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 4 (Heritage; Residential Zones; Commercial Zones; Industrial Zones; Open Space & Recreation Zones) of the Waitaki District Plan ("**Proposed Plan**")

LEGAL SUBMISSIONS ON BEHALF OF KIWIRAIL HOLDINGS LIMITED

10 NOVEMBER 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 the Main South Line and the Waiareka Line (both operational and key parts of the KiwiRail national network) that run through the district (designations KRH-1 and KRH-2).

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 The Proposed Plan rightly recognises the need to manage the interface between development and the rail network through a proposed 4.5m minimum setback for new buildings and structures from the rail corridor designation boundary ("**Building Setback**"). KiwiRail supported the notified Building Setback in its submission, and the Council Officers for each zone have recommended retaining the notified Building Setback. KiwiRail has subsequently filed a letter in support of the Council Officers' recommendations and has sought minor changes to the matters of restricted discretion.[1]

1.4 While there is no disagreement between the Council Officers and KiwiRail on the appropriateness of the Building Setback, the planning evidence of Ms Beneke on behalf of Kāinga Ora Homes and Communities ("**Kāinga Ora**") opposes the Building Setback and raises several matters that warrant a response from KiwiRail.[2]

2. AN OVERVIEW OF THE BUILDING SETBACK

2.1 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, and as Kāinga Ora well knows, they are regularly sought and approved through plan processes (including with Kāinga Ora as a party) and have been endorsed

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1 Tabled letter dated 28 October 2026.

2 Statement of Evidence of Lezel Beneke dated 3 November 2026.

by the Environment Court on a number of occasions.[3] 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.

2.2 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 (like this one) than a non-operational site.

2.3 Having people or objects on the corridor requires trains to stop, disrupting service schedules and creating hazards for train operators and workers within the corridor.

2.4 The Building Setback in the Proposed Plan does not prevent development. The provisions apply only to new buildings and structures, with existing buildings remaining unaffected. They also simply introduce a restricted discretionary consent pathway for new buildings which do seek to locate within the setback, which enables site-specific assessment where a landowner seeks to develop within the setback area.

3. JUSTIFICATION FOR A 4.5M SETBACK

3.1 The basis for the setback distance sought by KiwiRail is set out in the Galvin Report attached to KiwiRail's submission on the Proposed Plan.

3.2 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.[4]

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[3] 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.

[4] Galvin Report at sections 4-8.

3.3 The Galvin Report also 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:[5]

(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 may affect rail operations and the network.[6] This is compounded by the characteristics of small businesses and DIYers who often carry out their own construction and maintenance work.[7] The construction sector is predominantly comprised of small businesses which commonly lack formal governance arrangements and specialist safety advice.[8]

(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 4.6m 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).[9] When a zone for dropped objects is included, the required safe horizontal distance increases to approximately 4.5 to 6.5m.[10]

(c) The Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 establish 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.[11]

3.4 On the basis of this advice, Ms Heppelthwaite prepared a section 32 assessment (which is also attached to KiwiRail's submission). 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.

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5 At page 2.
6 Galvin Report at section 6.
7 At page 2.
8 At section 5.
9 At 3.1 and 7.1.
10 At page 3.
11 Health and Safety at Work (General Risk and Workplace Management) Regulations 2016, at regulation 6.

3.5 Despite the expert advice supporting a 5m setback, KiwiRail has taken a pragmatic approach in this case, and supported the notified 4.5m Building Setback in the Proposed Plan.

3.6 The advice before the Panel from KiwiRail is that the 4.5m Building Setback is an appropriate and reasonable building setback distance. It is good planning. 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 creates a hazardous environment, where the live corridor is immediately adjacent, without the necessary safety controls.

4. RESPONSE TO MS BENEKE'S EVIDENCE

4.1 Ms Beneke, a planner on behalf of Kāinga Ora, opposes the 4.5m Building Setback. She says (in summary):[12]

(a) there is insufficient evidence to demonstrate that a setback is necessary and the effects identified by KiwiRail are largely theoretical;

(b) the Building Setback is disproportionate to the effects it seeks to manage and that KiwiRail, as the rail corridor operator, is best placed to manage risks associated with the operation of the network through measures such as fencing, monitoring, maintenance requirements and operational controls;

(c) recent district plan reviews and intensification plan changes have generally retained standard residential setbacks adjoining rail corridors; and

(d) the scale and location of buildings adjoining the rail corridor are already controlled through the district plan's setback, height, and height in relation to boundary provisions.

4.2 We address these matters in turn below.

12 Evidence of Ms Beneke dated 3 November 2026 at [8.5] – [8.9].

Insufficient evidence and low risk

4.3 Ms Beneke's opinion is that there is insufficient evidence to support the Building Setback and the effects / risks identified by KiwiRail are "largely theoretical" and "of a low likelihood". She says the effects do not outweigh the benefits of retaining development capacity within the Residential Zones.[13]

4.4 We refer the Panel to the Galvin Report and Ms Heppelthwaite's section 32 analysis, summarised in section 3 above.

4.5 In our submission, the evidence before the Panel contradicts Ms Beneke's opinion - the risks are clearly neither theoretical nor unlikely, and the effect on development capacity is minimal. Ms Beneke's characterisation also fundamentally misapprehends the nature and severity of the effects / risks KiwiRail seeks to manage through the Building Setback. The rail corridor is not a public domain. It is a highly operational environment where trains regularly pass through the district and encroaching on the corridor has severe and potentially fatal consequences.

4.6 Ms Beneke has not recommended an alternative distance for a setback nor pointed to any technical or expert evidence that supports her opinion. By contrast, KiwiRail has provided independent expert advice, and has extensive experience managing the interface between the rail corridor and adjoining land uses across the country. In its experience, trespasses, collision events and near misses are not uncommon. Ms Grinlinton-Hancock will be able to speak to this further at the hearing and can provide a hearing statement should the Panel require one.

Proportionality

4.7 Ms Beneke also considers the Building Setback to be disproportionate to the effects / risks it seeks to manage.[14] Again, this seeks to trivialise the effects and overplay the relief. The Building Setback only applies to new buildings and structures. It retains an enabling consenting pathway (restricted discretionary) and is a proportionate and reasonable response to what is a genuine infrastructure and safety issue.

4.8 Ms Beneke also states that she considers KiwiRail is best placed to manage risks associated with the operation of the network through measures such as fencing, monitoring, maintenance requirements and operational controls.[15]

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13 Evidence of Ms Beneke dated 3 November 2026 at [8.8].

14 At [8.6].

15 At [8.6].

KiwiRail does manage risks associated with its operations within the rail corridor but has no control over third party actions outside its designated area. Ms Beneke's comment appears to misunderstand the purpose of the setback, which is to ensure there is sufficient distance for buildings adjacent to the corridor to be safely maintained by third parties.

4.9 Further, Ms Heppelthwaite's section 32 assessment evaluated a range of options to manage the interface between development and the rail network. This assessment concluded a 5m setback from the rail corridor is a pragmatic and proportionate distance that balances the safety requirements with any impacts on land.

Setbacks in other District Plans

4.10 Ms Beneke states that recent district plan reviews and intensification plan changes throughout Aotearoa have generally retained standard residential setbacks adjoining rail corridors.[16] She has cherry-picked a few examples to support her statement but fundamentally overstates this point. Further, some of the lesser setback examples Ms Beneke has referred to were imposed on KiwiRail through the intensification plan change processes which had limited appeal rights (on points of law only to the High Court).

4.11 There are a number of plans across the country where setbacks of 4–5m have recently been endorsed by councils and / or the Environment Court, of which Kāinga Ora will be aware. For example:

(a) the Christchurch District Plan – 4m;

(b) the Dunedin City District Plan – 4m;

(c) the New Plymouth Part Operative District Plan – 5m;

(d) the Partially Operative Selwyn District Plan – 5m; and

(e) the Western Bay of Plenty Operative District Plan – 5m.

4.12 Each of these provisions is directed at the same outcome KiwiRail seeks here, being sufficient space for people to safely use, access and maintain buildings without requiring access on, above or over the rail corridor.

16 At [8.7].

Other Proposed Plan provisions manage development

4.13 Ms Beneke suggests that the scale and location of buildings adjoining the rail corridor are already controlled through the Proposed Plan's setback, height, and height in relation to boundary provisions.[17]

4.14 The Proposed Plan controls vary between zones, however, in KiwiRail's view, they are not sufficient to ensure buildings are appropriately set back from the rail corridor. Without the Building Setback recommended by the Council Officer, the permitted standards (in, as an example, the General Residential Zone) would simply be:[18]

(a) GRZ-S2, which provides a maximum height of 8m; and

(b) GRZ-S3, which provides a height in relation to boundary recession plane of 3m plus a range of angles from 30° to 55° (depending on boundary orientation).

4.15 With only those controls in place, buildings could be as close as 1.6m from the boundary of the rail corridor and could result in a habitable building (based on a flat site) being 5m high, set back 1.6m from the site boundary (applying a 3m plus 55° height to boundary control).

4.16 This results in a situation that KiwiRail cannot support, as it leaves inadequate space between the rail corridor and new buildings.

DATED: 10 November 2026



A A Arthur-Young / K M Dibley

Counsel for KiwiRail Holdings Limited

17 At [8.9].

18 Noting these are the controls as recommended by the Council Officer in the Section 42A Report: Residential Zones authored by Emily McEwan, dated 19 October 2026, Appendix 1 (Recommended Changes to Provisions), GRZ-S2, GRZ-S3 and GRZ-S6.