

Before the Hearings Commissioners

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

In the matter of a submission by KiwiRail Holdings Limited (submitter DPC56/188 and DPC56/F20) on Plan Change 56

and in the matter of City of Lower Hutt District Plan

Supplementary statement of evidence of Catherine Lynda Heppelthwaite for KiwiRail Holdings Limited regarding Plan Change 56 on the City of Lower Hutt District Plan

Dated 4 May 2023

1 INTRODUCTION

- 1.0 My Primary Statement sets out my qualifications, commitment to comply with the Environment Court's Code of Conduct for Expert Witnesses (2023).
- 1.1 My Primary Statement describes KiwiRail's relief which includes a 5m setback being provided for buildings and structures in the following zones:
- i. the Medium Residential Activity Area (**MRAA**);
 - ii. High Density Residential Activity Area (**HDRAA**);
 - iii. Suburban Mixed Use Activity Area (**SMUAA**); and
 - iv. General Business Area (**GBAA**)
- 1.2 The Panel has issued an Information Request dated 1 May 2023 which includes direction that KiwiRail provide the following in relation to the 5m yard setback:
- a. policy framework against within the district plan to support the setback; and
 - b. whether decks and eaves can intrude into setback requirements and what effect that may have.
- 1.3 I rely on my Primary Statement to address the statutory and higher order planning framework and the details of KiwiRail's submissions and further submissions.

2 DISTRICT PLAN POLICY BASIS OF SETBACK PROVISIONS

- 2.0 I have undertaken an analysis of the Operative District Plan objective and policy framework as amended by the recommendations in the Section 42 Hearings Report¹ for PC56. Operative Plan provisions are in black text; Section 42 recommendations are red underline / strikethrough. I have added **bold emphasis** in some locations.

Plan Wide Provisions

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https://hccpublicdocs.azurewebsites.net/api/download/7210cb015bf3423eb849e753bed7dbae/_districtplann/867e7af5144159b62497bad4d069e5fa3580a

- 2.1 Operative Plan Chapter 13 Network Utilities [...] includes the following objective and policy framework which is not proposed to be amended by PC56:

13.1.2 Managing Adverse Effects, including Reverse Sensitivity Effects, on Regionally Significant Network Utilities

Objective

To ensure the operation, maintenance, upgrading and development of regionally significant network utilities is not compromised by other activities.

Policy

(a) To avoid, or as appropriate, remedy or mitigate, the potential for any adverse effects, including reverse sensitivity effects on regionally significant network utilities from incompatible new subdivision, use and development occurring under, over, or adjacent to regionally significant network utilities

- 2.2 The *Explanation and Reasons* for 13 1.2 provides guidance, including for Policy (a):

Policy (a) requires that any potential adverse effects, including reverse sensitivity effects on regionally significant network utilities are appropriately managed, with priority given to avoiding adverse effects, where practicable, on those utilities. The location of inappropriate new subdivision, use or development in proximity to existing regionally significant network utilities has the potential to compromise the efficient operation and use of the network utility including by restricting access and result in the benefits of that network utility being reduced. In addition, **the safety and amenity values of the community may be adversely affected by locating in too close proximity to regionally significant network utilities.** The potential for reverse sensitivity effects may arise when the pattern and density of land use activities changes through the subdivision or rezoning of land. **At the time of rezoning, the Council will seek to introduce new provisions to manage those potential reverse sensitivity effects on existing or designated regionally significant network utilities.** [...]

- 2.3 Overall, regardless of the provisions in specific zones, I consider (Operative) Chapter 13 provides a definitive policy basis for the 5m yard setback.

Medium Density Activity Area

- 2.4 Objective 4F 2.1AA and two policies have been identified as relevant for the MDRAA / 5m yard setback.

Objective 4F 2.1AA

A well-functioning urban environment that **enables all people and communities to provide** for their social, economic, and cultural wellbeing, and **for their health and safety**, now and into the future. [required to be included under Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021]

Policy 4F 3.2B

Enable housing to be designed to **meet the day-to-day needs of residents**.

Policy 4F 3.3

Manage the effects of built development on adjoining sites and the street by controlling height, bulk and form of built development ~~and requiring sufficient setbacks~~.

- 2.5 Objective 4F 2.1AA specifically refers to (among other things) enabling health and safety of people which is the key driver of the proposed building setback. In relation to Policy 4F 3.2B, in my opinion, maintenance would fall within the day-to-day needs of residents; the 5m yard is proposed to enable maintenance. Policy 4F 3.3 seeks to manage effects of buildings on adjoining sites by controlling (among other things) building bulk and form. By providing a suitable building bulk, effects on the rail corridor (being an *adjoining site*) can be managed. These two policies provide a basis for the 5m yard setback for the MDRAA.

High Density Residential Activity Area

- 2.6 Objectives and policies supporting the 5m yard setback have been identified as follows:

Objective 4F 2.1AA

A well-functioning urban environment that **enables all people and communities to provide** for their social, economic, and cultural wellbeing, and **for their health and safety**, now and into the future. [required to be included under Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021]

Objective 4G 2.6

Built development is adequately serviced by network infrastructure or **addresses any infrastructure constraints**.

Policy 4G 3.5

Enable housing to be designed to **meet the day-to-day needs of residents.**

Policy 4G 3.8

Manage the effects of built development on adjoining sites and the street by controlling height, bulk and form of built development.

- 2.7 The objectives and policies identified provide a policy basis for a 5m yard setback for the same reasons as outlined in paragraph 2.2 and will also address an *infrastructure constraint* (per Objective 4G 2.6).

Suburban Mixed Use Activity Area

- 2.8 Objective and policies supporting the 5m yard setback have been identified as follows:

Objective 5E 2.5

Built development is adequately serviced by network infrastructure or **addresses any infrastructure constraints.**

Policy 5E 3.4

Recognise the **functional and operational requirements of activities and development.**

Policy 5E 3.5

Enable the efficient use of land through medium **to high** density built development while **managing any adverse effects on the environment, including effects on infrastructure** and residential amenity.

- 2.9 The combination of the objective and policies recognise functional requirements of development (i.e. maintenance) relative to potential effects on infrastructure which provides a basis for the 5m yard setback.

General Business Activity Area

- 2.10 The most relevant of policy for the proposed provision is:

6A 1.1.3

Environmental Effects

Policy (b) That effects likely to be generated by each activity are managed to avoid or mitigate any adverse effects causing harm or damage to the receiving environment.

- 2.11 The policy is fairly general but does direct effects to be avoided or mitigated on the *receiving environment* which would include adjoining sites such as the rail corridor.

DECK AND EAVE EXEMPTION

MDRAA and HDRAA

- 2.12 The Section 42A Report recommends the same approach for MDRAA and HDRAA in terms of yards. *Rule 4F 4.2.4 Setbacks*² and *Rule 4G 4.2.5 Setbacks*³ both recommend a 1m rear and side yard setback and also provide *Eaves may encroach into any yard by up to 0.6m.*
- 2.13 For all zones, the Operative Plan excludes *decks less than 500mm in height*⁴ from the definition of 'building' and therefore these are able to be constructed in a yard as a permitted activity. No change to the Operative Plan definition relating to decks is proposed under PC56.
- 2.14 This means an eave can be located in a yard which would reduce the area available to establish maintenance equipment to 0.4m (based on the 1m setback recommended within the Section 42A Report).
- 2.15 The effect of a deck (less than 0.5m) within a (1m) setback is more difficult to assess as the extent (location and shape) of deck may (or may not) result in uneven ground levels which may in turn impact the ability to locate maintenance equipment.

SMUAA

- 2.16 The Section 42A Report recommends a 1m rear and side yard setback within Rule 5E 4.2.3⁵. There are no exemptions for eaves therefore these would need to locate outside the yard. The Operative Plan excludes *decks less than 500mm in height*⁶ from the definition of 'building' and therefore these are able to be constructed in a yard as a permitted activity.
- 2.17 As with the MDRAA and HDRAA, the effect of a deck (less than 0.5m) within a (1m) setback is difficult to reliably assess as the extent (location and shape) of deck may (or may not) result in uneven ground levels which may in turn impact the ability to locate maintenance equipment.

² Proposed District Plan Change 56 Enabling Intensification in Residential and Commercial Areas VOLUME 1 of 2 Proposed Amendments and New Chapters, page 37.

³ Proposed District Plan Change 56 Enabling Intensification in Residential and Commercial Areas VOLUME 1 of 2 Proposed Amendments and New Chapters, page 65.

⁴ Operative District Plan, Chapter 3 Definitions, definition of *Building / Structure*.

⁵ Proposed District Plan Change 56 Enabling Intensification in Residential and Commercial Areas VOLUME 1 of 2 Proposed Amendments and New Chapters, page 138.

⁶ Operative District Plan, Chapter 3 Definitions, definition of *Building / Structure*.

GBAA

2.18 No changes to the GBAA yard setback provisions are proposed under PC56. I have considered the provisions of the Operative Plan; Rules (6A 2.1.1 (a) and (b)) do not require yard setbacks relative to the rail designation boundary. Therefore any exclusions in relation to decks (any height) or eaves are not relevant. Eaves and decks could be constructed to adjoin common boundary (notwithstanding the need to meet other controls such as the Building Act).

Cath Heppelthwaite

4 May 2023