

**BEFORE INDEPENDENT COMMISSIONERS  
AT PALMERSTON NORTH**

**UNDER THE** Resource Management Act 1991 ("**RMA**")

**AND**

**IN THE MATTER** of an application by KiwiRail Holdings Limited ("**KiwiRail**") under section 168 of the Act for a Notice of Requirement for the Palmerston North Regional Freight Hub ("**Freight Hub**")

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**MEMORANDUM OF COUNSEL ON BEHALF OF  
KIWIRAIL HOLDINGS LIMITED**

**12 JULY 2021**

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**MAY IT PLEASE THE PANEL:****Introduction**

1. Counsel for KiwiRail are in receipt of:
  - (a) the second minute of the Independent Hearing Panel dated 8 July 2021 regarding the Panel's site visit and requesting additional information ("**Second Minute**"); and
  - (b) the memorandum of counsel prepared on behalf of Dr Whittle and Dr Fox dated 8 July 2021 regarding KiwiRail's requiring authority status ("**Whittle/Fox Memorandum**").
2. We respond briefly to both below.

**Second Minute**

3. Counsel is grateful for the matters raised in the Second Minute. Confirmation of the height of the light towers at the Existing Freight Yard at Tremaine Avenue has been confirmed in the lighting evidence of Mr McKensey, filed on 9 July 2021.
4. In relation to visual simulations of the anticipated height of the proposed bunding outside the three entrances to the driveways at the eastern end of Sangsters Road, KiwiRail's landscape expert Ms Rimmer has prepared context photographs and cross-sections showing representative views of the Site through this area, which have been included in her evidence filed on 9 July 2021. Ms Rimmer will prepare additional visuals in relation to the three entrances to the driveways at the eastern end of Sangsters Road, which will be provided to the Panel as soon as practicable.

**Whittle/Fox Memorandum**

5. On 5 July 2021 counsel for KiwiRail received a letter from counsel on behalf of submitters, Dr Whittle and Dr Fox, which raises the same issues as noted in the Whittle/Fox Memorandum filed with the Panel on 8 July 2021. The letter asks KiwiRail to explain (to the submitters' counsel) whether KiwiRail's approval as a requiring authority under section 167 of the RMA covers the full scope of the Freight Hub for which a designation is proposed.
6. The Whittle/Fox Memorandum to the Panel states:

If KiwiRail and/or the Council are not able to provide a satisfactory explanation of the legal basis for the proposed NoR,

then the Panel may wish to consider whether it is appropriate to proceed with a...hearing in August.

7. This was also raised in Dr Fox's submission.<sup>1</sup> Dr Whittle did not raise this issue in her submission. It was also clearly noted in the Council's Section 42A Report as being a matter to be addressed in legal submissions at the hearing.<sup>2</sup>
8. Counsel for KiwiRail is firmly of the view that the activities proposed in KiwiRail's notice of requirement for the Freight Hub are well within the scope of KiwiRail's approval as a requiring authority, and there is no issue in relation to the "legality" of the notice of requirement.
9. However, we agree with the Council's Section 42A Report on this point that the matter is appropriately and fairly considered at the upcoming hearing. This matter will be comprehensively addressed in legal submissions for KiwiRail, and the submitters who have raised this issue will also be able to address the Panel on this point. The Panel can appropriately consider this matter, along with the range of other matters arising from the application, at that time.
10. In our submission, it would be both unreasonable and unfair for the upcoming hearing to be postponed or adjourned at this late stage. This matter can, and properly should, be considered at the hearing in August.

**DATE:** 12 July 2021



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

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<sup>1</sup> Submission of Dr Fox (number 47) at page 9. See also the submission of Foodstuffs North Island (number 58) at paragraph 3.2 and the submission of PMB Landco LTD, Brian Green Properties Ltd and Commbuild Property Limited (number 45) at paragraph 2.

<sup>2</sup> Section 42A Report, dated 18 June 2021, at paragraph 44.