

18 November 2024

Independent Hearings Panel  
Napier City Proposed District Plan  
Private Bag 6010  
Napier 4142

By email to: [districtplanreview@napier.govt.nz](mailto:districtplanreview@napier.govt.nz)

Dear Commissioners,

### **Napier City Proposed District Plan – Hearing Stream 2**

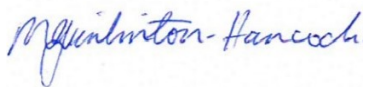
KiwiRail Holdings Limited (**KiwiRail**) is the State-Owned Enterprise responsible for the management and operation of the national railway network. This includes managing railway infrastructure and land, as well as rail freight and passenger services within New Zealand. KiwiRail is also the Requiring Authority for land designated "Railway Purposes" in district plans throughout New Zealand.

KiwiRail made a submission on the Napier City Proposed District Plan (**Proposed Plan**) on 15 December 2023. A number of KiwiRail's submission points have been allocated to Hearing Stream 2.

KiwiRail's submission points that were accepted by the Council Officers (Ms Sajan reporting for Signs, Natural Features and Landscapes, and Light, Ms Mills reporting for Subdivision, Ms Lawson reporting for Earthworks, and Ms Hemmings reporting for Coastal Environment) are not discussed further in this letter. The Council Officers make recommendations on KiwiRail's other submission points that were not wholly accepted or were rejected. KiwiRail's position on these recommendations is set out in the tables included at **Appendix A** to this letter.

At this stage, KiwiRail does not wish to be heard at the hearing for Hearing Stream 2, and respectfully requests this letter is tabled as a record of KiwiRail's position. I am available to answer any questions from the Hearings Panel either in writing or via videoconference if required.

Yours faithfully,

A handwritten signature in blue ink that reads "Michelle Grinlinton-Hancock".

Michelle Grinlinton-Hancock

**Manager RMA Team**

**KiwiRail Holdings Limited**



## Appendix A – KiwiRail's position on the Council Officers' recommendations

### Subdivision

Submission number	Provision	Recommendation	Comments on Council Officers' recommendation
168.74	SUB-R1	Accepted in part	KiwiRail sought to retain SUB-R1 as notified. This has been accepted in part as the Council Officer recommends a consequential amendment to SUB-R1 in response to New Zealand Transport Agency's (NZTA) submission. The recommended amendment removes the requirement for the subdivision of land for public works and network utilities to comply with the traditionally residential bulk and location requirements. KiwiRail accepts the Council Officer's recommendation and will not pursue this relief further.
168.75	SUB-R2	Accepted in part	KiwiRail sought to retain SUB-R2 as notified. This has been accepted in part as the Council Officer recommends a consequential amendment to SUB-R2 to note that <i>"any boundary adjustment greater than 10% change of original area but remaining compliant with minimum net site area shall be considered under SUB-R1A"</i> . KiwiRail accepts the Council Officer's recommendation and will not pursue this relief further.
FS233.277.61	SUB-O6	Rejected	<p>KiwiRail supported NZTA's submission to add a new clause to SUB-O6 as follows: <u>"Subdivision of rural land: d. avoids reverse sensitivity effects between rural subdivision and lawfully established noise activities."</u> The Council Officer has rejected NZTA's relief as it is already addressed in SUB-O3(d) which applies to all subdivision, and including the amendment sought would dilute the primary objective of SUB-O6 to protect highly productive soils in the rural environment from conflicting sensitive activities.</p> <p>KiwiRail accepts the Council Officer's recommendation to not amend SUB-O6 given it is sufficiently broad to address reverse sensitivity effects on rail. However, KiwiRail seeks a consequential amendment to SUB-O3(d) to require reverse sensitivity effects to be avoided, as follows: <i>"Subdivision does not compromise the operation, maintenance, upgrade and development of and access to established network utilities and regionally</i></p>



			<p><i>significant infrastructure while <u>avoiding or mitigating reverse sensitivity effects.</u></i>" The potential for reverse sensitivity effects to arise from new or intensified sensitive activities developing near the rail corridor is a particular concern for KiwiRail, as it can result in greater numbers of individuals being subject to adverse noise and vibration effects. This can result in increased complaints and operational constraints on the rail network. KiwiRail's proposed amendment to SUB-O3(d) is appropriate to avoid such effects.</p>
FS267.165.17	SUB-I7	Accepted in part	<p>KiwiRail supported New Zealand Frost Fan Ltd's (NZFFL) submission to amend SUB-I7 as follows (amongst other amendments): "[...] <u>Mitigation measures such as noise insulation requirements for sensitive uses, planting buffers and site layout should be considered and incorporated at the time of subdivision where the potential for reverse sensitivity exists.</u>" The Council Officer does not comment on the relief sought in SUB-I7 on the basis that the Network Utilities s42A report has not yet been published. KiwiRail continues to support NZFFL's relief and will address this in the later hearing stream which includes the Network Utilities chapter.</p>

## Earthworks

Submission number	Provision	Recommendation	Comments on Council Officers' recommendation
FS233.277.75	EW-S1	Rejected	<p>KiwiRail supported NZTA's submission to amend EW-S1 to increase the permitted volume of general earthworks to 700m<sup>3</sup> on the basis that they are too low for construction and maintenance works. The Council Officer notes the permitted volumes in EW-S1 are the same as those in the operative District Plan and there is not sufficient evidence to warrant the increase sought by NZTA.</p> <p>Given that KiwiRail can undertake general earthworks within its designated railway lines throughout the Napier District, KiwiRail accepts the Council Officer's recommendation and will not pursue this relief further.</p>



FS236.289.176	Activity status	Rejected	<p>KiwiRail opposed Forest &amp; Bird's submission seeking new rules to make all earthworks in Special Character Landscapes (<b>SCLs</b>), Special Character Features (<b>SCFs</b>), Outstanding Natural Features (<b>ONFs</b>) and Significant Natural Areas (<b>SNAs</b>) and the coastal environment a non-complying activity.</p> <p>The Council Officer refers to the note in the Earthworks chapter which states "The Natural Features and Landscapes chapter contains rules for earthworks within an outstanding natural feature, significant feature, and special character landscape".</p> <p>Where there is a conflict between the Earthworks chapter and the Natural Features and Landscapes chapter, the note clarifies that "the more restrictive provision applies."</p> <p>On that basis, the Council Officer does not consider the Earthworks chapter is the appropriate location to include rules relating to earthworks within SCLs, SCFs, ONFs and SNAs, and that Forest &amp; Bird's relief is best addressed in the hearing for the Natural Features and Landscapes chapter. In turn, the Council Officer reporting for the Natural Features and Landscapes chapter has recommended shifting various rules and policies into the Network Utilities chapter for clarity.</p> <p>KiwiRail accepts it is a sensible approach to address rules relating to earthworks within SCLs, SCFs, ONFs and SNAs in the Network Utilities chapter. However, Regulation 30 of the National Planning Standards states "<i>the Earthworks chapter must include cross-references to any relevant earthworks provisions under the Energy, Infrastructure and Transport heading</i>". Provided there are such cross-references in the Earthworks chapter, KiwiRail accepts the Council Officer's recommendation but reserves the right to comment on this relief further in the relevant hearing stream.</p>
FS236.289.166	EW-O2	Rejected	<p>KiwiRail opposed Forest &amp; Bird's submission to amend EW-O2 to include all areas of natural and other value that need protection as follows: "<i>Earthworks are managed so that <del>significant</del> outstanding and special character</i></p>



			<p><i>landscapes and features, significant natural areas, the coastal environment including areas of natural character, and cultural and heritage values are protected.</i>" The Council Officer acknowledged KiwiRail's concerns about the implications for managing its rail network in an efficient and effective manner, but considers the changes sought by Forest &amp; Bird to EW-O2 are necessary to give effect to the New Zealand Coastal Policy Statement 2010 (<b>NZCPS</b>).</p> <p>KiwiRail continues to seek the relief sought in its further submission to provide for earthworks in or near the existing rail corridor in the coastal environment that are necessary to provide for rail-related activities.</p> <p>Further, Forest &amp; Bird's submission seeks to extend EW-O2 to afford protection to "<i>special character landscapes and features</i>" and all of the coastal environment. This does not reflect the more nuanced approach of Policies 13 and 15 of the NZCPS which affords differing levels of protection to different landscapes (ie ONFs, Outstanding Natural Landscapes (<b>ONLs</b>) and Areas of Outstanding Natural Character (<b>ONC</b>) should be given a higher level of protection by avoiding effects, compared to other coastal areas and landscapes where significant effects should be avoided, and other effects avoided, remedied or mitigated).</p>
FS236.289.171	EW-P3	Accepted in part	<p>KiwiRail opposed Forest &amp; Bird's submission to include more directive language in EW-P3 by replacing the term "consider" with "avoid". The Council Officer recommends amending EW-P3 as follows: "<i>Ensure that earthworks are of an appropriate type, scale, and form that <del>consider</del> avoid or mitigate adverse effects on: [...]</i>". KiwiRail considers the inclusion of the term "manage" in EW-P3 (and deletion of "avoid or mitigate") would provide a more appropriate balance.</p>

## Light

Submission number	Provision	Recommendation	Comments on Council Officers' recommendation
168.88	LIGHT-P1	Rejected	KiwiRail sought to retain LIGHT-P1 as notified. The Council Officer recommends a



			<p>minor amendment in response to another submission to allow an appropriate level of artificial lighting for "safety and security" purposes (in addition to other purposes). KiwiRail accepts the Council Officer's recommendation and will not pursue this relief further.</p>
168.89	LIGHT-P2	Rejected	<p>KiwiRail sought to retain LIGHT-P2 as notified. The Council Officer recommends an amendment in response to Hawke's Bay Airport Ltd's submission to add a specific reference to aircraft within the term "transport network". KiwiRail accepts the Council Officer's recommendation and will not pursue this relief further.</p>
FS233.277.78	LIGHT-R1	Accepted in part	<p>KiwiRail supported the intent of NZTA's submission to include a new matter of discretion in LIGHT-R1 (regarding outdoor lighting) as follows: "<u>3. Effects on the safety of road users and the state highway network</u>" but sought this be broadened to encompass rail users and train drivers. The Council Officer accepted NZTA's relief but did not broaden the amendments to include rail, nor specifically comment on KiwiRail's relief.</p> <p>KiwiRail continues to seek the relief sought in its further submission, to ensure this rule appropriately accounts for the potential adverse effects of outdoor lighting on the safety and efficiency of the rail network.</p>
FS233.277.79	LIGHT-S1	Accepted in part	<p>KiwiRail supported the intent of NZTA's submission to amend LIGHT-S1 as follows: "[...] <i>outdoor lighting must be selected, located, aimed, adjusted, screened, and maintained to ensure that glare resulting from the lighting <del>does not cause significant avoid</del> adverse effects on the occupants of residential activities, road users or aircraft</i>", but sought this be broadened to encompass rail users and train drivers. The Council Officer accepted NZTA's relief but did not broaden the amendments to include rail, nor specifically comment on KiwiRail's relief.</p> <p>KiwiRail continues to seek the relief sought in its further submission. The provision for rail in this standard would be consistent with policies elsewhere in the Light chapter which refer to "air, road and rail".</p>



## Coastal Environment

Submission number	Provision	Recommendation	Comments on Council Officers' recommendation
168.77	CE-O7	Accepted in part	<p>KiwiRail sought to add a new objective to the Coastal Environment chapter ("CE-O7 Adverse effects of network utilities") given the Coastal Environmental Overlay extends over large sections of the rail corridor within the Napier District. This has been accepted in part as the Council Officer recommends an amendment to CE-O3 to recognise the importance of infrastructure and the relief sought by KiwiRail, rather than adding a new objective entirely. The recommended amended wording for CE-O3 is as follows: <i>"Provide for activities and development in the coastal environment [...]: <u>modified elements of the coast including the Port, transportation networks and other network utilities and infrastructure with a functional and operational requirement to locate within the coastal environment; [...]</u>".</i></p> <p>The Council Officer's recommended amendment is not as broad as the new objective sought by KiwiRail, which sought to provide direction that <i>"the adverse effects of network utilities on the natural character of the coastal environment are avoided, remedied, or mitigated, as far as is practicable, while recognising the functional and operational needs of network utilities (including those associated with their scale, design, and their locational requirements)."</i></p> <p>Further, the chapeau clause of "protect and restore" in CE-O3 does not provide any practical ability for KiwiRail to undertake works (eg enable maintenance or resilience works) in the coastal environment. KiwiRail therefore continues to seek the relief sought in its submission.</p>
FS266.253.70	CE-P3	Accepted in part	<p>KiwiRail opposed the Department of Conservation's (DOC) submission to amend CE-P3 as follows: <i>"[...] ensuring there is minimal disturbance to the natural contours, coastal vegetation, habitats of indigenous and migratory coastal species, and any significant heritage, cultural, and ecological features."</i> The Council Officer acknowledges KiwiRail's submission that removal of the</p>



		<p>word "significant" may result in an unduly narrow interpretation, so has recommended changes to the policy for a "more acceptable solution" that still reflects Policies 11, 13 and 15 of the NZCPS. This has resulted in a substantial revision to Policy CE-P3. The amendments will strengthen the policy from "ensuring minimal disturbance" to "protect and preserve" and also add an effects management framework.</p> <p>The policy as notified is as follows: (bold emphasis added)</p> <p>CE-P3: <i>"The character of the coastal <u>environment</u> is retained by <b>ensuring there is minimal disturbance</b> to the natural contours, coastal vegetation, habitats of indigenous coastal species, and any significant heritage, cultural, and ecological features."</i></p> <p>The amended policy recommended by the Council Officer is as follows: (bold emphasis added)</p> <p>CE-P3: <i>"Identify, <b>protect and preserve</b> outstanding natural features and landscapes, outstanding natural character, and significant indigenous biodiversity of the coastal environment by avoiding adverse effects of subdivision, use and development on indigenous and migratory coastal species, coastal habitats, ecological corridors and coastal landscapes, and by avoiding, remedying or mitigating significant adverse effects on all other coastal species, landscapes and character."</i></p> <p>The changes proposed by the Council Officer do not reflect the nuances of Policies 11, 13 and 15 of the NZCPS.</p> <p>Policy 11 requires effects to be avoided on a very specific range of indigenous biological diversity (Policy 11(a)), and significant effects to be avoided and other effects to be avoided remedied or mitigated on a further very specific list of indigenous biological diversity (Policy 11(b)). NZCPS Policy 13 has a similar effects mitigation hierarchy to Policy 11 (to avoid effects on ONLs, ONFs and ONCs, and avoid significant / avoid, remedy or mitigate effects on other areas).</p>
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			<p>KiwiRail considers that the types of environments which the 'avoid' effects management approach have been applied (ie indigenous and migratory coastal species, coastal habitats, ecological corridors and coastal landscapes) lacks the specificity reflected in Policies 11, 13 and 15.</p> <p>For example, CE-P3 identifies that effects on "<i>indigenous and migratory coastal species, coastal habitats, ecological corridors and coastal landscapes</i>" should be avoided. This range of items (indigenous and migratory coastal species, coastal habitats, ecological corridors) is much broader than NZCPS Policy 11(a).</p> <p>Similarly, the 'avoid' requirement of CE-P3 has been applied to [all] "<i>coastal landscapes</i>" (not just ONLs, ONFs and ONCs) which is much broader than NZCPS Policies 13(a) or 15(a).</p> <p>Overall, these are substantial changes to CE-P3 which will result in a broad application of an 'avoid' approach to areas where national planning standards do not require this. KiwiRail requests that CE-P3 is reconsidered in its entirety to closely align with the NZCPS.</p>
FS236.289.150	CE-P3	Rejected	<p>KiwiRail opposed Forest &amp; Bird's submission to amend CE-P3 as follows: "<i>The character of the coastal environment is retained by ensuring there is minimal disturbance to the natural contours, coastal vegetation, habitats of indigenous coastal species, and any significant heritage, cultural, and ecological features. <u>In some circumstances, even minimal disturbance will need to be avoided to ensure values are protected.</u></i>" The Council Officer has accepted Forest &amp; Bird's relief to the extent it aligns with the NZCPS, but notes the relief sought is impacted by other submissions.</p> <p>Forest &amp; Bird's proposed wording is not necessary for CE-P3 and should be deleted; all applications will require a case-by-case assessment, and the proposed wording simply sets out one possible outcome.</p>
FS236.289.162	CE-AC1	Rejected	<p>KiwiRail opposed Forest &amp; Bird's submission to make various amendments to the headings and matters in CE-AC1 (governing all</p>



			<p>activities in the coastal environment). This has been accepted in part as the Council Officer recommends amending CE-AC1(b) to add reference to natural landscapes ("<i>Effects on natural character, natural processes and natural features and natural landscapes</i>") and add an additional criterion regarding "<u>the extent to which the proposal avoids adverse effects on areas of outstanding natural coastal landscapes, or avoids significant adverse effects on other coastal landscapes.</u>"</p> <p>KiwiRail accepts the Council Officer's recommendation reflects the fact that the effects management hierarchy is not available for ONLs, ONFs and ONFs (pursuant to NZCPS Policies 13(a) and 15(a) which require adverse effects to be avoided in these landscapes). KiwiRail will not pursue this relief further.</p>
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#### Natural Features and Landscapes

Submission number	Provision	Recommendation	Comments on Council Officers' recommendation
168.65	NFL-P7	Accepted in part	<p>KiwiRail sought to amend NFL-P7 as follows: "<u>Avoid, remedy or mitigate the adverse effects of network utilities on special character landscapes and special character features.</u>" The Council Officer agrees with KiwiRail's proposed amendments to provide an assessment hierarchy to effectively protect ONLs while appropriately managing SCFs and SCLs. However, KiwiRail's relief was only accepted in part as the policy has been moved to the Network Utilities chapter for clarity. KiwiRail accepts the Council Officer's recommendation and will not pursue this relief further.</p>
FS236.289.103 FS236.289.104	NFL-R1 – NFL-R4	Rejected	<p>KiwiRail opposed Forest &amp; Bird's submission seeking new criterion for "Landscape values" in NFL-R1 – NFL-R4: "<u>The extent to which significant adverse effects in the coastal environment are avoided, or other effects are avoided, remedied or mitigated.</u>" The Council Officer has accepted the amendment sought by Forest &amp; Bird on the basis that it aligns with the NZCPS and the objectives of the Coastal Environment chapter. The Council Officer acknowledges it is broad in nature, but that it</p>



			<p>provides necessary protection and essentially network utility activities are adequately provided for in the Network Utilities chapter.</p> <p>Although Rules NFL-R1 – NFL-R4 are key rules governing earthworks, buildings, structures and vehicle parking areas in the coastal environment in which there may be existing rail network, KiwiRail accepts the approach recommended to give effect to Forest &amp; Bird's submission reflects Policies 13 and 15 of the NZCPS. KiwiRail will not pursue this relief further.</p>
FS236.289.89	NFL-P6	Accepted in part	<p>KiwiRail opposed Forest &amp; Bird's submission to amend NFL-P6 as follows: <i>"Avoid extractive industries (quarrying and mining) within or in the vicinity of outstanding natural features, <u>special character landscapes</u> and special character features."</i> The Council Officer supports extending NFL-P6 to cover SCLs to avoid extractive industries in these areas, and notes the essential activities associated with network utilities are already provided for in the Network Utilities chapter. KiwiRail has a neutral position on the Council Officer's recommendation given it has no view on the location of extractive industries. KiwiRail will not pursue this relief further.</p>
168.66 168.68	NFL-R1 NFL-R3	Accepted in part	<p>KiwiRail sought to add two new matters of discretion to NFL-R1 (regarding earthworks or land disturbance within a special character landscape) and NFL-R3 (regarding buildings or structures within a special character landscape) as follows: <i>"4. <u>The functional and operational requirements of the network utility</u>; and 5. <u>Impact on the safe and efficient operation of the network utility.</u>"</i> The Council Officer does not consider it necessary to add further matters of discretion to accommodate network utilities as the clarified relationship between the Natural Features and Landscapes and the Network Utilities chapters now provides sufficient management for network utilities in these areas.</p> <p>KiwiRail continues to seek the relief sought in its submission, to appropriately recognise the needs of network utilities and provide a pathway for resource consent if the standards</p>



			for earthworks or buildings under the respective rules cannot be met.
168.67	NFL-R2	Accepted in part	KiwiRail sought to amend the title of NFL-R2 as follows: <i>"Buildings or structures within an outstanding natural feature <del>and special character feature</del>"</i> and instead group SCFs with SCLs in NFL-R3. The Council Officer recommends amendments to clearly separate ONFs from SCFs and SCLs in the rule structure and to ensure that ONFs are afforded the higher level of protection mandated by section 6 of the Resource Management Act 1991. KiwiRail accepts the Council Officer's recommendation and will not pursue this relief further.
FS265.99.93	Introduction	Accepted in part	<p>KiwiRail supported Transpower's submission to amend the introductory text as follows: <i>"All rules apply throughout the city and are in addition to the specific zone, precinct, overlay, and district-wide rules unless otherwise stated. <u>However the rules do not apply to Network Utilities. Instead Network Utilities are managed under the Network Utilities chapter.</u>"</i> The Council Officer agrees with Transpower's submission to clarify the relationship between these chapters, and rely solely on the Network Utilities chapter to manage network utilities.</p> <p>This relief has been accepted in part as the Council Officer recommends the following amendment to the introductory text: <i>"All rules apply throughout the city and are in addition to the specific zone, precinct, overlay, and district-wide rules unless otherwise stated, with the exception of <u>Network Utilities Activities which are managed by the Network Utilities Chapter, and Earthworks Chapter, EW-R4 and EW-R5 as they relate to Earthworks for the purposes of upgrading, maintenance, and new Network Utilities.</u>"</i> KiwiRail supports the Council Officer's recommendation.</p>
FS265.99.96	NFL-AC2	Rejected	KiwiRail supported Transpower's submission to amend a matter of discretion within NFL-AC2 as follows: <i>"c. <u>Whether there are any practical alternatives to the location of the building or structure, and any operational or functional needs.</u>"</i> The Council Officer does not consider it necessary to include operational or functional needs in the



			<p>assessment criteria for buildings and structures within ONFs and SCLs, because the rules in the Natural Features and Landscapes chapter primarily focus on landscape and visual impacts which do not require operational needs to be considered in this context. KiwiRail continues to support Transpower's relief (which would be consistent with Policies 3 and 5 of the National Policy Statement on Electricity Transmission (<b>NPS-ET</b>) and Policy 10 of the NZCPS) and will address this in the later hearing stream which includes the Network Utilities chapter.</p>
FS236.289.92	NFL-R1	Rejected	<p>KiwiRail opposed Forest &amp; Bird's submission to include a new criterion for earthworks to be a permitted activity under NFL-R1 as follows: "<u>[...] d. the activity is outside the Coastal Environment.</u>" The Council Officer has accepted Forest &amp; Bird's relief to include a permitted rule condition that restricts activities to those outside the coastal environment, given it aligns with the NZCPS and the objectives of the Coastal Environment chapter.</p> <p>KiwiRail continues to seek the relief sought in its further submission, in order to ensure that not all earthworks and buildings and structures in the coastal environment will require resource consent, particularly where infrastructure is already located in those areas and where it is for a level of activity that could be appropriately controlled through permitted activity standards.</p>

