

BEFORE INDEPENDENT COMMISSIONERS

AT PORIRUA

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

AND

IN THE MATTER of Variation 1 to the Proposed Porirua District Plan

**LEGAL SUBMISSIONS ON BEHALF OF KIWIRAIL HOLDINGS LIMITED IN
RELATION TO HEARING STREAM 7**

9 MARCH 2023

**Russell
McAugh**

A A Arthur-Young / K L Gunnell
P +64 9 367 8132
F +64 9 367 8163
PO Box 8
DX CX10085
Auckland

1. SUMMARY

- 1.1 These submissions are prepared on behalf of KiwiRail Holdings Limited ("**KiwiRail**") in relation to Variation 1 to the Proposed Porirua District Plan ("**Variation 1**")
- 1.2 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.
- 1.3 The North Island Main Trunk Line ("**NIMT**") passes through the Porirua District. The NIMT is a critical component of the rail network that will be subject to growth in use as New Zealand moves towards a low-carbon economy.¹ With this anticipated growth and forecast population growth in Porirua, KiwiRail is already undertaking a range of specific rail upgrades and projects to support the growth in the Porirua District, including the Wellington Metro Upgrade Programme and various works under the Porirua Area Capacity Enhancements project.²
- 1.4 Providing a physical setback for buildings adjacent to the railway corridor boundary is to ensure that there is sufficient space for landowners and occupiers to safely and maintain and use their buildings, while minimising the potential for interference with the rail corridor. Such an approach strikes an appropriate balance between use and maintenance of building in a safe manner and the continued operation of regionally significant infrastructure.
- 1.5 The Section 42A Report did not accept KiwiRail's submission in relation to setbacks. KiwiRail does not agree with this for the reasons set out in these submissions and the evidence of Ms Grinlinton-Hancock.

2. BUILDING SETBACKS FROM THE RAIL CORRIDOR

- 2.1 As an infrastructure asset of strategic importance to the country and the region, it is critical the rail corridor can operate safely and efficiently without

¹ Evidence of Michelle Grinlinton-Hancock, dated 24 February 2023, at [3.2].

² Evidence of Michelle Grinlinton-Hancock, dated 24 February 2023, at [3.3].

interference. Ms Grinlinton-Hancock has explained that interference with the rail corridor from activities inadvertently entering the rail corridor poses a significant safety risk.³

- 2.2 As Porirua continues to grow, and urban centres intensify, careful management of the interface between the rail corridor and adjacent land will only become more important. The intensification proposed under Variation 1 will put increasing pressure on this interface. Buildings of at least 3 storeys will become increasingly common on sites adjacent to the rail corridor, which, without appropriate planning protections in place, has the potential to pose real safety risks.
- 2.3 An effective and pragmatic method of ensuring that the interface is managed through the (very common) planning tool of a setback control. This approach aligns with the intent of qualifying matters, which allows for provisions to be less enabling of development if that is required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure.⁴ The setback proposed by KiwiRail is for the purpose of ensuring the safe and efficient operation of nationally significant infrastructure, being the rail network.
- 2.4 In its submission, KiwiRail sought that relevant zone standards in Variation 1 require a 5 metre building setback from the rail corridor. 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.

Response to Section 42A Report

- 2.5 The Reporting Planner recommends a 1.5 metre setback is maintained, on the basis that KiwiRail has not provided any examples or evidence showing that this size setback is insufficient.
- 2.6 As outlined in the evidence of Ms Grinlinton-Hancock, the primary reason for a setback is to minimise the risk of interference in the rail corridor due to activities associated with buildings, such as water blasting and the use of equipment such as ladders.⁵ A 1.5m setback does not provide sufficient room for building maintenance and cleaning to be undertaken safely. Closer buildings pose a greater risk in terms of railway interference.⁶ Taller buildings

³ Evidence of Michelle Grinlinton-Hancock, dated 24 February 2023, at [5.2].

⁴ RMA ss 771(e) and 770(e).

⁵ Evidence of Michelle Grinlinton-Hancock, dated 24 February 2023, at [5.6].

⁶ Evidence of Michelle Grinlinton-Hancock, dated 24 February 2023, at [5.6].

also become more difficult to maintain and require additional equipment such as scaffolding, which often inadvertently and unsafely enters the rail corridor.⁷ Scaffolding, used safely, requires more than 1.5 metres. Variation 1 will enable up to 3 storeys, which means a wider setback is required.⁸

- 2.7 The wider the setback, the lower the risk of objects or structures entering the rail corridor from neighbouring properties which could cause disruption to the network, or a collision or accident. In Porirua, the electrified railway line makes these risks significant. Issues such as spray drift from water blasters could have significant consequences if they interfere with electrified lines.⁹ Unless neighbouring buildings are sufficiently set back from the railway corridor, these are significant safety hazards.

3. CONCLUSION

- 3.1 The relief sought by KiwiRail is the most appropriate way to provide for the safe and efficient operation of nationally significant infrastructure as intended by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

DATED: 9 March 2023

K L Gunnell
Counsel for KiwiRail Holdings Limited

⁷ Evidence of Michelle Grinlinton-Hancock for Hearing Stream 4, dated 21 January 2022, at [5.3].

⁸ Section 42A Report – Overarching at [606].

⁹ Evidence of Michelle Grinlinton-Hancock dated 24 February 2023, at [5.6].