

BEFORE INDEPENDENT COMMISSIONERS

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER a submission by KiwiRail Holdings Ltd ("KiwiRail") (submitter 188) on Proposed Plan Change 56 ("PC56") to the Operative Hutt City District Plan

**STATEMENT OF EVIDENCE OF MICHAEL BROWN
ON BEHALF OF KIWI RAIL HOLDINGS LIMITED**

CORPORATE

1. INTRODUCTION

- 1.1 My full name of Michael James Brown and I am the Group Manager Planning and Land Use for KiwiRail Holdings Limited ("KiwiRail"). I have the qualifications of a BSc (Hons) and a LLB from the University of Otago.
- 1.2 I am a qualified lawyer and have over 20-years' experience in property, planning, environmental law and the management of large infrastructure projects.
- 1.3 Prior to working at KiwiRail, I was the Head of Planning at Wellington International Airport which involved advising on planning, feasibility studies, property management, development, contract management, environmental compliance and customer service.
- 1.4 I have also worked at the Energy Efficiency and Conservation Authority where I oversaw all procurement and property functions for the business, involving management of external advisers, providing internal legal advice and leading future focused discussions.

2. SCOPE OF EVIDENCE

- 2.1 I have prepared this statement for KiwiRail as the Group Manager of Planning and Land Use for the North Island Main Trunk line ("NIMT") that passes through the Hutt City District.

2.2 My evidence will:

- (a) outline KiwiRail's infrastructure and activities within the Hutt City District;
- (b) comment on the need for noise and vibration controls; and
- (c) comment on the need for a wider setback than 5 metres and address comments from the Reporting Planner.

3. KIWI RAIL IN THE HUTT CITY DISTRICT

- 3.1 KiwiRail is a State-Owned Enterprise responsible for the management and operation of the national railway network. The rail network is an asset of national and regional importance. Rail is fundamental to the safe and efficient movement of people and goods throughout New Zealand. Recognising the importance of rail network, the Government has invested and continues to invest in the maintenance and expansion of the rail network to meet future growth demands and improve transport network efficiency.
- 3.2 The Wairarapa Line, Melling Branch and Gracefield Branch are all designated rail corridors that extend through Hutt City and are a key part of the KiwiRail network nationally. KiwiRail seeks to protect its ability to develop, operate, maintain and upgrade this line into the future.
- 3.3 Hutt City is a key component of the Wellington Metro commuter rail network, with approximately 670 trains per week traversing between Upper Hutt to the north and Korokoro to the south along the Wairarapa Line and a further 115 trains per week between Melling and Korokoro on the Melling line.
- 3.4 An additional 64 commuter trains per week travel through Hutt City serving the Wairarapa contribute to making the rail network through Hutt City one of the more rail congested areas in the country.
- 3.5 The Wairarapa Line is also a key freight route, linking Wairarapa freight exports with Wellington via Hutt City. While the principal commodity along this line is log traffic, containerised and break goods loads are also carried, all of which contributes to the removal of truck traffic from congested and narrow Rimutaka Hill Road.
- 3.6 The Wairarapa Line also operates as key resilience rail link to the Hawkes Bay, complementing the rail link from Palmerston North to Woodville via the Manawatu Gorge.
- 3.7 In the most recent budget, the Government allocated \$349 million to replace and modernise New Zealand rail assets,¹ which has gone towards a number of major projects nationwide,

¹ Wellbeing Budget 2022 – A Secure Future (New Zealand Government, Wellington, 2022) at page 82.

including the rejuvenation of the Northland railway lines, the reopening of the Napier to Wairoa line, establishing a multi-million-dollar regional freight hub in Palmerston North, and significant upgrades to the Auckland, Wellington and Hamilton metro networks.

- 3.8 To assist New Zealand's move towards a low-carbon economy, and to meet the needs of New Zealand's growing population, services on the Hutt City lines will grow. Recognising that rail produces at least 70 percent less carbon emissions per tonne of freight carried compared to heavy road freight, and that frequent reliable rail provides greater opportunities to avoid car journeys, plans to accommodate more rail traffic through the Hutt City rail corridors are presently underway to generate additional capacity.
- 3.9 In particular, the Wellington Metro Upgrade Programme (funded through the NZUP programme) is presently underway seeking to resolve reliability issues with the line, and as a result allow more frequent services.
- 3.10 While actual freight volumes through Hutt City have not been forecast, the expectation is that as freight customers demand lower carbon alternatives, rail freight demand will grow.
- 3.11 The fundamental driver of PC56 is to enable intensification of housing in urban areas. KiwiRail supports urban development and recognises the benefits of co-locating housing near transport nodes. However, it is critical that PC56 provides for adequate management of the interface between urban development and lawfully established, critical infrastructure, such as the railway network. An integrated and proactive approach to planning is critical to support the overall vision of our urban environments, and to ensure that our transport network can support the increasing growth and housing intensification.

4. NOISE AND VIBRATION

- 4.1 Acoustic and vibration standards are important controls to ensure the ongoing health and wellbeing of people and are instrumental in ensuring that reverse sensitivity effects on rail are minimised particularly where intensive residential development is proposed adjacent to the rail corridor. For the reasons set out in the evidence of Dr Chiles and Ms Heppelthwaite, KiwiRail is seeking that the current noise and vibration controls be amended to apply to activities within 100m (noise) and 60m (vibration) from the rail corridor. KiwiRail also seeks to amend the definition of noise sensitive activities to ensure that it is fit for purpose by including all relevant sensitive land uses within the definition.
- 4.2 These controls are regularly sought by KiwiRail and have been included in district plans around the country (including recently in Marlborough and Whangārei). KiwiRail undertook specific noise modelling as part of the Whangārei District Plan processes in relation to that rail corridor,

which confirmed that 100 metres was justified for noise controls, and was subject to a consent order agreed between the parties to resolve KiwiRail's appeal.

5. SETBACKS AND CORRIDOR ACCESS REQUESTS

5.1 As an asset of national significance, it is important the rail corridor can operate safely and efficiently without interference. An effective and pragmatic method of ensuring that the interface is managed through the (very common) planning tool of a setback control. These controls are regularly sought by KiwiRail and contrary to the Reporting Planner's comments,² setbacks from the rail corridor have been included in district plans throughout the country.³

5.2 The Reporting Planner does not consider it is clear why a setback from the rail corridor is necessary to prevent the extension of building maintenance activities into the rail corridor when this outcome could be achieved by the law of trespass providing a strong incentive to ensure that landowners can either access and maintain buildings or structures without crossing the property boundary or that they can arrange access with the neighbour.⁴ The Reporting Planner appears to consider therefore that the rail corridor is like any other property where building owners or occupiers would need to seek permission from adjacent landowners.

Nature of the rail corridor

5.3 The rail corridor is very different from property used for residential or other uses, which would be the typical "neighbouring property". Entry onto the rail corridor poses a very different and high consequence risk compared to entering almost all other sites. I strongly disagree with the statement by the Reporting Planner that the setback sought by KiwiRail is "disproportionate to the issue".⁵ In the event that an owner or occupier encroaches into their next door neighbour's property this is a trespass, and may result in damage to that neighbour's garden, fence etc, but it is not likely to be dangerous to both the person undertaking the maintenance activity, and / or the activity that is occurring on the neighbouring land.

5.4 If a person or object encroaches onto the rail corridor there is a risk of electrocution where there are electrified lines and / or risk of injury or worse from rail activities. The corollary of this is that the rail activities (and those who use them) are at risk from the unauthorised obstruction onto the rail corridor. Even agreed encroachments can require suspension of services with consequences for both passengers, commercial freight and timetabling of rail services.

² Section 42A Report at [765] and [803].

³ For example, in the Drury Centre and Waihoehoe Precincts in the Auckland Unitary Plan, Marlborough Environment Plan, Christchurch City Plan.

⁴ Section 42A Report at [804].

⁵ Section 42A Report at [804].

5.5 I am also surprised that the Reporting Planner has suggested that the solution to building maintenance requirements is to seek permission to use the rail corridor. In my opinion, it would be a poor planning outcome if the options for landowners who need to access their buildings for maintenance to be either that the landowner needs to seek permission to encroach onto the rail corridor, or they do not obtain permission and therefore trespass on the rail corridor. It is a much better planning outcome to provide an adequate setback **within** a landowner's own property for the building to be able to be accessed for maintenance.

Corridor access requests

5.6 The Reporting Planner has suggested that KiwiRail can refuse access for this purpose. KiwiRail operates a system regulating requests for access to its rail corridor. The large majority of these requests come from utility operators who wish to access the utilities located within the rail corridor, for example, telecommunications, electricity, water / wastewater etc. It is uncommon for private landowners to request access to the corridor.

5.7 In KiwiRail's experience, adjacent landowners do not contact KiwiRail for permission before undertaking building maintenance activities. KiwiRail is not aware whether this is because landowners do not perceive their encroachment into the rail corridor to be a concern; if they may be are unaware that they should be seeking permission; or whether there is a possible concern about process and costs. To the extent access is requested, declining access does not provide a solution – maintenance still needs to be carried out. To this end the Reporting Planner's statement that the law of trespass provides a strong incentive for people constructing buildings to ensure they can access and maintain them without crossing the property boundary is impractical. If buildings are built too close to the railway corridor then landowners will not be able to maintain them without crossing the property boundary. I expand on the width required to access and maintain buildings, especially buildings of height, in paragraphs 5.12 to 5.19 below.

5.8 In the event there was a genuine request to access the rail corridor, and this required KiwiRail to alter or suspend its services, this would be a cost for the landowner and also for KiwiRail in terms of the impacts on its services. Allowing for building maintenance so that encroachment is not required is a much more appropriate, and safer, method of addressing this issue.

5.9 It is also important to underline that it is not only the potential for physical encroachment by ladders / scaffolding etc into the rail corridor that the setback seeks to avoid. An appropriate setback distance also minimises the potential for items from adjoining landowners to inadvertently encroach into the rail corridor, such as items dropped from scaffolding, ladders or windows, or spray drift from water blasting which can be a risk to electrified lines.

Fencing

- 5.10 The Reporting Planner also suggests that KiwiRail could fence the rail corridor to deter unauthorised access.⁶ With respect, this is not a sensible planning outcome. Fencing the rail corridor (to stop people having to illegally access the corridor because district plans have not provided a sensible setback buffer) is not practical, reasonable or a good use of taxpayer money. Non-existent or impractical setbacks from the rail corridor for adjoining buildings and structures force landowners to take dangerous encroachments into the rail corridor. This can be easily, and simply, avoided by the inclusion of the plan provisions sought by KiwiRail requiring buildings and structures to be setback from the rail corridor in order to be a permitted activity.

Designation

- 5.11 The Reporting Planner suggests that as KiwiRail is a requiring authority, if KiwiRail needs additional protection for infrastructure beyond its existing designation, the appropriate method is to alter the designation (we presume, to widen it).⁷ It is not an efficient use of land for KiwiRail to designate adjoining properties simply for the purpose of ensuring people can safely access their properties, as it would impose much greater constraints on private land than the controls currently proposed by KiwiRail here. Designating land would result in additional cost, inefficiency and uncertainty for developers as they would have to seek section 176 approval from KiwiRail when they wish to undertake activities on that land.

Setback width

- 5.12 A 5 metre setback is sought by KiwiRail. This will ensure the safe and efficient operation of the rail network at the interface between the rail corridor and the neighbouring built environment, while minimising health and safety effects on adjoining residents.
- 5.13 As Hutt City continues to grow, and urban centres intensify, careful management of the interface between the rail corridor and adjacent land will only become more important. This is particularly necessary where PC56 enables three storey buildings as of right in the MDRAA and up to 22 metres in the HDRAA, SMUAA and GBAA. When buildings are taller, they become more difficult to maintain and require additional equipment like scaffolding or cherry picker cranes for maintenance. Due to the nature of this equipment, there is a risk that elements could inadvertently enter the rail corridor.
- 5.14 I have reviewed the WorkSafe Guidelines on Scaffolding in New Zealand.⁸ These Guidelines include the following configurations and guidelines for scaffolding design for tower and mobile scaffolds:

⁶ Section 42A Report at [767] and [805].

⁷ Section 42A Report at [469], [768], [806].

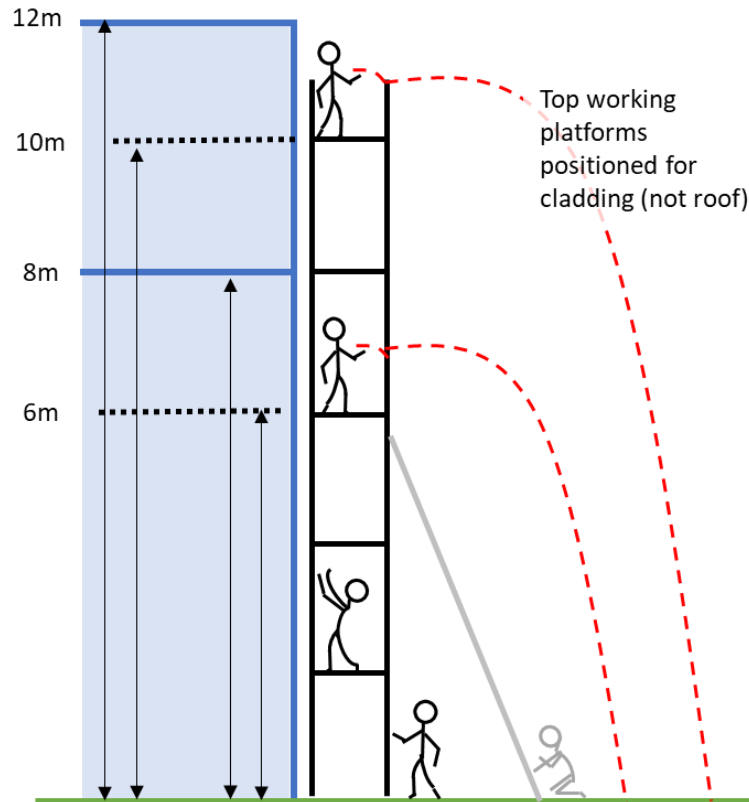
⁸ <https://www.worksafe.govt.nz/topic-and-industry/working-at-height/scaffolding-in-new-zealand/#lf-doc-20051>

- (a) Over 2 metres high - the height of the top working platform is no more than three times the minimum base dimension. For a 3 storey building of around 12 metres in height this would require a minimum of 4 metres at the base of the scaffolding.
 - (b) No overhead power lines or other obstructions to be within 4 metres of the line of travel.
 - (c) If portable ladders are used to access the scaffolding then these should be pitched at an angle between 1:4 and 1:6 horizontal to vertical and should be clear of the supporting structure at the base.
- 5.15 I note the WorkSafe Guidelines make no recommendation for the area (setback) needed to set up and construct the scaffold, only the final scaffold dimensions.
- 5.16 While providing room for scaffolding is a key basis for the setbacks sought, it is not the only basis KiwiRail seeks these provisions. Other matters for which the 5 metre setback allows sufficient space without encroachment into the rail corridor include use of mechanical access equipment required for maintenance of buildings or land uses, for example:
- (a) Equipment required for drainage works, such as operation of diggers (which require at least 3 - 5 metres for operation).
 - (b) Mobile height access equipment such as scissor lifts or cherry pickers. These include support structures which extend out from the main equipment to provide further stability in areas of unstable ground, or include moving booms which can swing out from the equipment. A small crane can be nearly 2.5 metres wide (without any outrigger support) and up to 18 metres in height.
- 5.17 KiwiRail has also taken into account appropriate support structures for higher scaffolding (such as outriggers) and the necessary space required around scaffolding equipment or machinery. It is not enough to trespass neighbouring landowners from entering the rail corridor and KiwiRail also needs to ensure the equipment itself does not encroach into the rail corridor.
- 5.18 To assist the Panel, I have had prepared a diagram that illustrates the points outlined above (attached as **Appendix A**).
- 5.19 A building setback is also necessary to minimise the risks of activities that may not otherwise be seen as creating safety risks (such as water blasting and using equipment like ladders) from interfering with the rail corridor. It is particularly important to manage these activities where the rail line is electrified, as activities such as spray drift from water blasters could have significant consequences if it interferes with the electrified lines or impedes visibility for train drivers.

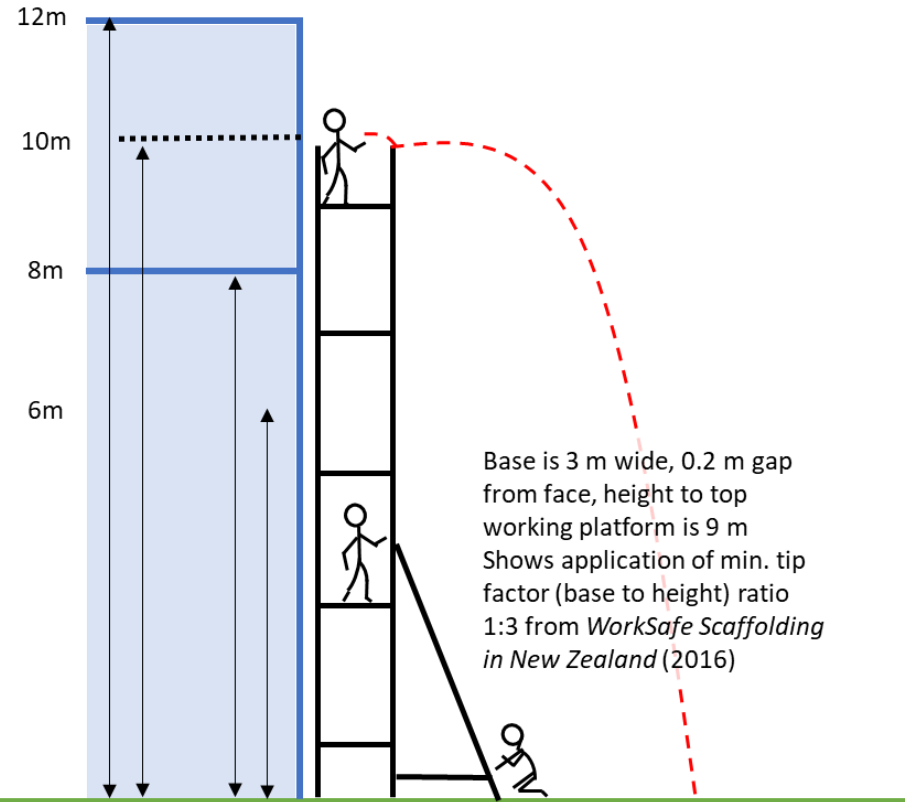
Mike Brown
29 March 2023

APPENDIX A – DIAGRAM

Example of an Independent, Multi-Bay Scaffold

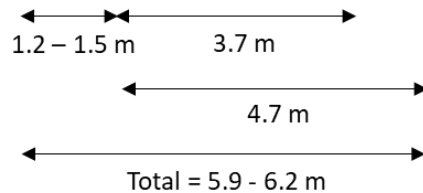


Example of a Tower Scaffold with Outrigger



Key:

- - - Path of a dropped object



Setbacks also need to accommodate motion of people e.g. walking at base of structure and attending to outrigger

