

BEFORE INDEPENDENT COMMISSIONERS

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Porirua District Plan
("Proposed Plan")

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

PLANNING

1. INTRODUCTION

- 1.1 This evidence has been prepared in response to the planning evidence of Ms Williams dated 21 January 2022 on behalf Kāinga Ora – Homes and Communities in relation to setbacks from the rail corridor boundary.

2. SETBACK FROM BOUNDARY OF RAIL CORRIDOR

The Whangārei Plan Changes

- 2.1 Ms Williams refers to recently settled aspects of appeals on Plan Changes in the Whangārei district to support a setback of buildings and structures from the boundary of the railway corridor of no more than 2m in residential zones, and 2.5 in mixed-use/commercial zones.¹ A range of matters in relation to those appeals are still live.
- 2.2 In relation to setbacks, as KiwiRail has made clear on many occasions that the setback provisions in Whangārei are specific to those particular Plan Changes and KiwiRail's operations within that district. It is not appropriate, in my view, for those setbacks to be directly translated into the Proposed Plan without consideration of the Porirua context. For example:

¹ Evidence of Karen Williams, dated 21 January 2022, at [5.53].

- (a) Unlike the Whangārei rail network, the Porirua rail network is electrified. This is a significant difference. Electric trains are quieter than freight trains, meaning that when people are undertaking activities on land adjoining the rail corridor they may not be aware of a train approaching. This increases the potential risk of inadvertent interference with the rail corridor where activities are located too close to the rail corridor boundary.
- (b) The Porirua network experiences far greater train volumes than Whangārei, with on average almost 70 trains per day using the network. With projected population growth in the Porirua and the greater Wellington area, KiwiRail anticipates that there will be an increase in operations on the rail network across Wellington over the next 25 years. For example, KiwiRail is currently undertaking the Porirua Area Capacity Enhancements (PACE) project, which includes a complete upgrade of Plimmerton Station including the addition of a new platform. Given the volume of trains using the Porirua network, and its expected growth in the future, any inadvertent incursions into the rail corridor as a result of development occurring too close to the rail corridor will have more significant and widespread delays to the rail network. When train drivers are required to stop if there is an incursion into the rail corridor, it affects all trains at stations on either side of the point of incursion and has flow on impacts to the wider rail network.
- (c) The general setback provisions in the Proposed Plan reduce the extent of setbacks in Porirua. Under Part 3: Area Specific Matters of the Proposed Plan, setback standards are set out for the General Residential Zone,² Medium Density Residential Zone,³ and the General Industrial Zone.⁴ Each of these standards are subject to exceptions which limit the application of the setback standards. For example, the standards do not apply to eaves up to a maximum of 600mm in width, and external gutters or downpipes (including their brackets) up to an additional width of 150mm.⁵ This allows encroachment of the eaves of a building into the setback area of up to 750mm. In practice, this reduces the area available for maintenance or certain construction works on a building (for example, where a ladder is being used to undertake works in the gutter or on the roof of a building in the setback area, that ladder will have 0.75m less setback space to utilise). The useable setback space for undertaking gutter or roof work with a ladder would, based

² Proposed Plan, Part 3: Area Specific Matters at GRZ-S4 and GRZ-S5.

³ Proposed Plan, Part 3: Area Specific Matters at MRZ-S3 and MRZ-S4.

⁴ Proposed Plan, Part 3: Area Specific Matters at GIZ-S3.

⁵ Proposed Plan, Part 3: Area Specific Matters at GRZ-S4, GRZ-S5, MRZ-S3, MRZ-S4 and GIZ-S3.

on the Council Officer's recommended setback of 1.5m, be effectively reduced to 0.75m. A 2m or 2.5m setback as proposed by Ms Williams would also result in a small area of useable setback space, being 1.25m or 1.75m. This increases the likelihood of encroachment into the rail corridor with consequential risk to the safety of the public.

2.3 KiwiRail therefore does not consider that the approach agreed in Whangārei is a "one size fits all" and should not be promoted as such. In the context of the more urbanised and densely populated Porirua district, and the busy, electrified line, I consider a setback of 5m (or no less than 4m for consistency with other provisions in the Proposed Plan) is appropriate.

Cost to landowners

2.4 Ms Williams considers safe, efficient, and effective operation of rail infrastructure must be balanced against the cost on landowners (and the associated restriction on their development rights).⁶ However, Ms Williams has failed to consider the costs which the setback is intended to minimise.

2.5 I am aware that trains travel at speed and are unable to stop quickly, with freight trains often taking one kilometre to come to a complete stop. There are limited evasive actions that a train driver can take in an emergency. While the probability may be low, a collision with a train has significant consequences. Injuries and death, temporary track closure, damage to locomotives and freight, and impacts on supply chains all carry costs which must also be considered by reducing a setback.

2.6 There are also other costs that need to be considered. KiwiRail has a Permit to Enter system for all access to the rail corridor that must be obtained before access is granted. A reduced setback will result in a greater number of access permits being required in circumstances where there is insufficient space on adjoining land to undertake activities, such as maintenance of buildings, without entering the rail corridor. Processing these permits brings additional cost to KiwiRail and landowners that Ms Williams has not considered. This includes the requirement for onsite safety personnel, or the temporary closure of track for a set period to manage safety while activities occur. An applicant for a permit to enter must also pay a fee in applying for a permit which can be expensive if access to the rail corridor is required regularly to undertake day to day activities. By reducing the setbacks as suggested by Ms Williams, there is the additional risk that people will enter the rail corridor without the necessary approvals, which result in increased safety risks and disruptions to the network without protections that the Permit to Enter process provides in place.

2.7 I do not consider that the cost to landowners in terms of development potential is unreasonable. A 5m setback as proposed by KiwiRail does not sterilise the land within it. The

⁶ Evidence of Karen Williams, dated 21 January 2022, at [5.53].

setback is a permitted activity standard and resource consent can be sought as a restricted discretionary where it is proposed to be infringed. KiwiRail is not opposed to buildings being located closer to the rail corridor where careful design can demonstrate that it is appropriate having regard to the safe and efficient operation of the rail network. The permitted activity standard also exempts some forms of development, such as buildings that are no more than 2m² in floor area and 2m in height above ground level.⁷ In practice, this means this land can still be utilised for a range of activities, including for example garden sheds and water tanks.

- 2.8 Where the setback standard is infringed, Ms Williams has proposed a new matter of discretion which also reflects the standard agreed in Whangārei.⁸ I consider that the matter of discretion sought by KiwiRail in its submission on Porirua is sufficiently broad to enable the matters proposed by Ms Williams to be considered. On that basis, I continue to support the matter of discretion proposed by KiwiRail in its submission.

Michelle Grinlinton-Hancock

28 January 2022

⁷ See for example Proposed Plan, Part 3: Area Specific Matters at GRZ-S4, GRZ-S5, MRZ-S3, and MRZ-S4.
⁸ Evidence of Karen Williams, dated 21 January 2022, at [5.55]-[5.56].