

**BEFORE THE HEARING PANEL**

**IN THE MATTER** of the Resource  
Management Act 1991

**AND**

**IN THE MATTER** of Notice of Requirement  
(NOR) by KiwiRail Holdings  
Limited (KiwiRail) to alter an  
existing designation (D0103)  
at the Paekakariki Rail Yard,  
Tilley Road, Paekakariki

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**SECTION 42A REPORT TO COMMISSIONERS**

**MR MARK ST CLAIR (CHAIR), MR DAVID FORREST  
AND COUNCILLOR JACKIE ELLIOT**

**STATEMENT OF EVIDENCE OF PHILLIP JOHN HINDRUP - PLANNING**

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**11 January 2018**

## **A. INTRODUCTION**

### **Qualification and Experience**

1. My name is Phillip John Hindrup.
2. I am contracted to the Kapiti Coast District Council (Council) in the position of Consultant Planner.
3. I hold a degree in Resource Management and Environmental Planning from Massey University. Following my graduation in 2001 I have worked for a number of local government authorities as a Consents Planner and Policy Planner. I have been a Consents Planner and Senior Consents Planner/Team Leader Consents for the Hawkes Bay Regional and Horizons Regional Councils respectively. I have also been a Consents Planner for the Horowhenua District and Palmerston North City Councils. In recent years I have established my own private Planning Consultancy where I have been processing resource consents for the Napier City Council, and Kapiti Coast District Council. I have also been a sole Commissioner hearing and determining resource consent applications for the Wairoa District Council and Napier City Council.
4. In total I have over 16 years resource management experience, both in regional and urban planning settings, and in particular relating to resource consenting matters.
5. I have read the Environment Court Practice Note 2014 as it relates to conduct of expert witnesses and I agree to comply with it and have complied with it in preparation of this evidence. Other than where I state that I am relying on the advice of another person, the matters covered in this report are within my area of expertise. I have not omitted to consider material facts known to me that might detract from the opinions I express.

### **Background**

6. Application NOR170060 lodged by KiwiRail Holdings Limited (the Applicant) was received by the Council on 30 March 2017. The application was made under section 181(1) of the Resource Management Act 1991 (the Act) being an alteration to an existing designation. The Notice of Requirement (NOR) was served on

identified affected parties (identified from the Council Report on Notification dated 22<sup>nd</sup> May 2017)<sup>1</sup> on 26 May 2017. A total of three submissions were received.

7. A pre-hearing meeting was held on 20<sup>th</sup> July and was facilitated by Mrs Gina Sweetman. Mrs Sweetman prepared a Pre-Hearing Report dated 9<sup>th</sup> October 2017. Notwithstanding the pre-hearing meeting submitter issues remained unresolved and hence the NOR has proceeded to be considered and determined at this hearing.

### **Purpose of the Proposed Designations**

8. KiwiRail Holdings Limited is a requiring authority pursuant to section 166 of the Resource Management Act 1991 and is responsible for railway purposes designations throughout New Zealand, including designation D0301 in the Operative Kapiti Coast District Plan.
9. KiwiRail seek to incorporate into their existing designation (D0301), the subject site, being 24 – 28 Tilley Road?, which they own, being the five separate adjacent allotments with a combined area of 4.854 hectares.
10. The objectives and reasons for the NOR are outlined and discussed in more detail in Section C of this report.

### **Scope of Report**

11. This report refers to matters which relate to the NOR sought by the Applicant. More detail regarding the application is discussed in Section C of this report.
12. This report is to be read in conjunction with the s42A reports prepared by Mr Malcolm Hunt (Environmental Noise and Vibration to the Council) and Mr Don Wignall (Traffic and Roading to the Council).
13. In preparing this report I have considered:
  - a. The Assessment of Environment Effects (AEE) which accompanied the application;

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<sup>1</sup> Kapiti Coast District Council Notification Report – 22 May 2017. Pg 13, section 10.2 – Limited Notification Decision.

- b. The further information received 19<sup>th</sup> April 2017, being a Noise and Vibration Effects Assessment Report commissioned by the Council and prepared by Malcolm Hunt Associates.
- c. The further information received 10<sup>th</sup> May 2017, being a Light Spill Assessment (email correspondence) commissioned by the Council and prepared by Andrew Kemp.
- d. The three submissions received on the NOR.
- e. The contents of the pre-hearing meeting report dated 9<sup>th</sup> October 2017 and prepared by Independent Facilitator Mrs Gina Sweetman.
- f. The joint conferencing statements being the *Acoustics – Joint Witness Statement*, dated 12 December 2017 and a draft *Joint Expert Witness Statement (Traffic)* dated 22 December 2017.
- g. The draft suggested conditions put forward (on a without prejudice basis) by the Applicant dated 18 August 2017.
- h. All other relevant resource management matters which are required to be considered by a consenting authority in relation to this NOR.

14. In my report I have provided the following:

- a. A description of the site and surrounding environment;
- b. A description of the activity;
- c. An outline of the notification process;
- d. A summary of the matters raised in submissions;
- e. An assessment of the relevant section 168A(3) matters including:
  - i. An assessment of the environmental effects on the environment of allowing the requirement,
  - ii. An assessment of the relevant National Environmental Standards, National Policy Statements, Regional Policy Statement and District Plans;
  - iii. An analysis of Part 2 of the Resource Management Act 1991 as it relates to the application.
  - iv. Alternatives
  - v. The necessity for the requirement in achieving the objectives for the requiring authority.
  - vi. Any other matter relevant to the application.

15. In summary this section 42A report provides an analysis of the relevant plans and policy documents, as well as an interpretation of those where required. It also includes discussion on the effects associated with the activity, and an assessment of the submissions received. It concludes with my recommendation.
16. In accordance with section 42A (1A) and (1B) of the RMA, I have minimised the repetition of information included in the application and where I have considered it appropriate, adopted that information.

## **B. THE SITE AND SURROUNDING AREA**

### **Site Description**

17. The applicant has provided a detailed description of the site on pages 1 to 4 of the application<sup>2</sup>. Key features of the site worth emphasising include:
  - The site is located to the east of 24-28 Tilley Road, Paekakariki, being residentially developed sites;
  - The existing yard which is the subject of the existing designation is comprised of the Paekakariki Railway Station, the North Island Main Trunk Line and a number of NIMT sidings and service buildings used to house equipment and activities relating to the operation and maintenance of the NIMT;
  - The site features a bank with established vegetation along the northern boundary. At the top of the bank is Tilley Road separated by the embankment, existing vegetation and formed mesh fence;
  - Three existing buildings are located on the site along the southern boundary. These are a workshop/storage shed with a footprint of 295m<sup>2</sup>, a signal building with a footprint of 45m<sup>2</sup> and a storage building with a footprint of 138m<sup>2</sup>;
  - Vehicle access to the site is obtained from the existing designated land parcel along the southern boundary which is accessed from the west.

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<sup>2</sup> NOR application for Alteration of designation – March 2017, Pgs 1-4

There is no vehicle crossing to or along the northern boundary to Tilley Road.

18. Currently the site is being used for storage purposes associated with the “Railway Purposes” which has been found to be contrary to the underlying residential zoning.

### **Surrounding Environment**

19. The site is surrounded by four residential parcels of land to the west which contain six residential dwellings. These are 24, 26A, 26B, 28, 28A and 32 Tilley Road. Located to the east is one residential allotment (46 Tilley Road) on which a residential dwelling is situated. To north is Tilley Road which runs along the top of the embankment. Along the northern side of Tilley Road are a number of residential dwellings (Nos 33, 35-39, 41, 43, 45, 47 and 49 Tilley Road) which overlook the site but are screened from the site by very well-established vegetation. To the south east of the site is the North Island Main Trunk Line.
20. With respect to the wider surrounding environment, the site is located in Paekakariki. The central village is located to the south west and Pakakariki Hill is located to the east. State Highway 1 is located to the south east and the coast is located to the west.

### **Site Visit**

21. I visited the site on 10<sup>th</sup> April 2017. I am familiar with the location, its surrounds and characteristics of the current activity.

## **C. THE ACTIVITY**

22. Incite, on behalf of their client KiwiRail Holdings Limited, has lodged a NOR to alter an existing designation (D0103) in the Operative and Proposed Kapiti Coast District Plans at Tilley Road, Paekakariki. The application seeks to alter designation D0103 to include five residentially zone allotments adjacent to the existing Paekakariki Rail Yards into the designation. KiwiRail Holdings currently own the five allotments, legally described as Lots 4-8 Block III DP 2009, which have a combined area of 4.854 hectares.

23. Designation D0103 has a current designated purpose of 'Railway Purposes'. The notice of requirement will allow for Kiwi Holdings Limited to legally expand its current operations onto the five adjacent allotments. The Applicant seeks to allow for the land to be used for railway purposes consistent with the balance of the railway land in the Kapiti Coast District and throughout New Zealand. The applicant has described the types of activities to be undertaken on pages 7 and 8 of the application. They are described as (but not limited to the following):
- Movement of trains along existing lines;
  - Creation of new sidings and track;
  - Maintenance and repair of both track, trains and related railway infrastructure;
  - Storage of materials, machinery and vehicles; and
  - Buildings associated with all of the above (stations, depots, workshops and the like).
24. The Applicant summarised the likely intended use of the site on page 8 of the application. Specifically, the application states:
- "On this basis, the likely future use of the subject land is likely to be along the same lines as its current use. KiwiRail have no plans to use the land for residential purposes, and the use of the land by KiwiRail for its zoned purpose should be considered highly unlikely."*<sup>3</sup>
25. Notwithstanding this, the application does not seek to restrict the intended use of the site and therefore it is valid for the purpose of this assessment and assessment of effects, to consider the potential future use of the site to be anything associated with 'Railway Purposes' as described in the current Designation.
26. The NOR does not propose to alter the Purpose of the Designation but to incorporate additional land into it only.

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<sup>3</sup> NOR application for Alteration of designation – March 2017, Pg 8

## **D. NOTIFICATIONS AND SUBMISSIONS**

### **Notification**

27. The notification decision dated 22<sup>nd</sup> May 2017 concluded that the application would not be publicly notified, however notice of the application would be served on the owners and occupiers of six affected properties<sup>4</sup>.
28. Notice of the application was served on identified affected parties in accordance with section 95B of the RMA on 26 May 2017 with the submission period closing on 26 June 2017. A total of three submissions were received. There were no late submissions.

### **Submissions**

29. Three submissions were received from the following persons:
  - Matthew Robinson and Beba McLean - 26B Tilley Road;
  - Zophia and Timothy Nolan - 65 Tilley Road (Owners of 28 and 30 Tilley Road);
  - Louise and Ben Falepau – 26A Tilley Road.

### **Submission from Matthew Robinson and Beba McLean 26B Tilley Road**

30. Mr Robinson and Ms McLean reside at 26B Tilley Road. Their property backs directly onto the western most end of the KiwiRail site. Both Mr Robinson and Ms McLean oppose the application in full and have requested to be heard.
31. The submission raises a number of concerns with the proposed activity, and the anticipated effects that may arise. These include excessive noise and vibration, loss of privacy, effects on character, and dust and odour.
32. The submission seeks that the application be declined.

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<sup>4</sup> Kapiti Coast District Council Notification Report – 22 May 2017. Pg 13, section 10 – Notification Decision.

33. It should be noted that over the past 18 months, more specifically in the period between 6-18 months prior to the date of this report, there have been a number of complaints made by the submitter to the Council about activities being undertaken on the land which is the subject of this application. This is well documented in the property file and has resulted in the Council monitoring the site and taking some enforcement action against the Joint Venture leasing the site from KiwiRail. While related to this application, I do not consider it to be material to the decision being sought and therefore I do not propose to comment on this further<sup>5</sup>. However, should the Commissioners request, I can arrange for an officer from Council's Monitoring and Enforcement Team to be present at the hearing to answer any questions of fact relating to the compliance history at the site.
34. The submission makes comment about the acoustic measurements undertaken by Dr Chiles in the NOR. These comments are specifically addressed in Mr Hunt's 42A report as they relate to his area of expertise and so I refer the Commissioners paragraphs 49 and 50 of Mr Hunt's evidence.<sup>6</sup>
35. In summary, these submitters oppose this application for a host of reasons, primarily regarding noise and disturbance of sleep and acoustic amenity, experienced both inside and outside their dwelling. Although the submitters oppose the NOR application they provide a description of the relief they would like to see if NOR was granted, including [but not limited to] acoustic grade fencing and no night time operations. The specific relief sought can be found on page 14 of their submission and I have considered these in my assessment of this application.

#### **Submission from Zophia and Timothy Nolan 65 Tilley Road**

36. Mr and Mrs Nolan reside at 65 Tilley Road and own property at 28 and 30 Tilley Road. The submission does not appear to clearly note the submitters position i.e. support or oppose, however a number of concerns are raised by the submitters including vehicle movements during day and night as well as what the submission describes as 'full scale commercial activity' occurring on site. These submitters and their submission raise similar concerns to Mr Robinson and Ms McLean

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<sup>5</sup> I have provided comment in section 3.5 (pg 5) of the notification report about the specific actions taken by Council regarding this issue.

<sup>6</sup> Paragraphs 49 & 50 of Malcolm Hunt's Statement of Evidence – Environmental Noise and Vibration – 11 January 2018.

regarding noise sources. No relief appears to be sought in this submission, nor does the submission indicate whether the submitter wishes to be heard in respect of these matters. It should be noted that the Mr Nolan did attend the pre-hearing meeting and did request that the hearing be delayed from its original hearing date so that he could attend.

37. While the submitter did outline his views at the pre-hearing meeting that was on a without prejudice basis and so the submitter may wish to clarify their position in support or opposition and any relief sought if present at the hearing. I confirm that the Nolan's have been advised of the hearing details should they wish to attend.

**Submission from Louise and Ben Falepau, 26A Tilley Road**

38. Mr and Mrs Falepau are owners but not occupants of 26A Tilley Road and their submission opposes the application. In summary the submission makes note that the quality of life of their tenant has been significantly affected by the increase of KiwiRail activity around the vicinity of 26A Tilley Road. Specifically the submission highlights excessive night time noise which has resulted in the tenant being woken from sleep.
39. The submission seeks that the application be declined on the basis that the designation allows KiwiRail to use the site in a way that significantly impacts the quality of life of people living at 26A Tilley Road, over and above what can reasonably be expected for a house in the vicinity of State Highway 1 and the Kapiti/Wellington railway lines.
40. The submission does comment on specific mitigation or conditions that would be sought in the event the designation was approved. These include:
- Approval of the recommendations outlined in pages 7-8 of the Malcolm Hunt Associates report dated 10 May 2017;
  - On site noise monitoring;
  - The requirement for a sound acoustic barrier between the site and 26A Tilley Road;
  - Management of site activities so that excessive noise activities are discontinued.

41. Mr and Mrs Falepau indicated in their submission they did not wish to be heard.

## **E. PRE-HEARING MEETING**

42. A pre-hearing meeting was held on 20<sup>th</sup> July to consider and potentially resolve outstanding matters raised by submitters and the Council. The meeting was facilitated by independent facilitator Mrs Gina Sweetman.
43. Mrs Sweetman has prepared a report pursuant to s99(5) of the RMA which has been circulated to all parties. I do not intend to repeat what is discussed in the report as the report is succinct and best referred to as a standalone report, as is intended by s99(5). The key point however is that there were outstanding matters at the conclusion of the meeting which have been the focus of expert caucusing and evidence preparation.

## **F. STATUTORY CONSIDERATIONS ASSESSMENT – SECTION 168A**

44. The provisions of Section 168A of the Act must be considered by the Hearing Commissioners in making a decision on the NOR. Specifically subsections (3) and (4) set out the matters that must be considered by a consent authority when considering an NOR and the powers available to a consenting authority when making its decision. Those subsections read as follows:

### **Section 168A(3)**

*“Section 168A(3) of the RMA specifies that, when considering a NOR and any submissions received, a territorial authority must, subject to Part 2 of the Resource Management Act 1991 (“RMA”), consider the effects on the environment of allowing the requirement, having particular regard to:*

- (a) any relevant provisions of –
  - (i) A national policy statement;*
  - (ii) A New Zealand Coastal Policy Statement;*
  - (iii) A regional policy statement or proposed regional policy statement;*
  - (iv) A plan or proposed plan; and**
  
- (b) whether adequate consideration has been given to alternative sites, routes or methods of undertaking the work if –
  - (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or*
  - (ii) it is likely that the work will have a significant adverse effect on the environment; and**
  
- (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and*

*(d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.”*

#### **Section 168A(4)**

*“After considering a NOR under section 168A(3) the territorial authority may, under section 168A(4) decide to:*

- (a) confirm the requirement:*
- (b) modify the requirement:*
- (c) impose conditions:*
- (d) withdraw the requirement.”*

45. My report will now assess the application against the matters set out in section 168A(3).

#### **G. ACTUAL AND POTENTIAL ADVERSE EFFECTS**

46. The applicant has provided an assessment of effects of the activity on the environment (AEE). The AEE is supported by the following technical reports:

- Noise Assessment by Dr Stephen Chiles of Chiles Limited;
- Light Spill Assessment by Stewarts Electrical Supplies.

47. Having been informed by these technical reports, and having undertaken an assessment of actual and potential effects throughout the body of the application, the AEE concludes on page 13 of the application that:

*“Overall, the alteration of the designation is expected to have a less than minor effect on the surrounding environment.”<sup>7</sup>*

48. In assessing the effects of the activity, I have considered the assessment of effects provided in the application, including the technical reports from Dr Childs and Stewarts Electrical Supplies. I have also considered the s42A reports prepared by Mr Hunt and Mr Wignall. In the following paragraphs I draw conclusions from the findings of both the AEE and the s42A technical reports in reaching my overall assessment of the actual and potential effects of the activities.

49. In determining what effects to consider, I have been guided by Part 1, Section 3 of the Act which encompasses a broad definition of what constitutes environmental

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<sup>7</sup> NOR application for Alteration of designation – March 2017, Pg 13

effects. The Act requires the consideration of both actual effects and possible future effects. Potential cumulative effects on the environment must be taken into account. In addition, consideration must be given to any potential effect of high probability and any potential effect of low probability which has a high potential impact.

50. I have also considered those effects that have been raised in submissions.
51. In summary, the following are considered to be the actual and potential effects that require consideration:
- a. Noise and vibration effects;
  - b. Traffic effects;
  - c. Effects on residential character and amenity;
  - d. Effects from light spill; and
  - e. Dust.

### **Noise and Vibration Effects**

52. The application was accompanied by a Noise Impact Assessment prepared by Dr Stephen Childs. Based on acoustic measurements of activities on the site, the assessment concluded that:

*“Future activity in the land that is subject to the alteration might exceed residential zone noise limits at times. However, the sound will be received in an environment that is already controlled by significant road and railway sound, including sound above residential zone noise limits and regular sound at night. In this context, the alteration of the designation should cause negligible additional adverse noise effects.”<sup>8</sup>*

53. I note that Mr Hunt in his statement of evidence considers the assessment by Chiles Ltd was lacking details on the extent of works planned for the site (especially works to be conducted at night time), the types of sound likely to be emitted (and whether they may possess ‘special audible character’).<sup>9</sup> I also note that Mr Hunt concludes in his evidence that potential noise effects associated with the use of

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<sup>8</sup> Childs Limited Noise Assessment of Paekakariki Rail Yard – 21 March 2017, pg 5.

<sup>9</sup> Malcolm Hunt Statement of Evidence – 11 January 2018. Paragraph 21.

the site for its designated purpose will, at times, be likely to have a more than minor effect on adjacent residential sites at 24 to 32 Tilley Road and at 46 Tilley Road.<sup>10</sup>

54. There is apparent disagreement between the two experts about the extent of noise and vibration effects from future activities and whether a condition requiring a Noise Management Plan is necessary. Mr Hunt believes it is necessary while Dr Childs does not.
55. It is clear to me from reading the submissions and from attendance at the pre-hearing meeting that noise is the most contentious issue for submitters and has the most chance of causing significant adverse effects on neighbouring properties. It is my view that there is too great a risk of significant adverse effects occurring if noise is not addressed, and appropriately managed at the land designating process, rather than waiting for the outline planning process.
56. I therefore agree with Mr Hunt that two inter-related noise conditions be attached to the designation applying to the newly designated sites and which require the requiring authority to undertake monitoring and to manage the potential for adverse noise effects associated with the use in accordance with a certified Noise Management Plan for the site. These conditions are recommended in section R of this report.
57. I note that two of the submissions have requested an acoustic barrier fence along the western boundary on the site which adjoins the residential properties. I do not consider this to be a requirement as a condition of the designation as I consider this is something that can be addressed through the noise management plan. It may well be that as part of that plan, an acoustic barrier fence (or an improvement on what has already been constructed) will be required as mitigation and I consider it more appropriate to wait for that assessment to be completed before imposing such a requirement.

### **Traffic Effects**

58. The application did not include an expert assessment of traffic effects however the applicant has since engaged the services of Mr Mark Georgeson to undertake this piece of work. Mr Georgeson has prepared a joint statement (at the time of writing

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<sup>10</sup> Malcolm Hunt Statement of Evidence – 11 January 2018. Paragraph 29.

this report it was in draft) with Council's traffic expert Mr Don Wignall to assess traffic effects. Key conclusions from that statement include:

- Agreement that the difference in traffic generation, in terms of the number of vehicles, between the two activity types (specifically the proposed NOR and the residential land use if established on the site) is small (70 and 55).
- Two fundamental traffic improvements can be made, involving:
  - a) *“The form and standard of the Tilley Road driveway. This driveway is currently formed to a width of 6m (at the property boundary), which is too narrow for larger trucks to negotiate without over-running the driveway edges. We suggest that it should be widened to 7.5m, and that Council actively consider restricting on-road parking for a length of at least 6m on Tilley Road itself, either side of the driveway, and for a length of approximately 15m around the bend opposite the driveway, extending east from the existing access to Industrial Optics Ltd;*
  - b) *The form and condition of the yard access beyond the Tilley Road driveway. Having entered the KiwiRail property from Tilley Road, vehicles need to make a tight left turn towards the yard, where there is evidence of trucks over-running the inside kerb. We suggest that this inside corner be eased, and that the subsequent 50m of site access to the yard gate be re-formed in an all-weather surface, that removes the potholes, dust and material migration issues associated with the existing unsealed gravel surface. The vehicle access should of suitable width and alignment, to provide for safe HPMV 23m Truck and Trailer entry and exit (as per swept path analysis in Figure 1). When designing and implementing this access improvement, the opportunity should be taken to achieve better delineation of adjacent parking spaces to ensure these are clear of site vehicle access movements.”*
- Agreement that the extended designation area will present traffic safety benefits, both from the larger area itself, as well as from the improvement works suggested.

- Agreement that the extended designation area will assist with on-site manoeuvring and loading, and provide an expanded yard that, together with appropriate site management, will allow trucks to enter and exit in a forward direction, removing the current practice of unsafe reverse manoeuvres, in an area that includes pedestrians and residential traffic.
- Agreement that the improvement works (in the second bullet point above) will:
  - a) provide safer and easier access to and from Tilley Road;
  - b) avoid damage occurring at the Tilley Road driveway; and
  - c) give a clean surface and delineated route to and from the yard, with defined areas for carparking, and clear access to 24 Tilley Road.

59. In conclusion I am of the opinion that traffic effects from the proposed designation will be adequately avoided, remedied or mitigated and will offer an improvement to the current arrangements at the site. I have recommended a condition that requires the imposition of these improvements in section R of this report.

### **Effects on Residential Character and Amenity**

60. The applicant has considered the following issues which could potentially adversely affect neighbouring properties:

- Loss of privacy
- Loss of character
- Increased bulk and dominance

61. In the notification report I address these issues and conclude that overall effects will be minor.<sup>11</sup> This is primarily due to the erection of a close boarded fence along the western boundary, and existing established vegetation and steep topography to the north and east of the site.

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<sup>11</sup> Kapiti Coast District Council Notification Report – 22 May 2017. Pg 11, section 9(c) General Residential Amenity Effects.

62. However, I do consider that the potential exists for more than minor adverse effects on residential character and amenity remains due to the immediate proximity of the site to residential properties. Allowing the designation in my view will provide for an industrial style site to operate adjacent to residential properties without any performance standards or conditions restricting the type of activities in operation (as sought by the NOR).
63. Because the designation will allow for a wide range of activities (associated with railway purposes) to be established on the site, there is sufficient uncertainty regarding the potential adverse effects that may arise. As such I consider mitigation measures or conditions are warranted as part of the designation approval process. These may include such things as restrictions on the hours of operation, a buffer distance between activities and the residential property boundary, additional screening from fences or preferably landscape planting, and documented operation procedures to manage noise (as per paragraph 54-56 of this report).
64. It is my view that such measures will provide additional certainty to the Council and to the submitters that effects can be appropriately managed. This combined with the usual scrutiny of activities offered through the outline plan approval process in my view will allow for sufficient mitigation measures to be put in place.
65. Therefore to conclude, I believe the effects of the NOR on residential amenity and character can be adequately avoided, remedied or mitigated through the provision of conditions which I have recommended in section R of this report.

### **Effects from Light Spill**

66. The application included an assessment by Stewarts Electrical Supplies of the potential light spill from the site onto adjacent residential properties. This had been an issue raised by submitters via complaints to the Council in the past. After measuring light spill at the site, the assessment concluded that light spill 1.5 metres from the boundary was zero.
67. Council commissioned further information in the form of a peer review of the light spill assessment by Andrew Kemp. On reviewing the Stewarts Electrical assessment, Mr Kemp concluded the following:

*“With further regards to the site and any further/future lighting requirements by the client, it would be possible to light this site from different locations within the boundary lot confinements to achieve a better light dispersment and elevate the glare issues from the existing lighting location that may be experienced.*

*A detailed design would need to be undertaken paying special regards to placement and light selection to ensure compliance with not only council requirements but also health and safety and security.”*

68. Having considered both assessments I am of the view that light spill effects can be mitigated through adequately designed lighting. This could either be achieved via an outline plan process or through the imposition of a condition on the designation. My preference is to address these potential effects as part of the designation and so have suggested wording for a condition in section R of this report. Based on the imposition of this condition I consider any adverse effects from light spill can be adequately mitigated.

### **Dust**

69. Submitters have raised concerns about excessive dust generated from vehicles manoeuvring on the site. In my view this matter can be addressed by way of a condition of the designation to ensure that nuisance effects from dust generation are avoided. I have suggested a condition in section R of this report.

### **Effects Conclusion**

70. Having considered all areas where adverse effects on the environment may arise from the proposed NOR, I consider that the proposal in its current form to not have fully addressed, or rather avoided, remedied or mitigated these effects. I consider noise effects to be of greatest concern, and loss of privacy, which combined with excessive noise, have a detrimental effect on residential amenity and character of the neighbouring sites. These concerns have been reflected by submitters at certain times over the past 18 months (due the operation of unlawful activities on the site). Therefore doubt remains in my mind that any future land use activities within the purpose of the designation on the site will not give rise to adverse effects on the adjacent residential properties.
71. I do consider that the proposal can be amended to address these adverse effects, or that conditions can be imposed on the NOR to ensure any subsequent land use activities have their effects avoided or mitigated. I have suggested some conditions

to address these matters. The Applicant may wish to comment on these conditions and possibly offer additional conditions around the operation of activities. These conditions are suggested in section R of this report.

## **H. NATIONAL ENVIRONMENTAL STANDARDS**

72. Section 104 requires consideration of any NES's that are relevant. I consider the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) require consideration. This is because the site, which is currently zoned residential, has been the subject of some unlawful activities of an industrial nature (the activities that have been the subject of complaints and compliance action).
73. The National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) applies to certain activities on certain land, including the disturbance of soil on land where an activity described on the Hazardous Substances and Industries List (HAIL)<sup>12</sup> is taking place. I have checked the HAIL and it appears from the limited information I am privy too that the site would be classed a HAIL site as it has been used for the following:

### ***F. Vehicle refuelling, service and repair***

*6. "Railway yards including goods-handling yards, workshops, refuelling facilities or maintenance areas."*

74. Given this consideration, I ask that this aspect is clarified by the Applicant as the AEE appears silent on this matter. Further comment can then be provided on the implications, if any, of this matter.
75. I consider there are no other National Environmental Standards relevant to this application.

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<sup>12</sup> HAIL - <http://www.mfe.govt.nz/land/hazardous-activities-and-industries-list-hail>

## **I. RELEVANT NATIONAL POLICY STATEMENTS**

### **National Policy Statement on Urban Development Capacity (NPS-UDC)**

76. The NPS-UDC can into effect on 1 December 2016 and requires that decision makers consider the relevant objectives and policies in their decision-making.
77. The site is currently zoned residential under both the operative and proposed district plans and so through allowing the designation, the net result would be a loss of sites that as of right could be used for residential purposes.
78. However in my view this observation should not be overstated. The site is currently not used for residential purposes and given the adjacent industrial land use, the existing access arrangement through the existing rail yards site, and lack of reasonable alternative access north onto Tilley Road due to the steep topography, it is my view that there would be little desire to develop this site into residential dwellings (for reasons similar to what has been raised by submitters – i.e. being located adjacent to an industrial land use).
79. Furthermore I am not aware of any housing land use pressures in the Kapiti Coast area, in particular around Paekakariki, that would lend weight towards not approving the designation on those grounds. I therefore do not consider the designation of these sites to be inconsistent with the objectives and policies of the NPS.
80. I do not consider any other NPS relevant to this application.

## **J. NEW ZEALAND COASTAL POLICY STATEMENT (NZCPS) –**

81. The purpose of the NZCPS is to state Objectives and Policies in order to achieve the purpose of the RMA in relation to the Coastal Environment of New Zealand.
82. Although the development is in reasonably close proximity to the coastal environment, the proposal is consistent with the NZCPS in that it will not detract from the natural character of the coastal environment will not exacerbate adverse effects on the coastal environment and will utilise existing services that provided for additional development in this area.

## K. WELLINGTON REGIONAL POLICY STATEMENT

83. The Wellington Regional Policy Statement ("WRPS") sets out the strategic framework for managing the use, development and protection of the natural and physical resources of the Wellington region in an integrated and co-ordinated manner.
84. I have had regard to this document and note that the application on page 14 sets out that section 3.3 of the WRPS is relevant insofar as it identifies the rail network as a significant physical resource that *"forms part of national or regional networks and enables communities to provide for their social, economic and cultural wellbeing and their health and safety."*<sup>13</sup>
85. I concur with this assessment insofar as the WRPS does identify the importance and relevance of the rail network. In particular Objective 10 requires consideration which reads:
- "The social, economic, cultural and environmental benefits of regionally significant infrastructure are recognised and protected."*
86. In my view this objective is about protecting existing regionally significant infrastructure from the establishment or operation of an activity that would hinder those sought after benefits. It is less about providing for the strategic and operational function of this infrastructure, however that too is important.
87. In any event due to the comparatively small scale of the activity, it is my view that the actual impact of either granting or not granting the designation would not be inconsistent with WRPS. Or in other words, this application is inconsequential to the overall realisation of Objective 10.
88. With respect to the remainder of the WRPS, I am of the view that there is nothing in this application that would be inconsistent with the direction of this policy statement.

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<sup>13</sup> NOR application for Alteration of designation – March 2017, Pg 14

## **L. KAPITI COAST DISTRICT PLAN**

89. There are two District Plans that require consideration. The first is the Operative District Plan (1999) and the second is the Proposed District Plan (2012).
90. With respect to weighting, I consider more weight should be afforded to the Operative District Plan (ODP) given that the Proposed District Plan (PDP) is still moving through the plan development process. However in light of the recent release of hearing decisions on the PDP on 22 November 2017, fair consideration of those objectives and policies is required.

### **Operative District Plan (1999)**

91. The ODP sets out the status of activities within rules, that is whether they are permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited. The Objectives and Policies contained in the ODP are also important in decision making as they are to be taken into account in the evaluation of the activities.

### **Zoning and Overlays**

92. The property is zoned Residential on planning map 16 under the ODP. The site is also located within the Noise Corridor associated with the North Island Main Trunk Line.

### **Activity Status**

93. Activity status is not relevant to a NOR application other than for an assessment of the intended use against the land use provisions of the plan (a permitted baseline test).

### **Objectives and Policies**

94. The following Objectives and Policies apply to this application:

#### ***C.1 Residential Zone***

##### *Objective 1.0 – General*

*“Ensure that the low density, quiet character of the district’s residential environments is maintained and that adverse effects on the amenity values that constitute this character and make the residential environments safe, pleasant and healthy places for residents are avoided, remedied or mitigated.”*

##### *Objective 2.0 - Non residential activities*

*“Ensure that the adverse effects of non-residential activities in residential areas on the amenity values and environmental quality of residential areas are avoided, remedied or mitigated.”*

*Policy 1 - amenity values*

*“Activities locating and/or operating in the district’s residential environments shall display a residential appearance and be at a density which enables the existing character to be maintained and, in particular, which does not cause a decline in the amenity values of these environments through the:*

- clearance of vegetation;*
- changes to the landform;*
- loss of private gardens and open space;*
- creation of hard surfaces and lack of permeable area;*
- loss of landscaped frontages;*
- overshadowing and overlooking of neighbouring residential properties;*
- generation of excessive levels of noise, vibration, glare, dust or odour associated with the activities themselves;*
- generation of additional traffic movements resulting in excessive noise, vibration, glare, dust or odour and a decline in traffic safety;*
- imposition of buildings, structures, signs or other features that are visually obtrusive and out of character with the character of these environments;*
- degradation of the natural environment and/or modification of natural processes likely to lead to degradation;*
- inadequate provision for access to sites of activities and also manoeuvrability for associated traffic movements;*
- hazards to human health and residential convenience of inadequate or inappropriate supply of water, disposal of effluent and stormwater;*
- creation of neighbourhoods with inadequate availability of network utility services;*
- generation of nuisance or health risks to adjoining residents of farming activities and/or the keeping of animals/birds;*
- lack of off-street parking;*
- siting of buildings;*
- storage of goods;*
- generation of traffic.”*

95. Given the location of the site adjacent to existing well established residential properties, and given the identified potential environmental effects that may arise, and the history of complaints and impacts of existing railyard activities on the adjacent residential properties, I am of the view that the proposal as applied for will be inconsistent with this objective. Specifically the operation of railyard activities on this site without limitation will in my view will potentially have adverse effects on the character and amenity values of the adjacent residential environment.
96. I do believe however that should sufficient mitigation be proposed, in line with what has been discussed in section G of this report, effects can be mitigated to a level that allows the activity to be consistent with the above provisions.

97. Also of relevance is the Anticipated Environmental Outcomes for the zone. Those relevant to this application are:

*“Anticipated Environmental Outcomes*

*The following environmental outcomes are expected from the effective implementation and administration of the District Plan:*

...

*(ii) The provision of non residential activities within the residential area where they provide for convenient access to goods and services provided any adverse effects are avoided, remedied or mitigated or controlled.*

...

*(iv) The provision of high amenity living environments in appropriate typologies and scales.”*

98. It is my view that District Plan allows for non-residential activities to be established within the residential zone, on the proviso that adverse effects are avoided, remedied or mitigated. As discussed above, the activity without limitation in my view will not achieve these outcomes.
99. Also requiring consideration are the objectives and policies relating to noise, as this has been identified as a key issue by submitters and by Mr Hunt. The relevant provisions of the Noise chapter are:

*“Objective 1.0*

*Ensure that the adverse effects of noise from non-residential activities on the amenity values of the residential and rural environments is avoided, remedied or mitigated.”*

*“Policy 1*

*Protect the quiet character of residential areas of the district from the adverse effects of unreasonable noise from non-residential activities. POLICY 2 Ensure noise in the environment generated from non-residential activities does not reach a level injurious to the health of residents in residential and rural areas.”*

*“Anticipated Environmental Outcome*

*The following environmental outcome is expected from the effective implementation and administration of the District Plan:*

*(i) The District's living environment is quiet for peoples' enjoyment.”*

100. In line with the reasons outlined in paragraphs 95, 96 and 98 of this report, it is my view that the application without limitation or effective mitigation measures will result in the proposal being inconsistent to the noise objectives and policies, and it will also fail to achieve the anticipated environmental outcome.

### **Conclusion**

101. In conclusion, it is my view that the proposal as applied for will create adverse effects on the neighbouring residential properties that potentially cannot be avoided, remedied or mitigated to a sufficient level. For this reason it is my view that the proposal is inconsistent with the relevant objectives, policies and anticipated environmental outcomes of the ODP.

### **Proposed District Plan 2012**

102. On 29 November 2012, the Council publicly notified the PDP 2012. The PDP includes a full review of the ODP provisions, and marks a major shift in the Council's approach to resource management in the District.
103. On 22 November the PDP was amended by decisions. As such I have referred to the most recent version (being the version amended by decisions) to inform my assessment against the PDP.

### **Zoning and Overlays**

104. The property is zoned Beach Residential as shown on Planning Map 16A in the PDP. As explained on page 6 of the application, the site is shown as being within the 'Railway Designation' on PDP map 16B. Despite this, and for the reasons discussed on page 6 of the application, the applicant has applied for this NOR<sup>14</sup>.

### **Objectives and Policies**

105. The following Objectives and Policies apply to this application:

*"Objective 2.3 – Development Management To maintain a consolidated urban form within existing urban areas and a limited number of identified growth areas which can be efficiently serviced and integrated with existing townships, delivering:*

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<sup>14</sup> NOR application for Alteration of designation – March 2017, Pg 6

...

*h) management of the location and effects of potentially incompatible land uses including any interface between such uses.”*

*“Objective 2.11 – Character and Amenity Values To maintain and enhance the unique character and amenity values of the District’s distinct communities so that residents and visitors enjoy:*

...

*e) well managed interfaces between different types of land use areas (e.g. between living, working and rural areas and between potentially conflicting land uses, so as to minimise adverse effects.”*

*“Policy 5.5 – Beach Residential Zone Subdivision, use and development in the Beach Residential Zone will be undertaken in a manner that protects the valued character and qualities of these areas in accordance with Appendix 5.2 Special Character Areas Design Guidelines. Where new subdivision or development is proposed in the Beach Residential Zone, specific consideration will be given to the extent to which the proposal:*

- a) contributes to the collective identity of the local environment;*
- b) reinforces an attractive, defined and coherent streetscape character and is responsive to specific local conditions;*
- c) is sympathetic to and maintains the integrity of the existing landscape, landform and vegetation;*
- d) is compatible in scale with its built context; e) is coherently designed and of good design quality; and*
- f) retains mature vegetation, reinforces existing planting patterns and integrates buildings into the existing landscape setting.”*

#### *Policy 5.22 – Non-Residential Activities*

*A. Non-residential activities other than community facilities will be allowed in the Living Zones only if the activities are compatible with residential activities and the amenity values of residential areas, and if they provide a function which:*

- a) minimises the need to travel for daily goods and services;*
- b) supports the resilience of the local neighbourhood;*
- c) provides a service or function to the local neighbourhood; and*
- d) does not detract from the vitality of centres and other Working Zones.*

*B. In determining whether or not the scale of effects of non-residential activities is appropriate, particular regard shall be given to:*

- a) the appropriateness of the scale, size and intensity of the proposed buildings and activities and visual or landscape mitigation proposed;*
- b) the effects generated by the buildings and activities on the safety and efficiency of the local transport network, including the extent to which the activities make efficient use of the transport network by minimising the need to travel;*

- c) the appropriateness – in the design and amount – of proposed access and car parking for staff, customers, visitors and service/delivery vehicles;
- d) the hours of operation, including the timing and frequency of delivery/service vehicles;
- e) the effects on residential character and amenity values of the surrounding environment generated by the proposed building or activity;
- f) nuisance effects (including noise, odour, light, glare, smoke and dust) produced on-site;
- g) whether or not any proposed signage on the site is associated with the activity, visually distracting to motorists or dominating or detracting from the amenity of the surrounding environment;
- h) whether the activities adversely affect the vitality of centres;
- i) whether the activity provides goods and services to meet the daily needs of the local neighbourhood; and
- j) any cumulative effects.

*“Policy 12.10 – Managing Amenity Noise resulting from land use and development (including fixed plant) will be managed or minimised to achieve an appropriate level of amenity in each zone while acknowledging the primary activities and character in each zone.”*

## **Conclusion**

106. In conclusion, it is my view that the proposal as applied for will create adverse effects on the neighbouring residential properties that potentially cannot be avoided, remedied or mitigated. For this reason it is my view that the proposal will be inconsistent with the relevant objectives, policies and anticipated environmental outcomes of the PDP. However should sufficient mitigation measures be put in place as part of the designation, as recommended in section R of this report, in my view the proposal would be consistent with the objectives and policies of the PDP.

## **M. CONSIDERATION OF ALTERNATIVES**

107. Under section 168A(3)(b) of the RMA, the Council must have ‘particular regard to’:

- “(b) whether adequate consideration has been given to alternative sites, routes or methods of undertaking the work if –*
  - (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or*
  - (ii) it is likely that the work will have a significant adverse effect on the environment;”*

108. The application has briefly mentioned possible alternatives to this site<sup>15</sup> in the context of preferring the NOR process over the resource consent process for establishing future land use activities on the site. I concur with this assessment.
109. However the application is silent on alternative locations for the intended use of the land. Given the conclusions reached in this report that the adverse effects of the designation require avoidance or mitigation, it is my view that a consideration of alternative sites would be of value. It could be useful for the Commissioners to know if there are alternatives to this site that have a less sensitive receiving environment, in the event that the Applicant does not wish to offer up mitigation measures. I consider that this a reasonable request in the holistic resource management consideration of this application.
110. Having said that, I do appreciate the attractiveness of this site for its intended use given it is adjacent to well established existing railyards, and that the site is unlikely to be developed for residential purposes despite its underlying residential zoning.

## **N. REASONABLE NEED FOR THE DESIGNATIONS**

111. Section 168A(3)(c) of the RMA requires the Council to have ‘particular regard to’:

*“(c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought;”*

112. The application states that the objective of the NOR is to allow the land to be used for railway purposes consistent with the balance of the railway land owned in the Kapiti Coast District and throughout New Zealand.<sup>16</sup> Activities included in existing railway owned land include (but are not limited to)

- Movement of trains along existing lines;
- Creation of new sidings and track
- Maintenance and repair of both rack, trains and related railway infrastructure;
- Storage of materials, machinery and vehicles; and

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<sup>15</sup> NOR application for Alteration of designation – March 2017, Pg 18

<sup>16</sup> NOR application for Alteration of designation – March 2017, Pg 7

- Buildings associated with all of the above (stations, depots, workshops and the like).
113. The application further states that it would be highly unlikely given the shape of the site that any formed track or railway sidings would be constructed and that the likely use would be along the same lines as its current use (storage, plant operation and workshop activities). I concur with this statement.
114. Having considered the intended use of the site based on the description in the application, and considering the physical constraints presented by the site (specifically its steep topography at the rear of the site and relatively compact width and length which does not appear to be suitable for new track or rail sidings), it is my view that the wide extent of the designation as applied for is not completely justified or necessary. To be clear, it is my view that the applicant has justified the need for the site for activities related to railway purposes (specifically storage, plant operation and workshop activities). However given the constraints offered by the site, it is my opinion that the scope of the designation could be narrowed to provide greater certainty of likely future effects (i.e. some activities are not suitable on the site and therefore could be excluded from the designation). This may assist in alleviating submitter concerns.
115. I do appreciate that the applicant is trying to protect their investment by applying for the widest designation scope possible. However I consider a more sustainable approach is to apply for a narrower scope based on what could reasonably be expected to operate in the future or alternatively implement mitigation measures such as those recommended in section R of this report. After all the designation process will still be available in the future if the requiring authority had good reason to expand activities on that site.
116. To conclude, in my opinion the designation is the preferred approach to developing the site for the intended use (over a resource consent process), however I challenge whether the NOR has to be as wide in scope as is being sought.

## **O. OTHER MATTERS**

117. Section 168A(3)(c) of the RMA requires the Council to have 'particular regard to':

*“(d) any other matter the territorial authority considers reasonably necessary in order to make a decision on the requirement.”*

118. I consider there to be one other matter of relevance to this application. This is discussed below.

### **Outline Planning Process**

119. Section 176A sets out the process for obtaining outline planning approval for a public work, project or work to be constructed on designated land. Subsections (1) and (2) of that section read:

*“s176A (1) Subject to subsection (2), an outline plan of the public work, project, or work to be constructed on designated land must be submitted by the requiring authority to the territorial authority to allow the territorial authority to request changes before construction is commenced.*

*(2) An outline plan need not be submitted to the territorial authority if—*

*(a) the proposed public work, project, or work has been otherwise approved under this Act; or*

*(b) the details of the proposed public work, project, or work, as referred to in subsection (3), are incorporated into the designation; or*

*(c) the territorial authority waives the requirement for an outline plan.”*

120. I consider these sections and the outline plan process relevant when considering this application. I fully understand that once a piece of land is designated, the outline plan process still offers protection against adverse effects of activities via assessment by Council thereby allowing for any activities that has adverse effects to have the appropriate relief sought.

121. My argument however is that full reliance on that process is not sound resource management practice when there is the possibility of adverse effects in the environment occurring that have not been fully assessed or may not be able to be adequately avoided, remedied or mitigated.

122. An NOR is essentially a rezoning of a piece of land, and in this instance, the zoning of a residential site to industrial with no performance standards by equivalent means. I do not consider it good sustainable management to grant such a designation with no performance standards and rely on the argument that the outline plan process will be the ‘safety net’ or ‘ambulance at the bottom of the cliff’. It is my view that there is sufficient doubt that adverse effects on the surrounding residential environment can be adequately avoided, remedied or mitigated.

Therefore I consider it prudent to not solely rely on the section 176A process to avoid and mitigate adverse effects, but rather recommend that the NOR is modified to include various conditions around noise, loss of privacy and protection of residential amenity and character. I discuss these conditions in section R of this report. Alternatively, the Applicant could narrow the scope of the NOR to provide greater certainty on the level of effects expected in the future.

123. To conclude, I consider the outline plan process relevant if only to show the possible failing or undesirability of entirely relying on this process to manage adverse effects.

## **P. PART 2 ASSESSMENT**

### **Recent Case Law**

124. Prior to considering Part 2 of the Act, I feel it necessary to comment on two recent cases that question when it is appropriate, or is it appropriate at all to consider Part 2 matters when assessing an application. Before I comment further however I must stress that this is largely a legal argument and the Commissioners may wish to seek legal advice if it is pertinent to their consideration. I am of the understanding that the Applicant will have legal representation at the hearing and so this question may be better posed to that person.
125. There are two recent cases which I consider are relevant to this matter. The first of these cases is the Supreme Court's reasoning in *EDS v NZ King Salmon* [2014]. In that judgement, it was determined that in most cases there is no need (or ability) to refer back to the purpose and principles of the RMA ('Part 2') in determining an application for a plan change. This is because in preparing a Policy Statement or Plan, the principles of Part 2 would have been fairly considered and represented in the relevant provisions. As such, if a proposal was consistent with or inconsistent with those instruments, it would be reasonable to assume that it was consistent or inconsistent with Part 2 (the case acknowledged that if there were failings in this regard then Part 2 could be considered). It is important to note also that this judgement was confined to plan changes.
126. The second of these cases is *R J Davidson Family Trust v Marlborough District Council* [2017] which was before the High Court. In this judgement it was determined that the findings reached in the King Salmon case also apply to

resource consent applications, specifically that consideration of an application under s 104 of the RMA does not permit general recourse to Part 2 RMA unless the relevant provisions of the planning instruments to be considered under s 104 RMA are invalid, incomplete or uncertain.

127. I note that it does seem, at least for the time being, that Part 2 can be considered in relation to a proposed designation (under section 171 RMA, or an alteration to designation under section 181), but is generally not able to be considered in the resource consent or plan change contexts.
128. Having considered these two judgements, and because it is unclear whether this approach is to be applied to designations, I consider it prudent, and helpful to consider the proposal against Part 2 of the Act.

### **Section 5 – Purpose and Principles**

129. Section 5 of the Act states that the purpose of the Act is to promote the sustainable management of natural and physical resources. “Sustainable management” is defined in section 5(2) of the RMA and it includes managing resources in a way that enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while achieving specified environmental outcomes.
130. For the reasons considered in section G of this report, specifically that any adverse effects of the proposed activities require avoidance, remediation or mitigation so that neighbouring residential properties are not adversely affected, I consider that the proposal is not consistent with section 5(2)(c) of the Act.
131. I am therefore of the opinion that the NOR as it stands will not be consistent with the purpose of the RMA. I do however consider that with the addition of conditions and/or the narrowing of the scope of the designation, the NOR can be consistent with the purpose of the Act.

### **Section 6 – Matters of National Importance**

132. Section 6 requires all persons exercising functions and powers under the RMA to recognise and provide for matters of national importance.
133. I do not consider that there are any section 6 matters of relevance to the NOR.

## **Section 7 – Other Matters**

134. Section 7 sets out the matters that Council shall have particular regard to in achieving the purposes of the Act. Those matters I consider are of relevance to this application are:

- (b) The efficient use and development of natural and physical resources*
- (c) The maintenance and enhancement of amenity values*
- (f) Maintenance and enhancement of the quality of the environment.*

135. Section 7(b) requires regard to be had to the efficient use and development of natural and physical resources. Due to the site's location adjacent to the existing railyards I do consider that utilisation of this site, provided adverse effects are adequately managed, to be an efficient use of a physical resource.

136. In regard to section 7(c) amenity values are defined in the Act as meaning “those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”. As discussed in Section G above, I consider that actual and potential adverse effects of the NOR have not been adequately avoided, remedied or mitigated. In particular I do not think the amenity values and character of the adjacent residential environment will be maintained or enhanced. Rather I think they will be diminished.

137. Regarding section 7(f), in my opinion the quality of the environment will be adversely affected by the NOR. The applicant has not adequately demonstrated that potential noise effects on residential properties will be mitigated or that the quality of the residential environment will be maintained or enhanced through the establishment of activities on the site.

## **Section 8 – Treaty of Waitangi**

138. Section 8 of the RMA requires all persons exercising functions and powers under it to take into account the principles of the Treaty of Waitangi. There are no known treaty issues associated with the project site that would impact on obligations under Section 8 of the Act.

## **Part 2 Conclusion**

139. Overall I consider the proposal in its current form to be inconsistent with Part 2 of the Act.

### **Q. SUMMARY AND CONCLUSION**

140. The Requiring Authority (KiwiRail Holdings Limited) is seeking under section 181(1) of the Act to alter an existing designation (D0103) to designate land in the Kapiti Coast District Plan for 'Railway Purposes' at the Paekakariki Rail Yard, Tilley Road, Paekakariki. The land to be designated is Lots 4-8 Block III DP 2009, comprising a combined area of 4.854 hectares.

141. The area where the proposed designations are located is zoned as 'Residential and Beach Residential in the ODP and PDP respectively.

142. Section 168A(3) requires that, subject to Part 2 of the RMA, the effects on the environment of allowing the requirement must be considered having regard to Plans and Policy Statements, alternatives, and whether the work is necessary for achieving the objectives of the requiring authority. Insufficient consideration has been given to alternatives and the activity in its proposed form is not consistent with relevant objectives and policies of the District Plan.

143. With respect to Part 2 of the RMA, the proposed designation will allow the requiring authority to use a physical resource for their economic well-being, however in its current form it will not be done so in the most sustainable way.

144. The assessment of environmental effects has determined that the NOR in its current form has not demonstrated that adverse effects on the neighbouring residential environment can be adequately avoided, remedied or mitigated and is therefore not consistent with section 5(c) of the Act.

145. Having regard to relevant section 7 matters the NOR will not achieve the desired outcomes of section 7(c) and 7(f) however it will achieve the outcomes of section 7(b).

146. Overall I consider the site is appropriate for some of activities defined as railway purposes provided adequate mitigation is in place as part of the designation. Using the expert assessments, I have therefore proposed some performance standard or conditions to be tied to the designation to avoid and/or mitigate adverse effects

on the neighbouring residential environment. Through the provision of these conditions, I consider the NOR will be consistent with the relevant objectives and policies of the District Plans, and with section 2 of the Act. These conditions are set out in section R below.

## R. RECOMMENDATIONS

147. That subject to new or additional evidence being submitted at the hearing, it is recommended to the Commissioners appointed on behalf of Kapiti Coast District Council, that the Notice of Requirement NOR170060 to designate land on Lots 4, 5, 6, 7 and 8, Block III DP 2009 at Paekakariki Rail Yard, Tilley Road, Paekakariki for 'Railway Purposes' **BE CONFIRMED SUBJECT TO CONDITIONS** pursuant to Section 168A(4) of the Resource Management Act 1991.

## CONDITIONS

1. Any Outline Plan submitted under Section 176A of the Resource Management Act 1991 to undertake works on the designation shall be accompanied by a Landscape Planting plan. The Landscape Planting Plan shall specifically address the screening of and potential loss of privacy effects from the proposed activity on the adjacent properties at 26A, 26B, 28, 28A and 32 Tilley Road, Paekakariki. The Landscape Plan shall include, but not be limited to:

- (a) Plan(s) to scale showing the location of all areas to be planted. This location must include the entire length of the southern boundary of Lot 4 Block III Deposited Plan 2009, to a depth of 5m from that boundary, and tied into the existing vegetation in the western corner of that lot;
- (b) The species that are to be planted, the mature size of the plants and the density of planting; 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 to the southwest.*

- (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.

2. Not less than 30 days from the date on which this designation amendment is approved, the requiring authority shall submit for certification to the Compliance Manager, Kāpiti Coast District Council, a Noise Management Plan prepared by a suitably experienced acoustics engineer (acceptable to Council) that includes (but is not 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 'design target' noise emission cap on maximum activity noise based on compliance with the following:

*Noise associated with non-residential activities shall be managed and controlled so that the following limits are not be exceeded at any point within the boundary of a residential site*

*Daytime 55 dB  $L_{Aeq(15 min)}$*

*Evening 50 dB  $L_{Aeq(15 min)}$*

*Night-time 45 dB  $L_{Aeq(15 min)}$*

*Night-time 75 dB  $L_{AFmax}$*

*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 steps taken to ensure the 'best practical option' is adopted (and updated as necessary) to achieve compliance with the above noise limit, including a signed statement from the author (acoustic engineer acceptable to Council) that the methods and procedures set out within the noise management plan are sufficient to ensure compliance with the above design target noise limits.
- iv. Monitoring; The 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 closest residential sites at 24 to 36 Tilley Road, Paekakariki. 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) Providing a copy of any noise monitoring report prepared following monitoring undertaken under (a) above within 20 days of completing the measurements.
  - v. All activity on the subject site be undertaken in accordance with a Noise Management Plan certified by Council for this purpose.
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. Prior to any activity being undertaken Lots 4, 5, 6, 7 and 8 Block III Deposited Plan 2009 which repeatedly facilitates (i.e. on more than five consecutive days) more than three heavy trade vehicle movements per day to those sites via the existing vehicle crossing point between Tilley Road and the existing KiwiRail designation, then that vehicle crossing must be upgraded 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 formation of the access into the site to a width of 7.5 metres.
  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 suitably controlled at all times to minimise dust hazard or nuisance.



Phil Hindrup  
**CONSULTANT PLANNER**