

BEFORE INDEPENDENT COMMISSIONERS

IN THE MATTER

of the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER

of a submission by KiwiRail Holdings Limited ("**KiwiRail**") on Hearing Stream 6 (Infrastructure) of the Proposed Lower Hutt District Plan ("**Proposed Plan**")

**LEGAL SUBMISSIONS ON BEHALF OF KIWIRAIL HOLDINGS LIMITED
IN RELATION TO HEARING STREAM 6 (INFRASTRUCTURE)**

17 SEPTEMBER 2026

**Russell
McVeagh**

A A Arthur-Young | K M Dibley
P +64 9 367 8000
F +64 9 367 8163
E kirsty.dibley@russellmcveagh.com
PO Box 8
DX CX10085
Auckland

1. SUMMARY

- 1.1 KiwiRail is responsible for the construction, maintenance and operation of New Zealand's rail network. KiwiRail is also a requiring authority under the RMA and holds railway purpose designations throughout New Zealand, including various designations in Lower Hutt.
- 1.2 KiwiRail supports urban development around transport nodes and recognises the benefits of co-locating housing near transport corridors. However, such development must be well-planned and carefully managed to both ensure the health and safety of people living near the rail corridor, and to safeguard the ongoing operation of nationally significant infrastructure that serves the wider region and country.
- 1.3 While a number of KiwiRail's submissions on this hearing stream have been accepted or accepted in part by the Council Reporting Officer, there are still some significant matters of disagreement, the key one being KiwiRail's proposed 5m safety setback for new buildings adjacent to the rail corridor.
- 1.4 KiwiRail's evidence answers the key question for the Panel, that is, whether a 5m setback is justified.
- 1.5 A setback provides space for people to safely maintain their buildings without needing to enter the rail corridor. The rail corridor is not a public domain. It is a highly operational environment where trains often pass through the Lower Hutt District, and where parts of the network are electrified.¹ Encroaching the corridor has severe risks. A 5m setback is an appropriate distance required for safe scaffolding and building maintenance on multi-storey buildings, accounting for the trajectory of dropped objects.²
- 1.6 The setback applies only to new buildings, retains an enabling consenting pathway, and affects less than 0.9% of properties adjacent to the rail network.³ It is a proportionate response to what is a genuine infrastructure and safety issue.
- 1.7 The remaining matters of disagreement between the Council Reporting Officer and KiwiRail are addressed in the evidence of Ms Heppelthwaite.⁴ Ms

¹ Statement of Evidence of Michelle Grinlinton-Hancock dated 7 September 2026 at section 3 and [5.11].

² Galvin Report at Figure 1.

³ Section 32 Assessment, at page 14.

⁴ Statement of Evidence of Catherine Heppelthwaite dated 7 September 2026.

Heppelthwaite will address the further comments from Mr McDonald in his rebuttal evidence on these matters at the hearing.

2. KIWIRAIL'S OPERATIONS IN THE LOWER HUTT

- 2.1 New Zealand's rail network is an asset of national and regional significance. It is critical to the safe and efficient movement of freight and passengers throughout New Zealand and forms an essential part of the national transportation network and wider supply chain.
- 2.2 The Wairarapa Line, Melling Branch and Gracefield Branch all traverse through the Lower Hutt District. Approximately 670 trains per week traverse the Wairarapa Line and an additional 60 commuter trains per week serve the Wairarapa, making the rail network through Lower Hutt a busy and significant one.⁵

3. UNDERSTANDING THE SETBACK

- 3.1 Setbacks are a common and accepted planning tool in land use planning. Setback tools like yard and frontage controls are often used. In a rail context, they are regularly sought and approved through plan processes and have been endorsed by the Environment Court on a number of occasions.⁶ A setback provides space for sites adjoining the rail corridor in which the landowner or occupier can maintain their building safely (ie clearing gutters, painting, repairs) without accessing the rail corridor to do so.
- 3.2 Problems arise when buildings are located too close to the rail corridor boundary. Where there is insufficient space on site for scaffolding or other access equipment, people either need to enter the rail corridor to undertake maintenance, or carry out maintenance in a dangerously confined space with objects at risk of falling into the corridor. The consequences of trespass (whether to retrieve a dropped object or to access a building) are materially different and potentially substantially more severe in a live corridor than a non-operational site.

⁵ Statement of Evidence of Michelle Grinlinton-Hancock dated 7 September 2026 at [3.3]-[3.6].

⁶ See for example, *KiwiRail Holdings Limited v New Plymouth District Council* [2025] NZEnvC 154, and *Kāinga Ora - Homes and Communities v Auckland Council* [2022] NZEnvC 218.

- 3.3 Trespassing into the corridor can also require trains to stop, disrupting service schedules and creating hazards for train operators and workers within the corridor.
- 3.4 The proposed setbacks sought by KiwiRail do not prevent development. The provisions apply only to new buildings, and do not apply to structures (such as fences). Existing buildings remain unaffected. A restricted discretionary consent pathway is retained for new buildings locating within the setback, where the applicant can demonstrate that safety matters have been adequately addressed. In this way, the provision enables site-specific assessment where a landowner seeks to develop within the setback area.

4. JUSTIFICATION FOR 5 METRES

- 4.1 KiwiRail's expert evidence demonstrates 5m is the most appropriate setback distance from the rail corridor, as it strikes an appropriate balance between safety requirements and the impact on adjoining land.
- 4.2 KiwiRail's position on the appropriate setback distance is supported by independent expert advice. This advice is set out in the Galvin Report attached to these submissions as **Attachment A**.
- 4.3 To assist the Panel, and in response to Mr McDonald's assertions (without evidence) of the issue as "highly hypothetical"⁷ and "highly conceptual",⁸ we summarise the key findings of the Galvin Report below.
- 4.4 The Galvin Report considers the safety implications of construction and maintenance-related activities on buildings adjacent to rail. It identifies a range of hazards that arise where buildings are located in close proximity to the rail corridor, including working at height, dropped objects, electricity, unstable ground, and mobile plant.⁹ It highlights that events which can harm construction and maintenance workers can also damage the rail network and impact the safety of those working on or using rail:¹⁰
- (a) There is a lack of situational awareness in New Zealand with respect to rail. People are not generally aware of the safety hazards presented by rail operations, or how their work and other activities

⁷ Section 42A Report at section [731].

⁸ Statement of Rebuttal Evidence of Mr McDonald on behalf of Hutt City Council dated 16 September 2026 at [6.12].

⁹ Galvin Report at sections 4-8.

¹⁰ At page 2.

may affect rail operations and the network.¹¹ This is compounded by the characteristics of small businesses and DIYers who often carry out their own construction and maintenance work.¹² The construction sector is predominantly comprised of small businesses which commonly lack formal governance arrangements and specialist safety advice.¹³

- (b) The horizontal space required between the boundary of the rail corridor and a building to safely accommodate building maintenance activities adjacent to the rail corridor is approximately 3.7 to 4.6 m for two, three, and four-storey buildings. This assumes free standing scaffold is used, and that flat, stable ground conditions are available (ie it does not overstate the distance required).¹⁴ When a zone for dropped objects is included, the required safe horizontal distance increases to approximately 4.5 to 6.5m.
- (c) The Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 establishes a hierarchy of control measures, requiring the isolation of the hazard giving rise to the risk and implementing engineering controls before resorting to administrative controls to manage risk.¹⁵

4.5 On the basis of this expert advice, Ms Heppelthwaite prepared a section 32 assessment. That assessment evaluated a range of options to manage the interface between development and the rail network and concluded a 5m setback from the rail corridor is a pragmatic and proportionate distance that balances the safety requirements with any impacts on land.

4.6 The evidence before the Panel from KiwiRail is that 5m remains an appropriate, and conservative building setback distance. A district plan framework that otherwise permits development adjacent to the rail corridor which cannot be built or maintained safely within the site does not accord with the purpose of the RMA to enable people and communities to provide for their social, economic, and cultural well-being and for their health and safety. It also potentially creates an extremely hazardous environment, where the live corridor is immediately adjacent, without the necessary safety controls.

¹¹ Galvin Report at section 6.

¹² At page 2.

¹³ At section 5.

¹⁴ At 3.1 and 7.1.

¹⁵ Health and Safety at Work (General Risk and Workplace Management) Regulations 2016, at regulation 6.

- 4.7 Accepting the relief sought by KiwiRail would therefore be consistent with the Council's obligations under s 74(1)(b) of the RMA. If the Council did not accept that relief, it would leave a gap in the planning framework that fails to address a genuine and documented safety risk.

5. THE SECTION 42A REPORT

- 5.1 The Council Reporting Officer has rejected KiwiRail's request for a 5m setback from the rail designation boundary. Mr McDonald lists a number of concerns as to why he considers a setback unnecessary in the Section 42A report¹⁶ and in his rebuttal evidence.¹⁷ We respond below.

The risk of trespass and falling objects

- 5.2 Mr McDonald considers one of the issues that the setback is designed to address (the scenario in which a person working on the exterior of a building near the rail designation drops an item into the rail corridor and then trespasses into the corridor to retrieve it) to be "highly hypothetical" with a "low risk" of resulting in an adverse effect.¹⁸ Mr McDonald asserts the issue is "highly conceptual".¹⁹
- 5.3 With respect, this characterisation fundamentally misapprehends the nature and severity of the risk. His suggestion that KiwiRail needs to demonstrate a real-world collision event to get the Council to act upon this significant safety concern is surprising. Ms Grinlinton-Hancock has a record of near misses and collision events along its network she can speak to,²⁰ but to be frank, the risk is there even if there is no record of a recent incident in the Lower Hutt.
- 5.4 KiwiRail's position is supported by the independent Galvin Report summarised above. Mr McDonald has not pointed to any technical or expert evidence that supports a different conclusion. In contrast, KiwiRail has extensive experience managing the interface between the rail corridor and adjoining land uses across the country, and in its experience (as set out in Ms Grinlinton-Hancock's evidence), near misses and collision events are not uncommon.²¹

¹⁶ Section 42A Report at section 5.3.3.

¹⁷ Statement of Rebuttal Evidence of Mr McDonald on behalf of Hutt City Council dated 16 September 2026 at from 6.10 – 6.17.

¹⁸ Section 42A Report at [731].

¹⁹ Statement of Rebuttal Evidence of Mr McDonald on behalf of Hutt City Council dated 16 September 2026 at [6.12].

²⁰ Statement of Evidence of Michelle Grinlinton-Hancock dated 7 September 2026 at [5.6].

²¹ At [5.6].

- 5.5 Further, the risk is not confined to the retrieval of a dropped item. As set out by Ms Heppelthwaite, the two key purposes of the safety setback are:²²
- (a) managing the risk of dropped objects during construction or maintenance; and
 - (b) addressing the need for adequate space to safely access building walls for maintenance and repairs throughout the lifetime of a building.
- 5.6 Buildings at, or close to, the designation boundary may not leave space for essential maintenance, including the erection and use of scaffolding or other access equipment.²³ Lack of space increases the likelihood that maintenance will be constrained or that people, equipment, or objects will encroach into the rail corridor. It is not a simple matter for landowners to seek permission to access the rail corridor to undertake maintenance. As Ms Grinlinton-Hancock explains, enabling third parties to access the corridor can require on-site safety personnel or a temporary closure of a block of track, and planning even a temporary closure can take approximately six months.²⁴
- 5.7 Any object within the rail corridor becomes a safety issue for rail employees who must remove the obstruction, and for train drivers and passengers if it is not removed in time.²⁵

The issue is not Lower Hutt specific

- 5.8 Mr McDonald opines KiwiRail's justification for setbacks is framed in a national context and does not address the Lower Hutt context specifically.²⁶ He refers to the "well-established" proximity of urban development along the rail corridor and the regulatory settings which have been carried over to the Proposed Plan.²⁷ He comments that the cost of impeding use of land should be considered further²⁸ and maintains this position in his rebuttal evidence.²⁹
- 5.9 Firstly, Mr McDonald appears to have misunderstood the way the setback standard works. The setback standard does not impede the use of land – it will only apply to *new* buildings and cannot apply retrospectively to existing

²² Statement of Evidence of Catherine Heppelthwaite dated 7 September 2026 at [7.11].
²³ Statement of Evidence of Michelle Grinlinton-Hancock dated 7 September 2026 at [5.15].
²⁴ At [5.21].
²⁵ At [5.6].
²⁶ Section 42A Report at [729].
²⁷ At [735].
²⁸ At [735].
²⁹ Statement of Rebuttal Evidence of Mr McDonald on behalf of Hutt City Council dated 16 September 2026 at [6.14].

buildings along the corridor.³⁰ It also does not apply to structures.³¹ Uses such as landscaping and fencing remain available within the setback area,³² and buildings may still be located within the setback through the restricted discretionary consent pathway when safety matters are adequately addressed.

- 5.10 Second, in relation to the cost of the setback standard, KiwiRail's section 32 analysis clearly demonstrates that the costs do not outweigh the benefits of protecting health and safety and the safe and efficient operation of nationally and regionally significant infrastructure.³³
- 5.11 Third, as Ms Grinlinton-Hancock explains, the safety risk that the setback is intended to manage (namely, the risk to people undertaking maintenance or other activities close to an operational, and in places electrified, rail corridor) does not vary between districts.³⁴ Given the high volume of trains through Lower Hutt, with approximately 670 trains per week on the Wairarapa Line alone plus additional commuter and freight services,³⁵ addressing this risk is especially important in this district.
- 5.12 Finally, regarding the existing regulatory settings carried over into the Proposed Plan – these are insufficient to manage the safety risks KiwiRail is concerned by. The existing 0m to 1.5m setback requirements cannot accommodate the minimum setback distances required for safe building maintenance, nor the minimum requirements for scaffolding. Ms Heppelthwaite explains that enabled intensification means that multi-storey residential development will increasingly occur adjacent to rail corridors, and without the controls now sought would create maintenance access and safety issues that were not contemplated when the existing provisions were drafted.³⁶

Setback distance

- 5.13 Mr McDonald queries the 5m setback distance sought, asserting the link between the risks mentioned above and the 5m setback to be "tenuous".³⁷ In his rebuttal evidence he "does not consider it credible that such a width is necessary for scaffolding" and states he doubts "that the scaffolding required

³⁰ Statement of Evidence of Catherine Heppelthwaite dated 7 September 2026 at [7.1].
³¹ Statement of Evidence of Michelle Grinlinton-Hancock dated 7 September 2026 at [4.5].
³² At [5.12].
³³ Statement of Evidence of Catherine Heppelthwaite dated 7 September 2026 at [7.1].
³⁴ Statement of Evidence of Michelle Grinlinton-Hancock dated 7 September 2026 at [5.11].
³⁵ At section 3.
³⁶ Statement of Evidence of Catherine Heppelthwaite dated 7 September 2026 at [7.5].
³⁷ Section 42A Report at [732].

for maintaining buildings is likely to be more than that required for their construction".³⁸

- 5.14 The evidential basis for the 5m setback distance is well documented in the independent expert Galvin Report and KiwiRail's section 32 assessment, as set out at section 4 of these submissions. Mr McDonald's assertions are not based on any contrary expert evidence.
- 5.15 Ms Heppelthwaite also addresses the 5m distance, considering this distance appropriate as it is likely to capture most effects while avoiding the more conservative land-use consequences of, for example, a 6.2m setback.³⁹

No qualifying matter identified

- 5.16 Mr McDonald states that under s 77I of the RMA, provisions may be less enabling than the Medium Density Residential Standards only where a qualifying matter applies.⁴⁰ A qualifying matter applies here.
- 5.17 The safe or efficient operation of nationally significant infrastructure is a qualifying matter under s 77I(e) of the RMA. The New Zealand railway network is nationally significant infrastructure. The proposed 5m setback is a matter required for the purpose of ensuring the safe operation of that infrastructure, as demonstrated by the Galvin Report and the evidence of Ms Grinlinton-Hancock and Ms Heppelthwaite.
- 5.18 The proposed setback is also only to the "extent necessary to accommodate" the qualifying matter.⁴¹ It applies only to new buildings, does not apply to structures, and retains a restricted discretionary consent pathway for buildings within the setback. It is based on the independent expert evidence in the Galvin Report which demonstrates the minimum distances required for safe building maintenance. The section 32 assessment evaluates costs and benefits, including the impact on development capacity, and the Insight Economics assessment demonstrates the impact is minimal: less than 0.9% of New Zealand properties are adjacent to the rail network, and of those, around 70% are already developed.⁴² The 5m setback is pragmatic and proportionate.

³⁸ Statement of Rebuttal Evidence of Mr McDonald on behalf of Hutt City Council dated 16 September 2026 at [6.13].

³⁹ Statement of Evidence of Catherine Heppelthwaite dated 7 September 2026 at [7.12]-[7.14].

⁴⁰ Section 42A Report at [726].

⁴¹ RMA, s 77I.

⁴² Insight Economics, *High Level Assessment of Proposed Building Setbacks Adjacent to the Rail Network* (Attachment 3 to KiwiRail's Section 32 Assessment) at Table 1 and section 3.3.

- 5.19 The full plan review provides the appropriate vehicle to address the interface between the rail corridor and adjoining development. KiwiRail's relief is supported by independent expert evidence, is consistent with the statutory framework, and represents a proportionate and necessary response to a genuine infrastructure and safety issue.

DATED: 17 September 2026

A handwritten signature in blue ink, appearing to read 'A A Arthur-Young'.

A A Arthur-Young / K M Dibley

Counsel for KiwiRail Holdings Limited