



Report pursuant to s42A Resource Management Act 1991

In the matter of:	A Notice of Requirement to construct and operate a new intermodal rail and freight hub on land between Palmerston North and Bunnythorpe
And:	A hearing by Palmerston North City Council pursuant to s100A
Requiring Authority:	KiwiRail Holdings Ltd
Hearing date:	Commencing 9 August, 2021

Section 42A summary statement for hearing: Planning

By: Anita Coplestone

Contents

1	INTRODUCTION	1
1.1	Issues of jurisdictional overlap	1
1.2	Ecology and indigenous biodiversity matters	2
1.3	Air quality	3
1.4	Natural Hazards, including control of flooding, stormwater, seismic hazards	4
1.5	Role of the Outline Plan versus conditions on the designation	6
1.6	Use of management plans as a tool for managing effects	6
1.7	Information gaps	7
2	OTHER MATTERS	8
2.1	Use of a 'design framework'	8
2.2	Permitted baseline	10
2.3	Lapse period	10
2.4	Relevance and applicability of the NPS FM 2020	11
2.5	Te Mana o te Wai	11
2.6	Weight to be given to certain positive effects	12
3	POINTS OF CLARIFICATION	13
3.1	PowerCo's submission (submission 48)	13
4	DRAFT CONDITIONS	13

1 Introduction

1. I prepared the s 42A planning report on the Freight Hub, with assistance from my colleague Phillip Percy. I have been asked by the Panel to address the following matters:
 - (a) The extent to which the Panel's recommendation to KiwiRail should engage planning considerations that overlap with the regional council;
 - (b) What balance should be achieved between the use of outline plans versus conditions attaching to the NOR;
 - (c) The use of management plans as a tool for managing effects;
 - (d) In relation to outstanding information gaps, to identify both:
 - i. Where remaining uncertainty can be satisfactorily addressed by conditions; and
 - ii. Whether there are any areas of uncertainty that are not able to be addressed through conditions.

1.1 Issues of jurisdictional overlap

2. During the hearing there have been a number of discussions about whether the s 42A reporting team has 'strayed across the lanes'. I would like to briefly reiterate some of the overarching reasons for the reporting officers' approach, before dealing with some specific matters.
3. KiwiRail has chosen not to seek regional resource consents concurrently with the NOR application. KiwiRail has not provided detailed information as to the scale, characteristics, intensity and significance of effects that relate to regional planning matters (e.g., in relation to ecology, air, natural hazards and waterbodies) or the way in which those effects will be avoided, remedied or mitigated.
4. These 'gaps' have made it practically difficult for the reporting team to determine the potential extent of the adverse effects of the Freight Hub proposal, or the adequacy/availability of proposed mitigation measures to

address those effects. The challenge has been that while we consider we are required to consider “all” effects of the Freight Hub, we are also expected to accept different levels of information for different environmental effects, based on assertions that they will be covered later. In some instances this has been difficult to accept. For example, where Council's technical experts are providing advice that KiwiRail's assessment of effects is likely incorrect (such as with natural character and ecological issues) or where, despite our enquiries, we do not have complete confidence that later processes will address all relevant effects (refer to Ms Ryan's summary).

5. Essentially, our enquiry has been an attempt to obtain sufficient understanding in a holistic sense of how those effects might influence the appropriateness of the Freight Hub in this location, considering the proposed design and its uncertainty.
6. We have assessed the character, scale and intensity of adverse effects with an eye to integrated management, and whether those effects can be appropriately avoided, remedied or mitigated – noting cautiously that some of the effects we assess will be managed at the subsequent consenting stage.
7. I acknowledge that it would be inefficient to duplicate the detailed assessment or imposition of controls that will be undertaken at the regional consenting stage. However, I consider it would also be inefficient if KiwiRail finds it necessary to make a future application to alter the designation because regional consents are unobtainable without significant design changes. It also seems likely to cause undue uncertainty and anxiety for affected landowners.
8. It would also not, in my opinion, be consistent with sustainable management if we did not address an effect based on KiwiRail's assertion that it would be addressed later, only to find out that this was incorrect.
9. I turn now to some specific topics.

1.2 Ecology and indigenous biodiversity matters

10. Submissions have established that there are amenity, cultural and intrinsic ecological values present within the designation extent, even if it is not clear whether there is significant indigenous vegetation or significant habitats of indigenous fauna. As evidenced in the submissions of Mereti Taipana

(submission 44), Diane Tipene (submission 81) and Ngati Kauwhata (submission 14), the functioning and presence of ecosystems (whether these are pristine or not) is relevant to the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.

11. I recognise the Regional Council's primary role in relation to freshwater and terrestrial indigenous biological diversity. However, I also understand that territorial authorities have a function to provide for amenity values, cultural values and the intrinsic values of ecosystems under Policy 6-1(b)–(c) of the One Plan (RPS), and Part 2 of the RMA. Ms Quinn does not agree with the conclusions in KiwiRail's ecological assessment, and considers that the ecological values of the site are likely to be understated.

1.3 Air quality

12. Part 2 of the RMA directs the management of the use, development and protection of resources in a way which enables people to provide for their health and safety, and which safeguards the life supporting capacity of air. Maintenance and enhancement of the quality of the environment is a matter that decision makers under the RMA must have particular regard to. Territorial authorities also have responsibilities for the integrated management of effects of land use and development, including amenity effects. Under the One Plan (RPS), territorial authorities have been allocated responsibility for managing the potential for incompatible land uses to establish near each other, where this impacts on air quality (Policy 7-4).
13. KiwiRail recognises there is likely to be adverse effects arising from dust which will require 'active management' and has proposed conditions to address operational dust emissions. Submitters have raised concerns about the potential amenity, health and well-being effects of dust. I therefore consider these effects fall within the scope of effects to be considered through the NoR process, and that it is appropriate to include conditions addressing them.
14. The reporting officers proposed conditions seek to avoid localised adverse effects (on amenity values, human health, property and the environment) arising from the generation of dust in close proximity to sensitive receptors, through real time construction dust monitoring, construction management, and amendments to KiwiRail's proposed conditions for operational dust management and dust effects on water supply.

15. KiwiRail previously proposed to prepare a Construction Dust Management Plan, which has been removed from its proposed condition set. I would expect to see management of construction dust addressed in an Outline Plan, and therefore consider it is appropriate to include conditions which instruct that future Outline Plan process. One of the reasons for the MidCentral Health Board's support for the Council's proposed conditions is that these would provide "*overarching and consistent conditions that apply to all construction activities, rather than just to individual activities, such as earthworks*", such as might be applied through regional consents.¹
16. Dr Heveldt (for KiwiRail) agreed that it was appropriate to monitor wind conditions and undertake air quality monitoring for particulate matter during construction. However, KiwiRail has not offered conditions to implement these recommendations. On Ms Ryan's advice, the Council's proposed monitoring conditions specify the type of monitoring (i.e., real time PM₁₀ monitoring concurrent with PM_{2.5}) that should be used to inform management practices to address amenity and nuisance impacts. Fine particulate monitoring will provide appropriate information to manage the larger particle components of dust, as well as important data to determine the potential health effects of finer particulate matter discharges, which is likely to be required to demonstrate compliance with regional plan standards, managing 'two birds with one stone.
17. In summary, I consider the Council's recommended conditions (end of hearing set) are a reasonable response to the lack of clarity around the character, intensity or scale of discharges of dust arising from the Freight Hub, and considering the potential effects. While the Regional Plan covers aspects of these effects, there are also potential effects for which the territorial authority has specific responsibility to address. I do not consider that any overlap in this area would be burdensome to KiwiRail, and in my opinion they strike the right balance.

1.4 Natural Hazards, including control of flooding, stormwater, seismic hazards

18. The s 42A planning report sets out the policy framework for natural hazards that the Panel must have particular regard to in coming to a recommendation

¹ At paragraph 15 of Mr Watt's oral submissions.

on the NOR. Policies 9-1 – 9-5 in the RPS set out the responsibilities for managing natural hazards with the intention that there is an integrated approach between the One Plan and District Plans. The need for an integrated approach was the reason for the reporting officers' recommendation that the Stormwater Management Framework be provided to both authorities. Having revisited this after the Panel's discussion with Mr Arseneau, I am comfortable that either approach (the reporting team or KiwiRail's) could be adopted.

19. The rules in Chapters 14 (discharges to water) and 16 (diversions of water) of the Regional Plan will address the loss of floodplain and displacement of floodwaters from the filling in and raising of the land. Stormwater effects relating to quantity, water quality, flood risk, erosion and sedimentation will be addressed by rules in Chapter 14. Considering this consenting framework and the expert advice of Mr Arseneau and Ms Baugham, I consider that the potential stormwater and flooding effects arising from placing the Freight Hub in this location can be appropriately avoided or mitigated.
20. One policy that I did not specifically reference in my report is Policy 9-3 in the RPS, which relates to the placement of new critical infrastructure in an area likely to be adversely affected by natural hazards. I consider that some elements of the Freight Hub will be critical infrastructure. However, by raising the level of the Freight Hub, the critical infrastructure will not be placed in an area likely to be inundated by the 0.5% AEP flood event, and therefore this hazard will be avoided, which is consistent with the policy requirements. I consider a similar interpretation can be applied to the other elements of the Freight Hub under Policy 9-2(b).
21. Turning to other natural hazards, the RPS requires that future development should be managed such that any increase in risk to human life, property or infrastructure from natural hazards is avoided where practicable, or mitigated where the risk cannot be practicably avoided (Policy 9-4). The District Plan requires that earthworks should not increase the risk posed by natural hazards, and built development should not take place on unstable land unless it can be demonstrated that the hazard can be avoided, remedied, or mitigated. Any built development on areas subject to liquefaction should be located or designed in a manner that suitably addresses the hazard on the site².

² Refer to District Plan policies Section 6: General Rules, Policy 1.4; Section 22: Natural Hazards, Policy 2.5 and Policy 2.6.

22. I therefore support KiwiRail's proposed condition 34B to prepare and submit a geotechnical report documenting the physical suitability of the land for the proposed development (subject to minor amendments to require that report to be prepared prior to undertaking detailed design).

1.5 Role of the Outline Plan versus conditions on the designation

23. In my opinion, the outline plan process provided by Part 8 of the RMA is not the appropriate place for defining the scale or significance of adverse effects. The determination of those matters should be informed by input from communities and stakeholders, which is not provided for within the Outline Plan process.
24. The ability to make changes at the Outline Plan stage is also limited, particularly where changes might be required to address adverse effects on the local community or mana whenua.
25. Therefore, my recommendations for conditions seek to establish a number of 'hard limits' on advice from technical experts, to provide a level of certainty for the community that the effects arising from the detailed design, construction and operation of the Freight Hub will be no more than what is envisaged at this NOR stage.

1.6 Use of management plans as a tool for managing effects

26. Management plans are common in large complex projects, where design details are not yet fixed or known, and there is a need to retain a level of flexibility to make changes at the detailed design stage. I consider that, if management plans are to be used, a level of certainty should be achieved at the designation stage so that:
- (a) the objective of such plans is clear and carefully scoped,
 - (b) the standards which the management plans seek to achieve are set out in standalone conditions, so that these can be appropriately enforced, and

- (c) the scale and significance of acceptable effects is established at the designation stage, rather than through the management plan.
27. I have attempted to reflect these principles in the conditions.
28. I also consider there should be meaningful opportunities for the community and stakeholders to have a say in the development of mitigation set out in management plans. Over the course of the hearing the conditions which provide these opportunities have been strengthened (CLF and RNIP).

1.7 Information gaps

29. During the hearing, KiwiRail has provided further information and proposed amendments to conditions which provide a level of comfort that certain effects can be addressed satisfactorily.
30. Commissioner Maassen asked that I identify those areas where there remains insufficient information to:
- (a) determine if the full envelope of effects has been identified (and captured by conditions); and
 - (b) determine whether those effects can be appropriately managed through conditions.
31. I consider the following areas of uncertainty remain:
- a) Cultural effects – There is currently very limited information before the Panel about cultural effects. As a consequence, there is no certainty at this stage, that KiwiRail's proposed conditions (or the limited amendments I have recommended to those conditions) are adequate to address effects on values that are not clearly identified for the site.
 - b) Ecological effects – An incomplete assessment has been undertaken of the ecological values of the site, and there is a high policy bar to meet under the NPS FM 2020 that will relate to later processes, therefore it is uncertain as to ecological mitigation, compensation or offsetting measures that might be required, and this could prove to be significant. In discussions with Ms Quinn, we propose to address this with a condition requiring ecological surveys prior to detailed design.

- c) Noise effects – The full envelope of effects is not established, and will not be until detailed design, but conditions are available to address some of this uncertainty by setting hard limits or bottom lines. The appropriateness of the residual effects on neighbours remains as a related consideration, and the actual effects will depend on detailed design.
- d) Air quality effects – The full extent of air quality effects (in particular the cumulative effects of the Freight Hub operations in combination with emissions from trains and trucks) has not been identified and Ms Ryan remains concerned that there is potential for the NESAQ standards for PM₁₀ to be breached. While this is also matter for the regional council, there is potentially a 'regulatory gap' as the regional council does not regulate mobile sources of PM₁₀ through the regional plan. We are not able to propose conditions to address this gap.
- e) Flooding effects – There is little information about the potential effects of filling in the flood plain. Mr Arseneau indicated in his evidence that these effects will be dealt with at the regional consenting stage, but like the ecological effects, there is uncertainty as to how those effects will be managed, with potential requirements for offsite mitigation.

2 Other matters

2.1 Use of a 'design framework'

- 32. There has been some discussion as to the purpose and scope of the 'design framework' recommended by the s42A reporting team. The landscape, social and planning experts from KiwiRail and the Council held a joint session to explore this and the outcomes are summarised in the statement provided to the Panel.
- 33. Our intention in recommending a design framework was to provide an overarching framework that is able to:
 - (a) address the range of external effects generated by the Freight Hub proposal, so that the final design is cognisant of the complex interplay in the design of mitigations addressing noise, lighting, dust, traffic, cultural and visual effects; and

- (b) provide for the desire expressed by the community and mana whenua to have a say in designing the mitigation package.
34. I felt this was difficult to achieve through a process of providing feedback on individual management plans.
35. While I appreciate that many of the design principles and opportunities fall within the remit of the landscape and design plan, others do not, or only do so partially. For example, mitigation (which relates to ecology, active travel and community connectivity, lighting, noise, and stormwater management design) does not logically sit in the landscape and design plan.
36. I consider that there is real benefit in a document that sits above management plans in a project implementation hierarchy, so that all management plans are developed in a way that recognises the compendium of design principles.
37. If a framework was adopted, the drafting process should be flexible, so that it reflects the preferences of KiwiRail, the community and mana whenua. I do not think multiple iterations would be necessary as, once established, the high-level outcomes will not need ongoing adaptation to actively manage effects in the same way that management plans are designed to do.
38. From my perspective as processing officer, the Cultural and Environmental Design Framework created as part of Te Ahu a Turanga project was a useful tool to provide for 'holistic' consideration of cultural, mana whenua, ecological, landscape and visual, geological, active transport and technical design matters. The CEDF went through three iterations before being settled, with the final version informed by extensive input from mana whenua and the community/stakeholders. Outline plans were subsequently accompanied by a completed 'design review template', which demonstrated how the detailed design met and demonstrated the design principles and desired design outcomes in the CEDF. The design reviews provided useful insight into the detailed design.
39. I have listened carefully to discussion about the design framework today. Commissioner Maassen has accurately captured in his discussion with Ms Whitby the purpose or concept that we have intended in relation to the design framework. It is not intended to direct principles or outcomes that undermine the body of information that currently exists, but to build on it in a way that allows for community involvement and agency in development of

the design principles and outcomes, including with mana whenua. It is intended that the framework will providing for a valuable user-friendly compendium for the community, drawing from information currently contained in disparate sources and expertise. I consider that it does have value as a genuine intermediate document. I accept that the 'words' of the conditions need to be written so that it is clear how this process will occur, to properly capture our intention and ensure this process (and ultimately the framework itself) have meaning. I have attempted to adjust conditions (in limited time) to help make this clearer.

2.2 Permitted baseline

40. Ms Bell provided further explanation regarding her application of the permitted baseline in her verbal summary. I am comfortable with the understanding that it is not applied as a legal permitted baseline, but more as a general explanation of what types of activities are anticipated for the area. I do not think a permitted baseline applies here.

2.3 Lapse period

41. KiwiRail request a 15-year lapse period given the scale and complexity of the activities needed to acquire land, prepare the operational 'platform' and put in place mitigation such as the stormwater system. Several submitters are concerned this lapse period will expose residents and the community to a long period of uncertainty.
42. I recommended that the lapse period is reduced to ten years, which is broadly aligned with KiwiRail's indicative construction programme for completion of Stage 1, with some allowance.³
43. Based on the reporting officers' social and economic evidence, I consider a 15-year lapse period creates prolonged uncertainty which will have negative consequences for investment and relocation decisions, and thus economic and social wellbeing. Council's economic experts say an extended period of uncertainty will defer both public and private spending until there is some

³ The Design, Construction and Operation Report (at page 22) indicates that regional consents and detailed investigations can be completed in a period of 3.5 years, bulk earthworks in 3 years, and the first stage of construction within approximately another 3 years (totalling 9.5 years).

certainty that the Freight Hub will be built. This uncertainty relates to timing, not location. This includes decisions about the timing of public investment in strategic roading improvements such as the ring road as well as Council's planning/ investment in urban infrastructure and for city growth.

44. Commissioner Maassen has questioned whether a more sophisticated lapse condition could resolve these issues, and there has been previous discussion about establishment or implementation conditions. Mr Jessen has addressed this in his legal submissions. With input from KiwiRail, I would be happy to assist if further drafting is required.

2.4 Relevance and applicability of the NPS FM 2020

45. The NPS is one of the matters to which the Panel must have regard in coming to their recommendation on the Freight Hub NoR. I do not consider NPS directions can be disregarded even though Part 3 implementation clauses have not yet been incorporated into the RPS. I consider the NPS to be directive and prescriptive as to what is to be included (in regional planning documents) to give effect to the NPS objective and policies on natural wetlands and loss of river extent. The objectives and policies in Part 1 of the NPS provide strong direction regarding natural wetlands and rivers. There is also direction at clause 3.1 that:

"Nothing in Part 3 limits the general obligation under the Act to give effect to the objective and policies in Part 2 of this National Policy Statement."

46. I acknowledge that much of the responsibility for implementing the NPS FM 2020 falls to the Regional Council. However, the 2020 version of the NPS places much greater emphasis on integrated planning for freshwater outcomes across both levels of local government, and on management of the effects of the use and development of land that falls within the remit of the City Council's responsibilities. This is particularly emphasised in Section 3.5 of the NPS FM.

2.5 Te Mana o te Wai

47. As I have indicated above, the NPS FM 2020 is a relevant document, and giving effect to Te Mana o te Wai cannot necessarily be deferred until the

regional council has gone through the process of adding local detail to its interpretation. As I read the NPS FM it makes Te Mana o te Wai considerations relevant at all times.

48. In any event, no matter how Te Mana o te Wai is eventually articulated for the region through Schedule 1 processes, it will still need to achieve the NPS FM objective by putting the needs of the wai first and foremost.
49. Mana whenua have a central role in articulating what Te Mana o te Wai means for the region (and perhaps for particular water bodies). Mana whenua have expressed aspects of those values in their submissions on the NOR.
50. Te Mana o te Wai has references to key parts of the RMA, the intrinsic values of ecosystems, the life supporting capacity of air, water and soil, the quality of the environment. These concepts are already signalled in Part 2 of the Act as being important, and as not being human-centric. There is an inherent status of these natural things in the environment which is already recognised by the legislation, and which are forefront of the assessment under s 171(1), even if the status of certain provisions of the NPS FM is subject to debate in this hearing.

2.6 Weight to be given to certain positive effects

51. I do not agree that freeing up of land at the existing rail yard at Tremaine Ave for other land uses is not a positive effect of the NoR. This will be the subject of a separate future process.
52. In terms of the weight that can be given to the potential for the Freight Hub to reduce greenhouse gas emissions, there is a direction in the NPS UD (Objective 8 and Policy 1) that planning decisions should contribute to well-functioning urban environments that “as a minimum [...] support reductions in greenhouse gas emissions”. I agree the Freight Hub will assist in meeting this objective. I consider that the wording “as a minimum” means that such environments should become the status quo.

3 Points of clarification

53. The following points of clarification are provided in response to remaining questions raised by the Panel.

3.1 PowerCo's submission (submission 48)

54. In response to Mr Schofield's oral submission for PowerCo, Commissioner Sweetman requested clarification as to whether Railway Road at the south will be closed and designated by KiwiRail. My understanding is that the section of Railway Road from the south up to and including the junction with Roberts Line will remain open, but that the designation extends over this area to provide for the works required to modify the junction between Railway Road and Roberts Line, and for the closure of the level crossing on Roberts Line.

55. KiwiRail's proposed condition 101 provides for removal of the designation from those areas which are no longer necessary for the ongoing operation, maintenance or mitigation of effects of the Freight Hub, following completion of construction. KiwiRail's designation can be removed from public roads once works to those roads are complete.

56. I previously recommended that a Management Plan condition might be appropriate to address PowerCo's concerns, which I understand Mr Schofield supports. I understand that KiwiRail is in discussion with PowerCo to resolve these issues.

4 Draft Conditions

57. In this section I provide some brief comments on the latest condition set proposed by the reporting officers, which is attached to this statement.

58. Sequencing – the conditions provide for the early establishment of the CLF and mana whenua framework, so that these parties can contribute to the design framework. The design framework in turn will inform the management plans.

59. Advice notes – where there is jurisdictional overlap, the advice notes will be helpful.

60. Engagement conditions – provide for early and frequent engagement, through the lifetime of the development of the Freight Hub, until all stages have been constructed and opened.
61. Water bore – The PNCC water bore is critical infrastructure, as established by the RPS, and there is a policy direction to provide for its ongoing operation and expansion. I have suggested an amended condition to ensure that KiwiRail's designation does not impede the planned expansion of this facility, but retains flexibility in terms of how this will be resolved.
62. Damage to road conditions – refer to conditions 67A and 67B in relation to pre and post site establishment surveys, and the construction traffic management plan at condition 65(l), where these effects will be monitored, and damage addressed.
63. Train operations conditions - Mr Moyle in response to a question about fragmented facilities in the existing yard, stated that rail freight is a "*high hazard industry, with lots of risks, there are safety risks and efficiency concerns with trying to build trains from all different parts of the yard*". This is partly the rationale behind the proposed Safety in Design and concept of operations conditions. I consider these conditions go to the health and safety of communities, which is an RMA effect which the Panel is interested in.
64. The other part of the rationale is the potential of both processes to influence the design of the Freight Hub, including any possible changes to elements shown on the concept plan; for example, if the concept of design operation shows that the complex movement of freight around the site will not work safely and efficiently, a possibility that Mr Than spoke about.
65. I do not propose any certification of these processes by Council, but on Mr Than's advice consider that they should be carried out before detailed design. They should be provided to the Council to provide certainty that they have been carried out in time to inform that design. This will help to provide a transparent record should any material design changes result.
66. Connections to the NEIZ – the evidence suggests that a direct connection between the NEIZ and the Freight Hub does not need to be provided immediately, but is something that is possibly desirable in the long term. I have made provision for this as a matter to be considered in the RNIP condition.

NEIZ landowners will have an opportunity to input to these discussions, through the CLF.

67. Design Framework – As discussed, I have attempted to develop these conditions to better capture the concept that was discussed with Commissioners today. In any case, I stand by the concept and rationale for them.

Anita Copplesone

30 September 2021