

In the Matter of the Resource Management Act 1991

AND

In the Matter of KiwiRail Holdings Ltd Notice of Requirement to alter an existing designation at Tilley Road, Paekakariki (Council Application Number RM170060)

STATEMENT OF EVIDENCE OF TOM ANDERSON FOR THE REQUIRING AUTHORITY

Introduction

1. My name is Thomas William Anderson. I am a senior resource management consultant at Incite, a resource management consulting firm. I hold a Bachelor of Science and a Master of Planning (with Distinction), both from the University of Otago. I am a full member of the New Zealand Planning Institute and am currently Chair of the Wellington Branch Committee of that institute.
2. I have ten years' professional experience in town planning and resource management. I have been a consultant throughout my career. Over this time I have been able to undertake a broad range of town planning tasks including notices of requirement for various requiring authorities, preparing various regional, land use and subdivision resource consent applications, processing such applications on behalf of Territorial Local Authorities ("**TLA**"), assisting TLAs with planning policy matters, undertaking the full spectrum of planning for infrastructure companies, and providing advice to central government agencies.
3. I have provided resource management advice to KiwiRail Holdings Ltd ("**KiwiRail**") for the past seven years. This advice includes the preparation of notices of requirement, outline plans of works and regional resource consent applications for projects such as bridge renewals, contaminated land matters and culvert upgrades. Further, on three separate occasions I have been seconded into KiwiRail to undertake 'in-house' resource management activities, such as reviews of proposed planning policy matters and responding to written approval requests where KiwiRail is considered to be an affected party.
4. I am familiar with the planning framework in the Kapiti Coast, having made a number of resource consent applications to the Kapiti Coast District Council ("**Council**"), principally on

behalf of telecommunication companies. I was also employed by the Council when I was a student, undertaking a 'summer internship' of sorts in the Planning Policy team.

5. I have read and am familiar with the Code of Conduct for Expert Witnesses in the current Environment Court Practice Note (2014), have complied with it, and will follow the Code when presenting evidence. I also confirm that the matters addressed in this Statement of Evidence are within my area of expertise, except where relying on the opinion or evidence of other witnesses or persons. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

Scope of Evidence

6. I prepared the "*Notice of Requirement to Alter an Existing Designation, KiwiRail Holdings Limited, Paekakariki Rail Yard, Tilley Road, Paekakariki*" dated 28 March 2017, and the draft conditions put forward on 18 August 2017 (on a without prejudice basis) after the pre-hearing meeting. I also undertook expert witness conferencing with Mr Hindrup, and jointly prepared the "*Joint Statement of Expert Planning Witness Conferencing*" dated 10 January 2018 (herein referred to as the "**Planning Conferencing Statement**").
7. In this evidence, I comment on the background to this notice of requirement ("**NoR**") process, the description of the site, and the purpose and reasoning as to why the alteration to the designation is sought. I then focus my evidence on the key effects resulting from the alteration sought, and consider the statutory context in which the recommendation on this NoR is to be made. I then conclude with my views on how Part 2 of the Resource Management Act 1991 ("**RMA**" or "**Act**") applies to the NoR, and the recommendation sought from the Panel.
8. In writing this evidence, I have read and considered:
 - Council's Notification Report, dated 22 May 2017 and prepared by Mr Phillip Hindrup, as the planning consultant engaged by the Council to process the NoR;
 - The three submissions received in response to the limited notification of the NoR;
 - The Pre-Hearing Meeting Report, dated 9 October 2017 and prepared by Ms Gina Sweetman, the Independent Facilitator appointed by Council for that process (I also attended that meeting);
 - The *Acoustics – Joint Witness Statement*, dated 11 December 2017 and prepared jointly by Mr Malcolm Hunt and Dr Stephen Chiles, as the acoustic experts engaged by the Council and KiwiRail respectively;

- The *Joint Expert Witness Statement (Traffic)*, dated 10 January 2018 and prepared jointly by Mr Don Wignall and Mr Mark Georgeson, as the traffic experts engaged by the Council and KiwiRail respectively;
 - Mr Hindrup's Section 42A Report ("**s42A Report**"), dated 11 January 2018, and Mr Hunt and Mr Wignall's Statements of Evidence which inform Mr Hindrup's report;
 - Dr Chiles' Statement of Evidence, dated 19 January 2018;
 - Mr Georgeson's Statement of Evidence, dated 19 January 2018; and
 - Directions/Minute of the Panel #1 and #2 dated 25 October and 10 November 2017 respectively.
9. With specific regard to Mr Hindrup's s42A Report, and as is evident by the Planning Conferencing Statement, I generally agree with the recommendation reached in that report.¹ I have structured my evidence in a similar manner to the s42A Report, and respond to areas where I agree or disagree with the conclusions reached in that report.

Background to the Notice of Requirement Process

10. I was approached by KiwiRail in December 2016 to prepare the NoR to alter KiwiRail's existing designation to include five separate but contiguous allotments at Tilley Road. KiwiRail's existing designation is referenced as "D0301" in both the Operative Kapiti Coast District Plan 1999 ("**ODP**") and the Proposed Kapiti Coast District Plan 2012 ("**PDP**").
11. As is detailed in the NoR, the five allotments are subject to a relatively long 'history' which has led to this hearing.²
12. In summary, this history is as follows:
- Each of the five allotments was transferred to the Crown in 1929;
 - In 1983 it was reaffirmed that the land is "*still in use for railway purposes and is claimed as railway land*" with each allotment's 'purpose' (as annotated on the Computer Freehold Registers) being "*Railway*";³
 - As part of the designation review process for the PDP in 2011, KiwiRail identified that the allotments had not been included as part of their existing "railway purposes" designation ("**D0301**"). Consequently, the sites were the subject of an alteration to the designation

¹ Paragraph 147 of the s42A Report

² Pages 2 and 5-7 of the NoR

³ Historic Memoranda of Transfer and Computer Freehold Registers for the five allotments, included in Appendix A to the NoR

sought through KiwiRail's Notice of Requirement for Designation Rollover and Alteration (submitted to Council in June 2011);

- Subsequently, the five allotments were shown as being within the designation in the PDP as notified.
- However due to a procedural error concerning notification, the alteration could not be considered in the hearings process for the PDP. It was suggested by Council that requiring authorities (including KiwiRail) progress any affected designation alteration by alternative routes (namely Sections 181(1) or 181(3) of the RMA.
- A notice of requirement to alter the designation and include the five allotments under Section 181(3) was submitted to Council on 23 December 2016. On 7 March 2017 Council Officers advised that they did not agree to the Section 181(3) process; and
- A new notice of requirement was submitted to Council on 28 March 2017 under Section 181(1), which is the matter at hand for this hearing.

Site Description

13. I agree with the description of the site and surrounding area as detailed in the s42A Report.⁴
14. Expanding on that description, the five aforementioned allotments total approximately 4,854m² in area. This area is referred to in the remainder of my evidence as the "**subject site**". The already designated area is referred to as the "**designated site**".
15. I have visited the subject site and designated site twice, once in December 2016 in preparation of my initial notice of requirement, and again on 14 January 2018 in preparation of this evidence. As such, I am familiar with the specific characteristics of the subject site, the designated site and surrounding area.

Purpose of the NoR to Alter the Designation

16. On the basis of the historic Memorandum of Transfer, the subject site appears to have been used for railway purposes since at least 1929.
17. As has been summarised in Paragraph 12 above, KiwiRail has been seeking to alter the designation since discovering that the subject site was not included within their existing designation. The objective is to include the subject site within Designation D0301, which is for 'railway purposes' (in both the ODP and PDP). D0301 extends through the Kapiti Coast District as a lineal designation some 42km in length (and of varying, but typically narrow, width). It is

⁴ Paragraphs 17 to 20 of the s42A Report

contiguous with 'railway purpose' designations in Porirua City to the south and Horowhenua to the north. D0301 includes all of KiwiRail's assets in the Kapiti Coast District (with the exception of those which are within the subject site), and is not subject to any conditions in either the ODP or PDP.

18. The NoR is to alter an existing designation. The NoR does not seek to alter the purpose of that designation. Having the subject site designated for railway purposes will provide clarity as to what the subject site will be used for, and will clarify the legality of existing railway activities within the subject site, as well as any activities which could happen in the balance of the site.⁵
19. The existing designated purpose of 'railway purposes' is consistent with the purpose of KiwiRail's designations in other District and Unitary Plans throughout the country. In my experience, I do not recall a rail designation where the purpose has been for anything other than, or more detailed than 'railway purposes'.
20. In order to provide consistency with Designation D0301 as it is provided for in the ODP and PDP, as well as with the purpose of rail designations in other District and Unitary Plans in New Zealand, I do not consider a need to alter the designated purpose for the subject site. Rather I consider that the activities which can occur on the subject site can be mitigated through the placement of conditions on the designation, and I discuss this further in Paragraphs 24 to 41 of this evidence.

Notification, Submissions and Pre-Hearing Meeting

21. I agree with the summary of notification and submissions outlined in Paragraphs 27 to 41 of the s42A Report, as well as with the summary of the pre-hearing meeting outlined in Paragraphs 42 and 43 of that report.
22. I agree with Mr Hindrup that those processes assisted to refine the scope of actual and potential environmental effects that the NoR may give rise to. As is detailed in the Planning Conferencing Statement, those effects are:
 - Noise and Vibration;
 - Traffic;
 - Residential Character and Amenity;
 - Light Spill; and

⁵ Current and potential future activities are outlined on Pages 7 and 8 of the NoR, and are repeated in Paragraphs 23 and 24 of the s42A Report.

- Dust.

23. I address each area of effect in turn.

Noise and Vibration Effects

24. On the basis of the evidence provided by Dr Chiles and Mr Hunt, I am of the opinion that a Noise Management Plan will be appropriate for more intensive 'railway purpose' activities within the subject site. On the advice of Dr Chiles, I do not consider it necessary for the current level of activities, or similar storage activities, to be subject to such a Plan.⁶

25. On the basis of Dr Chiles' evidence⁷, I suggest that the following changes be made to Condition 2 as proposed in the s42A Report⁸ (note deletions shown as strikethrough and additions bold and underlined).

2. ~~Not less than 30 days from the date on which this designation amendment is approved,~~ **In the event that either:**

- **an Outline Plan of Works for Lots 4, 5, 6, 7 or 8 Block III Deposited Plan 2009 is submitted under section 176A of the Resource Management Act 1991; or**
- **any of Lots 4, 5, 6, 7 or 8 Block III Deposited Plan 2009 is to be used:**

(a) between 2200h and 0700h more than once a week (other than by personnel and/or light vehicles); and/or

(b) for manufacturing or fabrication activities; and/or

(c) for new rail tracks or rail sidings;

*the requiring authority shall submit ~~for certification with~~ **to** the Compliance Manager, Kāpiti Coast District Council, a Noise Management Plan prepared by suitably experienced acoustics engineer (acceptable to Council) that includes (but is not limited to) the following matters:*

- 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*

⁶ Paragraph 4.1 of Dr Chiles Evidence in Chief

⁷ Ibid Paragraph 4.5

⁸ Paragraph 147 of s42A Report

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~~ **for** 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 to be taken to ensure the ~~'best practical~~ **practicable** 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 **as far as practicable.**

- 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.~~ **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 applicable conditions. Amendments must be submitted to the Compliance Manager, Kāpiti Coast District Council at least five working days prior to the proposed changes taking effect (or a shorter timeframe if agreed).**

26. In my opinion, the changes to Condition 2 will provide better alignment with the activity types which could occur on the site in accordance with details already provided for in the designation, or for construction-related situations which require an Outline Plan of Works. Simply, if the site is used for passive activities which will not create a noticeable noise effect in the existing noise environment, then adherence to a Noise Management Plan is not essential. However, should activities on the site be of a sufficient intensity as to change this, then adherence to a Noise Management Plan is appropriate. I have also suggested that provision be made to amend the Noise Management Plan if and when required, and that since the Noise Management Plan is to be prepared by “a suitably experienced acoustics engineer (acceptable to Council)”, there is no need for the Compliance Manager to then certify any such Plan.

Traffic Effects

27. I agree with the s42A report⁹ that the *Joint Expert Witness Statement (Traffic)* shows that both traffic experts are in agreement as to what the traffic effects of the NoR could be, and how these effects could be managed.

28. On the basis of further discussion with Mr Georgeson, and his evidence in chief, I am of the opinion that the following changes be made to Condition 4 of the s42A Report:

4. ~~Prior to any~~ **In the event that an** activity being undertaken **on any of** 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

⁹ Paragraphs 58 and 59 of the s42A Report

include the reformation of the **existing vehicle crossing** access into the site to a **minimum width of 7.5 metres**. **The length of the existing KiwiRail access road between Tilley Road and the gated yard must also be re-formed as a sealed route. The works must be completed within 6 months of this condition being triggered.**

Note: A heavy trade vehicle has the definition prescribed in the Proposed District Plan, being a vehicle with a gross mass exceeding 3,500kg.

29. The primary emphasis of the change is to provide a timeframe within which the required upgrades shall be undertaken once the vehicle movement threshold has been triggered, as well as clarity as to what those upgrades are. Mr Georgeson has outlined in his evidence that there are two separate upgrades that both he and Mr Wignall consider necessary (should the vehicle movement threshold be exceeded), and these should be appropriately reflected in the condition. I consider six months to be an appropriate timeframe for KiwiRail to complete the physical works. It also provides certainty to the community in terms of expectation as to when the works will be completed once/if that condition is triggered.
30. I agree with Mr Hindrup's drafting of the condition in that it is limited to vehicle movements undertaken on the subject site rather than within the existing designation. This is an important distinction to make as there are a number of vehicle movements associated with the existing designation (including those which use the Park and Ride for Paekakariki Railway Station) which do not enter the subject site. It is important that the conditions are restricted to effects by the alteration sought through the NoR, and not those effects which arise from the existing designation.
31. I do not consider there to be a need for the Compliance Manager to approve the design of any upgrade. The standard referenced in the PDP is clear, and the condition requires that this be met. This is a permitted standard in the PDP, and as such does not require approval if it is met for other projects. Consequently this should not change for the purposes of this condition.

Residential Character and Amenity Effects

32. To my mind, residential character and amenity of adjoining and surrounding residential properties could be adversely affected by factors such as noise, light spill, loss of privacy, loss of character and increased bulk and dominance. Noise and light spill effects can be appropriately mitigated through proposed conditions, and as such I have focussed this subsection on privacy, character and bulk and dominance.

33. While Mr Hindrup considers that privacy, character and bulk and dominance effects will be minor, it is his opinion that due to the “*wide range of activities*” which could be undertaken within a ‘railway purposes’ designation “*there is sufficient uncertainty regarding potential adverse effects that may arise*” and as such “*mitigation measures or conditions are warranted as part of the designation approval process*”.¹⁰
34. I agree that the designated purpose facilitates a ‘wide envelope’ of activities. I am also of the opinion that the effects can be appropriately avoided, remedied or mitigated through conditions and, in particular, thresholds for intensity of activity within those conditions. Essentially, if an activity of a certain intensity is to be undertaken on the site, then conditions must be met by the Requiring Authority.
35. I agree with Mr Hindrup that a buffer distance between activities undertaken within the subject site and the boundary with the adjoining residential properties at 24, 26A, 26B, 28, 28A and 32 Tilley Road is appropriate (and that a buffer to other adjoining and surrounding residential properties already exists through the existing topography and vegetation within the northern and western boundaries of the subject land). I am also of the view that the most appropriate way to achieve the buffer is through the inclusion of a landscape condition similar to Condition 1 as proposed in the s42A Report¹¹.
36. It is my opinion that the following changes should be made to that condition:
1. ~~Any Outline Plan submitted under Section 176A of the Resource Management Act 1991 to undertake works on the designation shall be accompanied by~~ **In the event that either:**
 - **an Outline Plan of Works for Lot 4 and/or Lot 5 Block III Deposited Plan 2009 is submitted under section 176A of the Resource Management Act 1991; or**
 - **an activity being undertaken on Lot 4 and/or Lot 5 Block III Deposited Plan 2009 repeatedly facilitates (i.e. on more than five consecutive days) more than the equivalent of 20 vehicle movements per day on those sites;**
- the requiring authority shall prepare and submit a Landscape Planting pPlan to the Compliance Monitoring Officer. The Landscape Planting Plan shall specifically address the**

¹⁰ Paragraph 63 of s42A Report

¹¹ Ibid Paragraph 147

screening of ~~and potential loss of privacy effects from the proposed activity on~~ **Lot 4 Block III Deposited Plan 2009 from** the adjacent properties at **24, 26A, 26B, 28, 28A and 32 Tilley Road, Paekakariki**. The Landscape **Planting** 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 **with 24, 26B and 28 Tilley Road**, to a depth of 5m from that boundary, and tied into the existing vegetation in the western corner of that lot (**where it adjoins 28 Tilley Road**);

(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.

The planting is to be completed within the next planting season after the Landscape Planting Plan is submitted to the Compliance Monitoring Officer.

37. The changes I seek to Condition 1 will ensure that the intent of the condition is achieved for all railway purpose activities which could adversely affect residential amenity which are either in accordance with detail already provided for in the designation, or for construction-related situations which require an Outline Plan of Works. The activity threshold, based on vehicle movements, to my mind would be the most reliable indicator that the subject site will be being used for activities other than storage, and I consider that the threshold for intensity of activity is appropriate, in those circumstances where the Outline Plan of Works process is not necessary.

38. Further, I consider that should KiwiRail choose not to undertake activities on either of Lot 4 Block III DP 2009 (being the adjoining/closest allotment to 24, 26A, 26B, 28, 28A and 32 Tilley Road) any activities within the remaining allotments will be suitably separated from those residential properties by such an extent that no further mitigation would be necessary. Essentially, if KiwiRail chose to limit more intense activities to the remaining four allotments

of the subject site, to my mind Lot 4 would provide the 'buffer' that the condition seeks to establish.

Light Spill Effects

39. I agree with Mr Hindrup that light spill effects can be mitigated through appropriately designed lighting, and that this is best addressed through a condition placed on the designation.¹²
40. As is evident through the Planning Conferencing Statement, I agree with the wording of Condition 3¹³ and as such no further comment on this matter is necessary.

Dust Effects

41. I also agree with Mr Hindrup that dust effects can be mitigated through a condition placed on the designation¹⁴ and agree to the wording of proposed Condition 5.¹⁵

Effects Conclusion

42. I am of the opinion that with the placement of the conditions on the designation as discussed above, railway purpose activities undertaken within the designation will give rise to acceptable effects on the adjoining and surrounding residential properties. I have included a 'clean' and marked up version of the conditions which I consider to be appropriate as **Appendix A** to this evidence.
43. For the record, I do not consider that the alteration to the designation will cause any noticeable adverse effects on any other property or infrastructure, including the existing KiwiRail designation, State Highway 1 (Designation D0101 in both the ODP and PDP), the Steam Incorporated private heritage rail operation, or any of the District Plan listed heritage buildings that are all within a relatively close proximity to the subject site.

Statutory Context

44. I now turn my evidence to the statutory context under which the recommendation on this NoR is to be made.

¹² Paragraph 66 of the s42A Report

¹³ Ibid Paragraph 147

¹⁴ Paragraph 69 of the s42A Report

¹⁵ Ibid Paragraph 147

45. Mr Hindrup states that this statutory context is provided in Section 168A of the Act¹⁶. It is my view, and this has been confirmed by KiwiRail's legal counsel, that Section 168A is not the appropriate section of the Act, and that instead the NoR must be considered by the Panel (under delegated authority from the Council) under Section 171.
46. However, in any instance the framework under Section 171 is the same as that detailed in Section 168A, in that it requires, in this instance, the Panel to consider the environmental effects (as undertaken above) as well as relevant provisions of relevant statutory planning documents, a consideration of alternatives in certain circumstances, whether a designation is reasonably necessary for achieving the objectives of the requiring authority and any other matters which may be appropriate. As such Mr Hindrup has appropriately considered the subsections outlined in Section 171.
47. Mr Hindrup has addressed each of these areas, and I comment on these below, and in particular outline where my opinion differs from the conclusions Mr Hindrup has reached in his s42A Report.

Relevant Provisions in Statutory Planning Documents

48. Mr Hindrup has stated that the following statutory planning documents contain provisions relevant to the NoR¹⁷
- National Policy Statement on Urban Development Capacity ("**NPS-UDC**");
 - New Zealand Coastal Policy Statement ("**NZCPS**");
 - Wellington Regional Policy Statement ("**WRPS**"); and
 - Kapiti Coast District Plans (both the Operative and Proposed)
49. In addition, Mr Hindrup has considered that the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health ("**NESCS**"), requires some comment as to its applicability and that this be addressed by the requiring authority at the hearing¹⁸. In doing so, he refers to Section 104 of the Act. It is correct that National Environmental Standards are specifically listed in Section 104, however Section 171 (which is

¹⁶ Ibid Paragraph 44

¹⁷ Section H, I, J, K and L of the s42A Report

¹⁸ Paragraph 74 of the s42A Report

the relevant statutory section in this case) does not require consideration of the NESCS. I have briefly addressed it below as it could potentially be considered an 'other matter'.

NPS-UDC and NZCPS

50. In turning to the list of Statutory Planning Documents above at Paragraph 46, I consider both the NPS-UDC and NZCPS together. I concur with the conclusions reached by Mr Hindrup on both of these matters¹⁹, and have no further comment to add.

NESCS

51. In my opinion, no assessment is required against the NESCS as part of this NoR. I am familiar with the NESCS and that railway yard activities are included on the Ministry for the Environment's 'Hazardous Activities and Industries List' (HAIL). However, the NESCS only applies when a HAIL site (or a potentially contaminated site) will be disturbed. The alteration to the designation will not include any disturbance of the site. The NESCS will need to be considered on a case by case basis for any future activities on the subject site which include soil disturbance, and, if necessary, applications made under NESCS.

WRPS

52. Railway lines form part of the Wellington region's 'Strategic Transport Network' and therefore are defined as '*Regionally Significant Infrastructure*' ("**RSI**") in the WRPS. From my reading of the definition, rail yards, such as what the subject site is intended to be used for, are not covered by this definition. However, it is my view that rail yards are of critical importance to the efficacy of railway lines in their role as RSI to the region.

53. As I stated in the NoR, for railway lines to operate efficiently and effectively they must be supported by an intensive maintenance and renewals programme. Further, due to the lineal nature of railway lines, and their typical location within a narrow corridor, there is limited room for maintenance and renewal activities to take place. Consequently it is crucial that KiwiRail have space where rail related equipment and materials can be stored and maintained, without impinging on the day to day operation of the railway lines themselves.²⁰

¹⁹ Ibid Paragraphs 79 and 82

²⁰ Page 14 of the NoR

54. I agree with Mr Hindrup that Objective 10, and to my mind in particular its supporting Policies 7, 8 and 39, consider the importance of RSI. Policies 7 and 8 require recognition of the benefits, and require protection of, RSI in Regional and District Plans.
55. Policy 39 is of greater relevance to this NoR, as it requires that when a notice of requirement is being considered, particular regard must be given to the social, economic, cultural and environment benefits of RSI, as well as ensuring its protection from incompatible subdivision, use and development occurring under, over, or adjacent to the infrastructure.
56. Given yards are crucial to the everyday operation and use of railway lines as RSI, I consider that Policy 39 should be afforded some weight in the recommendation of the Panel. For the railway line to effectively contribute in its role as part of the strategic transport network, yards are a necessity, and whilst I do not think yards themselves fit within the definition of RSI, their role in assisting the railway line to realise the associated social, economic, cultural and environmental benefits should not be discounted.
57. I also note that Section 3.3(b) of the WRPS states that the operation or use of the infrastructure can adversely impact surrounding communities (with noise effects given as an example) and therefore it is stated that *“these effects need to be balanced to determine what is appropriate for the individual circumstances”*²¹. In my view, for this NoR, the proposed conditions provide that balance.
58. I do not agree with Mr Hindrup’s views at Paragraph 86 of the s42A Report. It is my opinion that Objective 10 and its policies are not solely about protecting existing RSI. Protection of RSI is one of the outcomes, as is recognition of the benefits that RSI can provide. To my mind there is nothing which limits this recognition solely to existing RSI (in fact when considering the definition of RSI in the WRPS in regard to the strategic transport network, the future regional transport network is specifically mentioned). Further, for the reasons above, I consider that the NoR is consistent with Objective 10 and its relevant policies, and that if the recommendation from the Panel was to modify or withdraw this NoR, it would not be entirely consistent with this objective and policy, as the benefits rail provides to the community have the (albeit small) potential to be hindered.

²¹ Page 34 WRPS

Kapiti Coast District Plans

59. I agree with Mr Hindrup that at this point in time there are two Kapiti Coast District Plans that require consideration, being the ODP and the PDP.²²
60. The altered designation is sought to be shown in both Plans (or if the Proposed District Plan has become operative by the time that the alteration is confirmed by KiwiRail, then solely in that Plan).
61. I agree with Mr Hindrup that the subject site is zoned 'Residential' in the ODP and 'Beach Residential' in the PDP. I also note that in both plans, the subject site, as well as adjoining sites are within a 'noise corridor' overlay.²³
62. I also agree with Mr Hindrup that, given the matter at hand is a Notice of Requirement, there is no activity status. However, the relevant rules provide a degree of guidance for the types of activities which could occur within the designation, as well as for any future Outline Plan of Works. As such, I undertook an assessment of the relevant ODP permitted standards in the NoR.²⁴
63. In regard to the ODP Objectives and Policies, I agree with Mr Hindrup that C.1 Residential Zone Objective 1.0 and 2.0 and Policy 1 are relevant. I also agree with Mr Hindrup that mitigation (in the form of conditions) will mean designating the land is consistent with those objectives and policy.²⁵
64. In addition, I consider that the following 'district wide' noise, network utilities and transport objectives and policies of the ODP are of relevance:

C.14 Noise

- *Objective 1.0 (avoid, remedy or mitigate effects of noise from non-residential activities on the amenity values of residential activities); and*
- *Policy 2 (ensure noise generated from non-residential activities does not reach a level injurious to the health of residents).*

C.16 Network Utilities

²² Paragraph 89 of the s42A Report

²³ Map 16 of the ODP and Map 16B of PDP (Decisions Version)

²⁴ Table 3, Pages 14-18 of the NoR

²⁵ Paragraph 96 of the s42A Report

- *Objective 1.0 (provide for the efficient development, operation and maintenance of network utilities throughout the district while minimising potentially adverse environmental impacts); and*
- *Policy 2 (provide for the operation, use and development of network utilities while ensuring the adverse effects on the environment (including the residential, commercial, industrial, coastal environments) are avoided, remedied or mitigated).*

C.18 Transport

- *Objective 1.0 (achieve a transport infrastructure that provides for the efficient and safe movement of people and goods throughout the district and which avoids, remedies or mitigates adverse effects of existing and new traffic routes);*
- *Policy 6 (ensure that all developments, on approval, provide for safe vehicular and pedestrian access and adequate carparking areas); and*
- *Policy 13 (to advocate for, and to encourage the use of improved rail passenger services to the district).*

65. For reasons discussed elsewhere in this evidence, and with conditions placed on the designation, I consider that the NoR is consistent with these relevant objectives and policies.

66. In regard to the PDP Objectives and Policies, I agree with Mr Hindrup that Objectives 2.3 and 2.11, and Policies 5.5, 5.22 and 12.10 are all relevant.

67. I disagree with Mr Hindrup's view that the proposal is inconsistent with those objectives and policies²⁶. To my mind, the proposed conditions will ensure that the subject site is managed in a way which is consistent with the aforementioned objectives and policies.

68. Further, as per the ODP, I consider there to be other objectives and policies of the PDP which are of relevance to this NoR. These are:

- *Objective 2.13 (recognising the importance and benefits of infrastructure);*
- *Objective 2.14 (providing for access and transport, including avoiding, remedying or mitigating the adverse effects of the transport system on land uses);*
- *Policy 11.1 (recognising benefits of infrastructure, including rail networks);*

²⁶ Paragraph 106 of the s42A Report

- *Policy 11.2 (regarding reverse sensitivity effects, and that these will be avoided as far as reasonably practicable by ensuring that suitable standards are in place adjacent to the transport network (including railways)²⁷);*
- *Policy 11.4 (avoiding, remedying or mitigating adverse effects of infrastructure (as far as practicable));*
- *Policy 11.32 (promoting a timely, efficient and reliable transport network);*
- *Policy 11.33 (avoid, remedy or mitigate potential adverse effects of development, operation, maintenance and upgrading of the transport network, including that development of the network will minimise degradation to amenity values, avoid unacceptable levels of noise and vibration);*
- *Policy 12.11 (noise will be managed to achieve an appropriate level of amenity in each zone, while acknowledging the primary activities and character in each zone);*
- *Policy 12.13 (all noise sensitive activities in close proximity to the designated rail corridor must be protected by the building owner from adverse effects of noise through the adoption of acoustic mitigation measures); and*
- *Policy 12.15 (outlining noise assessment criteria).*

69. Again, for reasons discussed elsewhere in this evidence, and with conditions placed on the designation, I consider that the NoR is consistent with these relevant objectives and policies.

Consideration of Alternatives

70. Under Section 171(1)(b) consideration of alternative sites, routes or methods of undertaking the work is required:

- if 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.

71. KiwiRail has an interest in the land that forms the subject site is sufficient for operating the subject site as a railway yard. While the land is owned by the Crown, its stated purpose on the CFR is for 'railway' and it is administered by KiwiRail. I also do not consider it likely, particularly

²⁷ Page 11-3 PDP (Decision Version November 2017)

with the imposition of conditions, that the alteration to the designation will give rise to any significant adverse environmental effects.

72. As such, I do not consider there to be a need to consider alternative sites, routes or methods of undertaking the work.
73. In any case, Mr Hindrup has stated that it may be useful for the Panel to know if there are alternatives to the subject site that have a less sensitive receiving environment.²⁸ Given KiwiRail administers the land, it is contiguous with an existing rail yard and the North Island Main Trunk railway line and contains existing railway related buildings, KiwiRail considers it important that the subject site is retained for railway purposes, and as such KiwiRail seeks to include it within its designation.
74. Further, as is stated in the NoR, the designation process was preferred to the resource consent process due to the certainty this provides both to KiwiRail and to the surrounding community. Continuing to have a residential zoning on the land and not designating it may create unrealistic expectations that the subject site will be used for its residentially zoned purpose.²⁹

Reasonable Need for the Designation

75. Under Section 171(1)(c) consideration must be given as to whether the designation is reasonably necessary for achieving the objectives of the requiring authority.
76. As is outlined in the NoR, in general KiwiRail designated all of its railway lines and yards in District and Unitary Plans across New Zealand. This provides certainty both to KiwiRail as to how that land can be used to achieve its strategic objectives, as well as to the community, regardless of its underlying zone.
77. Mr Hindrup is of the opinion that due to the wide designated purpose, the designation is not completely justified or necessary, and that the scope of the designation could be narrowed to provide greater certainty of likely future effects³⁰.

²⁸ Paragraph 109 of the s42A Report

²⁹ Page 18 of the NoR

³⁰ Paragraph 114 of the s42A Report

78. My opinion is different:

- The NoR is not for a new designation, but to alter an existing designation with an existing purpose. In this instance, I consider it more appropriate to continue with that existing purpose and control effects through conditions (which are specific to the subject site). Changing the designated purpose has the potential to affect the entirety of the existing designation, as well as make the Kapiti Coast District Plan(s) inconsistent with other District and Unitary Plans across the country.
- Mr Hindrup has stated that as some activities are not suitable on the site, they could be excluded from the designation. To my mind, a more appropriate approach is to place conditions on the designation, so that future activities occur within the limits of those conditions.
- This provides sufficient flexibility to KiwiRail as well as certainty around the control of effects of any activities to the surrounding community. I also consider that controlling effects through conditions is better than listing specific activities, so that any unforeseen or unknown future activities which may arise, and that fall within the definition of railway purposes, are still captured.

Other Matters

79. Section 171(1)(d) allows for any other matter to be considered that is reasonably necessary in order to make a recommendation on the requirement. In this regard Mr Hindrup has noted the Outline Plan of Works process which applies to designated sites.³¹ He notes that this process *“offers protection against adverse effects”* but considers 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”*³².

80. To my mind, the Outline Plan of Works process is absolutely sound resource management practice. Outline Plan of Works are generally required to be submitted for projects where the detail of construction-related activities is not incorporated into the designation (which is applicable in this instance).

³¹ Ibid Paragraphs 119 to 123

³² Ibid Paragraphs 120 and 121

81. I consider the combination of the designation and outline plan of works process to be best practice for the subject site. The designation which is sought under the NoR clearly signals to the community that this railway land will be used for railway purposes (as opposed to its zoned purpose) and specific construction-related projects can be considered on a merits basis through the Outline Plan of Works process. Further, any Outline Plan of Works would need to be consistent with any conditions placed on the designation. As such, the process provides certainty, and effects from any construction (if it is to occur in future) will be appropriately managed.
82. Mr Hindrup also does not consider it *“good sustainable management to grant such a designation with no performance standards”* and to *“rely on the argument that the outline planning process will be the ‘safety net’ or ‘ambulance at the bottom of the cliff’³³”*.
83. In my experience, there are a number of designations included in District and Unitary Plan’s across New Zealand (including both the ODP and PDP) which are for ‘railway purposes’ (or similar such as ‘telecommunications purposes’, ‘state highway purposes’, ‘landfill purposes’ and the like), do not have conditions (or performance standards) attached to them, and utilise the outline plan of works process if and when construction takes place. Designations with a ‘wide envelope’ are typical resource management practice, and appropriately provide for the public work which the requiring authority designates the land to be used for.
84. Overall, in this instance, similar to Mr Hindrup, I consider it appropriate to include conditions on the designation in relation to the subject site, in order to ensure that effects on the adjoining and surrounding properties are appropriately managed.
85. I do not consider there to be any other matter which needs to be considered for this NoR.

Part 2 Assessment

86. Mr Hindrup has made comment on Part 2 of the Act, and how that should be considered in relation to a NoR.³⁴ I have discussed this with KiwiRail's legal counsel, and remain of the view that Part 2 can be considered for a Notice of Requirement.

³³ Paragraph 122 of the s42A Report

³⁴ Ibid Paragraphs 124 to 128

87. Mr Hindrup has identified the relevant provisions of Part 2 which are applicable to this NoR.³⁵ I have reviewed these and do not consider there to be any other Part 2 provisions which should be addressed.
88. It is my view that, with the imposition of conditions, the NoR is consistent with the relevant provisions outlined in Part 2 of the Act.

Recommendation Sought

89. Overall, I concur with Mr Hindrup's recommendation³⁶ that the Panel can confirm the NoR for railway purposes subject to conditions. It is my view that this confirmation must be under Section 171(2) of the Act.
90. The only instances of disagreement with Mr Hindrup's recommendation are to the wording of Conditions 1, 2 and 4 as outlined in the s42A Report. These disagreements are not that the conditions are unnecessary, as I consider they are, but relate to when the provisions of each condition should be applied. To my mind, those remain the only outstanding matters of contention for this NoR. For clarity, I have provided in Appendix A, a 'clean' version and a marked up version of the conditions I consider are appropriate to be placed on the designation as it relates to the subject site through this NoR.



Tom Anderson

Incite

19 January 2018

³⁵ Paragraphs 129 to 138 of the s42A Report

³⁶ Paragraph 147 of the s42A Report

Appendix A

Conditions proposed to be placed on Designation D0301 in the Operative and Proposed Kapiti Coast District Plan (marked up)

1. ~~Any Outline Plan submitted under Section 176A of the Resource Management Act 1991 to undertake works on the designation shall be accompanied by~~ In the event that either:

- an Outline Plan of Works for Lot 4 and/or Lot 5 Block III Deposited Plan 2009 is submitted under section 176A of the Resource Management Act 1991; or
- an activity being undertaken on Lot 4 and/or Lot 5 Block III Deposited Plan 2009 repeatedly facilitates (i.e. on more than five consecutive days) more than the equivalent of 20 vehicle movements per day on those sites;

the requiring authority shall prepare and submit a Landscape Planting Plan to the Compliance Monitoring Officer. The Landscape Planting Plan shall specifically address the screening of and potential loss of privacy effects from the proposed activity on Lot 4 Block III Deposited Plan 2009 from the adjacent properties at 24, 26A, 26B, 28, 28A and 32 Tilley Road, Paekakariki. The Landscape Planting Plan shall include, but not be limited to:

- 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 with 24, 26B and 28 Tilley Road, to a depth of 5m from that boundary, and tied into the existing vegetation in the western corner of that lot (where it adjoins 28 Tilley Road);
- 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.

- 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 submitted to the Compliance Monitoring Officer.

2. Not less than 30 days from the date on which this designation amendment is approved, in the event that either:

- an Outline Plan of Works for Lots 4, 5, 6, 7 or 8 Block III Deposited Plan 2009 is submitted under section 176A of the Resource Management Act 1991; or
- any of Lots 4, 5, 6, 7 or 8 Block III Deposited Plan 2009 is to be used:
 - (a) between 2200h and 0700h more than once a week (other than by personnel and/or light vehicles); and/or
 - (b) for manufacturing or fabrication activities; and/or
 - (c) for new rail tracks or rail sidings;

the requiring authority shall submit ~~for certification with~~ to the Compliance Manager, Kāpiti Coast District Council, a Noise Management Plan prepared by 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~~ for 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

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 reformation of the ~~access into the site~~ existing vehicle access to a minimum width of 7.5 metres. The length of the existing KiwiRail access road between Tilley Road and the gated yard must also be re-formed as a sealed route. The works must be completed within 6 months of this condition being triggered.

Note: A heavy trade vehicle has the definition prescribed in the Proposed District Plan, being a vehicle with a gross mass exceeding 3,500kg.

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.*

Conditions proposed to be placed on Designation D0301 in the Operative and Proposed Kapiti Coast District Plan (clean)

1. *In the event that either:*

- *an Outline Plan of Works for Lot 4 and/or Lot 5 Block III Deposited Plan 2009 is submitted under section 176A of the Resource Management Act 1991; or*
- *an activity being undertaken on Lot 4 and/or Lot 5 Block III Deposited Plan 2009 repeatedly facilitates (i.e. on more than five consecutive days) more than the equivalent of 20 vehicle movements per day on those sites;*

the requiring authority shall prepare and submit a Landscape Planting Plan to the Compliance Monitoring Officer. The Landscape Planting Plan shall specifically address the screening of Lot 4 Block III Deposited Plan 2009 from the adjacent properties at 24, 26A, 26B, 28, 28A and 32 Tilley Road, Paekakariki. The Landscape Planting 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 boundary of Lot 4 Block III Deposited Plan 2009 with 24, 26B and 28 Tilley Road, to a depth of 5m from that boundary, and tied into the existing vegetation in the western corner of that lot (where it adjoins 28 Tilley Road);*
- (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.*

The planting is to be completed within the next planting season after the Landscape Planting Plan is submitted to the Compliance Monitoring Officer.

2. In the event that either:

- an Outline Plan of Works for Lots 4, 5, 6, 7 or 8 Block III Deposited Plan 2009 is submitted under section 176A of the Resource Management Act 1991; or
- any of Lots 4, 5, 6, 7 or 8 Block III Deposited Plan 2009 is to be used:
 - (a) between 2200h and 0700h more than once a week (other than by personnel and/or light vehicles); and/or
 - (b) for manufacturing or fabrication activities; and/or
 - (c) for new rail tracks or rail sidings;

the requiring authority shall submit to the Compliance Manager, Kāpiti Coast District Council, a Noise Management Plan prepared by 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 'target' for 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 to be taken to ensure the 'best practicable 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 as far as practicable.

- 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. 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 applicable conditions. Amendments must be submitted to the Compliance Manager, Kāpiti Coast District Council at least five working days prior to the proposed changes taking effect (or a shorter timeframe if agreed).*
- 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. In the event that an activity being undertaken on any of Lots 4, 5, 6, 7 and 8 Block III Deposited Plan 2009 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 reformation of the existing vehicle crossing to a minimum width of 7.5 metres.*

The length of the existing KiwiRail access road between Tilley Road and the gated yard must also be re-formed as a sealed route. The works must be completed within 6 months of this condition being triggered.

Note: A heavy trade vehicle has the definition prescribed in the Proposed District Plan, being a vehicle with a gross mass exceeding 3,500kg.

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.*