

IN THE ENVIRONMENT COURT
AT WELLINGTON

I TE KŌTI TAIAO O AOTEAROA
KI TE WHANGANUI-A-TARA

Decision No. [2023] NZEnvC 071

IN THE MATTER

of an appeal under cl 14 of Schedule 1
of the Resource Management Act 1991

BETWEEN

FRASER AURET RACING

(ENV-2020-WLG-000037)

Appellant

AND

RANGITĪKEI DISTRICT COUNCIL

Respondent

Court: Environment Judge B P Dwyer
Environment Commissioner D J Bunting

Hearing: 12-14 September 2022 at Levin

Site Visit: 12 September 2022

Last case event: Minute issued 8 November 2022

Appearances: No appearance for Fraser Auret Racing
N Jessen and A Sinclair for the Council
M Baker-Galloway and S Schulte for IROMAR

Date of Decision: 27 April 2023

Date of Issue: 27 April 2023

DECISION OF THE ENVIRONMENT COURT

A: The Appeal is dismissed

B: The Council is directed to prepare and submit to the Court, within 10 working days, a clean copy of the proposed provisions which are to take into account our findings on the individual provisions where these are set out in this decision



C: Costs are reserved

REASONS

The Proposed Plan Change

[1] In August 2019 the Rangitikei District Council publicly notified a proposed change to the operative Rangitikei District Plan to rezone around 217 ha of land (the notified area) on the southern boundary of Marton from Rural to Industrial.

[2] The notified area is bounded by Wings Line to the north, State Highway 1 (SH1) to the east, Makirikiri Road to the south and the North Island Main Trunk Railway Line (NIMT) to the east.

[3] The purpose of the proposed rezoning was to provide for industrial development of a scale which the Council considered could not be accommodated within existing vacant industrial zoned land in Marton.

[4] The rezoning formed part of an economic development initiative by the Council to pursue new industrial activities in Marton and was instigated primarily by a proposal from NZ Bio-Forestry Ltd (Bio-Forestry) to establish a timber processing plant on the notified area which would eventually manufacture bio-plastics.

[5] Bio-Forestry was attracted to this site because of its close access to the NIMT and to SH1 and SH-3.

[6] The Plan Change as notified was to allow for the establishment of industrial activities as permitted activities subject to a range of environmental performance standards relating to the effects of noise, lighting, earthworks, storage areas and building height. Any non-compliance with an environmental building standard would have required a resource consent application as a restricted discretionary

activity.¹

[7] In his Decision Report dated 19 August 2020, Independent Hearing Commissioner Robert Schofield on behalf of the Council approved a series of changes to the operative District Plan incorporating:²

- the rezoning of approximately 40 ha of land from Rural to Industrial with an overlay labelled *Industrial Development Area*;
- a new Definition and a series of additional Objectives, Policies and rules to be added to a number of the Chapters and Maps in the District plan.

[8] The Commissioner's decision to reduce the notified 217 ha area to 40 ha was based on expert planning evidence from Fraser Auret Racing (a submitter and the owner of a race-horse training business located immediately adjacent to the notified area) as well as from the Council that there was no evidential basis to rezone the full 217 ha.

[9] The reduction in area was supported by evidence from Bio-Forestry that its industrial needs could be accommodated within a 40 ha site.

[10] The Hearing Commissioner also decided that the area of rezoning needed to be supported by a structure planning process informed by more detailed transport, industrial, stormwater, landscape and environmental studies.³

The Appeal

[11] On 1 October 2020 Fraser Auret Racing lodged an appeal against the Council's Decision. In doing so it listed a series of reasons for its appeal including that there was insufficient information on geotechnical issues, uncertainties on

¹ Respondent Opening Legal Submission at [9].

² Appendix 2: Changes to the Operative Rangitikei District Plan arising from this decision (pages 65 – 69).

³ Decision Report at 10.42.

transport connections including funding for these, inadequate assessment of the availability and demand for additional industrial land in Marton, inadequate assessment of the infrastructure needs for the 40 ha area and an inadequate assessment of the effects of the plan change on Fraser Auret's race-horse training business.

[12] A residents' group identified as Interested Residents of Marton and Rangitikei (later incorporated as Interested Residents of Marton and Rangitikei Inc (IROMAR)) joined the appeal as an interested party.

[13] IROMAR describes itself as a group of residents who live in Marton and the wider Rangitikei district who hold a strong affinity and commitment to the land and people of Rangitikei district, its health and well-being.⁴

[14] Its concerns about the plan change stemmed largely from what it saw as a lack of transparency from the Council, a lack of engagement with the community and real worries about the proposal and its effects on the Marton community.⁵

[15] In more detail IROMAR's concerns centre on:⁶

- whether there is a need for a new industrial zone;
- economic costs, benefits and effects;
- traffic;
- landscape;
- community awareness and the impact on Marton;
- insufficient assessment of alternatives;
- if the plan change was approved, the need for improvements in the proposed plan change provisions;

⁴ IROMAR Opening Legal Submission at [10].

⁵ IROMAR Opening Legal Submission at [9].

⁶ IROMAR Opening Legal Submission at [4] – [8].

- the lack of evidence from the industries who might use the rezoned land and therefore the risk of the costs of the proposal falling on the ratepayers of Marton.

The Current Proposal

[16] Prior to expert conferencing being undertaken in mid-2022 as part of the appeal process, the Council lodged with the Court a document titled “Consolidated Statement of Agreed Facts and Issues in Contention for Expert Witness Conferencing”.

[17] We note that in addition to being undated, this Statement does not identify the names of the parties who agreed to the Statement. We would assume these parties to be Fraser Auret, IROMAR and the Council.

[18] The Statement set out common background to the plan change as follows:

- the proposal had been through three iterations, the plan change as originally notified (the Notified Version), the plan change version as decided on by the Commissioner/Council and the current Proposal;
- as the current Proposal proposed an area of 65 ha ha of land as opposed to the 40 ha identified in the Commissioner/Council decision, the Environment Court had found that the Proposal was outside the scope of the Appeal;
- the Council had requested the Court to consider exercising its powers under s 293 of the RMA so that the current Proposal could be considered;
- the Court agreed to this request and in its Minute dated 17 January 2022 made directions that the notice of the current Proposal be served on:
 - Fraser Auret and the extant s 274 parties;
 - all submitters on the plan change as notified;

- the Director-General of Conservation and the Royal Forest and Bird Protection Society of New Zealand Inc; and
- the owners and occupiers of all properties having a common boundary with the notified plan change area (including those only divided from the site by a river or road boundary).

[19] Key components of the current Proposal are:

- (a) The Area runs parallel to Makirikiri Road, occupying an area bordered to the east by State Highway 1, and along the west by the North Island Main Trunk.
- (b) The planning provisions of the Proposal require that development within the Area be guided and constrained by the Comprehensive Development Plan prepared by the Rangitūkei District Council.
- (c) Development in the Area (as guided by the Comprehensive Development Plan) is proposed to consist of:
 - (i) Industrial (and associated commercial) developments and activities (such as use of logging trucks), which will require separate resource consents under the Proposal's provisions (and relevant provisions of the operative Rangitūkei District Plan and the Horizons One Plan). Specific activities enabled by the Proposal's provisions include:
 - Log yard and de-barker with pump station (5 ha/50,000 m²);
 - Polylactic Acid (PLA) and Polyhydroxyalkanoates (PHA) plastics manufacturing plants (6 ha/ 60,000 m²);
 - Food producer (20 ha/ 200,000 m²);
 - Biomass Energy plant (3 ha/ 30,000 m²); and
 - Small scale service businesses (3ha/30,000m²).

Note: These activities, while enabled by the Proposal's provisions, would still require a restricted discretionary consent from the Council to establish. If granted, the maximum height of these buildings would be 16m (compared to 10m in the rural zone), chimneys would be allowed to project a further 1.5m above the maximum height, and the Food Producer activity would be allowed to have exhaust flues up to 30m height.

If consent were granted, the PLA plant, the Energy plant and the Food producer are proposed to operate 24 hours a day 7 days a week and the Log yard and the debarker is proposed to operate 10 hour days, six days a week.

- (ii) 3 connected railway lines (1 being the central rail siding, and the other 2 being loop lines designated for the loading/unloading of logs and containers) which are connected to the North Island Main Trunk by two connecting tracks branching off the NIMT through 1 in 9 turnouts;
 - (iii) An internal roading network, including a weighbridge;
 - (iv) Container storage and loading platform areas to the north and south of the central siding; and
 - (v) Three waters infrastructure services.
- (d) The proposed rail siding track layout, design and operational function outlined in the Comprehensive Development Plan has received informal approval from Kiwirail, however, formal written approval has not yet been provided. Council will seek written approval from Kiwirail and produce a copy of any correspondence confirming the same as soon as practicable after it is received. IRO-MAR will not confirm acceptance of this paragraph until provided with a copy of the approval.
- (e) Development in the Area (as guided by the Comprehensive Development Plan) is proposed to occur in three stages:
- (i) Stage 1: Development of a comprehensive monitoring framework, initiation of a community liaison group and removal of mature trees and planting of new trees (supervised by a suitably qualified bat ecologist where appropriate);
 - (ii) Stage 2: Construction of the following, and earthworks needed to facilitate them:
 - The rail siding and log wagon loading area to south of siding;
 - Site entrance and internal roading to provide area to the rail siding and log yard or for protection of underground services;
 - Installation of underground services;

- Weighbridge facility including overflow parking area;
 - Provision of ducting for services and future proofing for movement of industrial inputs between sites, if required under the rail siding and the log yard;
 - Partial development of the stormwater detention basin;
 - Landscaping mitigation for the entire CDP site and essential hardstand areas will be constructed onsite; and
 - Log yard and log de-barking activity;
- (iii) Stage 3: All other activities.

[20] The Statement also identified lists of agreed facts and issues as inputs for the expert conferences to follow on noise, ecology and traffic but not for landscape, economics or planning. We will come back to consider the Joint Witness Statements for each of these topics later in this decision.

Responses to the s 293 Notice

[21] In response to the s 293 notice, both the Director-General of Conservation and the Royal Forest and Bird Protection Society of New Zealand Inc (Forest and Bird) joined the Appeal as new s 274 parties primarily because of the plan change's potential effects on long-tail bats in the Marton Industrial Development Area (MIDA) and the proposed related mitigations, s 6(c) matters and other biodiversity matters.

Refinement of Plan Change Area

[22] In the current Proposal an area of 65 ha south of and within the original notified area was identified as responding to and resolving Fraser Auret's concerns about the plan change. This same area was also identified as being better suited for the proposed industrial area as it would accommodate a perpendicular rail siding and avoid a stream which included a bat habitat in its riparian planting.

[23] In the current Proposal this southern 65 ha area has been referred to as the Marton Rail Hub (MRH) and in the current Plan Change provisions as the MIDA.

[24] In this decision we have chosen to adopt the term MIDA as the descriptor for this area.

Fraser Auret's Position

[25] In its memorandum dated 2 September 2022 Fraser Auret advised the Court that as its interests had been addressed by the provisions being sought by the Council in version DPP4 of the proposed plan change provisions, it did not wish to participate further in the proceedings and sought leave to be excused from the hearing.

Council's Support for MIDA

[26] Mr Peter Beggs, the Chief Executive for the Rangitikei District Council provided a brief of evidence explaining the Council's support for the MIDA proposal.

[27] He said that the MIDA would involve a new double rail siding and the construction of a debarker facility and that this would create local employment, more efficient log transportation and a new timber value-added industry.

[28] Another potential industry for the site would be based on using log site waste material in conjunction with milk factory waste streams to produce fully bio-degradable plastic products. There was also the potential for an existing major European food producer currently located in Marton to relocate to the MIDA.

[29] Mr Beggs said that the Council had been granted \$9.1m funding from Central Government's Infrastructure Reference Group for the MIDA, with further funding

likely to be required.⁷

[30] The Council was in the process of establishing a special purpose vehicle (SPV) under the Infrastructure Funding and Finance Act 2020 to administer, fund and operate the development with this SPV to be made up of representatives from the Council and private funders.

[31] The Council's contribution to the SPV would be via a council-controlled organisation (CCO).

[32] Mr Beggs explained the reasons for the Council supporting the MIDA as including:

- the proximity of the site to the NIMT and the state highways;
- the District's existing industrial zoned land being largely occupied and too small for the proposed development;
- many of the existing sites being either within or partially within a flood zone.

[33] He explained also that the MIDA project was aligned with the Council's stated community outcomes with its Economic Development Strategy 2021-2031 including:

- the positive effects of the reduction in carbon emissions through the promotion of rail over road transport;
- the wide-spread support of local iwi for the proposal;⁸
- the creation of new employment opportunities for residents;
- diversification from a heavy reliance on primary sector activity.

⁷ Perhaps better known as the Provincial Growth Fund.

⁸ See letter to the Council from Te Rūnanga Ngā Wairiki Ngāti Apa dated 19 July 2022 attached to Mr Begg's evidence which confirms that the Runanga is satisfied that the Council engaged meaningfully, regularly and appropriately with them in relation to the proposed plan change.

Funding the Development

[34] It was unclear to us from the evidence as to who was to be responsible for the funding of individual components of the development if the plan change was to be approved and a decision was made to proceed with the development of the MIDA.

[35] As a ratepayer group, IROMAR had a key concern as to how much the Council proposed to contribute to the proposed development, how this would be budgeted for and what funding commitment was in place from other parties for the proposed development.

[36] In response, Mr Beggs advised that:⁹

- to the best of his knowledge the MIDA land was still owned by a local farmer and that if the plan change was approved, the proposal was for the land to be purchased by a private sector entity and not by the Council;
- the Council would be responsible for delivering the rail head, the access roading, the log yard and the three waters infrastructure required for the development with these components being funded through a combination of the \$9.1m Government grant and \$750,000 of Council funding (which included \$320,000 for the purchase of land for the road and rail accesses, \$200,000 for the access road construction and \$225,000 for the cost of the plan change);
- with respect to Policy **DEV-P6** of the proposed plan change provisions, the Council would be responsible for developing the comprehensive monitoring framework for measuring and reporting on the cumulative effects on the environment of the construction and operation of the MIDA;
- with respect to Policy **DEV-P8** of the provisions, the Council would be responsible for the preparation of the ecological and landscape management plan; and

⁹ Transcript at 32 – 34.

- with respect to Item 4 of the Comprehensive Development Plan (CDP), the Council would be responsible for the 15 m wide perimeter planting.

[37] When asked about funding for the upgrading of the Wellington Road/Makirikiri Road Intersection (which would be a requirement under the plan change), Mr Beggs said that he was unable to commit to funding from the Council for this work prior to an analysis having been undertaken to determine the level and cost of the safety works required for the upgrade.

[38] When asked about developer contributions for Council provided infrastructure for the MIDA (such as wastewater connections and water supply), Mr Beggs said that his Council did not have a development contributions policy. Instead, as Chief Executive he had delegation from the Council to negotiate the level of contributions on a case-by-case basis with individual developers and that this was the likely approach to be adopted for this development.

[39] Alternatively, funding of the Council provided infrastructure could be through the CCO, if this was established, with the CCO seeking private investment or potentially further Central Government funding.

[40] Mr Beggs was at pains to point out that at this stage without an approved plan change for the MIDA in place, there was only so far the Council could go in reaching commercial agreements with potential private sector partners for the development.

IROMAR's Concerns

[41] Ms Felicity Wallace and Mr Simon Loudon submitted evidence on behalf of IROMAR.

[42] Key amongst their concerns were what they saw as being the Council's lack of community communication and consultation particularly during the early stages of

the plan change and the financial risk to the District's ratepayers from the proposed Council involvement in the proposed plan change.

[43] There were also concerns about the process proposed by the Council for obtaining levies from the private sector partners to fund the infrastructure required for servicing the MIDA.

[44] In her memorandum to the Court dated 2 November 2022 which addressed the Council's final version of the proposed plan change provisions, counsel for IROMAR noted that while IROMAR had suggested changes to various iterations of these provisions throughout the appeal process, it had made these without prejudice to its ongoing opposition to the plan change. She said that this opposition was based on what was, for IROMAR, a lack of any clear indication as to who the developer would be and very little reassurance about the risk to ratepayers and the level of cost involved.

Responses to IROMAR's Concerns

[45] Mr Beggs agreed that while there may well have been shortcomings in the way in which the Council communicated with the community in the early stages of its development of the plan change, this had been redressed during the CDP process.

[46] For our part, during the questioning of Mr Beggs on this issue during the hearing, we noted that even if there had been such shortcomings, it was likely that these would have little if any bearing in assisting us with reaching our decision on the merits of the case.¹⁰

[47] Mr Beggs was questioned also about a perceived lack of clarity from the Council about how funding for the plan change had been itemised in a number of the Council's planning documents¹¹ and the lack of community communications around decisions to apply for funding from the Provincial Growth Fund.

¹⁰ Transcript at 44.

¹¹ Transcript at 39 - 41

[48] In response, he said that while Central Government required the application for funding for the MIDA to be confidential, he considered that any earlier shortcomings in Council's communications with the community had been redressed through the participative CDP development process.

[49] Mr Beggs said also that without an approved plan change for the MIDA in place, there was only so far the Council could go in reaching commercial agreements with potential private sector partners for the development.

[50] He was questioned about the financial risk to the community/ratepayers if a key partner decided to abandon the development. His response was that the Council's investment was limited to the \$9.1m from the Provincial Growth Fund and the Council's own allocated \$750,000.

[51] When asked about the source of funding for other costs such as consultants' fees for preparing the CDP, Mr Beggs said that some of these costs could well have been paid for from the Provincial Growth Fund but that he was unsure about this.

[52] He confirmed that there was sufficient existing capacity in the Council's sewage treatment plant to accommodate the MIDA and to the best of his knowledge sufficient potable water was available also¹². Ms Brenda O'Shaughnessy (Council's planner) confirmed later in the hearing that she had been advised by the Council's infrastructure manager that Marton's existing water supply had sufficient capacity to service the MIDA.¹³

[53] When questioned about the budgeting challenges for the Council in delivering a number of other Projects in the District such as the new Bulls Community Centre, Marton to Bulls wastewater pipeline and the Ratana water treatment plant, Mr Beggs said that all these should be completed within the debt limits prescribed in the Local Government Act.

¹² Transcript at 52.

¹³ Transcript at 156.

[54] At the end of the section on economics which follows, we record what Dr Tim Hazledine had to say about the level of economic risk to the Council from its involvement in the proposed plan change.

Economics of the Proposed Plan Change

[55] Expert evidence on the economics of the proposed plan change was provided by Mr Lawrence McIlrath for the Council and Dr Hazledine for IROMAR.

[56] Mr McIlrath said that the rail dependent location of the MIDA was unique for the activities proposed to be located on the site and that finding a location to accommodate these proposed activities at other locations in the district or region would be difficult.

[57] Based on the proposed activities being implemented, his assessment was that the estimated benefits of the MIDA proposal to the District would be in the range from \$30.2 million to \$72.1 million over 30 years with costs in the range from \$12.8 million to \$16.2 million. Most of the benefits would come through local employment although such benefits might not be realised because of the low level of unemployment which currently existed.

[58] The proposal would result in 0.9% of the district's arable farmland being lost with the opportunity cost from this lost production being in the order of \$0.9 to \$2.3 million over the next thirty years (noting that the soil in the area has recently been reclassified from Class II to Class III).

[59] With the Provincial Growth Fund being the primary contributor to the cost of the proposal, most of the cost would be carried by all of New Zealand's taxpayers with only a small proportion being funded by the district's ratepayers (being their share of the national tax funded contribution and district rates).

*The Proposed Industries**The Debarker*

[60] Mr McIlrath explained that debarking of logs was an alternative to methyl bromide fumigation which was otherwise required to meet the phytosanitary requirements of receiving countries. He said that in lieu of fumigation the main wood exporting ports now have de-barkers to prepare logs for export.

[61] In terms of the availability of wood as an input to the debarker Mr McIlrath agreed that the current high levels of wood should not be used as a basis for infrastructure planning. He said that these current volumes were associated with planting levels in the 1990s referred to as the “wall of wood” which was now being harvested. He said that while a drop off in current levels was expected, he had considered MPI projections to 2060 which established that the long-term outlook was robust and that there would be sufficient supply to support the MIDA debarker even with reduced harvesting expected around 2030.¹⁴

[62] In response to questioning about what would happen to the bark if there was no biomass plant, he said that it was his understanding that it could be used in the plastics plant and there may be other uses (although these were not stated).¹⁵

[63] Later in the proceedings Ms O’Shaughnessy advised that there would be a resource consent process for the log yard operator which would provide the opportunity to impose consent conditions for the management of the temporary and more substantial storage periods for the bark which she said would be a more routine approach for dealing with this issue.¹⁶

Pet Food Manufacturing

[64] New Zealand’s pet food industry is a growth sector. Mr McIlrath’s

¹⁴ McIlrath Reply Evidence at [56].

¹⁵ Transcript at 92.

¹⁶ Transcript at 158.

understanding is that the local pet food manufacturer in Marton is operating at or near to capacity with limited land availability for expansion. The MIDA would therefore provide this manufacturer with the necessary land for growth and mitigate the risk that it might relocate out of the district. He assessed the economic loss to the district if this manufacturer did choose to relocate out of the district as being between \$37.7 million and \$45.1 million over the next 30 years.

[65] Conversely, if the manufacturer was to relocate to the MIDA, his assessment was that this move would facilitate substantial growth which could well support an additional 200 to 350 jobs.

[66] If there were 200 jobs, he assessed a benefit of additional economic activity to the district over 30 years from salary and wages of \$162.5 million and from local sales of between \$27.8 million and \$48.8 million. After adjusting for opportunity costs, displacement effects and the value of the resources used to deliver the goods and services, he estimated that the net benefit to the community over 30 years from a relocation to the MIDA would be between \$17.6 million and \$43.1 million (wages and salaries) and between \$8.0 million and \$19.6 million (local sales).

[67] When questioned on how he had taken account of these job numbers in his economic impact assessment which looked at GDP, he said that he had based this on 25 jobs. Conversely, he had used the 200 jobs for his cost/benefit analysis.¹⁷ He said that he had also undertaken a sensitivity analysis on the impact if there were jobs for only a third of the 200 number and that this had confirmed that the benefits would still outweigh the costs.¹⁸

[68] It was pointed out to Mr McIlrath from the traffic evidence that while the food manufacturer was open to rail transport for its products, it was not in fact committed to this mode.¹⁹

¹⁷ Transcript at 78.

¹⁸ Transcript at 78.

¹⁹ Transcript at page 74.

[69] He said that if he had known this, it would have changed the foundation of his assessment for this business. He would have sought feedback on transport mode options for the petfood particularly as it was his understanding that the petfood was for export and would therefore need to be transported from the site to a port or ports.

[70] He said also that in communication with the petfood business, the advice he had been given was that if the MIDA opportunity did not progress, it was not intended to pursue another New Zealand option.²⁰

[71] Asked by the Court about where a relocated petfood business might find 200 or more staff, Mr McIlrath said that it was likely that the plant would be scaled up over time and that the additional labour would be built up to suit.

Bio Plastic Manufacturing

[72] Mr McIlrath's understanding was that a bio-plastic manufacturer would establish at the MIDA using dairy waste slurry to produce biodegradable plastics with a capacity to supply between 3.5% and 4.7% of New Zealand's annual raw polymer requirements.

[73] He said that the location of the MIDA for this business was close to the input sources of local dairy farms and processing plants and was central to the destination markets of Auckland, Tauranga and Wellington.

[74] He said also that forecasting the benefits and costs from this industry was complex because there was only limited information available about the manufacturing process.

[75] In answer to a question about the status of bio-plastic manufacturing, Mr McIlrath said that while it was established overseas with an established reputation,

²⁰ Transcript at page 84.

he would put it in the class of “emerging technology showing a lot of promise”.²¹

Biomass to Energy Plant

[76] Mr McIlrath’s understanding was that the MIDA would include a biomass energy plant based on a mix of inputs such as dairy waste and wood waste to generate electricity. He did not provide any further detail on this as he said that such detail was uncertain.

[77] As for the biomass energy plant, he said that at this stage the type of plant and the technology that might be established at the MIDA was still at the concept stage.²²

Regional Perspective

[78] Mr McIlrath noted that the MIDA involved 65 ha of land of which 40 ha had been earmarked for the specific activities set out in the CPD (and described above) and that its development needed to be undertaken in such a way that it did not undermine the efficiency of the existing industrial real estate in the district as well as in the wider region.

[79] He said that the *regional* demand for industrial land had been estimated at 107 ha and that the additional 20 ha of land at the MIDA could accommodate 9% of this demand.²³

[80] He identified the main economic centres in the sub-region as including Whanganui (where there was limited industrially zoned land capacity), Palmerston North (where there was a strong demand with limited rail access) and to a lesser extent New Plymouth. He said that the Freight Hub in Palmerston North would add

²¹ Transcript at 85.

²² Transcript at 85.

²³ Mr McIlrath EIC at [97] noted that he had assumed that 12 ha of the additional MIDA land would be used for services including roads, utilities and stormwater treatment areas.

additional capacity in the longer term although it was his understanding that this would be transport focussed.

[81] In his view, the MIDA was consistent with the Regional Policy Statement and in particular:

- Objective 3-3, for the integration of infrastructure with land use; and
- Objective 3-4, considering the benefits of retaining versatile soils for use as production land when providing for urban growth.

Potential Risk of Establishing the MIDA

[82] Mr McIlrath said that the key economic risk for the MIDA was that it may dilute growth away from the existing industrial zoned land in Marton and the wider district and potentially undermine the functioning of this other land although he added that the proposed MIDA activities would be in high growth sectors with proven markets for the goods produced.

[83] When asked if he was aware of ways in which the risk of diluting the viability of the uptake of existing industrial sites might be mitigated within the plan change, he said that this was more of a planning issue and that he had had several discussions with the Council's planner Ms O'Shaughnessy and would rely on her advice for this.²⁴ He said that from his perspective, he would expect that any substitute industry should be linked to the need to use the rail connection on the site.

[84] We note that later, Ms O'Shaughnessy was questioned about how this issue would be provided for within the plan change.

[85] Her response was that **Policy DEV-P1** was worded: "Provide for the industrial activities listed in **DEV-R3** with an operational need to be near the NIMT and SH1..." . with the phrase "operational need" also used in **Policy DEV-P2**.

²⁴ Transcript at 75.

[86] She said that this phrase had been sourced from the glossary of the National Planning Standards 2019.

[87] In this glossary, “operational need” was defined as “The need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints”.

[88] She agreed that this definition of “operational need” should be incorporated into the District Plan glossary.²⁵ (We note from our evaluation of Version DEV DPP5 of the plan change provisions that this appears to have been overlooked. It needs to be added.)

[89] In his economic evidence Dr Hazledine for IROMAR raised a series of concerns about the proposed plan change which included that:

- whilst a number of potential industries had indicated interests in taking up land in the MIDA, none had made a firm commitment;
- it was unclear why these industries could not establish on existing industrially zoned land in the district;
- the net benefit of new jobs was the premium over existing jobs required to lure workers to change employment;
- with the PGF funding proposed, there were issues around the relationship between the benefits which would accrue to the district and those which would accrue to New Zealand as a whole;
- there were flaws in Mr McIlrath’s economic evaluations in terms of the way in which supply side effects had been addressed.

[90] Under cross-examination, Dr Hazledine was asked by counsel for IROMAR about Mr McIlrath’s assertion that his (Dr Hazledine’s) position on the opportunity cost of labour was at the extreme end of the spectrum and that therefore there would be no benefit.

²⁵ Transcript at 160.

[91] In response, Dr Hazledine provided an extended explanation on the way in which economists evaluate supply and demand when undertaking their economic analyses, explaining for example the way in which the application of opportunity cost methodology should be applied.

[92] In the context of our finding on economics as set out below, it has not been necessary for us to work through the detail of this response. Having said this, we do however acknowledge Dr Hazledine's criticism that the analyses undertaken by Mr McIlrath in support of the plan change appear to have been based on data which was mostly speculative and unsubstantiated. As an example, Dr Hazledine pointed to the lack of any evidence to support the numbers of people who might be employed in the petfood business if this was to be established at the MIDA.²⁶

[93] Because of a lack of reliable data, Dr Hazledine explained that he had not seen fit to undertake his own cost/benefit analyses for the plan change.

Discussion and Finding on the Economic Evidence

[94] While discussions between the debarking company and the Council would appear to be relatively well advanced, as Mr Begg pointed out, in the absence of an approved plan change, it has not been possible for the parties to advance their discussions to the stage of being able to negotiate a commercial contract for the establishment of the debarker on the MIDA.

[95] As well, one of the key messages from Mr McIlrath has been that the technologies for the bio-plastic plant and the biomass to energy plant are both very much in the concept stage with little or no firm detail available. As well, there is little detail available about the potential relocation of the petfood business to the site.

[96] Given this degree of uncertainty, our discussion and finding on the economic evidence, therefore, draws primarily on the exchange which took place between the

²⁶ Transcript at 197.

Court and Dr Hazledine at the conclusion of his cross examination.

[97] Dr Hazledine agreed with the Court that if the rezoning was to be approved by the Court, the purely economic cost to the Council at that stage would be limited to the \$750,000 which it had so far expended and that this would be a sunk cost.²⁷

[98] If development of the site was then to proceed, the installation of the rail hub and the development of the debarker would not be a cost to the Council as the funding for these items would come from either the PGF or the private sector. As well, the Council's costs for the infrastructure to service the site are scheduled to be recovered from the private sector.²⁸

[99] In the absence of any reliable information on the costs and benefits for the businesses which might establish in the MIDA, Dr Hazledine's advice was that the economics of the plan change would not be decisive for the Court in deciding whether to approve the plan change or not.

[100] Rather, in his opinion, it would be the assessment of the environmental effects of the developments arising from the plan change being implemented which would be determinative for the Court in making its decision.²⁹

[101] We accept Dr Hazledine's advice and find that that the economics of the plan change will not be determinative for us in reaching our decision on the appeal.

Ecology and Noise

[102] In their Memorandum of Agreement Concerning Ecology and Noise dated 19 August 2022, all parties to the appeal noted their agreement that subject to the amendments marked up on the set of plan-change provisions attached to the memorandum, all ecological issues relating to the appeal had been appropriately

²⁷ Transcript at 225.

²⁸ Transcript at 226.

²⁹ Transcript at 227.

recognised and provided for.

[103] Subject to the approval of these provisions by the Court, the Director-General of Conservation and Forest and Bird recorded that their interests in the appeal had been resolved with no issues as to costs.

[104] This same memorandum recorded that agreement had also been reached among IROMAR, the Council and the Appellant on all noise issues relating to the appeal based on the development standard listed in the Agreement.³⁰

[105] IROMAR recorded that subject to the Court's approval of this development standard, apart from two planning related issues, its interest in the appeal in relation to the issue of noise levels had been resolved. The outstanding planning issues were the activity status to apply if the agreed standards should be breached (IROMAR seeking non-complying status as opposed to discretionary) and the hours when the night-time limit should apply (IROMAR seeking that this limit should apply between the hours of 9 pm and 7 am as opposed to 10 pm and 7am).

[106] Our findings on which of these should prevail are set out in our evaluation of the proposed provisions for the plan change later in our decision. Apart from this, we accept the agreed position of the parties on the issue of how noise is to be managed within the proposed plan change.

Traffic

[107] Expert evidence on traffic was provided by Ms Nerrisa Harrison for the Council and Mr Colin Shields for IROMAR.

[108] In addition, a third expert Mr Glenn Connelly for Waka Kotahi participated in the court directed second expert conference as discussed below.

³⁰ Memorandum of Agreement at [11].

[109] Prior to the hearing commencing, the experts for the Council and IROMAR Ms Harrison and Mr Shields participated in an expert conference (the 12 July 2022 expert conference)³¹ where they reached agreement on the following:

- the estimates for the trip generation based on the assumptions made in Ms Harrison's Traffic Impact Assessment (TIA) were reasonable;
- the peak-hour and per-day limits on heavy vehicle movements proposed in **DEV-S3** of the proposed plan change provisions were appropriate;
- the peak hours described in **DEV-S3** of the proposed plan change provisions were appropriate;
- the service area in the MIDA should be limited to employee usage only;
- limits on light vehicle movements per day and per hour noting that in Mr Shields' opinion, these should be based on the TIA for each activity and in Ms Harrison's opinion that they should be based on capacity and the resulting limitations;
- for capacity and safety reasons, a suitably designed upgrade of the SH1/ Makirikiri Road intersection should be in place prior to the commencement of Stage 3 of the MIDA development;
- the other intersections as assessed in the TIA had sufficient capacity to accommodate the proposed rezoning.

[110] In a Minute dated 15 September 2022 released to the parties on the fourth day of hearing, the Court pointed out that prior to the commencement of the hearing the traffic experts had been directed to reconvene in a second conference. This was because the traffic evidence submitted by the two experts had identified substantially greater differences between them than was apparent in the JWS from their first conference (as set out above).

³¹ Record of Expert Witness Conferencing on Traffic held on 12 July 2022.

[111] The Minute noted also that this further conferencing had not been completed prior to the hearing because of witness unavailability.

[112] The Court repeated its earlier direction for the experts to undertake further conferencing:

Before the Court hears from the traffic witnesses they are required to conference again, acting as independent expert witnesses looking to responsibly identify and (if possible) resolve matters remaining in dispute. including matters arising under Issue [8].

[113] Counsel for the Council was also directed to liaise with Waka Kotahi with a request for a Waka Kotahi representative to attend this further conferencing.

[114] The hearing was adjourned at this point pending the completion of the further witness conferencing on the traffic issues.³²

[115] The three traffic experts including Mr Connelly participated in this further conferencing, which was held on 5, 7 and 10 October 2022 during which the experts prepared Joint Witness Statement 2# dated 12 October 2022 (JWS#2).

[116] Attached to this JWS#2 was a memorandum prepared by the Council's traffic engineering consultant WSP dated 10 October 2022. The stated purpose of this memorandum was to document further transport analysis undertaken in response to transport issues raised through the conference by Mr Shields about the suitability of the proposed site access arrangement to the MIDA site.

[117] The Agenda for the second expert conference was based around a series of issues identified by the experts as follows³³:

- (a) Trip generation assumptions and calculations;

³² As noted below, the traffic issues were resolved without the need for a reconvened hearing.

³³ Joint Witness Statement #2 dated 12 October 2022 at [6].

- (b) Safety and capacity impact and issues – SH1/Makirikiri Road (including Waka Kotahi responses);
- (c) Safety impact and issues – Makirikiri Road/proposed site access intersections;
- (d) Safety impact and issues – Makirikiri Road/Wellington Road;
- (e) Safety issues for vulnerable road users on Makirikiri Road;
- (f) Traffic distribution to the network at variance with the TIA assumptions;
- (g) The level of confidence that the intersection upgrades are deliverable;
- (h) Public access to a truck-stop within the MIDA.

[118] We summarise here the agreements/disagreements reached among the experts on each of these issues as set out in JWS#2.

Trip generation assumptions and calculations

[119] There was agreement that the trip generation assumptions and calculations in the TIA were appropriate for the assessment of the impact of the plan change area with a table being included in the JWS listing the agreed trip generation movements by vehicle type.

[120] Also identified under this issue were a series of thresholds/controls with the experts agreeing that if these thresholds/controls were included in the plan change provisions then there were no outstanding matters of disagreement between them on this issue.

[121] If however, these agreed thresholds were not included in the plan change provisions, then the JWS recorded the experts' individual opinions as to what thresholds/controls should apply.

Safety and capacity impact and issues – SH1/ Makirikiri Road (including Waka Kotahi responses)

[122] JWS#2 included a record of the wide-ranging discussions held between the experts on the state-highway intersection issue.

[123] These discussions were followed by a series of agreements reached between them for this intersection addressing:

- crash records;
- the appropriateness of the *Vision Zero and Safe System* approach to road safety;
- that this was not a high- risk intersection; and that
- that the SMG (term not defined) approach for evaluating safe speeds for this intersection was appropriate.

[124] The experts agreed also that before there was any development in the MIDA, a suitably designed upgrade of this SH1 intersection was required to be undertaken. They proposed that the design should be to the satisfaction of Waka Kotahi and the Council's Chief Operating Office with the design to take particular account of cyclists as Makirikiri Road forms part of the *Sea to Gorges* cycle trail.

[125] There were no outstanding matters of disagreement between the experts on the SH1/ Makirikiri Road intersection issue.

Safety impact and issues – Makirikiri Road/ proposed site access intersections

[126] JWS#2 included a summary of the wide-ranging discussions held among the experts on this issue with agreements being reached on the following:

- the separation distance and visibility for the accesses should be based on the Austroads standards applying the safe intersection sight distance (SISD) as opposed to the District Plan rules;
- the design speeds from each direction for each access;

- that the design of the accesses should recognise that visibility along the centre-line of Makirikiri would be marginal for cars;
- subject to detailed design, that the proposed separation distances between the site accesses and the SH1, Wellington Road and railway line intersections on Makirikiri Road would all be appropriate;
- prior to any development within the MIDA, that there should be an independently peer reviewed Safe System Assessment (SSA) undertaken to the satisfaction of the Chief Operating Officer of the Council to confirm the number, location form and function of each site access including that the designs had taken account of the cyclists using the *Sea to Gorges* cycle trail; and
- that provided all of the above were implemented, any reduction on the speed limit in Makirikiri Road would not be material.

[127] Notwithstanding these agreements, Mr Shields sought to add also that he still had a residual concern about the safety of the use of the proposed accesses into the MIDA as he considered that the proposed right turn bays were not the safest form of access. He did not, however, suggest what other options might be safer.

Safety impact and issues – Makirikiri Road/ Wellington Road

[128] All of the experts agreed that there was an existing safety issue at this intersection based on crash history and that before any development within the MIDA took place, a suitably designed upgrade of the intersection was required.

[129] They agreed that this upgrade also needed to be subject to an independently peer reviewed SSA undertaken to the satisfaction of the Council's Chief Operating Officer with the same proviso as the other SSAs for taking account of cyclists using Makirikiri Road.

[130] While the experts agreed that the developer should be responsible for undertaking this SSA and the upgrade, we put this to one side on the basis that who should be responsible for the upgrade is a decision for others to take.

Safety issues for vulnerable road users on Makirikiri Road

[131] JWS#2 recorded a summary of the general discussion among the experts about the ongoing safe use of Makirikiri Road for cyclists riding the *Sea to Gorges* trail. While Ms Harrison acknowledged that this was a concern, she said that the available data showed a very low level of cycle use on this road and that this was consistent with the levels of cycle use typically expected on rural roads.

[132] The experts noted the agreements they had already reached that the SSAs for each of the Makirikiri Road intersections needed to take particular account of cycle use. They agreed also that these assessments would provide the appropriate context for the overall level of cycling on this road (and we presume on what safety related measures for cyclists might be appropriate to make if these were found to be necessary).

Traffic distribution to the network at variance with the TIA assumptions

[133] The experts agreed that assumptions on future traffic behaviour in the TIA had been based on available information.

[134] Mr Shields was concerned that if the MIDA traffic using the road network to the west of the MIDA was higher than anticipated, then the effects could be significantly different from those which had been assessed through the TIA.

[135] Ms Harrison responded that she was comfortable with the assumptions in the TIA and while noting that there was a degree of conservatism built into these assumptions, she was not averse to monitoring traffic volumes under a “belt and braces” approach.

[136] This approach would involve monitoring traffic levels at the vehicle exit and entry points starting with the occupation of the MIDA and then at 25%, 50%, 75% and 100% of its development. If this monitoring identified exceedances from the values set out in the TIA (as set out in Table 4: Daily Two-Way Traffic Distribution

Thresholds for MIDA) then a new TIA should be undertaken with amended mitigation measures implemented before any further development was undertaken within the MIDA.

[137] The experts agreed that the developer should be responsible both for undertaking this monitoring and then for gaining approval and implementing any mitigations identified within the updated TIA (which we comment on below).

[138] Even if it was decided against including this monitoring in the plan change provisions, Ms Harrison and Mr Connelly said that they were satisfied that the TIA as prepared and the proposed SSA process would provide adequate safeguards in providing for suitably designed and safe access intersections and/or traffic management.

[139] Mr Shields said that while he agreed with the other experts that the extant provisions in the TIA would address network capacity, he had concerns in relation to road safety if the traffic volumes used in the TIA were exceeded as this may require a different level of mitigation. He did not identify what this “different level” might be.

The level of confidence that the intersection upgrades are deliverable

[140] Ms Harrison and Mr Connelly agreed that the necessary intersection upgrades and site accesses could be delivered. For example, they said that a right turn bay and left turn lane diversion or a 30m roundabout would both be achievable within the existing state highway road reserve or if a larger roundabout was required, this could be accommodated through a combination of road reserve and MIDA land.

[141] Ms Harrison accepted that there could be land constraints for the upgrade at the Makirikiri Road/Wellington Road intersection.

[142] If the SSAs identified the need for larger or different intersections than had been identified in the TIA, Ms Harrison said that the consequences would be higher

cost and the potential need for land take from within the MIDA rather than there being a fundamental lack of available land for the required upgrades.

[143] Mr Shields countered that the SSA process should be designed in more detail before the MIDA zone was adopted. Without this, he said that there was a lack of certainty that the road infrastructure to mitigate the effects of the MIDA could be delivered.

Public access to truck-stop within the MIDA.

[144] The experts agreed that the proposed traffic generation thresholds provided sufficient control over anticipated traffic effects should public access to a truck stop be allowed and with the inclusion of **Rule DEV-R1(1)(a)** in the plan change provisions which excluded truck stops for public use as a permitted activity.

Discussion on Traffic

[145] In its Minute dated 14 October 2022 the Court acknowledged receipt of JWS#2.

[146] It directed the Council to provide a draft of proposed plan change provisions (policies rules or other methods) giving effect to the agreements reached by the traffic experts or where there were ongoing disputes to reflect the majority position of the experts.

[147] The Minute also recorded that the Court agreed with the experts' agreements that the thresholds and monitoring be included in the plan change provisions.

[148] In our discussion of JWS#2 above, we recorded our reservation whether it was incumbent on the experts to decide who should be responsible for designing and funding various of the intersection upgrades..

[149] We comment on this further in our evaluation of the detail of the parties'

proposed updated plan change provisions which follows.

Findings on Traffic

[150] Drawing on our summary of each of the issues addressed in JWS#2 above, we set out here our findings on each with reference to the relevant provisions in the parties' final version of the plan change provisions *DPP5-RDC incorporating IROMAR's proposed changes*:³⁴

- For trip generation assumptions and calculations and details of the relevant thresholds/controls;

*We find that all of these have been incorporated in **Policy DEV-P3** of the provisions. This policy is approved.*

- For safety and capacity impact and issues – SH1/ Makirikiri Road, for the design and construction of the upgrade of this intersection to be completed before there is any development in the MIDA;

This agreement among the experts has been incorporated in Stage Two Item 1 of the CDP of the provisions. This Item is approved.

- For Makirikiri Road/proposed site access intersections, the approach to be adopted in the design and peer review of the designs for each of the Makirikiri Road/site access intersections;

This agreement has been incorporated in Stage One Item 5 of the CDP which addresses the SSAs and designs of the intersections of Makirikiri Road with the site accesses, SH1 and Wellington Road. The Council and IROMAR proposed slightly different wordings for this provision - we approve the IROMAR version.

- For Makirikiri Road/Wellington Road, for the design, peer review of the design and the upgrade of this intersection to be completed before there is any development in the MIDA;

³⁴ See Memorandum of counsel on behalf of Interested Residents of Marton and Rangitikei Incorporated dated 2 November 2022 and (response) Memorandum of Counsel for Rangitikei District Council dated 3 November 2022.

This agreement has been provided for in Stage One Item 5 of the CDP- (as noted above for the site access intersections). This Item is approved.

- For monitoring to be undertaken of traffic entering and leaving the MIDA at different stages of the development with a new TIA to be prepared if exceedances are identified above the TIA thresholds;

This recommendation has been proposed to be included by IROMAR incorporated in the CDP under Stage One Item 1. This Item is approved. (See also below under Proposed Plan Change Provisions.)

- For public access to the truck-stop within the MIDA, the inclusion of **Rule DEV-R1(1)(a)** which excludes truck stops for public use as a permitted activity.

*This has been provided for under **Rule DEV-R1(1)(a)** which is approved.*

[151] We find that, with these provisions having been agreed between the parties, despite the somewhat tortuous pathway followed to get to this point, traffic issues associated with the proposed plan change have been appropriately addressed.

Landscape

[152] Landscape evidence was provided by Ms Catherine Hamilton for the Council and Mr Dennis Scott for IROMAR.

[153] Counsel for the Council noted that while conferencing of the two landscape experts had been attempted on 8 August 2022, no common ground could be found between them.³⁵

[154] As will be seen when we come to our findings on this topic of landscape, we are not surprised that this was the case.

³⁵ Council Opening Legal Submission at [86].

Ms Hamilton's Evidence

[155] Ms Hamilton described the landscape of the site in this way:³⁶

The land is part of a large farm block which is characterised by open pastureland, tall hedgerows, geometric field patterns, disbursed [sic] farm buildings and ancillary structures such as stock fences and troughs.

The site slopes indiscernibly from the north-west to the south-east corner at a gradient of 0.9%. The CDP (MIDA) and surrounding areas were likely once covered in a podocarp dominated forest prior to human interference when the forest was removed and replaced with an exotic pastureland monoculture.

The wider landscape is largely rural to the east, south and west of the site. Most of the surrounding rural farmland has an open rural character derived from farming, small scale forestry woodlots and rural lifestyle activities with rectilinear shelterbelts.

In contrast with the rural character described above, a mix of industrial and commercial buildings, derelict sites, Marton Railway Station and the railway line, and residential land use activities are situated to the north and northwest of the Project site. These urban land use patterns are diverse and impose a strong industrial/utilitarian character near the site. The influence of the railway activities creates a strong link with the industrial character of the area.

No part of the proposed plan change site is identified as an Outstanding Natural Landscape/Feature in the Rangitikei District Plan.

(footnote omitted)

[156] She then described the proposed features of the MIDA:³⁷

The CDP shows that 8300m² of the site may have a maximum building height of 34m, while 1400m² may have towers that reach up to 40m high. These tall structures therefore cover less than [sic] 1ha of the 65ha site. The remaining development will be 16m high or less (as permitted by the district

³⁶ Hamilton EIC at [32] – [36].

³⁷ Hamilton EIC at [30].

plan in the Industrial zone) and are able to be screened with tall hedgerow planting within 10 years of growth.

[157] Ms Hamilton said that the MIDA site was extensively altered and degraded from its natural landscape state with low landscape character and values and as well, its local hydrological and biophysical landscape values had been heavily modified and degraded and unrecognisable from their natural condition.

[158] She said that with the proposed development there was high potential to enhance the natural landscape of the industrial areas through improving water quality and restoring stream biodiversity with ecological net gain through a “constructed nature” approach with ponds, swathes of planting, hedgerows and swales.³⁸

[159] In support, she pointed to the landscape-related provisions of the plan change³⁹ which require the creation of a wetland, native riparian planting, hedgerow buffer planting and the retention of existing trees, all aimed at enhancing the currently degraded natural landscape values.

[160] She then described the approach she had followed to assess the effects of the proposal to introduce industrial buildings and infrastructure into a site that has the visual qualities of a rural pastureland.

[161] This had involved the development of a digital model and from this the preparation of a number of visual simulations for distant and close representative viewing points within the visual catchment.

[162] From the distant viewing points, she said that the development constituted only a very small proportion of the rural outlook with the simulations showing the development being set against a backdrop of shelterbelts and paddocks with the

³⁸ Hamilton EIC at [47].

³⁹ Such as in Policy DEV-P8 and DEV-S13 which we come back to in our overall evaluation of the landscape Evidence.

proposed rooflines and exhaust flues all contained within the main skyline.⁴⁰

[163] From low angle nearby viewing points Ms Hamilton said that once the perimeter planting became well established, this would screen the development with less than 1 ha of the 65 ha area remaining unscreened in the short to medium term and the remaining area screened within about 10 years.

[164] She concluded that the potential adverse effects of the development on the existing rural landscape were likely to be low. This was because in her opinion the activity was in keeping with the vernacular of the existing landscape and could be seen as being comparable with other rural townships where similar activities were located along major transport routes.

Mr Scott's Evidence

[165] Mr Scott said that within what he described as the Proposed Industrial Zone (PIZ) and the MIDA there were existing critical formative features worthy of specific recognition and inclusion in guiding land-use form and the integration of future hydrological, ecological and landscape site development management proposals.

[166] He was critical that landscape visual assessment prepared by Mr Steyn of WSP (which had been relied on by Ms Hamilton) had ignored various attributes. He said that these included the truncation of the undulating flow of the landscape through substantial earthwork intervention with this to be replaced with a high imposition of bulk building forms. As well, the virtual total landform modification would erase the existing topography and hydrology attributes of the MIDA.

[167] He said that potential further positive enhancements to improve the MIDA site included improving the quality of the water and soils, promoting fish habitat movements, and the establishment of more complete wildlife habitat and

⁴⁰ This is consistent with our own impressions when viewing the site from distant viewpoints on our site visit.

recreational trails.

[168] Overall, Mr Scott said that the proposed CDP was a premature design and development proposition and that there should have been a pre-integrated design planning landscape assessment undertaken.

[169] Under cross examination by counsel for the Council Mr Scott said that:

in an international situation ...this would be a highly designed, highly design articulated development ...with big design teams and they'd be looking at something exceptional in terms of trying to put industrial development into the new green world that we're all trying to build. Seriously I mean, in that sense this should have been in my opinion the subject of an international design competition to actually try - serious to try and look at how this entire area could actually be developed for a whole range of multi-uses, regenerating this environment....⁴¹

Ms Hamilton's Response

[170] In responding to Mr Scott's evidence, Ms Hamilton said that in her own assessment, she had focussed on three main themes: the methodology to conceptualise the landscape; the comprehensive development approach; and the natural landscape attributes of the site and sensitivity to the proposed change.

[171] She agreed with Mr Scott where he had written that there were three overlapping landscape conceptual dimensions to be considered (physical, associative and perceptual values) as provided for in the NZLA's Te Tangi a Te Manu the Aotearoa New Zealand Landscape Assessment Guidelines.

[172] While she accepted that Mr Scott had *acknowledged* associative human factors, she said that he had then *failed to inform* his conclusions with these as to the appropriateness of the proposal by overemphasising natural landscape values.

⁴¹ Transcript at page 294.

[173] In response to his assertion that the proposal had ignored the opportunity to work within the wider regional landscape, she pointed out that while the CDP was constrained by cadastral boundaries, its development had involved a thorough natural landscape character analysis of both the site and its surrounds. And as noted above, the proposal involved a “constructed nature” approach for restoring the functions of the natural landscape including wetlands, the restoration of stream habitat and planting on the MIDA with each of these having been provided for in the proposed landscape mitigation plan.

[174] Considered overall, she said that her proposal had been structured to enhance the existing degraded state of the site where pastoral farming had severely damaged the primary landscape formative attributes.

District Plan Provisions

[175] Ms Hamilton was asked by counsel for IROMAR whether she had considered *Section A2 Natural Environment* of the District Plan and *Objective 6*, which provides:⁴²

Maintain the largely primary production qualities of the Rural Zone and manage land use so that the character and amenity values are not compromised

and Policy A2-1.4

Preserve the largely open space and unbuilt nature of the rural environment and maintain the distinctive cultural landscapes associated with the predominance of primary production.

[176] In particular, she was asked whether the proposal would “preserve the largely open space and unbuilt nature of the rural environment”. She responded that it would because this policy was referring to the natural processes and patterns that underlie the landscape and these had been destroyed through farming while the proposal provided the opportunity to reinstate these.

⁴² Transcript at 116.

[177] She was asked also whether she had undertaken an audit of the design principles listed under Appendix 1 of Stage 1 of the proposed plan change provisions where these related to the preparation of an Ecological and Landscape Management Plan (ELMP). Of particular importance was whether the principles would be faithful to each other and whether a primary outcome of the ELMP was to hide as much of the buildings as possible.

[178] She responded that it was not just a case of hiding the buildings but more of integrating the development in a harmonious way. She did note that the long straight lines of perimeter planting proposed on the site would be consistent with the idiom of perimeter planting contained on many of the farming blocks which surround the site.

Mr Scott's Maps

[179] Mr Scott had prepared a series of 23 maps as part of his evaluation of the proposal.⁴³ In broad terms these covered his representations of the site's hydrology, topography, flow paths, elevations and slopes.

[180] Ms Hamilton was asked a series of questions about each of these maps by counsel for IROMAR and in summary she said that:

- the land around and within the site is gently sloping and could be classified as being more or less flat;
- while the maps show the underlying patterns of the land, these are not obvious when looking at the site;
- it would have been helpful if the maps had identified the water forms on the site such as ephemeral water courses, standing water and the like;
- the maps did not show the condition of the landscape and did not provide a full picture.

⁴³ Exhibit 7 admitted by consent.

[181] When asked if the proposed buildings and rail lines cut across the natural flow paths of the site, she said that while they might, there was in fact less than a one-degree slope across the site.

Plan Change Provisions

[182] The proposed plan change includes a number of provisions which address landscaping including the following:

- **Policy DEV-P8⁴⁴** which requires the maintenance of riparian landscape, ecological and natural character values adjacent to streams through erosion and sediment control, the maintenance or enhancement of existing planting along stream channels and riparian enhancement planting along all diverted habitats.
- **Policy DEV-P9** which requires buildings associated with industrial activities to be designed to integrate with the wider landscape so as to maintain the existing rural landscape character and amenity values.
- **Standard DEV-S13** which requires activities to be certified in accordance with the Certified ELMP prepared pursuant to Appendix 1;
- **The design principles in Appendix 1** which include requirements for the creation of a stormwater detention pond located adjacent to Makirikiri Road, the enhancement with riparian planting of the stream at the western edge of the area and the diverted stream, mitigation measures to be implemented through consent conditions for landscape and visual amenity effects and for the timing of the works in each section of the MIDA to delay mature tree removal until this is essential for construction to progress.

⁴⁴ Note that there are two Policies DEV- P8 in the DPP5 version of the provisions. This refers to the second of these which needs to be renumbered DEV-P9

Discussion and Finding on Landscape

[183] The MIDA proposal is to build a number of industrial buildings, a rail siding and two access roads on rural land on the outskirts on Marton.

[184] The taller buildings in the development are to be contained within an area of less than 1 ha of the 65 ha MIDA site with the remaining development being 16 m high or less⁴⁵ and screened with tall hedgerow planting within 10 years.

[185] The provisions outlined above which address landscaping in the proposed plan change provisions are comprehensive. They respond directly to Ms Hamilton's landscape evidence through requiring the maintenance and enhancement of the site's landscape, ecological and natural character values, and its stormwater riparian planting as well as the creation of a stormwater pond and for the MIDA industrial activities to be designed to integrate with the wider landscape in order to maintain the existing rural landscape character and amenity values.

[186] While Mr Scott was highly critical of the Council's landscape approach for the development, he provided us with little or no detail of how, in his words... *creating something unbelievably amazing like a reimagined landscape* might be realised other than offering a highly fanciful (and to us hardly believable) suggestion that... "there should have been an international design competition".⁴⁶

[187] We find that Version DPP5 of the proposed plan change provisions for landscape are consistent with the landscape provisions in the operative Rangitikei District Plan (noting in particular Ms Hamilton's advice that no part of the proposed plan change had been identified in this Plan as an Outstanding Natural Landscape/Feature).

⁴⁵ Apart from the flues for the Food Producer Activity provided for in Standards DEV-S1 and DEV-S10(2).

⁴⁶ Transcript at 293

[188] Our overall finding is that, as set out in Version DPP5 of the Proposed Plan Change we approve provisions **Policy DEV-P8, Policy DEV-P9, Standard DEV-S13** and the relevant design principles relating to landscape in **Appendix 1: MIDA Comprehensive Development Plan**.

Planning

[189] Planners for the Council, the Director-General of Conservation, Fraser Auret and Forest and Bird prepared a joint witness statement (JWS Planning) following their expert conference held on 22 July 2022. The agenda for this conference related specifically as to how the recommendations from the JWS for ecology should be incorporated into the proposed plan change provisions.

[190] There were no disagreements among these planners as to how these ecology provisions should be framed and accordingly, the Director-General of Conservation and Forest and Bird took no further part in the proceedings.

[191] Likewise, as we have already noted, Fraser Auret advised the Court in its memorandum dated 2 September 2022 that as its interests had been addressed by the provisions being sought by the Council in version DPP4, it did not wish to participate further in the proceedings and sought leave to be excused from the hearing.

[192] IROMAR did not provide planning evidence with the expert planning evidence being restricted to that provided by Ms O'Shaughnessy for the Council.

[193] In a later section of this Decision, we have evaluated and reached decisions on the proposed content of the final version of the plan change provisions identified as Version DPP5-IROMAR comments 2 November 2022.

[194] In this section on planning, drawing on Ms O'Shaughnessy's evidence, we focus on how the proposed plan change responds to each of the relevant documents in the planning hierarchy.

National Policy Statement – Urban Development 2020 (NPS-UD)

[195] While Marton is not an urban environment within the meaning of this NPS, in Ms O’Shaughnessy’s opinion the proposed plan change responds to location specific demand which will enable development in a well-considered response consistent with the intent of the NPS.

National Policy Statement – Fresh Water Management 2020 (NPS-FM)

[196] Pathways consistent with Objective 1 of this NPS are available for consent applications under the One Plan and (as noted above) Te Rūnanga Ngā Wairiki Ngāti Apa support the proposed plan change and therefore Ms O’Shaughnessy considers that they can be expected to be active in any regional consent applications to be sought under this NPS.

National Planning Standards

[197] The proposed planning provisions for the MIDA have been structured in accordance with the Standards and are consistent with the format of the operative Plan provisions (noting that an update to this Operative plan is to be undertaken in 2023).

Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

[198] The Preliminary Site Investigation report found it to be unlikely that an activity or industry described in HAIL is being or has been undertaken on the MIDA site.

Regional Policy Statement

[199] The proposed plan change has been assessed by Ms O’Shaughnessy against the One Plan as detailed in the *Marton Rail Hub-Comprehensive Development Plan Part A-*

Plan Change Appeal Supporting Information and S32AA Evaluation and assessed as not being inconsistent with the following relevant provisions:

- Objective 2-1: Resource Management;
- Objective 3.2: Energy;
- Objective 3.3: The strategic integration of infrastructure with land use;
- Objective 3.4: Urban growth and rural residential subdivision on versatile soils;
- Objective 3.5: Waste, hazardous substances and contaminated land;
- Policy 3.2 Adverse effects of other activities on infrastructure and other physical resources of regional or national importance;
- Policy 3.4: The strategic integration of infrastructure with land use;
- Policy 3.5: Urban growth and rural and residential subdivision on versatile soils;
- Objective 9.1: Natural Hazards: and related Policies 9.1 to 9.5.⁴⁷

Regional Plan

[200] Ms O'Shaughnessy noted that:

- It is likely that a range of regional consents will be required for land disturbance, stream diversions, placement of clean fill, stormwater discharge and the take, diversion and take of groundwater or discharge into water;
- No Schedule F indigenous biological diversity features are recorded in the One Plan for the MIDA site; and
- Pathways are available under the One Plan to consider the effects relevant to land development for the installation of infrastructure services and the establishment of industrial activities on the MIDA site.

⁴⁷ O'Shaughnessy EIC at [104].

Rangitikei District Plan

[201] Ms O’Shaughnessy has assessed the proposed plan change against what she considered to be the relevant provisions of the Rangitikei District Plan all as detailed in the *Marlon Rail Hub-Comprehensive Development Plan Part A- Plan Change Appeal Supporting Information and S32AA Evaluation*.⁴⁸ For each of the identified provisions (as listed below) she has provided a detailed assessment of how the proposed plan change responds to the provision, concluding overall that the plan change is consistent with each of the provisions.

[202] The relevant provisions she identified in the District Plan are:

As Built Environment:

- Objective 1: Promote urban areas with highly regarded amenity values that reflect the character of each township and provide nice places to live (which is supported by Policies A1-1.1, A1-1.3 to A1-1.7 and A1.10).

[203] Ms O’Shaughnessy’s assessment is that the mitigation measures recommended by the Landscape and Visual Assessment, the Lighting Impact Statement, the Construction Management Plan, the TIA and the Ecological Report all provide ways in which amenity values of the surrounding area will be maintained as the MIDA area is developed.

Industrial Activities:

- Objective 5: Industrial activities are sited in appropriate locations and their effects managed where these are significant, and
- Objective 5A: Enable large scale industrial activities to take advantage of the strategic location of the roading and rail networks at Marlon, adequately serviced by infrastructure, with adverse effects avoided, remedied, or mitigated to protect the amenity values and quality of the environment (both of which are supported by Policy A1-5.1, Policy A1-5.3 and Policy A1-5.4).

⁴⁸ At 32 – 36.

[204] Ms O'Shaughnessy notes that the MIDA has been located to capitalise on access to the NIMT and SH1 and that infrastructure services can be readily extended for the development.

Hazards:

- Objective 17: The adverse effects of natural hazards on people, property, infrastructure, and the wellbeing of communities are avoided or mitigated, and
- Objective 18: Storage, use, containment, and transportation of hazardous substances is carried out in a manner that protects the environment from adverse effects, such as contamination, toxic discharge, and pollution.

[205] Ms O'Shaughnessy points out that the site is not identified in any of the planning maps as being subject to any natural hazards and that, as noted above, it has not been used previously for any HAIL activities.

Infrastructure

- Objective 21: Protect the safety and operation of network utilities from the adverse effects of other land use activities (supported by Policies A5-1.6, A5-1.7, A5-1.11 and A5-1.12).

[206] Ms O'Shaughnessy notes that these have all been provided for in the CDP incorporated in the plan change provisions.

Transport

- Objective 23: Ensure that the safety and efficiency of the existing transportation network is maintained, and that additions to the network complement the existing network (supported by Policies A5-3.2, A5-3.4, A5-3.5, A5-3.6, A5-3.7).

[207] All the matters under the Transport provisions of the RDP have been responded to in the traffic evidence and provided for within the plan change provisions.

Discussion and Finding on Planning

[208] Ms O'Shaughnessy's evidence is that the proposed plan change is essential to enable the realisation of industrial development growth opportunities based on the strategic transport advantages presented by the site of the MIDA.

[209] She has completed a comprehensive evaluation of the proposed plan change against each of the relevant documents in the planning hierarchy either as detailed in her evidence or in the supporting *Marton Rail Hub-Comprehensive Development Plan Part A- Plan Change Appeal Supporting Information and S32AA Evaluation*.

[210] She is satisfied that the proposed plan change has been prepared in accordance with the Council's functions to give effect to the MIDA under s 31 and the provisions of Part 2 of the RMA.

[211] She is also satisfied that an appropriate evaluation has been undertaken under s 32 as well as the re-evaluation undertaken under s 32AA.

[212] Finally, she considers that the proposed plan change is the most appropriate way to achieve the purpose of the RMA with the plan change provisions in DPP (eventually Version 5) being the most appropriate way of achieving the proposed plan change objectives.

[213] Her evidence on these matters was not contested in any substantive way by any other party and from our assessment we accept her evidence.

Plan Change Provisions

[214] In a number of places in this decision we have referred to Version DPP5 of the proposed plan change provisions. Having done so we note that over the course of the hearing the Council had produced a number of earlier versions of these provisions all identified by the same title DPP – Proposed Provisions. The final track changed version we have been given has been identified as DPP5-IROMAR comments 2 November 2022.

[215] In our evaluation of the traffic and landscape evidence completed above, we have addressed specific provisions for each of these two topics which we do not need to repeat here.

[216] Under cover of her memorandum of this same date, counsel for IROMAR proposed a number of amendments to the Council's 2 November 2022 DPP5.

[217] She noted that while IROMAR had also proposed changes to various earlier iterations of the provisions, these had been without prejudice to its ongoing opposition to the plan change.

[218] In his response memorandum dated 3 November 2022, counsel for the Council said that while the Council did not agree with any of IROMAR's proposed amendments to the DPP5 provisions, with one exception it was content for these issues to be resolved by the Court without further submissions. This was on the basis that the outstanding differences between the Council and IROMAR could not be resolved through inter-party discussion.

[219] The exception was in relation to the hours per day applying to noise with counsel pointing out that in their joint witness statement the noise experts had agreed that "a development standard should be included to preclude rail activity between 10.00 pm and 7.00 am".

[220] We now evaluate the alternative wording still in contention and set out our findings on which is to prevail. Where there is no reference to a particular provision, the uncontested wording in Version DPP5 for that provision is approved.

Objectives

DEV-01 and **DEV-02**: IROMAR has not proposed any alternative wording to the Council's wording for these two Objectives both of which are approved.

Policies

DEV-P1: The wording in the introductory section of this policy with IROMAR's amendments is approved (with **DEV- R2** being substituted for **DEV - R3**).⁴⁹

DEV-P2(1): Alternative wording is proposed in this policy, from IROMAR "Avoid industrial activities...." and from the Council "Discourage industrial activities..." ...that do not demonstrate an operational need to be near the NIMT or SH1, excluding industrial service activities* located in general accordance with the MIDA*".

[221] With respect to whether "avoid" or "discourage" should apply, Ms O'Shaughnessy referred to the qualifier in both **Policy DEV-P1** and **Policy DEV-P2** of the need to "demonstrate an operational need".

[222] We agree that for any industry seeking to establish in the MIDA there should be a demonstrated operational need for that industry to require direct access to the NIMT (and SH1 transport links). The requirement for this need underpinned the justification from the Council for rezoning the land from rural to industrial.

[223] We find therefore in favour of the word "Avoid" (as proposed by IROMAR) in preference to "Discourage" in this policy.

DEV-P2(3): The wording of the policy with IROMAR's proposed amendments is approved.

DEV-P2(11): The wording of the policy with IROMAR's proposed amendments is approved.

DEV-P7: The wording of the policy with IROMAR's proposed amendments is approved.

DEV-P8: Note that Version DPP5 has two policies identified as DEV-P8. There are no amendments required to the first DEV-P8.

DEV-P9(1): The wording of this policy (which should be DEV-P9 and not DEV-P8) with IROMAR's proposed amendments is approved.

⁴⁹ IROMAR identified this incorrectly as DEV – R3.

DEV-P9(3): The wording of the policy (which should also be DEV-P9 and not DEV-P8) with IROMAR's proposed amendments is approved.

DEV-P9 in Version DPP5 is to be renumbered DEV-P10.

Rules

DEV-R5 and DEV-R6: IROMAR seeks two new provisions with non-complying status: **DEV-R5** for any activity not provided for in **DEV- R3** and **Appendix 1**; and **DEV-R6** for any activity that breaches **B1.5, DEV-S2, DEV-S3, DEV-S4, DEV-S5, and DEV-S13.**

[224] On the basis that these proposed **Rules DEV-R5 and DEV-R6** have not been opposed by the Council, they are approved.

Notification

[225] IROMAR seeks that consent applications pursuant to **Rules DEV-R2 to R6** be publicly notified. While this has not been opposed by the Council, we approve the public notification of **Rules DEV-R3, DEV-R4, DEV-R5 and DEV-R6** (but not **DEV-R2**) on the basis that, in the specific context of this plan change, these Rules have either Discretionary or Non-complying status.

Standards

DEV-S1(1): The wording of the policy with IROMAR's proposed amendments is approved.

DEV-S4: IROMAR has proposed different day-time and night-time hours from the Council for the noise limits as follows:

	Council	IROMAR
Daytime	7 am – 10 pm	6 am – 9 pm
Night-time	10 pm – 7 am	9 pm – 6 am

[226] The Council's hours which are consistent with those agreed by the noise experts are approved.

Appendix 1: MIDA Comprehensive Development Plan: Stage One

Item 1: IROMAR proposes that with respect to traffic entering and leaving the MIDA, the following be included as an additional provision:

The MIDA Comprehensive Monitoring Framework must also require that when development reaches a level where **DEV S3** values are likely to be exceeded, then a further TIA should be undertaken, and mitigation measures implemented, before any further development within MIDA can occur.

[227] As noted earlier in the Traffic section of this decision, we have approved the proposed inclusion of this provision.

Item 5: IROMAR has proposed a number of edits to clarify the wording of this provision.. This is approved.

Amendments Required to the District Plan: Definitions

[228] As we have directed earlier in this decision, the definition for “operational need” is to be added to the District Plan definitions.

[229] With respect to the definition of “Hydrological Neutrality”, IROMAR has suggested that the proposed definition be replaced with the definition used by Horizons Regional Council but has not provided details of this. The Council and IROMAR are directed to liaise and agree the wording for this based on the regional definition.

First Instance Decision

[230] In our evaluation of the proposed plan change we are required under s 290A to take account of the Council’s first instance decision.

[231] As we noted at the start of our decision, in his decision the Hearing

Commissioner decided that the area of rezoning needed to be supported by a structure planning process informed by more detailed transport, industrial, stormwater, landscape and environmental studies.

[232] As can be seen in our decision, the final form of the proposed plan change has responded in detail to these matters raised by the Commissioner.

Decision

[233] As noted in our individual findings throughout this decision including those for the proposed plan change provisions, we are satisfied that the measures proposed by the Council to respond to the environmental effects anticipated from the proposed development in the MIDA have been appropriately addressed.

[234] We accept Ms O'Shaughnessy's planning evidence for the Council that the proposed plan change including the provisions in DPP Version 5 are the most appropriate way to achieve the purpose of the RMA and the plan change objectives.

[235] IROMAR's overriding concerns about the plan change as articulated by its counsel are about a lack of knowledge as to who the developer would be, the risk to ratepayers and the level of costs involved.

[236] In response, we accept the advice from Mr Beggs that without an approved plan change in place for the MIDA there is only so far the Council can go at this stage in reaching commercial agreements with potential private sector partners.

[237] As well, IROMAR's economist Dr Hazledine told us that on the basis that the plan change was approved, the economic cost to the Council at this point would be limited to the \$750,000 it had so far expended.

[238] We are satisfied that this evidence is an appropriate response to IROMAR's overriding concerns about who the developer will be, the risk to ratepayers and the costs of the proposed development.

[239] Our decision is to dismiss the appeal, while in doing so, noting that there are substantial differences in the detail of the plan change provisions which we have approved compared with those which were under consideration by the Hearing Commissioner at the first instance hearing.

Directions

[240] The Council is directed to prepare and submit for the Court's approval within 10 working days, a clean copy of the proposed provisions which are to incorporate our findings on the individual provisions as set in this decision.

Costs

[241] Costs are reserved. Any application to be made and responded to in accordance with the Court's Practice Note 2023.

Authorship

[242] Commissioner Bunting is the author of this decision which represents the unanimous views of the Court.



B P Dwyer
Environment Judge



DJ Bunting
Environment Commissioner

