

BEFORE THE PALMERSTON NORTH CITY COUNCIL

IN THE MATTER the Resource Management Act 1991

AND

IN THE MATTER of a Notice of Requirement to construct and operate
an intermodal rail and freight hub on land between
Bunnythorpe and Palmerston North.

STATEMENT OF EVIDENCE OF PAUL NORMAN THOMAS

Dated 15 July 2021

INTRODUCTION

1. My full name is Paul Norman Thomas.
2. I have been asked by PMB Landco Ltd, Brian Green Properties Ltd and Commbuild Property Ltd, who made a joint submission to provide planning evidence in relation to the part of their submission that concerns the scope of activities that are to be authorised by the designation.

QUALIFICATIONS AND EXPERIENCE

3. I am currently a Director of Thomas Planning Ltd, a resource management planning consultancy. I have a B.A (Hons) Degree in Urban and Regional Planning from Oxford Brooks University and a Diploma in Business Management from Deakin University in Melbourne. I am a member of the New Zealand Planning Institute, the Resource Management Law Association and a former member of The Royal Town Planning Institute.

4. I have over 40 years' experience in planning and resource management, the last 30 or so years which have been in consultancy. From 1996 to 2016 I was a director of Environmental Management Services (EMS) providing a range of resource management advice and services. Prior to that I was the Manager of the Wellington Planning Group and National Discipline Head of Works Consultancy Ltd. In that capacity I was responsible for the development of a team of planners and landscape architects serving a wide range of public and private sector clients and for the technical standards of over 40 planning staff.
5. I am a Commissioner accredited as a Chair by the Ministry for the Environment and have been active as a Commissioner since 2008.

CODE OF CONDUCT

6. I confirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise.
7. In that regard I am aware that the subject matter of this evidence is as much a legal issue as a planning one and has been the subject of some memoranda and minutes by parties and the panel ahead of the hearing. Both the Council and KiwiRail have stated that this matter will be addressed in legal submissions to the hearing.

SCOPE OF AUTHORISED ACTIVITIES

8. The submission by PMB Landco Ltd, Brian Green Properties Ltd and Commbuild Property Ltd generally supports the development of the rail hub but raises a concern regarding the scope of activities that is to be authorised by the designation.
9. The submitters are all industrial land development companies with developments and interests in the north east quarter of Palmerston North. PMB Landco Ltd owns and develops the Manawatu Industrial Park which makes up most of the original North East Industrial Zone which has since been expanded. Brian Green Properties Ltd owns industrial and residential land in and around Palmerston north including land in the North East Industrial. Commbuild Property Ltd owns and develops land for commercial clients and also has land in the Railway Road area.

10. These companies are to a large degree trade competitors with each other but have made a joint submission. That submission seeks simply to ensure that KiwiRail being a State Owned Enterprise and approved Requiring Authority is only authorised to undertake activities under this Notice of Requirement that come within its financial responsibility.
11. The Resource Management (Approval of KiwiRail Holdings Ltd as Requiring Authority) Notice 2013 defines the companies network utility operation as “being the construction, operation, maintenance , replacement upgrading, improving and extension of its railway line.”
12. The term “operation” would clearly include loading and unloading wagons, marshalling of freight prior to and after transport by it’s railway line, and the loading and unloading of road vehicles for inbound and outbound freight.
13. However, this clearly does not extend to warehousing and distribution of that freight or processing of freight.
14. The Notice of Requirement states that the Freight Hub will include the following key elements and associated works
 - Marshalling yards (including tracks, signals, overhead line equipment and lighting)
 - Container terminal
 - Wagon storage
 - Maintenance and network services facilities
 - Freight forwarding facilities
 - Log handling yard
 - Bulk liquid storage
 - Train control and rail operation centre, administration offices and carparking
 - Staff facilities, including parking
 - Access roads, and changes to existing road layouts and intersections
 - Stormwater management areas with associated planting
 - Noise management areas with associated planting
 - Buildings and other activities ancillary to the freight hub
15. The term Container Terminal Yard is one of the above activities and is defined in the AEE project Glossary as “*Area where containers are transferred from rail to truck and vice versa and includes container storage and, rail tracks and truck parking.*”

16. In my opinion, that definition fits well with the scope of KiwiRail “operations” outlined in para 11 above. Notably it does not include the loading or devanning of containers which will not be authorised by the designation.
17. The submission is effectively seeking that clarity for all parties be achieved by including in the designation recommendation definitions of the other activities that could otherwise easily expand or be established beyond the financial responsibility of KiwiRail.
18. Specifically this is required for the terms Freight Forwarding Facilities, Log handling and Bulk Liquid Storage.
19. I do not consider that this is either controversial or problematical. It is simply to provide clarity on the scope of activities embraced by these terms.
20. It is important because it is clear from the NOR/AEE that the proposal includes facilities that are not the financial responsibility of KiwiRail but instead would be owned and operated by other entities.
21. At Section 6.1 of the AEE it is stated that the purpose of the designation is: *“To develop, operate and maintain railways, railway lines, railway infrastructure, and railway premises as defined in the Railways Act 2005, and activities and infrastructure required to enable the transportation of goods by rail and road.”*
22. On page 8 of the AEE it states *“The concept needs to anticipate the full range of facilities that KiwiRail, and KiwiRail’s freight partners, are typically expected to require at regional hubs, such as:...”*
23. In my opinion this designation cannot authorise activities and facilities of KiwiRail’s freight partners that are not owned by KiwiRail and whose activities do not come within the scope of KiwiRail’s requiring authority status, or for that matter the purpose of the designation.
24. Further the Concept Plan shown on page ii of the AEE identifies a large part of the designation to be used for *“Freight Forwarding Private Siding.”* See Figure 1 below. In my opinion the designation cannot be used to construct private sidings as these will not be owned by KiwiRail and therefore do not come within the scope of “its railway line” (See para 10)., or the definition of “railway premises” in the Railways Act 2005.

25. These are likely to be owned and operated by KiwiRail's Freight Forwarding Partners. If so, these facilities cannot be authorised through this designation process and the area of land that is the subject of the designation will need to be modified to reflect this..
26. Having said that, approximately the southern third of the site is currently zoned North East Industrial Zone in the operative Palmerston North District Plan. Within this part of the site these non KiwiRail activities can be authorised through the provisions of the Plan subject to the approval of KiwiRail pursuant to section 176(1)(b) of the Act.



Figure 1: Concept Plan Showing Distribution of Activities (page ii AEE).

27. Those activities, therefore, need to be removed from this designation and be authorised through a quite separate process whether within the North East Industrial Zone or not.
28. The submission seeks clarity on this matter by defining the terms freight forward facilities, log handling and bulk liquid storage as they relate to the activities of KiwiRail that fit within the legal scope of this designation. The definitions will depend on what facilities are under the financial responsibility of Kiwi Rail and which are not. That is for Kiwi Rail to clarify not me.
29. I don't anticipate any challenges with a suitable definition of log handling as this largely involves vehicle delivery and removal, on site storage and loading/unloading of wagons. A suitable definition might therefore be

Log Handling means the unloading and loading of vehicles and rail wagons with logs and the temporary open storage of logs prior to transportation.

30. Bulk liquid storage may similarly be straight forward if the facilities are owned and operated by Kiwi Rail. If that is the case a definition might be:

Bulk Liquid Storage means the temporary storage of bulk liquid products prior to and immediately after transportation by rail.

31. However, freight forwarding is likely to be more problematical and lie outside the designation particularly as it appears to relate to privately owned and operated sidings.
32. As an aside I also note that this issue may have implications for acquisition of land for the project under the Public Works Act 1981. My understanding is that the legislation can only be applied for acquisition of land for a public work. The question of whether it can be used for land for freight forwarding and private sidings is a matter that Kiwi Rail will need to address, but clearly lies outside of the process of determining this Notice of Requirement.
33. Finally, while I have noted these submitters are to an extent trade competitors with each other they are not trade competitors with KiwiRail and simply intend to keep it that way.

Paul Thomas
15 JULY 2021