



NOTICE OF RECOMMENDATION

**In Respect of a Notice of Requirement by
KiwiRail Holdings Limited (As Requiring Authority) under
the Resource Management Act 1991 for an Alteration to
an Existing Designation (D0301) to Encompass its
Paekakariki Rail Yard**

April 2018

DELEGATED AUTHORITY

- [1] Pursuant to Section 34A of the Resource Management Act 1991 (RMA), independent Commissioners Mark St Clair (Chair) and David Forrest, and Cr. Jackie Elliott, were delegated authority from the Kapiti Coast District Council (KCDC) to hear and make a decision (recommendation) in respect of the Notice of Requirement (NoR) lodged by KiwiRail Holdings Limited [RM170060] to alter an existing designation [D0103] at the Paekakariki Rail Yard.

PROCEDURAL MATTERS

Directions/Minutes

- [2] We issued initial Directions (Minute #1) on the 25th of October 2017 regarding a request from one of the submitters, Mr Nolan, to reschedule the hearing scheduled for the 20th of November 2017 as he would be overseas and not back in the country until 15 December 2017. As there was no objection from the requiring authority, the hearing was postponed and the KCDC officers directed to schedule a new hearing date as soon as reasonably practicable.
- [3] We issued a further Minute (#2) on the 10th of November 2017 regarding the pre-circulation of the Section 42A Officer Report and evidence in accordance with RMA Section 103B and advising as to how the hearing was to be conducted. We also requested that all parties calling expert witnesses conference on matters relevant to their specific areas of expertise, prior to the preparation of their reports or evidence, with a view to clearly identifying areas of agreement and disagreement.

Site Visit

- [4] We undertook a site visit, prior to the hearing, on the morning of Wednesday 7 February 2018. We did not enter the subject site, nor the properties of submitters. Our inspection was limited to observations from publicly accessible vantage points.

Decision Format

- [5] Whilst this decision pertains to a Notice of Requirement and not a resource consent application, we nevertheless have had regard to the requirements of section 113 of the RMA when preparing our recommendation. In particular, we note, and have acted in accordance with, section 113(3) which states:

"A decision prepared under subsection (1) may, –

(a) instead of repeating material, cross-refer to all or a part of -

(i) the assessment of environmental effects provided by the applicant concerned;

(ii) any report prepared under section 41C, 42A, or 92; or

(b) adopt all or a part of the assessment or report, and cross-refer to the material accordingly."

BACKGROUND

Existing Designation

- [6] The NoR¹ seeks an alteration to Designation D0301, as identified in the KDC's Operative and Proposed District Plans. Designation D0301 applies to most of KiwiRail's land holdings in the Kapiti Coast District. The designation is stated as being for "Railway Purposes".

Alteration Proposed

- [7] KiwiRail seeks to alter designation D0301 by incorporating five separate, but contiguous, land parcels forming part of the Paekakariki Rail Yard, into the existing designation. The legal description of these land parcels and their location are detailed in the NoR².

The Environment

- [8] A description of the site and surrounding environment is contained in the NoR³ and summarised in Mr Hindrup's S42A Report⁴. Of particular significance is the fact that three residentially zoned and occupied properties adjoin the subject land on its western boundary.

NOTIFICATION AND SUBMISSIONS

Notification

- [9] Following receipt and due consideration of the NoR, a Notification Report⁵ was prepared and submitted to the Council's Resource Consents and Compliance Manager for consideration and determination. The notification decision⁶ made (on the 22nd May 2017) was that the NoR be processed on a limited notified basis in accordance with Sections 95B, 95E and 95F of the RMA and that notice of the NoR be served on the owners and occupiers of 24, 26A, 26B, 28, 28A and 46 Tilley Road.

¹ Notice of Requirement to alter an Existing Designation, KiwiRail Holdings Limited Paekakariki Rail Yard, Tilly Road, Paekakariki – 28 March 2017.

² NoR, page 2.

³ NoR, pages 1 – 5.

⁴ S42A Report to Commissioners by Phillip John Hindrup, 11 January 2018, pages 5 and 6.

⁵ RCC Form 065 Notification Decision Report on NoR170060, by Phil Hindrup, dated 22 May 2017.

⁶ Notification Decision Report, pages 13 and 14.

Submissions

- [10] By the closing date for submissions on 26 June 2017, the Council had received three submissions⁷ in respect of the NoR from the following property owners:
- Louise and Ben Falepau, 26A Tilley Road, owners.
 - Matthew Robinson and Beba McLean, 26B Tilley Road, owners/occupiers.
 - Zophia and Timothy Nolan, 28 and 30 Tilley Road, owners.

PRE-HEARING REPORT

- [11] A pre-hearing meeting was held on 20 July 2017 in Paekakariki, facilitated by Ms Gina Sweetman, and involved representatives of the requiring authority KiwiRail, submitters and Council officers and advisers. A report⁸, prepared pursuant to S99(5) RMA by Ms Sweetman, was distributed to all participants following the meeting. Participants all agreed that all matters discussed could be included in the S99(5) Report.

- [12] In the conclusion to her Report, Ms Sweetman states⁹ as follows:

“39. I noted that the next steps were for KiwiRail to lead and that there was a general willingness between all participants to work together.

40. The action points from the meeting were:

- *KiwiRail were to discuss and draft conditions with the Council*
- *The draft conditions were to be provided to all participants for their review*
- *Participants would then decide whether to meet again, or proceed to a hearing”.*

Obviously, it was decided to proceed to a hearing.

- [13] In accordance with RMA S99(7), we have had regard to Ms Sweetman's Report in making our decision (recommendation) in respect of the NoR. In particular, we are cognizant of Ms Sweetman's statement in paragraph 39 quoted above.

RMA S42A REPORT

- [14] Prior to the hearing, the Council circulated a S42A Officers Report prepared by a consultant planner, Mr Phillip Hindrup, dated 11 January 2018.

This report recommends that the NoR be confirmed, subject to Conditions applying to the land the subject of the alteration to the designation.

⁷ These submissions are summarised in the S42A Report, pages 8 to 10.

⁸ Pre-Hearing Report Pursuant to Section 99(5) of the Resource Management Act 1991, Gina Sweetman, 9 October 2017.

⁹ Pre-Hearing Report, page 6, paragraphs 39 and 40.

THE HEARING

[15] The hearing was conducted in the Coastlands Kapiti Sports Turf Hockey Pavilion, 10 Scaife Drive, Paraparaumu on Wednesday 7th February 2018, commencing at 10.00 am.

[16] Appearances were recorded from the following:

KiwiRail Holdings Limited

Ms Bronwyn Carruthers - Legal Counsel
Mr Mark Georgeson - Traffic Consultant
Dr Stephen Chiles - Acoustic Consultant
Mr Tom Anderson - Planning Consultant

Submitters

Mr Matt Robinson and Ms Beba McLean - Owner/occupier of adjoining land
Mr Tim Nolan - Owner of adjoining land

The Council

Mr Don Wignall - Traffic Consultant
Mr Malcolm Hunt - Acoustic Consultant
Mr Philip Hindrup - Planning Consultant (and S42A Report Author)

We were assisted in an administrative capacity by Ms Paula Fletcher.

RELEVANT STATUTORY PROVISIONS

[17] RMA Section 181(1) provides for a requiring authority that is responsible for a designation to give notice to the territorial authority of its requirement to alter a designation. Section 181(2) provides that sections 168 to 179 shall, with all necessary modifications, apply to a requirement to alter a designation as if it were a requirement for a new designation unless it is for a minor alteration. In this instance, the proposed alteration was not considered to be a minor alteration and was notified, on a limited basis, to neighbours of the subject site.

[18] RMA Section 171 requires that, when considering the NOR for the Alteration and any submissions received, we must, subject to Part 2 of the RMA, consider the effects on the environment of allowing the Alteration. In so doing, we must have particular regard to:

- Any relevant statutory planning document [(s171(1)(a))];

- Whether adequate consideration has been given to alternative sites, routes and methods of undertaking the work in circumstances where the requiring authority does not have an interest in the land sufficient for undertaking the work or it is likely that the work will have a significant adverse effect on the environment [S171(1)(b)];
- Whether the work and designation are reasonably necessary for achieving the objectives of NZTA for which the designation is sought [s171(1)(c)]; and
- Any other matter that we consider reasonably necessary in order to make a recommendation [s171(1)(d)].

[19] Our jurisdiction, pursuant to RMA S171(2), is limited to recommending to the requiring authority (KiwiRail) that it -

- (a) confirm the requirement
- (b) modify the requirement
- (c) impose conditions
- (d) withdraw the requirement

STATUTORY CONSIDERATIONS (RMA S171)

RELEVANT STATUTORY PLANNING DOCUMENTS

[20] Mr Hindrup, in his S42A Report, identifies the relevant planning documents as being the:

- National Policy Statement on Urban Development Capacity
- New Zealand Coastal Policy Statement (NZCPS)
- Wellington Regional Policy Statement
- Kapiti Coast District Plan (Operative – 1999)
- Kapiti Coast District Plan (Proposed – 2012)

He also stated¹⁰ that the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) required consideration.

¹⁰ S42A Report, 11 January 2018, paragraphs 72 to 74, page 19.

- [21] Ms Carruthers, in her legal submissions on behalf of the Requiring Authority¹¹, and Mr Anderson in his evidence¹² both confirm Mr Hindrup's list of the relevant planning documents but do not agree that the NESCS is relevant to the NoR (and therefore that it requires consideration, as suggested by Mr Hindrup).
- [22] Ms Carruthers and Mr Anderson consider that the NESCS is not relevant to the consideration of the NoR for two main reasons, namely:
- a. That Section 171 of the RMA does not require us to consider any national environmental standard; and
 - b. That the NESCS only applies where soil on an identified Ministry for the Environment HAIL site will be disturbed and in this instance the NoR does not involve any disturbance of the site.
- [23] On the evidence provided, we are in agreement that the relevant planning documents have been identified and agree with Ms Carruthers and Mr Anderson as to the non-applicability of the NESCS in this instance.

ALTERNATIVE SITES, ROUTES OR METHODS

- [24] In accordance with S171(1)(b) of the RMA, we are only obliged to have particular regard to this section if either the requiring authority does not have an interest in the land sufficient for undertaking the work [S171(1)(b)(i)] or it is likely that the work will have a significant adverse effect on the environment [S171(1)(b)(ii)].
- [25] In respect of S171(1)(b)(i), it is accepted, from the evidence produced, that the Requiring Authority owns the land in question and therefore has an interest in the land sufficient for undertaking work in accordance with the designated purpose. Section 171(1)(b)(i), therefore, does not apply.
- [26] In respect of the second limb of S171(b), we were of the view, following the hearing and the consideration of the evidence presented and submissions received, that the activity proposed to be undertaken on the subject land is likely to have a significant adverse effect on the environment. In particular, we were concerned about the potential adverse night-time noise and light spill effects arising from the use of the site, given the documented evidence of such effects having arisen in the past¹³. We did not consider that the conditions proposed by the Requiring Authority¹⁴ were sufficient to mitigate or avoid significant adverse effects on the environment (in particular, upon the neighbouring residents at 24, 26A, 26B, 28, 28A and 32 Tilley Road) arising from the proposed alteration to the designation. That being the case our preliminary finding was that we could either recommend to the Requiring Authority that it accept conditions which we

¹¹ Legal submissions on behalf of KiwiRail Holdings Limited, 7 February 2018, paragraphs 5.1 and 5.2, on page 9.

¹² Statement of Evidence of Tom Anderson for the Requiring Authority, paragraphs 48 and 51, pages 13 and 14.

¹³ See the submission and Hearing submission of Mr Matthew Robinson and Ms Beba McLean.

¹⁴ See Evidence of Tom Anderson dated 19 January 2018, Appendix A – Conditions proposed to be placed on Designation D0301 in the Operative and Proposed Kapiti Coast District Plan; and legal submissions by Ms Carruthers, dated 7 February 2018.

considered would mitigate or avoid any significant adverse effects, or we could recommend that the requirement be withdrawn in order to enable a revised NoR to be submitted which included a consideration of alternative sites. As it transpired, the Requiring Authority in its right-of-reply, proposed an amended set of conditions¹⁵ which it considered would achieve the sustainable management purpose of the RMA. Having considered these proposed conditions, we now find that they allay our initial concerns, to the extent that we no longer consider that the activity that is to occur on the subject land (in accordance with the designated purpose) will have a significant adverse effect on the environment. That being the case, both limbs of S171(b) are considered to be met and therefore there is no need for us to determine whether adequate consideration has been given to alternative sites, routes or methods.

REASONABLE NECESSITY FOR ACHIEVING OBJECTIVES

- [27] Section 171(1)(c) requires us to consider whether the designation is *reasonably necessary* for achieving the objectives of the requiring authority.
- [28] Whilst not stated explicitly in the NoR, the primary objective of the requiring authority would appear to be to move "... freight and people around New Zealand in a safe, efficient and customer focussed way."¹⁶ This objective was restated in the Requiring Authority's right of reply¹⁷.
- [29] The extension of existing designation D0103 to encompass the subject site will enable it to be used for 'railway purposes'. The land in question has been owned by the crown since 1929 and held as railway land for use of 'railway purposes'¹⁸.
- In essence, Memoranda 590118.1, placed on the subject land titles in 1983, confirmed the use of the land as being for 'railway purposes' which is the same purpose as stated in the District Plan for existing designation D0301.
- [30] Mr Hindrup, in his S42A Report¹⁹, considers the scope of the designated purpose in too wide and suggests that a more sustainable approach would be to narrow the scope based on what could reasonably be expected to operate on the site in the future. Alternatively, he does consider the mitigation measures, such as those recommended in section R of his report, be applied to activities on the site²⁰.

¹⁵ Reply Submissions on behalf of KiwiRail Holdings Limited, 28 February 2018, Appendix D.

¹⁶ NoR, Table 1, page 9.

¹⁷ Reply Submissions on behalf of KiwiRail Holdings Limited, 28 February 2018, paragraph 6, page 2.

¹⁸ NoR, last paragraph under heading 'Land Ownership', page 2 and Appendix A.

¹⁹ S42A Report, paragraphs 114 – 116, page 29.

²⁰ S42A Report, paragraphs 115, page 29.

- [31] Mr Anderson, in his statement of evidence for the Requiring Authority²¹ rejects the notion that the scope of the designed purpose ought to be narrowed and considers that it would be more appropriate to continue with the existing designated purpose (D0103) and control any effects through conditions which are specific to the site.
- [32] We have considered and accept Mr Anderson's opinion. Given that designation D0103 applies over a large area, we consider it appropriate that the purpose of this designation should remain and that any effects on the environment beyond the subject site, arising from activities on the site relating to that purpose, be subject to specific conditions to manage actual or potential adverse effects.
- [33] We are therefore satisfied, on the basis of the submissions and evidence considered, that the alteration to the designation is reasonably necessary to achieve the objectives of the requiring authority.

CONSIDERATION OF EFFECTS ON THE ENVIRONMENT SHOULD THE ALTERATION BE ALLOWED

Principal Issues in Contention

- [34] The NoR Report²² identifies the actual and potential environmental effects arising from the alteration of the designation as being:
- Residential Amenity Effects, including such factors as bulk and dominance, privacy, character, lighting, noise and vibration
 - Traffic Effects
 - Heritage Effects

It concludes that, "overall, the alteration of the designation is expected to have a less than minor effect on the surrounding environment".²³

- [35] In his S42A Report, Mr Hindrup identifies and then considers the following matters as being the actual and potential effects on the environment:
- a. Noise and vibration effects;
 - b. Traffic effects;
 - c. Effects on residential character and amenity;
 - d. Effects from light spill; and
 - e. Dust

²¹ Evidence, Tom Anderson, paragraph 78, page 20.

²² NoR, pages 10 to 13.

²³ NoR, page 13.

Of the matters identified by Mr Hindrup, only 'e. Dust²⁴' was not identified and considered in the NoR Report. Mr Hindrup did not consider Heritage Effects presumably because Mr Anderson, in the NoR²⁵ concluded that no listed heritage features near the subject land will be affected by the alteration to the designation.

The submitters primary concerns are in respect of these matters.

- [36] Having heard and considered evidence and submissions from the various parties to these proceedings, we consider that the adverse effects on the environment can be narrowed down to residential amenity value effects on the neighbours to the subject site as identified.

Whether site specific conditions, on activities able to be carried out on the site in accordance with the designated purpose, can be put in place such that the identified adverse effects on the residential neighbours can be avoided, remedied, or mitigated, is the principal issue in contention.

Amenity and Visual Effects

- [37] Any change in the nature of the activities permitted under the "railway purposes" designation, or an increase in the scale of activity on the site, could result in neighbouring properties being subjected to adverse amenity or visual effects. Submitters, in particular Ms McLean and Mr Robinson, provided evidence of these adverse effects in their submission²⁶. They submitted²⁷ that a lack of screening of the subject site forces them to keep blinds and curtains closes at times to ensure their privacy. They also submitted that activities on the subject site detract from the residential character of the area and that the fence constructed on the boundary they share with the subject site is not adequate to screen it.²⁸
- [38] Both the planning experts agree that the appropriate way to mitigate such effects is to establish or landscape buffer between the activities on the subject site and the adjoining residential properties²⁹. What was not agreed during conferencing, was the point in time at which the landscape buffer (strip) ought to be established³⁰. Mr Hindrup was of the opinion that the landscaping should be undertaken as part of an Outline Plan of works, whereas Mr Anderson was of the opinion that it should be undertaken when works within the site are of a sufficient intensity.

²⁴ S42A Report, paragraph 51, page 13.

²⁵ NoR, page 13.

²⁶ Submission of Mr Matthew Robinson and Ms Beba McLean, pages 3, 4, 5, and 8 – 11 inclusive.

²⁷ Hearing submission, paragraph 2.3.2, page 4.

²⁸ Hearing submission, paragraph 2.3.3, page 5.

²⁹ Joint Statement of Expert Planning Witness Conferencing, paragraph 17.

³⁰ Joint Statement of Expert Planning Witness Conferencing, paragraph 26.

[39] Following the hearing of evidence and submissions, we concluded that a landscape buffer strip to screen activities on the site from neighbours, was required if the alteration to the designation were to proceed. Based on the submissions from neighbours to the site, we formed the view that the Requiring Authority's suggested draft Condition 1, which required the preparation, submission and implementation of a Landscape Planting Plan would be appropriate were it not for the fact that it only needed to be implemented when one of two "trigger" criterion were met (relating to the need for an Outline Plan of Works or a specified level of activity based on vehicle movements).

We were therefore pleased to see that the Requiring Authority, in its 'Right of Reply'³¹, responded to concerns raised at the Hearing by acknowledging that the vehicle movement trigger (threshold) would be too onerous and difficult to enforce. Draft Condition 1 has now been amended by the Requiring Authority to remove the 'vehicle movement' and 'Outline Plan of Works' triggers³². It is now proposed that a Landscape Planting Plan be prepared prior to any activity being undertaken on Lot 4 of the subject site, including where an Outline Plan of Works is required. We consider draft Condition 1, as now proposed³², is both reasonable and acceptable, except in respect of its limitation to activity occurring only on Lot 4 Block III, DP 2009. Based on the evidence and submissions we heard, and considered, we are of the view that any activity occurring on Lots 4, 5 and 6 Block III DP 2009 ought to be the trigger for the preparation and submission of a Landscape Planting Plan. The videos produced by Mr Robinson and Ms McLean clearly indicated to us that the activity affecting their property was not only on Lot 4 but extended to Lots 5 and 6. For this reason they ought to be included.

Noise and Vibration

[40] As with visual effects, and related to amenity value effects, any change in the nature of the activities permitted under the "railway purposes" designation, or an increase in the scale of activity on the site, could result in neighbouring properties being subjected to adverse noise and/or vibration effects. Submitters, Ms McLean and Mr Robinson made reference in their submission to, "... the unpredictable, sudden and loud noise we have experienced from the subject site."³³ They go on to state³⁴ that:

"Through activity on the subject land we have experienced:

- *Disturbances to our sleep.*
- *Have at times not been able to hold a conversation in our yard without having to raise our voices to be heard above vehicle noise.*
- *Our son being frightened by loud noises and vibrations.*
- *Continued noise throughout the day, such as that of fork lifts operating for hours on end.*

³¹ Reply Submissions on Behalf of KiwiRail Holdings Limited, paragraph 19(b), pages 4 and 5.

³² Reply Submissions on Behalf of KiwiRail Holdings Limited, Appendix D, Condition 1.

³³ Submission of Mr Matthew Robinson and Ms Beba McLean, page 11.

³⁴ Submission of Mr Matthew Robinson and Ms Beba McLean, page 13.

- *Loud noise which we cannot escape even with all windows and doors shut.*
- *Activity on site 7 days a week and throughout public holidays meaning we do not get any reprieve from it."*

[41] Whilst this submitter is against the alteration of the designation in principle, the relief sought includes a request for a number of noise related mitigation measures to be put in place.

The measures requested include³⁵:

- An acoustic fence and a landscape buffer strip to "... *act [inter alia] as a noise buffer between us and the activity onsite;*" and
- Restrictions on the location and timing of work on the subject site and notification of any work expected to exceed permitted standards or that is outside the permitted hours of operation; and
- Noise insulation in the submitters house and in the storage building 2238 on the subject site; and
- Determination of an acceptable noise level at the boundary of the submitter's property and subsequent compliance monitoring and reporting by an independent noise expert.

[42] Both the planning experts agree that noise and vibration is an actual or potential adverse effect and that these effects can be appropriately avoided, remedied or mitigated through conditions placed on the designation. They both agree that a condition of the designation requiring a Noise Management Plan is appropriate.

[43] What was not agreed was the point at which a Noise Management Plan would be required. The Requiring Authority submitted³⁶ that the criteria set out in the evidence of Dr Chiles (and adopted by Mr Anderson in his evidence) provided an appropriate 'trigger' point at which a Noise Management Plan would be required. Based upon the report of Mr Hunt, Mr Hindrup agreed with him that conditions ought to be placed on the designation requiring a certified Noise Management Plan for the site to be lodged with the Council not less than 30 days from the date on which the designation amendment is confirmed.³⁷

[44] Following the hearing of submissions and evidence, we found ourselves in agreement with Mr Hindrup³⁸ that "... *noise is the most contentious issue for submitters and has the most chance of causing significant adverse effects on neighbouring properties*". We also concluded that a Noise Management Plan is required immediately following confirmation of the alteration to the designation rather than waiting for one of the suggested activity criterion³⁹ to be triggered.

³⁵ Submission of Mr Matthew Robinson and Ms Beba McLean, page 14.

³⁶ Legal submissions on behalf of KiwiRail Holdings Limited, paragraph 4.8, page 5.

³⁷ S42A Report, paragraph 56, page 14 and Section R Condition 2, pages 36 and 37.

³⁸ S42A Report, paragraph 55, page 14.

³⁹ Evidence of Tom Anderson, paragraph 25, pages 6 to 8.

- [45] In its right of reply⁴⁰, the Requiring Authority amended its proposed Condition 2 to "... *simplify the circumstances in which a Noise Management Plan ("NMP") is required*". This amended condition now provides that an NMP will be required where any part of the subject site is used between 10.00pm and 7.00am more than once a week, in addition to the other activity-related triggers.
- [46] Given the evidence and submissions we heard, and considered, in relation to night-time noise we have concluded that the NMP is required where any part of the subject site is to be used between 10.00pm and 7.00am, without qualification. The potential to generate adverse noise effects would remain if the site were to be used once a week between 10.00pm and 7.00am. Any 10.00pm to 7.00am night-time activity generating noise must be managed in terms of the NMP and ought not to be permitted until the NMP has been certified by the Council.

Traffic

- [47] Submitters expressed concerns about a potential increase in vehicle movements, in particular heavy vehicles, in relation to the subject site. Both the planning experts agreed⁴¹ that, should the level of activity within the subject site necessitate it, the recommendations included in the Traffic Experts' Joint Statement should be implemented. The two fundamental traffic improvement recommendations in this joint statement⁴² involved:
- (a) The form and standard of the Tilley Road driveway; and
 - (b) The form and condition of the yard access beyond the Tilley Road driveway, including corner easing and the formation of an all-weather surface.
- [48] The traffic experts suggested that these works be provided for as conditions of consent⁴³. Whilst the Requiring Authority recognised the need for these recommendations to be implemented⁴⁴, it considered that any recommended improvements should only be required once the specified vehicle movement threshold (of more than 3 heavy trade vehicle movements per day) was triggered⁴⁵.
- [49] Following the adjournment of the hearing, the Requiring Authority reconsidered this vehicle movement threshold and suggested, for reasons of consistency with other conditions, an amended Condition 4.⁴⁶ This amendment means the existing vehicle crossing must be upgraded and the access road re-formed and sealed, within 6 months of any activity being undertaken on Lot 4 Blk III DP 2009.

⁴⁰ Reply Submissions on behalf of KiwiRail Holdings Limited, paragraph 19(c), page 5 and Appendix D.

⁴¹ Joint Statement of Expert Planning Witness Conferencing, paragraph 15.

⁴² Joint Expert Witness Statement (Traffic) 10 January 2018, paragraph 11, page 3.

⁴³ Joint Expert Witness Statement (Traffic) 10 January 2018, paragraph 12, page 4.

⁴⁴ Legal Submissions on behalf of KiwiRail Holdings Limited, paragraph 4.11, page 6.

⁴⁵ Legal Submissions on behalf of KiwiRail Holdings Limited, paragraph 4.12, page 6.

⁴⁶ Reply Submissions on behalf of KiwiRail Holdings Limited, paragraph 19(d), page 5.

- [50] We consider this condition is an appropriate means of managing any potential increase in traffic movements to and from the site.

Lighting

- [51] Submitters raised the matter of glare at night, generated from activities on the site. Light spill has been the subject of complaints to the Council by neighbours to the site in the past⁴⁷. Mr Hindrup in his S42A Report⁴⁸ expressed an opinion that light spill effects can be mitigated through adequately designed lighting. Based on the imposition of Condition 3 suggested in his report⁴⁹, Mr Hindrup considered that any adverse effects arising from light spill can be adequately mitigated. Mr Anderson agreed that light spill from the subject site can be appropriately mitigated through a condition placed on the designation⁵⁰. As both experts agree, we consider the imposition of Condition 3 to be both appropriate and necessary.

Dust

- [52] Submitters raised concerns about excessive dust being generated by vehicles manoeuvring on the subject site. The expert planning witnesses agreed⁵¹ that any actual or potential effects resulting from activities that generate dust within the subject site can be appropriately managed through a condition placed on the designation. That being the case, we consider the imposition of Condition 5 to be appropriate and necessary.

PART 2 RMA

- [53] Our consideration of the effects on the environment of allowing the Alteration is subject to Part 2 of the RMA. Part 2 sets out the purpose and principles of the Act, matters of national importance, other matters to which particular regard must be had, and the Principles of the Treaty of Waitangi.
- [54] Having examined these Part 2 matters, the expert planning witnesses agreed that, subject to the imposition of conditions to manage actual and potential adverse effects, the alteration to the designation will be consistent with the relevant provisions of Part 2 of the RMA.⁵²

We accept this view and find that, overall, the alteration to the designation will achieve the purpose of the RMA.

⁴⁷ S42A Report, paragraph 66, page 17.

⁴⁸ S42A Report, paragraph 68, page 18.

⁴⁹ S42A Report, paragraph 147, condition 3, page 37.

⁵⁰ Joint Statement of Expert Planning Witness Conferencing, paragraphs 20 and 21.

⁵¹ Joint Statement of Expert Planning Witness Conferencing, paragraphs 22 and 23.

⁵² Joint Statement of Expert Planning Witness Conferencing, paragraph 27

REASONS FOR THE RECOMMENDATIONS

In addition to our findings and the reasons recorded in the body of this Notice of Recommendation, the following is a summary of the reasons for our recommendation:

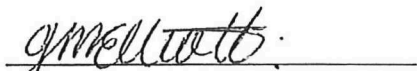
- In considering the NoR and the submissions received and heard, and the evidence presented, we have paid particular attention to the effects on the environment of allowing the proposed Alteration to the designation, having particular regard to the relevant provisions of the statutory planning documents identified in S171(1)(a) of the RMA. The proposed alteration is considered to be consistent with the relevant provisions of these statutory documents and with Part 2 of the RMA.
- Actual and potential adverse effects on the environment arising from allowing the Alteration to the designation can be satisfactorily mitigated by means of measures to be put in place by the Requiring Authority. These measures are the subject of conditions which will be monitored and enforced by KCDC as the consent authority.
- The Alteration to the designation is considered to be reasonably necessary for achieving the requiring authority's objectives.

RECOMMENDATION

Acting under delegated authority from the Kapiti Coast District Council, we recommend to the Requiring Authority, KiwiRail Holdings Limited, pursuant to Section 171(2) of the Resource Management Act 1991, that the requirement to alter existing designation D0301 be confirmed, subject to the imposition of the designation conditions as set out in Appendix 1 attached hereto and for the reasons described above.



Mark St Clair (Chair)

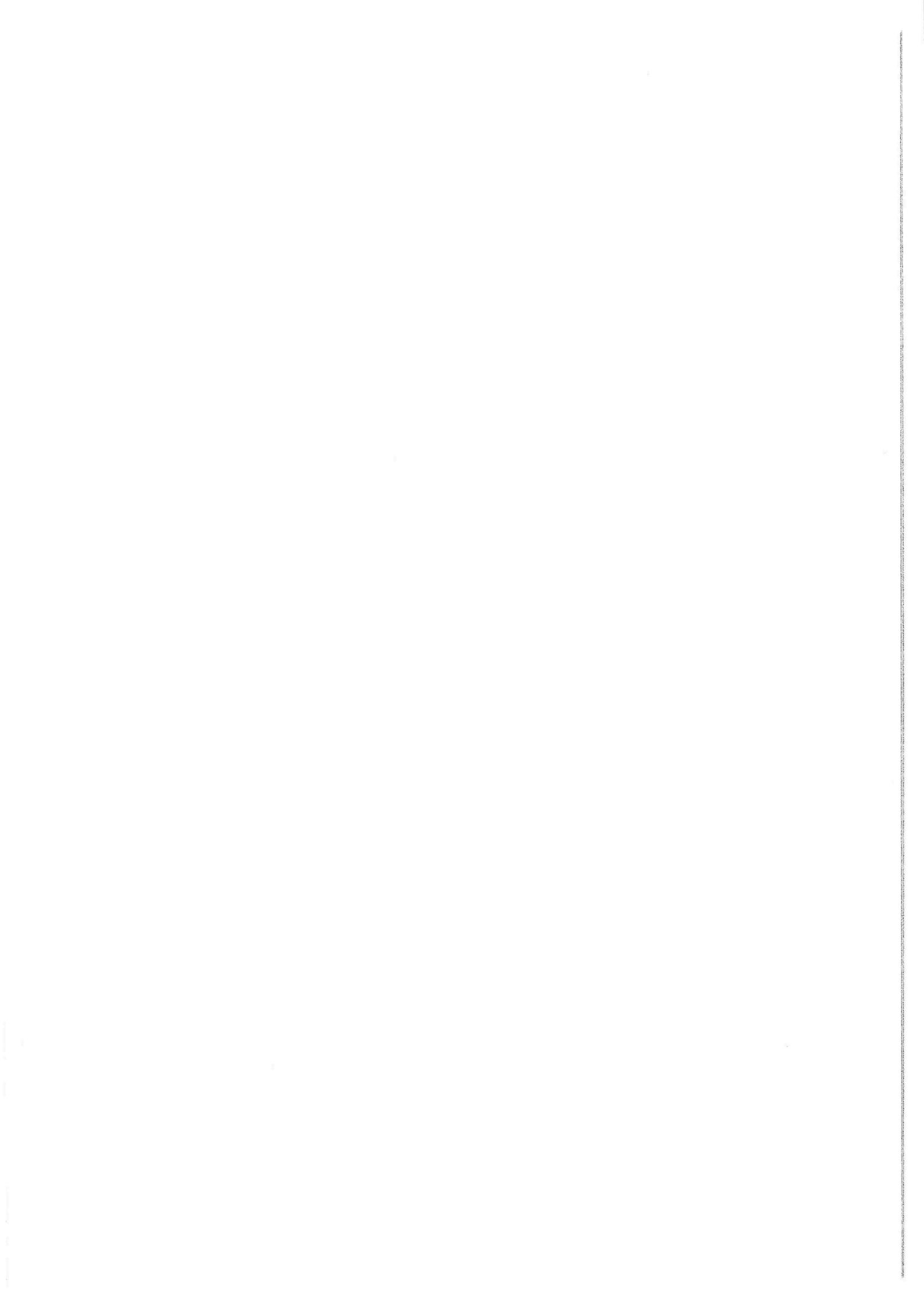


Jackie Elliott



David Forrest

Date 12 April, 2018



APPENDIX 1

Requiring Authority KiwiRail Holdings Limited

District Plan ID	Designation/Title	Address	Legal Description
D0301	Railway Purposes	Railway through the Kapiti Coast District	Various

D0301 Note: The *designation* does not allow the *demolition* or alteration of the buildings/structures identified in the District Plan Schedule of *Historic Heritage* (Schedule 10.1) as B20

The following conditions only apply to the designated use of Lots 4, 5, 6, 7 and 8 Block III Deposited Plan 2009 (as specified in the conditions below), being land designated for railway purposes at Tilley Road, Paekakariki:

1. Prior to any activity occurring on Lots 4, 5 and 6 Block III Deposited Plan 2009, the Requiring Authority shall prepare and submit a Landscape Planting Plan to the Compliance Monitoring Officer for certification that the Plan meets the requirements of this condition.

The objective of the Landscape Planting Plan is to ensure that views of the railway related activities undertaken on Lots 4, 5 and 6 Block III Deposited Plan 2009 are appropriately screened from the adjoining residential properties at 24, 26A, 26B, 28, 28A and 32 Tilley Road, Paekakariki, in order to assist in the mitigation of amenity effects on those properties.

The Landscape Planting Plan shall cover the entire length of the boundary of Lot 4 Block III Deposited Plan 2009 with 24, 26B and 28 Tilley Road, to a depth of 5m from that boundary.

The Landscape Planting Plan shall be prepared by a suitably qualified and experienced person and include, but not be limited to:

- (a) Plan(s) to scale showing the location of all areas to be planted;
- (b) The species that are to be planted, the mature size of the plants and the density of planting. The planting shall be tied into the existing vegetation in the western corner of Lot 4 (where it adjoins 28 Tilley Road); and

Note: The mature size of the plants selected shall be of a height which is no greater than 5m, in order to protect the availability of sunlight to the adjoining properties.

- (c) Details of the on-going maintenance of the planting including, but not limited to, the replacement of plants, future management, and control of pest plants.

The planting is to be completed within the next planting season after the Landscape Planting Plan is certified by the Compliance Monitoring Officer, and maintained / replaced in accordance with the plan on an ongoing basis.

If certification is not received within 10 working days of its submission to Council, the Landscape Planting Plan is deemed to be certified unless the Compliance Monitoring Officer has advised the Requiring Authority that it refuses to certify the Plan on the grounds that it fails to meet the requirements of this Condition, and provides reasons as to why that view is held.

2. Prior to any of Lots 4, 5, 6, 7 or 8 Block III Deposited Plan 2009 being used:

- (a) between 2200h and 0700h; and/or
- (b) for manufacturing or fabrication activities; and/or
- (c) for new rail tracks or rail sidings;

the Requiring Authority shall prepare and submit a Noise Management Plan to the Compliance Monitoring Officer for certification that the Plan meets the requirements of this condition.

The objective of the Noise Management Plan is to put in place measures that will mitigate any adverse noise effects on the residential amenity of adjoining and surrounding residential properties which may arise from the activities listed above being undertaken within any of Lots 4, 5, 6, 7 or 8 Block III Deposited Plan 2009.

The Noise Management Plan shall be prepared by a suitably qualified and experienced person and include, but not be limited to, the following matters:

- i. Identification of potential noise sources and a description of the physical and management methods to be used to reduce these noise emissions to reasonable levels at all times. Options to consider include site signage, roller door closing policy, worker on-site behaviour, and standard operating procedures for the use of the workshop.
- ii. Set a maximum activity noise level so that the following limits are not exceeded at any point within the boundary of an adjoining residentially zoned site:
 - 0700h to 1900h 55 dB LAeq(15 min)
 - 1900h to 2200h 50 dB LAeq(15 min)
 - 2200h to 0700h 45 dB LAeq(15 min)
 - 2200h to 0700h 75 dB LAFmax

Noise levels shall be measured and assessed in accordance with NZS6801:2008 Acoustics Measurement of Environmental Sound and NZS6802:2008 Acoustics - Environmental Noise.

- iii. Details of methods to ensure the 'best practicable option' is adopted (and updated as necessary) to achieve compliance with the above noise limits, including a signed statement from a suitably qualified and experienced person that the methods and procedures set out within the Noise Management Plan are sufficient to ensure compliance with the above noise limits as far as practicable.
- iv. The Noise Management Plan shall include a monitoring plan setting out the methods and procedures to be adopted to measure sound emissions (in accordance with NZS6801:2008) at or within the adjoining residentially zoned sites at 24 to 36 Tilley Road. The plan shall include provision for;
 - a) Measuring noise over the first TWO 'worse case' night time noise events, and TWO daytime events involving significant noise.
 - b) Retaining a record of the measurement results in (a) above and providing this record to the Compliance Monitoring Officer within 20 days of receiving a request for such.

If certification is not received within 10 working days of its submission to Council, the Noise Management Plan is deemed to be certified unless the Compliance Monitoring Officer has advised the Requiring Authority that it refuses to certify the Plan on the grounds that it fails to meet the requirements of this Condition, and provides reasons as to why that view is held.

The Requiring Authority may, at any time, amend the Noise Management Plan. Any amendments must be consistent with the overall intent of the Noise Management Plan, and must comply with any matters set out at (i) to (iv) above. Amendments must be submitted to the Compliance Monitoring Officer for certification prior to amendments taking effect, and follow the same process as set out above for initial certification.

The Requiring Authority shall comply with the certified Noise Management Plan at all times.

The Requiring Authority shall keep and maintain a record of all activity, including vehicle movements, between 2200h and 0700h and shall provide that information to the Compliance Monitoring Officer within 20 days of receiving a request for such.

3. Any floodlighting of Lots 4 or 5 Block III Deposited Plan 2009 shall be directed so that spill of light will be contained within the boundaries of the KiwiRail designation. Light levels from the aforementioned sites shall not exceed 10 lux, when measured 1.5 metres inside the boundary of any adjoining Residential Zone property.
4. Within six months of any activity being undertaken on Lot 4 Block III Deposited Plan 2009, the Requiring Authority must upgrade the existing vehicle crossing point to Tilley Road to meet the relevant Council private access design standard at that time (currently Diagram A4 Diagram D: Private access design standards for heavy vehicles as shown in Schedule 11.1 of the Proposed District Plan). Specifically this will include the reformation of the existing vehicle crossing to a minimum width of 7.5 metres.

The full length of the access from Tilley Road to Lot 4 Block III Deposited Plan 2009 must also be formed as a sealed route.

5. The Requiring Authority must ensure that the discharge of dust created by activities being undertaken on Lots 4, 5, 6, 7 and 8 Block III Deposited Plan 2009 is controlled at all times to minimise dust hazard or nuisance.