

Before the Independent Hearings Panel at Gore District Council

Under Schedule 1 of the Resource Management Act 1991

In the matter of Hearing Submissions and Further submissions on the Proposed
Gore District Plan.

**Hearing Stream 2 Reporting Officer Right of Reply of Joanne Skuse, Mishka Banhidi,
Tina Carlson-McColl and Victoria Woodbridge on behalf of Gore District Council**

Date: 19 July 2024

Introduction:

1. Our full names are:
 - Tina Carlson-McColl
 - Victoria Emily Jane Woodbridge
 - Joanne Skuse
 - Mishka Banhidi
2. Our Hearing Stream 2 Section 42A reports set out our qualifications and experience in planning expertise.
3. We have prepared this right of reply in respect of Hearing Stream 2 and the submissions received, including evidence and statements presented and tabled.
4. This right of reply provides a response to additional evidence provided from KiwiRail Holdings Ltd and Fire and Emergency New Zealand as requested by Minute 11 to be provided by 19 July 2024.
5. We confirm that we are continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's practice Note 2023, as applicable to this independent hearing panel.
6. A full copy of amendments we now recommend is included at Appendix 1.

Response to additional information provided by KiwiRail Holdings Ltd

7. KiwiRail's additional information¹ dated 5 July 2024 sets out that:
 - The width of the rail corridor designation is irrelevant for the purpose of the setback control, all areas may be used for rail-related activities and the setback control should be measured from the designation boundary.
 - KiwiRail considers that the setback is required regardless of the impact on narrow properties, and that a reduced setback can be considered through a consent process where the applicant adequately addresses safety matters to KiwiRail.
 - The falling object trajectory is based on Dropped Objects Exclusion Zone Tool by the Dropped Objects Prevention Scheme (DROPS).
 - KiwiRail does not accept using the standard side and rear yard setbacks distances for the zones as sufficient for safe building maintenance.

¹ Hearing Stream 2: Memorandum of Counsel on Behalf of KiwiRail Holdings Limited, 5 July 2024

- KiwiRail proposes a stepped approach to setbacks which would require all buildings and structures to be setback based on their height:
 - Less than 3m high - 2.5 metres
 - Between 3m to 9.5m high – 4 metres
 - Above 9.5m high – 5 metres
- There are no recorded incidences in the Gore District due to the fact the Main South Line already has good separation from adjoining properties in the Town Centre, Local Centre, Neighbourhood Centre and Mixed Use Zones.

Reply:

8. It has been acknowledged in our S42A report² and supplementary evidence³ that a setback may be required to manage development adjoining the rail corridor, and it has been recommended to apply the side and rear yard setback standards to boundaries with the rail corridor, which would ensure that access to the rail corridor is not relied on for building maintenance. The panel has requested a response from KiwiRail that the setback distance varies with the height of any building in proximity to the rail corridor boundary⁴. In principle we support a stepped approach to setbacks as the space required for maintenance structures increases with the height of buildings and this method could reduce the impact on the landholder.
9. KiwiRail has indicated that they believe the lack of reported incidences in the Gore District is a result of the Main South Line having good separation from adjoining properties in the Town Centre, Local Centre, Neighbourhood Centre and Mixed Use Zones. There is currently no yard setback requirements in the Commercial and Mixed Use Zones, but a daylight admission control applies⁵. Yet, KiwiRail has argued that permanent space within private property is still required to not only allow for temporary scaffolding and support structures, but to have additional space around them for access, and to allow for hypothetical dropped objects where this object bounces off a scaffolding guardrail. The extent of the setback distance is primarily derived from the outputs from Dropped Objects Exclusion Zone Tool⁶.
10. The Dropped Objects Prevention Scheme⁷ DROPS is a global initiative by the oil and gas industry where dropped object safety is a key concern. The Dropped Objects Exclusion Zone Tool calculator is only one tool used to manage personnel exposure to

² Section 42A Report: Part 3 Town Centre, Local Centre, Neighbourhood Centre & Mixed Use Zones

³ Statement of supplementary planning evidence of Tina Carlson-McColl, Victoria Woodbridge, Joanne Skuse and Mishka Banhidi on behalf of Gore District Council, 24 June 2024

⁴ Minute 11 of the Hearings Panel Request for Additional Information Following Stream 2 Hearing

⁵ Operative Gore District Plan, Chapter 4: Land Use Activities – Rules [District Plan - Gore District Council \(goredc.govt.nz\)](#)

⁶ Appendix A to Hearing Stream 2: Memorandum of Counsel on Behalf of Kiwirail Holdings Limited, 5 July 2024

⁷ [About DROPS › DROPSOnline](#)

the potential risk of dropped objects. Other recommended practices that form part of the DROPS system approach are to establish risk-based zones for a site, using the DROPS calculator for the risk profile based on the weight of the item, securing systems, processes and personnel training.

11. The use of the Dropped Objects Exclusion Zone Tool by KiwiRail appears to have been taken somewhat out of context. The tool is primarily to protect personnel within a high-risk work site, not to protect infrastructure. Although the principle of calculating a deflection trajectory may have some validity, the use of Dropped Objects Exclusion Zone Tool for this purpose appears to be inconsistent with the intent of the tool⁸. The tool is intended to be flexible in application, educate and provide guidance rather than act as a prescriptive solution, and is designed to work in concert with the DROPS calculator. It is also questionable if work safe practices for the energy sector, to protect people from falling objects, are directly transferrable to the maintenance of private buildings on adjoining sites, to manage risk to the rail network. Works within the rail corridor itself may be high-risk, due to a number of other hazards presents, but it is not necessarily an area that has a high risk of workers being exposed to falling objects from adjoining sites.
12. KiwiRail's proposed stepped setbacks are based on the distances from the Dropped Objects Exclusion Zone Tool, which we consider flawed for the reasons indicated above. The dropped object scenario is overall highly hypothetical in nature, and we therefore do not consider that the reliance on it to determine the setback distance for buildings, is appropriate. The cost to the private landholder with KiwiRail's proposal would appear to be disproportionate, especially as there are currently no recorded incidences and the setback distances have not been sufficiently justified. We do however consider that it is reasonable to have a setback to enable building maintenance within private property and that a stepped setback based on building height is appropriate.
13. The evidence provided by Ms Grinlinton-Hancock⁹ for the hearing suggested that a typical scaffold platform width is 1.5m, and that with an outrigger the total width increases up to approximately 3.5m depending on the height of the scaffolding structure. Pedestrian access required around structures is shown to be 1m wide. For a building up to 9.5m the diagram in Appendix A shows the scaffolding and support structure to be approximately 2.5m wide, and for a 12m high building the scaffolding and support structure is shown to be less than 3.5m wide. I consider that these distances are a more appropriate basis for the setbacks rather than the dropped object deflection trajectory.
14. KiwiRail have rejected the proposal to amend existing side and rear yard boundary standards to include the setback from the rail corridor and are seeking a separate standard. The setback proposed by Ms Taylor¹⁰ applies to all building and structures, however this application will capture fences and ancillary structures, for example clotheslines, planter boxes or bike racks, which in our opinion do not need to be included in a building maintenance setback. We therefore consider that the standard should only

⁸ Dropped Objects Exclusion Zone Tool – Intent [Exclusion Zone Calculator > DROPSONline](#)

⁹ Statement of Evidence of Michelle Grinlinton-Hancock on Behalf of Kiwirail Holdings Limited

¹⁰ Supplementary statement of evidence of Louise Elizabeth Robertson Taylor for KiwiRail Holdings Limited regarding Gore Proposed District Plan Hearing Stream 2 Dated 5 July 2024

apply to buildings. Moreover, many buildings less than 3m high (for example a typical garden shed) is unlikely to require scaffolding in the first place but may need some space for pedestrian access. Equally, maintenance of single storey building may not require scaffolding, but if used, as a general rule, this can be erected by a private (uncertified) person¹¹ and due to the limited height would be unlikely to need an outrigger.

15. For the reasons outlined above we recommend amending the KiwiRail proposed setback from Rail Corridor Standard as follows:

Setback from Rail Corridor

1. Any building ~~or structure~~ no greater than 3m in height shall be setback at least ~~2.5m~~ 1m from the legal boundary with the rail corridor of the Main South Line.
2. Any building greater than 3m but no greater than 5m in height shall be setback at least 1.5m from the legal boundary with the rail corridor of the Main South Line.
3. Any building greater than 5m but no greater than 9.5m in height shall be setback at least ~~4m~~ 2.5m from the legal boundary with the rail corridor of the Main South Line.
4. Any building greater than 9.5m in height shall be setback at least ~~5m~~ 3.5m from the legal boundary with the rail corridor of the Main South Line.

Activity status where compliance is not achieved: **Restricted Discretionary**

Matters of discretion:

1. The safe and efficient operation of the rail network.
 2. Compatibility with the surrounding environment.
 3. The reason for the reduced setback.
16. The Section 32A Evaluation¹² provided for the supplementary evidence remains valid in terms of the recommendation, with the added benefit that stepped approach to setbacks is a more targeted risk based approach as the space required for maintenance structures increases with the height of buildings, and this method could reduce the impact on the landholder whilst providing greater separation to the rail corridor for the taller buildings.
17. The above recommendation is for the Commercial and Mixed Use Zones, the panel may wish to consider a similar standard across all zones for consistency, however the distances may need to be amended depending on the character and nature of the zone.
18. It should also be noted that there is a relevant Environment Court decision in relation to setback to rail corridor, KiwiRail Holdings Limited vs Marlborough District Council from

¹¹ [Scaffolding in New Zealand | WorkSafe](#)

¹² Paragraph 60, Statement of supplementary planning evidence of Tina Carlson-McColl, Victoria Woodbridge, Joanne Skuse and Mishka Banhidi on behalf of Gore District Council Date: 24 June 2024

2023¹³, where the court ordered the Council to amend the proposed Marlborough Environment Plan to amend a number of zone standards, including the urban residential, industrial and business zones, as follows:

A building or structure must not be located within ~~1.5m~~ 3m of the legal boundary with the rail corridor of the Main North Line except for a fence up to 2m in height.

19. The setback standard could be considered as an alternative to the above recommendation. However, we have not been able to obtain any detail about the reasons for the decision and why the court decided 3 metres was a more appropriate distance than 1.5 metres or 5 metres. The maximum building heights in the applicable zones range from 7.5m up to 12m.
20. KiwiRail is currently appealing the decision on the proposed Wellington City District Plan to include a setback distance of 1.5 metres from the rail corridor in the Mixed Use Zone, General Industrial Zone and Large Lot Residential Zone, however no decision in this case has been issued yet.

Response to additional information provided by Fire and Emergency New Zealand

21. Minute 11 was issued from the Hearings Panel requesting FENZ provide information in support of the various submission points lodged in relation to the PDP.
22. Specifically:
 - Whether the distance to a fire hydrant is a concern rather than providing onsite firefighting provision.
 - The interest of FENZ relating to, and why rules are sought for, sewage treatment and disposal on sites outside of the reticulated area.
 - The rationale of on-site storage of 45,000 litres, given the size and capacity of water tanks for sale from retail stores.
 - The type and size of towers and poles FENZ wish to have permitted in various zones.
23. FENZ have provided email correspondence, dated 8 July 2024, in response to Minute 11 which sets out:
 - Fire and Emergency considers that new buildings should be required to provide a firefighting water supply in accordance with SNZ PAS 4509:2008 New Zealand Fire Service Firefighting Water Supplies Code of Practice in order to manage fire risk.

¹³ ENV-2020-CHC-57

- The proposed wording of the new standards was in accordance with other servicing standards within the Proposed Gore District Plan for example LLRZ-S2. For clarity, Fire and Emergency interest is the provision of firefighting water supply being in accordance with SNZ PAS 4509:2008 New Zealand Fire Service Firefighting Water Supplies Code of Practice, and not with the provision (or not) and connection to Council reticulated wastewater network.
 - With respect to the rationale of on-site storage of 45,000 litres, this wording sought to ensure consistency with the wording found elsewhere in the plan. Fire and Emergency seeks that developments have an independent water supply for water supply for firefighting that is compliant with SNZ PAS 4509:2008 New Zealand Fire Service Firefighting Water Supplies Code of Practice.
 - In terms of the type and size of towers and poles, some stations have multi-purpose towers or poles between 12 to 15 minutes in height. Fire and Emergency towers are typically either lattice towers that can support a siren, aerials and hose drying or are platform towers that can support all the above plus be used for firefighter training. Similarly, poles can support sirens, aerials and hose drying activities.
24. FENZ have not provided additional information in relation to concerns over the distance to fire hydrants. We note this is managed by the Gore Subdivision and Development Bylaw.
25. We do not consider FENZ have provided additional information beyond their original submission. Thus, we consider the position put forward by the Section 42a authors in hearing stream 2 remains unchanged. This being:
- It is acknowledged that providing a standard for firefighting supply is a conscientious response to development, and there is currently no specific firefighting standard in the PDP.
 - There is concern with including the entirety of the SNZ PAS 4509:2008 New Zealand Fire Service Firefighting Water Supplies Code of Practice in the PDP, as proposed by the submitter. The standard is extensive and complex and raises concerns in relation to the useability of the plan and the determining of compliance by Council officers.
 - There may be instances where an alternative firefighting provision is agreed by the local FENZ representative, which if not strictly compliant with SNZ PAS 4509:2008, will trigger the standard anyway and a resource consent would be required.
 - Whilst there is operational value of towers and poles, there are still no parameters set out by FENZ of what a tower or pole could constitute. A tower may be a larger structure and it may therefore be appropriate to manage this structure through a resource consent process. We do not consider it is appropriate to simply exempt these structures from the height limit (thereby enabling any height) or the height

in relation to boundary requirements. We consider visual effects on persons residing in the area should be considered.

- A Section 32AA evaluation has also not been provided by the submitter.

26. Servicing standards are considered appropriate where it is not entirely certain that every site will have access to reticulated water and wastewater, and are recommend to be included in the Mixed Use Zone, the General Residential Zone (GRZ), the Large Lot Residential Zone (LLRZ) and the Māori Purpose Zone (MPZ) to encourage larger developments to extend Council services, or ensure alternative servicing in lieu of reticulation.
27. The specific wording of the servicing standard is assessed in the Residential Section 42a Report (Hearing Stream 4). The standard is included in the General Residential Zone (GRZ) and Large Lot Residential Zone (LLRZ) as reticulated services are not guaranteed to these areas. Additional submissions have further been received in relation to the 45,000 Litre tank size and these will be considered in Hearing Stream 4.

It is recommended all servicing standards are consistent across the plan. If the panel agrees with the recommendations for the Residential zone servicing standards, then consequential amendments would be required for the Mixed Use Zone.

Appendix 1 – Circulated separately