

IN THE MATTER

of the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER

of a notice of requirement for a designation by KiwiRail Holdings Limited ("**KiwiRail**") for the Palmerston North Regional Freight Hub under section 168 of the RMA

**LEGAL SUBMISSIONS ON BEHALF OF
KIWIRAIL HOLDINGS LIMITED**

6 AUGUST 2021

**Russell
McAugh**

A A Arthur-Young / L J Rapley
P +64 9 367 8000
F +64 9 367 8163
PO Box 8
DX CX10085
Auckland

MAY IT PLEASE THE HEARING PANEL:**1. INTRODUCTION**

- 1.1 KiwiRail has lodged a Notice of Requirement ("**NoR**") for the construction and operation of a Regional Freight Hub near Palmerston North ("**Freight Hub**" or "**Project**").
- 1.2 The Freight Hub is a critical piece of infrastructure that is required to meet the needs of future generations. The demand for freight movements is growing, and the way freight is being handled is changing. And as a country, there is an ever-increasing need for us to reduce our carbon emissions. In our submission, the Freight Hub is a sustainable transport solution that is necessary to meet these demands and adapt to our changing environment.
- 1.3 The delivery of the Freight Hub will have significant benefits for the Manawatū-Whanganui region and "New Zealand Inc". Benefits are wide ranging, and include employment opportunities and improvements to the safety of our transport network, and increasing the resilience of the regional and national freight transport system over time.
- 1.4 KiwiRail has long been a part of the Palmerston North community and the wider Manawatū-Whanganui region. The proposed site for the Freight Hub, located between Bunnythorpe and Palmerston North Airport ("**Site**"), was carefully selected following an assessment of alternatives process. The Site is largely rural, relatively undeveloped, and in a highly modified environment.
- 1.5 KiwiRail recognises that a project of this nature and scale will be a change for the local community. There will be adverse effects associated with its construction and operation.
- 1.6 KiwiRail has worked hard with its consultant team to design the Freight Hub in a way that manages the effects on the environment and the proposal that is before the Panel for consideration represents KiwiRail's best efforts to balance all the competing interests that inevitably come to the fore in any large infrastructure project. KiwiRail is also committed to continuing to work with key stakeholders and the community throughout the life of the Project.
- 1.7 The effects of the Freight Hub have been carefully assessed by KiwiRail's team of independent experts. The NoR is supported by a comprehensive effects management package, which appropriately addresses the actual and potential effects of allowing the NoR.

- 1.8 In our submission, the NoR satisfies the statutory test in section 171(1) of the RMA and the Panel should recommend that the NoR be confirmed on the conditions as attached to Ms Bell's evidence at **Appendix 1 ("Proposed Conditions")**.

Evidence to be presented

- 1.9 Recognising the complexity and importance of the Project, KiwiRail will call 16 witnesses. Their combined view is that the Freight Hub is necessary, will have significant benefits, will avoid, remedy or mitigate any adverse effects on the environment, and will promote the sustainable management purpose of the RMA.

- 1.10 The witnesses to be called by KiwiRail are:

- (a) **Todd Moyle**, KiwiRail's Chief Operations Officer and Deputy Chief Executive.
- (b) **Olivia Poulsen**, KiwiRail's Executive General Manager of Property.
- (c) **Fraser Colegrave**, Economist and Managing Director of Insight Economics.
- (d) **Daniel Parker**, Archaeologist and Director of inSite Archaeology Limited.
- (e) **Richard Paling**, Independent Transport and Economics Consultant at Richard Paling Consulting.
- (f) **Andrew Mott**, Principal Engineering Geologist at Stantec New Zealand.
- (g) **Michael Skelton**, Senior Transportation Engineer at Stantec New Zealand.
- (h) **Mark Georgeson**, Transport Engineer and Transport Operations leader at Stantec New Zealand.
- (i) **Allan Leahy**, Principal - Growth Planning at Auckland Council Healthy Waters.
- (j) **Kirsty Austin**, Environmental Planner specialising in Social Impact Assessment.
- (k) **Jeremy Garrett-Walker**, Ecologist at Boffa Miskell Limited.

- (l) **Paul Heveldt**, National Environmental Science Specialist at Stantec New Zealand.
- (m) **John McKensey**, Executive Engineer at LDP Ltd (Independent Electrical Illumination Engineers).
- (n) **Stephen Chiles**, Acoustics Engineer at Chiles Limited.
- (o) **Lisa Rimmer**, Principal Landscape Architect at Isthmus.
- (p) **Karen Bell**, Principal Planner and Technical Specialist at Stantec New Zealand.

Structure of submissions

1.11 The remainder of these submissions are structured as follows:

- (a) the importance of the rail network;
- (b) the NoR and approvals sought;
- (c) the legal test for consideration of the NoR;
- (d) assessment of effects;
- (e) specific legal matters raised; and
- (f) proposed conclusions.

2. THE IMPORTANCE OF THE RAIL NETWORK

2.1 KiwiRail's national railway network is an asset of national and regional importance. Rail is fundamental to the safe and efficient movement of people and goods throughout New Zealand. As Mr Moyle explains, its importance to the New Zealand economy is demonstrated by the significant volume of freight and passengers it carries every year.¹

2.2 Heavy rail is critical infrastructure that has a fundamental role in New Zealand's supply chain, with the ability to safely transport significant volumes of freight. In order to be able to operate the network and move freight efficiently and safely across the country, KiwiRail's network is comprised of the necessary infrastructure including rail tracks, container terminals, and freight yards.

¹ Evidence of Todd Moyle at [4.2].

2.3 The use of rail for transporting freight (and passengers) has a range of benefits, which are recognised in Mr Moyle and Mr Paling's evidence.² These benefits are significant and include:

- (a) Sustainability - Transporting a tonne of freight by rail generates 70% fewer emissions than road transport³ and is therefore a more climate friendly method of distributing goods throughout New Zealand.
- (b) Safety and wellbeing - Transporting more goods by rail has the benefit of enabling a reduction in the level of heavy vehicles on our road network thereby reducing congestion and providing a safer road network for other users.⁴ This also assists in reducing the road toll and contributes to the health and wellbeing of New Zealanders.
- (c) Connectivity – The use of rail for the movement of freight provides a critical connection between primary producers and the nation's ports.⁵ In that regard, rail is an integral part of the freight supply chain and supports distribution of goods between key transport nodes.
- (d) Resilience – Rail provides an alternative method of transport for distributors and exporters. This can be a major benefit in the event of congestion on the road network or in emergency situations (such as a natural disaster) which disrupt the road network.⁶

2.4 The benefits of rail to the economy have been estimated (as at 2020) to be in the order of \$1.7 – 2.1 billion.⁷ The importance and value of the rail network has been recognised by the Government's investment in rail and acknowledged in a range of strategic documents, including the New Zealand Rail Plan 2021 which provides that:⁸

Rail enables access and mobility, transporting people and goods to where they need to go, supporting productivity and business growth, reducing emissions, congestion and road deaths, and strengthening social and cultural connections between communities. It is a key part of a multi-modal transport system for both freight and passengers in New Zealand.

² Evidence of Todd Moyle at [4.3] and [4.5].

³ Evidence of Todd Moyle at [4.3].

⁴ Evidence of Todd Moyle at [4.5].

⁵ Evidence of Todd Moyle at [4.6].

⁶ Evidence of Richard Paling at [4.5].

⁷ Evidence of Richard Paling at [4.3] referring to the Value of Rail in New Zealand Report.

⁸ New Zealand Rail Plan 2021, at page 9.

- 2.5 KiwiRail's national railway network is a vital element of New Zealand's infrastructure that is critical to the movement of freight and passengers throughout the country.

3. THE FREIGHT HUB PROJECT

Palmerston North's strategic role

- 3.1 Palmerston North is a key freight distribution centre and plays a critical role in New Zealand's supply chain. Palmerston North's role as a logistics hub is supported by its location in the lower North Island and the fact it is at a transport crossroads where state highways and rail corridors intersect.⁹ The Manawatū-Whanganui Region is also an important producer of primary products, many of which are transported to other critical ports by rail for export.¹⁰
- 3.2 KiwiRail has been a part of the Palmerston North community for a long time. It currently operates an existing freight yard on Tremaine Avenue ("**Existing Freight Yard**"), which is an important part of the logistics chain in the Palmerston North area and in the lower North Island. Mr Paling's evidence explains the existing freight traffic through the Existing Freight Yard.¹¹ Looking ahead, he identifies that freight traffic in the region is expected to grow substantially by early 2050.¹² These projections do not take into account the potential for a greater share of goods to be transported by rail as a result of mode shift, for example, which means there is the potential for growth to be even higher than projected.¹³
- 3.3 Having been established in the 1960s, KiwiRail's current facilities in Palmerston North are old and fragmented. Over time, residential development has also intensified around the Existing Freight Yard. As a result, the Existing Freight Yard is constrained in its ability to expand and accommodate future demand in an efficient manner.¹⁴
- 3.4 Following an analysis of its options, KiwiRail considered that it needed to develop a new intermodal freight hub near Palmerston North to efficiently accommodate freight growth over time. The strategic location of Palmerston North for the movement of freight means that improved facilities in this location

⁹ Evidence of Richard Paling at [4.10].

¹⁰ Evidence of Richard Paling at [4.11].

¹¹ Evidence of Richard Paling at section 5.

¹² Evidence of Richard Paling at [6.8].

¹³ Evidence of Richard Paling at [6.9].

¹⁴ Evidence of Todd Moyle at [1.3].

have the potential to play a critical role in improving the supply chain and enhancing economic development in the wider region.¹⁵

- 3.5 The Government granted KiwiRail funding to plan for a new intermodal freight hub near Palmerston North through the Provincial Growth Fund in 2019. This funding was the catalyst for the development of the Master Plan for the Freight Hub in Palmerston North.¹⁶
- 3.6 As Ms Poulsen explains in her evidence, KiwiRail developed a master plan (a common tool used by major infrastructure providers) for the development of intermodal freight hubs in New Zealand. This was intended to bring together key operational requirements with spatial requirements so that it could be used as a guide for the development and redevelopment of its landholdings across the country.¹⁷ The Master Plan was used by KiwiRail to identify an appropriate location for the Freight Hub along the North Island Main Trunk line ("**NIMT**") as part of its assessment of alternatives process (which is discussed in further detail below).¹⁸

Key components of the Freight Hub

- 3.7 Mr Moyle explains that the Freight Hub is underpinned by the concept of "hubbing" which involves locating rail tracks with critical freight handling and storage facilities to improve the efficiencies in the movement of freight by rail.¹⁹ The Freight Hub is comprised of the following key components:
- (a) facilities for the marshalling of trains (including arrival and departure tracks as well as a marshalling yard);
 - (b) maintenance facilities for locomotive and wagon maintenance;
 - (c) rail operation and train control centre;
 - (d) container terminals which are directly serviced by rail to enable simultaneous loading of containers into storage or direct to road;
 - (e) rail serviced freight forwarding and distribution facilities; and
 - (f) speciality rail serviced facilities for log handling and bulk liquid storage facilities.

¹⁵ Evidence of Richard Paling at [4.13].

¹⁶ Evidence of Todd Moyle at [6.5].

¹⁷ Evidence of Olivia Poulsen at [4.2].

¹⁸ Evidence of Olivia Poulsen at [4.5].

¹⁹ Evidence of Todd Moyle at [7.2].

- 3.8 The Freight Hub also includes the necessary supporting infrastructure to ensure its safe and efficient operation such as roading access which is necessary to enable the transfer of freight from rail to road, and stormwater management facilities. As explained in Mr Skelton's evidence, each of the elements of the Freight Hub have been carefully considered through the concept design phase having regard to KiwiRail's operational requirements as well as measures to appropriately manage adverse effects.²⁰ The Freight Hub proposal that is before the Panel includes a comprehensive effects management package, including substantial noise and visual mitigation measures.
- 3.9 To ensure that the Freight Hub can meet future freight demands, it has been designed with a long-term horizon in mind and in light of the changes in the way that freight is being handled. In particular, improved facilities for the marshalling of trains will enable the introduction of trains up to 1,500m in length and expanded freight handling facilities will provide for the effective transfer of goods between road and rail. These facilities will result in a range of benefits, including improvements in the efficiency of the supply chain, a reduction in the costs of transporting goods by rail, and improvements in the reliability of transporting goods by rail.²¹
- 3.10 In developing the Freight Hub proposal, KiwiRail has worked with key stakeholders and has been involved in an ongoing conversation with the wider community. As Ms Poulsen explains in her evidence, KiwiRail has undertaken a multi-faceted approach to engagement which occurred through various phases of the project since 2019.²² KiwiRail is committed to continuing to work with key stakeholders and the community throughout the life of this project.

4. THE NOTICE OF REQUIREMENT AND APPROVALS SOUGHT

4.1 Section 168(2) of the RMA provides:

(2) A requiring authority for the purposes approved under section 167 may at any time give notice in the prescribed form to a territorial authority of its requirement for a designation—

(a) for a project or work; or

²⁰ Evidence of Michael Skelton at section 4.

²¹ Evidence of Richard Paling at [7.9].

²² Evidence of Olivia Poulsen at [6.3].

- (b) in respect of any land, water, subsoil, or airspace where a restriction is reasonably necessary for the safe or efficient functioning or operation of such a project or work.

4.2 Pursuant to section 168(2) of the RMA, KiwiRail has given notice to Palmerston North City Council ("**Council**") of a requirement for a designation for the construction and operation of the Freight Hub.

4.3 Submitters have raised questions as to the scope of KiwiRail's ability to designate land for some of the activities within the Freight Hub.²³ To lawfully give notice of a requirement under section 168(2) of the RMA, the following limbs must be satisfied in this case:

- (a) the Freight Hub is a project or work;
- (b) KiwiRail has given notice in the prescribed form; and
- (c) the Freight Hub is within the scope of KiwiRail's approval as a requiring authority.

4.4 There is no dispute as to the matters in (a) and (b) and in our submission these are clearly satisfied. We therefore focus on the matter in (c), having been raised in submissions.

4.5 Section 167(3) of the RMA provides that the Minister for the Environment can approve network utility operators as requiring authorities, by *Gazette* notice, for the purposes of a particular network utility operation. A network utility operator includes a person who:²⁴

- (f) constructs, operates, or proposes to construct or operate, a road or railway line; [...]

4.6 KiwiRail applied to become a requiring authority in November 2012. The requiring authority approval application provided that KiwiRail was seeking approval for the following network utility operation:²⁵

[...] the construction, operation and proposed construction and operation, of any railway line currently owned by NZRC and any future railway line to be part of that network.

NZRC owns 4,000km of track and has rights to use 18,000 hectares of land. From 31 December 2012, the KHL Group will

²³ Submission 45; Submission 47; Submission 58.

²⁴ RMA, section 166(f).

²⁵ Approval Application, dated 29 November 2012, at [8] and [9].

own the tracks and **all other railway infrastructure assets**, and have rights to use the underlying land. It will become responsible for the nationwide **operation, construction, maintenance, improvement, replacement and extension of the existing and future railway system (including lines, rail yards, station precincts and off-rail sites, and route protection corridors)**.

[Emphasis added]

4.7 The application also provided that:²⁶

On a day to day basis, the works needed to be undertaken by KiwiRail to enhance the bulk of KiwiRail's infrastructure are more about upgrading the existing track and equipment needed to run trains, accommodate passengers, maintain the railway and load and unload freight. This can range from works to provide for track slews and realignments, maintenance, and upgrading, **to providing facilities for modal transfer (yards and sidings)**. The majority of this day to day work relies upon the Outline Plan of Works process with most territorial authorities in New Zealand, as the work falls within existing designations.

[Emphasis added]

4.8 The Minister approved KiwiRail as a requiring authority by *Gazette* notice dated 14 March 2013. The *Gazette* notice provides:²⁷

Approval as a requiring authority - KiwiRail Holdings Limited is hereby approved as a requiring authority under section 167 of the Resource Management Act 1991, for its network utility operation being the construction, operation, maintenance, replacement, upgrading, improvement and extension of its railway line.

4.9 The scope of KiwiRail's powers as a requiring authority stems from its *Gazette* notice (which was approved on the basis of KiwiRail's application) and the empowering provisions in sections 166 and 167 of the RMA. In approving a requiring authority, the Minister must be satisfied that the approval is appropriate for the purposes of carrying on the network utility operation and the applicant is likely to satisfactorily carry out all responsibilities (including financial responsibilities) of a requiring authority under the RMA.²⁸ KiwiRail has, and accepts, financial responsibility for its network utility operation and the designations that it holds for those purposes. It is the

²⁶ Approval Application, dated 29 November 2012, at [32].

²⁷ *Gazette* Notice, dated 14 March 2013.

²⁸ RMA, section 167(4).

existence of this financial responsibility that is important.²⁹ The Minister, in approving KiwiRail as a requiring authority, accepted that KiwiRail had the necessary responsibilities which includes responsibility for all works necessary for the operation of its railway network.

4.10 Turning to section 166 of the RMA, "railway line" is not defined in the RMA. Some submitters have contended that this term should be given the narrow definition of "railway line" in the Railways Act 2005 ("**Railways Act**").³⁰ We respectfully disagree.

4.11 Section 166 of the RMA does not refer to the definition of "railway line" in the Railways Act (or any other relevant legislation), and never has. This is despite the definition of network utility operator containing references to various other statutes and their corresponding definitions.³¹ In our view, the absence of a definition of "railway line" in the RMA was deliberate given that the New Zealand Railways Corporation Act 1981 (in force at the time the RMA was drafted) contained a definition of "railway line". Had Parliament intended to limit the scope of the network utility operation for rail to a particular definition, it would have made this express in the RMA.

²⁹ *Waitaki District Council v Waitaki District Council* [2007] NZRMA 68 at [31].

³⁰ Two submitters, Dr Fox and Dr Whittle, have raised this through a memorandum of counsel, dated 8 July 2021. Railway line is defined in section 4 of the Railways Act, as: **railway line—**

- (a) means a single rail or set of rails, having a gauge of 550 mm or greater between them, laid for the purposes of transporting people or goods by rail; and
- (b) includes—
 - (i) sleepers, associated formation and ballast, tunnels, and bridges; and
 - (ii) in relation to a single rail or set of rails that are laid on a road for the purposes of 1 or more light rail vehicles,—
 - (A) any area between the rails; and
 - (B) the area that extends 500 mm outside the extremity of any light rail vehicle being used on that single rail or set of rails; and
 - (iii) a set of rails, having a gauge of less than 550 mm between them, that is designated as a railway line in regulations made under section 59(l); and
 - (iv) except as provided in subparagraph (ii), any area within 5 m of a single rail or within 5 m of a line drawn midway between a set of rails; but
- (c) excludes—
 - (i) a railway line that is part of a railway used as an amusement device;
 - (ii) a railway line excluded by regulations made under section 59(m);
 - (iii) a railway line that exclusively serves private cable cars

³¹ For example section 166 defines an electricity operator or electricity distributor "as defined in section 2 of the Electricity Act 1992 for the purpose of line function services as defined in that section" and an airport authority "as defined by the Airport Authorities Act 1966 for the purposes of operating an airport as defined by that Act".

- 4.12 Under section 167 of the RMA, the Minister has broad powers to grant a requiring authority status to a network utility operator on such terms and conditions as he/she sees fit.³² Despite these broad powers, the Minister did not limit the definition of "railway line" in KiwiRail's *Gazette* notice to the definition in the Railways Act. This is also despite it being common for *Gazette* notices for requiring authorities to refer to specific legislative definitions where it is intended to be confined to a specific power or limited to a definition in an enactment.³³
- 4.13 In our submission, the phrase "railway line" should be interpreted in light of the preceding text in the *Gazette* notice which includes the "operation" as well as the "improvement and expansion" of the "railway line". As railway lines exist for the transit of freight and passengers, the marshalling of trains as well as loading, transit and unloading of freight are all clearly necessary for *operation* of KiwiRail's railway tracks.
- 4.14 The express reference in the *Gazette* notice to "upgrading, improvement and expansion" also envisages that KiwiRail can undertake works to alter and / or change the railway corridor (and the activities that are necessary for its operation).
- 4.15 Without rail infrastructure like rail yards, container terminals, and freight loading facilities, KiwiRail would not be able to "operate" the railway tracks. In our submission, it would be an unduly narrow approach to interpret KiwiRail's requiring authority powers as being confined to mean KiwiRail could only give notice of works relating simply to the management of "tracks".
- 4.16 This interpretation is, in our submission, consistent with the legislative purpose of the provisions of the RMA in allowing network utility operators to become requiring authorities. That purpose is to allow particular entities to carry out works via a designation process that are generally services which are considered essential to a functioning society (for example, the supply of water, electricity and the provision of transport via roads and rail). Taking a purposive approach, it is appropriate and necessary for requiring authorities have the ability to designate land for works that are necessary to achieve their approved functions. In the context of the rail corridor, this would clearly include

³² *Malvern Hills Protection Society Inc v Selwyn District Council* C105/07 at [17].

³³ For example, Queenstown Airport Corporation's *Gazette* notice has an interpretation section which provides that in the notice "unless the context otherwise requires, "airport" has the same meaning given to that term by section 2 of the Airport Authorities Act 1966.

infrastructure and activities to support the movement of freight and passengers on railway tracks.

- 4.17 All of the activities within the Freight Hub are directly serviced by rail. These activities are a necessary and integral part of the rail corridor as without them, KiwiRail's railway could not be used as intended (ie as a method of transporting freight by rail). The nature of the activities that will be authorised through the designation for the Freight Hub are not unique to this application; they are common activities that are undertaken at KiwiRail's yards throughout the country. This is reflected in the range of designations KiwiRail holds around the country.
- 4.18 The Freight Hub is clearly within the scope of KiwiRail's powers as a requiring authority to designate land for the operation of its railway line.

The designation process

- 4.19 The designation process sets an important framework for the assessment of the NoR and the effects on the environment. The designation process is two-fold. First, the requiring authority gives notice of its requirement for a designation to the relevant district council(s) (as outlined above). It is common at this stage for the NoR to be prepared on the basis of a preliminary design as detailed design has not yet been undertaken. As the Environment Court has acknowledged "many cases before the Court are prepared on the basis that the final design is not known".³⁴
- 4.20 Second, once a designation is confirmed, the details of the proposed works are then provided to the district council through an outline plan (unless the requirement for an outline plan is waived).³⁵ As observed by the Environment Court, the designation process recognises the need for flexibility.³⁶
- 4.21 Section 176A(3) of the RMA provides that an Outline Plan must show:
- (a) the height, shape, and bulk of the works;
 - (b) the location on the site of the works;
 - (c) the likely finished contour of the site;
 - (d) the vehicular access, circulation, and provision for parking;

³⁴ *Sustainable Matata v Bay of Plenty Regional Council* [2015] NZEnvC 90 at [45].

³⁵ RMA, section 176A.

³⁶ *Sustainable Matata v Bay of Plenty Regional Council* [2015] NZEnvC 90 at [46].

- (e) the landscaping proposed; and
- (f) any other matters to avoid, remedy, or mitigate any adverse effects on the environment.

4.22 In our submission, the scheme of Part 8 of RMA, most notably the two-stage designation process, is a critical distinction between an NoR and a resource consent application under the RMA. It recognises that for NoRs, a number of features may be subject to change at the detailed design phase and that the NoR phase is not the only opportunity for the effects of the designation to be considered by Council. The Outline Plan mechanism provides an appropriate vehicle to further address effects of a designation once detailed design has been undertaken.

4.23 The Council Reporting Planners are concerned that the Freight Hub has only been developed to a concept design stage and consider that KiwiRail's "strategy" in this regard has made it difficult for the Council to reach conclusions on the effects of the NoR.³⁷ We respectfully disagree. Developing a concept design for the Freight Hub to support the NoR is an appropriate and common approach in the context of a NoR.

4.24 It is accepted that, at the NoR stage, effects need to be considered and an appropriate level of information needs to be provided on the effects that is commensurate to the scale and potential effects of the NoR.³⁸ In our submission, the NoR and assessment of effects prepared by KiwiRail achieves this.

Other approvals required

4.25 Other approvals are required to enable the construction and operation of the Freight Hub, including regional resource consents.³⁹ KiwiRail has not sought these concurrently with the NoR and there is no requirement under the RMA to do so.

4.26 KiwiRail will also seek an alteration to the NIMT Designation⁴⁰ in the Palmerston North City District Plan ("**District Plan**") to enable the realignment of the NIMT to the west of its current alignment. As outlined in Mr Skelton's evidence, the existing rail corridor where the NIMT is currently located will be

³⁷ Section 42A Report at [50].

³⁸ *Sustainable Matata v Bay of Plenty Regional Council* [2015] NZEnvC 90 at [47].

³⁹ Regional consents from Horizons Regional Council in relation to structures in streams, diversions, stormwater discharge and earthworks.

⁴⁰ Designation 3 – *Railway purposes* in the Palmerston North City District Plan.

used (as part of this application) to develop the bunds and barriers required to manage the noise effects from the Freight Hub as well as for planting.⁴¹ The realignment of the NIMT has a range of benefits including from a noise perspective as it will shift the existing railway tracks further away from the existing dwellings along Sangsters Road.⁴² In our submission, it is appropriate for the NIMT to be relocated as part of a separate alteration to the existing designation.

- 4.27 For the present purposes, in our submission the Panel's consideration of the application should remain focussed on the effects of allowing this NoR. As set out below, section 171(1) of the RMA makes this explicit, by requiring the Panel to consider the effects on the environment of allowing *the requirement*.

5. CONSIDERATION OF A NOTICE OF REQUIREMENT – THE LEGAL TEST

- 5.1 The Recommendation on the NoR is governed by section 171(1) of the RMA. This provision will be well known to the Panel, but is repeated here to assist:

171 Recommendation by territorial authority

- (1A) When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.
- (1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, 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

⁴¹ Evidence of Michael Skelton at [4.6].

⁴² Evidence of Karen Bell at [6.15] and [7.14(c)].

- (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.

[...]

5.2 Section 171(1) is clear that the Panel must consider the NoR and any submissions received. A total of 98 submissions were received, many of which were in support. The majority of submissions were in opposition and KiwiRail's expert team has carefully consider the matters raised in those submissions.

5.3 In summary, when considering the NoR and any submissions received, the Panel must, subject to Part 2, consider the effects on the environment of allowing the requirement having particular regard to:⁴³

- (a) any relevant planning provisions;
- (b) whether adequate consideration has been given to alternative options (where the requiring authority does not have a sufficient interest in the land, or it is likely that the work will have a significant adverse effect on the environment);
- (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 Panel considers reasonably necessary in order to make a recommendation.

5.4 While the requirement to "have *particular* regard to" the matters in section 171(1)(a) to (d) conveys a stronger meaning the merely "to have regard to", it does not mean "give effect to".⁴⁴ The High Court has confirmed that it essentially means to take the matter into account, while recognising that it is important to the decision and so it needs to be carefully considered and weighed.⁴⁵ Each relevant matter must be considered separately and

⁴³ RMA, section 171(1).

⁴⁴ *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 at [60] and [64].

⁴⁵ *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 at [63], [67] – [68].

specifically from other relevant considerations.⁴⁶ The strength of an individual matter and the weight to be given to it will depend on the evidence and importance in respect of a particular case.⁴⁷

- 5.5 The application of each of these criteria in the context of the NoR are addressed in turn below.

Effects on the environment – section 171(1)

- 5.6 Section 171 requires the Panel to consider the "effects on the environment" of allowing the NoR. This has been characterised by the High Court as the "focal point" of the assessment under section 171(1).⁴⁸ While this wording is slightly different from section 104 (which applies to the assessment of applications for resource consents), the central focus under both provisions is effects.⁴⁹ The Environment Court has observed:⁵⁰

Section 171 uses the words *effects on the environment* compared to 104 which refers to *any actual or potential effects on the environment*. We cannot see any distinction between the wording. Both deal with effects under s 3, which defines effects in the widest terms. It includes positive and negative effects. Environment is also defined in s 2 in the widest terms, and includes communities and people, social, economic aesthetic and cultural conditions. The environment includes that which lawfully exists and that which can be established.

- 5.7 Case law on the assessment of effects, particularly in the context of section 104, has led to a layered analysis, starting with an assessment of the existing environment, then a consideration of the plausible future environment, a discretion to disregard effects forming part of the "permitted baseline", and

⁴⁶ *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 at [69] – [78].

⁴⁷ *North Eastern Investments Ltd v Auckland Transport* [2016] NZEnvC 73 at [51] referring to *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991.

⁴⁸ *Queenstown Airport Corp Ltd v Queenstown Lakes District Council* [2013] NZHC 2347 at [68].

⁴⁹ "Effect" is defined in section 3(1) as:

In this Act, unless the context otherwise requires, the term effect ... includes—

- (a) Any positive or adverse effect; and
- (b) Any temporary or permanent effect; and
- (c) Any past, present, or future effect; and
- (d) Any cumulative effect which arises over time or in combination with other effects—regardless of the scale, intensity, duration, or frequency of the effect, and also includes—
- (e) Any potential effect of high probability; and
- (f) Any potential effect of low probability which has a high potential impact.

⁵⁰ *North Eastern Investments Ltd v Auckland Transport* [2016] NZEnvC 73 at [43].

finally an assessment of the remaining effects.⁵¹ In our submission, it is appropriate to apply this same approach when considering the effects on the environment of allowing the NoR.

Receiving environment

- 5.8 The starting point for the assessment of effects is to consider the effects of the Freight Hub against the environment of the proposed location. This is a factual assessment of the current environment (both on and beyond the subject site) at the time of the application for the NoR, including all features and characteristics occurring on or around the Site.
- 5.9 The environment also includes the reasonably foreseeable future environment as it might be modified by the rights to carry out permitted activities under the District Plan and implementation of resource consents which have been granted and are likely to be implemented.⁵² The environment does not include the effects of resource consents that have not yet been obtained.⁵³
- 5.10 The existing environment for this NoR has been detailed by Ms Bell⁵⁴ and has been considered by the relevant KiwiRail experts in their evidence. By way of summary, the Site is relatively open and largely undeveloped. The land within the Site is characteristic of existing rural land use, with the majority of indigenous vegetation replaced by pasture and other exotic vegetation to allow farming.⁵⁵ There are two stream systems within the site which KiwiRail's experts consider have low ecological and natural character values.⁵⁶
- 5.11 From a planning perspective, approximately two thirds of the site is zoned Rural and the remainder is zoned North East Industrial Zone ("**NEIZ**").⁵⁷ KiwiRail also operates the NIMT which is authorised by an existing designation (Designation 3 in the District Plan for *Railway Purposes*).

⁵¹ For cases in the context of section 104 see *Rodney District Council v Eyres Eco-Park Limited* [2007] NZRMA 1 (HC) and *Queenstown-Lakes District Council v Hawthorn Estate Limited* [2006] 12 ELRNZ 299; [2006] NZRMA 424 (CA).

⁵² *Queenstown-Lakes District Council v Hawthorn Estate Limited* [2006] 12 ELRNZ 299; [2006] NZRMA 424 (CA) at [84].

⁵³ *Queenstown-Lakes District Council v Hawthorn Estate Limited* [2006] 12 ELRNZ 299; [2006] NZRMA 424 (CA) at [84].

⁵⁴ Evidence of Karen Bell at section 5.

⁵⁵ Evidence of Jeremy Garrett-Walker at [4.2]; Evidence of Lisa Rimmer at [6.14].

⁵⁶ Evidence of Jeremy Garrett-Walker at [7.9] and [7.10]; Evidence of Lisa Rimmer at [6.13].

⁵⁷ Evidence of Karen Bell at [5.10]. Ms Bell notes that a small area to the north is zoned as residential.

Permitted baseline

- 5.12 In assessing the effects of the Freight Hub, the Panel is also entitled (if it chooses) to disregard "permitted" adverse effects. The permitted baseline is a tool that allows any effects that are permitted as of right under the District Plan or through an existing resource consent/designation to be disregarded when assessing the effects of a particular proposal.⁵⁸ The permitted baseline has been accepted as applying to the assessment of designations.⁵⁹
- 5.13 Ms Bell considers that there are some adverse effects which can be disregarded through the application of the permitted baseline.⁶⁰ These effects relate to activities which are permitted in the NEIZ under the District Plan.⁶¹ The Council Reporting Planners do not consider that the permitted baseline should be applied in this context because the Freight Hub is at a different scale to the activities that are permitted in the NEIZ.⁶²
- 5.14 In our submission, it is open to, and appropriate for, the Panel to apply the permitted baseline insofar as there are effects which are permitted under the District Plan and are comparable to the activities proposed to be authorised by the NoR.
- 5.15 In the event that the Panel elects not to apply the permitted baseline, it is our submission that this does not have a material impact on the Panel's assessment of effects of the NoR. Ms Bell has confirmed that even if the permitted baseline is not applied in assessing effects, the effects of the Freight Hub can be appropriately managed through the Proposed Conditions.⁶³

Measures to address effects

- 5.16 The Panel must also consider the remaining effects of the NoR and any measures to avoid, remedy or mitigate those effects. The mitigation measures, including that proposed through conditions on the NoR, has been detailed in the evidence of KiwiRail's experts.

⁵⁸ *Nash v Queenstown Lakes District Council* [2015] NZHC 1041 at [64].

⁵⁹ *Beadle v Minister of Corrections* NZEnvC A074/02, 8 April 2002 at [1002].

⁶⁰ Section 92 Response dated 15 February 2021, Attachment 11 (planning). Ms Bell considers that the effects of 13000m² of building platform, the effects of the associated traffic generated by the permitted 13000m² floor area, and the visual effects of the permitted floor area at 9m tall.

⁶¹ District Plan, Rule 12A.4.1.

⁶² Section 42A Report at [178].

⁶³ Evidence of Karen Bell at [9.27].

5.17 In terms of managing the effects of the NoR, the RMA is not a "no effects" statute. The reality is that a project of this scale and nature will have adverse effects on the environment as it is simply not practicable to internalise all effects. As summarised by the High Court:⁶⁴

Effects will always be unavoidable for large-scale, linear projects and the Act does not purport to be a "no effects" statute.

5.18 Each adverse effect does not have to be avoided, remedied or mitigated to the extent that there is no effect remaining after mitigation. It is for the Panel to consider the effects of the NoR and reach a conclusion on the basis of the evidence whether these are sufficiently avoided, remedied or mitigated, in the context of the Project as a whole.⁶⁵

5.19 KiwiRail has comprehensively assessed the effects of the NoR. We provide a summary of the effects in section 6 below.

Relevant planning provisions – Section 171(1)(a)

5.20 Under section 171(1)(a) the Panel is required to consider the effects on the environment of allowing the requirement, having particular regard to any relevant provisions of:

- (a) a national policy statement;
- (b) the New Zealand Coastal Policy Statement;
- (c) a regional policy statement; and
- (d) any relevant plan or proposed plan.

5.21 Ms Bell has undertaken an assessment of the NoR against the relevant planning documents, being:⁶⁶

- (a) National Policy Statement on Electricity Transmission 2008;
- (b) National Policy Statement for Freshwater Management 2020 ("**NPS-FM**");
- (c) New Zealand Coastal Policy Statement 2010;
- (d) National Policy Statement on Urban Development 2020;

⁶⁴ *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2020] NZHC 3159 at [245].

⁶⁵ *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2020] NZHC 3159 at [245].

⁶⁶ Evidence of Karen Bell at Appendix 2.

- (e) Horizons Regional Policy Statement; and
- (f) District Plan.

- 5.22 Ms Bell has concluded that the Freight Hub, with Proposed Conditions, is consistent with the relevant policy statements and plans.⁶⁷ The Council Reporting Planners agree that generally, the Project is consent with relevant planning provisions that focus on enabling infrastructure, including the infrastructure objectives and policies in the Horizons One Plan and the District Plan.⁶⁸ However, they consider that the Project is inconsistent with some relevant provisions and recommend additional controls to seek alignment with the relevant provisions.⁶⁹
- 5.23 Notwithstanding KiwiRail's assessment that the NoR was already consistent with the relevant planning provisions,⁷⁰ a number of the additional measures sought by the Council's Reporting Planners have been incorporated into the Proposed Conditions attached to Ms Bell's evidence, including the imposition of noise limits. The extent to which the additional controls sought by the Council Reporting Planners are necessary has been addressed in the relevant expert evidence.
- 5.24 In our submission, it is unlikely that a project of this scale will ever be consistent with every provision in the relevant planning documents. Even if the Panel were to find that there was a degree of inconsistency with relevant planning instruments, this is not determinative of whether the NoR should be confirmed. As the Environment Court has recognised:⁷¹

It is not unusual for there to be a lack of direct policy support for a NoR. The planning instruments are not determinative of a NoR even though they are documents to which we are to have particular regard.

- 5.25 The planning documents as a whole support enabling infrastructure such as the Freight Hub and any adverse effects have been considered and addressed through the mitigation proposed and the Proposed Conditions.⁷² We submit that the NoR is consistent with the relevant planning instruments but in any case, should the Panel find to the contrary, this is only one of a number of matters that the Panel must consider in assessing the NoR.

⁶⁷ Evidence of Karen Bell at [8.11].

⁶⁸ Section 42A Report at [7].

⁶⁹ Section 42A Report at [8].

⁷⁰ AEE, page 127.

⁷¹ *Minister of Corrections v Otorohanga District Council* [2017] NZEnvC 213 at [155].

⁷² Evidence of Karen Bell at [9.16].

Consideration of alternatives – Section 171(1)(b)

- 5.26 The Panel must also consider whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if KiwiRail 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.
- 5.27 KiwiRail does not own all of the land on which the Freight Hub is proposed to be developed and does not have a sufficient interest in the land to undertake the works. KiwiRail therefore determined that an assessment of alternatives was required and, in our submission, undertook a comprehensive assessment.
- 5.28 The test in section 171(1)(b) is whether "adequate" consideration has been given to alternative sites, routes and methods of undertaking the work. The Environment Court has held that:⁷³

[...] adequate is a perfectly simple word and we have no doubt has been deliberately used in this context. It does not mean meticulous; It does not mean exhaustive; it means sufficient or satisfactory.

- 5.29 The focus of the Panel's inquiry as to whether adequate consideration has been given to alternatives is on the *process* undertaken by the requiring authority, not the outcome. In this regard, the Environment Court has held:⁷⁴

When determining whether alternatives have been adequately considered, the question before the Court is narrow. In essence the question is whether the decision was reached arbitrarily. The Court is limited to the process the authority undertook, rather than whether or not *all* alternatives were considered and whether the outcome was the *best* option.

- 5.30 What constitutes "adequate consideration" largely involves questions of fact rather than law. The High Court has considered that demonstrating adequate consideration of alternatives will depend on the circumstances of application, in particular the level of adverse effects⁷⁵ and the extent of private land affected by the designation.⁷⁶ The High Court has confirmed that section 171(1)(b) may require a more careful consideration of alternatives where there are more significant adverse effects of allowing the requirement.⁷⁷

⁷³ *North Eastern Investments Ltd v Auckland Transport* [2016] NZEnvC 73 at [62].

⁷⁴ *Sustainable Matata v Bay of Plenty Regional Council* [2015] NZEnvC 90 at [167].

⁷⁵ *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 at [140]-[142].

⁷⁶ *Queenstown Airport Corp Ltd v Queenstown Lakes District Council* [2013] NZHC 2347 at [121].

⁷⁷ *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 at [142].

5.31 KiwiRail has carried out an assessment of alternatives process which satisfies section 171(1)(b). The assessment of alternatives process is comprehensively documented in the Multi Criteria Analysis ("**MCA**") report and summarised in the evidence of Ms Poulsen and Ms Bell.⁷⁸ In summary, this involved three phases which were carefully undertaken over many months:

(a) Stage 1 (Site selection) - KiwiRail investigated a range of potential sites to determine the preferred site for the Freight Hub. The existing NIMT rail corridor was appropriately the focus for the identification of areas and nine potential site options were identified for the purpose of undertaking an MCA. This was subsequently reduced to a short list of three options through the process. KiwiRail engaged independent technical experts from a range of disciplines to assess each site option (both the long and short list of options) against a comprehensive set of criteria. As explained in Ms Poulsen's evidence, the evaluation criteria had significant breadth and depth to ensure that KiwiRail's decision was well informed.⁷⁹

A series of workshops were also held throughout the process and attended by technical experts, stakeholders and KiwiRail representatives. A decision conferencing technique was applied at the workshops to test the assessments and ensure that scores and weightings were tested before they were applied.⁸⁰ This was important to ensure robust outcomes and to provide transparency in the decision-making process.⁸¹

(b) Stage 2 (Site Layout) – Once the preferred site had been identified from a technical perspective, four alternative layouts for the site were considered from an operational perspective and by technical experts in terms of the environmental effects of each of the layouts. This process was used to inform the preferred layout of the key components of the Freight Hub.

(c) Stage 3 (Spatial extent) – With a preferred layout for the main operational components selected, consideration was given to alternative methods of undertaking the work. This included

⁷⁸ Appendix F, *Multi Criteria Analysis and Decision Conferencing Process*, June 2020. Evidence of Karen Bell at [7.4] – [7.15]; Evidence of Olivia Poulsen at section 5.

⁷⁹ Evidence of Olivia Poulsen at section 5.

⁸⁰ Evidence of Karen Bell at [8.7].

⁸¹ Appendix F, *Multi Criteria Analysis and Decision Conferencing Process*, June 2020 at paragraph 2.2.2.

consideration of potential roading connections to service the Freight Hub, locations for stormwater management and methods, and noise mitigation measures (such as bunds and noise barriers).

- 5.32 In relation to some submitters' concerns as to why particular locations were not considered, the case law above is clear that there is no requirement for KiwiRail to consider all options.
- 5.33 The Council Reporting Planners agree that KiwiRail has undertaken adequate consideration of sites for the Freight Hub.⁸² They have, however, questioned why various alternative methods were not considered for the NoR, including extending the designation boundaries to designate more land to include the properties expected to be significantly affected by noise.⁸³
- 5.34 In any case, Ms Bell's evidence is that extending the designation boundaries to include these properties would not represent an efficient management of resources nor would it be considered reasonably necessary to designate that land. That is because other methods, such as the substantial noise mitigation already included in the designation boundaries and the proposed conditions, are appropriate to manage the effects of the Freight Hub.⁸⁴
- 5.35 We submit that the process undertaken by KiwiRail was sufficiently robust and achieves the test in section 171(1)(b) of the RMA.

Reasonably necessary to achieve objectives – section 171(1)(c)

- 5.36 Whether the work and designation are reasonably necessary for achieving the requiring authority's objectives is an objective test.⁸⁵ The focus of this inquiry is not on the objectives themselves (it is for the requiring authority to determine the objectives) but rather whether the work and designation are necessary to achieve the objectives set by the Requiring Authority.⁸⁶

⁸² Section 42A Report at [9].

⁸³ Section 42A Report at [11].

⁸⁴ Evidence of Karen Bell at [9.40] and [9.41].

⁸⁵ *Gavin H Wallace Ltd v Auckland Council* [2012] NZEnvC 120 at [183].

⁸⁶ *Gavin H Wallace Ltd v Auckland Council* [2012] NZEnvC 120 at [184] "We are also aware of the limits of any enquiry into the merits of the objectives. It is well settled that the Act neither requires or allows the merits of the objectives themselves to be judged by the Court."

5.37 In terms of the meaning of "reasonably necessary", the Environment Court has held that it falls between "desirable and essential".⁸⁷ The High Court has held that:⁸⁸

The inbuilt flexibility of this definition enables the Environment Court to apply a threshold assessment that is proportionate to the circumstances of the particular case. This is mandated by the broad thrust of the RMA to achieve sustainable management and the inherently polycentric nature of the assessments undertaken by the Environment Court.

5.38 KiwiRail's objectives for the development and delivery for the Freight Hub in or near Palmerston North on the NIMT are to:

- (a) increase its operational capacity to efficiently accommodate projected regional and national freight growth and support wider regional development; and
- (b) enable rail to be integrated with, and connect to, other transport modes and networks; and
- (c) improve the resilience of the regional and national freight transport system over time.

5.39 The work and designation are reasonably necessary to achieve these objectives. This has been canvassed in detail in the Assessment of Environmental Effects and the evidence of Ms Bell.⁸⁹ In summary, the work is reasonably necessary to achieve KiwiRail's objectives as the Freight Hub has been:

- (a) appropriately sized to accommodate forecast growth and with a layout that enables the efficient movement of Freight. It will also provide for trains up to 1,500m in length. Longer trains are an efficient method of improving the freight demand capacity to meet growing demand. This, in turn, will support wider development in the Manawatū region;
- (b) developed with infrastructure that has direct connections to road from key operational components. The location of the Freight Hub also

⁸⁷ *North Eastern Investments Ltd v Auckland Transport* [2016] NZEnvC 73 at [137].

⁸⁸ *Queenstown Airport Corp Ltd v Queenstown Lakes District Council* [2013] NZHC 2347 at [95].

⁸⁹ Assessment of Environmental Effects at section 10.3.1. Evidence of Karen Bell at [7.17] – [7.24].

enables integration with the future planned roading network, such as the Regional Freight Ring Road, and the proximity to Palmerston North Airport enables freight to be moved by air as well as road and rail; and

- (c) designed with facilities that are forward looking and that are directly serviced by rail. This has the potential to make moving freight by rail a more attractive option which will improve the resilience of the transport work in terms of enabling a reduction in heavy vehicles using the road network. The improved facilities at the Freight Hub will also assist in minimising disruptions to the wider transport network.

5.40 We also submit the use of a designation is reasonably necessary for achieving the objectives as it enables the land to be safeguarded from potential incompatible development which may prevent or hinder the works from being developed.⁹⁰

5.41 The Council Reporting Planners consider that KiwiRail's objectives could be "better achieved through refinement and improvement to better integrate the Freight Hub with other infrastructure and economic activities".⁹¹ The Council Reporting Planners consider that while the Freight Hub will enable rail to be connected with other transport modes, it may not always achieve this in an efficient way.⁹² We respectfully disagree. It is entirely in KiwiRail's interests to ensure an efficient and well integrated network and it is committed to working with other infrastructure providers to ensure this. This is reflected in the purpose of the Road Network Integration Plan in the Proposed Conditions.⁹³ In any case, in our submission section 171(1)(c) does not require that the form of the Freight Hub is the "best" way of achieving the objectives.⁹⁴

5.42 Overall, the Council Reporting Planners, conclude the Freight Hub is reasonably necessary to achieve KiwiRail's objectives.⁹⁵ In our submission, the test in section 171(1)(c) is satisfied.

⁹⁰ Evidence of Karen Bell at [7.23] and [7.24].

⁹¹ Section 42A Report at [12].

⁹² Section 42A Report at [902].

⁹³ Evidence of Karen Bell at Appendix 1, condition 48.

⁹⁴ *Queenstown Airport Corp Ltd v Queenstown Lakes District Council* [2013] NZHC 2347 at [96].

⁹⁵ Section 42A Report at [905].

Any other matters – section 171(1)(d)

5.43 The Panel must also have particular regard to any other relevant matters that it considers reasonably necessary to make a recommendation. The High Court has highlighted that:⁹⁶

The reference in s 171(1)(d) to "any other matter" is qualified by the words "reasonably necessary". Given the Act's overarching purpose, however, the scope of the matters that may legitimately be considered as part of the effects assessment must be broad and consistent with securing the attainment of that purpose.

5.44 As set out by Ms Bell, there are a number of other strategic documents that may be considered in making a decision on the NoR in accordance with s 171(1)(d).⁹⁷ These are set out at **Appendix 2** to her evidence and include:

- (a) the Government Policy Statement on Land Transport 2021;
- (b) the New Zealand Rail Plan 2021;
- (c) the Regional land Transport Plan (2015-2025) 2018 review;
- (d) the Accelerate 25 Regional Growth Economic Development Strategy / Manawatū - Whanganui Growth Study Economic Action Plan 2016;
- (e) the Council 10 Year Plan (2021-2031);
- (f) the Economic Development Strategy 2018;
- (g) the City Development Strategy 2018; and
- (h) the Strategic Transport Plan 2018/2021.

5.45 Ms Bell has undertaken an assessment of the NoR against those documents, and considers that the Freight Hub will be a key component to achieving the goals of an efficient transport network that integrates and supports the economic development of Palmerston North City and the wider region.⁹⁸

5.46 The Council Reporting Planners agree that the identified documents are relevant and reasonably necessary to have regard to under section 171(1)(d).⁹⁹ However, the Council Reporting Planners consider that there is

⁹⁶ *Queenstown Airport Corp Ltd v Queenstown Lakes District Council* [2013] NZHC 2347 at [70].

⁹⁷ Evidence of Karen Bell at [7.25].

⁹⁸ Evidence of Karen Bell at [7.26].

⁹⁹ Section 42A Report at [183].

some uncertainty as to the alignment with strategic transport documents, which Ms Bell has addressed in her evidence.¹⁰⁰

Part 2

- 5.47 Under section 171(1) RMA, the Panel's consideration of the effects on the environment is "subject to Part 2". The High Court has confirmed that, in the context of assessing notices of requirement, the matters addressed in Part 2 must be considered as well as those set out in section 171(1)(a) to (d).¹⁰¹ In the event of a conflict, the provisions of Part 2 prevail over the criteria set out in section 171(1).¹⁰²
- 5.48 As explained in Ms Bell's evidence,¹⁰³ the NoR is consistent with the sustainable management purpose of the RMA and other Part 2 matters. In particular, the Project is consistent with the sustainable management purpose of the RMA because:
- (a) The provision of the Freight Hub is directly related to enabling the people and communities of the region (and those who use the rail network) to provide for their economic well-being and for their health and safety.
 - (b) Any potential adverse effects arising from the construction and operation of the Freight Hub can be avoided, remedied or mitigated through the Proposed Conditions and through detailed design.

Section 6

- 5.49 Under section 6 of the RMA, the Panel is required to recognise and provide for various matters of national importance when considering a NoR. In terms of the Freight Hub, the following matters listed in section 6 are relevant:¹⁰⁴
- (a) Section 6(a) – the Freight Hub has the potential to enhance the natural character of the Mangaone Stream environs.

¹⁰⁰ Section 42A Report at [13].

¹⁰¹ *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 at [110]-[118].

¹⁰² *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 [112].

¹⁰³ Assessment of Environmental Effects, at 10.5. Evidence of Karen Bell at [7.27] to [7.38].

¹⁰⁴ Assessment of Environmental Effects, at 10.5. Ms Bell considers that there is nothing to indicate that the Freight Hub is inconsistent with sections 6(b) and (c), and in terms of section 6(g) the Freight Hub is not expected to affect any protected customary rights.

- (b) Section 6(d) – as there is currently no public access to the streams or tributaries within the Site, public access to waterways will be enhanced through the provision of recreational tracks around the stormwater ponds.
- (c) Section 6(e) - throughout this process and during the development of the detailed design for the Freight Hub, KiwiRail has, and will continue to work with iwi to ensure that cultural values will be recognised and provided for.
- (d) Section 6(f) – there are no registered historic heritage features within the Site, any potential effects on archaeological values will be managed through the Heritage New Zealand Pouhere Toanga Act 2014.
- (e) Section 6(h) - any potential hazards that could apply to the Site have been comprehensively considered by KiwiRail's experts to the extent required for an NoR, and such risks will be able to be managed through detailed engineering design for the Freight Hub.

5.50 The Project is consistent with and recognises, and provides for, the relevant matters under section 6 of the RMA.

Section 7

5.51 The following matters under section 7 are relevant:¹⁰⁵

- (a) Section 7(a) and (aa) - KiwiRail is continuing to engage with mana whenua to identify cultural values and address any potential effects of the Project on mana whenua. As will be detailed later in these submissions, KiwiRail has proposed a mana whenua engagement framework in conditions to ensure that mana whenua values will be recognised and provided for throughout detailed design.
- (b) Section 7(b) - the Project will be an efficient use of the natural and physical resources present on the land. The Freight Hub in its proposed location is consistent with Council's strategic plan for the area and will enable the transfer of more goods by rail than currently occurring. The removal of freight traffic from the road network will

¹⁰⁵ RMA, sections 7(ba), (h) and (j) are not relevant to the Project.

provide for greater efficiency in use of that physical resource in a more sustainable manner.¹⁰⁶

- (c) Sections 7(c) and 7(f), while the existing amenity values are expected to change, this will be minimised by the proposed mitigation methods (eg such as noise barriers and planting).¹⁰⁷
- (d) Section 7(d) - the proposed planting, stormwater management, watercourse and culvert design will respect and enhance the intrinsic values of the ecosystems.¹⁰⁸
- (e) Section 7(g) - there are no finite characteristics of natural and physical resources identified.¹⁰⁹
- (f) Section 7(i) - flood effects from future climate change events will be modelled and considered during detailed design stage.¹¹⁰

5.52 Overall, the Project is consistent with, and has had particular regard to, relevant section 7 matters.

Section 8

5.53 Section 8 of the RMA requires that the principles of the Treaty of Waitangi be taken into account. As set out above, the Proposed Conditions provide a framework through which mana whenua values will be recognised and provided for. KiwiRail has been exploring ways to formalise the relationships with iwi and foster a positive partnership going forward.¹¹¹

5.54 Overall, we submit that the Project is in accordance with Part 2 of the RMA.

6. ASSESSMENT OF EFFECTS

6.1 KiwiRail's team of independent experts has comprehensively assessed the positive and adverse effects arising on the environment from the construction and operation Freight Hub, and have carefully considered issues raised in submissions. A full assessment of the effects is undertaken in the Assessment of Environmental Effects and set out in the evidence of Ms Bell. We summarise these in the following sections.

¹⁰⁶ Evidence of Karen Bell, at [7.32].
¹⁰⁷ Evidence of Karen Bell at [7.33].
¹⁰⁸ Evidence of Karen Bell at [7.34].
¹⁰⁹ Evidence of Karen Bell at [7.35].
¹¹⁰ Evidence of Karen Bell at [7.36].
¹¹¹ Evidence of Olivia Poulsen at [6.7].

Economic effects

- 6.2 Mr Paling and Mr Colegrave's evidence is that the construction and operation of the Freight Hub will provide a range of economic benefits, including:
- (a) Both during construction and once operational, the Freight Hub will generate employment opportunities and, which at the construction phase, could boost North Island gross domestic product by nearly \$100 million per annum for 10 years.¹¹²
 - (b) The benefits of introducing additional container capacity and the use of longer trains will, conservatively, amount to approximately \$1.3 billion (over 60 years).¹¹³
 - (c) There will be direct benefits to the movement of goods in that the costs will reduce which will assist in encouraging modal shift from road to rail as well as reduce congestion on the road network.¹¹⁴
 - (d) The Freight Hub will enable the Existing Freight Yard to be released for alternative uses which will have wider economic benefits for Palmerston North city.¹¹⁵
- 6.3 While the Freight Hub will generally support other activities within vicinity of the Freight Hub, there is the potential for some adverse economic effects as a result of changes in access and traffic flow. However, these effects can be mitigated through design, which in Ms Bell's view, would make the effects on a small number of business negligible.¹¹⁶ In respect of the access to the Foodstuffs Distribution Centre, in particular, Mr Georgeson has provided a concept design in his rebuttal evidence showing how access can be safely accommodated in this location.¹¹⁷
- 6.4 Mr Colegrave's evidence is that the increases in employment will increase demand on the housing market. However, the Section 42A Report confirms that the Council considers there is sufficient land available to enable more housing.¹¹⁸ Therefore, the Panel can be comfortable that these effects can be managed.

¹¹² Evidence of Fraser Colegrave at [1.1(c)].

¹¹³ Evidence of Richard Paling at [7.12].

¹¹⁴ Evidence of Richard Paling at [7.9].

¹¹⁵ Evidence of Fraser Colegrave at [1.1(a)].

¹¹⁶ Evidence of Karen Bell at [6.31].

¹¹⁷ Rebuttal evidence of Mark Georgeson.

¹¹⁸ Section 42A Report at [818].

- 6.5 This evidence demonstrates that there will be significant economic benefits and while there is the potential for some adverse economic effects, the effects are overall positive.
- 6.6 While there are minor technical differences of opinions between the KiwiRail and Council economic experts (which have been addressed in Mr Paling and Mr Colegrave's evidence), the Council Reporting Planners agree that there will be significant economic benefits from the Freight Hub.¹¹⁹ Several submitters also identified economic benefits likely to arise from the Freight Hub.¹²⁰ The primary outstanding issue relates to the Council's desire for a dedicated freight corridor to be established between the Freight Hub and the NEIZ.¹²¹ KiwiRail's evidence is that there is neither an economic nor a transport basis for such a corridor. In our submission, KiwiRail's evidence should be preferred.

Archaeological effects

- 6.7 Mr Parker's evidence confirms that there are no Registered Historic Places, recorded archaeological sites or listed heritage sites in the relevant district plans within the Site.¹²² Despite this, there is the potential for adverse effects on archaeological sites within the Designation Extent that Mr Parker has identified and for a small number of additional sites to be uncovered during construction.¹²³
- 6.8 Mr Parker considers that the adverse effects on archaeological sites can be managed through the Heritage New Zealand Pouhere Taonga Act 2014.¹²⁴ Accidental discovery protocols have also been recommended and are included in the Proposed Conditions which reflect the changes recommended by the Council Reporting Planners.¹²⁵
- 6.9 While no archaeological evidence has been provided by the Council, the Council Reporting Planners agree with submitters that there will be adverse effects on heritage values.¹²⁶ Notwithstanding this, they consider that the archaeological authority process should provide for appropriate management of effects.¹²⁷

¹¹⁹ Section 42A Report at [714].
¹²⁰ Evidence of Fraser Colegrave at [5.3].
¹²¹ Evidence of Mark Georgeson at [10.2] and [10.22-23].
¹²² Evidence of Daniel Parker at [1.1].
¹²³ Evidence of Daniel Parker at [7.11].
¹²⁴ Evidence of Daniel Parker at [7.15].
¹²⁵ Evidence of Daniel Parker at [8.6], [10.3] and [10.4].
¹²⁶ Section 42A Report at [856].
¹²⁷ Section 42A Report at [857].

Geotechnical effects

- 6.10 Mr Mott explains that a preliminary geotechnical assessment has been undertaken for the Site based on a desktop analysis.¹²⁸ Mr Mott considers that while there are some potential geotechnical risks for the Site, these can be appropriately managed through engineering solutions at the detailed design phase.¹²⁹
- 6.11 The Council Reporting Planners consider that, based on the information provided, they cannot form a conclusion on whether the geotechnical risks can be avoided, remedied or mitigated, but consider that it "appears" that the risk can be managed through detailed design.¹³⁰ Mr Mott's evidence is that it can be managed through detailed design and in our submission, the Panel should rely on that evidence.

Stormwater and flooding effects

- 6.12 Mr Leahy's evidence is that, once operational, the Freight Hub has the potential to result in a number of positive effects from a stormwater perspective, including reduced upstream flooding, reduction in sediment loads, and the delivery of a comprehensive stormwater management system which will provide better outcomes than incremental development.¹³¹
- 6.13 There is the potential for adverse effects arising from the construction of the Freight Hub. However, Mr Leahy considers that there are a range of methods to manage the effects, such as erosion and sediment control practices, which are (appropriately, in our submission) addressed at the regional consenting phase.¹³² Although there is the potential for adverse effects once the Freight Hub is operational, Mr Leahy confirms that these can be mitigated through provision of an appropriate stormwater system and sufficient land has been included within the Site for this purpose.¹³³ While there are some minor technical areas of disagreement, overall, the Council's experts and Reporting Planners agree with this conclusion.¹³⁴
- 6.14 Ms Bell states that the volume and quality of discharges from the Freight Hub will be addressed through the regional consenting phase and that the

¹²⁸ Evidence of Andrew Mott at [4.1].

¹²⁹ Evidence of Andrew Mott at [1.1].

¹³⁰ Section 42A Report at [866].

¹³¹ Evidence of Allan Leahy at [6.2].

¹³² Evidence of Allan Leahy at [7.2].

¹³³ Evidence of Allan Leahy at [7.5].

¹³⁴ Section 42A Report at [573].

Proposed Conditions have incorporated those aspects of stormwater management that Council is responsible for at a district level.¹³⁵ There are some differences of opinion with the Council Reporting Planners as to how stormwater management is provided for in the Proposed Conditions. In our submission, the conditions proposed by Ms Bell are appropriate in the context of an NoR and are sufficient to mitigate the stormwater and flooding effects of the Freight Hub.

Transport effects

- 6.15 There will be positive transport effects as a result of the Freight Hub due to level crossing closures as well as opportunities to improve public transport facilities and the walking / cycling network within the vicinity of the Freight Hub.¹³⁶
- 6.16 Although it is anticipated that there may be adverse traffic effects as a result of construction of the Freight Hub, the ability to assess these effects is limited as the details of where fill will be transported from and the routes that will be followed has not yet been confirmed. A Construction Traffic Management Plan has been included in the Proposed Conditions and is, in our submission, appropriate to manage these effects.
- 6.17 The Council Reporting Planners have also recommended a condition requiring KiwiRail to undertake pre-condition surveys and repair local roads as a result of damage caused by the construction of the Freight Hub.¹³⁷ While there is the potential for heavy vehicle movements to cause damage to a road, the traffic associated with the construction of the Freight Hub will only represent a portion of the traffic on the surrounding road network. It will be difficult to attribute damage to roads to vehicle movements associated with a particular activity. A condition of this nature could result in the KiwiRail addressing effects which are unconnected to its activity. There are a range of other tools that are available to Council to address these matters as part of its broader road control authority functions.¹³⁸
- 6.18 Mr Georgeson's evidence is that while there will be potential adverse transport effects associated with the traffic volumes generated by the Freight Hub once operational, the adverse effects will be minor with appropriate transport

¹³⁵ Evidence of Karen Bell at [6.111] and [6.112].

¹³⁶ Evidence of Mark Georgeson at [1.3].

¹³⁷ Section 42A Report at [230].

¹³⁸ *Norsho Bulc Ltd v Auckland Council* [2017] NZEnvC 109 at [104].

upgrades provided.¹³⁹ Mr Georgeson also considers that the effects on travel time will be minor and that there will be no adverse effects on safety or parking.¹⁴⁰

- 6.19 In addition to the proposed infrastructure upgrades, a suite of measures are proposed to manage the potential adverse effects of the Freight Hub and ensure an appropriately integrated transport network. These measures, which have been secured by way of conditions, include an Operational Traffic Management Plan, a Level Crossing Safety Impact Assessment and a Road Network Integration Plan. The transport conditions have also been substantially amended in response to the Section 42A Report. In our submission, the mitigation measures proposed by KiwiRail are appropriate to address the transport effects of the NoR.

Social impacts

- 6.20 Ms Austin has comprehensively assessed the potential social impacts of the Freight Hub in terms of the local impact area and the wider impact area. She considers that there will be positive effects from a social impact perspective, including improved safety and employment opportunities.¹⁴¹
- 6.21 Ms Austin's evidence is that during construction and operation there will be a range of adverse social impacts, many of which arise from changes to the noise, amenity levels and transport environment in relation to the Freight Hub. In this regard, the mitigation recommended by the technical experts is also important for mitigation of social effects. A suite of additional measures are also proposed to mitigate the social impacts, including the establishment of a Community Liaison Forum, appointment of a Community Liaison Person, and the implementation of a Construction Engagement Plan, which have been included in the Proposed Conditions. These conditions have been amended and, in our submission, strengthened in response to the Section 42A Report and matters raised in submissions.
- 6.22 In our submission, a project of this nature and scale will inevitably be a change for the community. This is acknowledged and reflected in Ms Austin's evidence and assessment. The mitigation measures proposed by KiwiRail are appropriate to manage the social impacts and provide ongoing opportunities for community involvement in the Project going forward.

¹³⁹ Evidence of Mark Georgeson at [1.4].

¹⁴⁰ Evidence of Mark Georgeson at [1.4].

¹⁴¹ Evidence of Kirsty Austin at [1.3] and [1.4].

Ecological effects

- 6.23 The adverse effects on ecological values will primarily occur at the construction phase as a result of vegetation clearance and loss of streams. Mr Garrett-Walker's evidence is that, overall, the Freight Hub will have a very low level of adverse effect on the ecological values on the Site and that any adverse effects can be appropriately managed.¹⁴² To date, no natural inland wetlands have been identified within the Site and Mr Garrett-Walker considers that it is unlikely there will any other potential inland wetlands on the Site that would contain ecological values that would require avoidance.¹⁴³
- 6.24 There are a range of measures available to manage the effects on ecological values. However, Ms Bell's evidence is that none of these measures are required as conditions on the designation as they will be required as part of the regional consents which KiwiRail will seek in the future.¹⁴⁴
- 6.25 In some cases, Mr Garrett-Walker considers that the Freight Hub provides an opportunity to improve the condition of ecological features within the Site.¹⁴⁵ Mr Garrett-Walker considers that if culverts / pipes are installed in accordance with the relevant guidelines the Freight Hub could improve fish passage.¹⁴⁶ The Council Reporting Planners consider a more comprehensive assessment of the environment and effects on ecological values is required.¹⁴⁷ We address the management of ecological effects, in the context of the NPS-FM, in further detail below.

Effects on contaminated land

- 6.26 A preliminary site investigation has been undertaken for the Site. While that investigation did not identify any HAIL recorded sites within the designation extent, Mr Heveldt's evidence is that there is the potential for contamination to be present due to the pastoral farming practices that previously been undertaken on the Site.¹⁴⁸
- 6.27 Mr Heveldt recommends that further investigations are undertaken by way of a Detailed Site Investigation prior to the commencement of construction of the Freight Hub and depending on the outcomes of that investigation, a

¹⁴² Evidence of Jeremy Garrett-Walker at [8.19].

¹⁴³ Evidence of Jeremy Garrett-Walker at [5.8].

¹⁴⁴ Evidence of Karen Bell at [6.101].

¹⁴⁵ Evidence of Jeremy Garrett-Walker at [8.20].

¹⁴⁶ Evidence of Jeremy Garrett-Walker at [8.10].

¹⁴⁷ Section 42A Report at [507].

¹⁴⁸ Evidence of Paul Heveldt at [6.6].

Contaminated Site Management Plan may be required.¹⁴⁹ The requirement to prepare a Detailed Site Investigation and, where appropriate, a Contaminated Site Management Plan has been incorporated in the Proposed Conditions.¹⁵⁰ The conditions are supported by the Council Reporting Planners.¹⁵¹ The removal and disposal of any potentially contaminated soil is considered by Mr Heveldt as a positive effect of the Freight Hub.¹⁵²

- 6.28 Once the Freight Hub is operational, activities will take place on the Site and have the potential to give rise to adverse effects. Mr Heveldt considers that with best practice operating procedures, these effects can be effectively managed.¹⁵³

Effects of dust and emissions to air

- 6.29 At the construction phase, there is the potential for dust to be generated from earthworks and the movement of heavy machinery around the Site which has the potential to cause adverse effects on the surrounding environment.¹⁵⁴ KiwiRail has proposed a condition requiring the preparation of a Construction Management Plan which includes a requirement for a Construction Dust Management Plan.¹⁵⁵
- 6.30 Once the Freight Hub is operational, Mr Heveldt's evidence is that there is the potential for discharges to air from diesel locomotives on the Site, but he considers that this would be very localised and would result in no more than minor adverse effects on air quality.¹⁵⁶ There is also the potential for dust and other particulate discharges from operational activities. Mr Heveldt considers that dust emission controls are necessary and recommends an Operational Dust Management Plan. While there is the potential for other particulate emissions from the Freight Hub, these relate to broader air quality matters which are, in Ms Bell's view, most appropriately addressed at the regional

¹⁴⁹ Evidence of Paul Heveldt at [9.2] and [9.3].

¹⁵⁰ Proposed Conditions 33 and 34.

¹⁵¹ Section 42A Report at [871].

¹⁵² Evidence of Paul Heveldt at [7.1].

¹⁵³ Evidence of Paul Heveldt at [7.7] – [7.11].

¹⁵⁴ Evidence of Paul Heveldt at [8.1].

¹⁵⁵ Evidence of Karen Bell at [6.134]. Ms Bell's evidence notes that a Construction Dust Management Plan will be required as part of the regional consent for bulk earthworks and the condition has accordingly been proposed to ensure that the CDMP is consistent with any conditions of regional consents.

¹⁵⁶ Evidence of Paul Heveldt at [8.4].

consenting phase.¹⁵⁷ The Council Reporting Planners agree with this approach.¹⁵⁸

- 6.31 In response to submitter concerns about the adverse effects on drinking water supply for households that rely on rooftop rainwater collection for domestic supply as a result of emissions from the Freight Hub, KiwiRail is committed to identifying affected dwellings and investigating methods of managing potential dust effects. This requirement is included in the Proposed Conditions.¹⁵⁹

Lighting effects

- 6.32 There is the potential for adverse effects on residential properties arising from vehicles associated with construction of the Freight Hub. Mr McKensey agrees with the Council Reporting Planners that this can be appropriately addressed through the Construction Traffic Management Plan.¹⁶⁰
- 6.33 As Mr Moyle explains in his evidence, it is necessary for the Freight Hub to operate 24 hours a day / 7 days a week to keep freight moving efficiently and cater for the needs of different traffic flows through the Freight Hub.¹⁶¹ The Freight Hub will need to be lit to enable these operations to be undertaken safely on Site. Since lodgment of the NoR, and in response to submissions received in relation to lighting effects, KiwiRail has undertaken further work to refine the operational lighting design for the Freight Hub. Mr McKensey's evidence is that the revised lighting design included in his evidence complies with the recommended limits for spill light, glare and sky glow. On this basis, he considers that the light effects of the Freight Hub will be less than minor.¹⁶²
- 6.34 While Mr McKensey considers that the effects will be less than minor, he acknowledges that lighting will be subject to detailed design and in that regard has recommended that an Operational Lighting Design Plan be prepared to ensure that the design complies with the relevant standards.¹⁶³ In our submission, the design and the Proposed Condition are appropriate to manage the lighting effects of the Freight Hub and address the concerns raised by submitters.

¹⁵⁷ Evidence of Karen Bell at [9.37] and [9.38].

¹⁵⁸ Section 42A Report at [667].

¹⁵⁹ Evidence of Karen Bell at Appendix 1, condition 99.

¹⁶⁰ Evidence of John McKensey at [8.11] and [8.12].

¹⁶¹ Evidence of Todd Moyle at [7.4].

¹⁶² Evidence of John McKensey at [1.4].

¹⁶³ Evidence of John McKensey at [6.37].

Noise and vibration effects

- 6.35 Dr Chiles' evidence is that there will be positive noise and vibration effects as a result of the eventual decommissioning of the Existing Freight Yard, the realignment of the NIMT and changes to the roading network as a result of the Freight Hub.¹⁶⁴
- 6.36 In terms of adverse effects, Dr Chiles considers that with good management practices, construction noise and vibration effects should be minor. He has recommended a Construction Noise and Vibration Management Plan to ensure that standard practice is followed.¹⁶⁵ In response to the Section 42A Report, Construction Noise and Vibration criteria have also been included in the Proposed Conditions.¹⁶⁶
- 6.37 Dr Chiles considers that operational vibration should not require further controls but considers that this should be verified through detailed design.¹⁶⁷ Without mitigation, Dr Chiles considers that operational noise has the potential to result in disturbance to residential activities over a wide area. A range of measures are proposed which will be implemented through an Operational Noise and Vibration Management Plan, including:¹⁶⁸
- (a) operation of the Freight Hub in accordance with noise criteria, which is now required by the Proposed Conditions to ensure that during operation limits are not exceeded at the single noise management boundary;
 - (b) implementation of noise barriers on the northern and eastern boundaries of the Site;
 - (c) treatment for existing sensitive activities where recommended noise criteria will be exceeded; and
 - (d) monitoring of noise and vibration.
- 6.38 Dr Chiles acknowledges that the Freight Hub will alter the existing noise environment. However, he considers that with the recommended mitigation

¹⁶⁴ Evidence of Stephen Chiles at [6.2].

¹⁶⁵ Evidence of Stephen Chiles at [6.7] and [7.8].

¹⁶⁶ Evidence of Karen Bell at [6.65].

¹⁶⁷ Evidence of Stephen Chiles at [7.7].

¹⁶⁸ Evidence of Stephen Chiles at [7.5].

measures in place, the residual noise and vibration should be at reasonable levels and effects should be acceptable in this environment.¹⁶⁹

- 6.39 Dr Chiles is generally in agreement with the Council's noise expert on matters of operational noise and vibration criteria and the effects likely to arise from the Freight Hub.¹⁷⁰ KiwiRail has recognised the Council Reporting Planners' requests for additional certainty in the conditions and, in response, has included noise and vibration limits in the Proposed Conditions as well as further amendments to strengthen the conditions.¹⁷¹

Landscape and visual effects

- 6.40 Ms Rimmer's assessment is that the preferred layout of the Site (which locates buildings closer to the NEIZ) and the significant areas of planting proposed within the Site will assist in mitigating the effects of the Freight Hub from a landscape and visual perspective. With the mitigation proposed, Ms Rimmer considers that the adverse effects (which are based on guidance from the New Zealand Institute of Landscape Architects) will range in terms of:¹⁷²

- (a) moderate to high adverse effects on the natural landscape,
- (b) low to moderate in terms of the urban (built) landscape; and
- (c) no more than low-moderate for most viewing audiences, but high adverse effects where residential properties have open views towards the Freight Hub and where noise mitigation structures are proposed in close proximity.

- 6.41 To further manage the potential adverse effects, Ms Rimmer has recommended additional measures (including at the detailed design phase) in order to further integrate the Freight Hub into the surrounding environment. This includes a Landscape and Design Plan (proposed to be secured in the Proposed Conditions). This Plan has been broadened in scope in response to the Section 42A Report, although it does not go so far as to require a bespoke design framework as sought by the Council Reporting Planners.¹⁷³

¹⁶⁹ Evidence of Stephen Chiles at [7.10].

¹⁷⁰ Evidence of Stephen Chiles at [1.8].

¹⁷¹ Evidence of Karen Bell at [6.65].

¹⁷² Evidence of Lisa Rimmer at [7.6] – [7.8].

¹⁷³ Section 42A Report at [411] and [413].

- 6.42 Ms Bell and Ms Rimmer agree, in principle, with the development of design principles and outcomes.¹⁷⁴ However, contrary to the Council Reporting Planners, they consider that the NEIZ Design Guide contained in the District Plan provides an appropriate starting point for any such framework.¹⁷⁵ In our submission, the Landscape and Design Plan proposed by KiwiRail provides the appropriate balance of ensuring that the design of the Freight Hub is guided by a set of principles and outcomes while also ensuring it achieves KiwiRail's operational requirements.
- 6.43 Ms Rimmer's assessment is that there will be positive urban (built) landscape effects as a result of the proposed recreational footpaths and the opportunities for a lookout along Te Araroa Trail, and positive visual amenity effects from the proposed planting which will improve the gateway to into Bunnythorpe. Ms Rimmer also considers that the natural character will be enhanced through the naturalised channel, the stormwater ponds and the integration of planting around these features.¹⁷⁶ The Council Reporting Planners, based on the evidence of Ms Whitby, disagree with this assessment.¹⁷⁷ In our submission, Ms Rimmer's evidence should be preferred.

Effects on Council assets and network utilities

- 6.44 As set out by Ms Bell there are both above and below ground network utility assets currently located within the Site.¹⁷⁸ These assets include Transpower National Grid assets as well as Council, Powerco and First Gas infrastructure in the roads within the Site. The Council water bore, while not within the Site, is in proximity to the Freight Hub.
- 6.45 The Transpower National Grid asset (overhead lines and a pylon) is located at the north of the Freight Hub in an area that is required for noise mitigation and landscaping. KiwiRail has worked with Transpower to agree amendments to the conditions to ensure that any potential adverse effects on the National Grid assets are appropriately managed during construction and operation.¹⁷⁹
- 6.46 KiwiRail will work with utility operators to manage the existing network utility assets which are affected by the Freight Hub in a way that ensures continuity of their services. A condition has been incorporated into the Proposed

¹⁷⁴ Evidence of Karen Bell at [9.51].

¹⁷⁵ Evidence of Karen Bell at [9.50]; Evidence of Lisa Rimmer at [10.5].

¹⁷⁶ Evidence of Lisa Rimmer at [7.4].

¹⁷⁷ Section 42A Report at [551].

¹⁷⁸ Evidence of Karen Bell at [6.136].

¹⁷⁹ Joint Memorandum of Counsel on behalf of KiwiRail and Transpower, dated 23 July 2021.

Conditions to ensure that access is granted to assets located in roads within the Designation Extent until such time as the relevant existing roads are stopped.¹⁸⁰ KiwiRail is also working with Council to develop a project agreement that ensures that Council's assets are managed in a coordinated way.

Effects on productive land supply

- 6.47 While there will be a loss in land currently available as productive land and zoned for that purpose, given the other benefits that arise from the Freight Hub, the effects on productive land supply are assessed By Ms Bell to be minor.¹⁸¹ The Council Reporting Planners acknowledge that Palmerston North is located on an alluvial plain with quality soils around it, making it difficult to avoid urban development on versatile soils. They consider that locating the Freight Hub within the NEIZ (and adjacent to it) means that the take up of that productive land would not be ad hoc.¹⁸²

7. SPECIFIC LEGAL MATTERS RAISED

- 7.1 In the remainder of these submissions, we focus on specific legal issues that are relevant to the Panel's consideration of the effects of the NoR that have been raised in the Section 42A Report and the submissions received.

Assessment of cultural effects

- 7.2 Under section 171(1) the Panel must, subject to Part 2, consider the effects on the environment of allowing the requirement. This includes cultural effects, or effects on mana whenua values and relationships. These effects can be tangible or intangible.

Engagement with mana whenua to date

- 7.3 KiwiRail acknowledges iwi have an important interest in the Project. KiwiRail has been, and remains, firmly committed to meaningful engagement with mana whenua regarding the cultural effects of the Freight Hub and how those effects can be appropriately addressed.
- 7.4 KiwiRail acknowledges the Freight Hub should be informed by a comprehensive understanding of cultural values and that mana whenua are best placed to describe their cultural values and the effects the Freight Hub

¹⁸⁰ Evidence of Karen Bell at [6.141].

¹⁸¹ Evidence of Karen Bell at [6.149].

¹⁸² Section 42A Report at [829].

may have on those matters. It remains KiwiRail's view that it is not appropriate for KiwiRail to step into the shoes of mana whenua to assess the cultural values of the Site and wider area.¹⁸³ As such, KiwiRail has been exploring ways to formalise the relationships with iwi to foster a positive and effective working relationship going forward.¹⁸⁴

- 7.5 The Council Reporting Planners and some submitters have raised the need for Cultural Values Assessments ("**CVA**").¹⁸⁵ KiwiRail is continuing to work collaboratively with iwi to understand the cultural values of the Site and wider area. As set out by Ms Poulsen, KiwiRail will continue to work with iwi to ensure that they are appropriately resourced to provide input into the Freight Hub, including in preparing CVA.¹⁸⁶
- 7.6 In our submission, the lack of CVA does not mean that the NoR cannot be confirmed. That said, we accept the Panel requires an evidential basis to make findings regarding the conditions (if the Panel is mindful to recommend that the NoR be confirmed) that are required to mitigate those effects, which we address below.

Legal framework for assessing cultural effects

- 7.7 The framework for assessing cultural effects is in Sections 6 - 8 of the RMA. It is expanded upon in the context by the objectives and policies of the Regional Policy Statement and One Plan that are specifically directed towards cultural values.
- 7.8 There is a statutory distinction in the emphasis placed under each section,¹⁸⁷ however, the nature of cultural matters is such that judicial discussion of sections 6(e), 7(a) and 8 often considers all three matters together.
- 7.9 KiwiRail has proposed, through conditions, a mana whenua engagement framework to provide for and incorporate mana whenua values and manage any cultural effects of the Freight Hub. In summary, the proposed mana whenua engagement framework conditions:

¹⁸³ Evidence of Olivia Poulsen at [7.11].

¹⁸⁴ Evidence of Olivia Poulsen at [6.7].

¹⁸⁵ Submission 51 by Manawatū District Council and Section 42A Report dated 18 June 2021 at [448]; [491].

¹⁸⁶ Evidence of Olivia Poulsen at [7.11].

¹⁸⁷ The wording of these sections 6(e), 7(a) and 8 reflect their cascading degrees of importance, with the requirement being "to recognise and provide for" (section 6), "to have particular regard to" (section 7), and "to take into account" (section 8) (*Director-General of Conservation v Taranaki Regional Council* [2018] NZEnvC 203 at [231]).

- (a) require KiwiRail to engage with mana whenua to prepare an engagement framework; and
- (b) provide that the objective of the framework is to recognise and provide for mana whenua values in the area affected by the Freight Hub, to develop mechanisms to avoid or mitigate effects on mana whenua, and provide opportunities for expression of those values through design.

7.10 The Council Reporting Planners have raised concerns about the specificity of the proposed conditions.¹⁸⁸ As Ms Poulsen has explained, KiwiRail has proposed conditions as a mechanism to enable iwi to identify how their values are represented through the project and effects are managed.¹⁸⁹ KiwiRail has been mindful not to pre-empt the outcomes of the ongoing engagement and to ensure that the form and content of the framework reflects how mana whenua wish to be involved.

7.11 The submissions received from iwi on the NoR have all sought that conditions be imposed that establish a decision making panel similar to that established for the Te Ahu-o-Turanga Roading Alliance, or an Iwi Working Group.¹⁹⁰ While the appropriate measures to address effects will need to be assessed in each individual case (and it will not necessarily be appropriate to directly adopt an approach taken to another project), the proposed mana whenua engagement framework provides a mechanism for a decision-making panel to be established should KiwiRail and mana whenua determine that this is the most appropriate form for the framework to take going forward.

7.12 The mana whenua engagement framework conditions will ensure that the Project is consistent with sections 6(e), 7(a) and 8 of the RMA. In our submission, these conditions will provide ongoing opportunities for iwi groups to develop more contextual mitigation.

Interaction with the regional consenting pathway

7.13 Regional consents will be required to implement the Freight Hub. KiwiRail will apply to Horizons Regional Council ("**Regional Council**") for the required regional consents in due course, and prior to submitting its Outline Plan to Council.

¹⁸⁸ Section 42A Report at [448].

¹⁸⁹ Evidence of Olivia Poulsen at [6.7].

¹⁹⁰ Submission 14; Submission 49; Submission 69; Submission 96.

7.14 We acknowledge that the effects that will be subject to a separate consent process are relevant here, to the extent that the Panel must be satisfied that if the NoR is confirmed, effects can be avoided, remedied or mitigated. The Environment Court has observed that where regional consents were required, but not sought concurrently with the NoR, there would be a further formal process at a later time and the present enquiry is limited:¹⁹¹

[...] to ensuring that we would be satisfied that issues of effects on the environment could sensibly be addressed and concluded during the subsequent stage of the lodgement of an OPW and the bringing of applications for discharge consents.

7.15 However, the Environment Court went on to say that the level of detail required for the NoR enquiry must be such that it does not pre-empt the regional consenting process.¹⁹² That is to say a balance must be struck between providing a level of detail that the Panel can be satisfied in allowing the NoR (if it is minded to do so), that the designation extent is such that the effects of the NoR can be appropriately managed through any future processes.

7.16 In our submission, KiwiRail's evidence demonstrates that the effects on the environment can appropriately be addressed through the Outline Plan of Works process and at the time other statutory approvals are sought. In terms of the effects of stormwater and flooding arising from the construction and operation of the NoR, Mr Leahy's evidence is that there is adequate room within the designation extent to manage these potential adverse effects.¹⁹³ The Council Reporting Planners agree with this.¹⁹⁴

7.17 While the Council Reporting Planners acknowledge that regional resource consents will be sought separately, they have expressed some concern about the ability for KiwiRail to manage the ecological effects within the designation extent.¹⁹⁵ In terms of managing the ecological effects on freshwater bodies, most notably effects on wetlands and loss of streams, KiwiRail's evidence is that:

- (a) The site investigations undertaken to date have confirmed that there are no natural inland wetlands on those sites. Mr Garrett-Walker's evidence is that it is unlikely that that any other potential areas that have not been able to be accessed would contain values that would

¹⁹¹ *Ellis v Minister of Education* [2014] NZEnvC 109 at [42].

¹⁹² *Ellis v Minister of Education* [2014] NZEnvC 109 at [55].

¹⁹³ Evidence of Allan Leahy at [7.4].

¹⁹⁴ Section 42A Report at [573].

¹⁹⁵ Section 42A Report at [506] and [507].

require avoidance, and any potential adverse effects would be able to be managed through mitigation within the designation extent or offsetting.¹⁹⁶

- (b) The loss of stream as a result of the Freight Hub as a very low level of effect.¹⁹⁷ Mr Garrett-Walker evidence is that the detailed design phase will inform the quantum of mitigation or offset that will be required.¹⁹⁸ However, where there is a net reduction in stream length (which is likely), there are opportunities for any residual loss in stream extent to be sought within the Site (including, for example, within the naturalised stream channel within the northern part of the Site) and that these will opportunities within the Site will be considered first. Mr Garrett-Walker acknowledges that there is the potential for the offset package to extend outside the Site. However, in his view, it was not appropriate for additional land to be included in the NoR solely for this purpose given that there is a further detailed design phase and regional consenting process to be completed.¹⁹⁹

7.18 KiwiRail's evidence has demonstrated that the effects of the NoR can be appropriately managed to the extent required as part of this process. It is unnecessary, in our submission, to provide the degree of certainty the Council Reporting Planners are seeking at this stage. In terms of the mitigation and offset package that may be required to manage ecological effects, KiwiRail's evidence is that the designation has been designed to provide for these opportunities within the Site but the precise nature of the methods and the quantum of land that will be required for this purpose will be confirmed following detailed design, further site investigations, and the regional consenting phase.

7.19 In the absence of the extent of mitigation required or the quantum of any offset having been determined (which in our submission is appropriately considered at the regional consenting phase) it would be premature for additional land to have been included in the designation extent for this purpose as it cannot yet be demonstrated that such land is reasonably necessary, particularly when offsetting can also occur outside the Site.

¹⁹⁶ Evidence of Jeremy Garrett-Walker at [5.8].

¹⁹⁷ Evidence of Jeremy Garrett-Walker at [8.5], [8.6], and [8.9].

¹⁹⁸ Evidence of Jeremy Garrett-Walker at [5.8].

¹⁹⁹ Evidence of Jeremy Garrett-Walker at [11.8].

Relevance of the National Policy Statement on Freshwater Management 2020

7.20 The NPS-FM has been the subject of some degree of focus for submitters²⁰⁰ and the Council Reporting Planners. The key issues relate to the effects of the Freight Hub on Te Mana o Te Wai and the extent to which it needs to be demonstrated at this stage that effects management hierarchy can be achieved.

Te Mana o Te Wai

7.21 The NPS-FM includes a suite of objectives and policies to reflect the fundamental concept of Te Mana o Te Wai, which refers to:²⁰¹

the fundamental importance of water and recognises that protecting health of freshwater protects the health and well-being of the wider environment.

7.22 In this regard, the NPS-FM provides a "hierarchy of obligations" in Te Mana o Te Wai that prioritises:²⁰²

- (a) first, the health and well-being of water bodies and freshwater ecosystems
- (b) second, the health needs of people (such as drinking water)
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

7.23 The Council Reporting Planners consider that Te Mana o Te Wai should be considered when assessing the NoR and that the Freight Hub's implications for this concept have not been adequately considered by KiwiRail.²⁰³

7.24 Consideration of Te Mana o Te Wai must be understood in the context of the requirements of the NPS-FM. Part 3 of the NPS-FM (relating to implementation) sets out the matters that local authorities must do in order to give effect to the objectives and policies in the NPS-FM. In particular, the regional councils are required to engage with tangata whenua and the community in order to determine how Te Mana o Te Wai applies to water

²⁰⁰ Submission 49; Submission 96; Submission 69.

²⁰¹ NPS-FM, at 1.3(1).

²⁰² NPS-FM, at 1.3(5).

²⁰³ Section 42A Report at [514].

bodies in each region.²⁰⁴ Regional councils are also required to include an objective in its regional policy statement that describes how the management of freshwater in the region will give effect to Te Mana o Te Wai.²⁰⁵ The Environment Court has confirmed that this is a specific, future obligation that must be undertaken through a new Schedule 1 plan change process.²⁰⁶

7.25 The meaning and application of Te Mana o Te Wai as it relates to the Manawatū-Whanganui region can therefore only be decided through that process. The One Plan has not yet been through that Schedule 1 process. In this context, KiwiRail has not applied for regional resource consents concurrently with the NoR and that the effects on freshwater bodies and relevant objectives and policies will need to be considered by the Regional Council, by which time the Regional Council may have undertaken the Schedule 1 process may have been completed.

7.26 In light of the above, it is our submission that it is not open to the Panel to find that the Freight Hub is inconsistent with Te Mana o Te Wai without the people of the Manawatū-Whanganui region having determined what that concept means to them. Notwithstanding this, and to the extent that the Panel considers Te Mana o Te Wai does need to be applied before the conclusion of process under the NPS-FM, Ms Bell has considered the hierarchy of obligations from a planning perspective for completeness.²⁰⁷

Effects management hierarchy

7.27 The NPS-FM provides for an "effects management hierarchy", being an approach to managing the adverse effects of an activity on the extent or values of a wetland or river (including cumulative effects and loss of potential value), starting with avoidance of adverse effects where practicable, through to minimising effects where they cannot be avoided and providing offsetting or compensation.²⁰⁸

7.28 The Council Reporting Planners consider that an analysis of the effects management hierarchy as set out in the NPS-FM is relevant when considering the NoR.²⁰⁹ In our submission, the relevance of the effects management hierarchy must be considered in light of the context of the NPS-FM which requires regional councils to amend their regional plans to:

²⁰⁴ NPS-FM, clause 3.2.

²⁰⁵ NPS-FM, clause 3.2(3).

²⁰⁶ *Minister of Conservation v Northland Regional Council* [2021] NZEnvC 77 at [37].

²⁰⁷ Evidence of Karen Bell, at [9.17] – [9.21].

²⁰⁸ NPS-FM at [3.21].

²⁰⁹ Section 42A Report at [516].

- (a) include policies requiring:
 - (i) the loss of extent of natural inland wetlands is avoided, except where the activity is for specified infrastructure and the effects of the activity are managed through the effects management hierarchy;²¹⁰ and
 - (ii) the loss of river extent is avoided, unless there is a functional need for the activity in that location and the effects of the activity are managed through the effects management hierarchy.²¹¹
- (b) ensure that application for consent for an activity within the specified exceptions is not granted unless the council is satisfied that the application has demonstrated how the effects management hierarchy will be applied and that any consent is granted subject to conditions that apply the effects management hierarchy.

7.29 These provisions have not yet been incorporated into the One Plan which means that these clauses in the NPS-FM have the same status as other national policy statements. While the NPS-FM is a relevant matter for the Panel to consider under section 171(1)(a)(i) of the RMA, the NPS-FM primarily directs that the effects management hierarchy is to be applied by the regional council through its regional plan in relation to applications for regional resource consents.

7.30 In any case, and to the extent that the Panel considers it necessary to consider these provisions of the NPS-FM in this context

there is a clear pathway within the NPS-FM for activities that are specified infrastructure which includes the Freight Hub, or where there is a functional need for an activity, which we submit there clearly is.²¹²

7.31 In any case, Ms Bell has provided an assessment of the effects management hierarchy in her evidence, noting that while adverse effects have been avoided where practicable, avoidance of stream loss is not practicable in the circumstances and they have been minimised and remedied.²¹³

²¹⁰ NPS-FM, clause 3.22.

²¹¹ NPS-FM, clause 3.24.

²¹² The Council Reporting Planners accept that the Freight Hub is specified infrastructure. Section 42A Report at [514].

²¹³ Evidence of Karen Bell at [9.22].

- 7.32 The application of the effects management hierarchy is primarily a matter to be considered at the regional consenting phase. However, to the extent that the Panel considers it necessary to apply it in this context, this is only one relevant matter that the Panel is required to have regard to (it is not required to give effect to the NPS-FM) and in that regard, it cannot be determinative of the NoR.

Interaction with Palmerston North Integrated Transport Initiative

- 7.33 One of the benefits of the Freight Hub in its proposed location is its ability to integrate with the wider strategic transport network, including the programme of works that is proposed as part of the Palmerston North Integrated Transport Initiative ("**PNITI**"). This programme of works is a broader package of works to be delivered by other road controlling authorities.
- 7.34 The PNITI programme of works includes southern and western bypasses of Bunnythorpe ("**Bunnythorpe Bypasses**") as well as a regional freight ring road ("**Ring Road**"). KiwiRail is committed to working collaboratively with relevant road controlling authorities on the delivery of the works proposed as part of PNITI and their alignment with the delivery of the Freight Hub.
- 7.35 A range of matters have been raised in submissions and by the Council Reporting Planners in relation to the delivery of these works, including that it is premature to determine the NoR without the details of the PNITI programme being available and that the effects of the NoR and the Ring Road should be assessed as part of this process. We address these matters in turn below.

Deferring the NoR

- 7.36 It is neither necessary, nor reasonable, to defer the NoR until such time as further detail on the PNITI programme is available. As the Panel will be aware, it is required to assess the project that has been applied for and is before it for consideration as a standalone project.²¹⁴ These works are not the responsibility of KiwiRail and are being delivered by other road controlling authorities. Further, and as discussed below, KiwiRail has proposed conditions on the designation to ensure that the Freight Hub can appropriately integrate with the wider transport network in a safe and efficient manner.
- 7.37 One submitter also contends that the NoR should be delayed until such time as the new Natural and Built Environment Act is in force.²¹⁵ As the Panel will

²¹⁴ *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 at [248].
²¹⁵ Submission 10.

be well aware, KiwiRail is within its rights to lodge the NoR and this is required to be considered under the current legislative framework of the RMA.

Effects of the NoR and wider transport upgrades

- 7.38 The Ring Road will use existing roads as well as new roads to connect key industrial areas of the city.²¹⁶ Delivering the Bunnythorpe Bypasses will also require the construction of new roads.
- 7.39 The evidence of Ms Downs on behalf of Waka Kotahi confirms that the PNITI business case was endorsed by the Waka Kotahi Board in February 2021,²¹⁷ however, this has not yet been publicly released. From a planning perspective, a notice of requirement has not yet been lodged (let alone a designation granted) for the new roads required to deliver the Ring Road and the Bunnythorpe Bypasses. At this point in time, there is no certainty that these activities will proceed nor any indication as to the timing for their implementation. As Mr Georgeson has explained, for this reason, these activities have not been modelled as part of the NoR.²¹⁸ While KiwiRail is committed to working with Waka Kotahi and Council to integrate with the wider transport network, it is not KiwiRail's responsibility to model or deliver these works on behalf of other parties simply because its NoR has progressed ahead of other projects.
- 7.40 The Panel is required to assess the effects of allowing the NoR on the environment. As set out above, the "environment" against which the effects must be assessed includes the reasonably foreseeable future environment. This embraces the future state of the environment as it might be modified by the implementation of resource consents (and designations) which have been granted at the time a particular application is considered, where it appears those approvals will be implemented.²¹⁹
- 7.41 In the absence of planning approvals being obtained for the Ring Road and the Bunnythorpe bypasses, it is our submission that these activities cannot be considered as forming part of the reasonably foreseeable future environment against which the NoR should be assessed.

²¹⁶ Section 42A Report, Appendix A, at page 19 which shows two potential options for these connections.

²¹⁷ Evidence of Sarah Downs, dated 23 July 2021, at [4.1].

²¹⁸ Evidence of Mark Georgeson at [5.31].

²¹⁹ *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA) at [84].

- 7.42 Some submitters have also raised concerns about the "combined" effects of the NoR and Ring Road.²²⁰ As the Panel will be aware, the definition of "effect" includes "any cumulative effect which arises over time or in combination with other effects".²²¹ The Court of Appeal has provided guidance on the meaning of such effects, stating that:²²²

The first thing which should be noted is that a cumulative effect is not the same as a potential effect. This is self evident from the inclusion of potential effect separately within the definition. A cumulative effect is concerned with things that will occur rather than with something which may occur, that being the connotation of a potential effect. This meaning is reinforced by the use of qualifying words "which arises over time or in combination with other effects". The concept of cumulative effect arising over time is one of a gradual build up of consequences.

- 7.43 There is no information or evidence as to the effects of the Ring Road and Bunnythorpe Bypasses let alone whether those effects will occur. In our submission, it is therefore not possible to consider the combined effects of the NoR and these other activities at this point in time. The Council Reporting Planners agree with this approach.²²³
- 7.44 Notwithstanding this, KiwiRail acknowledges the importance of integration between the Freight Hub and these wider improvements to the strategic transport network. In light of this, KiwiRail has proposed a condition requiring a Road Network Integration Plan to be prepared, the objective of which is to ensure that the roading network is appropriately managed and safely and efficiently integrated with the wider transport network. In our submission, this is an entirely appropriate mechanism to achieve an efficiently integrated roading network.
- 7.45 In response to the Section 42A Report, further amendments have been proposed to the Road Network Integration Plan condition as set out in the evidence of Mr Georgeson and Ms Bell.²²⁴ Waka Kotahi endorses the amended conditions and has confirmed that they address the matters raised in its submission.²²⁵

²²⁰ Submission 61.

²²¹ RMA, section 3.

²²² *Dye v Auckland Regional Council* [2002] 1 NZLR 337 (CA) at [348]–[349].

²²³ Section 42A Report, at [238] and [383].

²²⁴ Evidence of Mark Georgeson at section 11; Evidence of Karen Bell at Appendix 1.

²²⁵ Evidence of Sarah Downs at [2.3].

7.46 Without any certainty as to when these roading connections would be delivered, KiwiRail determined that it was necessary to provide for the Perimeter Road to enable access to the Freight Hub and manage the effects on the roading network. The delivery of this road would not, however, preclude integration with the wider roading network when those upgrades are delivered. This is reflected in the proposed conditions which require the Perimeter Road to be constructed unless alternative access (such as the Bunnythorpe Bypasses) are delivered.²²⁶

Sensitivity of receivers

7.47 Dr Chiles has assessed the effects of the Freight Hub, in terms of sensitivity to noise, based on normal responses.²²⁷ Some submitters have raised personal health conditions that may cause or contribute to increased noise sensitivity of some residents.²²⁸

7.48 In assessing the effects of a proposal, the Environment Court has previously considered how hypersensitive individuals, including those with autism should be considered under the RMA. The Court observed:²²⁹

In public health terms, a population of individuals will have individual noise sensitivity that falls on a normal distribution (Gaussian bell curve). It would be a reasonable expectation that the population that falls within the curve defined by plus or minus 2 standard deviations of the mean would be protected. This represents 95% of the population, but 5% of the population remains that these people *may* be particularly sensitive to an environmental stressor.

In *Motorimu Wind Farm Ltd v Palmerston North City Council* the Court accepted, in dealing with annoyance that might give rise to sleep deprivation, anxiety and possible consequential health effects, which "*ultimately, consideration of noise effects must be based on normal physiological responses, and cannot seek to protect those whose sensitivities might be at the higher end of the scale*". We agree with this approach because the RMA is not a "*no effects*" statute. The 5% of the population who are either hyper or hyposensitive to noise may attract an individual assessment and arrangements to avoid a potential health effect, but any arrangements reached will need to be by agreement outside the requirements of the RMA.

²²⁶ Evidence of Mark Georgeson at [11.1(c)].

²²⁷ Evidence of Stephen Chiles at [8.9].

²²⁸ Submission 6; Submission 22; Submission 50; Submission 80.

²²⁹ *Re Meridian Energy Ltd* [2013] NZEnvC 59 at [298] and [299].

- 7.49 This approach is consistent with KiwiRail's approach to the assessment of noise effects. In line with the Environment Court's approach, it is appropriate for the Panel to consider the effects of the NoR, based on a population's normal physiological responses.

Effects on property values

- 7.50 Effects on property values as a result of the NoR have been raised in a number of submissions from landowners in the vicinity of the Site.²³⁰ Each of those submitters have also raised a range of other concerns with regard to effects including noise effects and social disruption and KiwiRail acknowledges the concerns expressed by submitters.
- 7.51 The relevance of effects on property values in the context of the RMA has been considered in numerous cases. The starting point, from a legal perspective, is that generally potential effects on property values are not a relevant matter for consideration under the RMA.²³¹ In the context of resource consent applications, the Environment Court has observed that there are inherent difficulties in assessing property values as a separate effect under the RMA.²³²
- 7.52 In the context of an alteration to a designation, the Environment Court has held:²³³

[...] Adverse effects on land and property values are not in themselves a relevant consideration, but if they occur, they are simply a measure of adverse effects on amenity values.

If property values are reduced as a result of activities on adjoining land, the devaluation would reflect the effects of that activity on the environment. The correct approach is to consider those effects directly rather than market responses because the latter can be an imperfect measure of environmental effects.
[...]

- 7.53 In our submission, the potential effects on property values is not a separate effect to be considered by the Panel in considering the effects on the environment under section 171(1) of the RMA.
- 7.54 In her evidence, Ms Austin has acknowledged that some residents in the local impact area have expressed concern about the negative effect of the Freight

²³⁰ Submission 1, Submission 21, Submission 35 and Submission 53. Section 42A Report at [685].

²³¹ *Tram Lease v Auckland Transport* [2015] NZEnvC 137 at [57].

²³² *Re Meridian Energy Ltd* 2013 NZEnvC 59 at [484] and [485].

²³³ *City Rail Link Ltd v Auckland Council* [2017] NZEnvC 204 at [62] and [63].

Hub on property values, she goes on to identify that no property value projections are available to determine whether this a real or perceived fear.²³⁴ While Ms Austin acknowledges that fear and uncertainty can be an adverse social impact perspective,²³⁵ the Environment Court has also been clear that decisions "should not be made based on people's fears that might never be realised"²³⁶ and that "such fears can only be given weight if they are reasonably based on real risk".²³⁷

- 7.55 Some of the submitters surrounding the Freight Hub have also raised concerns that no compensation has been offered.²³⁸ This is not a matter that is relevant for the Panel to consider in the context of the NoR. There is a specific legislative regime under the Public Works Act 1981 and section 185 of the RMA in which matters of compensation for land acquisition or other forms of compensation are appropriately addressed.

Lapse period

- 7.56 KiwiRail seeks a lapse period of 15 years for the designation for the Freight Hub. As explained by Ms Bell, this lapse period is sought due to the scale and complexity of the works required to enable the construction of the Freight Hub.²³⁹ In our submission, a 15-year lapse period is appropriate and reasonable in the circumstances.
- 7.57 Submitters and the Council Reporting Planners have questioned the length of lapse period and consider that a shorter lapse period should be imposed.²⁴⁰ The Council Reporting Planners have recommended a lapse period of 10 years.²⁴¹
- 7.58 The RMA provides that the default lapse date for designations is five years from the date the designation is included in the plan, unless the designation specifies a different period.²⁴² The RMA does not provide any guidance as to when it is appropriate to extend a lapse period, however, there is clear discretion to extend lapse periods beyond the default period when confirming a designation.²⁴³

²³⁴ Evidence of Kirsty Austin at [6.18(b)].

²³⁵ Evidence of Kirsty Austin at [6.18(b)].

²³⁶ *City Rail Link Ltd v Auckland Council* [2017] NZEnvC 204 at [64].

²³⁷ *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66 at [193].

²³⁸ Submission 18; Submission 97; Submission 57; Submission 6.

²³⁹ Evidence of Karen Bell at [4.7].

²⁴⁰ Submission 77; Submission 61; Submission 59; Section 42A Report at [741] – [745].

²⁴¹ Section 42A Report at [745].

²⁴² RMA section 184(1)(c).

²⁴³ RMA, section 184(1)(c).

7.59 The Environment Court has provided useful guidance as to when it is appropriate for lapse periods to be extended:²⁴⁴

The discretion has to be exercised in a principled manner, after considering all of the circumstances of a particular case. There may be circumstances where a longer period than the statutory 5 years is required to secure the route for a major roading project. Such circumstances need to be balanced against the prejudicial effects to directly affected property owners who are required to endure the blighting effects on their properties for an indeterminate period. The exercise of the discretion needs to be underlain by fairness.

7.60 The appropriateness of an extended lapse period will depend on the circumstances of each case. It is a factual assessment that needs to be undertaken by balancing all of the relevant factors of a particular case. In the context of the Freight Hub, we submit that the following matters are relevant to the consideration of the lapse period:

- (a) it is a complex project that requires sufficient lead time for a range of actions to be undertaken before construction of the Freight Hub commences;²⁴⁵
- (b) designating the land is appropriate in order to safeguard the Site from inappropriate use and development;²⁴⁶ and
- (c) the designation will provide certainty for the local community and key stakeholders as KiwiRail's plans for this land.

7.61 The Council Reporting Planners consider that a shorter lapse period is necessary to mitigate adverse effects associated with economic uncertainty.²⁴⁷ In our submission, the NoR has the opposite effect and provides the community and key stakeholders with greater certainty as to its location. The Environment Court has previously said in relation to designations for major projects:²⁴⁸

We consider that if the proposed route is identified now in the plan then this assists in planning for the sustained and integrated management of the natural and physical resources along the route for the foreseeable future. If such tools are not

²⁴⁴ *Beda Family Trust and Ors v Transit New Zealand* Decision No. A139/2004 at [113].
²⁴⁵ Evidence of Karen Bell at [4.8]; Evidence of Todd Moyle at [7.7]; Evidence of Michael Skelton at Section 6.

²⁴⁶ Evidence of Karen Bell at [7.23].

²⁴⁷ Section 42A Report at [744] and [745].

²⁴⁸ *Quay Property Management Ltd v Transit New Zealand* 29/5/2000, W028/00 at [123].

available for major projects such as state highways and motorways, then industry would not know for commercial reasons when and where a major transport route might be available for planning and freighting purposes.

- 7.62 From an economic perspective, Mr Colegrave's evidence is that the market has already started acquiring land in anticipation of a Freight Hub in this location some time ago.²⁴⁹ Lodgement of the NoR (and its subsequent confirmation) will only, in our submission, provide greater investment certainty for businesses looking to locate in this area.
- 7.63 KiwiRail is actively working with landowners to acquire land by agreement. As Ms Poulsen has explained, KiwiRail has received funding for the acquisition of the land for the Freight Hub and has commenced the acquisition process, with approximately 41% of the Site having been acquired to date.²⁵⁰
- 7.64 15 year lapse period strikes the appropriate balance for a project of this scale and significance. An extended lapse period is not uncommon and has been granted for other major infrastructure projects including by the Board of Inquiry for the Transmission Gully Proposal and the East West Link Proposal. In both instances, 15-year lapse periods were granted.

Management plans

- 7.65 The Proposed Conditions employ the use of management plans to ensure that effects are appropriately managed throughout the Project. The Council Reporting Planners have questioned the use of management plans.²⁵¹ While the Council Reporting Planners appear to accept the use of management plans, they consider that if they are to be used, they should clearly be scoped with the outcomes that the plan is intended to achieve.²⁵²
- 7.66 In the context of a recent decision an Expert Consenting Panel, the Panel identified that the key tenets of a "fit for purpose" management plan condition are:²⁵³
- (a) a requirement for it to be prepared by suitably qualified personnel;

²⁴⁹ Evidence of Fraser Colegrave at [4.26].

²⁵⁰ Evidence of Olivia Poulsen at [6.14].

²⁵¹ Section 42A Report at [27].

²⁵² Section 42A Report at [923].

²⁵³ Decision of the Expert Consenting Panel concerning the Te Ara Tupua - Ngā Ūranga Ki Pito–One - Shared Path, issued 5 February 2021 at [265].

- (b) a clear objective, a stated scope and performance management requirements;
- (c) specification of a process for council certification;
- (d) specification of process for amending a certified plan; and
- (e) a requirement to comply with the management plan once certified.

7.67 The Proposed Conditions achieve these tenets. The conditions include a certification process for management plans including their amendment.²⁵⁴ The management plans are required to be prepared by a suitably qualified and experienced person.²⁵⁵ Each individual management plan condition is linked to the relevant condition(s) and include clear objectives and performance management requirements.

7.68 For example, condition 58 set out the objective of the Construction Management Plan.²⁵⁶ Condition 59 sets out measures the Construction Management Plan is required to contain, including links to performance management standards such as measures to ensure that enabling or construction works and structures are designed and undertaken to comply with the New Zealand Code of Practice for Electrical Safe Distances (NZECP 34:2001).²⁵⁷ The Proposed Conditions require that all works shall be carried out in accordance with the applicable management plan(s) and other plans required by the conditions.²⁵⁸

8. PROPOSED CONDITIONS

8.1 KiwiRail has proposed a suite of conditions on the NoR. These conditions have been refined through further engagement with submitters and in response to matters raised in the Section 42A report. A marked-up version of these conditions is attached to the evidence of Ms Bell (as **Appendix 1**) and the reasons for the amendments proposed by KiwiRail are discussed by Ms Bell and addressed by various KiwiRail experts. In our submission, the

²⁵⁴ Evidence of Karen Bell at Appendix 1, Condition 5 and Condition 10.

²⁵⁵ For example, Condition 43 (Stormwater Management and Monitoring Plan), Condition 63 (Construction Traffic Management Plan), and Condition 70 (Construction Noise and Vibration Management Plan). Evidence of Karen Bell at Appendix 1.

²⁵⁶ Evidence of Karen Bell at Appendix 1.

²⁵⁷ Evidence of Karen Bell at Appendix 1, Condition 59(e).

²⁵⁸ Evidence of Karen Bell at Appendix 1, Condition 6.

conditions proposed by KiwiRail are reasonable and appropriate to manage the effects of the NoR.

9. CONCLUSION

- 9.1 The Freight Hub is a critical infrastructure project of regional and national importance that will have significant benefits for the Manawatū-Whanganui region and New Zealand as a whole. KiwiRail's expert evidence has demonstrated that the adverse effects on the environment can be appropriately managed through the design and the suite of mitigation measures proposed. We submit that Panel should recommend that the NoR for the Freight Hub be confirmed.

Dated: 6 August 2021

A A Arthur-Young / L J Rapley
Counsel for KiwiRail Holdings Limited