

Before the Hearings Commissioners

Under the Resource Management Act 1991 (the **RMA**)

In the matter of

a submission by KiwiRail Holdings Limited (submitter 442) on Hearing Stream 6 Infrastructure

and in the matter of

the Proposed Lower Hutt District Plan (**Proposed Plan**)

**Primary statement of evidence of Catherine Lynda Heppelthwaite for
KiwiRail Holdings Limited**

Dated 7 September 2026

1 INTRODUCTION, QUALIFICATIONS AND EXPERIENCE

- 1.0 My full name is Catherine Lynda Heppelthwaite. I am a principal planner for Eclipse Group Limited. I am presenting this planning evidence on behalf of KiwiRail Holdings Limited (**KiwiRail**).
- 1.1 I hold a Bachelor's Degree in Resource Studies obtained from Lincoln University in 1993. I am a full member of the New Zealand Planning Institute, a member of the Resource Management Law Association and the Acoustical Society of New Zealand. I have more than 25 years' experience within the planning and resource management field which has included work for local authorities, central government agencies, private companies and private individuals. Currently, I am practicing as an independent consultant planner and have done so for the past 18 years.
- 1.2 I have extensive experience with preparing submissions and assessing district plan provisions in relation to noise and vibration, most recently in relation to the New Plymouth, Upper Hutt, Porirua and Whangārei District Plans where I assisted Waka Kotahi and KiwiRail by providing specialist planning evidence on similar issues.

2 CODE OF CONDUCT

- 2.0 I have read the Environment Court's Code of Conduct for Expert Witnesses (2023) and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my areas of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

3 SCOPE OF EVIDENCE

- 3.0 My evidence will address the following:
- a. The statutory and higher order planning framework;
 - b. KiwiRail's submissions;
 - c. Council's s42A recommendations; and

d. Proposed Plan In preparing my evidence, I have considered the Section 42A Reports for *Infrastructure and Protection of Infrastructure and Transport*, both prepared by Mr McDonald.¹

3.2 I have also reviewed the Section 42A Report on *Three Waters*² but provide no further commentary on the Three Waters matters in my evidence as the two KiwiRail submissions allocated to this topic³ are in support of the notified provisions and the Section 42A Report proposes no further changes to these provisions.⁴

4 THE STATUTORY AND HIGHER ORDER PLANNING FRAMEWORK

4.0 In preparing this evidence I have specifically considered the following:

- a. The purpose and principles of the RMA (sections 5-8);
- b. Provisions of the RMA relevant to plan-making and consenting;
- c. National Policy Statement for Infrastructure 2025 (**NPS-I**);
- d. National Policy Statement on Urban Development 2020 (**NPS-UD**);
- e. National Planning Standards 2019; and
- f. The Wellington Regional Policy Statement (**RPS**) (Decisions version) with specific reference to:
 - i. Chapter 3.3 Introductory Text:
 - Recognising rail as a significant physical resource;⁵
 - *The efficient use and development of such infrastructure can be adversely affected by development. For example, **land development can encroach on infrastructure or interfere with its efficient use**. Infrastructure can also have an adverse effect on the surrounding environment⁶ [emphasis added].*

¹ Section 42A Reports, both dated 24 August 2026.

² Prepared by Cristal Bennett and Pou Whakamahere Kaupapa Here, dated 24 August 2026.

³ Submissions 442.56 and 442.57.

⁴ S42A Report, Three Waters, Table 2: Provisions of the Three Waters chapter that only received submissions in support.

⁵ Greater Wellington Regional Council "Regional Policy Statement for the Wellington Region" (15 December 2023) Greater Wellington <www.gw.govt.nz> at [3.3].

⁶ At [3.3].

- ii. Objective 10: *The social, economic, cultural and environmental, benefits of regionally significant infrastructure are recognised and protected.*⁷
- iii. Policy 7:⁸ *Recognising the benefits from renewable energy and regionally significant infrastructure – regional and district plans*
District and regional plans shall include objectives, policies, rules and/or other methods that:
 - a) *recognise the social, economic, cultural and environmental benefits of*
 - (i) *regionally significant infrastructure, including:*
 - (a) *the social, economic, cultural and environmental benefits of regionally significant infrastructure including:*
 - (i) *people and goods can travel to, from and around the region efficiently and safely; [...]*
 - (ii) [...]
- iv. Policy 8: *Protecting regionally significant infrastructure – regional and district plans.*⁹ *District and regional plans **shall include policies and rules** that protect regionally significant infrastructure from incompatible new subdivision, use and development occurring under, over, or adjacent to the infrastructure*¹⁰ [emphasis added].
- v. Policy 8 Explanation:

*Regionally significant infrastructure is an important physical resource that enables people and communities to **provide for** their social, economic and cultural wellbeing, and **their health and safety.***

*Incompatible subdivisions, land uses or activities are those which **adversely affect the efficient operation of***

⁷ At [3.3], Table 3.

⁸ At [3.3].

⁹ At [3.3].

¹⁰ At 96.

infrastructure, its ability to give full effect to any consent or other authorisation, restrict its ability to be maintained, or restrict the ability to upgrade where the effects of the upgrade are the same or similar in character, intensity, and scale. It may also include new land uses that are sensitive to activities associated with infrastructure [emphasis added].

*Protecting regionally significant infrastructure **does not mean that all land uses or activities under, over, or adjacent are prevented.** The Wellington Regional Council and city and district councils will need to ensure that **activities provided for in a district or regional plan are compatible** with the efficient operation, maintenance, and upgrading (where effects are the same or similar in character, intensity, and scale) of the infrastructure and any effects that may be associated with that infrastructure. Competing considerations need to be weighed on a case by case basis to determine what is appropriate in the circumstances¹¹ [emphasis added].*

vi. Method 1 (for Policy 8) identifies District plans as an implementation method.¹²

vii. *Policy 39¹³: Recognising the benefits from renewable energy and regionally significant infrastructure – consideration*

When considering an application for a resource consent, notice of requirement or a change, variation or review of a district or regional plan,

(a) [...] ; and

c) have particular regard to protecting regionally significant infrastructure from incompatible subdivision, use and development occurring under, over, or adjacent to the infrastructure; and [...]

¹¹ At 96.

¹² At [3.3], Table 3.

¹³ At 131.

- 4.1 The RPS also includes definitions of Strategic Transport Network and Regionally Significant Infrastructure:

Strategic Transport network

(a) *All railway corridors and 'core' bus routes as part of the region's public transport network identified in the Regional Land Transport Plan 2021, and*

(b) *[...]*

Regionally significant infrastructure includes:

- *[...]*
- *the Strategic Transport Network (including ancillary structures required to operate, maintain, upgrade and develop that network)*

- 4.2 Mr McDonald has also identified other relevant statutory provisions in his Section 42A Reports for Infrastructure and Transport which I generally agree with and will not repeat here.

5 KIWIRAIL SUBMISSIONS

- 5.0 KiwiRail has a number of submission points allocated to Hearing Stream 6A. I have set out below whether these submission points were accepted, accepted in part, or rejected by Mr McDonald.

- a. KiwiRail supported the retention of INFSD-01, INFSD-03, INFSD-04, and INFSD-05 as notified. These have been accepted or accepted in part by Mr McDonald.¹⁴
- b. KiwiRail supported retention of INF-02, INF-R4, INF-R22 and INF-R23 as notified. These have been accepted or accepted in part by Mr McDonald.¹⁵
- c. KiwiRail supported retention of INV-01 and INV-03 as notified. These have been accepted by Mr McDonald.¹⁶

¹⁴ S42A Infrastructure, paragraphs 52[, 77,87 and 90.

¹⁵ S42A Infrastructure, paragraphs 162 and 95.

¹⁶ S42A Infrastructure, paragraphs 195 and 205.

- d. KiwiRail supported policies for new and upgraded infrastructure within overlays being located in the INF chapter. This has been accepted by Mr McDonald.¹⁷
- e. KiwiRail supported INF-P1, INF-P2 and INF-P5 as notified. This has been accepted or accepted in part by Mr McDonald.¹⁸
- f. KiwiRail supported with amendments INF-P6 and INF-P7 as notified. Mr McDonald has accepted in part KiwiRail's amendments to INF-P6¹⁹ and INF-P7²⁰. I accept the changes to INF-P6 and address the recommended amendments to INF-P7 further at section 6 of my evidence.
- g. KiwiRail opposed in part INF-P9 and sought amendments to the policy as notified. Mr McDonald²¹ has accepted in part KiwiRail's amendments but has proposed alternative amendments. I consider KiwiRail's proposed amendments better reflect the NPS-I effects management framework and address this further at section 6 of my evidence.
- h. KiwiRail supported INF-R2, INF-R3, INF-R10 and INF-R23 as notified. Mr McDonald has accepted, and accepted in part, these submission points and recommended these rules be retained as notified, or subject to minor amendments in response to other submissions.²²
- i. KiwiRail opposed INF-R24 and sought amendments to enable activities as permitted where standards are complied with. Mr McDonald²³ has accepted in part KiwiRail's amendments and recommends a tiered approach whereby new transport infrastructure within existing road reserve or rail corridor is permitted (where standards are complied with), while new transport infrastructure outside of existing road reserve or rail corridor is restricted discretionary. I address this at section 6 of my evidence.

¹⁷ S42A Infrastructure, paragraph 214.

¹⁸ S42A Infrastructure, paragraph 225, 234 and 260.

¹⁹ S42A Infrastructure, paragraph 273.

²⁰ S42A Infrastructure, paragraph 286.

²¹ S42A Infrastructure, paragraph 312.

²² S42A Infrastructure, paragraphs 185, 365 and 396.

²³ S42A Infrastructure, paragraph 456.

- j. KiwiRail sought to retain INF-S6 and INF-S7 as notified. Mr McDonald has accepted these submission points in part and recommended amendments to simplify the height provisions for support structures.²⁴
- k. KiwiRail sought to modify INF-S8 to require network utility support structures be setback at least 5m from the rail designation boundary. Mr McDonald has rejected KiwiRail's amendments, noting that requiring a 5m setback would place an unreasonable restriction on activities captured by INF-R12 and INF-R22.²⁵ KiwiRail is no longer seeking a setback be applied in the plan to structures.
- l. KiwiRail sought to modify INF-S14 to require buildings and structures (other than cabinets or support structures) to be setback at least 5m from the rail designation boundary. Mr McDonald has rejected KiwiRail's submission, considering a 5m setback to be an unreasonable imposition on infrastructure providers.²⁶ KiwiRail is no longer seeking a setback be applied in the plan to structures.
- m. KiwiRail sought to modify INF-S16 matters of discretion to include an additional consideration of the functional and operational need for earthworks. Mr McDonald has rejected KiwiRail's requested amendments, considering that the matters of discretion are already addressed through the Rules.²⁷
- n. KiwiRail sought to modify the definition of *ancillary transport network infrastructure* to ensure the definition is not exhaustive. This has been accepted by Mr McDonald.²⁸
- o. KiwiRail supported the definitions of *functional need*, *network utility operator* and *operational need* as notified and sought to modify the definition of *regionally significant infrastructure*. Mr McDonald has accepted or accepted in part these submission points.²⁹

²⁴ S42A Infrastructure, paragraphs 511 and 517.

²⁵ S42A Infrastructure, paragraph 525.

²⁶ S42A Infrastructure, paragraph 550.

²⁷ S42A Infrastructure, paragraph 586.

²⁸ S42A Infrastructure, paragraph 630.

²⁹ S42A Infrastructure, paragraphs 636, 677 and 670.

- p. KiwiRail sought to amend the definition of *transport network* to ensure all aspects of the rail network (including areas which are not public) are included in the definition. Mr McDonald has rejected this submission, considering that the notified wording already includes all public rail infrastructure.³⁰ I address this at section 6 of my evidence.
- p. KiwiRail supported the definition of *minor upgrading of network utilities* as notified. This was an error and should have referred to the definition of *upgrading*. In any event, Mr McDonald has recommended the definition for *upgrading* be retained as notified.³¹ KiwiRail sought a new definition for *maintenance (network utilities)*. Mr McDonald has accepted in part KiwiRail's submission but has preferred the wording proposed by other submitters.³² I address this at section 6 of my evidence.
- q. KiwiRail sought to modify PINF-01 and PINF-P1 to better protect regionally significant infrastructure. Mr McDonald has accepted in part KiwiRail's submission however I consider further changes are required. This is addressed at section 6 of my evidence.³³
- r. KiwiRail sought a new objective and policy be included (PINF-O2 and PINF-P4) to manage health and reverse sensitivity effects. Mr McDonald has rejected the request for new provisions on the basis that the NOISE chapter includes provisions for controlling noise sensitive activities.³⁴ I address this at section 6 of my evidence.
- s. KiwiRail sought new provisions requiring building and structures be set back at least 5m from the rail designation boundary. This has been rejected by Mr McDonald. I address this at section 7 of my evidence.
- t. KiwiRail sought amendments to the Introduction of the Transport Chapter to make reference to the importance of rail. Mr McDonald has made a number of amendments to the Introductory text, but

³⁰ S42A Infrastructure, paragraph 694.

³¹ S42A Infrastructure, paragraph 700.

³² S42A Infrastructure, paragraph 712.

³³ S42A Infrastructure, paragraphs 792 and 765.

³⁴ S42A Infrastructure, paragraph 773.

further changes are required. I address this at section 8 of my evidence.

- u. KiwiRail sought new provisions for at-grade crossings (TR-02 and TR-03). Mr McDonald has rejected KiwiRail's submission on the basis that KiwiRail's proposed provisions are addressed by TR-P3 (as amended) and TR-O1. I address this at section 8 of my evidence.
- v. KiwiRail sought amendments to TR-O1 to emphasise the need to maintain safety and efficacy of the transport network. Mr McDonald has rejected KiwiRail's submission on the basis that requiring the transport network to be 'maintained or improved' is not a reasonable or achievable outcome given the scope of the chapter. I address this at section 8 of my evidence.
- w. KiwiRail sought to modify TR-P3 to emphasise the importance of maintaining the existing levels of safety and efficiency of the transport network. This has been accepted by Mr McDonald.³⁵
- x. KiwiRail sought TR-P7 be retained as notified. This has been accepted by Mr McDonald.³⁶
- y. KiwiRail sought to amend TR-S1 to refer to the rail network. This has been rejected by Mr McDonald.³⁷ I address this at section 7 of my evidence.
- z. KiwiRail sought that TR-S7 and TR-P5 be retained as notified. This has been accepted by Mr McDonald.

5.1 Where KiwiRail's submissions are noted as either "accepted" or "accepted in part" above, I do not address these further (unless otherwise stated) as I consider the proposed provisions (as recommended to be amended by Mr McDonald) are appropriate.

³⁵ S42A Transport, paragraph 83.

³⁶ S42A Transport, paragraph 27.

³⁷ S42A Transport, paragraph 108.

- 5.2 My evidence below focuses on areas where I do not agree with Mr McDonald and recommend alternative amendments. I have set out the specific amendments I consider appropriate in **Attachment A** to my evidence.

6 ASSESSMENT: SECTION 42A INFRASTRUCTURE

INF-P7 Upgrading and developing the transport network

- 6.0 KiwiRail's infrastructure falls within the definition of *transport network* (noting KiwiRail also seeks some amendments to this definition for clarity). KiwiRail sought in its submission the following amendments to INF-P7:

INF-P7 Upgrading and developing the Transport Network

Provide for upgrading and developing the transport network where, as far as practicable, it:

2. ~~Does not compromise~~ *Maintains or improves* the safety, efficiency, and resilience of the transport network,

[...]

~~4. Is consistent with the planned outcomes, including in relation to character and amenity, of the zones and precincts in which it is located.~~

- 6.1 While Mr McDonald agrees with KiwiRail's amendments to clause 2, he does not support the deletion of clause 4 because he considers the transport network (as part of the urban environment) can have effects on amenity of the surrounding zones.³⁸ I agree that transport networks can impact the surrounding environment and this is clearly reflected in existing statutory processes (notices of requirement, designations, outline plans) for considering those effects.
- 6.2 However, I consider that requiring an essential infrastructure activity to be consistent with zone outcomes (which may not anticipate such infrastructure) is misaligned. For example, the residential zone would not anticipate a railway upgrade such as a level crossing removal, which requires an overbridge or underpass, and it would be unclear how such works would be considered consistent with the planned character and

³⁸ S42A, Infrastructure, paragraph 282.

amenity and urban built environment outcomes of the zone. This could have unintended consequences for infrastructure projects.

- 6.3 I therefore support the deletion of clause 4 as sought by KiwiRail.

INF-P9 Upgrading and developing infrastructure in natural hazard overlays

- 6.4 KiwiRail sought a range of amendments to INF-P9 to ensure the policy did not have unintended consequences for rail infrastructure which is already located in hazard prone areas:

INF-P9 Upgrading and developing infrastructure in natural hazard overlays

Provide for new or upgraded infrastructure in natural hazard overlays where:

~~2. Related buildings, structures or earthworks are of a scale and design that do not significantly increase nNatural hazard risk in High and Medium Flood Hazard Overlays and other high natural hazard Medium Flood Hazard Overlays are avoided where possible, or otherwise reduced to the extent practicable., and~~

~~3. Increases in natural hazard risk in identified high natural hazard overlays are avoided.~~

- 6.5 Mr McDonald has proposed amendments to INF-P9 to reflect some of the matters raised in KiwiRail's (and other submitters) submission, however I consider further amendments are required.

- 6.6 The National Policy Statement for Natural Hazards (**NPS-NH**) states that the NPS applies to all activities except for infrastructure (as defined in the RMA) and primary production.³⁹ KiwiRail's rail network falls within the definition of "infrastructure" under the RMA. The policy direction in the NPS-I is however directly relevant.

- 6.7 I do not consider that Mr McDonald's proposed amendments to INF-P9 reflects the framework for effects management of infrastructure under the NPS-I, in particular:

- a. Policy 7(1)(a) provides that when assessing and managing the effects of infrastructure activities, decision makers must *have regard to the extent to which adverse effects have been avoided,*

³⁹ National Policy Statement for Natural Hazards 2025 at 1.3(2).

remedied or mitigated through the selection of the route, site or method of undertaking the work;

- b. Policy 8(1) provides that decision makers must enable the efficient operation and maintenance and minor upgrade of existing infrastructure *provided that, where practicable, adverse effects are avoided, remedied or mitigated;* and
- c. Policy 9(1) directs decision makers to enable new infrastructure or major infrastructure activities in all environments. It also provides at (2) that where infrastructure activities are proposed to locate in or are likely to have adverse effects on environments and values provided for in section 6 of the Act, the provisions of this must be read alongside other planning direction. (3) then states that where (2) does not apply (as is the case here due to the exclusion in the NPS-NH), [...] *the adverse effects of new infrastructure and major upgrades must be, where practicable, avoided, remedied or mitigated.*

6.8 The NPS-I clearly includes a directive for enabling infrastructure in *all environments*. Policies 7, 8 and 9 are not “no effects” or “avoid” provisions when considering how adverse effects of infrastructure should be managed, including in relation to natural hazards. Mr McDonald's amendments have the effect of meaning INF-P9 is a “no effects” approach whereby there can be no increase in natural hazard risks.

6.9 I do not support Mr McDonalds recommended amendments to INF-P9(2). In my view the recommended amendments within KiwiRail's submission better reflects the NPS-I's more nuanced and moderated effects management structure for infrastructure and should be adopted by the Panel. This is set out in **Attachment A** to my evidence.

INF-R24 New transport network infrastructure, including cycleways and shared paths

6.10 KiwiRail sought amendments to INF-R24 so that the starting position for new transport network infrastructure that complies with the relevant standards is a permitted activity (as opposed to restricted discretionary).

- 6.11 Mr McDonald recommends a tiered approach whereby some activities are permitted, and others require a restricted discretionary consent. Mr McDonald does not support a permitted activity for works outside the road reserve or rail corridor. I agree with Mr McDonald's recommendations on activity status. However, I consider that the matters of discretion for INF-R24(2) are overly broad and should be refined. For example, the matters of discretion include "the matters in INF-P1 to INF-P6". INF-P5 requires consideration of effects on natural and physical resources, amenity values, natural hazard risks, and other matters of national importance. INF-P6 then sets out a cascade of considerations: the time, duration and frequency of effects; whether effects can be reduced through co-location; whether there is a functional need; and whether effects can be avoided, minimised, remedied, mitigated or offset. Taken together, these particular policies effectively require a full assessment of all potential effects, equivalent to what would be expected for a discretionary activity.
- 6.12 I have recommended amendments in **Attachment A** to my evidence.
- INF-S16 Matters of Discretion Earthworks — Slope, height, depth, and location
- 6.13 KiwiRail sought a number of technical improvements to INF-S16 which have been accepted by Mr McDonald. However, KiwiRail's requested amendments to (11) and a new (12) as included below, have been rejected:
- 11. Whether there is any change to natural hazard risk and whether risks have been minimised to the extent practicable.*
- 12 The functional need and operational need of, and benefits derived from earthworks, including the potential impact on the levels of service, operational efficiency or health and safety if the work is not undertaken.*
- 6.14 Mr McDonald considers that the changes duplicates matters of discretion which are explicitly stated in the rule (such as functional and operational needs) or are stated in the matters of discretion in the rule which refer to policies INF-P1 to INF-P6.⁴⁰ I agree the provisions are structured in this way and (11) and (12) are addressed through Rules (eg INF-R22-R25). I do not consider further changes are necessary.

⁴⁰ S42A Infrastructure, paragraph 282.

Definition of "Transport Network"

- 6.15 KiwiRail sought to amend the definition of *transport network* to ensure all aspects of the rail network are included in the definition:

means ~~all public the~~ rail ~~network~~, public roads, public pedestrian and cycling facilities, public transport and associated public infrastructure. It includes, ~~but is not limited to~~:

- 6.16 Mr McDonald does not consider this is necessary as he considers the notified wording already includes all public rail infrastructure.⁴¹ I disagree.
- 6.17 The reference to 'rail' does not need to be prefaced by 'public'. Unlike roads (where there are defined public and private roads), rail infrastructure does not have any statutory distinction between public and private assets. Also, as explained by Ms Grinlinton-Hancock, not all rail facilities are open to the public (eg rail yards) nor does the word 'rail' sufficiently encompass all items which make up a functioning rail network (such as signalling equipment, overhead line equipment, and track infrastructure).⁴² I include recommended wording for *transport network* in my **Attachment A**.

Maintenance and Repair New definition

- 6.18 I support Mr McDonald's proposal to introduce a definition of "maintenance and repair", but I have concerns with the proposed wording. In particular, I do not support the following aspect of the definition:

[...] include[s] replacement of an existing structure with a new structure of identical dimensions.

- 6.19 I consider this would not cater for situations where very similar (or even perhaps smaller) replacement structures were proposed. I recommend the following amendment, drawing upon language from section 10 of the RMA:

[...] include[s] replacement of an existing structure with a new structure of the same, similar or reduced ~~identical~~ dimensions

⁴¹ S42A Infrastructure, paragraph 694.

⁴² Statement of Evidence of Michelle Grinlinton-Hancock dated 7 September 2026, at section 6.

PINF-O1 Adverse effects on regionally significant infrastructure and other Infrastructure

- 6.20 KiwiRail sought amendments to PINF-O1 to provide greater clarity that new development should not compromise future upgrades and future operations, in addition to existing infrastructure. KiwiRail also sought express reference to avoiding reverse sensitivity effects.
- 6.21 Mr McDonald has proposed alternative amendments to PINF-O1 which I consider better align with NPS-I Policy 10 *Planning for and managing the interface and compatibility of infrastructure with other activities* (1)(b):

1. Decision-makers on planning instruments must manage the interface between existing and planned infrastructure and other activities to ensure:
a. infrastructure and other activities are as compatible as practicable;
b. the safe, efficient and effective operation, maintenance and minor upgrades, and major upgrades of existing or planned infrastructure are not compromised by the adverse effects of other activities; and

- 6.22 I agree with Mr McDonald that reference to reverse sensitivity would be better placed in a policy (similar to PINF-P3(2) for the National Grid). In this regard I recommend alternative wording to PINF-P1 as outlined below rather than in PINF-O1.

PINF-P1 Protecting regionally significant infrastructure

- 6.23 KiwiRail recommended substantive changes to PINF-P1 (underline and strikethrough):

Regionally significant infrastructure is protected from incompatible new subdivision, use and development, including the potential for reverse sensitivity effects by:

[...]

2. Avoiding activities sensitive to the National Grid, and controlling buildings, structures and earthworks within ~~a defined National Grid Yard.~~

[...]

6. Managing access to the rail corridor and the national and regional road network.

7. Ensuring new development maintains the safe and efficient operation of railway level crossings for all road users and the rail corridor

8. Managing new activities and development through setbacks from existing electricity supply, gas supply and rail infrastructure

6.24 I address the changes except (8) in this section. Clause (8) is proposed to support the proposed setback from the rail corridor and I address it concurrently with the other setback provisions below.⁴³ As noted above in relation to PINF-O1, I prefer the inclusion of a reference to reverse sensitivity effects at a policy level. NPS-I Policy 10 addresses the functions of a decision maker which include:

2. Decision-makers on planning instruments must:
a. engage with infrastructure providers to:
i. [...]
ii. identify appropriate buffers and other methods to protect existing and planned infrastructure from the adverse effects of new or intensified sensitive and incompatible activities, including direct effects, reverse sensitivity effects, and risks to health and safety;
iii. support the strategic integration of infrastructure with land use activities;

6.25 This function would include setting appropriate objectives and policies to support methods to protect infrastructure.

6.26 I support inclusion of the reference to reverse effects, and new (6) and (7):

6. Managing access to the rail corridor and the national and regional road network.
7. Ensuring new development maintains the safe and efficient operation of railway level crossings for all road users and the rail corridor

6.27 Mr McDonald has not agreed to include an express reference to reverse sensitivity in this policy, and suggests the following alternative (6):

Requiring new vehicle crossings to not be located in proximity to railway crossings.

6.28 Mr McDonald's proposed clause (6) does not reflect the policy outcome sought in regard to rail level crossings or its interface with the road network. As set out by Ms Grinlinton-Hancock, 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.⁴⁴ The matter the submission (and policies) are directed at is the control of crossing locations across the rail line and the relationship with

⁴³ Section 7.

⁴⁴ Statement of Evidence of Michelle Grinlinton-Hancock dated 7 September 2026, at section 6.

the roading network. Mr McDonald's suggestion does not address crossings across the rail line or the interaction with the road network.

- 6.29 Overall, I prefer the wording put forward in KiwiRail's submission and this is included in my **Attachment A**.

Noise – New objective PINF-O2 and policy PINF-P4

- 6.30 KiwiRail proposed new objective PINF-O2 and policy PINF-P4 to manage the interface between the rail corridor and noise sensitive activities. Mr McDonald sets out that the PINF chapter *does include some overarching policy direction which provides clarity on the overall management of effects on infrastructure in the PDP*.⁴⁵ He also confirms that the PINF may not contain rules and standards for all activities.
- 6.31 Mr McDonald considers provisions for controlling noise sensitive activities along the railway corridor are located in the NOISE chapter, specifically NOISE-O2, and that including KiwiRail's PINF-O2 would duplicate NOISE chapter provisions.⁴⁶ The Noise Chapter contains the following objectives and policies:
- a. NOISE-O1: requires health is not compromised and noise is compatible with welling being and zone purposes (except for construction noise or major events);
 - b. NOISE-O2: noise generating activities in *locations anticipated for such activities* are not unreasonably constrained by reverse sensitivity;
 - c. NOISE-P1: enables noise where it does not compromise health and is consistent with receiving zone;
 - d. NOISE-P2: not relevant – relates to short term noise; and
 - e. NOISE-P3: requires acoustic insulation *where practicable* near railways (and other locations).
- 6.32 This framework has a strong emphasis on health and compatibility with the amenity and purpose of the receiving zones (see NOISE-O1, NOISE-

⁴⁵ S42A Infrastructure, paragraph 718.

⁴⁶ S42A Infrastructure, paragraph 770.

P1). While KiwiRail's proposed new provisions are designed to protect health outcomes, rail activities are unlikely to be compatible with zone outcomes, including amenity and built form (e.g. a new rail overbridge or overhead gantry adjoining a residential zone).

- 6.33 Further, while reverse sensitivity is included (NOISE-O2 and NOISE-P3), it is limited to where noise generated is in *anticipated locations* (NOISE-O2) and acoustic protection is only required *where practicable* (NOISE-P3).
- 6.34 Overall, it is my opinion that the NOISE chapter objective and policy framework is weakened by specific wording and is not sufficiently directed at avoiding or mitigating health and reverse sensitivity effects (as in KiwiRail's PINF-O2) and requiring acoustic mitigation (as in KiwiRail's new PINF-P4). KiwiRail has made submissions specifically on the Noise provisions to address this, however further support in the PINF chapter would also assist and I consider is appropriate.
- 6.35 As an alternative to KiwiRail's PINF-O2 and PINF-P4, I consider a modification to PINF-P1 to include reference to protecting health and wellbeing and avoiding reverse sensitivity effects adjacent to the rail (or transport) corridors would be appropriate. Wording is included in **Attachment A**.

7 SETBACKS

- 7.0 Within this section, I address the suite of rail setback provisions (**setback provisions**) included in KiwiRail's submissions, being:
- i. Proposed objective PINF-O3;
 - ii. Policy PINF-P5;
 - iii. amendments to PINF-P1 subclause (8); and
 - iv. new rule PINF-R5.
- 7.1 In summary, KiwiRail seeks a 5m setback standard for all new buildings from the rail designation boundary in all zones and related provisions. It no longer requests that structures be setback from the rail designation

boundary.⁴⁷ The setback standard does not apply to existing buildings, only **new 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 proposed by KiwiRail.

7.2 In my view there is a clear evidential basis for a 5m rail setback. In addition to the section 32 report which was provided with KiwiRail's submission, the evidence of Ms Grinlinton Hancock sets out the reasons why KiwiRail seeks a setback, and I do not repeat that here other than to emphasise that the setback seeks to manage safety risks – being the risk to people undertaking maintenance or other activities close to an operational, and in places electrified, rail corridor. I consider a setback is a common and appropriate planning tool to manage safety risks.

7.3 Mr McDonald has rejected KiwiRail's request for a 5m setback from the rail designation boundary and lists a range of concerns with KiwiRail's proposed setback provisions. I address these in turn below.

No evidence the issue is not being managed currently

7.4 Mr McDonald considers there is a lack of evidence that existing plan provisions are not managing the risks KiwiRail seeks to address. I do not agree.

7.5 The intensification enabled by the MDRS and planning documents means that multi-storey residential development will increasingly occur adjacent to rail corridors, creating maintenance access and safety issues that were not contemplated when existing provisions were drafted. With reference to Mr McDonald's assertion that existing regulatory settings⁴⁸ (0m to 1.5m setback), I refer to the diagrams in the s32 Report and the attached Galvin Technical Report.⁴⁹ These illustrate both scaffold/ladder configurations and "dropped object" risks and that the minimum setback (for a 6.5m building) is 4.5m. On this basis, I do not agree that 'rolling

⁴⁷ Statement of evidence of Ms Grinlinton-Hancock dated 7 September 2026.

⁴⁸ S42A Infrastructure, paragraph 735.

⁴⁹ For example, Diagram 10, page 25 of the Galvin Report, Attachment 2, S32 Report.

over' existing provisions of 0m to 1.5m setback is an appropriate planning response.

No qualifying matter identified

- 7.6 Mr McDonald states that under s77I of the RMA, provisions may be less enabling than the MDRS, only where a qualifying matter applies, and only to the extent to accommodate that qualifying matter.⁵⁰
- 7.7 The Proposed Plan is a full plan review (and Plan Change 56 incorporated the MDRS). However, to the extent a qualifying matter needs to be identified, the proposed rail setback is a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure, being the railway network (s77I(e)). The justification for this setback is set out in the section 32 report provided with KiwiRail's submission.

No Lower Hutt specific context

- 7.8 Mr McDonald states that KiwiRail's s32 assessment is nationally based, not Lower Hutt specific.⁵¹ He considers the issue KiwiRail seeks to manage (being safety) needs to be established in the Lower Hutt context which includes the well-established proximity of urban development along the rail corridor, and the long-standing regulatory settings which have been carried over to the notified Proposed Plan.
- 7.9 As described by Ms Grinlinton-Hancock, the safety risk that the setback is intended to manage does not vary between districts.⁵² I have reviewed the existing rail corridor and the existing built environment (by aerial photographs). While there are existing buildings on or close to the rail designation boundary, this is not unusual based on my experience and, to be clear, the setback provisions do not apply retrospectively so these existing buildings will not be affected by the setback provisions KiwiRail proposes. In addition, I do not consider it appropriate not to manage a known risk moving forward with reference to what has already occurred.

⁵⁰ S42A Infrastructure, paragraph 736.

⁵¹ S42A Infrastructure, paragraphs 729 and 374.

⁵² Statement of Evidence of Michelle Grinlinton-Hancock dated 7 September 2026, at 5.11.

- 7.10 I also do not agree with Mr McDonald that the costs of impeding use of land has not been considered in the context of this existing urban development. The setback standard 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.

Dropped objects encroaching into the rail corridor

- 7.11 Mr McDonald's assessment seems to characterise the purpose of the setback provisions as preventing "dropped objects" falling into the rail corridor. This is an incomplete description of the risk the setback seeks to manage. As set out in the s32 Report (which I prepared), there are two key purposes: first, the risk of dropped objects during construction or maintenance; and second, the need for adequate space to safely access building walls for maintenance throughout the building's life (ie to ensure sufficient room to erect scaffolding or position ladders without encroaching on the rail corridor). The diagrams in the s32 Report and the attached Galvin Technical Report⁵³ illustrate both scaffold / ladder configurations and "dropped object" risks.

5m seems tenuous

- 7.12 I do not agree with Mr McDonald that the 5m distance appears tenuous.⁵⁴ This 5m has been based on the independent expert evidence set out in Attachment 4 to the section 32 report provided with KiwiRail's submission.
- 7.13 The s32 assessment provides detailed consideration of the practicalities of providing maintenance for a range of building heights and concludes that:
- a. a setback of between ~ 4.5 metres to 4.8 metres is necessary for 5 metre buildings);

⁵³ For example, Diagram 10, page 25 of the Galvin Report, Attachment 2, S32 Report.

⁵⁴ S42A Infrastructure, paragraph 740.

- b. a setback of between 5.3 metres to 5.6 metres is necessary for three storied (9.5 metre) buildings⁵⁵ where 10 metres is the maximum permitted height; and
- c. a setback of between 4.6 metres to 6.2 metres is necessary for a four to five (12 metre-15 metre) storied building.

7.14 Considering this advice, a 5m setback distance was considered to be the preferred approach by KiwiRail and I agree it is reasonable (ie likely to capture the majority of effects) relative to seeking a more conservative (eg 6.2 metre setback) approach when considering buildings of two storeys or more.

Alternatives have not been investigated, including fencing of the corridor

7.15 Mr McDonald considers that alternative approaches have not been considered, including fencing of the corridor.⁵⁶ This is incorrect, Attachment 4 of the s32 report provided with KiwiRail's submission sets out a range of alternative approaches to use of a setback, including fencing.⁵⁷

7.16 In particular the following alternatives have been considered and discounted:

- a. Increase Designation Width: Widening the designation was considered but rejected as disproportionately restrictive, with greater impacts on landowners and potential acquisition costs for KiwiRail. District plan provisions provide a more flexible and proportionate approach.
- b. Fence/Physical Barrier: Fencing may reduce casual access to the rail corridor but would not provide the space to undertake building maintenance or manage the risk of falling objects. It would also involve significant establishment, maintenance and visual amenity costs.

⁵⁵ Galvin Consulting Ltd report Advice for KiwiRail on the safety implications of construction and maintenance-related activities adjacent to rail, Figure 10.

⁵⁶ S42A Infrastructure, paragraph 742.

⁵⁷ Page 21, S32 Report.

- c. Access Requests for Adjoining Building Maintenance: Using KiwiRail access permits was considered ineffective because landowners rarely seek approval and buildings located too close to the corridor may still require access for maintenance.

Conclusion

- 7.17 Overall, I consider there is strong justification for a 5m setback in the Lower Hutt District. Rail is a nationally significant physical resource; it is at risk from incursions from adjoining land uses (e.g. encroachment of maintenance activities and dropped items). I consider setbacks to undertake building maintenance and to minimise risk of dropped objects have been assessed as the most efficient and effective option to manage risk.
- 7.18 The NPS-I Policy 10(2)(a)(ii) anticipates and is very directive in matters for consideration relative to “buffers” and other methods:
- 2. Decision-makers on planning instruments must:*
a. engage with infrastructure providers to:
i. [...]
ii. identify appropriate buffers and other methods to protect existing and planned infrastructure from the adverse effects of new or intensified sensitive and incompatible activities, including direct effects, reverse sensitivity effects, and risks to health and safety;
iii. support the strategic integration of infrastructure with land use activities;
- 7.19 The RPS also provides very clear direction recognising regionally significant infrastructure, requiring its protection from *incompatible new subdivision, use and development occurring under, over, or adjacent to the infrastructure*.⁵⁸ The Explanation for Policy 8 notes that *Protecting regionally significant infrastructure does not mean that all land uses or activities under, over, or adjacent are prevented*. Enabling people and goods to travel safely and efficiently around the Wellington Region is also reflected in the RPS policy framework (eg Policy 7).
- 7.20 In my opinion, the setback provisions achieve a balance between the protection of infrastructure from incompatible use and, by way of restricted discretionary resource consent, not outright preventing

⁵⁸ RPS Policy 8.

development within the setback area (provided resource consent is obtained).

7.21 Overall, I support a 5-metre setback for the Proposed Plan as it will:

- a. be consistent with Policy 10 of the NPS-I;
- b. give effect to the very directive RPS provisions (which are to be reflected through into the operative and proposed District Plan objectives and policies) by providing for both the ongoing safe and efficient⁵⁹ operation of infrastructure and the safe and efficient travel for people and goods⁶⁰ (by minimising potential disruption caused by people entering the rail corridor to undertake building maintenance); and
- c. ensure the safe or efficient operation of KiwiRail's rail network in the Wellington Region.

7.22 I have included changes I consider necessary as **Attachment A**.

8 ASSESSMENT: SECTION 42A TRANSPORT

Introduction

8.0 KiwiRail sought a range of amendments to the Introductory text of the Transport Chapter. Mr McDonald has made some amendments and I consider his amendments address the majority of KiwiRail's submission except for the clarification that the Transport chapter sets requirements for *road* transport facilities but not rail. I recommend the following minor amendment to the introductory text:

*This chapter sets requirements for **road** transport facilities, including what facilities are required for different activities and design requirements such as minimum dimensions.*

TR-O1

8.1 KiwiRail sought amendments to TR-01 which were rejected by Mr McDonald.

⁵⁹ RPS, Policy 39.

⁶⁰ RPS, Policy 7 and Explanation Policy 8.

- 8.2 I agree with Mr McDonald that, by its very nature, applications under the Transport chapter will almost always seek to enable ‘use’ of the transport network and *maintaining or improving* its operation would be extremely difficult to achieve in all instances where an activity is undertaken.⁶¹ I therefore do not consider any amendments are required.

New objectives and policies relating to Rail Level Crossings

- 8.3 KiwiRail's submission sought a new objective and policy be added to address the importance of the safe operation of road / rail crossings. Mr McDonald has not adopted the new provisions on the basis that KiwiRail's proposed provisions are addressed by TR-P3 (as amended) and TR-O1.⁶²
- 8.4 I agree that the recommended changes are appropriate and address the relief requested in TR-O2 and TR-O3, however they do not reflect the protection of sight lines as set out in the KiwiRail proposed policy. I propose a modification to PINF-P1 to ensure sight lines are protected (amendments PINF-P1 (12)). My proposed wording is included in **Attachment A**.
- 8.5 While Mr McDonald observes that *“there is one rail crossing in Lower Hutt, and this is surrounded by a wide rail corridor and road reserve”*, this does not diminish the importance of appropriate policy protection. Ms Grinlinton-Hancock explains that level crossings pose one of the most significant risks on the rail network for KiwiRail and to the public and KiwiRail has a policy of strongly discouraging the creation of new level crossings and actively seeks to remove level crossings where it can. She also notes the high number of incidents that occur each year. The policy framework must safeguard the rail network and surrounding communities over the life of the plan, and notwithstanding that there is currently limited potential for the rail network to be affected by transport facilities, appropriate provisions should be in place to protect against future applications that could compromise level crossing safety or sight lines.

TR-S1

⁶¹ S42A Transport, paragraphs 70 and 71.

⁶² S42A Transport, paragraph 36.

- 8.6 KiwiRail's submission sought that the matter of discretion in TR-S1 be modified to consider effects on the rail corridor where a non-compliant *pedestrian and cycling access* is proposed. Mr McDonald suggests that an amendment to the definition of *pedestrian and cycling access* may resolve KiwiRail's submission. As the non-compliances with TR-S1 would relate to pathway widths / gradients and the useability of these, I consider the notified matters of discretion are suitable and no further change is required.

Cath Heppelthwaite
7 September 2026

Attachment A:

Base text:

Section 42A Officer's Report - Appendix 2 – Recommended Provisions with changes accepted.

Recommended changes:

Red underline / red ~~strike through~~

INF-P9	Upgrading and developing infrastructure in natural hazard overlays
Provide for new or upgraded infrastructure in natural hazard overlays where:	
1. There is a functional need or operational need for the infrastructure to be in that location,	
2. Related buildings, structures or earthworks are of a scale and design that do not significantly increase <u>Natural hazard risk in High and Medium Flood Hazard Overlays and other high natural hazard Medium Flood Hazard Overlays are avoided where possible, or otherwise reduced to the extent practicable., and</u>	
3. Increases in natural hazard risk in identified high natural hazard overlays are avoided	

INF-R24	New transport network infrastructure, including cycleways and shared paths
All zones	[...]
All zones	[...] Matters of discretion are restricted to: 1. The matters in INF-P1 to INF-P6. 2. The functional needs, operational needs, and technical requirements of the infrastructure. 3. Any positive effects that can only be achieved through noncompliance with a rule or standard. 4. For transport network infrastructure, the matters in INF-P7. 5. For infrastructure (other than National Grid infrastructure) located within the Active Street Frontage Overlay, effects on pedestrian amenity, comfort, and safety, and visual amenity. 6. For infrastructure located within a High Natural Hazard Overlay, the change to risks from natural hazards as a result of the activity being undertaken

PINF-P1	Protecting regionally significant infrastructure
Regionally significant infrastructure is protected from incompatible new subdivision, use and development <u>including the potential for reverse sensitivity effects</u> by:	
7. Avoiding the location of activities sensitive to hazardous substance risk within a defined risk management overlay.	
8. Avoiding activities sensitive to the National Grid, and controlling buildings, structures and earthworks within a defined National Grid Yard.	
9. Controlling subdivision within a defined National Grid Subdivision Corridor.	
10. Controlling subdivision, buildings, structures, earthworks and activities sensitive to gas transmission infrastructure within a defined Gas Transmission Pipeline Corridor	
11. Controlling noise sensitive activities within a defined Highway and Railway Noise Overlay <u>including requiring appropriate acoustic mitigation.</u>	
12. Requiring new vehicle crossing to not be located in proximity to railway crossings.	
12. <u>Ensuring new development and accesses maintain the safe and efficient operation of railway level crossings for all road users and the rail corridor.</u>	
13. <u>Managing new activities and development through setbacks from rail infrastructure.</u>	

PINF-O3	Rail Designation Setback
Protect communities and infrastructure by mitigating: a. the adverse health and safety impacts associated with accessing the rail corridor; and b. risk of disruptions to the safe and efficient operation of regionally significant rail infrastructure.	
PINF-P5	Rail Designation Setback
Require buildings adjoining the rail designation to be setback to provide for the health and safety of adjacent communities and efficient infrastructure operation.	
PINF-R5	Activities Adjacent the Rail Corridor
All zones	1. Activity Status: Permitted Where: a. Buildings (including extensions) must be set back 5 meters from the rail designation boundary. 2. Activity Status: Restricted discretionary Where: a. Compliance is not achieved with PINF-R5.1 Matters of discretion are restricted to: a. The location and design of the building as it relates to the ability to safely use, access and maintain buildings without requiring access on, above or over the rail designation boundary. b. The extent to which the reduced setback will compromise the safe and efficient functioning of the rail network, including rail corridor access and maintenance. c. The outcome of any consultation with KiwiRail.

Transport Chapter Introduction

[...]

This chapter sets requirements for road transport facilities, including what facilities are required for different activities and design requirements such as minimum dimensions.

[...]

TR-P5A	Rail Level Crossings
<u>Avoid new level crossings and protect the sight lines at existing level rail crossings by managing adjacent land use and development</u>	

Definitions

Maintenance and Repair New definition

[...] include[s] replacement of an existing structure with a new structure of the same, similar or reduced identical dimensions

Transport Network

means ~~all~~ public ~~the~~ rail network, public roads, public pedestrian and cycling facilities, public transport and associated public infrastructure. It includes, but is not limited to: