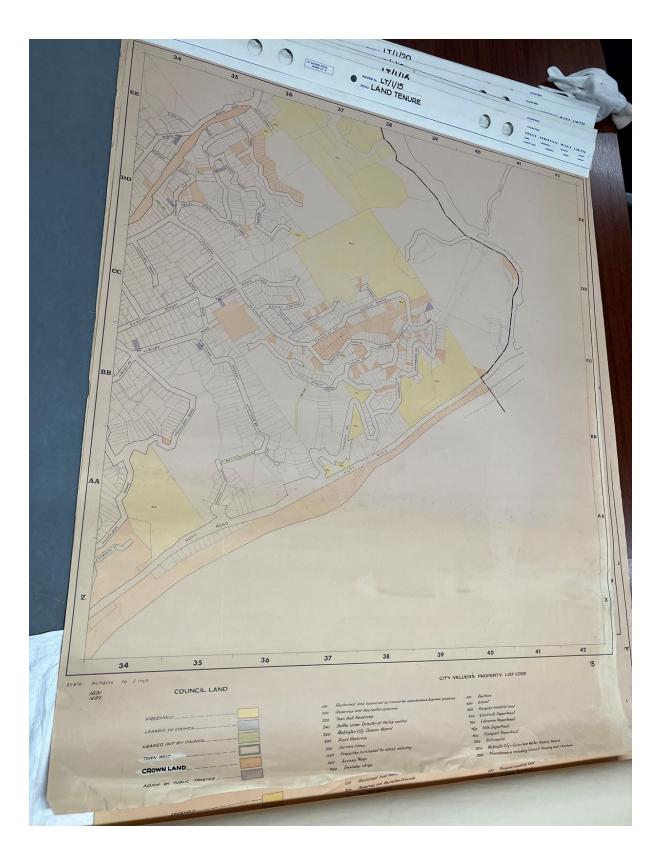
Annexure C: City of Wellington District Scheme 1959

The City of Wellington District Scheme Sections 1 and 2 Scheme Statement and Code of Ordinances in clause 8 comments on Railway land, but the clause itself simply states "Railway land – 57 Acres" with no further commentary on rail.

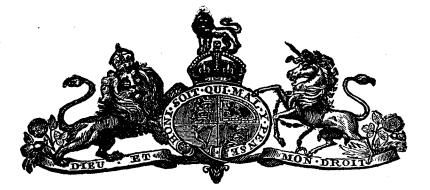
The land tenure plans sourced from the Wellington archives below show the land tenure as being Crown land and the tunnels are indicated on the plans.







Annexure D: Gazette Notice



THE

GAZETTE NEW ZEALAND

Published by Authority.

WELLINGTON, THURSDAY, AUGUST 12, 1926.

E RRATUM.—In the Proclamation dated the 20th day of July, 1926, and published in the New Zealand Gazette No. 51, page 2351, of the 29th day of July, 1926, proclaming land as a road and road closed in Block VI, Huiroa Survey District, Inglewood County, in the third item of the First Schedule for "0a. 0r. 0.5p." read "0a. 0r. 0.05p."

(P.W. 26/1072/2.)

Additional Land at Middleton taken for the Purposes of the Hurunui-Waitaki Railway.

CHARLES FERGUSSON, Governor-General. [L.S.] A PROCLAMATION.

WHEREAS it has been found desirable for the use, con-W HEREAS it has been found desirable for the day, our venience, and enjoyment of the Hurunui-Waitaki Railway to take further land at Middleton, in addition to land previously acquired for the purposes of the said railway : Now, therefore, I, General Sir Charles Fergusson, Baronet, Governor-General of the Dominion of New Zealand, in exercise of the powers and authorities conferred on me by sections twenty-nine and one hundred and eighty-eight of the Public Works Act, 1908, and of every other power and authority in anywise enabling me in this behalf, do hereby proclaim and declare that the land described in the Schedule hereto is hereby taken for the purposes above mentioned.

SCHEDULE.

APPROXIMATE area of the piece of land : 2 roods 38.9 perches. Portion of R.S. 180, Block X, Christchurch Survey District (Waimairi County). (S.O. 1964, red.)

In the Canterbury Land District; as the same is more particularly delineated on the plan marked W.R. 38038, deposited in the office of the Minister of Railways at Wellington, and thereon coloured green.

Given under the hand of His Excellency the Governor-General of the Dominion of New Zealand, and issued under the Seal of that Dominion, this 6th day of August, 1926.

J. G. COATES, Minister of Railways.

GOD SAVE THE KING

Α

IN PROCEENSATION. TN pursuance and exercise of the powers and authorities vested in me by the Public Works Act, 1908, the Public Works Amendment Act, 1911, and of every other power and authority in anywise enabling me in this behalf, I, General Sir Charles Fergusson, Baronet, Governor General of the Dominion of New Zealand, do hereby proclaim and declare that so much of the subsoil of the land mentioned in the First Schedule hereto as is described in the Second Schedule hereto is hereby taken for the purposes of a tunnel for a portion of the Wellington-Foxton Railway.

FIRST SCHEDULE.

APPROXIMATE area of the piece of land of which portion of the subsoil is taken: 35-89 perches, part street (Section 3, Kaiwarra).

Situated in Block VI, Port Nicholson Survey District, City of Wellington. (S.O. 2112.)

SECOND SCHEDULE.

As to the area mentioned in the First Schedule : All that portion of the subsoil situated below a plane 40 ft. in vertical

portion of the subsoil situated below a plane 40 ft. in vertical height above the centre-line of the roof of a tunnel. In the Wellington Land District; as the same is more particularly delineated on the plan marked W.R. 38052, deposited in the office of the Minister of Railways at Wel-lington, and thereon coloured red.

Given under the hand of His Excellency the Governor-General of the Dominion of New Zealand, and issued under the Seal of that Dominion, this 6th day of August, 1926.

J. G. COATES, Minister of Railways.

GOD SAVE THE KING !

Annexure E: Title Examples



RECORD OF TITLE UNDER LAND TRANSFER ACT 2017 CROSS LEASE

Search Copy



R.W. Muir Registrar-General of Land

Identifier	WN37B/82
Land Registration District	Wellington
Date Issued	03 September 1990

Prior References WN33D/767

Estate	Fee Simple - 1/3 share
Area	1035 square metres more or less
Legal Description	Lot 1 Deposited Plan 65535
Registered Owners	

Walter Turner, Patricia Turner and Jennifer Catherine Ellis

Estate	Leasehold	Instrument Term	L B106117.2 999 years commencing on 28.8.1990
Legal Description	Flat 2 Deposited Plan 70315		
Registered Owners			

Walter Turner, Patricia Turner and Jennifer Catherine Ellis

Interests

Lot 1 DP 65535 is restricted to airspace from a reduced level of 165.62 metres above mean sea level (Wellington City Datum) and over

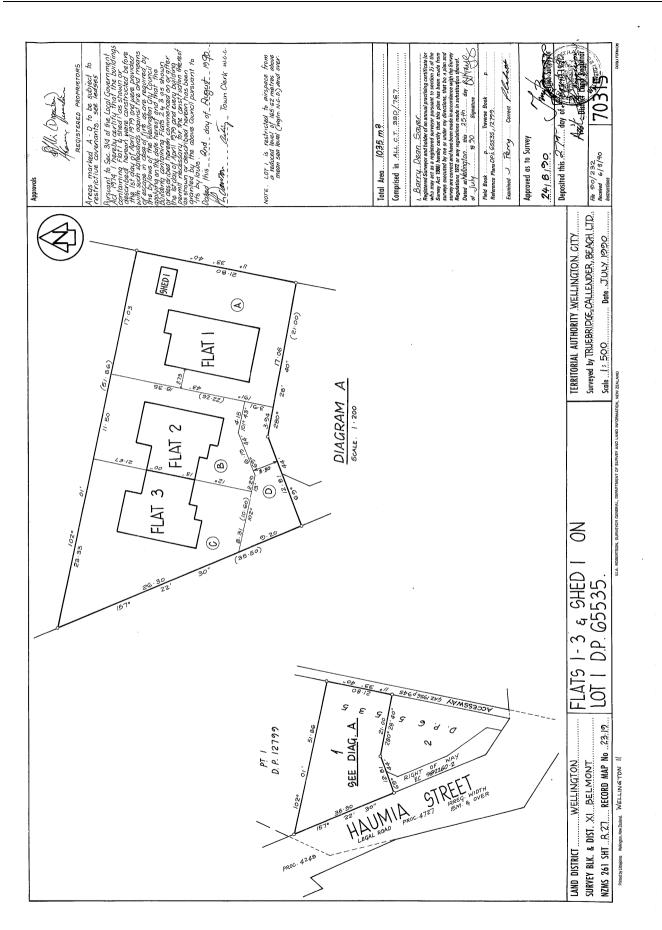
Appurtenant hereto is a right of way specified in Easement Certificate 982260.2 (Affects Fee Simple)

The easements specified in Easement Certificate 982260.2 are subject to Section 309 (1) (a) Local Government Act 1974

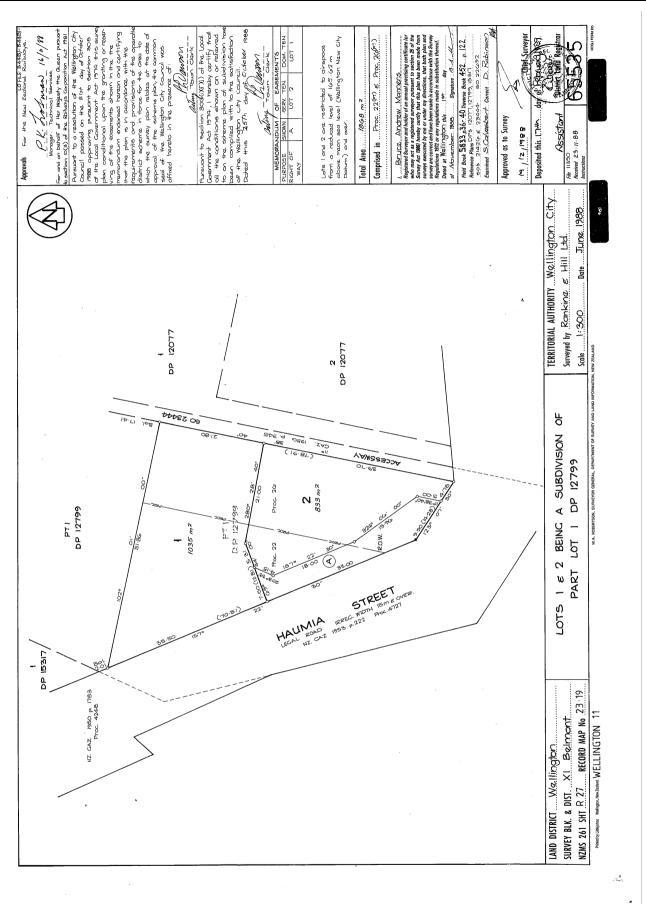
B106117.1 Lease of Flat 1 and Shed 1 DP 70315 Term 999 years commencing on 28.8.1990 Composite CT WN37B/81 issued - 3.9.1990 at 1.57 pm (Affects Fee Simple)

B106117.2 Lease of Flat 2 DP 70315 Term 999 years commencing on 28.8.1990 Composite CT WN37B/82 issued - 3.9.1990 at 1.57 pm (Affects Fee Simple)

B106117.3 Lease of Flat 3 DP 70315 Term 999 years commencing on 28.8.1990 Composite CT WN37B/83 issued - 3.9.1990 at 1.57 pm (Affects Fee Simple)



WN37B/82





RECORD OF TITLE UNDER LAND TRANSFER ACT 2017 FREEHOLD

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R.W. Muir Registrar-General of Land

IdentifierWN42A/847Land Registration DistrictWellingtonDate Issued19 January 1993

Prior References WN39C/317

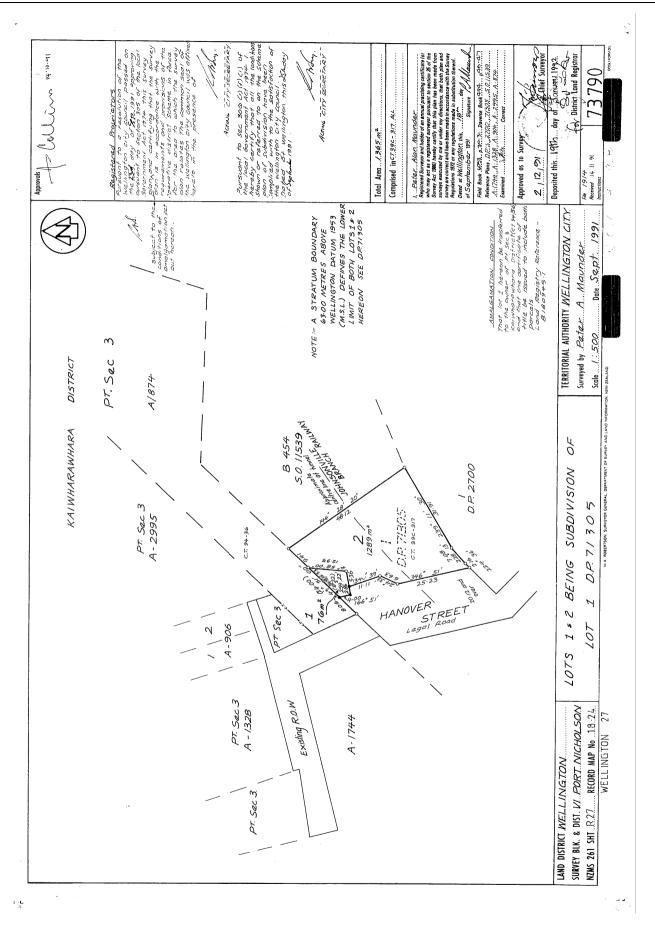
EstateFee SimpleArea1289 square metres more or lessLegal DescriptionLot 2 Deposited Plan 73790Registered OwnersElizabeth Anne Collins

Interests

The within Fee-Simple is above a reduced level of 63.00 metres in terms of the Wellington City Datum (M.S.L) B154790.2 Mortgage to Post Office Bank Limited - 16.4.1991 at 2.52 pm



WN42A/847





RECORD OF TITLE UNDER LAND TRANSFER ACT 2017 FREEHOLD

Search Copy



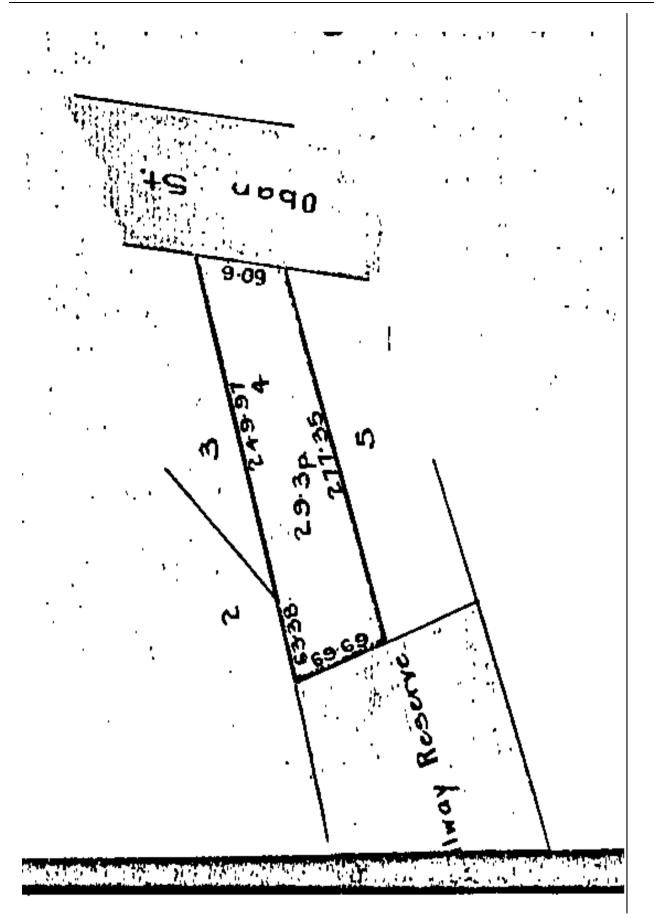
IdentifierWN387/158Land Registration DistrictWellingtonDate Issued09 May 1928

Prior References WN251/51 WN288/128

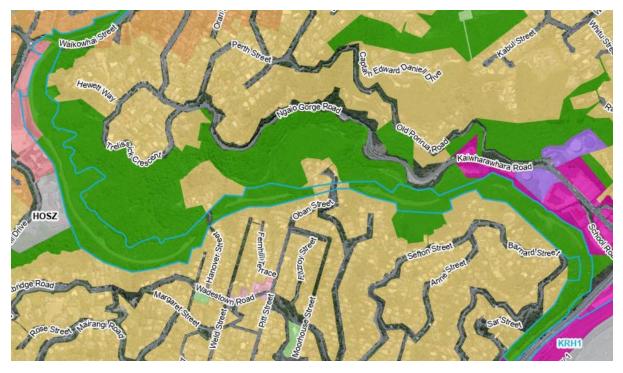
Interests

Excepting thereout such portion of the sub soil as lies below a plane parallel to and distant forty feet above the railway lines

Fencing Agreement in Transfer 190677 - 9.5.1928



Annexure F: Proposal for including tunnels in the Wellington City District Plan 2024



Snippet from the Proposed Wellington City District Plan 2024 eplan in relation to Tunnels 1-5 on the Johnsonville line which shows no gaps in the mapped designation.

Wellington Railway Lines	
Designation unique identifier	KRH1
Designation purpose	Railway purposes
Site identifier	The following assets are included in this designation:
	 Johnsonville Line (includes tunnels, bridges and level crossings)
	2. Wellington Rail Ferry Terminal
	3. Wellington Railway Station
	4. North Island Main Trunk (includes tunnels, bridges and
	level crossings)
	5. Wairarapa Line
Lapse date	Given effect to
Designation hierarchy under	Primary
section 177 of the Resource	
Management Act	
Conditions	Yes, see conditions 1 (applies to Wellington Railway Station)
Additional information	Roll over designation, formally designations R1, R2, R3,
	R4 and R5. Rollover conditions, Conditions 1 formally
	Appendix P.
	In relation to tunnels 1 – 7 on the Johnsonville line the designation is a strata designation that is a maximum of 40 feet (12.192 metres) from the apex of the centreline of the Tunnel.

The tunnels are located as follows:
Tunnel 1 Southern portal x 1749984 y 5430687
Northern portal x 1749760 y 5430820
Tunnel 2 Southern portal x 1749601 y 5430955
Northern portal x 1749521 y 5431014
Tunnel 3 Southern portal x 1749459 y 5431027
Northern portal x 1749315 y 5430986
Tunnel 4 Southern portal x 1749023 y 5431025
Northern portal x 1748824 y 5431000
Tunnel 5 Southern portal x 1748595 y 5430955
Northern portal x 1748505 y 5430865
Tunnel 6 Southern portal x 1750570 y 5433143
Northern portal x 1750670 y 5433224
Tunnel 7 Southern portal x 1751059 y 5434020
Northern portal x 1751083 y 5434137
In relation to Tunnels 1 and 2 on the North Island Main
Trunk (NIMT) the designation is a strata designation that
is a maximum of 40 feet (12.192 metres) from the apex of
the centreline of the Tunnel.
Tunnel 1 Southern portal x 1751187 y 5431652
Northern portal x 1751811 y 5432720
Tunnel 2 Southern portal x 1751892 y 5432963
Northern portal x 1752600 y 5437229