

Before the Hearings Commissioners

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

In the matter of

a submission by KiwiRail Holdings Limited (submitter 442 and further submitter 99) on Introduction and General Provisions and Strategic Direction matters

and in the matter of Te Tai o Poutini Plan (**TTPP**)

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

Dated 2 October 2023

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 Degree in Resource Studies obtained from Lincoln University in 1993. I am a full member of the New Zealand Planning Institute and 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 plans 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 variously 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 SUMMARY OF EVIDENCE

- 3.0 The key matter discussed in my evidence is the rejection of KiwiRail's submission seeking a 5 metre setback from the rail corridor boundary for all new buildings and structures. The purpose of the setback is to ensure the safety of occupants of properties that adjoin the rail corridor and the safe and efficient operation of the rail corridor itself.

3.1 In summary:

- (a) This setback control would only apply to new buildings and structures, therefore Ms Easton's concern about the potential impact on existing buildings is unfounded.
- (b) Boundary setback controls are common planning mechanisms that are used throughout New Zealand to ensure the safe and efficient operation of infrastructure. They are not the same as acoustic controls and are provided for different reasons.
- (c) The setback is not a "no build" control, but rather requires a consent application which allows the Council (and KiwiRail as an affected party) to assess whether or not safety concerns can be adequately managed.
- (d) The proposed setback control is consistent with the setbacks for other matters already included in the TTPP, such as setbacks from roads.
- (e) Importantly, the setback is consistent with the strong policy framework in the West Coast Regional Policy Statement July 2020 (**RPS**). This includes requirements to:
 - A. enable people and communities to provide for their health and safety;
 - B. enable the safe, efficient and integrated development, operation, maintenance, and upgrading of regionally and nationally significant infrastructure;
 - C. recognise that regionally significant infrastructure that is important to the West Coast region's wellbeing needs to be protected from adverse effects of other activities, which would compromise the effective operation, maintenance, upgrading, or development of that infrastructure.

3.2 I have proposed amendments to rules and matters of discretion in the TTPP to provide for a setback from the railway corridor.

- 3.3 My evidence also discusses proposed amendments to the definition of sensitive activity and to NENV-O3.

4 SCOPE OF EVIDENCE

- 4.0 My evidence will address the following:
- a. The statutory and higher order planning framework;
 - b. KiwiRail's submissions;
 - c. The Council's s42A recommendations; and
 - d. Further amendments which I propose to the TTPP provisions.
- 4.1 In preparing my evidence, I have considered the s42A Report for the Hearings Panel on Introduction and General Provisions and Strategic Direction prepared by Ms Easton¹.

5 THE STATUTORY AND HIGHER ORDER PLANNING FRAMEWORK

- 5.0 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. New Zealand Coastal Policy Statement 2010 (**NZCPS**);
 - d. National Policy Statement on Urban Development 2020 (**NPS-UD**);
 - e. National Policy Statement for Freshwater Management 2020 (**NPS-FM**) and National Environmental Standard Freshwater 2020 (**NES-FM**);
 - f. National Policy Statement Indigenous Biodiversity 2023 (**NPS-IB**);
 - g. National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**);
 - h. National Planning Standards 2019; and

¹ Te Tai o Poutini Plan Section 42A Officer's Report – Introduction and General Provisions; and Te Tai o Poutini Plan Section 42A Officer's Report – Strategic Direction.

i. The RPS, in particular Sections 5 and 6 which address *Use and Development of Resources* and *Regionally Significant Infrastructure* respectively. The relevant RPS objectives, policies and methods are set out in **Attachment C**.

5.1 Ms Easton has identified other relevant statutory provisions with which I generally agree and will not repeat here².

5.2 The Emissions Reduction Plan is a matter to be had regard to by the Council³. Of particular relevance within the Emissions Reduction Plan (for rail) is *Action 10.3.1: Support the decarbonisation of freight* which includes as a key initiative:

Continue to implement the New Zealand Rail Plan and support coastal shipping.

5.3 For completeness, the New Zealand Rail Plan (**NZRP**) lists as strategic investment priorities:

Investing in the national rail network to restore rail freight and provide a platform for future investments for growth.

5.4 While the Emissions Reduction Plan is *to be had regard to*, its support for the NZRP (among other things) illustrates a strategic forward plan to generally improve and increase train services over time.

6 KIWIRAIL SUBMISSIONS AND FURTHER SUBMISSIONS

6.0 In summary, KiwiRail's primary submission (as addressed in Hearing Stream 6 of the TTPP) seeks:

Whole of Plan

- a. Addition of a new provision to all zones⁴ to provide for a 5m setback from the rail corridor boundary for all new buildings and structures. This includes a restricted discretionary activity status for any infringement of the setback standard (where not otherwise provided for) and associated matters of discretion; and

² Section 4 of both Section 42A Hearings Reports.

³ RMA, section 74(2)(d).

⁴ Submission 442.093.

- b. Retention of the planning maps and overlays⁵ as notified.

Introduction and General Provisions

- c. Retention of the definition of *functional need* as notified⁶;
- d. Retention of the definition of *maintenance* as notified⁷;
- e. Retention of the definition of *operational need* as notified⁸;
- f. Amendment to the definition of *reverse sensitivity* to include effects arising from *the development, upgrading, operation, and maintenance of existing activities*⁹; and
- g. Amendment to the definition of *sensitive activity* to include *educational facility; marae/papakāinga; hospital; or place of worship*¹⁰.

Strategic Direction

- h. Retention of the CR – O2 as notified¹¹;
- i. Retention of the CR – O3 as notified¹²;
- j. Retention of the NENV – O3 as notified¹³; and
- k. Amendment to UFD – 01 to include reference to reverse sensitivity effects¹⁴.

- 6.1 KiwiRail also made further submissions on the Strategic Direction chapter in support of WMS Group (HQ) Limited and WMS Land Co Limited (WMS Group)¹⁵ who sought to amend NENV – O3 to include functional and operational need and mineral extraction.

⁵ Submission 442.095.

⁶ Submission 442.002.

⁷ Submission 442.005.

⁸ Submission 442.010.

⁹ Submission 442.012.

¹⁰ Submission 442.012.

¹¹ Submission 442.016.

¹² Submission 442.017.

¹³ Submission 442.018.

¹⁴ Submission 442.019.

¹⁵ Submission 599.026

7 SECTION 42A ASSESSMENT

7.0 Ms Easton responded to KiwiRail's submissions and further submissions as described below.

Whole of Plan

- a. Ms Easton has not supported the introduction of a new 5m building setback¹⁶ requirement for all zones adjacent to the rail corridor boundary (nor the corresponding matters of discretion). I address this further in Section 9.
- b. Ms Easton has not recommended any amendments to the planning maps and overlays as part of this hearing stream.

Introduction and General Provisions

- c. The definitions of *functional need*, *maintenance* and *operational need* are proposed to be retained as notified¹⁷, thus addressing KiwiRail's submission. I agree with the proposed definitions (which align with the National Planning Standards).
- d. The definition of *reverse sensitivity* has not been amended as sought by KiwiRail. I address this below in Section 9.
- e. Ms Easton has not adopted KiwiRail's submission seeking a separate definition for *noise sensitive activities* on the basis¹⁸ that the definition of *sensitive activity* already includes hospitals (as healthcare facilities), papakāinga (as residential activity) and marae and places of worship (as community facilities). I agree with Ms Easton except in relation to the inclusion of *community facilities*, which I address further in Section 9.

Strategic Direction

- f. Ms Easton proposes to amend CR – O2 to provide some additional flexibility (eg to enable quick recovery of infrastructure, potentially in a different location)¹⁹. I support this addition as it reflects the reality of re-

¹⁶ Submission 442.093.

¹⁷ Appendix 3: Submissions and Further Submissions on the Introduction and General Provisions Topic with Recommendations.

¹⁸ Section 42A Report – Introduction and General Provisions, paragraph 373.

¹⁹ Section 42A Report, paragraph 100.

establishing infrastructure for recovery in potentially changed or new environments.

- g. Ms Easton proposes to amend CR – 03 to remove "where practicable" and replace it with "functional and operational need". I address this further in Section 9.
- h. Ms Easton also proposes amendments to NENV – O3 which I address further in Section 9.
- i. UFD – 01 has been amended to include reference to reverse sensitivity effects. This satisfactorily addresses KiwiRail's submission and I do not comment further.

8 RPS FRAMEWORK

- 8.0 The RPS provides very clear direction recognising regionally significant infrastructure, requiring its protection from reverse sensitivity and requiring enablement of the safe, efficient and integrated development, operation, maintenance, and upgrading of regionally and nationally significant infrastructure. Examples of this direction are set out in Section 6 (Objective 1 to Policy 4 and associated methods and anticipated results).
- 8.1 Section 5 (Policy 2(a)) is also very directive in that it requires physical resources to be protected from significant negative impacts of new subdivision, use and development by avoiding, remedying or mitigating reverse sensitivity effects arising from new activities located near existing regionally significant infrastructure.
- 8.2 Section 6 (Policy 4) recognises the importance of regionally significant infrastructure to the West Coast region's wellbeing and the need to protect that infrastructure from activities that would compromise its effective operation, maintenance, upgrading, or development. The RMA's requirement to enable the health and safety of communities is also acknowledged in the Explanation of Policy 1.
- 8.3 In my opinion, the provisions proposed in the s42A Report do not fully give effect to the RPS' direction to integrate land use and infrastructure, to provide for community health and safety and to protect regionally

significant infrastructure from activities that compromise its operation, including from reverse sensitivity. My recommended amendments are set out in the next section.

9 AMENDMENTS SOUGHT

Building Setback

9.0 Ms Easton does not support a 5m setback from the rail corridor for the following reasons:

- a. it would restrict development / redevelopment, including on some locations where redevelopment is desirable and / or sites are subject to other constraints²⁰;
- b. some sites already have existing buildings directly abutting the rail corridor boundary²¹;
- c. the Westport rail line is no longer in use²²;
- d. provision of acoustic treatment is already required within 40m of the rail corridor, which is regarded by some submitters as a burden on landowners²³; and
- e. KiwiRail should designate areas that are required for the efficient and safe operation of the railway corridor²⁴.

9.1 I respond to these concerns as follows:

- a. The setback is not a “no build zone”; it has been structured to be a restricted discretionary activity with very specific matters of consent. There are a range of circumstances where it may be suitable for a reduced yard setback; including topography, width of corridor and proposed building maintenance methods.
- b. In assisting KiwiRail in other jurisdictions, I have seen examples of KiwiRail considering and providing affected party approvals to yard setback reductions where it can be demonstrated that adverse

²⁰ Section 42A Report, paragraphs 119 and 123.

²¹ Section 42A Report, paragraphs 119 and 121.

²² Section 42A Report, paragraph 120.

²³ Section 42A Report, paragraph 125.

²⁴ Section 42A Report, paragraph 125.

effects on the safety and efficiency of rail operations can be appropriately managed.

- c. The setback does not apply to existing buildings which (assuming section 10 of the RMA is met) would have existing use rights. The setback standard proposed here would not require any change to these buildings.
- d. Ms Grinlinton-Hancock's evidence acknowledges that the Westport line is not *presently* in use for regular freight services. However, her evidence is that while there are no regularly scheduled services on this line, it is used by KiwiRail for stabling maintenance machines and work trains on an ad hoc basis. Ms Grinlinton-Hancock also confirms that KiwiRail keeps this line maintained to a standard for these storage purposes and there is the potential for it to be used by new rail customers who desire access Westport's valuable deep sea port.²⁵ In this regard, I consider that it would be a poor planning outcome not to provide for the protection of existing regionally significant infrastructure and its primary purpose.
- e. Acoustic treatment requirements are unrelated to the proposed building setback. The setback is proposed to ensure owners can access and maintain their buildings safely without crossing into the rail corridor. Acoustic treatment requires an internal noise environment suitable for the building's intended use. Put another way, the provision of acoustic treatment does not address the health and safety issues requiring a building setback, and building setbacks do not manage acoustic effects.
- f. I have considered other methods (including extending designation widths) to provide for building maintenance and safety of adjoining occupants. This is assessed in the format of section 32AA and included as **Attachment B**. I conclude that a setback is the most efficient outcome as it retains land development potential (by way of resource consent) in the setback which would otherwise be precluded by a designation.

²⁵ Statement of Evidence of Michelle Grinlinton-Hancock dated 2 October 2023, paragraphs 3.5.

- 9.2 In addition, I rely on Ms Grinlinton-Hancock's evidence which:²⁶
- a. describes why a robust setback is necessary for maintaining buildings adjoining the rail corridor; and
 - b. describes the risk to persons both accessing the rail corridor (to undertake adjoining property maintenance) and rail corridor users.
- 9.3 In addition to Ms Grinlinton-Hancock's evidence, it is not uncommon for district plans to include provisions which limit uses of land to protect the operation of infrastructure and also to provide safe and healthy environments for people.
- 9.4 For example, Transpower has included in a range of district plans a national grid corridor overlay which restricts activities within a specified spatial extent of its network (around both pylons and lines).²⁷ Airports and ports are another common infrastructure type which restricts activities and / or requires mitigation for certain activities on surrounding private land.²⁸ As can be seen below, the TTPP already includes a number of setback provisions.
- 9.5 Table 1 sets out the TTPP provisions as notified and my recommendation relative to the zones which adjoin KiwiRail's designation.

Table 1: Building Setbacks included in the proposed TTPP

Zone	Notified Plan setback	Change requested
Natural Open Space Zone	NOSZ – R1(4) 4.5m from road	Yes, to include 4.5m rail designation boundary setback.
Open Space Zone	OSZ – R1(3) 4.5m from road	Yes, to include 4.5m rail designation boundary setback.
Commercial zone	COMZ – R1 (3) 4.5m from road	Yes, to include 4.5m rail designation boundary setback.
Mixed Use Zone	MUZ – R1 (4) 3m, various zone boundaries	Yes, to include 5m rail designation boundary setback.
Town Centre Zone	TCZ – R1(2) 3m, various zone boundaries	Yes, to include 5m rail designation boundary setback.
General Industrial Zone	GIZ – R1 5m various boundaries	Yes, to include rail designation boundary as listed at 5m.
Light Industrial Zone	LIZ – R1 5m various boundaries	Yes, to include rail designation boundary as listed at 5m.

²⁶ Statement of Evidence of Michelle Grinlinton-Hancock dated 2 October 2023, paragraphs 4.9 – 4.12.

²⁷ For example, Chapter D26 of the Auckland Unitary Plan.

²⁸ For example, Chapters D24 Aircraft Noise Overlay and D25 City Centre Port Noise Overlay of the Auckland Unitary Plan.

General Residential	GRZ – R1 4.5m less 0.75m eaves	Yes, to include rail designation boundary at 5m (no eaves exemption).
Large Lot Residential Zone	LLRZ – R1 10m road boundary, 4m from all other boundaries	Yes, to include rail designation boundary at 5m.
Medium Density Residential Zone	MDZ – R1 4.5m less 0.75m eaves road boundary	Yes, to include rail designation boundary at 5m (no eaves exemption).
Settlement Zone	SETZ – R2 5m various boundaries	Yes, to include rail designation boundary as listed at 5m.
Special Purpose: Buller Coalfield Zone	BCZ – R3 10m internal and road boundaries	No, 10m boundary already required.
Special Purpose: Future Urban Zone	FUZ – R1 10m road, 5m side and 20m rear	No, minimum 5m yard already required.
Special Purpose: Mineral Extraction Zone	MINZ – R3 and MINZ – R4 10m road and internal	No, minimum 10m yard already required.

9.6 The detail of my recommended changes is included as **Attachment A**.

9.7 Overall, I have endeavoured to balance notified TTPP provision setbacks with the setbacks required for community safety. While I prefer a 5m control for the Natural Open Space, Open Space and Commercial Zones, as outlined in Ms Grinlinton-Hancock's evidence,²⁹ a 4.5m setback is acceptable to KiwiRail.

9.8 For the Mixed Use and Town Centre Zones, I consider a 5m setback is required, particularly given the height permitted in these zones (12m and 12m to 20m respectively).

9.9 I propose adding *rail designation boundary* to a range of existing 5m setbacks in the General Industrial, Light Industrial and Settlement Zones because the designation is a specific mapped location within the TTPP and is therefore clearly identifiable.

9.10 For the General and Medium Residential Zones, the setback in the proposed TTPP provisions is effectively 3.75m (taking into account eaves) while the Large Lot Residential Zone is 4m. These setback distances are insufficient to enable safe maintenance of buildings and I consider a 5m setback is appropriate for these zones.

²⁹ Statement of Evidence of Michelle Grinlinton-Hancock dated 2 October 2023, paragraph 4.18.

- 9.11 I do not consider a change to setbacks in the Special Purpose Buller Coalfield, Future Urban or Mineral Extraction Zones are required as the setbacks already range from 5m to 20m in these zones.
- 9.12 However, should a future s42A Report recommend a reduction in any of the proposed setback distances in these zones to less than 5m, my position is that the 5m setback provisions would then be appropriate for the same reasons I support a 5m setback as set out above.
- 9.13 Finally, I support General Industrial rule GIZ – R1(3) and Light Industrial rule LIZ – R1(3)(i), both of which propose a 5m building setback from the rail corridor. However, I prefer the reference to rail designation boundary ahead of rail corridor as the designation is a specific mapped location within the TTPP so clearly identifiable. I have included this minor change in my **Attachment A**.

Reverse Sensitivity

- 9.14 I support Ms Easton's proposed amendments to the definition of *reverse sensitivity* ie replacement of "approved, existing or permitted activity" with "lawfully established"). I do however recommend three minor edits to improve readability:

[...] means the potential for ~~an approved, existing~~ lawfully established activity or ~~permitted activity~~ to be compromised ~~or~~ constrained by the more recent establishment or alteration of another activity which may be sensitive to the actual, potential or perceived adverse environmental effects generated by a lawfully established ~~approved, existing or permitted activity~~.

- 9.15 I have also reviewed KiwiRail's submission in this context of the s42A recommendation. I consider that Ms Easton's change will accommodate a range of activities which can be *lawfully established* in the context of KiwiRail's existing designations and that this suggested amendment addresses KiwiRail's submission.

Sensitive Activity

- 9.16 I acknowledge the notified definition of *sensitive activity* includes the majority of KiwiRail's suggested *noise sensitive activity* definition. However, for the purposes of managing noise effects on communities, I

retain reservations regarding the definition, specifically the inclusion of *community facilities*.

- 9.17 Rule GRZ-R1 (permitted activities - Residential Activities and Residential Units) relies on the definition of noise sensitive activity to trigger compliance with NOISE-R3 (provision of acoustic insulation within 40m of a rail line / State highway).
- 9.18 The sensitive activities definition includes a range of other defined terms included *community facilities*. The definition of community facilities is:

means land and buildings used by members of the community for recreational, sporting, cultural, safety, health, welfare, or worship purposes. It includes provision for any ancillary activity that assists with the operation of the community facility.

For the avoidance of doubt, marae are community facilities.

- 9.19 The definition includes ... *recreational, sporting, cultural, ...* activities. This is likely to lead to some unusual outcomes; for example, the definition includes both noise sensitive activities (eg worship) and noise generating activities (eg recreation or sport).
- 9.20 If the sensitive activity definition remains, I suggest that some further clarification as to which aspects of community facilities are subject to specific rules, for example GRZ-R1. This could include the removal of term *community facility* from the definition and replacement with *place of worship*. However, I would prefer to consider options in conjunction with Ms Easton to ensure any changes that are made take into account potential whole of plan impacts. The remaining alternative (as set out in KiwiRail's submission) is to include a separate definition for *noise sensitive activities* specifically for the implementation of noise provisions such as GRZ-R1.
- 9.21 The noise provisions are also the subject of a separate hearing stream currently scheduled for 2024, and this definition will require consideration in the context of submissions on those provisions.

Objective CR – 03 and NENV – 03

9.22 Ms Easton³⁰ recommended changes to CR – 03 and NENV – 03 as follows:

CR-03:

To ensure that new locations for critical infrastructure and connections take account of the hazardscape and ~~where practicable~~ are built away from natural hazards unless there is a functional or operational need to be in that location.

NENV-03:

To recognise:

- a. The substantial contribution to the protection of natural environment values that is made by the existence of public conservation land. ~~in protecting significant areas, habitats and features.~~*
- b. The functional need and operational need for infrastructure to sometimes be located in significant areas; ~~and~~*
- c. That there are existing lawfully established activities located in significant areas;*
- d. The need to support the ethic of stewardship and to consider the positive effects of the conservation estate in protecting natural environment values ~~achieving the requirements of the RMA;~~ and*
- e. The need for weed and pest control to protect, maintain and enhance the natural environment values.*

9.23 I support the notified version of CR-03 and Ms Easton's version of NENV-03 excluding the words in (b) *functional need and operational need* which I discuss in the next paragraph. I consider these objectives "set the scene" by providing a general acknowledgement that infrastructure may have to locate in hazard areas (CR-03) or will be existing / proposed in significant areas (NENV-03).

9.24 I do not support the inclusion of functional or operational need within CR-03 and NENV-03 (or within the *Part 2 –Strategic Direction* Objectives more generally). I consider a much more nuanced approach for the inclusion of functional and / or operational need is required and that this is more appropriately included within the specifics of *Part 2 Natural Environmental Values*.

9.25 This is because the national policy directives (NPS-FM, NES-FM, NPS-IB NPS-HPS and NZCPS) which set functional and / or operational

³⁰ Section 42A Report, paragraph 217.

need "tests" apply in specific locations and areas, rather than at a district-wide level (everywhere). *Part 2 Natural Environment Values* contains more specific directions for particular areas, which align with national direction. I set out more detail on the use of functional and operational need in national direction in **Attachment D**.

- 9.26 In my opinion, *Part 2 Natural Environmental Values* is the most appropriate place to include references to functional and operational need (not district-wide as would occur with Ms Easton's recommendation on Strategic Objectives CZ-03 and NENV-03). I recommend that functional and operational need be deleted from CZ-03 and NENV-03 and, for CZ-03, retain "where practicable" as notified.
- 9.27 I consider this approach will achieve a balance between supporting infrastructure while not unduly restricting its provision (particularly where outside of any specifically identified locations).

10 CONCLUSION

10.0 In conclusion:

- a. The RPS directs a range of outcomes including:
 - i. enabling community health, safety and wellbeing;
 - ii. protecting infrastructure from incompatible activities;
 - iii. enabling the safe, efficient and integrated development, operation, maintenance, and upgrading of regionally and nationally significant infrastructure; and
 - iv. the management of sensitive activities locating near infrastructure.
- b. I recommend that CR – O3 be retained as notified.
- c. I propose amendments to the TTPP provisions contained in Ms Easton's s42A Report to:
 - i. provide a 5m building setback for the Mixed Use, Town Centre, General, Large Lot and Medium Residential Zones;

- ii. amend the existing 5m setbacks in the General Industrial Light Industrial and Settlement Zones to refer to *rail designation boundary*;
 - iii. include rules across all zones providing for any infringement of the building setback as a restricted discretionary activity (and associated matters of discretion);
 - iv. modify the definition of sensitive activity to replace “community facility” with “place of worship”; and
 - v. modify NENV – O3 to remove references to “functional need and operational need”.
- d. In my view, these amendments are necessary to appropriately mitigate health and safety effects and to implement the RPS policy framework.

Cath Heppelthwaite
2 October 2023

Attachment A: Proposed Amendments to the TTPP

Definitions

Sensitive activity

means any

- a. residential activity;
- b. visitor accommodation;
- c. retirement home;
- d. healthcare facility;
- e. ~~community facility~~ place of worship; and
- f. educational facility.

Objectives and Policies

CR-03:

To ensure that new locations for critical infrastructure and connections take account of the hazardscape and ~~where practicable~~ where practicable are built away from natural hazards ~~unless there is a functional or operational need to be in that location.~~

NENV-03:

To recognise:

- a. The substantial contribution to the protection of natural environment values that is made by the existence of public conservation land. ~~in protecting significant areas, habitats and features.~~
- b. The ~~functional need and operational~~ need for infrastructure [including critical infrastructure and energy activities to be located] to sometimes be located in significant areas; ~~and~~
- c. That there are existing lawfully established activities located in significant areas;
- d. The need to support the ethic of stewardship and to consider the positive effects of the conservation estate in protecting natural environment values ~~achieving the requirements of the RMA; and~~
- e. The need for weed and pest control to protect, maintain and enhance the natural environment values.

Building Setback

Natural Open Space Zone

Permitted Activities

NOSZ – R1 Park Facilities and Park Furniture

Activity status permitted:

Where

1. [...]
4. Buildings or structures are setback a minimum 4.5m from road and rail designation boundaries; and [...]

Open Space Zones

Permitted Activities

OSZ – R1 Park Facilities and Park Furniture

Activity status permitted:

Where

1. [...]
3. Buildings or structures are setback
 - (i) a minimum 4.5m from road and rail designation boundaries; and [...]

Commercial Zone

Permitted Activities

COMZ – R1 Commercial Activities, Community Facilities, Emergency Service Facilities, Community Corrections Activity, Educational Facilities and Visitor Accommodation Activities and Buildings

Activity status permitted:

Where

1. [...]
3. Any building or structure is set back
 - (i) [...]
 - (ii) a minimum 4.5m from road and rail designation boundaries [...]

Mixed Use Zone

Permitted Activities

MUZ – R1 New Buildings and External Additions or Alterations to Existing Buildings

Activity status permitted:

Where

1. [...]
4. Any building or structure is setback a minimum of 3m from any RESZ - Residential Zone, OSRZ - Open Space and Recreation Zone, INZ - Industrial Zone or PORTZ - Port Zone boundary;
4A. Any building or structure is setback a minimum of 5m from any rail designation boundary; [...]

Town Centre Zone

Permitted Activities

TCZ – R1 Commercial Activities and Buildings, Community Corrections Activities, Community Facilities and Emergency Service Facilities

Activity status permitted:

Where

1. [...]
2. Any building or structure is setback a minimum of 3m from any RESZ - Residential Zone boundary;
2A. Buildings or structures are setback a minimum of 5m from any rail designation boundary; [...]

General Industrial Zone

Permitted Activities

GIZ – R1 [...]

Activity status permitted:

Where

1. [...]
3. Buildings or structures are setback a minimum of
 - (i) [...]
 - (ii) 5m from road boundaries, any Residential Zone, Open Space Zone or Settlement Zone boundary and the Rail designation boundary Corridor;

Light Industrial Zone

Permitted Activities

LIZ – R1 [...]

Activity status permitted:

Where

1. [...]
3. Buildings or structures are setback a minimum of
 - (i) [...]

(ii) 5m from road boundaries, any Residential Zone, Open Space Zone or Settlement Zone boundary and the Rail designation boundary Corridor;

General Residential Zone

Permitted Activities

GRZ – R1 [...]

Activity status permitted:

Where

1. [...]

4. Buildings are setback a minimum 4.5m from road boundaries, except that a roof overhang may encroach 750mm into the setback distance;

4A. Any building or structure is setback a minimum of 5m from any rail designation boundary; [...]

Large Lot Residential Zone

Permitted Activities

LLRZ – R1 [...]

Activity status permitted:

Where

1. [...]

4. Buildings are setback a minimum 10m from road boundaries, except that a roof overhang may encroach 750mm;

4A. Buildings or structures are setback a minimum of 5m from any rail designation boundary; [...]

Medium Density Residential Zone

Permitted Activities

MDZ – R1 [...]

Activity status permitted:

Where

1. [...]

3. Buildings are setback a minimum 4.5m from road boundaries, except that a roof overhang may encroach 750mm;

3A. Buildings or structures are setback a minimum of 5m from any rail designation boundary; [...]

Settlement Zone

Permitted Activities

SETZ – R2 [...]

Activity status permitted:

Where

1. [...]

4. Buildings or structures are setback from boundaries as follows:

(i) 5m from the road or rail designation boundary and any GRUZ - General Rural or INZ Industrial Zone boundary and 1m from internal boundaries; except [...]

The following matters of discretion or control is included :

- a. the location and design of the building or structure as it relates to the ability to safely use, access and maintain buildings or structures without requiring access on, above or over the rail corridor; and
- b. the safe and efficient operation of the rail network.

In these locations:

OSZ - R13 Matters of control

OSZ - R14 to R16 Matters of discretion
GRZ - R13 matter of discretion
LLRZ - R14 matter of discretion
MRZ - R11 matter of control
MRZ - R13 matter of discretion
GRUZ - R15 matters of control
GRUZ - R23 matter of discretion
GRUZ - R26 matter of discretion
SETZ - R21 matter of discretion

Attachment B: s32AA Assessment of Building Setback

Having regard to section 32AA, the following is noted:

Effectiveness and efficiency

- The proposed changes will be more efficient and effective than other methods (such as designating a wider corridor to provide setback) as it provides flexibility of use by resource consent allowing for situations where building within the setback is acceptable. Applying a wider designation means land will not be available for use, the setback could able future use by way of resource consent. This fits the RPS policies in providing development which can be, with mitigation, compatible within reasonably close proximity to infrastructure.
- Providing no setback will not support an efficient outcome generally as incursions can lead to disruption to the rail network/ inefficient operation and endanger safety.
- Providing a minimal setback is insufficient to achieve the purpose of the control.
- The provisions apply to new and altered structures (not retrospectively).
- The provisions provide clear and specific matters of discretion which gives greater certainty to developers (and the Council) over the matters that will be assessed where resource consent is required.

Costs/Benefits

- The recommended amendments will limit building in some locations (cost).
- The benefits are providing for a safer and more efficient rail network which supports passenger transport (being itself a significant supporting factor for residential intensification).
- The changes will enable greater certainty for home owners and occupiers to undertake maintenance to their dwellings.

Risk of acting or not acting

- Evidence has been provided of the risks to public safety and network efficiency if no action is taken. Not acting could result in an inefficient operation of nationally significant infrastructure due to unexpected shutdowns.

Decision about most appropriate option

- The recommended amendments as set out in my evidence are therefore considered to be more appropriate in achieving the purpose of the RMA rather than the notified provisions.

Attachment C: RPS Provisions

Section 5: Use and Development of Resources

*The **significant issues** in relation to the use and development of resources on the West Coast are:*

1. [...].
2. *Managing the conflicts arising from the use, development and protection of natural and physical resources.*

Objectives

1. *To recognise the role of resource use and development on the West Coast and its contribution to enabling people and communities to provide for their social, economic and cultural wellbeing.*
2. *Incompatible use and development of natural and physical resources are managed to avoid or minimise conflict.*

Policy 1. *Enabling sustainable resource use and development on the West Coast to contribute to the economic, social and cultural wellbeing of the region's people and communities.*

Explanation Policy 1 [...] *The use and development of resources must be undertaken in a way which promotes the sustainable management purpose of the RMA. This will mean enabling people and communities to provide for their economic, social and cultural wellbeing and for their health and safety while meeting the requirements of section 5(2)(a), (b) and (c) of the RMA to meet the reasonably foreseeable needs of future generations, safeguard life-supporting capacity of resources, and avoiding, remedying or mitigating adverse effects on the environment.*

Policy 2. *To recognise that natural and physical resources important for the West Coast's economy need to be protected from significant negative impacts of new subdivision, use and development by:*

a) *Avoiding, remedying or mitigating reverse sensitivity effects arising from new activities located near existing:*

- i) [...]
- v) *Regionally significant infrastructure; and*

b) *Managing new activities to retain the potential future use of:*

- i) [...]; or
- ii) *Land which is likely to be needed for regionally significant infrastructure.*

Explanation Policy 2: *Policy 2 aims to create a framework for getting the right development in the right place at the right time. It is a strategic and proactive policy, designed to give effect to section 30(1)(g)(b) of the RMA which gives regional councils the function of*

strategically integrating infrastructure with land use. The policy seeks to ensure that there is a planned and coordinated approach to developing the built environment. Well-designed development also provides for the wellbeing of people and communities now and into the future. It also recognises that some types of development are incompatible when in close proximity to each other and that some activities can only occur in certain places because of the functional needs of that activity. Should other development occur there, then this can lead to a lost opportunity for a higher value use of that land.

Section 6: Regionally Significant Infrastructure

*The **significant issues** in relation to RSI for the West Coast are:*

- 1. [...]*
- 2. Strategically integrating infrastructure and land use.*

Objective 1. *Enable the safe, efficient and integrated development, operation, maintenance, and upgrading of regionally and nationally significant infrastructure.*

Policy 2. *Provide for the development, operation, maintenance and upgrading of new and existing RSI including renewable electricity generation activities and National Grid infrastructure.*

Policy 4. *Recognise that RSI important to the West Coast's wellbeing needs to be protected from the reverse sensitivity effects arising from incompatible new subdivision, use and development, and the adverse effects of other activities, which would compromise the effective operation, maintenance, upgrading, or development of the infrastructure.*

Explanation Policy 4: *The operation, maintenance and future development of RSI can be significantly constrained by the adverse environmental impact of encroaching activities and development, also known as reverse sensitivity, or by the effects of existing resource use.*

Policy 8. *Land use and infrastructure should be integrated to avoid as much as practicably possible:*

- a) Constraints through the lack of supporting infrastructure;*
- b) Unsustainable demands being placed on infrastructure to meet new growth;*
- c) Significant adverse effects on existing land uses.*

Methods 2. *Through regional and district plan rules, or conditions of resource consents:*

- a) Recognise the positive benefits of RSI;*
- b) Recognise the constraints imposed by the locational, technical and operational requirements of RSI, including electricity transmission, distribution and renewable electricity generation infrastructure; and*
- c) Manage adverse environmental effects on the safe and efficient operation of RSI.*

Anticipated Results 4. *Effective management of resource management conflicts arising from reverse sensitivity effects on existing RSI, or between the provision of RSI and existing resource use.*

Attachment D: Functional / Operational Need Provisions

Below I have detailed the specific circumstances where functional and/or operational need is required by national policy directives (including draft national direction).

- (a) **NPS-FM** requires regional councils to apply the functional need "test" to activities in or adjacent to *natural inland wetlands* for specified infrastructure³¹ quarrying³², mineral extraction³³ and landfills³⁴. It also requires the functional need test for activities proposing to locate in a river³⁵ (also for regional councils).
- (b) The **NES-FM** provides corresponding (to NPS-FM) discretionary activity status for specified infrastructure, quarrying and mineral extraction³⁶ for activities in and around natural inland wetlands with a "functional need" test. A discretionary activity status (with functional need "test") is also provided for reclamation of river beds³⁷.
- (c) The **NPS-IB** (generally) requires identification of Significant Natural Areas and measures to avoid effects except in certain circumstances these³⁸. These exceptions include a range of activities (specified infrastructure, some mineral, aggregate extraction and coal mines) where there is a functional or operational need³⁹.
- (d) Similar to the NPS-IB, the **NPS-HPL** (generally) requires identification of highly productive land and measures to avoid in appropriate use except in certain circumstances. Exceptions include notices of requirement and designations⁴⁰. In addition, exemptions also include specified infrastructure, defence, mineral and aggregate extraction⁴¹ where there is a functional or operational need (noting that functional or operational need does not apply to notices of requirement/designations).
- (e) For natural hazards in the coastal environment, Policy 25 of the **NZCPS** is relevant; it does not preclude infrastructure in hazard areas or require it to have a functional or operational need:

*Policy 25: Subdivision, use, and development in areas of coastal hazard risk
In areas potentially affected by coastal hazards over at least the next 100 years:*

³¹ NPS-FM Clause 3.22(b).

³² NPS-FM Clause 3.22(d)(iii).

³³ NPS-FM Clause 3.22(e)(iii).

³⁴ NPS-FM Clause 3.22(f).

³⁵ NPS-FM Clause 3.24(a).

³⁶ NES-FM s45s, s45A and s45D respectively.

³⁷ NES-FM s57.

³⁸ NPS-IB Clause 3.10.

³⁹ NPS-IB Clause 3.11(1)(b).

⁴⁰ NPS-HPS Clause 3.9(h).

⁴¹ NPS-HPS Clause 3.9(j).

- a. **avoid increasing the risk¹⁰ of social, environmental and economic harm from coastal hazards;**
 - b. **avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards;**
 - c. *encourage redevelopment, or change in land use, where that would reduce the risk of adverse effects from coastal hazards, including managed retreat by relocation or removal of existing structures or their abandonment in extreme circumstances, and designing for relocatability or recoverability from hazard events;*
 - d. **encourage the location of infrastructure away from areas of hazard risk where practicable;**
 - e. *discourage hard protection structures and promote the use of alternatives to them, including natural defences; and*
 - f. *consider the potential effects of tsunami and how to avoid or mitigate them.*
- (bold added)**

- (f) NZCPS Policy 25 requires that development avoids increasing risk and locates away from areas or risk where practicable; it does not require that development (which would include critical infrastructure) proves a functional and operational need.
- (g) The **RPS** appropriately identifies (3)(b)(ii) identifies functional or operational requirements as being a relevant consideration in the coastal environment, it makes no other reference to this being a requirement.

Acknowledging prospective policy changes, both the Transitional National Planning Framework⁴² and the Proposed National Policy Statement for Natural Hazard Decision-making are currently under consultation.

- (h) The Transitional National Planning Framework (**T-NPF**), includes functional and operational need and they appear separately and conjointly. Outside of Regional Spatial Plans (which may recognise functional and operational needs for infrastructure)⁴³, the requirement to have a functional or operational need, generally relates to specific items such as cultural features, rivers⁴⁴ (functional need), vegetation⁴⁵ highly productive soils⁴⁶ and wetlands rather than a "blanket" test applied to all infrastructure. Not unexpectedly, with the exception of cultural features, these generally reflect the existing National Policy Statements (noting it is

⁴² As at 21 September 2023 <https://environment.govt.nz/assets/publications/RM-system-2023/Engagement-draft-Natural-and-Built-Environment-Transitional-Nation-v34.0.pdf> Draft Natural and Built Environment (Transitional National Planning Framework) Regulations,

⁴³ Draft Natural and Built Environment (Transitional National Planning Framework) Regulations, Section 12.2.1. *When identifying opportunities to provide for infrastructure as described in subclause (1), a regional planning committee must recognise that infrastructure may have functional or operational needs to operate in, be located in, or traverse particular environments, including to—*
(a) provide services to particular communities in a timely, effective, and efficient manner; and
(b) have access to particular natural resources.

⁴⁴ Draft Natural and Built Environment (Transitional National Planning Framework) Regulations, Section 2.3.2.

⁴⁵ For example Clause 2.5.28.

⁴⁶ For example Clause 4.2.11(2)(j).

as yet unclear of the T-NPF would accommodate the *Proposed National Policy Statement for Natural Hazard Decision-making*).

- (i) The Proposed National Policy Statement for Natural Hazard Decision-making⁴⁷ (**Draft NPS-NH**) as drafted includes functional or operational need in draft Policy 5:

Policy 5: Planning decisions must ensure that:

*(a) in areas of high natural hazard risk, **new development is avoided unless the level of risk is reduced to at least a tolerable level or:***

(i) the new development is not a new hazard-sensitive development; and

(ii) there is a functional or operational need for the new development to be located in the area of high natural hazard risk, and

(iii) there are no practicable alternative locations for the new development; and

(iv) risk is reduced to as low as reasonably practicable; and [...]

[Policy 5 continues to address moderate and low natural hazard risk but does not refer further to functional or operational need].

- (j) In the event that the Draft NPS-NH is adopted as currently worded, development in high hazard areas is to be avoided unless risk is reduced to tolerable levels or the exemptions in (i) to (iii) apply (exemptions include demonstrating functional and operation need). A functional and operation need test is one pathway through Policy 5, but not the only pathway.

Based on my assessment, I conclude that functional and/or operational need relative to infrastructure should be addressed in Part 2 Natural Environmental Values within the ECO and NC sections as these reflect the specific matters which have functional and/or operational need tests set out in national policy direction. The TTPP (as notified) already achieves this in a number of places; in particular ECO *Ecosystems and Indigenous Biodiversity* and/or NC *Natural Character and Margins of Waterbodies* policies.

Further:

- a. Highly Productive Soils (NPS-HPS) are not currently addressed in the TTPP (the NPS-HPS became operative subsequent to plan notification) but I anticipate that suitable functional or operational need policy direction could be included when this occurs.

⁴⁷ <https://environment.govt.nz/assets/publications/RMA/Proposed-National-Policy-Statement-for-Natural-Hazard-Decision-making-2023.pdf>

- b. There is no requirement for functional or operational need to be assessed for infrastructure in the coastal environment under the NZCPS (a different test applies as set out in Policy 25); and
- c. Future updates can be made (or may be mandatory) once the detail of the T-NPF and draft NPS-NH are confirmed. Even if adopted "as is", both documents approach to functional and operational need is very nuanced rather than "blanket".