

## Before the Hearings Commissioners

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

In the matter of a submission by KiwiRail Holdings Limited (submitter 408 and FS72) on the Hearing Stream 2 Residential Zones

and in the matter of Wellington City Proposed District Plan

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**Primary statement of evidence of Catherine Lynda Heppelthwaite for  
KiwiRail Holdings Limited regarding Wellington City Proposed  
District Plan Hearing Stream 2**

Dated 16 March 2023

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## **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, 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, Porirua and Whangarei District Plans where I assisted Waka Kotahi by providing specialist planning evidence on similar issues (noise and vibration).

## **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 submissions and further submissions in relation to High Density, Medium Density and Large Lot residential zones;
  - c. Councils s42A recommendations; and
  - d. Further amendments required.

- 3.1 In preparing my evidence, I have considered the following Section 42A Hearings Reports:
- a. Stream 2 – Part 2, Residential Zones – Part 1: Overview and General Matters (**Overview Hearings Report**);
  - b. Stream 2 – Part 3, Residential Zones – Part 2: High Density Residential Zone (**HDR Hearings Report**);
  - c. Stream 2 – Part 3, Residential Zones – Part 3: Medium Density Residential Zone (**MDR Hearings Report**); and
  - d. Stream 2 – Part 3, Residential Zones – Part 5: Large Lot Residential Zone (**LLRZ Hearings Report**).

All of the above were prepared by Mr Josh Patterson dated 1 March 2023.

#### 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 on Urban Development 2020 (**NPS UD**);
  - d. Wellington Regional Policy Statement (**RPS**) with specific reference to:
    - i. Chapter 3.3 Introductory Text:
      - Recognising rail as a significant physical resource<sup>1</sup>;
      - *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 environment. For example, the operation or use of **infrastructure can create noise which may adversely impact surrounding communities**. These*

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<sup>1</sup> RPS Introductory text, 3.3 Energy, infrastructure and waste, page 44(b) *Infrastructure*.

*effects need to be balanced to determine what is appropriate for the individual circumstances<sup>2</sup>. [bold added]*

- ii. Objective 10: *The social, economic, cultural and environmental, benefits of regionally significant infrastructure are recognised and protected<sup>3</sup>.*
- iii. Policy 8: *Protecting regionally significant infrastructure – regional and district plans<sup>4</sup>. 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<sup>5</sup>. [bold added]*
- iv. Policy 8 Explanation: *Incompatible subdivisions, land uses or activities are those which **adversely affect the efficient operation of 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.***

*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 circumstances<sup>6</sup>. [bold added]*

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<sup>2</sup> RPS Introductory text, 3.3 Energy, infrastructure and waste, page 44(b) *Infrastructure*.

<sup>3</sup> RPS Table 3: Energy, infrastructure and waste objectives and titles of policies and methods to achieve the objectives

<sup>4</sup> RPS Table 3: Energy, infrastructure and waste objectives and titles of policies and methods to achieve the objectives and page 96.

<sup>5</sup> RPS Page 96.

<sup>6</sup> RPS Page 96.

- v. Method 1 (for Policy 8) identifies District plans as an implementation method<sup>7</sup>.

4.1 Council's *Section 32 Evaluation Report Part 1: Context to s32 evaluation and evaluation of proposed Strategic Objectives*<sup>8</sup> has (particularly at Section 5) identified the relevant statutory, planning and strategic document provisions with which I generally agree and will not repeat here.

4.2 The Emissions Reduction Plan<sup>9</sup> is a matter to be had regard to by Council; 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.*

4.3 For completeness, the New Zealand Rail Plan (**NZRP**) lists as strategic investment priorities<sup>10</sup>:

- *Investing in the national rail network to restore rail freight and provide a platform for future investments for growth; and*
- *Investing in metropolitan rail to support growth and productivity in our largest cities.*

4.4 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.

## 5 KIWIRAIL SUBMISSIONS AND FURTHER SUBMISSIONS

5.0 In summary, KiwiRail's primary submission seeks:

- a. that rail be identified as a qualifying matter<sup>11</sup> pursuant to s771(e) and s770(e) of the RMA including within the introductory sections<sup>12</sup> of the High

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<sup>7</sup> RPS Table 3: Energy, infrastructure and waste objectives and titles of policies and methods to achieve the objectives

<sup>8</sup> <https://wellington.govt.nz/-/media/your-council/plans-policies-and-bylaws/district-plan/proposed-district-plan/reports/section-32-part-1-context-to-evaluation-and-strategic-objectives.pdf?la=en&hash=C433D3521179B827BBCA3822BD154886D619A463>

<sup>9</sup> Emissions Reduction Plan, Section 3.2.3

<sup>10</sup> The New Zealand Rail Plan, Part B, pages 25 and 38 for key details.

<sup>11</sup> Submission 408.120.

<sup>12</sup> Submission 408.116

Density Residential (**HDR**)<sup>13</sup> and Medium Density Residential (**MDR**) zone provisions; and

- b. a 5m setback being provided for buildings and structures adjacent to the rail corridor and a new matter of discretion in the HDR, MDR and Large Lot Residential zone (**LLR**) including HDR-S4<sup>14</sup>, HDR-R13<sup>15</sup>, MRZ-S4<sup>16</sup>, MRZ-R13<sup>17</sup>, LLR-S6<sup>18</sup> and LLR-R12<sup>19</sup>.

5.1 KiwiRail has also made the following further submissions which generally support its primary submissions:

- a. For the HDR zone: Rejects the deletion of yard setback standards<sup>20</sup> and rejects exempting 1-3 dwellings from complying with yard setback standards<sup>21</sup>.
- b. For the MDR zone: Rejects the deletion of yard setback standards (MRZ-S4)<sup>22</sup>; rejects exempting 1-3 dwellings from complying with yard setback standards<sup>23</sup> and supports side and rear setbacks from the rail corridor for health and safety reasons.(MRZ-S5)<sup>24</sup>.
- c. For the LLR zone: Rejects the deletion of yard setback standards (LLRZ-S6)<sup>25</sup> and supports the Waka Kotahi primary<sup>26</sup> submission seeking the addition to assessment criteria (LLRZ-S1) to allow for consideration of infrastructure and the transport network when the activity fails to meet permitted activity standards<sup>27</sup>.

## 6 SECTION 42A ASSESSMENT

6.0 Mr Patterson (in both his HDR and MDR Hearings Reports) has considered rail as a qualifying matter (**QM**) for the purpose of building setbacks but not for inclusion in the HDR and MDR Introduction sections.

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<sup>13</sup> Submission 408.120.

<sup>14</sup> Submission 408.123.

<sup>15</sup> Submission 408.122.

<sup>16</sup> Submission 408.119.

<sup>17</sup> Submission 408.122.

<sup>18</sup> Submission 408.125.

<sup>19</sup> Submission 408.124.

<sup>20</sup> FS72.89.

<sup>21</sup> FS72.90.

<sup>22</sup> FS72.85 and FS72.86.

<sup>23</sup> FS72.87.

<sup>24</sup> FS72.88.

<sup>25</sup> FS72.92 (primary submission of James Barber 56.6).

<sup>26</sup> Waka Kotahi submission 370.398.

<sup>27</sup> FS72.91.

- 6.1 For HDR-S4 and HDR-R13, Mr Patterson:
- a. Agrees a setback is required but recommends 1.5m setback (instead of KiwiRail's preferred 5m). The 1.5m setback in HDR-S4 is considered to provide sufficient space to access and maintain buildings safely and be consistent with recommendation made by Porirua City Council in their hearings to the Proposed Porirua District Plan<sup>28</sup>.
  - b. Agrees that a new matter of discretion is required within HDR-13<sup>29</sup> to address where setbacks are not met.
- 6.2 For the MDR-S4 and MDR-R13, Mr Patterson:
- a. Agrees a setback is required but recommends 1.5m setback (instead of KiwiRail's preferred 5m). The 1.5m setback in MDR-S4 is considered to provide sufficient space to access and maintain buildings safely and be consistent with recommendation made by Porirua City Council in their hearings to the Proposed Porirua District Plan<sup>30</sup>.
  - b. Agrees that a new matter of discretion is required in MDR-R13<sup>31</sup> where setbacks are not met.
- 6.3 For the Large Lot Residential Zone LLRZ-S6 and LLRZ-R12, Mr Patterson:
- a. Agrees a setback is required and considers that the 3m setback contained within LLRZ-S6 is sufficient<sup>32</sup>.
  - b. Agrees that a new matter of discretion is required in LLR-R12<sup>33</sup>.
- 6.4 I will address each of these points in Sections 7 and 8.

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<sup>28</sup> Hearing stream 2 – Section 42a Report Part 2 High Density Residential Zone, paragraph 547.

<sup>29</sup> Hearing stream 2 – Section 42a Report Part 2 High Density Residential Zone, paragraph 401.

<sup>30</sup> Hearing stream 2 – Section 42a Report Part 3 Medium Density Residential Zone, paragraph 759.

<sup>31</sup> Hearing stream 2 – Section 42A Report, Part 3 Medium Density Residential Zone, paragraph 537.

<sup>32</sup> Hearing stream 2 – Section 42A Report, Part 5 Large Lot Residential Zone, paragraph 179.

<sup>33</sup> Hearing stream 2 – Section 42A Report, Part 5 Large Lot Residential Zone, paragraph 142.

## 7 MDR AND HDR INTRODUCTION AND QUALIFYING MATTER

- 7.0 Mr Patterson has not recommended listing specific QMs in the Introduction sections for HDR and MDR. In relation to whether each qualifying matter needs to be specified in the Plan, the Hearing Stream 1 authors concluded the importance of QMs will be much less once decisions are made<sup>34</sup> (i.e. QMs will be reflected within Plan and not require additional recognition). KiwiRail's submission was that the list of qualifying matters was limited and did not recognise nationally significant infrastructure such as the rail corridor. I agree with Mr Patterson's changes to delete the examples of QMs (generally) from the Introduction section of both chapters as this approach removes limitations associated with listing QM's and reflects their role in the Plan as it moves towards being operative.
- 7.1 However, I do comment further on the rail network as relevant to QM, in light of comments in the S42A Assessments for Hearings Stream 1 and 2, which are described further below.
- 7.2 The S42A Assessment Hearings Stream 1<sup>35</sup> addressed *Plan wide matters of strategic or procedural importance*<sup>36</sup>. This included assessing whether the rail network should be a QM on a plan-wide basis. It concluded:
- KiwiRail has not indicated whether it considers all or some of its [KiwiRail's] lines meet the nationally significant test, or provided detail as to the extent of interference being experienced in Wellington city in the absence of the control*<sup>37</sup>.
- 7.3 The Hearings Stream 1 report author indicated this matter would be revisited in Stream 2<sup>38</sup>.
- 7.4 Additionally, Mr Patterson stated in the s42A report that the railway corridor is not a qualifying matter.<sup>39</sup>
- 7.5 Council may introduce Qualifying Matters to be less enabling than that required under the MDRS or Policy 3 of the National Policy Statement for

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<sup>34</sup> Hearing stream 1 – Section 42a Report Part 1 plan wide matters and strategic direction, paragraph 722 and 723.

<sup>35</sup> Hearing stream 1 – Section 42a Report Part 1 plan wide matters and strategic direction.

<sup>36</sup> Hearing stream 1 – Section 42a Report Part 1 plan wide matters and strategic direction, Section 4.

<sup>37</sup> Hearing stream 1 – Section 42a Report Part 1 plan wide matters and strategic direction, paragraph 88.

<sup>38</sup> Hearing stream 1 – Section 42a Report Part 1 plan wide matters and strategic direction, paragraph 88.

<sup>39</sup> Hearing stream 2 – Section 42a Report Part 3 Medium Density Residential Zone, paragraph 222.



Urban Development.<sup>40</sup> Qualifying matters include *a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure.*

7.6 The NPSUD 2020 defines nationally significant infrastructure:

***nationally significant infrastructure*** means all of the following:

[...]

(e) *the New Zealand rail network (including light rail)*

[...]

(g) *rapid transit services (as defined in this clause)* [...]

***rapid transit service*** means any existing or planned frequent, quick, reliable and high-capacity public transport service that operates on a permanent route (road or rail) that is largely separated from other traffic

7.7 It is also important to note that:

- a. the rail network is captured under two 'limbs' of the NPSUD definition by both being the *rail network* but also by being a *rapid transit service*; and
- b. the NPSUD does not include a 'hierarchy' between types of rail lines or services (i.e. it is all nationally significant, not just parts).

7.8 The Wellington rail network is part of the New Zealand rail network and clearly within the definition of *nationally significant infrastructure*. Further, as will be described further by Mr Brown and summarised below, a 5m setback is sought to ensure the *safe and efficient* operation of the rail network, being nationally significant infrastructure.

7.9 I also note that other IPIs have recognised the rail corridor as a QM, for example, Selwyn and Porirua.

## 8 BUILDING SETBACK HDR, MDR AND LLR

8.0 I rely on Mr Brown's evidence which:<sup>41</sup>

- a. describes why a 5m metre setback is necessary (relative to a three / 12m storey dwelling within the HDR and MDR zones) and why the

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<sup>40</sup> Sections 77(l) and 77(o) of the RMA.

<sup>41</sup> Statement of Evidence of Mike Brown dated 16 March 2023 at [4.3] – [4.12].

notified 3m building setback for the LLR zone is not sufficient adjoining a rail corridor;

- b. describes the risk to persons both accessing the rail corridor (to undertake adjoining property maintenance) and rail corridor users (train operators and passengers); and
- c. concludes that corridor access requests are not a reliable method of managing network access.

8.1 Mr Brown also comments on the impacts of Mr Patterson's proposed amendments which:

- a. for the MDR zone, allow eaves of 1m and decks less than 1m in height within the 1.5m (MRD-S4) Boundary setback<sup>42</sup>; and
- b. for the HDR zone, allow uncovered decks and uncovered structures of 0.5m in height and eaves up to 0.6m in within the 1.5m (HDR-S4) Boundary setback<sup>43</sup>.

8.2 In addition to Mr Brown'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.

8.3 For example, Transpower has included in a range district plans<sup>44</sup> a national grid corridor overlay which restricts activities within a specified spatial extent of its network. Airports and ports are another common infrastructure type which restricts activities on surrounding private land<sup>45</sup>.

8.4 For completeness, I have considered other methods (no setback and extending existing 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 and I conclude that a setback is the most efficient outcome. I have relied on the evidence of Mr Brown as to the extent of that setback.

8.5 With regard to the proposed matter of discretion (HDR-R13, MDR-R13 and LLRZ-R12), I agree with Mr Patterson and the KiwiRail submission on the

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<sup>42</sup> Appendix A Medium Density Residential Zone S42A Proposed Amendments MRZ-S4 Boundary Setback.


<sup>43</sup> Appendix A High Density Residential Zone S42A Proposed Amendments HDZ-S4 Boundary Setback.

<sup>44</sup> For example, Chapter D26 of the Auckland Unitary Plan.

<sup>45</sup> For example, Chapters D24 Aircraft Noise Overlay and D25 City Centre Port Noise Overlay of the Auckland Unitary Plan.

need for a matter of discretion to 'match' the proposed setback rule. These changes are included in my **Attachment A**.

- 8.6 Finally, I note that Mr Patterson proposes some amendments to how the permitted activity standards apply to HDR-R13 and MDR-R13 *Construction, addition or alteration of buildings and structures where no more than three residential units occupy the site*. Mr Patterson proposes that the qualifier words *only in relation to the rear yard boundary setback*, relative to application of HRZ-S4 and MDR-S4, are removed. For example<sup>46</sup> HRZ-R13(1)(a)(iii) amendment:

<b>HRZ-R13</b> 	<b>Construction, addition or alteration of buildings and structures where no more than three residential units occupy the site</b>
1. Activity status: <b>Permitted</b>	
Where:	
a. Compliance with the following standards is achieved:	
i. HRZ-S1;	
ii. HRZ-S3;	
iii. HRZ-S4 <del>only in relation to the rear yard boundary setback</del> ;	
iv. HRZ-S5;	
v. HRZ-S6;	
vi. HRZ-S7;	
vii. HRZ-S8; <del>and</del>	
viii. HRZ-S9; <del>and</del>	
ix. <del>HRZ-S10.</del>	

- 8.7 Mr Patterson has proposed the same amendment to MDRZ-R13<sup>47</sup>. This has the effect of applying all yard setbacks as a permitted activity standard (rather than just rear yard boundary setbacks) to proposals for less than three units. This would include the proposed rail corridor boundary yard. I support these amendments as there is no reason to exclude construction of less than three dwellings from compliance with the rail corridor boundary yard.

## 9 CONCLUSION

9.0 In conclusion:

- a. **Qualifying Matter:** The KiwiRail network and facilities are nationally significant infrastructure as defined in the NPSUD.

<sup>46</sup> Section 42A Appendix A: High Density Residential Zone – Planners recommendation, page 9.

<sup>47</sup> Section 42A Appendix A: Medium Density Residential Zone – Planners recommendation, page 14.

- b. **Introduction:** Changes to the introduction as proposed by Mr Patterson are agreed.
- c. **Building Setback:** A building setback is considered to be a Qualifying Matter as it is required to enable the nationally significant infrastructure to operate in a safe and efficient manner. Based on Mr Brown's evidence, a 5m setback is considered appropriate to ensure safe building maintenance within the HDR, MDR and LLR zones.
- d. **Amendments to HDZ-R13 and MRZ-R13 permitted activity standards:** I support Mr Patterson's amendments to apply (as a permitted activity standard) rail corridor boundary yard to developments no more than three dwellings.
- e. **Matter of discretion:** I support Mr Patterson's recommended inclusion of matters of discretion within HDZ-R13, MRZ-R13 and LLRZ-R12.

**Cath Heppelthwaite**  
16 March 2023

## Attachment A: Proposed Changes

Base text is taken from Appendix A – Planners recommendation with changes accepted. All changes are in red text. New text is underlined and proposed deletions in ~~strike through~~.

### High Density Residential Zone

HRZ-S4	Building setback	
1. Buildings and structures must be set back from the relevant boundary by the minimum depth listed in the yards table below:	Assessment criteria where the standard is infringed: 1. Streetscape and visual amenity effects; and 2. Dominance, privacy and shading effects on adjoining sites.	
	Yard	Minimum depth
	Front	1.5 metre
	Side	1 metre
	Rear	1 metre (excluded on corner sites)
	Rail corridor boundary	<del>1.5</del> <u>5</u> metres
This standard does not apply to: [...]		

### Medium Density Residential Zone

MRZ-S4	Building setback	
1. Buildings and structures must be set back from the relevant boundary by the minimum depth listed in the yards table below:	Assessment criteria where the standard is infringed: 1. Streetscape and visual amenity effects; and 2. Dominance, privacy and shading effects on adjoining sites.	
	Yard	Minimum depth
	Front	1.5 metre
	Side	1 metre
	Rear	1 metre (excluded on corner sites)
	Rail corridor boundary	<del>1.5</del> <u>5</u> metres
This standard does not apply to: [...]		

### Large Lot Residential Zone

LLRZ-S6	Building setback	
1. Buildings or structures must not be located within: a. A 5m setback from a road <u>or rail</u> boundary; and b. A 3m setback from a side or rear boundary.  Except that water tanks for water supply and firefighting purposes can be located within these setbacks.	Assessment criteria where the standard is infringed: 1. Streetscape and amenity effects; 2. Dominance, privacy, and shading effects on adjoining sites; 3. Whether the topography of the site mitigates or exacerbates effects; and 4. The extent to which site layout or landscaping has been incorporated into the design to mitigate any resulting amenity effects.	

## **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 RPS Objective 10 and Policy 8 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.

### **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.