

BEFORE THE 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**")

**STATEMENT OF EVIDENCE OF MICHELLE GRINLINTON-HANCOCK
ON BEHALF OF KIWIRAIL HOLDINGS LIMITED**

CORPORATE

1. INTRODUCTION

- 1.1 My name is Michelle Grinlinton-Hancock and I am the Manager of the RMA Team for KiwiRail. I have over 25 years of RMA and planning experience and am a full member of the New Zealand Planning Institute. I have a Bachelor of Resource and Environmental Planning (Hons) from Massey University.
- 1.2 I began my career in planning and resource management in 2000 and have over the course of my career worked as a planner in Councils, as well as a consultant where I prepared consent applications and submitted on district and regional plan provisions on behalf of clients.
- 1.3 I have worked at KiwiRail as a Senior RMA Advisor, Team Leader and now Manager of the RMA Team for over six years. I am authorised to give this evidence on behalf of KiwiRail.

2. SCOPE OF EVIDENCE

- 2.1 This statement relates to Hearing Stream 6: the Energy, Infrastructure and Transport chapters of the Proposed Plan.

- 2.2 The focus of KiwiRail's submission points on Hearing Stream 6 are:
- (a) the need for a safety setback from the railway corridor; and
 - (b) amendments to other, non-setback related provisions to protect the safe and efficient operation of the rail network in the Infrastructure, Protection of Infrastructure and Transport chapters.¹

3. KIWIRAIL IN THE LOWER HUTT 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. There continues to be ongoing critical investment in the maintenance and expansion of the rail network to meet future growth demands and improve transport network efficiency.
- 3.2 To assist with New Zealand's move towards a low-carbon economy and to meet the needs of New Zealand's growing population, rail services will grow. Recognising that rail produces at least 70 percent less carbon emissions per tonne of freight carried compared with heavy road freight, plans to accommodate more freight on rail are underway.
- 3.3 The Wairarapa Line, Melling Branch and Gracefield Branch all traverse through the Lower Hutt District. Approximately 670 trains per week traverse 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 when operational, noting this line is not currently operating as a result of the Riverlink project. An additional 60 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.
- 3.4 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.

¹ At section 6.

- 3.5 While train services north of Masterton are currently suspended, the Wairarapa Line has the potential to serve as a key resilience rail link to Hawke's Bay in the event of a major disruption to the North Island Main Trunk line.
- 3.6 Growth in these lines is expected over the life of the Proposed Plan. KiwiRail seeks to protect its ability to operate, maintain and upgrade these lines into the future. The primary drivers for growth of volume of the line will be increased use of the lines for carrying freight, and also the Greater Wellington Regional Council plans for increased frequency of passenger service.

4. SETBACKS

Protecting the rail corridor

- 4.1 The rail corridor is an important physical resource and strategic transport infrastructure. As part of its operations and obligations to its customers, KiwiRail needs to operate trains as required to meet demand. This can result in changes to the timing, frequency, or length of trains passing along the route. It can also result in upgrades to the network that can provide passing opportunities for trains, or other associated rail improvements.
- 4.2 As an asset of national significance, it is important that the rail corridor can operate safely and efficiently without interference. Any interference with the railway corridor is disruptive to rail services, creating unnecessary and cascading delays to passengers and freight, as well as obvious safety concerns.
- 4.3 A safety setback's primary function is as a safety buffer. It is distinct from noise and vibration provisions. The setback seeks to protect the safety of the rail corridor, and of people living and working next to it, as it provides space within a site adjoining the rail corridor for the landowner or occupant of that building to maintain and access their own house or building safely, without accessing the rail corridor to do so or getting too close to heavy freight trains.
- 4.4 KiwiRail therefore commonly seeks setback controls in plans throughout New Zealand from the rail corridor boundary for development on land adjoining the corridor, as an efficient and effective means of ensuring that the risk of interference is mitigated.

How KiwiRail's setbacks work

- 4.5 KiwiRail seeks a 5m setback for all new buildings from the rail designation boundary in all zones.² It is no longer seeking the same setback for structures. The provisions apply to new developments, not to existing buildings. Compliance with the proposed setback standard would provide for buildings as a permitted activity, with non-compliance (ie buildings that seek to establish within the setback area) requiring a restricted discretionary activity consent, with associated matters of discretion.
- 4.6 These matters of (restricted) discretion will ensure the Council (and KiwiRail as a potentially affected party) has an opportunity to assess whether safety concerns can be adequately managed where the setback is not proposed to be complied with (ie where part of a building is located within 5m of the rail corridor boundary).
- 4.7 In addition to the proposed setback standards, KiwiRail's submission seeks other relief (including a new objective, policy and rule, together with amendments to PINF-P1) to give effect to the setback sought.³

5. SECTION 42A REPORT

- 5.1 I have read the Council Officer's report. He does not support the inclusion of rail setback standards for a number of reasons.⁴
- 5.2 I address these matters in turn below.

Risks of trespass and falling objects

- 5.3 The Council Officer considers the scenario of a person trespassing into the rail corridor to retrieve an item that had fallen while working on the exterior of a nearby building, as being a "highly hypothetical" issue that has a low risk of resulting in an adverse effect.⁵ In his view, the safety risks suggested by KiwiRail are not justified.⁶ He also considers it "improbable" that falling objects could strike scaffolding and be projected into the rail corridor.⁷

² Submission point 442.55.

³ Submission points 442.46, 442.47, 442.51b, 442.52, 442.54 and 442.55.

⁴ Section 42A Report at [725]-[737].

⁵ Section 42A Report at [731].

⁶ Section 42A Report at [731].

⁷ Section 42A Report at [732].

- 5.4 I do not agree with the Council Officer's view and do not understand the basis for his view. Planning is inherently forward-looking: its purpose is to manage risk before harm occurs. It would be counterintuitive for KiwiRail to have to wait for an incident in Lower Hutt (or anywhere else) before it sought safety standards be implemented. Setbacks are a common and accepted planning tool, regularly sought and approved through plan processes and by the Environment Court.
- 5.5 I do not agree that the safety risk KiwiRail seeks to manage is "highly hypothetical", or that the risk of falling objects striking scaffolding and being projected into the rail corridor is "improbable".
- 5.6 KiwiRail has extensive operational experience managing the interface between rail and adjoining land uses. These risks are real and KiwiRail has a record of near misses and collision events along its network. In relation to scaffolding, KiwiRail has observed incidents where scaffolding has obscured level crossing signals, requiring temporary speed restrictions to be imposed. Trains are heavy and travel at high speeds meaning they cannot easily stop or swerve an object or person within the railway corridor.
- 5.7 As is illustrated in the Galvin Consulting Ltd report provided with KiwiRail's submission,⁸ buildings built right up on the boundary (or which are subject to a minimal setback from the boundary):
- (a) do not leave enough space on site for essential maintenance activities and this lack of space means people either need to access the rail corridor or carry out essential maintenance and building works in a very small space; and
 - (b) significantly increase the risk of inadvertent incursion into the rail corridor from objects falling from open windows or being dropped from scaffolding / platforms that are used for maintenance.
- 5.8 The rail corridor is not a public domain, and it has a very different and high consequence risk profile compared to entering other sites. It is a hazardous environment and entering the rail corridor can result in a material safety issue to both the person accessing the corridor, and to the rail operations being undertaken within the rail corridor.
- 5.9 Any object within the rail corridor becomes a safety issue for rail employees who need to remove the obstruction, not to mention train drivers and

⁸ Attachment 2 to KiwiRail's Submission.

passengers if the obstruction is not removed in time. It is also a safety issue for residents who seek to retrieve items from the track, due to danger from trains.

Lower Hutt context and cost

- 5.10 The Council Officer comments that the evidence supplied by KiwiRail is framed in the national context and is not Lower Hutt specific.⁹ The Officer also refers to urban development along the rail corridor and the cost of impeding the use of this land with a 5m setback.¹⁰
- 5.11 With respect to providing Lower Hutt specific context, 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, is not a risk that varies between districts.
- 5.12 However, I consider the Council Officer may have misunderstood the potential impacts of the new rule sought by KiwiRail when he refers to the cost of impeding the use of land. As set out in Ms Heppelthwaite's evidence, the setback control proposed only applies to **new buildings** and does not require any changes to be made to existing buildings.¹¹ For many of the landowners along the railway corridor, the standard will not have any impact on them.
- 5.13 The proposed setback standard also does not prevent use of the land within it: it is a permitted activity standard, other uses (eg landscaping, fencing) remain available within the setback area, and a consent pathway is available for buildings that wish to locate within the setback, where the applicant can demonstrate that safety matters have been adequately addressed. The standard is also drafted to only apply to new buildings.
- 5.14 For these reasons, I do not consider the setback costs outweigh the benefits of the setback in protecting the safe and efficient operation of a nationally and regionally significant asset, and the health and safety of people using and occupying land near the rail corridor. I consider this to be a proportionate and appropriate balance of costs and benefits, including in the Lower Hutt context. I refer to the Section 32 assessment which reaches the same conclusion.¹²

⁹ Section 42A Report at [729].

¹⁰ Section 42A Report at [735].

¹¹ Statement of Evidence of Cath Heppelthwaite at [7.1]

¹² KiwiRail Submission, Appendix 2, Section 32 Assessment at p17.

Safety risks justify a 5m setback

- 5.15 The Council Officer queries the 5m setback distance sought.¹³ The width of the setback area needs to be sufficient for maintenance activities and access requirements. This includes scaffolding, ladders and other mechanical access equipment required for the maintenance of buildings or land uses.
- 5.16 The evidence of Ms Heppelthwaite addresses the evidential basis for KiwiRail seeking 5m. However, relying on the independent expert technical advice KiwiRail has received (set out in the Galvin Consulting Ltd Report provided with KiwiRail's submission), I consider that 5m is required to enable the residents of the district to be able to use and maintain buildings on their properties safely, while also protecting rail operations from interference.
- 5.17 The Galvin Consulting Report concludes that 3.7 to 4.6m is required from the building cladding to construct freestanding scaffold for maintenance activities on two to four-storey buildings, and 4.5 to 6.5m when including a zone for dropped objects. There is no single distance that reflects all circumstances. 5m is considered to be a pragmatic approach that balances the safety requirements with the impacts on land.

Alternative approaches

- 5.18 The Council Officer considers that there has been no investigation of other approaches implemented in district plans and their efficacy in addressing the issue.
- 5.19 I do not agree that alternative approaches have not been investigated.
- 5.20 As set out in the evidence of Ms Heppelthwaite, KiwiRail's Section 32 Assessment on Setbacks specifically considered alternative methods of managing the safety and interference risks associated with development immediately adjacent to the rail corridor, including increasing the width of KiwiRail's designation, fencing the rail corridor, and relying on access requests for adjoining building maintenance.¹⁴ Each of these alternatives was found to be less effective, less efficient, or more restrictive of private property rights than the setback standard sought. The rail corridor also has a materially different and higher consequence risk profile than other land uses given its hazardous, and in places electrified, nature, so a comparison with lower-risk activities on adjoining land is of limited assistance.

¹³ Section 42A Report at [732].

¹⁴ Attachment 4 to KiwiRail's Section 32 Assessment on Setbacks.

- 5.21 In KiwiRail's experience, one alternative suggested by other submitters and councils is that adjoining landowners should simply ask for permission to access the rail corridor to undertake maintenance and other activities. With respect, this is not the answer. This would be disruptive to the rail network and onerous for landowners / occupiers to have to use each time they wish to undertake maintenance on their own properties. Enabling third parties (like neighbours) to access the rail corridor can require on-site safety personnel, or the temporary closure of a block of the track. Closing the track, even temporarily, requires around six months to plan, as rail operation demands are required to be factored in and alternatives found.
- 5.22 In my opinion, it would be a poor planning outcome if the options for landowners who need to access their own buildings for maintenance are either to: (a) seek permission from KiwiRail to encroach into the rail corridor (resulting in delays, costs and safety issues); or (b) not obtain permission and trespass on the rail corridor. The better planning outcome is to provide an adequate safety setback within an adjoining site for the landowner / occupier to access their building safely.
- 5.23 The Council Officer suggests that consideration of the issue in the Lower Hutt context should acknowledge the fencing of the rail corridor, and the extent to which this reduces the potential for rail corridor trespass associated with building work.¹⁵
- 5.24 In relation to fencing specifically,¹⁶ fencing the rail corridor boundary does not resolve the underlying issue of insufficient space on adjoining sites to safely undertake building maintenance and will not address the risk of falling objects entering the rail corridor. Fencing also carries significant establishment and ongoing maintenance costs, including from damage and graffiti, and adverse visual amenity effects.¹⁷ KiwiRail does not consider fencing to be an effective or efficient alternative to a setback standard.

6. SAFE AND EFFICIENT OPERATION OF THE RAIL NETWORK

- 6.1 Ms Heppelthwaite also comments on KiwiRail's other non-setback related submission points that the Council Officer has recommended be rejected or accepted only in part and I support her evidence. I wish to comment on two matters:

¹⁵ Section 42A Report at [735].

¹⁶ Section 42A Report at [735].

¹⁷ Attachment 4 to KiwiRail's Section 32 Assessment on Setbacks.

- (a) The definition of "Transport Network": KiwiRail's submission proposed to amend the definition of "Transport Network" to ensure all aspects of the rail network were included. The notified definition referred to "public rail" infrastructure. Not all rail facilities are open to the public (eg rail yards) and I consider it would be clearer for the definition to refer to "the rail network".
- (b) The provisions relating to rail level crossings: KiwiRail's submission proposed two new objectives and a new policy relating to the safe and efficient operation of rail level crossings. The Council Officer has recommended amendments to address the relief requested in KiwiRail's submission, however Ms Heppelthwaite has proposed a further change to ensure sightlines at existing level crossings are protected. I support this approach. Level crossings pose one of the most significant risks on the rail network for KiwiRail and to the public. KiwiRail has a policy of strongly discouraging the creation of new level crossings and actively seeks to remove level crossings where it can. This is because level crossings pose a significant risk to health, safety and wellbeing, as evidenced by the high number of incidents that occur each year.

7. CONCLUSION

- 7.1 For the reasons set out above and in the evidence of Ms Heppelthwaite, the setback controls, and other amendments sought by KiwiRail are appropriate and necessary for the safe and efficient operation of the railway network in the Lower Hutt District.

Michelle Grinlinton-Hancock

7 September 2026