

Proposed Marlborough Environment Plan

Response to Hearing Panel Minute 53

9 April 2019

Report prepared by:

Kaye McIlveney, Solicitor

Introduction

1. The Hearing Panel issued Minute 53, on 12 March 2019, requesting the following information relating to the use of roads by forestry trucks of commercial forest harvest produce on such roads as Queen Charlotte Drive, the Kenepuru Road and the Port Underwood Road—
 - (i) any other legal avenues, such as by-law controls, or other non-regulatory methods which may have either been utilised, or been formally considered, by either MDC or MCC, or reported on by their officers or advisors to address those asserted effects?
 - (ii) the detailed nature of any such control measures which are still in place in respect of any of those Sounds roads, whether regulatory or non-regulatory, and how and when those were put into operation?
 - (iii) Reference to any reports as to practicality, efficiency or legality of such options and copies of those reports?
 - (iv) Reference to any reports as to the outcome/s of such control measures and copies of same?
2. The Panel noted that in the past Council and its predecessor the Marlborough County Council may have considered various options for controlling or managing safety, roading infrastructure integrity and sedimentation issued arising for this road use.

General Comment

3. Council and the MCC have considered and employed various options, regulatory and otherwise, to control and manage the effects of the use of the Sounds roads by forestry transportation. These considerations date back as far as the 1970's.
4. The methods considered and implemented have differed across the region. In all areas, road upgrades, such as seal extensions have occurred. In the Port Underwood, there has been—
 - individual approvals to use the Roads with conditions;
 - a voluntary accord with Port Underwood foresters;
 - investigation of an alternate forestry road to Koromiko; and
 - NZTransfund funds used for alternatives to roading (barge site).

5. Part of Queen Charlotte Drive has been closed to heavy vehicles.
6. A barge site has been approved in the Kenepuru to reduce road use and other barge sites are being investigated.
7. Northbank foresters pay a contribution to roading upgrade and maintenance.
8. The volume of documents held by Council, including from its predecessor, the Marlborough County Council, has made it difficult to provide a comprehensive report in the time available. This report, therefore, provides an overview of the main methods employed and gives a sample of the various reviews that have been undertaken over time. If the panel wishes a more in-depth report on any of these methods or reviews, the writer is happy to provide it.
9. I address each of the methods described above in the balance of this report. I attach a schedule of legal advice and other reviews undertaken over the years. Finally, I identify the current powers Council has to regulate road use outside the RMA.

History of forestry in the Marlborough Sounds

10. The first forests were planted at Snake Point by Sir Francis Chichester in the 1930s. Harvesting began and there was an uproar by local residents.
11. The Crown introduced a Forestry Encouragement Grants Scheme in the 1970's and the Crown Forest Service undertook it's own plantings.
12. The latter forests, being undertaken by the Crown, did not require planning permission whereas planting on private land did.
13. The Crown forests were later transferred to private ownership but those forests did not have the planning condition prohibiting use of the roads for transport of the forest produce.
14. The forests in the Kenepuru were planted later than in the Port Underwood and the issues associated with transport of the forest produce have arisen more recently.

Port Underwood

15. In the early 2000's, Council investigated a number of options for regulating the road use by the foresters. Council issued an Issues and Options paper for public consultation in April 2003. The options canvassed included—
 - the status quo;
 - rerouting the forestry traffic through Rarangi;
 - a new road through DOC reserve to Koromiko;
 - a road upgrade; and
 - barging from Onapua Bay with a private road and site access.
16. The public were also asked to submit on who they considered should bear the cost of the method chosen.

17. The report on submissions received on the Issues and Options paper identified further work that needed to be undertaken before decisions could be made. An update was also made reporting on progress.
18. One option was to negotiate a new forestry road from Port Underwood, through DOC reserve, to Koromiko. The proposal is commented on in the advice from Radich Dwyer Hardy-Jones Clark of 10 April 2000. It appears that this option posed extreme engineering challenges and a \$4 million plus price tag as well as significant environmental issues. It was not considered practicable.

In the event, few of these options was adopted.

Voluntary Accord

19. Council commenced negotiations with the forestry industry over entering an accord whereby the foresters would agree to barge all produce intended for export and only use the Port Underwood Roads for logs intended for the domestic market. The accord was never executed but the industry has generally kept to its purpose.
20. The draft accord records that it is not contractually binding and cannot affect statutory or other rights. The draft accord also records that the parties accept that forest produce cannot be extracted over Councils ordinary roading system without—
 - excessive damage being done to the roading system;
 - there being potential safety issues;
 - there being other environmental issues;
 - there being community unrest.

NZ Transfund—Opua Bay Barge Site

21. In order to implement the accord, barging sites had to be established. Initially two sites were considered. One site was established by Rayonier at Opua Bay. To access the barging site, an access road had to be negotiated and constructed over private land (from Tumbledown Bay to Opua). The second site at Onapua Bay was not progressed.
22. Rayonier established the barge site and Council accessed part funding from the Crown Alternatives to Roding Fund administered by Land Transport NZ. A condition of provision of the funding was that Council provide a 43% Local Share. Council and Rayonier entered into a Port Underwood Funding Agreement whereby Rayonier agreed to fund the Local Share and Council paid over the Crown contribution to Rayonier, using the method in the agreement.
23. The funding consisted of both capital and operational elements and was calculated per tonne of funded logs.
24. Funded logs were defined as logs that are—
 - harvested by or on behalf of any commercial forestry operator (including Rayonier);
 - transported from the barge site to Shakespeare Bay by barge; and

- practical to transport via Port Underwood Road.
25. The funding agreement also provided that Rayonier must—
- maintain the barge site and the access roads as suitable for commercial forestry;
 - provide access to other commercial forestry operators when Rayonier had surplus capacity (on reasonable commercial rates);
 - use reasonable commercial endeavours to transport by barge all export logs harvested by them that would otherwise be transported via Port Underwood Roads.
26. Council committed not to obstruct the use of Port Underwood and Tumbledown Roads to transport logs to domestic customers (subject to Council not fettering its regulatory powers). Rayonier and its successors have continued to use the barge site for export logs even without the ATR subsidy.
27. The alternative to roading funding was authorised by section 3D of the Transit NZ Act 1989 (renamed the Government Roding Powers Act 1989)—
- Without limiting any other provision of this Act, it is hereby declared that—*
- (a) *The power of the Board to fund any outputs under this Act authorises the Board to fund outputs that consider or develop efficient alternatives to the provision or maintenance of roading; and*
- (b) *Any such output may relate to one or more of the following, namely, passenger services, rail transport, and maritime transport; and, for the purposes of this paragraph, the terms passenger services, rail transport, and maritime transport include the carriage of freight and the carriage of passengers.*
28. This section was in effect between 1 July 1996 and 13 November 2003. There is no equivalent provision currently in force and no stand-alone alternative to roading fund.

Approvals for the Use of Port Underwood Roads

29. This method is related to the planning approvals granted for the planting of the forests. Those planning approvals usually contained a condition prohibiting use of the roads without permission of Council.
30. A number of applications for permission were made to Council. The applications were not processed through the planning processes. Instead, they were decided upon by Council, by resolution, following a consultation period.
31. Initially, Council granted these permissions on conditions. Latterly, such permissions have been declined.
32. An example of an approval, granted in 2003, imposed conditions—
- requiring payment of a contribution for the use of the roads;
 - requiring provision to Council of forest management and harvesting plans;
 - imposing daily limits on the number of truck movements;
 - imposing limits on the hours the roads may be used;

- requiring trucks to be equipped with RT;
- prohibiting use of the roads under certain weather conditions;
- prohibiting use on weekends and public holidays; and
- requiring the approval to be provided to all employees, workers and contractors.

Kenepuru

33. The Kaikoura Earthquake has had additional and major detrimental effects on the Kenepuru Road. For instance and in the words of the NZTA Journey Manager ..” prior to the earthquake we have never had slips on the road like we have now”.
34. Substantial work has been undertaken in studying the location, age and yield profiles of the Kenepuru forests. Projections are available for the next two growing cycles (50+ years).
35. The issues facing the Kenepuru differ across the area. For parts of the Kenepuru, there is no option; in some areas only transport by sea is available and in others only road transport is an option. In the Pelorus, the only option is barging. In the north and north-eastern margins of the Kenepuru, both sea and roading are viable options. The roads that would be used in this area are Kenepuru Road from Waitaria Bay around to Broughton Bay.
36. An assessment has been made that the roads would need to be significantly upgraded to cope with the projected commercial forestry use.

Barge sites

37. Council has committed to establishing a barge site on the north side of Kenepuru Road as an alternative to using the road. Council decided to commit funding to establish the barge site on the condition that forest owners formally commit to exclusive use of the site through entering MOUs. Conditions of the MOUs would include a commitment to use barging and to fund operating and maintenance of the barge site.
38. Budgetary provision was made for the barge site in the 2016/17 financial year. Significant further funding was sought in the 2017/18 year following a “concept for consultation” report prepared by MWH consultants. They estimated the costs of the proposed barge site as more than double the 2016/17 provision (due to the need for the causeway to be substantially longer than expected).
39. Funding from the Regional Land Transport Plan is being investigated as the Crown Alternative to Roading Funding is no longer available.
40. The project plan initially estimated completion in September 2018. This date has not been met. The 2017/18 report indicated that the date may slip due to—
 - the need for further pre-design investigative work;
 - consenting timeframes; and
 - the foresters response to the requirement that they enter into the MOU’s.

Multiple v Single Barge Sites

41. Work continues on the project but following a different strategy. Multiple sites for barging operations rather than a single site are being investigated with the majority of these sites being in private ownership. This became a conclusion of the in house project team during 2018, and has become a focus for the current project team which has been expanded to include consultant assistance from Stantec's Richmond team.

Industry Stakeholders Meeting of 20th February 2019

42. The multiple site approach (in preference to single) was not only confirmed but amplified at a meeting in Havelock on 20th February 2019. This was a constructive and well attended meeting which included representatives from a variety of industry stakeholders specifically those involved on the "production" side of the ledger.

43. Present at the meeting were:

- Forest owners
- Forestry management companies
- Marlborough Forest Industries Association
- Barging Operators
- Transport Operators
- Port Authority
- Project Team; MDC and Stantec

Management Shift

44. Another notable factor among the options currently being contemplated is a shift in the management approach for any barging sites. This too arose at the meeting on 20th February and was confirmed as a preference by the industry stakeholders. Specifically, that where possible, MDC will not become involved in managing and controlling the log transport operations; to log marshalling site, at log marshalling site and onto/off barges. These will likely become the domain of industry players and the landowners concerned.

Other Stakeholders

45. It is acknowledged that consultation with other stakeholder groups is required and will occur. Here the project team recognises other stakeholders as including but not restricted to;

- Iwi
- Department of Conservation
- Marine Farmers
- Residents and Residents Association/Groups – eg KCSRA
- Community Groups – eg Waitaria
- MDC's Sounds Advisory Group

This will occur once there is certainty as to what the solution might look like.

Field Visits

46. As part of the ongoing investigation which is currently focussing on exploring options for multiple sites, field visits are being made to the area. The first, by/from a sea/boat perspective followed up on land was made on Monday 25th March 2019. Investigation work continues.

Queen Charlotte Drive

47. Part of Queen Charlotte Drive has a vehicle length restriction; from Dalziels Bridge (on the Linkwater straight) to Shakespeare Bay. An alternative route is available from Linkwater to SH6 for Kenepuru Road traffic. The length restriction was imposed in February 1995 following a submission from Police. The empowering provision was section 70AA of the Transport Act 1962. It provided—

70AA Restriction of heavy traffic on roads

- (1) *The Minister in the case of a Government road, the Agency in the case of a State highway the control of which has not been delegated to a territorial authority under Part 4 of the Government Roding Powers Act 1989, and the territorial authority in the case of any road under its control, may from time to time, by public notice, direct that any heavy traffic, or any specified kind of heavy traffic defined in the notice, shall not proceed between any 2 places by way of any road or roads specified in the notice.*
- (2) *A copy of every notice under this section shall be displayed in at least 1 prominent position on every road to which the notice applies.*
- (3) *Every person commits an offence who contravenes the requirements of any notice under this section unless the person proves that there was no other way reasonably available for the traffic concerned.*

48. Initially Council considered using a bylaw, but decided to use section 70AA instead. Attached is a copy of the report to Council's Works and Services Committee and the Minute.

49. Section 70AA was repealed on 10 May 2011. Council now has a power under section 22AB(1)(c) of the Land Transport Act 1998 to make a bylaw *prohibiting or restricting, absolutely or conditionally, any specified class of traffic (whether heavy traffic or not), or any specified motor vehicles or class of motor vehicle that, by reason of its size or nature or the nature of the goods carried, is unsuitable for use on any road or roads.* I discuss this power further at the end of this Report.

50. Speed zoning along Queen Charlotte Drive has also been implemented.

North Bank

Industry Contributions

51. In the early 2000's, Council negotiated contributions to upgrade and maintenance of the Northbank Road by forestry companies. Council had undertaken a detailed study of the Northbank Road which identified a significant shortfall in rating revenue to meet future costs.

52. The forest industry sought independent advice to assist in developing a model of the Northbank Road pavements and the effects of forecast traffic volumes including an assessment of costs.
53. In conjunction with forest industry roading specialists Council engaged consulting engineers, Beca Carter Hollings and Ferner who produced a detailed model identifying the most efficient (optimised) mix of maintenance and construction on Northbank Road over a 20 year period. The report “Effects of Forestry Traffic Loadings on the Northbank Roding Network” has been used as the basis for Council’s Asset Management Plan.
54. With publication of the report, a major player in the forest industry was able to accept the report outcomes and subsequently agreed to assist Council with a funding contribution.
55. The original agreements were based on the volume of timber carted each year. If the volume increased or decreased by more than 20%, a recalculation would be made. Volumes have increased significantly over time and the calculations have been more precisely determined. The following table identifies the proportional effect that heavy vehicles have on Council’s costs (assessed at 2013).

Activity	Forestry Contribution Rate
Off pavement maintenance	0%
On pavement maintenance	50%
Area wide treatments	75%
Pavement rehabilitation	75%
Minor widening	75%
Bridge damage	75%
Reseals	20%

The industry share is calculated net of financial assistance from Land Transport NZ.

56. The contribution to funding continues today. The 2018/19 agreement is for \$40,000 per year for the next five years.

Current non-RMA regulatory powers

57. Council’s powers to control traffic on roads are mainly contained in the Land Transport Act 1998. The powers have altered somewhat over time and the legal opinions described in the Schedule to this report may no longer be current.
58. There are bylaw-making powers—

s22AB Road controlling authorities may make certain bylaws

- (1) *A road controlling authority may make any bylaw that it thinks fit for 1 or more of the following purposes:*
- (c) *prohibiting or restricting, absolutely or conditionally, any specified class of traffic (whether heavy traffic or not), or any specified motor vehicles or class of motor vehicle that, by reason of its size or nature or the nature of the goods carried, is unsuitable for use on any road or roads:*

Heavy traffic

- (i) *providing for the giving and taking of security by or from any person that no special damage will occur to any road, bridge, culvert, ferry, or ford by reason of any heavy traffic:*
- (j) *prohibiting any specified class of heavy traffic that has caused or is likely to cause serious damage to any road, unless the cost of reinstating or strengthening the road, as estimated by the Minister or the relevant road controlling authority, as the case may be, is paid previously:*
- (k) *providing for the annual or other payment of any reasonable sum by any person concerned in any heavy traffic by way of compensation for any damage likely to occur as a result of the heavy traffic to any road, bridge, culvert, ferry, or ford:*
- (l) *providing for the establishment, in accordance with section [361](#) of the Local Government Act 1974, of a toll to be levied on any class of heavy traffic:*

59. This power differs from the powers in the Transport Act 1962 and the Heavy Motor Vehicle Regulations 1974 in that it expressly permits a distinction to be made according to goods carried. The section was inserted into the Land Transport Act 1998 in December 2009. Initially, it only empowered bylaws to be made controlling cruising. The paragraphs above were inserted in May 2011.

60. The Land Transport Act 1998 also contains a power to impose a temporary restriction on heavy traffic.

16A Temporary restriction of heavy traffic on roads

- (1) *This section applies if a road controlling authority decides on reasonable grounds that there is an urgent risk of either or both of the following:*
 - (a) *damage to a road:*
 - (b) *danger to the safety of road users.*
- (2) *The road controlling authority may, for a specified period of no more than 6 months, by a road closure sign, direct that any heavy traffic, or any specified kind of heavy traffic, may not proceed between any 2 places by way of any specified road or roads.*
- (3) *A sign referred to in subsection [\(2\)](#) must be displayed in at least 1 prominent position on every road to which the sign applies.*
- (4) *A person commits an offence, and is liable on conviction to a fine not exceeding \$1,000, if the person contravenes the requirements of any sign described in subsection [\(2\)](#) unless the person proves that there was no other way reasonably available for the traffic concerned to proceed.*

The original version of this section was derived from section 70AA of the Transport Act 1962. It was written on the same terms. That section was replaced in whole in August 2017 with the version (above) now in force.

61. The Heavy Motor Vehicle Regulations 1974 remain in force.

- (1) *For the purposes of these regulations, roads shall be classified in Class I or Class C.*
- (2) *Subject to subclause (19) of this regulation, Class I shall comprise—*
 - (a) *All roads classified in Class I before the 1st day of February 1989; and*
 - (b) *All state highways; and*
 - (c) *All roads classified in Class II before the 1st day of February 1989.*
- (3) *Subject to subclause (19) of this regulation, Class C shall comprise roads—*
 - (a) *That would be likely to suffer excessive damage by heavy motor vehicles if classified in Class I; and*
 - (b) *Are classified in Class C by the Agency.*
- (4) *The Board may at any time require the Agency to alter the classification of any state highway. Any other controlling authority having the control of any road may at any time apply to the Agency to approve a proposal of the controlling authority that the classification of the road be altered.*
- (5) *Notwithstanding anything in subclauses (1) to (4) of this regulation, the Board, after notice to the appropriate controlling authority, may require the Agency to alter the classification of any road under the control of that authority, and the Agency shall declare the classification accordingly.*
- (6) *Where a controlling authority or the Board applies to or requires the Agency to alter the classification of a Class I road to Class C, it shall first give public notice of the names or other sufficient identification of the roads proposed to be so classified and of the class to which it is proposed that each such road shall be declared to belong, and shall in that notice call upon any person objecting to lodge notice in writing of his or her objection and of the ground thereof at an address to be stated in the notice, and before a date to be specified in the notice which shall be at least 14 clear days after the date of the first publication of the notice. The notice shall be given by publishing in some newspaper circulating in the district affected a notice in form A in Schedule 1 to these regulations.*
- (7) *Upon the expiration of the period stated in the notice, the controlling authority shall apply to the Agency for approval or (in the case of an application by the Board) for a declaration of the alteration in classification, and, except in the case of the Board, the controlling authority shall forward with its application any objections relating to the application.*
- (8) *In the case of an alteration in classification proposed by the Board, the Agency shall, by notice in the Gazette, declare the alteration in classification proposed by the Board.*
- (9) *In the case of an alteration in classification proposed by any other controlling authority, the Agency may, by notice in the Gazette, approve the proposed classification, or, with the concurrence of the parties concerned, modify the proposed alteration in classification in accordance with any objections received or otherwise, and then approve the alteration in classification as so modified.*

- (10) *In the event of any difference of opinion as to the correct classification for a road arising between the Agency and the controlling authority applying under subclause (4) of this regulation to have the road classification altered and any party objecting under subclause (6) of this regulation to the proposed alteration, the question may be submitted by the Agency or the controlling authority or any such party to the Board. The decision of the Board shall be final, and the Agency shall, by notice in the Gazette, declare the alteration in classification (if any) in accordance with the decision of the Board.*
- (11) *When the classification of a road is altered, the controlling authority shall give public notice, by publication in some newspaper circulating in the district affected, of the classification effected and of the Authority's approval or declaration thereof, and shall forthwith erect and shall at all times maintain, in the manner prescribed by Land Transport Rule: Traffic Control Devices 2004 (54002), such one of the signs described in that rule as may be appropriate to the classification.*

62. Regulations 5 provides the prohibition—

5 Use of roads and general weight limitations

- (1) *Revoked.*
- (2) *Revoked.*
- (3) *Revoked.*
- (4) *Revoked.*
- (5) *No person shall operate any heavy motor vehicle on any Class C road, except for the purposes of the delivery or collection of goods or passengers, or any of those things, to or from locations directly accessible only from such roads.*

The revoked provisions are not relevant to the current question.

63. Regulation 10 provides—

10 Prohibition of certain heavy traffic

- (1) *Revoked.*
- (2) *Revoked.*
- (3) *The controlling authority may, on reasonable grounds, prohibit absolutely or conditionally the use on any specified road of heavy motor vehicles or of any specified class of heavy motor vehicle during any specified period or series of periods.*
- (4) *The controlling authority may, if it considers on reasonable grounds that it is necessary to protect a road from excessive damage, prohibit, during any specified period of not more than 12 months, the use on that road of heavy motor vehicles which exceed a specified axle weight. If, at the expiry of the specified period, the controlling authority still considers a prohibition necessary to protect the road, it may extend the prohibition for a further specified period of not more than 12 months, and, until it considers such a prohibition is no longer necessary,*

may continue to extend the prohibition for further specified period of not more than 12 months each.

- (5) *Notice of any prohibition imposed under subclauses (3) or (4) of this regulation shall be given by the controlling authority in the manner provided in subclause (6) of this regulation at least 7 days before the commencement of the specified period:*
Provided that in special circumstances, such as an emergency arising from rain, frost, flood, or other climatic conditions, it shall be sufficient compliance with this requirement if that notice be given as long before the commencement of the period as the circumstances reasonably permit.
- (6) *The notice referred to in subclause (5) of this regulation shall be given by publication of a statement conveying the grounds of the prohibition and the general effect of the prohibition in some newspaper circulating in the district to which the matter of the notice relates, and by the erection and maintenance of an adequate sign posted in some conspicuous place at all entrances to the road or roads affected by the prohibition. ...*
- (7) *Revoked.*
- (8) *Any consent or prohibition given or imposed under subclause (1), or subclause (3), or subclause (4) of this regulation may be expressed to relate to all roads under the control of the controlling authority, or any particular road or portion thereof.*
- (9) *If as a result of advice by the National Roads Board, or of inquiry, the Agency is of the opinion that the power given by subclause (3) or subclause (4) of this regulation has in the case of any road not been exercised in a reasonable manner, the Agency may, by notice in writing given to the controlling authority, revoke, wholly or in part, the prohibition of the use of the road by heavy motor vehicles or any class of heavy motor vehicles, as the case may be, as from the date of the notice or from such later date as may be specified in that behalf in the notice, and may give such public notice of the revocation as the Agency thinks fit.*
- (10) *On the date on which any such revocation takes effect, the controlling authority shall remove the signs giving notice of the prohibition which has been revoked.*
- (11) *Any sign erected under the Heavy Motor Vehicle Regulations 1955 or the Heavy Motor Vehicle Regulations 1969 at the commencement of these regulations shall remain in force as if it had been erected under this regulation.*

The revoked provisions are not relevant to the question before us. So this provision has been substantially the same throughout the period in question to the present day.

64. The roading provisions in the Local Government Act 1974 remain in force after the enactment of the 2002 Act. These provisions give Council property in and control over local roads. The powers include the power to stop and close roads. The power to stop a road allows Council to distinguish between different types of traffic.

342 Stopping and closing of roads

(1) *The council may, in the manner provided in Schedule [10](#) to this Act,—*

(a) *Stop any road or part thereof in the district:*

Provided that the council shall not proceed to stop any road or part thereof in a rural area unless the prior consent of the Minister of Lands has been obtained; or

(b) *Close any road to traffic or any specified type of traffic (including pedestrian traffic) on a temporary basis in accordance with that Schedule and impose or permit the imposition of charges as provided for in that Schedule.*

(2) *Repealed.*

65. Schedule 10, in relation to closing a road to traffic provides—

Temporary prohibition of traffic

11 *The council may, subject to such conditions as it thinks fit (including the imposition of a reasonable bond), and after consultation with the Police and the New Zealand Transport Agency, close any road or part of a road to all traffic or any specified type of traffic (including pedestrian traffic)*

(a) *while the road, or any drain, water race, pipe, or apparatus under, upon, or over the road, is being constructed or repaired; or*

(b) *where, in order to resolve problems associated with traffic operations on a road network, experimental diversions of traffic are required; or*

(c) *during a period when public disorder exists or is anticipated; or*

(d) *when for any reason it is considered desirable that traffic should be temporarily diverted to other roads; or*

(e) *for a period or periods not exceeding in the aggregate 31 days in any year for any exhibition, fair, show, market, concert, film-making, race or other sporting event, or public function:*

Provided that no road may be closed for any purpose specified in paragraph [\(e\)](#) of this clause if that closure would, in the opinion of the council, be likely to impede traffic unreasonably.

The balance of the Schedule deals with the process for the road closure.

Attachments

Issues & Options, Consultation paper, April 2003 & associated reports to Council

Industry Accord, not executed, 2000s.

Port Underwood Funding Agreement, April 2005

Approval for use of roads, 2003

Kenepuru funding paper, March 2017

Vehicle Length restriction documents, February 1995

Northbank Contributions, Report to Council, July 2005

Legal Advice

25 November 1980, Forestry Roding County Engineer, Marlborough County Council

24 November 1994, Bylaws-Vehicle Length- Queen Charlotte Drive, Tanya Turfrey, Radich Dwyer Hardy-Jones Clark

6 December 1995, Advice on MDC-Forestry Rating, Elizabeth Herd, Barrister

10 April 2000, Forestry Roding- Port Underwood, Peter Radich, Radich Dwyer Hardy-Jones Clark

8 September 2000, Forestry impact on roads-traffic restrictions, Denis Sheard, Buddle Findlay

15 September 2000, Forestry Roding, Peter Radich, Radich Dwyer Hardy-Jones Clark

12 February 2001, Forestry Impacts on Roads, Peter Radich, Radich Dwyer Hardy-Jones Clark

21 June 2001, Forestry Roding, Peter Radich, Radich Dwyer Hardy-Jones Clark

23 July 2001, Traffic Bylaw, Peter Radich, Radich Dwyer Hardy-Jones Clark

27 August 2002, Forestry Impacts on Roads, Peter Radich

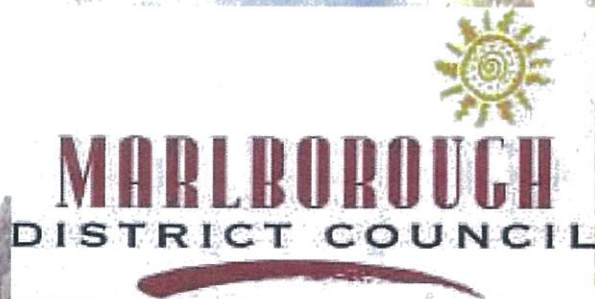
25 August 2003, Forestry Roding Issues, Peter Radich, Radich Dwyer Hardy-Jones Clark

8 September 2003, Forestry Roding Issues, Peter Radich, Radich Dwyer

16 May 2016, Forestry Harvesting, Richard Fowler, Queens Counsel

Attached is a Submission Form. We welcome your submissions which should be posted or faxed to Council by 5.00 pm 20 June 2003.

If you require any further information please phone Mark Wheeler on 578 5249



Ph. 03 5785249
Fax 03 578 6866
E-mail: mde@marlborough.govt.nz
Website: www.marlborough.govt.nz

Port Underwood

Logging Extraction

Issues and Options

April 2003

Marlborough District Council

Purpose of this Paper

The Marlborough District Council has debated options to resolve problems created by the forecast increased use of Port Underwood and Waikawa Roads for sometime.

There are conflicting objectives of property owners adjacent to the road, forest owners, the wider forestry industry and district ratepayers to resolve.

Over the last decade between 30,000 and 50,000 tonnes per annum of logs have been hauled over the Port Underwood Road.

In the next few years a significant increase in log cartage from the area, to a total of between 100,000 to 200,000 tonnes per annum, can be expected.

These volumes will create significant road maintenance and upgrade costs for Council. There will also be significant concerns from Port Underwood and Waikawa Road residents.

This paper summarises the issues such volumes create and discusses possible options for dealing with these issues.

We seek your written submissions in response to this paper by 5.00 pm Friday 20 June 2003 so that Council can consider further action.

Realistic Options

Unrealistic Options

	Status Quo Do Nothing	Option 2 Upgrade Road	Barge ex Opua Purchase Access	Weight constriction	Alternative Route (\$)	Barge ex Opua	Barge ex Port Underwood
\$M 10 year Net Cost (Less Subsidy)	1.42	3.05	6.41	2.75	5.20	2.41	9.42
Road Infrastructure Improved	No	Yes	No	Part	No	No	No
Cost of forest extraction *	\$9/tonne	\$9/tonne	\$12/tonne	\$18/tonne	\$9/tonne	\$12/tonne	\$15/tonne
Government Road User Charges #	Status Quo	Status Quo	-\$0.6M	+\$0.6M	-\$0.3m	-\$0.6M	-\$0.6M
Accident Savings	No	No	Yes	No/Worse	Yes (Pt)	Yes	Yes

* This assumes Council does not pay 'funding gap' but industry uplifts 50% ATR subsidy. However it does not take account of land purchase and assumes a limited amount of barge site or road access development costs.

Government Road User Charges (RUCs) are compared to 'Status Quo' (road haulage)

Assumed similar to existing - increased haul length offset by reduced RUCs

Negative Indicators

Recommended Options



File Ref: R945-P02

Submission Form

Council welcomes your submissions posted or faxed by **5.00 pm Friday 20 June.**

Please address to:

Port Underwood Issues and Options
Marlborough District Council
P O Box 15 462
BLENHEIM

or fax to (03) 578 6866

We suggest you give us your views in response to the following questions. However please feel free to submit more or less as you see fit.

Name: _____

Postal Address: _____

Contact Phone: _____

e-mail: _____

Why are you interested in these issues? eg; forest owner, Port Underwood Road resident etc.

Question 1:

Is the current situation acceptable?

Question 2:

Do you consider an increased tonnage would also be acceptable?

Question 3:

Please rank in order of preference the following options (as outlined in the preceding paper).

	Rank	Comments
Option 1		<i>Status quo</i>
Option 2		<i>Road upgrade</i>
Option 3		<i>Barging ex Onapua Bay by obtaining private road and barge site access and upgrading or developing those roads and the barge site.</i>

Question 4:

Who do you think should fund the extra costs of forestry traffic on roads or barges?

	Rank	Comments
(a)		<i>General ratepayers (district wide)</i>
(b)		<i>All properties adjoining the Tumbledown Bay, Port Underwood and Waikawa Roads</i>
(c)		<i>Forest owners using these roads or barges.</i>
(d)		<i>A combination of the above.</i>

Please specify:

General Comments or Suggestions

2. Regional Development Funding

Government allocated \$27 million per annum to transport related regional development projects from the 2002 petrol tax increase. Currently Northland and Tairāwhiti (North Island East Coast) have priority for this funding and a huge programme of works to complete. However, Industry New Zealand is encouraging our region to apply for some assistance. We have commenced work towards this. The funding could be used for road upgrades but probably not for assisting a barging option which is not the most economic cartage method.

3. Mitigation Compensation

Council has received legal advice indicating that it has an ability to require road users to mitigate the adverse effects of their road use. This could be applied to log cartage on roads whereby Council could require compensation for road damage. Such compensation has been negotiated and paid by several forest owners in the past but enforcement has not been required.

The Resource Management Act or Bylaws would be used to enforce mitigation. This would be a New Zealand first and may be subject to challenge.

Options for Future Extraction

Council has investigated several options for dealing with the Port Underwood log cartage issues. These include:

1. Do minimum (status quo).
2. Upgrade the road for safety, smoothness and maintenance reduction.
3. Direct heavy traffic through Rarangi by restricting the use of the Haka Haka to Waikawa route.
4. Provide an alternative logging road traversing Department of Conservation Estate adjacent to Mount Robertson.
5. Require barging from Tory Channel and enforce by restricting the use of the Port Underwood Road by heavy vehicles.

6. Require barging from Port Underwood and similarly restrict heavy vehicle road use.

A summary of the options proposed as follows:

1. Do Minimum—(Status Quo)

Council considers that approximately 30,000 tonnes per annum of logs carted over the Port Underwood route is acceptable and sustainable.

As the tonnages increase, maintenance costs will increase and will result in an inefficient use of Council funds. Maintenance funding would be used only for that purpose. There would be no increase in level of service, either in terms of road upgrading to deal with safety issues or pavement surfacing. Therefore there will be an increased safety risk and increased environmental concerns from dust, noise and vibration. The level of service to motorists may reduce.

Over 10 years total roading costs resulting from forestry traffic would be \$2.8 million if the status quo option was taken. The Council local share would be \$1.42 million. Rates targeted at forest owners could be used to assist funding.

2. Upgrade the Road

Port Underwood Road and its pavement could be upgraded to cater for the increased traffic. The geometry would be improved where practicable to minimise safety concerns and, asphaltic surfacing proposed for those sections of road adjacent to closer density residential properties. We have included Waikawa Road to the start of Port Underwood Road in our costings. This surfacing would minimise road noise and reduce vibration. There are wider community benefits as this improved route would benefit all motorists and enhance tourist access to the Port Underwood area.

The capital improvements would need to be in place early on and Council may need to raise loan funding for this. Obviously this would have rating implications.

Over 10 years the total capital and maintenance costs, caused by forestry traffic, would be \$6.1 million. Council would not be

required to fund all this as a Transfund subsidy should be available (currently 48%). Rates targeted at forest owners and/or local residents could be used to assist funding. A statutory consultation process would be necessary to implement targeted rating with no guarantee of success.

3. **Direct Heavy Traffic through Rarangi (Weight Restriction)**

Council could place a weight restriction on the route between Haka Haka and Port Underwood such that the use of the Port Underwood Road from Haka Haka via Rarangi would be the only available road option for heavy motor vehicles.

The downside of this option is that it just shifts the problem to another sector of the community, in particular, Rarangi residents. There would be significant rate expenditure to maintain the difficult Port Underwood route to Rarangi. There would be ongoing difficulty endeavouring to use the road during winter conditions.

The Port Underwood/Waikawa route would be available for those heavy vehicles which access onto Port Underwood Road between Haka Haka and Waikawa. These vehicles would tend to self regulate flows onto the road such that Council's accepted volumes of 30,000 tonnes per year could be met. There are other issues with respect to marine product cartage from Oyster Bay as well as other farm cartage which would also be required to use the Rarangi route.

A disadvantage of this proposal would be that there would be extra consumption of fossil fuels and an increase of CO2 emissions. Heavy vehicle use would face increased transportation costs. **This option is considered unrealistic.**

The 10 year cost of this option is estimated at \$5.5 million, with a local share of \$2.75 million, excluding State Highway costs.

4. **Provide An Alternative Logging Road Traversing Department of Conservation Estate Adjacent to Mount Robertson**

This option of a road between the Haka Haka summit traversing private and Department of Conservation estate land, across exceptionally difficult and steep terrain and accessing SH 1 at Koromiko is favoured by many forestry owners or harvesters but is fraught with difficulties both environmental and financial. It could enable a dedicated forestry road to be used with consequent benefit

A log cartage of 200,000 tonnes per annum, assuming 150 days are available to cart, 10 hours per day, will create 13 trucks per hour through Picton/Waikawa (full) with equivalent empty trucks.

Road Maintenance and Upgrading Costs

A 28 tonne laden logging truck has the same impact on the road as 6,000 cars. This impact is even more severe in wet weather. As volumes increase it is estimated the extra cost to maintain and reseal the Port Underwood and Waikawa Roads, will be \$2.84 million over 10 years (excluding Transfund subsidy).

Assuming a Transfund subsidy (from road user charges and petrol tax) is obtained Council will need to fund the balance of approximately \$1.42 million. This money, an average of \$142,000 per annum, would normally come from district ratepayers—Marlborough wide.

At present rates from Port Underwood landowners for roading costs are less than half the maintenance costs incurred. This situation will worsen considerably as volumes increase. New rating legislation does however enable "targeted" rates which could be applied to forest owners in the area.

Road upgrading could assist long term maintenance costs as well as benefiting safety and environmental effects. However funds are obviously still required "up front" for the upgrade works.

Funding Sources Other Than Rates

Rate income normally funds roading costs. There are other options:

1. **Alternatives to Roading Funding ATR**

Transfund NZ may provide a 50% subsidy of the cost difference between barging and road cartage of Port Underwood Logs. The funding gap is estimated at \$6 per tonne for barging from Opuia Bay to Shakespeare Bay and \$15 per tonne for barging ex Port Underwood.

If the subsidy was received Council would need to fund the remaining gap of \$3 per tonne or \$7.50 per tonne. A "targeted rate" could recover this from Port Underwood forest owners.

Positive Effects of Extracting Port Underwood Logs

Although this paper concentrates on the adverse impacts the carting of logs can have on roads, the positive benefits of the forestry industry must also be recognised. The industry employed 295 people (full time equivalents) in 1999. Since then there has been employment growth with harvest volumes increasing and expansion of local processing operations. Growth will continue as the projected harvest increases from 1.4 million cubic metres in 2000 to three million cubic metres in 2020. Marlborough forests represent approximately 4% of the total New Zealand plantation forests.

Port Marlborough Limited has built a major log handling port at a cost of approximately \$12 million in Shakespeare Bay to enable shipping of logs, generally for export. Approximately 60% of logs from the Port Underwood area will be exported if road cartage continues unabated. Up to 90% could be exported if barging was required.

A recent economic analysis found that there were significant economic returns, to a range of industry participants, from Port Underwood harvested logs. Where road cartage was used that benefit was \$52 per tonne nationally including \$16 per tonne regionally. The low regional component reflects the fact that most Port Underwood forests are not owned by Marlburians.

Negative Effects

Safety

Although reported accidents involving trucks are negligible, there are increasingly accounts made of "close shaves". Previously independent road engineering studies found the Port Underwood Road safe at the then prevailing cartage levels. As volumes increase exposure to accidents also increases.

The heavy transport industry does have a low accident rate, however the perception of the car driver is different. Large logging trucks are an imposing sight, particularly on narrow, winding Sounds roads.

Environmental

Council has fielded many complaints from Sounds residents who are unhappy about the noise and vibration from logging trucks. Petitions with hundreds of signatures have been received.

to the public, Port Underwood Road, lower road user charges to forestry harvesters and an ability to fund by tolls. **However the environmental issues are such that Council has all but discounted this option. It is considered unrealistic.**

5. Barging from Tory Channel

Barging logs significantly reduces public road damage and, most significantly, the adverse environmental effects of road cartage on Picton and Waikawa urban communities. However, barging is more expensive from most areas, than road cartage. There are also potentially adverse effects on the marine environment which would have to be mitigated eg bark or log spills, barge site run-off, and maritime safety issues from increased barge traffic along an already busy marine route. Currently public access by road to two existing barge sites, in Opua and Onapua Bays, is not possible. In the case of the Opua Bay barge site an excellent road from Ngakuta Bay exists for most of the route, however the lessee of the Crown land and road has to date refused Council access to the road or barging facility for wider industry use.

Access to the Onapua Bay barge site from the Tumbledown Bay or Port Underwood Roads would only be possible if numerous private landowners provided access and enabled Council to significantly upgrade existing private tracks or develop new roads. It is possible for the Local Government or Public Works Acts processes to be used to require access to the Onapua site but this would take sometime and be an unpopular acquisition method. The existing road on Crown leased land from Ngakuta Bay to Opua Bay cannot be acquired using these Acts due to the underlying Crown ownership.

We estimate barging will cost \$6 per tonne of logs more than road cartage from the Port Underwood area if access can be obtained free of charge. This \$6 additional cost may be 50% subsidised by Transfund through its alternative to roading provisions. If so \$3 per tonne would remain for Council to fund. General (district wide) rating, or targeted rating on Port Underwood forest owners, could be used.

An option if access cannot be agreed is to purchase the Queen

Charlotte forest cutting rights and assume the Crown lease. The road could then be used and managed by Council enabling access to the barge site. The Transport Act could be used to prevent most heavy vehicles from using the Port Underwood Road and force barging. The forest lessee expects to receive a price of up to \$10 million. At a more realistic price Council could purchase and harvest a lot of mature timber over the first two years of its ownership and as assessed by Councils' forestry consultants effectively incur a net cash cost of \$4 million for the forest and road.

Because future revenue would not be available for some years and would be significantly less than the early harvest proceeds, the investment to acquire the road and barge access is very high in comparison with the road upgrade option at a total (excluding Transfund subsidies) of \$8.94 million over 10 years versus \$6.1 million to upgrade the road.

Ratepayers would also be exposed to the commercial risks of owning and harvesting a forest.

6. Barging from Port Underwood

It is possible to barge from Port Underwood to either Shakespeare Bay or Wellington. A barge site with suitable handling areas would need to be developed.

It is estimated that because of significant additional distance involved relative to a Tory Channel option, much of which would be in open sea with consequent load constraints, the additional cost over roading of this option would be \$15 per tonne. This is two and a half times greater than the Tory Channel barging cost and would be considered unreasonable by the forestry industry. **This option is not realistic.**

Summary of Option Costs

The table which follows summarises the estimated costs of the various options to be best of our current knowledge.

There are only three options considered realistic at this time:

- Status Quo
- Upgrade Port Underwood Road
- Barging ex Onapua Bay by obtaining road access.

The Port Underwood Forests



10. Port Underwood Log Extraction (R855-03) & (R945-P02)

(Clr Dew) (Report prepared by M Wheeler)

Submissions

1. Submissions to Council's "Issues and Options" paper closed 20 June 2003.
2. Two hundred and nine submissions were received in total representing a wide range of interest groups.

Non-Industry	167	84%
Industry	26	13%
Unknown	<u>6</u>	<u>3%</u>
Total	<u>199</u>	<u>100%</u>

NB: Total is less than 209 due to multiple submissions being discounted.

3. Graphs of the questionnaire results follow. These can be summarised as:

Question 1: *Is the current situation acceptable?*

No	76%
Yes	21%
No response	<u>3%</u>
	<u>100%</u>

Question 2: *Do you consider an increased tonnage would also be acceptable?*

No.	80%
Yes	17%
No response	<u>3%</u>
	<u>100%</u>

Question 3: *Ranking of options.*

		Rank				
		1	2	3	4	Score (Note 1 *)
Option 1	Status quo	5	17	12	46	183
Option 2	Road upgrade.	35	8	37	9	474
Option 3	Barging ex Opua Bay by purchasing Queen Charlotte Forest to obtain road and barge site access.	73	42	9	8	936
Option 4	Barging ex Onapua Bay by obtaining private road and barge site access and upgrading or developing these roads and the barge site.	67	46	15	7	924

* Score is calculated by multiplying ranking 1, submission numbers by 9, ranking 2 by 6, rating 3 by 3 and ranking 4 by 0.

Question 4: *Who do you think should fund the extra costs of forestry traffic on roads or barges?*

		Rank				Score (Note 1*)
		1	2	3	4	
(a)	General Ratepayers (district wide)	26	14	23	11	387
(b)	All properties adjoining Tumbledown Bay, Port Underwood and Waikawa Roads.	1	6	11	33	78
(c)	Forest owners using these roads or barges.	153	8	6	3	1,443
(d)	A combination of the above.	14	32	13	4	357

4. The following inferences can be drawn from these results.

4.1 A significant majority of submitters find the current roading situation unacceptable.

4.2 An even greater majority cannot accept increased volumes.

4.3 Barging is clearly favoured over roading.

4.4 Opuia Bay barging is marginally favoured over Onapua Bay barging.

(Submission comments are of value here. Very few submitters favoured purchasing the Queen Charlotte Forest but believed Council should use other means to secure barge and barge site road access. The need to use Council statutory powers to secure access was the primary concern relevant to the Onapua Bay option).

4.5 Road upgrading had some level of support - 17% of submitters ranked it first. This exceeded the 13% of submitters with declared industry interests.

4.6 A large majority of submitters (153 or 79%) believed forest owners should fund marginal roading or barging costs.

(Submission comments extended this to other heavy vehicles such as mussel trucks).

There was a small amount of support for general ratepayers or a combination of options to pay.

5. Attached is a summary of submission comments.

A lot of suggestions are made and questions raised by submitters.

The following are considered of particular interest to councillors:

- **Submissions 3 and 4 Underwood Farm Ltd and Brian Perry**

The Perry family owns Underwood Farm Ltd which is a significant Port Underwood forest. They submit that barging is too expensive but believe that road upgrading is necessary with forecast increased volumes.

They also propose that Council develop a road from the Tongue, in Port Underwood, through their land up to the ridgeline then out along the ridge to join Port Underwood Road at the summit (between Whatamango and Haka Haka).

This would enable logging trucks from the heavily forested area to the northeast of Port Underwood to cut approximately 6 kms and 40 minutes off their road trip and avoid a good portion of the Tumbledown Bay Road and the Haka Haka residential area.

Opening up the road from the Tongue to the ridge would also enable trucks to access already formed roads through to the Williams' barge site in Onapua Bay.

We intend developing these options by further discussions with the Perrys.

- **Submissions 7 and 176 Rayonier NZ Ltd**

Rayonier strongly submit that the forest industry has a right to use public roads and cannot accept additional costs. They have stated they would now consider giving Council access to their forest road and barge site but only if their costs do not increase. We have suggested Council could take over development, management and maintenance of the road and barge site in return for general forest industry access.

Rayonier's response has been that Council has still not entered into "meaningful discussion", nor made a "meaningful offer". This is not accepted. A meeting with Rayoniers is however arranged for 1 August. Rayonier has not sold its Port Underwood forests and has withdrawn them from the market.

- **Submission 11 Frances Stuart**

Mrs Stuart comments on the safety of Port Underwood and Waikawa roads, particularly for walking and school children. This is a widespread concern of submitters.

Council has engaged a road safety expert to review route safety and possible improvements both now and with forecast heavy traffic volume increases.

We hope to be able to present findings from this review at our meeting.

Marlborough Roads is also developing the road upgrade option in more detail. They will include consideration of pedestrian and cyclist safety improvements.

- **Submission 15 Brian and Meryn Ewing**

They and many other submitters believe Council should enforce original "change of use permits" imposed under the Town and Country Planning Act which prevented log cartage by road unless Council agreed otherwise.

Council considered this in approving in principle, Sounds of Forest Limited's proposal for road cartage effects mitigation.

The only previous "exemption" was granted to Gills several years ago for cartage through Rarangi of a small volume. Gills did compensate Council for road damage.

Unfortunately the change of use permits could not be applied to Crown forests so over 50% of Port Underwood forests are not subject to these restrictions (Rayonier in particular).

- **Submission 15 Peter Ryan**

Mr Ryan suggests a heavy traffic bypass should be built around Waikawa and Picton residential areas.

Whilst a desirable aim, the quite intensive development up to the hills does not provide a practical bypass solution.

Council pursued an alternative heavy transport option from Port Underwood Road above Haka Haka through Department of Conservation land to Koromiko but considered this not viable.

Trucks could be diverted away from the roundabout on the corner of Waikawa Road and High Street by directing them up Wellington Street, west along Broadway and then onto either State Highway 1 or Kent Street.

This only shifts the problem from the CBD to other commercial and residential areas.

- **Submission 20 W D Charlwood**

Refers to roadworks considered deficient. Works and Marlborough Roads have inspected the works (an area wide pavement treatment between Karaka Point and Whatamango Bay). This was a major upgrade and there are several minor “tidy up” works required to complete a quality job. These are being actioned.

- **Submission 21 Tamati Smith**

Mr Smith is a director of Tasman Forestry Management Ltd which manages forests in the area.

He believes barging will occur without any sort of Council regulatory action and also believes barging is environmentally very acceptable.

He also believes a road upgrade is essential and should be paid for by general ratepayers, adjoining properties and the heavy transport sector as all benefit.

Mr Smith questions how mussel cartage can be rated for its fair share of roading costs.

At present issues have been raised about Council’s ability to rate mussel farmers. A declaratory judgment on the ability to rate mussel farms for such services as roading under the new Local Government Rating Act was to be lodged but this application has been deferred pending resolution of the Maori seabed and foreshore claim.

- **Submission 22 A Levy**

Mr Levy suggests that forest owners make such huge profits that they should pay whatever it costs to maintain and upgrade the road.

In October 2002 Council engaged an economist to investigate the economic benefits of harvesting Port Underwood forests. He concluded that, ignoring sunk costs, there was little doubt that harvesting was profitable whether road freight or barging was used. Recent market returns and the exchange rate will have reduced this profitability. A review of returns will be made.

- **Submission 23 Garfield Blair**

Mr Blair suggests Council makes profit out of logging this area.

Council does not own any forests in this area nor have any financial interest in them. Port Marlborough, owned by Council, profits from its log port operation at Shakespeare Bay but will do so whether logs are road carted or barged from the area.

Mr Blair also questions why Council does not exercise powers under the Local Government Act to force reluctant lessee forest owners to allow access for barging.

Rayonier’s forest is owned by the Crown. Crown land is not subject to the provisions of the Local Government Act in relation to Council’s power to compulsorily acquire land for public works (in this case road or barge site).

There is an argument that the Crown could force Rayonier to release its leased road and barge site for public works with compensation payable. “Guardians of the Sounds” are pursuing this politically.

- **Submission 32 John Pickering**

Mr Pickering is a recently retired Picton policeman with relevant knowledge and experience of the road.

He believes a road upgrade including separation of cycle and walkways would be a long term solution.

Marlborough Roads is investigating cycle and walkway options.

- **Submission 42 Clintondale Trust/Whyte Trustee Co. Ltd**

Mr Whyte favours a road upgrade in conjunction with various heavy traffic management controls. He proposes:

- (a) A restriction prohibiting usage on weekends, holiday periods and outside specified hours of the working day (to allay the fears of schools, tourists, etc).
- (b) Movement of heavy vehicles in convoy with a lead safety vehicle (pilot), fixed convoy travel times, signage and possibly automated warning lights.

Such a controlled use of the road by heavy vehicles could assist road safety but would involve more trucks travelling less frequently with consequent cost implications.

There are also various legal and practical issues involved in this proposal which we will, in conjunction with Marlborough Roads, further investigate.

- **Submission 65 Mrs P Rudeforth**

Mrs Rudeforth and numerous other submitters recommend the use of logging ships from Port Underwood.

Staff have discussed this concept with Sean Bolt and Wayne Barnett, Port Marlborough Ltd. Small barges could transport logs from the foreshore to a log ship anchored or moored in the bay.

An onboard crane(s) load the vessel.

Log ships generally carry 28,000 tonne of logs. If annual Port Underwood extraction is 150,000 tonnes, and 150 working days are available to use roads on and off forest, 1000 tonnes per day would be available for loading.

To minimise ship loading time and costs log storage would be necessary which can create log quality issues (sap stain) especially during the summer.

It may be possible to partially load the vessels which can be filled at either Port Shakespeare or Nelson.

We have contacted Owens Services (Nelson) who are log shipping agents at Port Shakespeare and also manage logging operations there. They are investigating the practicalities and costs of the shipping option.

There are also resource management and maritime safety issues to address. Gavin Cooper and Alex van Wijngaarden are addressing these. Port Underwood generally seems suitable for log ship use but maritime safety measures will be required.

- **Submission 66 Dr W J Brehaut**

Dr Brehaut is an engineer who has put some time into economic analysis of roading and barging costs. He contends barging is possibly cheaper than road cartage due mainly to the high capital cost of additional truck and trailer units.

probably less than stated in our "Issues and Options" paper. However it is impossible to be certain until an actual barging proposition is tendered.

If barging was really cheaper there would be no problem getting trucks off the road as industry would barge without any Council enforcement.

- **Submission 148 G Taylor**

Mr Taylor is a transport operator and Chairman of the local branch of the Road Transport Association. He, and several other operators, do not accept our statement that a laden logging truck has the same impact on the road as 6000 cars.

David Miller has subsequently written to Mr Taylor. The road impacts are well known and confirmed internationally. There is an exponential effect as axles and weights increase. In fact the figure could be as high as 12,000 cars but 6,000 was used as a very conservative estimate. Our comment relates only to road damage impact not other safety matters.

- **Submission 151 Monyeen Wedge**

Monyeen is concerned at the navigational and environmental effects of barging. She also believes barge option costings have understated the cost of developing a barge site and access road.

As discussed previously a 150,000 tonne per annum harvest will generate 1000 tonnes per day if 150 working days are available.

This is only two 500 tonne barge loads per day, 150 days a year.

We have discussed this with our harbourmasters. They foresee no significant issues with this level of traffic. There will be traffic management details to address but these are considered manageable.

Pilotage is required for tug and barge combinations exceeding 500 tonnes registered weight. Registered weight is a different calculation to the log load weight.

There are environmental issues relevant to barge sites such as run-off, sedimentation and reclamation needs. However the two sites considered in Opuia and Onapua both have requisite consents to operate. There may be a need for further works to cope with a volume increase which will require resource consent. However site issues are not expected to be problematic.

\$350,000 for road access and Opuia barge site development is considered adequate by Marlborough Roads.

- **Submission 152 Marlborough Forest Industry Association**

The Association supports a road upgrade to meet tonnages beyond 50-60,000 per annum. They are prepared to contribute to upgrades but believe general ratepayers and road adjoining landowners should also contribute.

Log harvest flow is preferred as a basis for payment of roading cost contributions. Rating of forestry land would create cash flow problems for forest owners.

Barging is seen as an option which will occur from specific parts of the forest estate without Council intervention.

The Association wants to review harvest projections with Council.

Its preferred option remains road access through the Department of Conservation land and onward to Koromiko. They seek a formal approach to the Ministers of Forestry, Conservation and Regional Development to progress this.

Marlborough Roads, the independent economist Council engaged last year and the forest/cartage industry have a different perception of the costs based on actual experience to date.

A local barge operator is confident he can reduce barging costs from the additional \$6 per tonne over roading identified in the "Issues and Options" paper states.

Until a barging proposal is tendered it is impossible to be certain on these costs.

There does seem to be evidence however that the \$6/tonne funding gap between barging and roading may be overstated making barging from Opuia/Onapua more feasible.

- **Submission 69 Dave Wells**

Mr Wells and several other submitters support use of the "skyline" system where logs are moved in bundles along a large "flying fox" type structure by cable to an anchored barge.

Council is familiar with this system which one forest owner in particular has been trialling in Hitau Bay.

This company experienced some problems with the system including anchoring and the speed of loading possible.

Reportedly Industry NZ supports development of the system.

We recommend Council adopts a "watching brief" on this system which still has developmental problems.

- **Submission 93 Peter Banks**

Mr Banks proposes barging from Port Underwood to Rarangi Beach south of the residential area for trucking to processors or Port Shakespeare.

There are already barge options out of Tory Channel to Port Shakespeare.

This option could be considered if Council recommends enforced barging.

- **Submission 142 Guardians of the Sounds**

Many of the "Guardians'" views have already been covered above.

Those not yet covered are:

- (a) Mussel trucks should also be removed from the road.
- (b) Length restrictions should be imposed to eliminate trailer units.
- (c) Weight restrictions should be used to limit road damage.
- (d) Roadside parking be eliminated between Waikawa Bay and Karaka Point during holiday periods to provide room for evasive action to avoid trucks.
- (e) Fossil fuel use be given more attention in considering options – barging would reduce fossil fuel usage and emissions.
- (f) "Guardians" question Council's road haulage costs.

(a) to (e) are self-explanatory.

(f), road haulage costs, have been assessed based on prices from transport operators and forest industry discussions. They are average costs from point of loading in the forest. As discussed for submission 66 staff accept that the funding gap between barging and road transport is

The District Treasurer is investigating the ability to apply the targeted rate mechanism on the basis of forest age (related to harvest date) rather than equally across all forest land regardless of age.

Marlborough Roads' staff will review harvest projections with the Association.

A letter has been written to the Minister of Conservation, copied to the Ministers of Forestry and Regional Development seeking consideration of access for a forestry road via Department of Conservation estate. Department of Conservation staff have consistently stated that due to conservation values in this area they do not support a forestry road.

Where to from here?

6. Essentially Council needs to make the same decisions that submitters to the "Issues and Options" paper made:

6.1 Is the current situation acceptable?

6.2 Would increased tonnage on the road also be acceptable?

6.3 Does Council:

6.3.1 Upgrade roads?

6.3.2 Enforce barging or sea freight? or

6.3.3 Undertake both options?

6.4 How does Council fund the required marginal costs of the chosen option(s)?

7. Staff are working on the following tasks, most of which are explained above. We believe completion will enable these decisions to be made, more fully informed, in the near future:

7.1 Road Issues

- Safety review Port Underwood Road.
- Preliminary survey and design of road upgrade.
- Provision of cycle and walkways in upgrade.
- Consideration of safety, practicality and costs of a convoy system.
- Review of log harvest projections with the Marlborough Forest Industry Association.
- Investigation of Underwood Farms Ltd proposal to develop a specialist forestry road from the "Tongue" to the summit between Whatamango Bay and Haka Haka.

7.2 Barge Issues

7.2.1 Onapua Bay

- Discussion with Underwood Farms Ltd, Williams Family Trust and other affected landowners regarding access to and use of the barge site at Onapua Bay.

7.2.2 Opuia Bay

- Continue negotiations with Rayonier, 1 August.

7.2.3 Profitability

- Review economist analysis of returns given market and exchange rate changes since October 2002.

7.3 Port Underwood Shipping

- Owens Services Ltd investigating shipping costs and availability.
- Discuss further with Port Marlborough.
- Investigate log storage, handling and barge sites for 'lighters' to pick up logs to transport to ships.

7.4 Alternative road through Department of Conservation land to Koromiko.

- Write to ministers to ascertain prospect of success.

7.5 Funding

- Bill Watts investigating ability to apply targeted rates on an age of forest basis.

7.6 Legal

- Radich Dwyer will be kept informed of progress. Legal mechanisms available to enforce transport or rating options will be further examined once Council decides to progress an option.

7.7 Summary

- Once the above work is completed updated costings and a report on possible funding options and their impact on Council and industry can be prepared.

8. Following discussion with "Guardians of the Sounds" representatives Jeremy Hall and Peter Beech it is proposed that a meeting of the councillor logging group (Clrs Dew, Maher, Bowers and Cairns) be arranged with Guardians of the Sounds, Picton, Waikawa and Port Underwood ratepayers groups, forest and cartage industry representatives to further explain their respective positions and explore any middle ground.
9. The 28 August 2003 Assets and Services Committee meeting is our target date when decisions should be able to be made.

RECOMMENDED

That the work programme outlined be accepted.

11. Port Underwood Log Extraction (R855-03, R945-P02)

(Clr Maher) (Report prepared by M Wheeler)

1. Following the last Committee meeting (17 July) substantial progress has been made on the work programme adopted:

1.1 Safety Review of Port Underwood Road

A copy of the Beca Carter Hollings & Ferner Limited's report is attached. Key points are:

- Port Underwood Road is not at present a desirable route to carry a mix of heavy vehicles, cars and pedestrians, especially if log cartage increases.
- However, only 17 crashes have been reported on Port Underwood Road in the 10 years between 1993 and 2002.
- Twelve of these were non injury crashes.
- Only two involved trucks and both were non injury.
- The heavy traffic accident severity is well below national guidelines, probably due to the low speed environment.
- On Waikawa Road average daily traffic volume is 3,430 vehicles per day outside Queen Charlotte College. Only 50 (1.5%) of these vehicles are heavy trucks.
- A range of safety improvement measures is recommended if there were to be significant increased logging truck movements including sight distance improvements, road widening, curve and other warning signs, edge lines and marker posts, installing a pedestrian/cycling path adjacent to the road and the provision of sealed pull over areas.

1.2 Preliminary Survey and Design of Road Upgrade and Provision of Cycle and Walkway

Marlborough Roads have completed this preliminary phase and have been able to include several of the key Beca safety recommendations including curve widening and a pedestrian/cycleway from Waikawa to Whatamango Bay.

Waikawa Road asphaltic surfacing is also included for vibration and noise reduction.

A cost estimate of \$5.4 million has been calculated (accuracy -0% to +15%).

Plans can be viewed as required.

1.3 Consideration of a Convoy System

Several submissions proposed that heavy traffic come out of Port Underwood at defined times, perhaps twice daily, in convoy with a pilot vehicle. Warning signals could be activated for the benefit of other road users.

While the system could offer safety improvements the cost involved in the extra truck resources needed is estimated to be greater than that of barging.

1.4 Review of Log Forest Projections With the Marlborough Forest Industry Association

Marlborough Roads and the Association's Forestry Consultant have agreed that log extraction for the next 10 years will total 1.2 million tonnes (an average of 120,000 tonnes per annum). Depending on age profile, market and exchange rate values, annual harvest volumes could be highly variable. This makes the annual volume figure stated in the Issues and Options (between 100,000 and 200,000 tonnes) quite realistic.

1.5 Investigation of Underwood Farms Limited Proposal to Develop a Specialist Forestry Road from the "Tongue" to the Summit Between Whatamango Bay and Haka Haka

Councillor Maher, Frank Porter and the writer met Brian and Tim Perry of Underwood Farms Limited to discuss this proposal and barge site access.

The forestry road would cut five kilometres from the public road route. It would also avoid the Haka Haka community and the very steep winding Port Underwood Road route to the "summit".

Further investigation and negotiation is warranted.

1.6 Onapua Bay Barge Access

Access to the Onapua barge site (owned by the Williams Family Trust) is currently possible mainly via Underwood Farms Limited and Williams Family Trust roads. These are very close to and, in some places, are located partially on, legal roads. Discussions have commenced with both parties.

Underwood Farms Limited are willing to provide access to other forestry traffic provided a fair maintenance charge is paid.

Brent Williams is willing to consider an access arrangement and options have been suggested. He will discuss these options with the Williams Family Trust Trustees.

The Local Government Act/Public Works Act could be used to force access but continued negotiation is recommended.

1.7 Opuia Bay Barge Access

A meeting was held recently with the Rayonier Managing Director and three other senior executives to discuss their plans to use their Opuia Bay road and barge site. Rayonier are now seriously investigating their own barge or shipping options and are also considering providing their road and barge/ship site to other forest harvesters given their announced intention of felling large areas in the near future.

They are unlikely to be in a position to make any final decisions until early October.

1.8 Review Economist Analysis of Returns Given Market and Exchange Rate Changes Since October 2002

As expected returns have reduced significantly in recent months. Port Underwood logs were expected to return a net stumpage price of \$27 per tonne in October 2002 (road cartage option). That return is now estimated to be only \$13 per tonne for road cartage and \$10 for the barge option.

Mike Copeland, Economist, concludes his report with the statement that....

“If the Marlborough District Council is insistent on barging rather than road transport, there is likely to be greater pressure on the Council (and Transfund) to meet the costs of the funding gap. If forest owners decide not to harvest their trees, economic benefits for the region will be lost, or at least delayed until returns improve.....”.

1.9 Port Underwood Shipping – Investigate Further

Discussions have been held with Port Marlborough management, Owens Services (Shipping Agents), a Marlborough Harbour Pilot and Council’s Harbourmasters.

Shipping logs from Port Underwood is considered achievable and lawful although anchorage could be problematic.

Costs have not been determined but may be high relative to barging given the size of vessel to be loaded (up to 28,000 tonnes) and the cost of keeping the vessel at anchor for several days during the loading process.

One forest harvest company believes vessel insurance might be very high given the exposed Port Underwood environment.

2.0 Funding Targeted Rates

The forest industry seems to accept that some of the additional transport costs resulting from the increased harvest should be funded by them. However, they are opposed to funding on a traditional land value basis due to a mismatch of income and rate incidence.

Rates could be targeted at forests but there is no ability under the new Rating Act to have a differential rate based on age of forest which would overcome the problem.

2.1 Legal Mechanisms

Radich Dwyer are to advise us on recommended legal mechanisms to underpin the option(s) Council wish to adopt.

a. Meeting with Community and Industry Representatives

This meeting attracted approximately 40 participants. A summary of progress, as above, was presented and representatives from both industry and community groups expressed their views.

A middle ground approach was proposed suggesting that current levels of logging road transport, staged road upgrading and barging of the balance of logs could be acceptable. Given the perishable nature of mussels, barging was considered an unreasonable option.

2. The response to the proposal was positive from industry participants and attracted a mild response from community representatives.

Peter Beech (Guardians of the Sounds) suggested that mussels and local mill logs could continue to be carted by truck but preferred single trucks not truck and trailer units.

3. Letters of support for the proposal have subsequently been received from Underwood Farms Limited and Jon Francis (Port Underwood Association). These are attached.
4. The writer has had a brief meeting with Jeremy Hall (Guardians of the Sounds) who was concerned that the resident group response at the meeting did not reflect the real community feeling. Conversely Peter Heagney (cartage contractor) believes a higher level of road cartage than the current (about 50,000 tonnes per annum) should be approved.

5. If the recommendation below is approved, staff will provide further information to the next Assets and Services Committee on:
- (a) The road upgrade programme and costings.
 - (b) Barge, site, road access and use.
 - (c) Funding the road upgrade and barging costs.
 - (d) Legal mechanisms to underpin the options chosen.
 - (e) Vehicular restrictions for this log cartage using the Port Underwood Road network eg; operating days, times, wet weather restrictions etc.

RECOMMENDED

That staff further develop an option, to be based on a voluntary written agreement with the forestry industry:

- (a) Restrict log cartage to that being transported to South Island timber mills (average 50,000 tonnes per annum) on the Port Underwood Road network.**
- (b) Allow mussel traffic to continue to use Port Underwood Road.**
- (c) Barge the balance of logs harvested.**
- (d) Upgrade Waikawa and Port Underwood Roads.**
- (e) Work with Underwood Farms Limited on a purpose built forestry road.**

5. That it be acknowledged at this stage Council can give no commitment that the road stopping will be completed given the objection rights available under the said Section 342.
6. That a condition of the approval be that the land once stopped be amalgamated with the adjoining property so that both titles are held within the one title, this being in terms of Section 342 of the Local Government Act 1974.
7. That within 14 days of notice that the title is available, settlement is to be completed with interest charged at 14% for any delayed settlement.

Carried

P.03/04.101 *Fire* Appointment of Rural Fire Officer F090-01

The committee was advised that in accordance with Section 13 of the Forest and Rural Fires Act 1977 Council as a Rural Fire Authority is required to appoint a Principal Rural Fire officer to respond to fire and to administer the affairs of the Fire Authority.

Barry Bridges who is the Principal Rural Fire officer at the present time, is contracted to Council to carry out the role for three years; the term of his present contract runs out on 30 September 2003.

From 1 October 2005 all rural fire officers including the Principal Rural Fire Officer must hold formal qualifications for the responsibilities they have at rural fire emergencies and for day to day administration duties.

Mark Wheeler, Manager – Assets and Services advised that he had discussed the appointment of a new Principal Rural Fire Officer with the Emergency Services Manager, Ross Hamilton and the current Rural Fire Officer, Barry Bridges. Both agreed that the Emergency Services Manager could, as part of his present duties, take over the role of the Principal Rural Fire Officer. Mr Hamilton already holds all the formal qualifications and training for this position, and it was considered that his position as Emergency Services Manager made him ideally placed to coordinate and develop the resources needed to maintain the continuous improvement necessary.

RECOMMENDED:

1. That Barry Bridges' services to the residents of Marlborough be acknowledged.
2. That the Emergency Services Manager, as part of his duties, be appointed as the Principal Rural Fire Officer for the Marlborough District Council.

ATTENDANCE: Cllr Maher attended the meeting.

P.03/04.102 *Roads* Port Underwood Log Extraction
R855-03, R945-P02

Following recommendation by the committee and subsequent approval by Council on 8 August that the work programme be accepted as outlined in the report presented to the committee meeting on 17 July (refer Minute No. P.03/04.23) it was reported that substantial progress had been made on the work programme adopted.

Detailed in a report prepared by Mark Wheeler, Manager – Assets and Services, was information on the progress made with the work programme.

Mr Wheeler advised that a meeting with community and industry representatives attracted approximately 40 participants. He reported that a middle ground approach was proposed suggesting that current levels of

logging road transport, staged road upgrading and barging of the balance of logs could be acceptable. Given the perishable nature of mussels, barging was considered an unreasonable option.

The response to the proposal was positive from industry participants and attracted a mild response from community representatives.

Peter Beech (Guardians of the Sounds) suggested that mussels and local mill logs could continue to be carted by truck but preferred single trucks not truck and trailer units.

Mr Beech attended the Assets and Services Committee meeting and spoke in his capacity as Chairman of the Guardians of the Sounds.

Whilst they ideally would like to see that no logging trucks be allowed on roads, they acknowledge this would be unreasonable. They fully support barging. Mr Beech commented that a precedent had been set with there being a vehicle length restriction on Queen Charlotte Drive, which effectively prohibited logging trucks from using it. He was advised that in this case there is an alternative route available ie; from Linkwater to State Highway 6 for Kenepuru Road traffic, whereas Port Underwood does not have an alternative route.

Mr Beech stated that nothing could be progressed until access was obtained through private land.

Clr Maher commented that the forestry industry was not happy with barging as this could mean their profits dropping by up to 50%.

Clr Sowman expressed his concern with regard to safety on the road and strongly felt that safety improvements needed to be done first as the issue of safety was of major concern to the community.

The committee was advised that this would be looked at when upgrading Waikawa and Port Underwood Roads.

It was noted that staff will provide further information to the next Assets and Services Committee on:

- (a) The road upgrade programme and costings.
- (b) Barge, site, road access and use.
- (c) Funding the road upgrade and barging costs.
- (d) Legal mechanisms to underpin the options chosen.
- (e) Vehicular restrictions for this log cartage using the Port Underwood Road network eg; operating days, times, wet weather restrictions etc.

RECOMMENDED:

That staff further develop an option, to be based on a voluntary written agreement with the forestry industry:

- (a) Restrict log cartage to that being transported to South Island timber mills (average 50,000 tonnes per annum) on the Port Underwood Road network.**
- (b) Allow mussel traffic to continue to use Port Underwood Road.**
- (c) Barge the balance of logs harvested.**
- (d) Upgrade Waikawa and Port Underwood Roads with particular reference to safety involved.**
- (e) Work with Underwood Farms Limited on a purpose built forestry road.**

ATTENDANCE: Stuart Donaldson, Planning and Development Engineer attended the meeting.

13. Port Underwood Road – LTSA Review (R945-P02)

(Cllr Maher) (Report prepared by M Wheeler)

1. The Land Transport Safety Authority has reviewed the safety of the Port Underwood Road.
2. Councillors and interested parties have been sent a copy of the report received on 11 August 2004.
3. The report recommendations are:

“Marlborough District Council have already agreed to commence a Bylaw process and the Council has resolved to publish a discussion document outlining Port Underwood issues and options which include the enactment of a Bylaw. This will give Council general powers including those to close roads, and to restrict road use to certain classes of vehicles. Under the Local Government Act (LGA) 2002 requirements, consultation is required which will take time. In the meantime, however, the following minor safety works and barging options should be considered, as well as a long term strategy for the Marlborough Region.

- Barging logs out of the area rather than using road encouraged and supported.
 - Encourage the development of private forestry road(s) to reduce amount of interaction between logging trucks and other road users.
 - Detailed investigation of costs of route upgrades and ‘spot’ upgrades such as road widening at bends be undertaken to provide informed input into an upgrade strategy.
 - Port Underwood Physical Upgrade Strategy be prepared to define priority for work. This should take into account local concerns and desires along with issues such as costs and all road user needs.
 - Route enhancements such as signage, forward visibility and delineation be undertaken in a structured manner in line with previous comments.
 - Needs of pedestrians and cyclists be examined and catered for in line with the upgrade strategy identified above.
 - Consideration be given to limiting use of the road by trucks at certain times of the day through local bylaw or preferably by self regulation by the trucking industry following discussion and consultation between all parties.
 - CVIU continue to encourage safe driving practices amongst truck drivers in the region, and in particular for those companies operating throughout the Sounds.”
4. These recommendations are broadly in line with actions already taken or planned for.
 5. The report does provide analysis useful for community input into Council deliberations on a Bylaw. It acknowledges that a Bylaw is the correct process involving consideration of all the views of all interested parties.

RECOMMENDED

That the report be received.

DATED this day of 2004

- PARTIES**
1. **MARLBOROUGH DISTRICT COUNCIL**
 - Council -
 2. **SOUNDS OF FOREST LIMITED**
 - SOF -
 3. [Transport operators]
 4. [Transport operators Association]
 5. [The Residents Association]
 6. **PORT MARLBOROUGH NEW ZEALAND LIMITED**
 - Port Marlborough -
 7. **OWENS SERVICES**

DRAFT

**ACCORD IN RELATION TO FOREST
PRODUCE EXTRACTION**

SOLICITOR ACTING: **P.J. RADICH**

FIRM OF SOLICITORS: **RADICH DWYER
TEMPLE CHAMBERS
76 HIGH STREET
PO BOX 646
BLENHEIM**

TELEPHONE: (03) 578 5339
FACSIMILE: (03) 578 0323

©
Copyright in this document has been
retained by
Radich Dwyer

THIS ACCORD has been entered into by:

- PARTIES:**
1. **MARLBOROUGH DISTRICT COUNCIL** (*Council*)
 2. **SOUNDS OF FOREST LIMITED** (*SOF*)
 3. [Transport operators]
 4. [Transport operators Association]
 5. [The Residents Association]
 6. [Any other interest groups]
 7. **PORT MARLBOROUGH NEW ZEALAND LIMITED** (*Port Marlborough*).
 8. **OWENS SERVICES**

- BACKGROUND**
1. Council is the Unitary Authority for the Picton Whatamonga Port Underwood area (*the area*) and as such has the functions and responsibilities of a Territorial Authority and a Regional Council.
 2. Within the area there has been extensive planting and development of plantation forestry (*the forests*).
 3. Some of the forests are now ready to be harvested and issues have arisen concerning the modes and routes to be used for the extraction of forest produce.

4. It is accepted by all the parties that the forest produce likely to be available to be extracted from the forests cannot be extracted over Council's ordinary roading system without:
 - Excessive damage being done to the roading system.
 - There being potential safety issues.
 - There being other environmental issues.
 - There being community unrest.
5. Various compromises have been considered by the parties and the present understanding has been reached to which the parties have agreed to commit.

ACCORD

Status of Accord

1. This Accord has the status of an agreement reached in good faith. It cannot be contractually binding and it cannot affect statutory or other rights and responsibilities. The parties agree to act in good faith pursuant to it. Any breach will have the status of a breach of good faith and in considering their future actions the parties shall have regard to any such breach of good faith. In particular in considering its future actions, Council shall have regard to any such breach of good faith.

General Intent

2. The general intent is to limit the volume of forest produce which is extracted over Council's roading system to limit the impacts of such extraction on Council's roading system. Within the parameters contemplated by this Accord Council will (subject to being obliged or compelled to exercise controls in a particular case) allow its roading system to be used for such extraction of forest produce.

Nature of Arrangements

3. All forest produce harvested in the area and intended for export as raw logs shall be extracted from the forest areas onto barges and shall be conveyed to Port Shakespeare or Centre Port at Wellington by barge.
4. Forest produce from the area intended to be further processed in the Marlborough or Nelson regions may be extracted from the forest areas and conveyed to the appropriate timber mills by road using Council's roading system subject always to Council having the capacity to control a particular situation where on account of adverse weather, adverse road conditions, safety or some other circumstances it is necessary for controls in a particular case to be put into place.

Mechanics of Arrangement

5. The parties to this Accord other than Council will ensure that forest produce under their control is properly identified according to its intended destination whether that be export in the form of raw logs or further milling and processing in New Zealand.
6. The parties to this Accord will facilitate Council being given and receiving such information as Council shall reasonably require to monitor this Accord.

Consultation

7. The parties to this Accord will establish a standing committee of representatives to meet regularly, consult and monitor the ongoing implications and effects of this Accord.

Term of Accord

8. The term of this Accord shall be a continuing term until it is brought to an end by any party giving to the others notice of termination in writing. The parties agree to be cautious in the bringing to an end of this Accord recognising that, if it is reasonably effective to produce a reasonable compromise then there is merit in its continuing.
9. The parties may by further agreement in writing modify this Accord as they wish.

- 10. This Accord is intended to be a public document and all issues in respect of it are intended to be available to the public as a matter of public interest.

This Accord has been entered into on the above date.

SIGNED for and on behalf of the)
MARLBOROUGH DISTRICT COUNCIL)
by)
in the presence of:)

SIGNED by)
SOUNDS OF FOREST LIMITED)
by its authorised signatories:)

Signature

Signature

Name

Name

Position Held

Position Held

Address

Address

SIGNED by _____)
[Transport Operators] _____)
by its authorised signatories in the presence of: _____)

Signature

Signature

Name

Name

Position Held

Position Held

Address

Address

SIGNED by _____)
[Transport Operators Association] _____)
by its authorised signatories in the presence of: _____)

Signature

Signature

Name

Name

Position Held

Position Held

Address

Address

SIGNED by _____)
[The Residents Association] _____)
by its authorised signatories in the presence of: _____)

Signature

Signature

Name

Name

Position Held

Position Held

Address

Address

SIGNED by _____)
PORT MARLBOROUGH NEW _____)
ZEALAND LIMITED by its authorised _____)
signatories in the presence of: _____)

Signature

Signature

Name

Name

Position Held

Position Held

Address

Address

SIGNED by)
[OWEN SERVICES])
by its authorised signatories in the presence of:)

Signature

Signature

Name

Name

Position Held

Position Held

Address

Address

2. Port Underwood Road Upgrade Strategy (R855-03)

(Clr Barsanti) (Report prepared by F Porter, Marlborough Roads)

1. Council at its 18 September 2003 meeting adopted the recommendations of the Assets and Services Committee as follows: “That staff further develop an option to be based on a voluntary written agreement with the forestry industry:
 - (a) Restrict log cartage to that being transported to South Island timber mills (average 50,000 tonnes per annum) on the Port Underwood Road network;
 - (b) Allow mussel traffic to continue to use Port Underwood Road.
 - (c) Barge the balance of logs harvested.
 - (d) Upgrade Waikawa and Port Underwood roads with particular reference to safety involved.
 - (e) Work with Underwood Farms Ltd on a purpose built forestry road.”
2. In order to develop that option further work and consequent Council decision making is required. Of particular significance is determining the degree of road upgrading to be done and the means of funding that.
3. An outcome of the option is that it is likely that there will be no significant increase in the volume of logs carted over Port Underwood Road from the Port Underwood/Hakahaka area to SH 1 in Picton than has been carted during previous years. In previous years up to 50,000 tonnes are estimated to have been carted over the road.
4. Whilst 30-50,000 tonnes per year have been accepted as a sustainable use on the Port Underwood Road, there is nevertheless a need to continue to assess safety aspects and future costs of pavement management associated with cartage of domestic logs.
5. In order to do this a draft strategy needs to be developed to establish what will be a fundable regime to enhance the route.
6. Already, work has been commissioned by Marlborough Roads to assess the volumes of timber that will be carted over the route over the next 10 years which meet Council’s criteria.
7. Concurrently Marlborough Roads will need to obtain more precise survey data for the existing road between Waikawa and Whatamango so that more detailed costings can be established as well as being able to establish economic criteria for upgrading.
8. Once the economic analysis is undertaken, Council will need to prioritise the various works and undertake them, as funding is available from various sources.
9. There are three prime external funding sources available for road upgrading, all of which will be funded through Transfund at varying financial assistance rates. These are: -
 - Regional Development Funding at 100% financial assistance rate.
 - Pedestrian/cyclist safety works or economically justified construction works at 53% financial assistance rate.
 - Works undertaken from Council’s base programme, eg; seal widening/seal smoothing/signage at 45% financial assistance rate.

10. Council will have to consider how to fund the “local share” (total upgrade cost less financial assistance). This could be done through the district wide roading rate (general rates), a geographic area charge (Picton/Waikawa/Port Underwood ratepayers), a targeted rate (forest owners) or a combination of these options.
11. To establish an approximate priority for works, Marlborough Roads considers that the first priority would be to cater for the safety of cyclists and pedestrians, the second priority to cater for the general safety of all road users, the next priority to mitigate noise and vibration through resurfacing and finally to undertake safety enhancements on the lower trafficked section of the Port Underwood Road.
12. A summary of this priority order with indicative costs is: -

Priority Order	Activity	Beneficiary	Cost
Priority One	Waikawa to Karaka Point	Pedestrians/cyclists and road users	\$860,000
Second Priority	Resurfacing Waikawa area	Adjacent residents	\$760,000
Third Priority	Karaka Point to Whatamango road widening	Road users	\$1.8m
Fourth Priority	Corner widening beyond Whatamango	Road users	\$1.5m

13. Until more detailed information is available from forestry owners in the Port Underwood area, there is uncertainty as to either where barging operations might occur from or also where domestic logs may access onto the Port Underwood Road. For example if a new private high level road is established from the Hakahaka summit connecting with the various Port Underwood forests and a barge site, then it is likely that little or no upgrading work would be required on the District Council section of Port Underwood Road between the summit and Oyster Bay. Otherwise up to \$700,000 may be required on this section of road in the longer term.
14. Work is ongoing to establish barging facilities in the Port Underwood/Onepua area.

RECOMMENDED

1. **That the upgrading work priority order above be confirmed.**
2. **That more detailed survey and design work be undertaken on the priority one proposal.**
3. **That further consideration of**
 - a. **The timing of upgrade works, and**
 - b. **Funding options****be undertaken and reported to the next Assets and Services Committee meeting.**

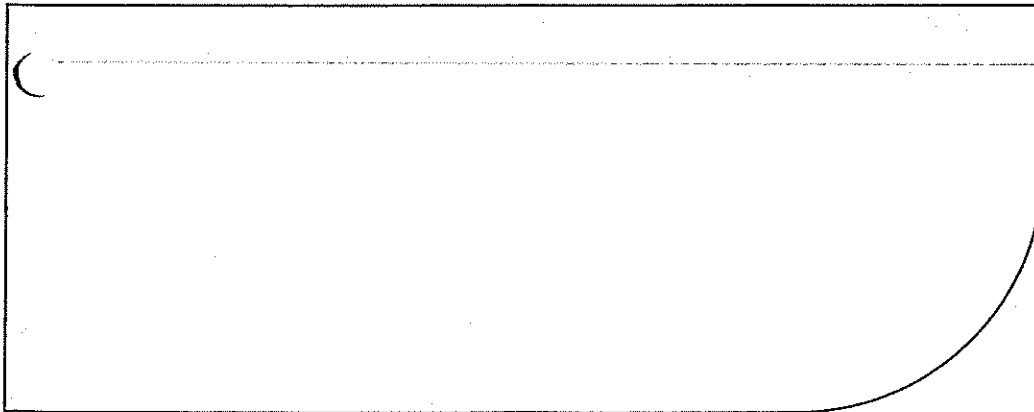


50-64 Customhouse Quay
PO Box 2791
Wellington
New Zealand
DX SP20002 Wgtn
Tel +64 4 472 6289
Fax +64 4 472 7429
www.phillipsfox.com

Adelaide
Brisbane
Canberra
Melbourne
Perth
Sydney
Auckland
Wellington
Hanoi
Ho Chi Minh City

Port Underwood Funding Agreement

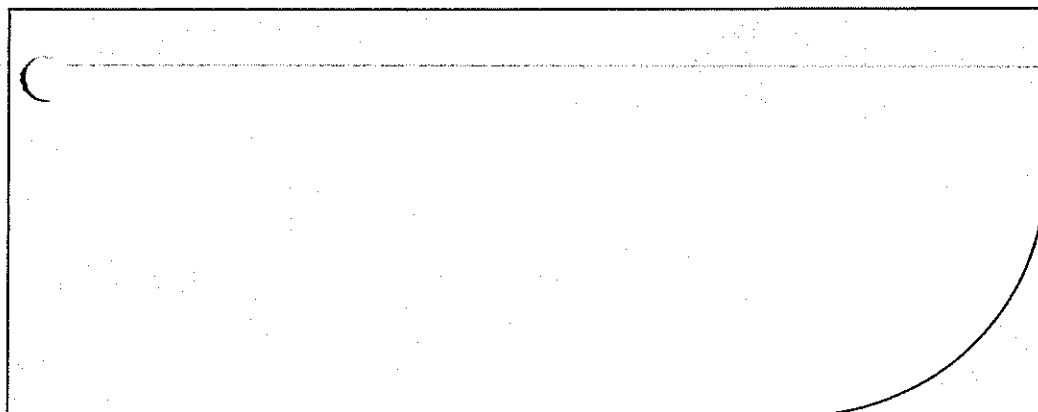
Marlborough District Council
Rayonier New Zealand Limited





50-64 Customhouse Quay
PO Box 2791
Wellington
New Zealand
DX SP20002 Wgtn
Tel +64 4 472 6289
Fax +64 4 472 7429
www.phillipsfox.com

Adelaide
Brisbane
Canberra
Melbourne
Perth
Sydney
Auckland
Wellington
Hanoi
Ho Chi Minh City



Parties

Marlborough District Council (the Council)

a unitary authority pursuant to the Local Government Act 2002 and constituted by the Local Government Amendment Act 1992, situated at Seymour Square, Blenheim

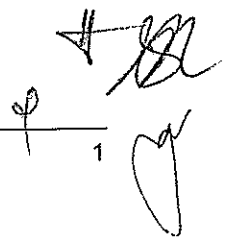
Rayonier New Zealand Limited (Rayonier)

a duly incorporated company having its registered office at Level 5, Symonds Centre, 49 Symonds Street, Auckland

Background

- A The Council wishes to reduce the amount of heavy-vehicle traffic associated with commercial forestry operations on roads within the Marlborough District. The parties acknowledge this can be achieved in part by barging logs from Opuia Bay to Shakespeare Bay.
- B At present barging is more expensive than transporting logs by road. The Council wants to encourage barging logs that would otherwise be transported via Port Underwood Road by securing financial assistance from Transfund New Zealand (**Transfund**).
- C The Council has applied to Transfund for an allocation of money from the National Land Transport Fund 'alternatives to roading' (**ATR**) activity class. Part of that application is the Council's agreement to provide 43% of the total money available for distribution under the Port Underwood Funding Agreement (**Local Share**) itself. Rayonier has agreed to fund the Local Share on behalf of the Council.
- D Rayonier is a significant commercial forestry operator in the Marlborough District. In 2004 Rayonier reclaimed, developed and established ancillary infrastructure on an area of seabed and foreshore (including an existing reclamation) at Opuia Bay pursuant to resource consents issued by the Council (**Barge Site**). The Barge Site is intended to facilitate the transport of logs by Rayonier and other commercial forestry operators to Shakespeare Bay.
- E Transfund New Zealand requires the Council and Rayonier to enter into a funding agreement as a condition precedent to allocating any ATR funding.
- F This agreement sets out how an allocation of ATR funding will be applied. The Council and Rayonier acknowledge that amendments to this agreement may be required by conditions placed on the allocation of ATR funding by Transfund New Zealand Limited.

1



Operative provisions

1 Commencement and duration

Conditions Precedent

- 1.1 This agreement is conditional on Transfund allocating ATR funding to the Council to facilitate the Port Underwood Funding Agreement between the Council and Rayonier (ATR Funding).

Parties must ensure Conditions Precedent are met

- 1.2 Both parties must use reasonable endeavours to ensure that the Condition Precedent is met, including any requirements arising from sections 25 and 95 of the Land Transport Management Act 2003.

Effect of failure to satisfy Conditions Precedent

- 1.3 If the Conditions Precedent are not fulfilled by 30 June 2005 or such later date as agreed in writing by the parties, this agreement will be terminated immediately by either party giving the other written notice.

Commencement and duration

- 1.4 On satisfaction of the Condition Precedent, this agreement shall be deemed to have taken effect from 1 July 2004 and remains in force until 30 June 2006, unless terminated earlier or extended in accordance with this agreement.

2 Port Underwood Funding Agreement

Definitions

- 2.1 **Capital Funding** means \$395,000 (excluding GST) that must be paid in accordance with clause 2.12.1.
- 2.2 **Operational Funding** means \$293,000 (excluding GST) that must be paid in accordance with clause 2.12.2.
- 2.3 **Funded Logs** means logs that are:
- 2.3.1 Harvested by or on behalf of any commercial forestry operator (including Rayonier); and
 - 2.3.2 Transported from the Barge Site to Shakespeare Bay by barge during the term of this agreement; and
 - 2.3.3 Practical to transport via the Port Underwood Road.
 - 2.3.4 For the purposes of this agreement one tonne of logs will be deemed to equal one JAS cubic metre.

Barge Site

- 2.4 During the term of this agreement Rayonier must maintain to a standard suitable for use by commercial forestry operators:
 - 2.4.1 The Barge Site; and
 - 2.4.2 The roads marked red on the map attached as Schedule A.
- 2.5 Any other road on land controlled by Rayonier that is reasonably necessary to enable another commercial forestry operator to access the Barge Site must be made available on reasonable commercial terms.

Access

- 2.6 At all times that the Barge Site has surplus capacity Rayonier must allow other commercial forestry operators to use it on reasonable commercial terms, provided:
 - 2.6.1 The additional use does not contravene any law, including the Resource Management Act 1991; and
 - 2.6.2 Other commercial forestry operators enter into agreements for use of the Barge Site and access roads that are acceptable to Rayonier.
- 2.7 Any price set by Rayonier for other commercial forestry operators to use the Barge Site must pass on the benefit of any Operational Funding Rayonier is eligible to receive from the Council by way of an equivalent reduction in price or a payment.
- 2.8 If a dispute arises under this clause that is unresolved by a meeting under clause 5.1, clauses 3.1 and 5.3 do not apply and the parties must submit the dispute to arbitration.
- 2.9 This agreement creates no obligations on the Council or Rayonier in relation to any resource consent or permission other commercial forestry operators may require to use the Barge Site.

Transport by barge

- 2.10 During the term of this agreement Rayonier must use reasonable commercial endeavours to transport by barge all export logs harvested by or on behalf of Rayonier that would otherwise be transported via Port Underwood Road.

Port Underwood and Tumbledown Bay Roads

- 2.11 During the term of this agreement the Council will not obstruct or hinder Rayonier from using either the Port Underwood and/or Tumble Down Bay Roads to transport logs to any domestic customer unless:
 - 2.11.1 A reason related to the Council's role as a unitary authority exists to do so; and
 - 2.11.2 The Council is empowered to do so by an applicable law or regulation.

[Handwritten signatures and initials]
3

Provided that nothing in this clause shall derogate from Councils responsibility to act in good faith to Rayonier pursuant to clause 8.7 of this Agreement.

Payment of Capital and Operational Funding

- 2.12 The Council must pay Rayonier:
 - 2.12.1 The Capital Funding at a rate of \$3.20 (excluding GST) per tonne of Funded Logs; and
 - 2.12.2 The Operational Funding at a rate of \$0.97 (excluding GST) per tonne of Funded Logs.
- 2.13 Without terminating any other part of this agreement:
 - 2.13.1 The Council's obligations under clause 2.12.1 cease once all of the Capital Funding has been paid; and
 - 2.13.2 The Council's obligations under clause 2.12.2 cease once all of the Operational Funding has been paid.
- 2.14 The Capital and Operational Funding must be paid by the Council by the last day of the month following a month in which it receives an invoice from Rayonier.
- 2.15 Any invoice issued by Rayonier under clause 2.14 must be reduced by 43% to recognise that Rayonier has agreed to fund the Local Share on behalf of the Council.

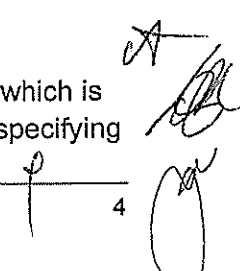
Records to be kept

- 2.16 Rayonier and/or its contractors must keep records in sufficient detail to enable the relevant tonnages in clause 2.12 to be readily calculated and verified.
- 2.17 Rayonier must allow the Council, at its own expense, to inspect and copy those records on reasonable notice during normal business hours.
- 2.18 On written request, Rayonier must have those records audited by an independent auditor nominated by the Council. Rayonier must give any assistance the Council or the auditor reasonably requests. The Council must pay the costs of the audit, however, Rayonier must reimburse the Council the costs of the audit if it reveals that a calculation of tonnages by Rayonier was incorrect by more than 1.5%.

3 Termination

Termination of this agreement

- 3.1 Either party may terminate this agreement immediately if any of the following occurs:
 - 3.1.1 The other party commits a material breach of this agreement which is not rectifiable; or
 - 3.1.2 The other party fails to rectify a material breach of this agreement which is rectifiable within 20 business days after receiving a written notice specifying the breach and requiring rectification.



3.2 No party is entitled to terminate this agreement except as expressly permitted in this agreement.

Effect of termination

3.3 In addition to any other rights, powers or remedies a party may have under this agreement or at law, if this agreement ends, or is terminated under clause 3.1, the following will apply:

3.3.1 Each party is released from its obligations under this agreement (except those relating to confidentiality and any other clauses expressly stated to survive the termination of this agreement); and

3.3.2 Each party retains the rights it has accrued under this agreement.

4 Extension

Extension of this agreement

4.1 If Rayonier wishes to extend this Agreement it must conclude the re-tendering of its road transport and barging options in accordance with section 25 and 95 of the Land Transport Management Act 2003 before 30 June 2006.

4.2 If the re-tendering in clause 4.1 shows that Rayonier's barging option will be more expensive than its road transport option, the Council must use reasonable endeavours to obtain additional ATR funding.

5 Dispute resolution

Meeting to attempt to resolve disputes

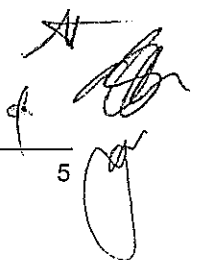
5.1 If a dispute arises under this agreement, either party may at any time give written notice to the other requesting that a meeting take place to seek to resolve the dispute. Nominated senior representatives of both parties must meet within five business days of the notice and endeavour to resolve the dispute in good faith. If such meeting does not take place or if after five business days of the meeting the dispute remains unresolved, either party may pursue its rights at law or in equity.

Performance of obligations

5.2 During a dispute, each party must continue to perform its obligations under this agreement.

Interlocutory relief and right to terminate

5.3 Clauses 5.1 and 5.2 do not restrict or limit the right of either party to obtain interlocutory relief, or to immediately terminate this agreement where this agreement provides such a right.



6 Force majeure

No liability

6.1 A party is not liable for failure to perform, or delay in performing, an obligation (except an obligation to pay money) if each of the following is satisfied:

6.1.1 The failure or delay arose from a cause beyond the reasonable control of that party. A cause beyond the reasonable control of a party includes an act of God, strike, lockout, other industrial disturbance or labour difficulty, war, act of public enemy, blockade, revolution, riot, insurrection, civil commotion, lightning, storm, flood, fire, earthquake, explosion, embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation, or anything done or not done by or to a person, except the party relying on force majeure; and

6.1.2 The party took all reasonable precautions against that cause and did its best to mitigate its consequences. This does not require the party to settle a labour dispute if, in the party's opinion, that is not in its best interests; and

6.1.3 The party gave each other party notice of the cause as soon as practicable after becoming aware of it.

Notice

6.2 From the date notice is served in accordance with clause 6.1.3, no party is required to perform its obligations under this agreement that are dependent on the delayed or failed obligations until the party that gave notice is able to resume fully performance of its obligations.

Termination

6.3 If the cause and the resulting failure or delay lasts for more than 60 business days, either party is entitled to terminate this agreement immediately by giving the other party written notice.

7 Notices

Giving notices

7.1 Any notice, consent, information, application or request that must or may be given or made to a party under this agreement is only given or made if it is in writing and sent in one of the following ways:

7.1.1 Delivered or posted to that party at its address set out below; or

7.1.2 Faxed to that party at its fax number set out below:

The Council

Name: Marlborough District Council
Address: P O Box 443, Blenheim
Fax number: +64 3 578 5249
Attention: Mark Wheeler, Manager, Asset and Services Department

Rayonier

Name: Rayonier New Zealand Limited
Address: P O Box 9283, Newmarket, Auckland
Fax number: +64 9 377 0249
Attention: General Manager, Forest Resources

And copied to:

Name: Rayonier New Zealand Limited
Address: P O Box 1181, Blenheim
Fax number: +64 3 579 2015
Attention: Dave Malone

Change of address or fax number

7.2 If a party gives the other party 3 business days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.

Time notice is given

7.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

7.3.1 If it is delivered, when it is left at the relevant address; or

7.3.2 If it is sent by post, 2 business days after it is posted; or

7.3.3 If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

7.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

8 Miscellaneous

Assignment

8.1 A party must not assign any of its rights or obligations under this agreement without the prior written consent of the other parties. Such consent is not to be unreasonably withheld.

Contracts (Privity) Act 1982

8.2 Unless this agreement expressly provides otherwise, it is not intended to confer a benefit on any person or class of persons who is not a party to it.

Costs

8.3 Except as otherwise set out in this agreement, each party must pay its own costs in relation to preparing, negotiating and executing this agreement and any document related to this agreement.

Entire agreement

8.4 This agreement contains everything the parties have agreed in relation to the matters it deals with. No party can rely on an earlier agreement, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this agreement was executed, except as permitted by law.

Execution of separate documents

8.5 This agreement is properly executed if each party executes either this document or an identical document. In the latter case, this agreement takes effect when the separately executed documents are exchanged between the parties.

Further acts

8.6 Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.

Good faith

8.7 The parties agree at all times to act in good faith towards each other in respect of all dealings or matters under, or in connection with, this agreement.

Goods and Services Tax

8.8 A party must pay GST on a taxable supply made to it under this agreement, in addition to any consideration (excluding GST) that is payable for that taxable supply. The party making the taxable supply must provide a valid tax invoice to the other party at or before the time that the other party is required to pay the GST. Terms used in this clause have the meaning given to them in the Goods and Services Tax Act 1985.

Governing law and jurisdiction

8.9 This agreement is governed by the law of New Zealand. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

No agency, partnership or other relationship

8.10 Except as expressly provided in this agreement, no party is an agent, representative, trustee, employee or partner of any other party by virtue of this agreement and no party may represent itself as such in any circumstances.

Handwritten signatures and initials in black ink, including a large signature and several smaller initials, located in the bottom right corner of the page.

Severability

8.11 If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

Variation

8.12 No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.

Waiver

8.13 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

9 Interpretation

Interpretation

9.1 In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:

9.1.1 A reference in this agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Wellington, New Zealand.

9.1.2 If the day on which any act, matter or thing is to be done under this agreement is not a business day, the act, matter or thing must be done on the next business day.

9.1.3 A reference in this agreement to dollars or \$ means New Zealand dollars and all amounts payable under this agreement are payable in New Zealand dollars.

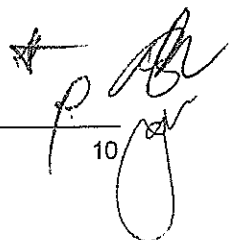
9.1.4 A reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

9.1.5 A reference in this agreement to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.

9.1.6 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this agreement.

9

- 9.1.7 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 9.1.8 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 9.1.9 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 9.1.10 References to the word 'include' or 'including' are to be construed without limitation.


Handwritten signature and initials, possibly "P. B.", with a star symbol above the signature.

Execution and date

Executed as a deed.

Date: 7th April 2005

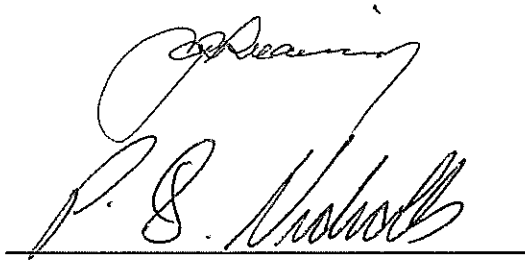
Signed by Rayonier New Zealand Limited by

Witness signature: 

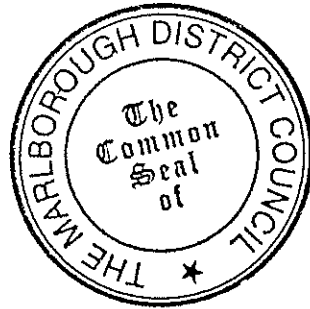
Witness name: Peter R. Spencer

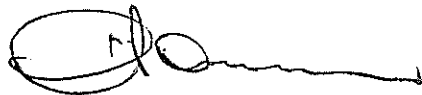
Occupation: Manager

Address: Auckland

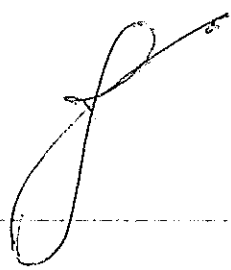


The common seal of
Marlborough District Council
was affixed in the presence of:



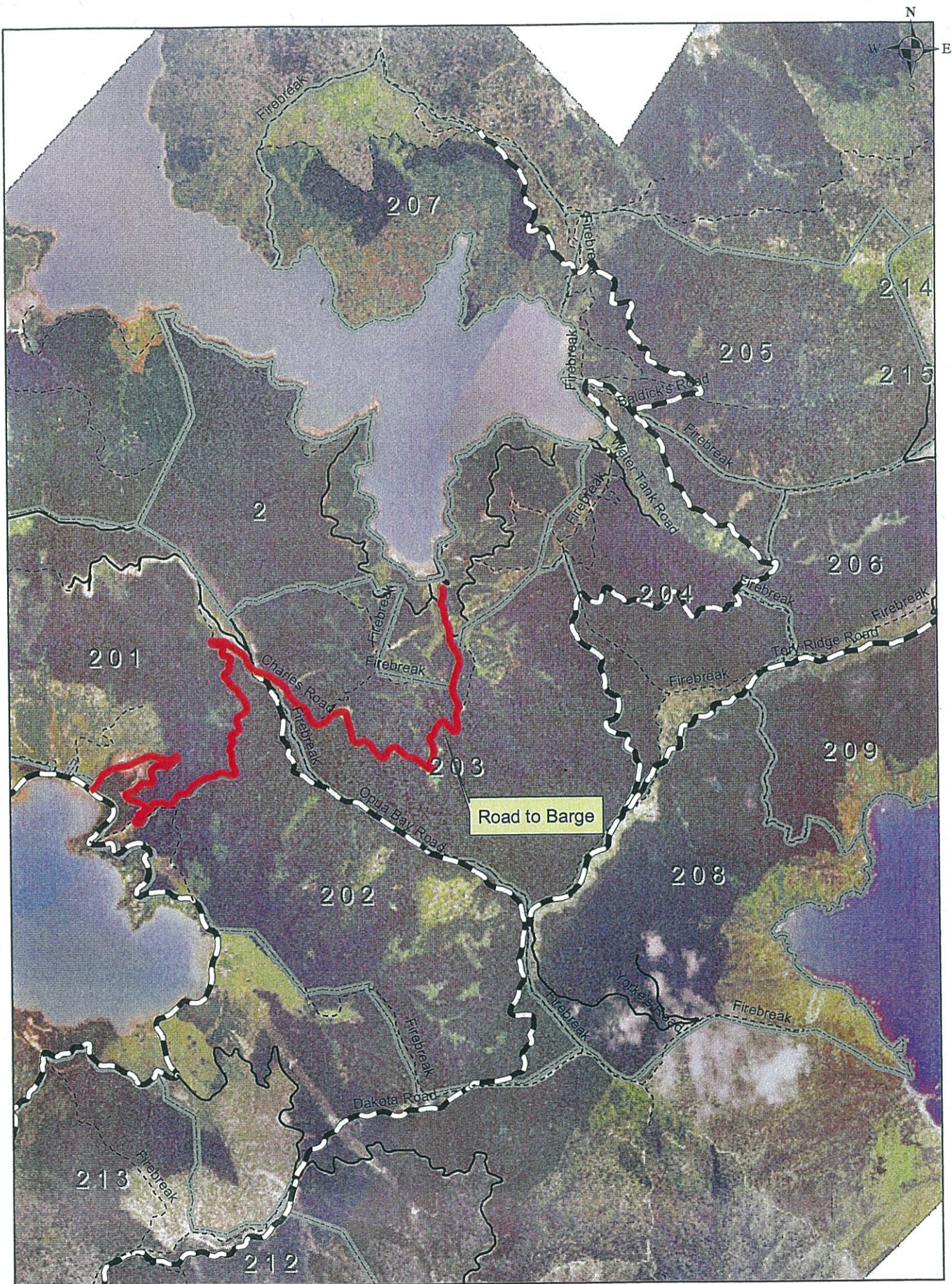


Authorised officer



Schedule A

Handwritten initials and signature



1:25,000 0 250 500 1,000 Meters

Date: Aug 2004
 Drawn: asb
 File: QC_road2barge.mxd

Queen Charlotte Forest
 Road Access to Barge Point

Rayonier
[Handwritten signature]
 PO

THIS AGREEMENT made this 3 day of February 2008

PARTIES

1. MARLBOROUGH DISTRICT COUNCIL
(Council) of the first part
2. SOUNDS OF THE FOREST LIMITED (Sounds
of the Forest) of the second part

BACKGROUND

- A. Council is a regional and territorial authority carrying out various obligations and functions of local government in the region and territory known generally as Marlborough.
- B. Sounds of the Forest undertakes forestry operations on a property at Port Underwood Marlborough Sounds pursuant to a deemed resource consent (*the consent*) granted by Marlborough County Council (a predecessor of Council) on 23rd March 1978.
- C. Condition C of the consent provides as follows:
- "The formed public road between Hakahaka Bay and Picton, and Hakahaka Bay and Rarangi, shall not be used as a transport route for logging trucks associated with the commercial forestry operations of the applicant's forest except as the Council may from time to time approve, within the basis of the applicant's forest management plan after approval by the Council".*
- D. Council has determined to approve the extraction of timber from the Sounds of the Forest property as delineated on the annexed plan by use of the

formed public road referred to in condition C on the basis that Sounds of the Forest enters into this Agreement and complies with the various conditions hereof.

THIS AGREEMENT ACCORDINGLY RECORDS

1. In consideration of the payment herein provided and subject to ongoing compliance by Sounds of the Forest with the various conditions specified herein Council pursuant to the provisions of condition C of the consent hereby approves and agrees to use of the road referred to in condition C of the consent by logging trucks undertaking commercial forestry operations on Sounds of the Forest's land at Port Underwood as delineated on the annexed plan in accordance with the consent.
2. Forthwith upon execution of this Agreement Sounds of the Forest shall make payment to Council of the sum of forty-three thousand eight hundred dollars (\$43,800.00) plus GST. Log extraction in accordance with this Agreement may not commence until such time as payment is made to Council.
3. Prior to commencement of logging operations Sounds of the Forest shall lodge with Council its forest management and harvesting plans in respect of the Port Underwood property.
4. In exercising the approval granted herein Sounds of the Forest shall at all times comply with the following conditions and restrictions.

- Daily log cartage to and from the Port Underwood property shall not exceed ten (10) truck and trailer units per day (fourteen traffic movements).
- All trucks being used to undertake the operations hereby approved shall be equipped with RT radios and the drivers shall be instructed to use the current road location markers *in situ* on the road to communicate their location between the various trucks carrying out the activity.
- No logs will be carted on the road outside the hours of 7am to 5pm and in any event not at any time during the hours of darkness. *not 7am to 6:30pm during daylight saving time*
- Logs will not be carted along Waikawa Road nor on any part of Waikawa Road between the hours of
 - 8.15 to 9am;
 - ~~12 midday to 1:15pm~~ *midday*
 - 3pm to 3.45pm
- Logs will not be carted at any time when more than 10mm of rain has fallen in the previous 24 hour period as assessed by Mr A Wootton's rain gauge at Waikawa Bay (or any other substitute rain gauge nominated by Marlborough District Council).
- No cartage of logs pursuant to this approval shall be undertaken on public holidays, Saturdays or Sundays.

M.D. W.
not 7am to 6:30pm during daylight saving time
M.D. W.

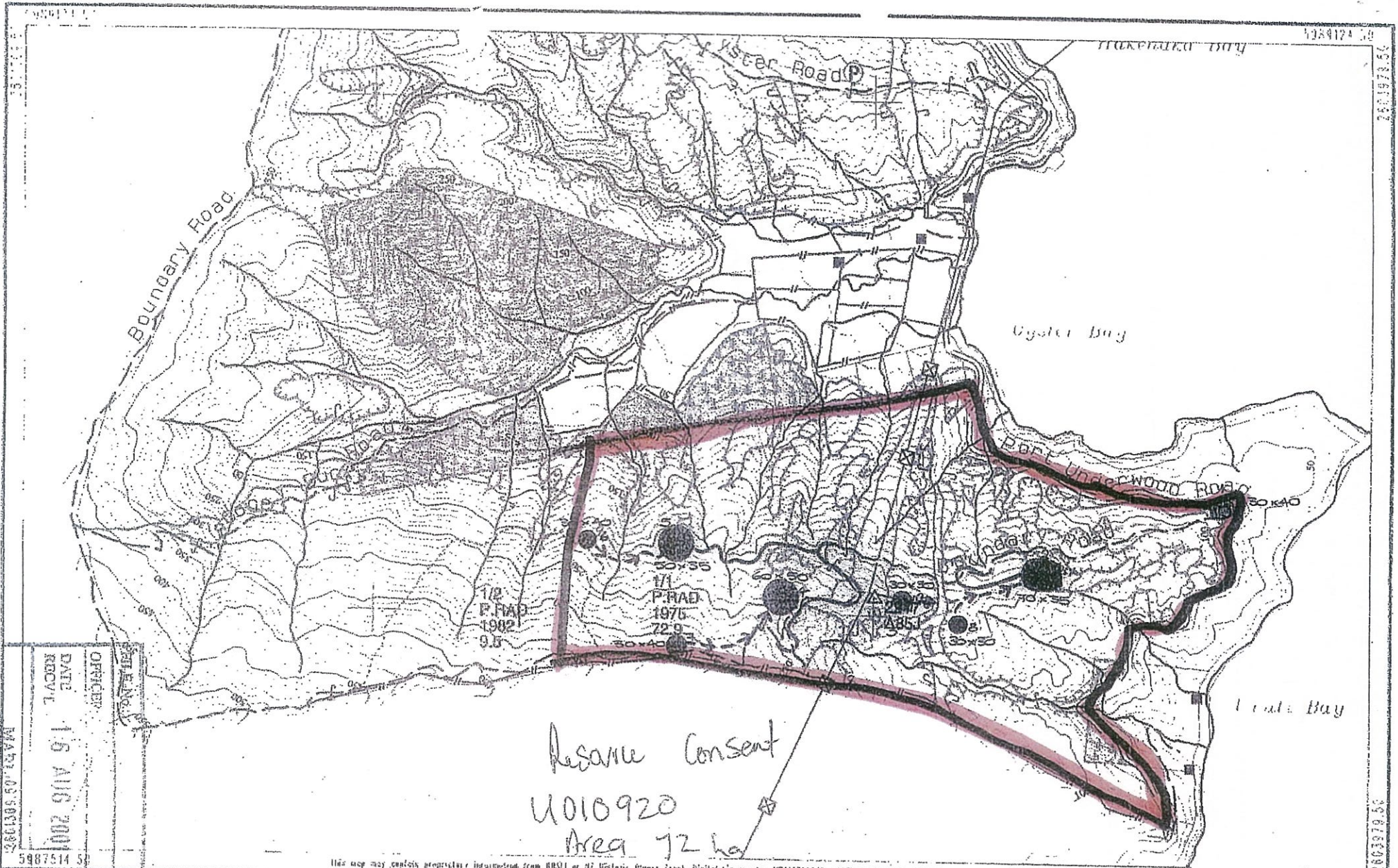
M.D. W.
M.D. W.

- Sounds of the Forest shall ensure that a written copy of these conditions is provided to any employees, workers or contractors carrying out forestry operations and further that a copy of these conditions is kept in the cab of every vehicle used for such operations.

Notwithstanding that logging operations pursuant to this approval may be undertaken by independent contractors or persons not otherwise directly under Sounds of the Forest's supervision or control, Sounds of the Forest acknowledges that as between itself and Council, Sounds of the Forest is solely responsible to ensure compliance with the conditions herein contained.

5. Sounds of the Forest acknowledges that strict adherence to the conditions herein contained is a fundamental and underpinning element of this Agreement and the approval contained herein. Any breach of the conditions shall entitle Council to forthwith terminate the approval given herein. Such termination may be effected by notice in writing to Sounds of the Forest c/- Wrightsons (Sounds Harvesting Manager) at PO Box 44 Blenheim or otherwise by forwarding to Sounds of the Forest registered office. Sounds of the Forest acknowledges and agrees that any withdrawal of approval has the effect of making subsequent use of the road identified in condition C of the consent, a breach of the terms of that consent.

6. The approval herein contained shall subsist and apply for a period of two years from the date of execution hereof (provided that it has not been earlier terminated on account of breach of any of the conditions herein contained).
7. Sounds of the Forest acknowledges that the roads upon which the timber extraction is to take place were not constructed to service logging traffic and are frequently subject to slips and subsidence. The approval to use the roads contained herein shall not be deemed to constitute a warranty on the part of the Council that the roads will continue to be open and available for logging extraction at any time nor to create any obligation on the Council to undertake any capital expenditure in respect of such roads nor any maintenance beyond that which the Council might determine is both economically and physically appropriate having regard to the level of usage for which the road was initially designed and established.
8. Sounds of the Forest shall meet Council's costs on preparation and execution of this Agreement. Payment to be made prior to undertaking of logging operations.



DATE 16 AUG 2001

OFFICER

DISTRICT C.

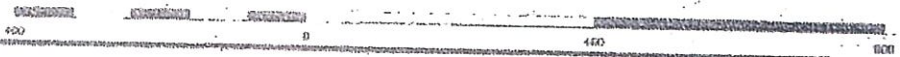
5987514 50

This map may contain proprietary information from ESRI or 3E Historic Photo Inst. Digital License No. 106705706076. ©2000 COPYRIGHT RESERVED

FOREST 021
Scale 1:10000
Contour Interval 10m
M22MG 122776
10-JUL-1991

NOTE: STREAMS DO NOT DELINEATE PERENNIAL EXTENT.

PORT UNDERWOOD CPT 1



5987514 50

4.13 Barge Loading Site

(Report prepared by Jon Cunliffe)

R800-001-W04

Purpose

1. The purpose of this report is to request additional budgetary provision for the establishment of a barge loading site on the northern side of Kenepuru Sound. This facility would be used principally for the transportation of harvested forestry logs by sea to Havelock as an alternative to using Kenepuru Road

Background

2. A proposal to establish a barge loading site on the northern side of Kenepuru Sound was confirmed by Council via the 2016-17 Annual Plan round.
3. A detailed paper in support was presented to Council on the 25th February 2016 and is appended to this report as background and context.
4. The rationale was based on thorough study of forest yields and a further study into the investment in roading improvements required to bring and keep the road up to a standard capable of sustaining the increased loads.
5. The investment required in roading improvements is detailed in a report entitled "*The impact of log transport on roads in the Kenepuru Sound area over the next 52 years (2016-2066)*". This was prepared for Council by David Robertson, BE (Civil), MIPENZ (Retired). David's work was peer reviewed by Engineers from MWH Consultants.
6. These improvements were estimated to cost in excess \$6.0M. ^{if} ↑ → \$9.0M.
7. This report also provided the original estimate of the investment required for a barging site. An investment of \$430,000 was sought and approved, subject to conditions.
8. This estimate was based on a ramp length for the barging site of 80 metres.
9. It is important to note that while estimated costs are a tangible metric they are not the only factors to feature in the decision. Health and Safety concerns rated highly. Concerns for both road users and roadside residents have been voiced loudly by community groups in the general area

Concept for Consultation Study: August – December 2016

10. In August 2016 MWH Consultants were commissioned to prepare a "concept for consultation".
11. Their completed study was received in December 2016. A hard copy is available.
12. Two barge size options at two sites were assessed.
13. The MWH estimate for the preferred option for the barge site is \$720,000. Some other options were more costly.
14. This is \$300,000 in excess of the \$430,000 approved in 2016.
15. A critical element in costing the barging site is the length of causeway required.
16. After a more detailed consideration of bathymetric information than was carried out in February 2016, MWH have concluded that a causeway length of 130 metres is required.
17. This is a significant increase over the 80 metres estimated by David Robertson.

18. Hence the increased cost for the option and the adjustment being sought via the recommendation.
19. While the possibility of funding the difference is being investigated through the Regional Land Transport Plan it is considered prudent to seek an additional \$300,000 in funding through the 2017-18 Annual Plan as a precautionary measure.
20. The conditions pertaining to the 2016 approval would remain.

Timeframes

21. The current project plan estimates completion in September 2018.
22. This may slip on account of any or all of the following three factors,
 - a) The completion of further pre-design investigation work as recommended by MWH.
 - b) Uncertainty around timeframes in consenting processes. Timeframes could be prolonged depending views held for and against within the community.
 - c) The response from foresters that they sign up a MOU requiring they use the barge site for the transport of their logs. (This is one of the conditions Council set in approving the funding in 2016-17).
23. Should any or all of these factors emerge and seriously affect project timing then the bulk of the funding may in fact be required in the 2018-19 year.
24. The proposed capital budget increase would have a rating impact of \$26,000 per annum.

RECOMMENDED

That Council approve an additional \$300,000 for inclusion in the 2017-18 financial year's Roothing Budget to top up the \$430,000 provided in 2016-17 to enable the establishment of a barge loading site on the northern side of Kenepuru Sound, subject to a fully subscribed Memorandum of Use (MOU) requiring all foresters in the designated catchment to use the barge site only and not the Kenepuru Road being a precondition of the investment.

Appendix: Establishing A Barging Loading Site on the Northern Side of Kenepuru Sound

Purpose

1. The purpose of this report is to request budgetary provision for the establishment of a barge loading site on the northern side of Kenepuru Sound. This facility would be used principally for the transportation of harvested forestry logs by sea to Havelock as an alternative to using Kenepuru Road

Background

2. Commercial forestry has been established throughout the Marlborough Sounds with significant areas being planted during the early to mid 1990's.
3. Plantings and replanting have occurred on a regular basis since.
4. A key aspect of the overall production cycle, especially within the Marlborough Sounds, is the transportation of harvested logs to export or processing facilities.
5. While the Port Underwood and Queen Charlotte Sounds forests have been in harvest mode for some years now many of the forests in the Kenepuru and Pelorus Sounds areas are now approaching maturity.

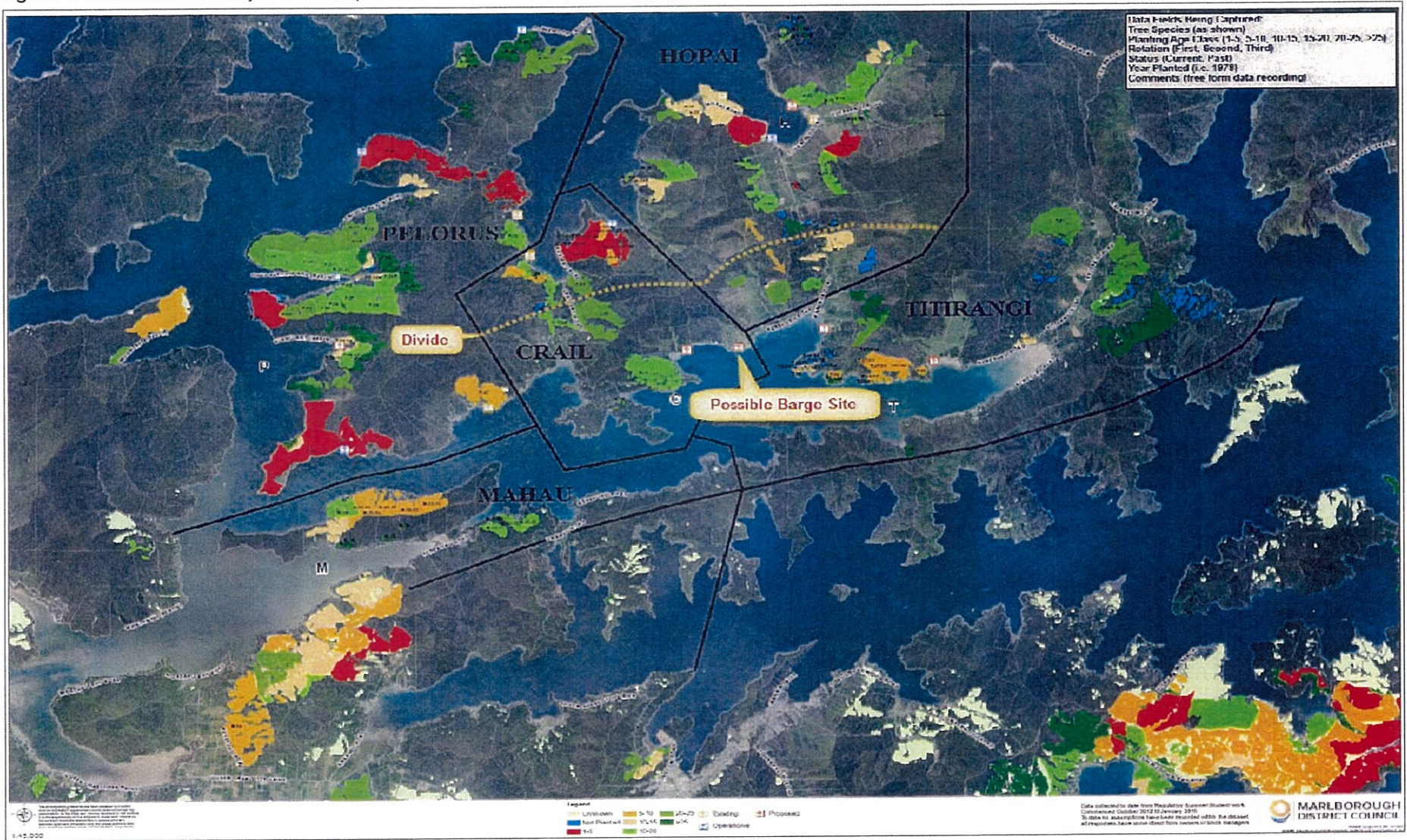
Kenepuru/Pelorus Forests – Yields and Transport Options

6. A study of the location, age and yield profiles of established commercial forests in the Kenepuru/Pelorus Sound area has enabled projections of harvest tonnages over the next two growing cycles (50+ years) to be made.
7. These tonnages require transporting from the forest to export and/or processing facilities.
8. For parts of the Kenepuru/Pelorus there are no transport options. It is either by sea (barge) as in the Pelorus area or by road in the Mahau area.
9. However along the northern and north-eastern margins of Kenepuru Sound there is both a sea and a road option for transporting harvested logs.
10. For forests in this area the road in question would be the Kenepuru Road from the vicinity of Waitaria Bay on the north side around to Broughton bay on the south side.
11. If the existing road were to be used it would have to be upgraded significantly to carry the additional loads. A capital cost. Coupled with this would be a much heavier annual maintenance requirement on account of both the heavier loading and the higher frequency of those loadings.
12. There is currently no viable "sea" option (barging site) in operation this area.
13. It is proposed that a barge loading site be established on the northern side of Kenepuru Sound as an alternative to using the road.
14. The cost of establishing such a facility is estimated at \$430,000. It is for this purpose that budget is being sought.

Kenepuru/Pelorus Forests – Study Area; Planting and Harvest Profiles

15. Figure 1 (below) indicates the extent and location of existing commercial forests in the Kenepuru/Pelorus Sound. It shows the catchment as a number of sub areas; Hopai, Titirangi, Mahau, Pelorus and Crail. These are labelled on Figure 1 and are referenced in succeeding Figures and Tables. Within the Hopai and Crail areas a dotted yellow line (labelled "Divide") approximates a ridge line. Arrows indicate the direction harvested logs may be transported in if a barging site were in place at the site indicated.

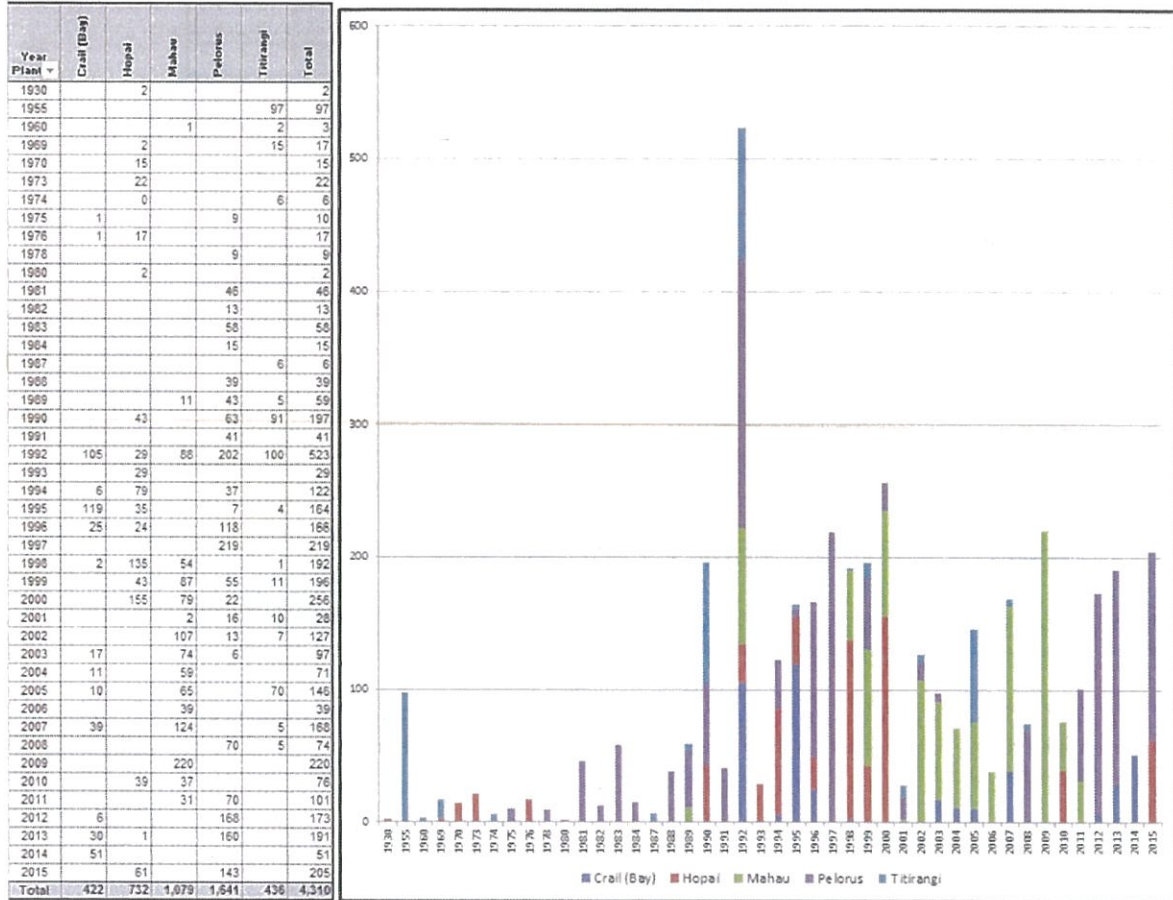
Figure 1: Commercial Forestry in the Kenepuru/Pelorus Sound Study Area



16. Figure 2 (below) shows the planting profile for the study area.
17. Of note is the upsurge in planting from the early 1990's. Steady planting has been sustained over the years since, albeit not at the same levels as in 1992.
18. There is currently some 4,310 hectares planted in commercial forest within the study area.

Figure 2: Planting Profile: Kenepuru/Pelorus Sound Study Area

KENEPURU SOUND FOREST: PLANTED AREA BY SECTOR & YEAR PLANTED (Hectares)



19. Table 1 (below) summarises the projected yields (in tonnes) from commercial forests within the study area over two harvest cycles. The table groups forests by area AND by transport option available.
20. Of note is that the total yield from the area over each harvest cycle is between 2.2 and 2.3 million tonnes. This represents a significant "production" resource.

Table 1: Yields from Forestry – Kenepuru/Pelorus – by Harvest Cycle and Transport mode

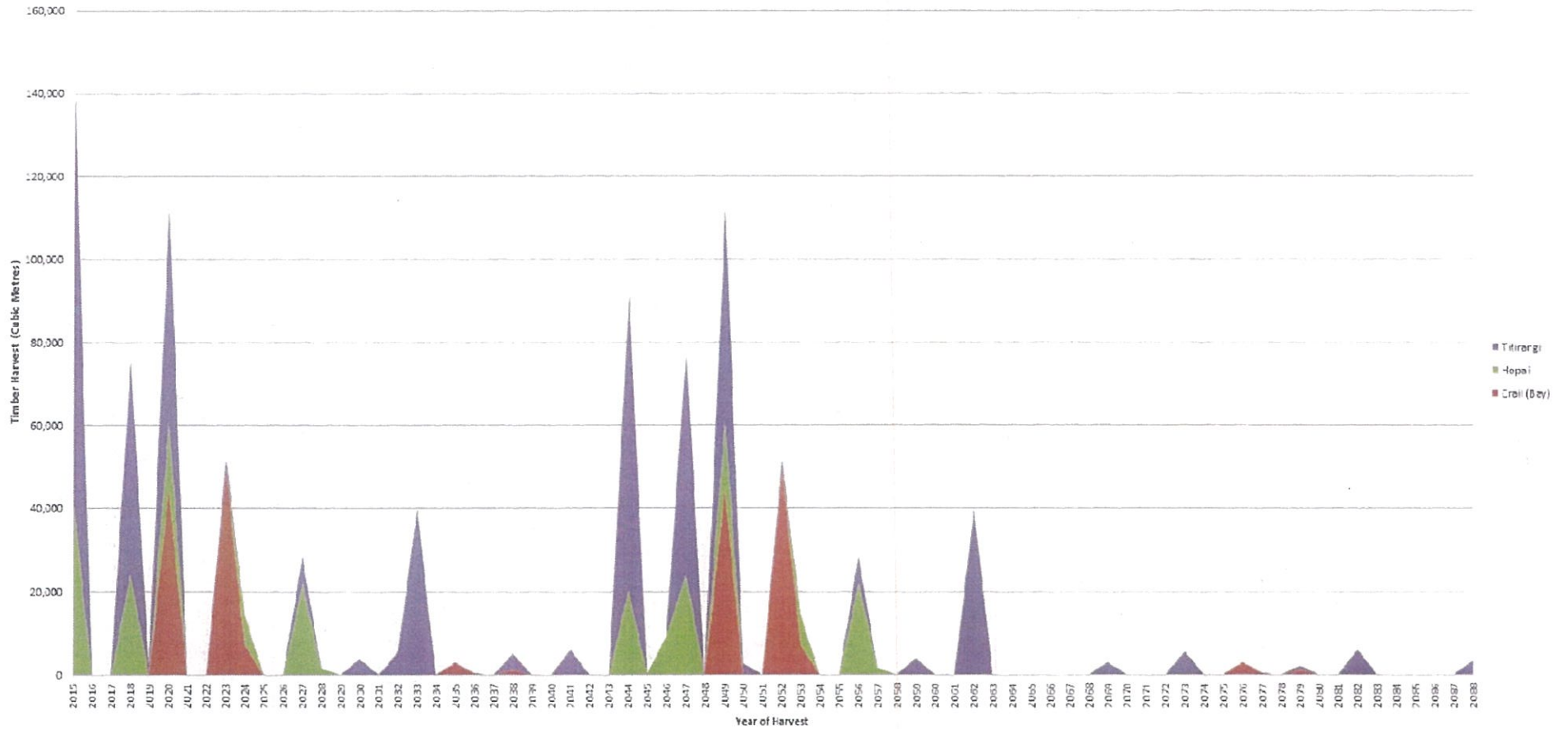
Harvest Area	First harvest cycle:	Second harvest cycle:
	2015-2041	2042-2068
	Harvest (tonnes)	Harvest (tonnes)
Sea transport only (Barge)		
Pelorus	827,458	783,930
Hopai	288,677	273,619
Crail	102,688	111,917
Totals	1,218,823	1,169,466
Road transport only		
Mahau	612,993	613,195
Road or Sea (Barge)		
Titirangi	277,817	233,748
Hopai	113,321	101,080
Crail	106,278	101,600
Totals	497,416	436,428
Total all areas	2,329,232	2,219,089

Note: 1 tonne weight of timber approximates 1 cubic metre volume

21. Of relevance to this item is the tonnage projected from the areas where there is both a road or a sea option for transport (ie if an additional barge site were in place as indicated and was operational.)
22. Over the first harvest cycle such a facility would handle an estimated 497,416 tonnes with a similar amount projected in the second harvest cycle. Assuming an average load of 28 tonnes per load, this equates to approximately 35,000 truck movements per harvest cycle.
23. The harvest profile for those areas where a Road or Sea option exists is shown in Figure 3 (below).
24. This highlights the fact that there are both highs and lows within the harvest cycles and from a roading design point of view it would be misleading to use average annual figures.
25. A feature in Figure 3 is the very high harvest projected for the first year – approaching 140,000 tonnes. It is important to appreciate that although the first year may have come and gone and the trees have not been harvested that is not the end of the matter. The trees are still there and will be harvested at some point. This merely adds to the harvest volumes and the loading on infrastructure in succeeding years.

Figure 3: Harvest Profile for Forests with a Road or Sea option for Transport

The Harvest Profile for areas in the Kenepuru where a "Road or Sea" option may exist for the transporting of logs



The Case for a Barge Site

26. The marginal costs of upgrading Kenepuru Road to enable it to take the increased loadings that would result from transporting harvested logs where road or sea has been identified as a transport option for the Hopai, Crail and Titirangi areas.
27. This would require a capital cost to upgrade the structure and the form of the Kenepuru Road from Waitaria Bay through Broughton Bay. There would also be an ongoing and increased annual maintenance costs to keep to road open.
28. The additional capital and maintenance cost has been estimated in present day terms at \$3.33m or \$6.63/tonne of harvested logs. This option also generates benefits to private motor vehicles through improved alignments as one example.
29. In comparison the cost of establishing and operating barging site has been estimated at \$430,000 or \$0.86/tonne of harvested logs for the first harvest cycle.
30. These comparisons represent a comparative cost of infrastructure only. It is assumed that ALL timber harvested from the "barge site catchment" would be transported through the barge site.
31. Should there be an investment of public money into a barge site then it will be recommended that a precondition of the investment be that forest owners formally commit to exclusive use of it by individually signing a Memorandum of Use.
32. Furthermore that M.O.U. will spell out terms and conditions for management and maintenance of the barging facility. It is anticipated that this would fall to the users to be responsible for.
33. In addition to the cost of infrastructure considerations there are other significant factors to take into account.
34. While the use of a barge site may incur additional handling costs for foresters, there will be savings in road transport costs to offset this.
35. Safety for road users (trucks and other vehicles alike) and residents along the road has been raised as a major concern amongst residents in the Kenepuru and Central Sounds Area.
36. Noise and nuisance are also factors that need to be taken into account.
37. Establishing a barge site will not be without challenge on an environmental front.
38. Neither would getting public support for using the current road network for the increased traffic loadings and the expenditures required to support upgrade works.
39. Overall a new barging site would be an investment in the community wellbeing, delivering both tangible and in-tangible benefits.

Summary

40. Significant tonnages of harvested logs from areas where there are transport options available (sea as well as road) will come on stream throughout the next 50 plus years.
41. There is a strong case emerging to establish a barge loading site within the Kenepuru Sound – northern side - to take the pressure off the Kenepuru Road as well as contributing to a greater sense of community harmony and road user safety than if the road was the sole means of transport.
42. The cost of establishing a new barge site has been put at \$430,000 or \$0.86 per tonne of logs harvested.

43. The cost of upgrading existing roading infrastructure (capital plus maintenance) has been estimated at \$3.33m or \$6.63/tonne.
44. This facility which would operate for the public, community and private good.
45. \$430,000 has been determined as the level of investment sought for this project.
46. A Memorandum of Use (MOU) requiring all foresters in the designated catchment to use the barge site only and not the Kenepuru Road is a precondition of investment.

RECOMMENDED

1. That the information be received and adopted as supporting information.
2. That \$430,000 be included in the Roding Budget for the establishment of a barge loading site on the northern side of Kenepuru Sound to provide a sea based option for the transport of harvested logs from that area to Havelock.
3. That a fully subscribed Memorandum of Use (MOU) requiring all foresters in the designated catchment to use the barge site only and not the Kenepuru Road be a precondition of the investment.

C.15/16.284 Establishing A Barging Loading Site on the Northern Side of Kenepuru Sound R800-001-W04

It was reported that the purpose of the report was to request budgetary provision for the establishment of a barge loading site on the northern side of Kenepuru Sound. This facility would be used principally for the transportation of harvested forestry logs by sea to Havelock as an alternative to using Kenepuru Road.

Mr Cunliffe advised that significant tonnages of harvested logs from areas where there are transport options available (sea as well as road) will come on stream throughout the next 50 plus years. There was a strong case emerging to establish a barge loading site within the Kenepuru Sound, on the northern side, to take the pressure off the Kenepuru Road as well as contributing to a greater sense of community harmony and road user safety than if the road was the sole means of transport. The cost of establishing a new barge site has been put at \$430,000 or \$0.86 per tonne of logs harvested. The cost of upgrading existing roading infrastructure (capital plus maintenance) has been estimated at \$3.33m or \$6.63/tonne. This facility would operate for the public, community and private good. A Memorandum of Use (MOU) requiring all foresters in the designated catchment to use the barge site only and not the Kenepuru Road is a precondition of investment.

Clr Jerram proposed an amendment to the motion including a nominal charge of \$1 per log on users to mitigate the effects on the Sounds of log harvesting. This amendment lapsed for want of a seconder.

Clrs Barsanti/Brooks:

1. That the report be received and adopted as supporting information.
2. That one-off funding of \$430,000 be included in the 2016-17 financial year Roading Budget for the establishment of a barge loading site on the northern side of Kenepuru Sound to provide a sea based option for the transport of harvested logs from that area to Havelock.
3. That a fully subscribed Memorandum of Use (MOU) requiring all foresters in the designated catchment to use the barge site only and not the Kenepuru Road be a precondition of the investment.

Carried

Description	Site (Option) A		Site(Option) B		2016 Estimate
	200 tonne to -2 m Contour	800 tonne to -3 m Contour	200 tonne to -2 m Contour	800 tonne to -3 m Contour	200 tonne ?
Barge capacity					
Length of Causeway (metres)	160	240	100	130	80
Causeway Construction					
Site Preparation, Concrete mooring wall, steel rods	\$450,000	\$690,000	\$270,000	\$360,000	
Sub Total - Causeway	\$470,000	\$710,000	\$290,000	\$380,000	\$336,000
Log storage area including stormwater control and security fencing	\$140,000	\$140,000	\$140,000	\$140,000	\$85,500
Roadway Preparation and Sealing	\$45,000	\$45,000	\$45,000	\$45,000	
Resource Consent Application (to Lodgement)	\$25,000	\$25,000	\$25,000	\$25,000	
Survey Soundings and Design	\$30,000	\$30,000	\$30,000	\$30,000	
Contingency	\$100,000	\$100,000	\$100,000	\$100,000	
Sub Total - Log storage, consents etc	\$340,000	\$340,000	\$340,000	\$340,000	\$85,500
Annual Maintenance; 26 years @ \$3,600 pa through NOC Contract					
Round Up					\$8,500
Totals	\$810,000	\$1,050,000	\$630,000	\$720,000	\$430,000

Note: 2016 Causeway estimate Includes allowance for resource consent, design work and contingency

9. Vehicle Length Restriction - Queen Charlotte Drive (ROA/5/3)

(Clr Murphy) (Report prepared by F Porter)

1. The Marlborough District Council have previously considered a vehicle length restriction for this route after receiving a submission from the New Zealand Police. The Committee recommended introduction of a bylaw with a suggested length restriction of 11.0 metres.
2. Council received support from the Marlborough Forest Owners' Association for the 11.0 metre restriction, however, we are now aware that many of the coaches using this route are 12.6 metres long and as these coaches have been established on the route for some years there are difficulties with the tourism infrastructure if an 11.0 metre restriction was to apply.
3. Council has received correspondence concerning an incident with a coach and approximately twelve months ago the District Engineer received a complaint about a coach which forced a car off the road. The best solution is possibly to continue to allow coaches up to 12.6 metres to use the route but should there be future serious incidents involving these vehicles, then we should reconsider the 11.0 metre length. This will place some onus back on coach companies to operate in such a manner that safety is enhanced e.g. slower travel through the area.
4. We also note the TNZ bylaw for the Arthurs Pass route which allows a vehicle length of 13.0 metres on the Pass. This is presumably to cater for coaches and allow short purpose-built articulated trucks to operate. It therefore seems appropriate the same criteria should apply to Queen Charlotte Drive.
5. Rather than introduce a bylaw, Council's Solicitor has considered the most expedient means to impose the restriction is to use Sec 70AA of the Road Transport Act. This section states "... the territorial authority ... may from time to time, by public notice, direct that any heavy traffic, or any specified kind of heavy traffic ... shall not proceed between any two places by way of any road or roads specified in the notice."
6. The restricted area shall be from Grove Wharf to Shakespeare Bay. An alternative route is available from Linkwater to State Highway 6 for Kenepuru Road traffic.
7. The notice needs to be displayed on the route and should convey a length restriction of 12.6 metres.

RECOMMENDED

1. **That a 12.6 metre length restriction be imposed on Queen Charlotte Drive between Grove Wharf and Shakespeare Bay under Section 70AA of the Road Transport Act with the required notice to be issued.**
2. **That the restriction remain in force until further resolution by Council.**
3. **That the length restriction be revised by Council if there are further safety problems with 12.6 metre vehicles.**

The District Engineer reported that the Marlborough District Council had previously considered a vehicle length restriction for the Queen Charlotte Drive route after receiving a submission from the New Zealand Police. The Committee recommended introduction of a bylaw with a suggested length restriction of 11.0 metres.

Council received support from the Marlborough Forest Owners' Association for the 11.0 metre restriction, however, Council was now aware that many of the coaches using that route were 12.6 metres long and as those coaches had been established on the route for some years there were difficulties with the tourism infrastructure if an 11.0 metre restriction was to apply.

It was felt the best solution was to continue to allow coaches up to 12.6 metres to use the route but should there be any serious incidents involving those vehicles, then Council would reconsider the 11.0 metre length. That would then place some onus back on coach companies to operate in such a manner that safety was enhanced e.g. slower travel through the area.

The restricted area would be from Dalziels Bridge to Shakespeare Bay. An alternative route was available from Linkwater to State Highway 6 for Kenepuru Road traffic.

Cls Barsanti/Dew:

1. That a 12.6 metre length restriction be imposed on Queen Charlotte Drive between Dalziels Bridge and Shakespeare Bay under Section 70AA of the Road Transport Act with the required notice to be issued.
2. That the restriction remain in force until further resolution by Council.
3. That the length restriction be revised by Council if there are further safety problems with 12.6 metre vehicles.

Carried

P.05/06.457 *TrafficMgmt* **Speed Zoning – Queen Charlotte Drive,
Kenepuru Road and French Pass Road**
T135-06

The Committee was advised by Marlborough Roads of the approval by Land Transport NZ to implement speed zoning on Queen Charlotte Drive and Kenepuru Roads.

Back in 2004 Marlborough District Council had nominated Port Underwood Road, Queen Charlotte Drive, Kenepuru Road, French Pass Road and the Wairau Plains as possible speed zoning sites.

At the last meeting of the Committee it was advised how Land Transport NZ approved speed zoning on Port Underwood Road.

It was reported that Land Transport NZ had now approved Queen Charlotte Drive and Kenepuru Road for speed zoning, with the application for speed zoning on French Pass Road being declined. Clr Barsanti believed that French Pass Road should be looked at further.

In an assessment from Land Transport NZ it can be seen that they have determined appropriate speed limits for different areas of both Queen Charlotte Drive and Kenepuru Road, and it was now up to Council whether implementing the speed zones should be proceeded with.

To implement the speed zones signage must be erected as per the Setting of Speed Limits Rule 2003. The estimate for this is \$15,000 for Queen Charlotte Drive and \$20,000 for Kenepuru Road. Councillors expressed their concern at the costs involved with regard to the requirement under the Setting of Speed Limits Rule 2003 that in implementing the speed zones signage, repeater signs have to be erected with the maximum length of road between signs being, for example, 1.7 km apart in a 50 km/h speed zone. With this in mind Committee members recommended that the speed zoning proceed on Queen Charlotte Drive and that Marlborough Roads confer with Land Transport NZ on the signage issue for Kenepuru and French Pass roads.

Clrs Maher/Taylor:

- 1. That the speed zoning proceed on Queen Charlotte Drive in the new financial year with implementation being funded from the 2006/07 Minor Safety programme.**
- 2. That Marlborough Roads confer with Land Transport NZ on the signage issue for Kenepuru and French Pass roads.**

Carried

NB: Clr Pat O'Sullivan voted against the motion.

P.05/06.458 *Roads* **Trenching in Sealed Roads** *R855-01*

As the Committee was aware Council has a contract with Land Transport NZ to provide a certain level of roughness on its roads.

Steve Murrin of Marlborough Roads explained that because of trenching, generally for the installation of services and problems with trenches slumping, Marlborough Roads is struggling to achieve these requirements particularly in the urban areas.

The Committee was informed that technology is now available within the district for the trenchless installation of services. This is particularly so for Telecom and power cables and also water connections.

3. Northbank Road Forestry Contributions (R855-03)

(Clr O'Sullivan) (Report prepared by F Porter, Marlborough Roads)

Purpose

1. To advise the Committee of contributions made towards maintenance and improvements undertaken on the Northbank Road network.

Background

2. Since the early 1990's, the District Council has faced costs to upgrade and maintain roads servicing the forest industry.
3. This culminated in a detailed study of Northbank Road which identified a significant shortfall in rating revenue to meet future costs.
4. The forest industry ultimately sought independent advice to assist in developing a model of the Northbank Road pavements and the effects of forecast traffic volumes including an assessment of costs.
5. In conjunction with forest industry roading specialists Council engaged consulting engineers, Beca Carter Hollings and Ferner who produced a detailed model identifying the most efficient (optimised) mix of maintenance and construction on Northbank Road over a 20 year period. The report "Effects of Forestry Traffic Loadings on the Northbank Roding Network" has been used as the basis for Council's Asset Management Plan.
6. With publication of the report, the forest industry was able to accept the report outcomes and subsequently agreed to assist Council with a funding contribution.

Industry Contribution Calculations

7. The original agreements were initially based on a volume of timber carted each year (40,000 cubic metres) for which an annual sum of \$40,000 would be paid by the industry to go towards road costs.
8. If the volume increased or decreased by more than 20%, a re-calculation would occur.
9. Over the years, the volumes have increased significantly. In 2003/2004, the volume was 183,000 tonnes and in the 2004/2005 financial year the volume is 238,000 tonnes. The calculations of road contributions have been more precisely determined.
10. The industry only contributes to pavement costs (as opposed to vegetation control, traffic services etc).
11. The following table identifies the proportional effect that heavy vehicles have on Council's costs.

Activity	Forestry Contribution Rate
Off pavement maintenance	0%
On pavement maintenance	50%
Area wide treatments	75%
Pavement rehabilitation	75%
Minor widening	75%
Bridge damage	75%
Reseals	20%

12. The industry share is calculated net of financial assistance from Land Transport NZ.

Financial Contributions

13. In 2003/2004, the two major companies, Weyerhaeuser and R.I.I. contributed \$88,000.
14. For last year, 2004/05, the industry contribution is being finalised and is anticipated to be slightly in excess of the contribution for 2003/2004 due to increased volumes carted.

Future Costs

15. The original model prepared by Beca Carter Hollings and Ferner identifies the need for considerable lengths of rehabilitation in 2004/2005 and again between 2008/2011, a total length of 18 km. This period coincides with a period of sustained harvest of approximately 250,000 tonnes per year.
16. This will mean a significant future increase in the industry contribution according to the agreed formula.

RECOMMENDED

That the information be received.



Manager of the Nelson Forest
A Joint Venture with
UBS/Resource Investments Int'l
58A Gladstone Road, Private Bag 5, Richmond, Nelson, New Zealand
Telephone 64-3-544 6035, Facsimile 64-3-544 5789

11.05 am
RECEIVED

Attention	Andrew Besley cc Frank Porter	From	Leo Jelinek
Facsimile No.	03 578 6866	Date	14 July 1998
Company	Marlborough District Council	File Reference	nbankrd
City	BLenheim, NZ	No. of Pages	2

If you do not receive all the copies or any of them are poor quality, please advise by telephone or telex as soon as possible. The information contained in this facsimile message is CONFIDENTIAL INFORMATION and is intended only for the person/persons to whom it is addressed. If you are not the intended recipient, you are hereby notified that any use, review, distribution or copying of this document is strictly prohibited. If you have received this document in error, please immediately notify us by telephone (call collect to the person and number above) and destroy the original message. Thank you.

Dear Andrew/Frank,

Northbank Road – Voluntary Contribution in Lieu of Differential Rates

What Contribution is for

I can now confirm as discussed with Frank last week approval of the agreed contribution to Northbank Road maintenance costs. The delay of confirmation has been due to Rayonier NZ not being able to respond immediately due to a restructure being undertaken for survival measures in these difficult times.

This contribution is above that which we are already contributing through normal rates, road user charges and input into the local community through the employment we are creating in Marlborough. Rates we are contributing are generated from a much larger land base than that on the Northbank as we have a large proportion of our estate on land with direct national highway access. On this direct highway access land we get practically no service provided from the local authority, as we have no people living thereon.

Agreement is with MFOA

The initial agreement (last year) was made with the Marlborough Forest Owners Association. Under this agreement with MDC the MFOA agreed to use of a cost sharing formula which moved the (to be imposed) differential rate burden more towards a harvest level contribution.

This year's agreement is on the same basis.

The agreement made with Council Staff on 18th June was for \$40,000. The split under the MFOA agreement was approximately \$32,000 from Weyerhaeuser, \$4,000 from the RII forests managed by RNZ, and the balance from all the other smaller Northbank owners.

Continued on next page

Northbank Road – Voluntary Contribution in Lieu of Differential Rates,
Continued

Amounts and Approvals

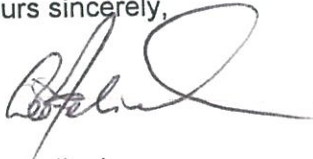
The amounts as allocated were still subject to owner's approval.

Weyerhaeuser can confirm that it will pay \$32,000 plus GST in June 1999 on receipt of an invoice to this office in May 1999.

RNZ have now also confirmed the payment of \$4,000 plus GST at same date on receipt of an invoice to The Forest Manager, Rayonier New Zealand, PO Box 3241, Richmond, Nelson.

The other members of the MFOA with individually smaller areas in the Northbank area have declined to contribute. The MFOA are not prepared to act as a collection agency this year for these owners. If Council wishes to obtain contributions from them individually then it should do so directly.

Yours sincerely,



Leo Jelinek
External Resources Manager

Copies to:

Chris Ford, RNZ
Ron Sutherland, MFOA

FAXED 11.06 am

FAXED 11.07 am

Schedule of Reviews & Legal Advice

Date	Description	Author
4 December 1979	<p><u>Forestry Access Roding Finance</u></p> <p>Letter to Forestry Council detailing statistics and anticipated forestry roading requirements.</p>	County Engineer, Marlborough County Council
25 November 1980	<p><u>Forestry Roding</u></p> <p>This is a report to Council on legal advice received and possible options for managing the effects.</p> <p>Quotes from advice of Mr Radich of August & September 1980. Advises Council has the powers to prohibit the use by logging trucks of specified county roads where the use is likely to cause abnormal damage to the roads. The options (planning and non-planning) identified included—</p> <ul style="list-style-type: none"> • Regulation 10 of the Heavy Motor Vehicle Regulations 1974 • a bylaw under section 72 of the Transport Act 1962. • Notes that Council had received conflicting advice on whether it had the power to impose a prohibition. • The County Clerk considered that prohibitions would increase Councils workload and was a negative approach giving the impression Council does not consider forestry to be a suitable land use. 	County Engineer, Marlborough County Council
24 November 1994	<p><u>Bylaws-Vehicle Length- Queen Charlotte Drive</u></p> <p>Assessment of s70AA Transport Act 1962 as an alternative, speedier, and equally efficient way of restricting heavy vehicle traffic on the Queen Charlotte Drive.</p> <p>The advice was that s70AA was limited insofar as it only applied to heavy traffic whereas a bylaw could apply to a specified class of traffic or any specified motor</p>	Tanya Turfrey, Radich Dwyer Hardy-Jones Clark

	vehicle.	
1995	<p><u>Exotic Harvesting Impacts</u></p> <p>Economic analysis with focus on the Northbank area.</p> <p>The brief from Council was <i>to undertake an economic analysis to establish a fair allocation to the forestry industry of the costs of providing council services including local roads, and to review the Council's proposed cost sharing approach, and to develop and appraise alternative funding methods.</i></p> <p>The report concluded—</p> <ul style="list-style-type: none"> • forestry will have a significant impact on the capital and maintenance requirements; • upgrading works will be required; • the projected contribution over the next 25 years will not cover the projected additional costs; • the shortfall would be about \$4 million • the shortfall should be funded primarily by direct contribution from the forest owners; <p>The recommended mechanism for the contribution is a differential rate on Northbank forests, with the potential for higher differential rates for those forests further from SH6.</p>	Travers Morgan (NZ) Ltd
6 December 1995	<p><u>Advice on MDC-Forestry Rating</u></p> <p>Assessment of power to prevent or recover the costs of damage to roading in Waikawa occasioned by forestry logging. Canvasses powers in Transport Act 1962, Heavy Motor Vehicle Regulations 1974, Resource Management Act 1991, and</p>	Elizabeth Herd, Barrister

	<p>Local Government Act 1974.</p> <p>The advice records Councils position that it wanted to not ban all classes of heavy traffic but to have control over specific logging heavy vehicles.</p> <p>The power under s70AA empowers Council to direct that heavy traffic or any specified kind of heavy traffic cannot travel on specified roads.</p> <p>The advice analyses what is meant by “specified kind” and concluded that this could not refer to logging trucks specifically (by reference to the contents (logs) of the truck).</p> <p>Another difficulty identified was that the section refers to redirecting traffic from time to time. The author concluded this meant that the power could not be used for a permanent solution and other methods would need to be considered (such as making a bylaw under s72).</p> <p>Difficulties were also identified with the bylaw powers (other than to recover the costs of damage) and use of the Heavy Motor Vehicle Regulations 1974. The latter gave Council the power to classify roads. Heavy vehicles were prohibited from using Class 3 roads except for delivery or collection of goods or passengers to or from locations directly accessible from such roads. It was considered that this power would not achieve the desired result because of the exception.</p>	
14 July 1997	<p><u>Report on Effects of Forestry Traffic Loadings on the Northbank Road Network</u></p> <p>Determines an appropriate set of standards and economic analyses to be applied to the issue of upgrading roads in the Northbank area. (technical report, 28 pages)</p>	<p>Beca Carter Hollings & Ferner, Consulting Engineers</p> <p>Record no. 1667108</p>
23 September 1999	<p><u>Proposal to LGNZ</u></p> <p>LGNZ was approached to act for local government in lobbying government to undertake nation-wide solution to forestry roading issues.</p> <p>[N.B. Have not found a copy of the letter only reference to it in an internal memo]</p>	Internal

10 April 2000	<p><u>Forestry Roding- Port Underwood</u></p> <p>Comment on proposal to build new road through DOC reserve to Koromiko.</p>	Peter Radich, Radich Dwyer Hardy-Jones Clark
8 September 2000	<p><u>Forestry impact on roads-traffic restrictions</u></p> <p>Assessment of power to impose restrictions on certain classes of heavy motor vehicles on a seasonal basis (May to October).</p> <p>Notes, Council—</p> <ul style="list-style-type: none"> • would prefer not to introduce a bylaw nor use the RMA planning processes • has used RMA enforcement provisions to abate damage • had applied differential rate (which is then waived in return for a financial contribution to the roading network) <p>Assumes Council had exhausted all options of recovering the costs of damage from Transfund.</p> <p>Canvasses s70AA Transport Act (but notes its imminent repeal), Heavy Motor Vehicle Regulations, for prohibition and classification, and Land Transport Act 1998, for use of ordinary rules (s157).</p> <p>The Regulations gave Council the power to prohibit heavy traffic for a specified period if it considered it necessary to protect the road from excessive damage. The main disadvantage of this power was considered not to give Council the discretion to waive the prohibition on a case by case basis.</p> <p>The use of s70AA was stated in broad terms and not restricted in purpose to road damage.</p> <p>The advice was that the Regulations were more appropriate to impose seasonal controls to prevent damage. The Regulations were a short-term or seasonal power and the Regulations power to classify roads had reduced effectiveness due to the</p>	Denis Sheard, Buddle Findlay

	<p>exception. It was noted that there was an ability to waive the prohibition on Class 3 roads on a case by case basis and this could allow Council to recover the costs of any damage.</p> <p>Difficulties with this costs recovery were identified.</p> <p>Finally, the advice assessed the ability for Minister to make a rule to control the use of the roads, either on a district or national basis. The author suggested that this option warranted further investigation.</p>	
15 September 2000	<p><u>Forestry Roding</u></p> <p>Relates to use of Port Underwood Roads in wet weather.</p> <p>Notes numerous opinions on file from January 1979.</p> <p>Contains hand-written notes commenting on the advice by Mark Wheeler.</p> <p>The advice concludes that effective means of control exist to manage excessive damage in wet conditions but it was difficult to target forestry vehicles alone (to target the nature of the load rather than the size and configuration of the vehicle).</p>	Peter Radich, Radich Dwyer Hardy-Jones Clark
21 December 2000	<p><u>Forestry Barging-Alternative Funding</u></p> <p>Assesses research and information required by Transfund to enable funds to be made available.</p>	Internal memo
12 February 2001	<p><u>Forestry Impacts on Roads</u></p> <p>Assessment of ability to target forestry heavy traffic and allow other heavy traffic (e.g. mussel trucks) to continue to use roads.</p> <p>This advice was focussed on whether there was an ability to distinguish between forestry and other heavy vehicles. The approach was considered justified on the basis that—</p>	Peter Radich, Radich Dwyer Hardy-Jones Clark

	<ul style="list-style-type: none"> • when full scale forest harvesting is taking place, the impacts are far greater in volume than the impact of other traffic • the foresters may have other practical means of transporting their produce whereas others might not • other users are regular but infrequent whereas forestry during harvest would be high volume and high frequency <p>Section 70AA was described as crude and unsophisticated.</p>	
21 June 2001	<p><u>Forestry Roothing</u></p> <p>Records Councils preferences as at 21 June 2001—</p> <ul style="list-style-type: none"> • Council is not looking at a short term solution; • Council wishes to see the bulk of the logs extracted across the water; • some residual logging traffic may have to go by road; • a bylaw was favoured; • Council needed to take an active role to find barging solutions. 	Peter Radich, Radich Dwyer Hardy-Jones Clark
23 July 2001	<p><u>Traffic Bylaw</u></p> <p>Contains proposed draft provisions to be included in Councils new Traffic Bylaws empowering Council to impose special road use restrictions (designed for logging trucks).</p> <p>This advice posed questions to make sure the draft provisions were on point.</p>	Peter Radich, Radich Dwyer Hardy-Jones Clark
September 2002	<p><u>Environmental Impact Assessment for Alternative Heavy Traffic Route from Port Underwood to Koromiko</u></p>	

	[N.B only have draft project brief. Not final]	
27 August 2002	<p><u>Forestry Impacts on Roads</u></p> <p>Assesses Council’s capacity to deal with forestry impacts on roads. Covers—</p> <ul style="list-style-type: none"> • bylaws • RMA • old planning conditions • s70AA Transport Act 1962 • Heavy Motor Vehicle Regulations 1974 <p>The advice comments that the bylaw powers would not allow a differentiation between different classes of traffic on the basis of load. Section 70AA could be used as a permanent solution. The Regulations were not appropriate for the resolution of what was described as <i>a major economic issue</i>.</p> <p>The advice also covered RMA solutions and concluded—</p> <p><i>we come back to the point that this is a resource management issue which should be dealt with in District Plan terms under the RMA.</i></p> <p>A bylaw was described as their second preference.</p> <p>Whilst the RMA policy was being developed, the advice was that adverse impacts could be dealt with using enforcement powers under the RMA, bylaws, old planning conditions, and, in specific conditions, under the Regulations.</p> <p>[N.B. only have advice in draft]</p>	Peter Radich
21 November 2002	<u>Road Infrastructure Financial Contributions</u>	Internal

	<p>Report to Council Committee informing Councillors of the various options to fund capital road improvements required across the District as a demand for increased levels of service.</p> <p>Records forestry industry contributions as one source of funding, including—</p> <ul style="list-style-type: none"> • the Northbank contributions • Alternative to roading funding for a barge site in Clova Bay • current (then) applications to Transfund for a barge site at Port Underwood and one in the Kenepuru. <p>Mention is made of the possibility of applying special rates to fund the Local Share payable with Transfund funding.</p>	
April 2003	<p><u>Issues & Options</u></p> <p>Described in covering paper.</p>	Internal
May 2003	<p><u>Port Underwood Forestry-Access to potential barge sites</u></p> <p>Assesses possible access routes to Tory Channel from the Port for forestry trucks</p>	Internal
25 August 2003	<p><u>Forestry Roding Issues</u></p> <p>Comments that the same issues that have been discussed for 30 years remain problematic. Comments on the various regulatory options available. Concludes bylaw option likely to be most effective. Assesses how logs destined for export (not to use roads) and logs destined for the domestic market (can use roads) could be distinguished in a bylaw. Sets out a preferred course.</p> <p>The Regulations are described as a blunt instrument which can only be applied to all vehicles or a specified class of vehicles. Thus Council could not differentiate between forestry and other heavy vehicles; <i>if you set out to catch logging trucks you</i></p>	Peter Radich, Radich Dwyer Hardy-Jones Clark

	<p><i>would also end up with a bycatch of livestock and mussel trucks.</i></p> <p>The problems with s70AA are described as being similar to those of the regulations plus the problem of s70AA not being available if there was no alternative access.</p> <p>The bylaw making power was considered too narrow to be effective. However, this option was considered to be the most effective option.</p>	
September 2003	<p><u>A Review of Issues relation to the Use of District Roads for the Transportation of Forest Harvest</u></p> <p>This review was commissioned by the NZ Forest Owners Association.</p>	Frame Group Ltd
8 September 2003	<p><u>Forestry Roding Issues</u></p> <p>Advice on the enforceability of the proposed Port Underwood Accord.</p> <p>There would be real difficulties in trying to enforce the accord where the entitlement surrendered is a lawful entitlement to use Councils roading system (in the absence of special circumstances).</p>	Peter Radich, Radich Dwyer
21 July 2004	<p><u>Proposed Heavy Transport Bylaw-Consultation Paper</u></p> <p>This is a memorandum on the consultation paper referred to below. It appears the paper was in development over a number of years.</p>	Peter Radich, Radich Dwyer
6 August 2004	<p><u>Port Underwood Road-Safety Review</u></p> <p>Council requested the Authority to undertake the review on the roading in the Port with emphasis on forestry logging. The review assesses a 2003 Beca Carter Hollings & Ferner Ltd review which was itself an update of a 1996 review.</p> <p>The 2003 Beca report had proposed a number of safety improvements for the road. Since the 2003 review, the Opuia Bay barging site had been developed and design work on a major road upgrade had commenced.</p>	Land Transport Safety Authority

	<p>The current review approve barging export logs out was a sensible, safe and appropriate way to address the transportation needs of the industry. As some logging trucks would still use the road (going to the domestic market), some further road improvements were necessary.</p> <p>The review also recommended the development of private forestry roads, route enhancements, and limiting the hours the vehicles could be on the roads.</p>	
2006	<p><u>Draft Consultation Paper—Heavy Transport Vehicles</u></p> <p>This consultation paper was prepared following the consultation on the Issues & Options paper in 2003. The consultation paper identifies progress to date (construction of the Opuia Bay barge site and a negotiated road cartage agreement (old planning consent approval)).</p> <p>The paper sets out a traffic forecast to 2012 and plans for roading upgrades. It sets out the community concerns and comments on each action requested by the community—</p> <ul style="list-style-type: none"> • restrict log cartage so there is no trucks on the roads after dark; • restrict log cartage between 8am and 9am and 3pm to 4pm to avoid school drop off and pick up times (schools along Waikawa Road); • Requiring the trucks to have a pilot vehicle; • Mussels trucks to be length restricted (no trailers); • Prohibit engine breaking from Whatamongo to Picton; • Limit speed to 50km/h on the whole of Port Underwood Road; • negotiate reduced wharfage fee for domestic logs to be barged; • Make crossing the centreline illegal; 	Internal

	<ul style="list-style-type: none"> • Vary the MSRMP to make forestry a non-complying activity; • Build an alternative forestry road from the Port through DOC reserve to Koromiko. <p>The paper assesses the various legal options most of which had been covered by the advice described above.</p> <p>The paper records that Council did not have a fixed position on the issues and that, although Council had not yet decided to introduce a bylaw, it had commissioned a bylaw outline (included in the paper), to seek public comment.</p> <p>The consultation paper does not appear to have been released.</p>	
14 August 2015	<p><u>Marlborough Forestry Inventory</u></p> <p>Map showing commercial forests in the Kenepuru</p>	<p>Internal assessment</p> <p>Record15168341</p>
23 October 2015	<p><u>Kenepuru Forests—Species Areas and Yields</u></p> <p>Graphs and tables showing commercial forestry species, age and location from 1930 to 2015 & expected transport and truck movements</p>	<p>Internal assessment</p> <p>Record 151213352 & 15213354 & 15213322</p>
16 May 2016	<p><u>Forestry Harvesting</u></p> <p>Includes advice on where no planning approval was required to establish a commercial forest and there were no restrictions under RMA instruments to control use of roads.</p> <p>Essentially, this opinion endorses the previous advice given on 27 August 2002 and concludes that, in the absence of an exercise of RMA powers, there is nothing restricting foresters from harvesting activities that include use of the roading network.</p>	<p>Richard Fowler, Queens Counsel</p>

IN REPLY QUOTE REFERENCE MAB:JW

7/15/02

FOR ENQUIRIES ASK FOR Mr Barnes

4 December 1979

The Executive Director,
Forestry Council,
Private Bag,
WELLINGTON.

Dear Sir,

Re: Forestry Access Roading Finance

Forwarded herewith details of the relevant Marlborough County Council Statistics and anticipated forestry roading requirements as requested.

I regret the delay in supplying the information however other commitments coupled with the very short notice prevented me from supplying same until now.

A Current Situation

1. (a) Population 11,200
- (b) Total road length in kilometres

Class I		Class II	
Sealed	Unsealed	Sealed	Unsealed
129	424	349	732
- (c) Number of Bridges 327
- (d) Total length of bridging 5386 m
2. The basis for Council's approaches to the National Roads Board to obtain both more National Roads Board finance has varied depending on the circumstances that have appeared particularly relevant. In some instances these are pertinent for the whole county while others are only pertinent to particular roads.

Three particular factors which apply to the whole of the County are:-

- (a) The significant bridge renewal requirements 135 timber bridges totalling 1330 m in length and;
- (b) The very considerable length of roading which has to be maintained by a small population and;
- (c) The remoteness of much of the roading and difficulty of obtaining suitable road making materials in many of these areas.

Council has only had limited success with these particular strategies with the argument related to bridge renewals being probably the most successful. The other two arguments put forward have not received any particular recognition.

The other most significant argument put forward relates to

/...

future forest access roads where Council has made the point that because of the very extensive upgrading required involving several hundred kilometres of road that there is an immediate need to start on the bridging well in advance and that road works cannot be left till the very last minute as there will be neither the finance nor the design and construction forces to have the work carried out in time.

Unfortunately the National Roads Board have refused to make a commitment to such needs.

3. The Ministry of Works and Development's policy of encouraging the upgrading of roads from Class II to Class I has not been particularly evident in this county presumably because of a shortage of roading funds and the only significant assistance that Council has received in this regard relates to a single road which formerly formed part of the National Railway route between Nelson and Spring Creek i.e. its importance related to the transport of goods generally resulting from the activities of New Zealand Railways. That this road will ultimately be of great importance for the transportation of forest products had no bearing on the assistance received.

B Future Activities and Requirements

Your questionnaire specifies a time period of 1980/85 however this has little or no relevance in this particular county. Set out below are details of the estimated timber production within this County and you will see that our particular roading needs will rise dramatically in the period 1996-2010.

Area of Timber (ha) to be Extracted for

	<u>Stated Period</u>				
	<u>1986-90</u>	<u>1991-95</u>	<u>1996-2000</u>	<u>2001-05</u>	<u>2006-10</u>
Ronga (Valley only)	-	-	67	67	242
From French Pass	-	53	170	227	1242
Lower Opouri	-	-	128	414	400
Tinline	61	108	12	80	250
Upper Maungatapu	18	2	6	102	200
Lower Maungatapu	79	110	18	182	450
Wakamarina	-	-	39	416	160
Linkwater-Havelock	30	16	48	1126	-
Onamalutu	-	-	108	196	500
Northbank	-	-	496	1566	2000
Pukaka	-	-	-	40	300
Port Underwood	73	12	173	571	800
Kaiuma	-	-	-	-	300
TOTALS	261	301	1265	4987	6844

At this stage it is not possible to provide exact costings of the necessary upgrading as there are many areas where either sea road transport could be used and decisions as to the alternative to be used may depend on the location of processing plants whose location being yet to be decided upon.

/...

It is however possible to provide an assessment of the upgrading costs of some of the more significant routes as follows:-

(a) Northbank and Onamalutu	62 km	\$2,503,800
(b) Linkwater - Mahau	12 km	\$ 770,800
(c) Grove - Havelock including Cullensville	.20 km	\$ 952,300
(d) Ronga - Okiwi Bay	21 km	\$ 428,000
(e) Ronga - Rai Valley	9 km	\$ 139,100

Of these only (d) might be unnecessary due to water transport.

The quantities of wood to be extracted can be extrapolated on the basis that one hectare will produce approximately 600 tons over a 25-30 year growth period.

Insofar as estimates of the proportion of non-logs to logging traffic the only road above which would have a substantial volume of non-logging traffic would be the Grove-Havelock and the traffic is predominantly cars. Elsewhere the non-logging traffic would be insignificant.

I regret the delay in advising you of the situation as it exists in the Marlborough County but I trust that the foregoing will be of some assistance in defining the extent of the problem.

Yours faithfully,

M.A. Barnes
COUNTY ENGINEER



MARLBOROUGH COUNTY COUNCILFORESTRY ROADING

The matter of forestry roading has been discussed with Mr Radich. He advises that all of the proposals he has for Council's consideration on this matter are set out in his letters to the County Clerk and dated 18th August 1980 and 25th September 1980.

While those letters have been circulated previously to members, no decision has been made and it is necessary to bring the issue into one perspective for an eventual scheme change, if that course of action is adopted.

The letter of 18th August reads :

"Now that the Planning Tribunal has given its decision on the forestry appeal it is possible for us to give you the opinion which you sought earlier in the year concerning forestry roading.

At the outset we wish to say that in our view Council has power to prohibit the use by logging trucks of specified county roads where such use is likely to result in abnormal damage to such roads.

The prohibition could be achieved either :-

- (a) Pursuant to Regulation 10(3) of the Heavy Motor Vehicle Regulations 1974, or*
- (b) Pursuant to a By-Law enacted pursuant to Section 72 of the Transport Act 1962. In this connection we point out that your present Street and Roads By-Law No. 1 1973 should be expanded if it is to be used for the purpose of prohibiting the use by logging trucks of any specified county road.*

Our conclusion that Council has the capacity to prevent logging trucks from using specified roads has been reached by us after careful consideration and with the knowledge that you have already received conflicting opinions on the matter.

The various forestry interests argued before the Planning Tribunal that forestry should be a predominant use and in the case of land outside the Marlborough Sounds area, the only real argument which Council raised in opposition was that its roading system was not adequate to cope with forestry traffic and that therefore, forestry should be retained as a conditional use in such areas to give Council some capacity to control the future use which might be made of its roads. The Planning Tribunal in deciding that forestry should remain a conditional use in areas outside the Marlborough Sounds, must have done so having accepted Council's evidence as to potential problems with roading. You will be aware however, that in its decision of 2nd July 1980 the Tribunal did not deal with the question of roading in any depth.

Accordingly it is our opinion that Council's concern about roading is a legitimate concern in the planning context and one which it is quite entitled to give expression to through the imposition of conditions attaching to any conditional use approval for forestry.

The real problem however, is the nature of any conditions. The extent of the problem of phrasing appropriate conditions varies according to the geographical situation of the forestry land involved.

If any substandard road in question services the forestry property only then there is no real problem and it is in our view legitimate for you to impose a condition to the effect that the forestry owner will prior to harvesting upgrade the road to the appropriate standard. You have already imposed conditions of this type and they have not been the subject of any appeal. Although we say that it is legitimate for you to take this approach, we think that there might be a better approach and we will come to this later.

Unfortunately where a road serves several properties or more it becomes impossible in our view to devise an intelligible, enforceable and effective condition.

In such cases there would seem to be the following options :-

- (a) To impose no condition at all as to roading having in mind that you have other means of preventing forestry traffic from using roads should such prohibition be necessary. We are not happy about this course being adopted because it tends to ignore the problem rather than face up to its resolution. Furthermore this approach does not give a future purchaser of any forestry land which has been the subject of conditional use approval any hint that there might be future difficulties in the extraction of timber over the particular County road.
- (b) To impose a condition which attempts to make the forestry owner financially liable for part of the cost of upgrading the road prior to extraction. As we have already said we cannot envisage such a condition through which it would not be possible to drive a cart and horses and indeed a logging truck.
- (c) To approach the whole question of forestry roading on the basis that you will, when the time comes, provide the road and rate forestry owners accordingly. The question of whether or not this approach should be followed is one of policy rather than one of law. We do not know whether you would have the financial and logistical capacity to take such an approach. However, this should perhaps be the direction of your long term thinking.
- (d) If you decide to take a positive approach towards the provision of forestry roading as suggested above then we think that you should do so bearing in mind the possibility that it might not be possible for you to achieve your objective by the time harvesting is due to commence. Thus we think that in cases where the road is not adequate at the present time you should impose a condition such as the following :

That no timber harvested from the property shall be carried by any heavy motor vehicle (as presently defined in the Transport Act 1962) along that section of county road commencing at (here define point of commencement) and ending at (here define terminal point) unless and until the County Engineer certifies to Council in writing that the section of road is capable of carrying the heavy vehicles intended to the extent intended without such road or any section thereof suffering substantial damage.

No doubt a condition along these lines could be further refined and if you were minded to impose such a condition we would like a further opportunity of considering the phraseology and discussing the matter with the County Engineer before the imposition of any such condition.

We think that there is a real likelihood that such a condition would be upheld by the Planning Tribunal. We say this because it merely restates the power which we believe you already have to prohibit logging trucks from using specified roads.

Such a condition would in our view be unobjectionable especially if it were imposed with a policy background pursuant to which Council expressed itself as being willing to undertake the responsibility for provision of forestry roads subject to financial and logistical constraints. The condition would in such cases be in the nature of a backstop designed to protect the road in the event of your not being able to achieve your stated objectives.

There will no doubt be cases where a person seeks to establish a forest on land which would be very difficult and expensive to service with a forestry road. In such cases we think that Council could legitimately say in the context of a conditional use consent that the present road is inadequate, that the prospects of this particular road being upgraded by harvest time are not good but that consent will be given subject to the condition mentioned above.

Even in this situation where the condition is not imposed along with an expression of policy that the road will be upgraded, we think the condition would likely be upheld by the Planning Tribunal. After all in a situation where a person seeks to establish forestry in an isolated area perhaps away from any other forestry, Council has little choice but to make it clear to him that he does so at his own

peril insofar as harvesting is concerned. The imposition of such a condition in this context or in any other context would not of course close the door on the forester making proposals to Council prior to harvest for the upgrading of the road partly or wholly at the expense of the forester.

In summary therefore we think that you should be imposing a condition such as that suggested above in all cases where the road at the present time is not up to standard. In cases where Council can foresee that it will take a positive approach and upgrade the particular road the imposition of the condition takes place against this background. In other cases however, where there is no real prospect of the particular road being upgraded to forestry standards, the condition is imposed against that background.

The major advantage of the approach which we are suggesting is that it places Council in a reasonably certain position. With conditions actually placing an obligation on a forester to contribute, Council could find itself facing a challenge to such a condition in 20 years time. If the condition we are suggesting is imposed now it is either accepted and would be enforceable or alternatively the matter goes before the Planning Tribunal which would reach a certain conclusion one way or the other. The strength of any decision will depend to a large extent on the manner in which it is phrased. If a condition such as that which we are suggesting is imposed in the context of a fully and carefully reasoned decision then we think that it would take some upsetting. It might be as well for you to give us an opportunity of perusing any contemplated decision.

We do not think that you should feel any unhappiness in abandoning the approach you have adopted in the past of endeavouring at this stage to quantify future financial liability of a forester. Conditions of that type after some years form a patchwork of varying obligations insofar as foresters were concerned. It would be difficult to achieve fairness and as we have already said even more difficult to achieve enforceability.

The writer will attend the appropriate Committee Meeting should you wish."

The relevant part of the memorandum attached to the letter of the 25th September reads :-

"Exotic forests will play an increasingly important part in the area's future economy. There are considerable areas of land to the north of the Wairau River (and more limited areas to the south of it) which are suited to its use. Because of the complexity of conflicts likely to arise forestry is restricted to the conditional use category in the Sounds. However, in the Rural A Zones outside the Sounds where existing and presently proposed roading is adequate, it is permitted as a predominant use but subject to special conditions designed to avoid conflict with other forms of land use to economise in the services of the District and to preserve the amenities. Council proposes to take a positive approach towards the provision of roading for the extraction of timber but it will not be possible to provide adequate roading in every area in which trees have been or may be planted. It may be necessary for the harvesting across County roads of certain plantings to be delayed until such time as the roads have the capacity to carry the traffic. Council will not have the capacity to create the new roads required out of general rates and the forestry industry will be obliged to carry some proportion to be determined in the future of the costs associated with upgrading of the roads to forestry standards."

Quite clearly the issue of how to deal with forestry roading is a policy matter which must be determined by the Council. That policy can be in one of two forms :-

- (a) A prohibition on the use of certain specified roads pursuant to the Heavy Motor Vehicles Regulations 1974 or pursuant to a By-Law under Section 72 of the Transport Act 1962.
- (b) A statement of objectives and policy for the provision of forestry roads, to be included in the District Scheme.

The use of prohibitions would in my view increase Council's workload for relatively little benefit. The use of either the Heavy Motor Vehicle Regulations or the Transport Act would require forestry roads to be re-classified. Any heavy vehicle over the specified weight

limit would then require an over weight permit. In any event the use of a prohibition is a negative approach and would give the impression that Council does not consider forestry to be a suitable land use.

If the Council accept that forestry is an appropriate land use for much of the hill country, and I believe that it does, then the Council needs to adopt a positive policy towards the extraction of timber which requires to be transported over county roads. This can be achieved by including a statement of objectives and policy for the provision of forestry roads, which would be included in the District Scheme.

To put forestry roading into the context of the District Scheme it is necessary to refer to the Land Planning Officers report of 25th July 1980 entitled "Proposed changes to District Scheme for Commercial Forestry". At page 1 of that report there is a paragraph setting out a proposed scheme statement.

I believe the statement can be expanded and re-worded in places to incorporate a policy on forestry roading, thus bringing together Council's total policy on forestry into the District Scheme.

I suggest the statement could be worded as follows :-

"Commercial forestry will play an important part as a major primary industry in the area's future economy. There are considerable areas of land to the north of the Wairau River (and more limited areas to the south of it) which are suited to its use. In the Rural A zones outside the Sounds where existing and proposed roading is adequate, commercial forestry is allowed as a permitted use, but subject to special conditions designed to avoid conflict with other forms of land use, to economise in the services of the District and to preserve the amenities. Council proposes to take a positive approach towards the provision of roading for the extraction of timber by planning for the upgrading or reconstruction of those roads required for logging traffic. Council wishes to stress, however, that it does not have the financial resources to carry out the actual works of upgrading or reconstruction. Council believes that such works will only be carried out by the provision of finance from Central Government and/or with the provision of finance from forest owners.

Accordingly Council proposes to prohibit the use of certain county roads to logging traffic and these roads are listed in Part VIII Communication and Transport.

Certain areas of the Sounds are identified on the planning maps where it is considered that commercial forestry can be undertaken without damage to natural cultural, landscape and recreational values or without undue conflict with other appropriate land and water uses provided stringent controls are enforced. In other parts of the Rural zones of the County, the Council will allow commercial forestry as a conditional use in cases where it is ancillary to pastoral farming. The important place of protection and amenity forestry is recognised in that such forestry is permitted as a predominant use subject to certain precedent conditions."

In addition the roads which are likely to be used by logging traffic and are of concern to Council should be listed in the Scheme Statement.

At page 2 of the Land Planning Officers forestry report I have suggested alterations under "Scheme Statement Part VIII - Communication and Transport". An additional paragraph 2.9 could be added here to read:-

"No timber harvested from any property having sole access to any of the county roads in the following schedule, shall be carried by any heavy motor vehicle (as defined in the Trans-

port Act 1962) unless and until the County Engineer certifies to Council in writing that the property has access to a road which is capable of carrying the heavy vehicles intended, to the extent intended, without such road or any section thereof suffering substantial damage."

List of Roads Affected

Northbank, Onamalutu, Waikakaho, Tuamarina Track, Wakamarina, Kaiuma Bay, Opouri, Tunakia, Ronga, French Pass, Queen Charlotte Drive between State Highway No. 6 and Grove Wharf, Cullensville, Linkwater - Mahau, Kenepuru Heads - Hopewell, Waitaria - Manaroa, Elie Bay - St. Omer, Maungatapu, Tinline, Bullford, Rimu Gully, Hills, Okaramio, Waikohu Valley, Twidles, Pukaka Valley, Para, Speeds, Miscellaneous sections of the Port Underwood Road where Council considers it necessary to provide access to log marshalling access from which points the timber will be transported by sea.

This list is not necessarily exhaustive and Council may wish to add to the list.

M.A. Barnes,
COUNTY ENGINEER.

25.11.80

RECEIVED
24 NOV 1994
MARLBOROUGH
DISTRICT COUNCIL

6
TEMPLE CHAMBERS

24 November 1994

The General Manager
Marlborough District Council
P.O. Box 443
BLLENHEIM

Attention: Mr T. Quirk

BYLAWS - VEHICLE LENGTH - QUEEN CHARLOTTE DRIVE

1. We have given this issue further consideration and believe that Council has available to it an alternative, speedier and equally efficient way of restricting heavy traffic on the Queen Charlotte Drive.

Council's purpose

2. To restrict heavy traffic on the Queen Charlotte Drive, applying from Linkwater to Picton.

Legislation

3. Section 70AA of the Transport Act 1962 provides (in summary):

"The Territorial Authority in the case of any road under its control, may from time to time, by public notice, direct that any heavy traffic, or any specified kind of heavy traffic defined in the notice, shall not proceed between any two places by way of any road or roads specified in the notice.

A copy of every notice under this Section shall be displayed in at least one prominent position on every road to which the notice applies.

Every person commits an offence who contravenes the requirements of any notice under this Section unless the person proves that there was no other way reasonably available for the traffic concerned."

This section is limited in its use insofar as it only applies to heavy

RADICH · DWYER · HARDY-JONES · CLARK

Barristers & Solicitors Temple Chambers 76 High Street Blenheim New Zealand

Partners: Peter Joseph Radich LLB Brian Patrick Dwyer LLB Michael Hardy-Jones LLB Christopher Thomas Clark LLB
Telephone: 03 578 5339 Fax: 03 578 0323 P O Box 646 Blenheim DX 15207 Picton Office Mariners Mall Telephone: 03 5736224

traffic whereas the enactment of a Bylaw may be in relation to any specified class of traffic (whether heavy traffic or not) or any specified motor vehicle. However, we believe that this Section is designed to achieve Council's purpose in this case.

Section 70AA(3)

4. Council may have some concerns that the notice will be less effective because this section provides for a way in which the Defendant may escape liability.

Contravention of this section amounts to what is in fact a strict liability offence. That means that the burden of proving the defence rests with the Defendant. We believe that the defence allowed to a Defendant will be interpreted narrowly. The Defendant would have to prove to the Court that he or she had no reasonable alternative available to him or her but to take that heavy vehicle on that particular piece of road at that particular time.

We believe that that interpretation is the best that you are going to achieve at any rate. It would be anticipated that a breach of the Bylaw may be successfully defended on the basis that there was no reasonable alternative but to take that particular vehicle on that particular piece of road at that particular time.

Penalty

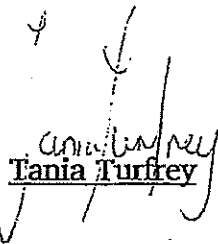
5. The penalty for an offence against Section 70AA is a fine not exceeding \$500.00. If the offending relates to road safety then the Judge may order that that person be disqualified from holding or obtaining a drivers licence for a period of time.

Again, no greater penalty is able to be imposed via the enactment of a Bylaw.

6. It is our advice that Council follow this path rather than enact a Bylaw.

Yours faithfully

RADICH DWYER HARDY-JONES CLARK


Tania Turfrey

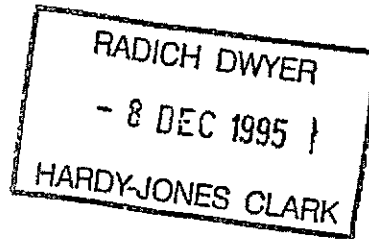
Elizabeth Hird
Barrister

6th Floor
Castrol House
36 Customhouse Quay
P.O. Box 10-171
Wellington, N.Z.

Telephone (04) 473 5730
Fax (04) 471 0672

and
Kitchener St
R.D. Otaki

6 December 1995



Radich Dwyer Hardy Jones Clark
Solicitors
DX WC60007
BLENHEIM
Attention: Mr P Radich

FAXED

Dear Peter,

MARLBOROUGH DISTRICT COUNCIL : FORESTRY RATING

A Background

1. You have asked me to consider whether or not the Marlborough District Council has any power prevent or recover the cost of damage to roading in Waikawa occasioned by forestry logging. I understand that logging has been proceeding for some six weeks with an estimated special damage amounting to \$150,000. It is proposed that this logging continue for some two months. The area concerned is very remote and not heavily populated.
2. You have asked me to consider what powers the Council may have to ban logging trucks from using Council roads. The Council are concerned not to ban classes of heavy traffic but to have control over specific logging heavy vehicles. You have also asked me to consider whether or not there is any recourse to the Resource Management Act.

B Transport Act 1962

2.1 Section 70AA(1) of the Transport Act 1962 provides that a territorial authority with control over a road may from time to time, by public notice, direct that any heavy traffic or any *specified kind* of heavy traffic defined in the notice, shall not proceed between any two places by way of any road or roads specified in the notice. Subsection (2) provides a copy of every notice under this section shall be displayed in at least one prominent position on every road to which the notice applies. Subsection (3) provides that it is an offence to contravene the requirements of the notice unless the person proves that there is no other way reasonably available for the traffic concerned.

2.2 Subsection (2) of the Act provides that heavy traffic is defined as:

"Heavy traffic means -

(a) The use of any heavy motor vehicle; or

(b) Any other traffic declared to be heavy traffic by the Authority by notice in the Gazette."

2.3 Heavy motor vehicle is defined as:

"Heavy motor vehicle means a motor vehicle (other than a motor car that is not used, kept, or available for the carriage of passengers for hire or reward) the gross laden weight of which exceeds 3,500kg."

3. A key issue in relation to the application of this section is what is meant by "any specified kind" of heavy traffic. "Kind" is defined in the Oxford English Dictionary, 1989 as:

"A class of individuals or objects distinguished by attributes possessed in common; a gene or species; also in vaguer sense: a sort, variety or description. Now the chief sense."

"Specify" is defined as:

"To mention, speak of or name (something) definitely or explicitly; to set down or state categorically or particularly; to relate in detail."

- 3.1 There is no definition in the Transport Act of the use of the words "specified kind". A search of Hansard and Select Committee Reports does not reveal the purpose of the adoption of the section. The legislation was part of a Transport Law Reform Bill concerning deregulation of taxis. Perhaps the Local Government Association has more information. The policy unit at the Ministry of Transport has indicated that the purpose of s.70AA was to allow for heavy traffic by-passes. In A v B [1969] NZLR 534 Roper J had to consider whether consent to the adoption of a child had been given by "any specified person or persons". In the particular case, the names of the adopting parents were not specifically referred to in the form of consent. His Honour held that persons can be specified without being named provided they were unambiguously identified. Although this is a decision in relation to a quite different matter I consider the thrust that the specification must be unambiguous is pertinent. In Customs v Excise Commissioners v Mechanical Services (Trailer Engineers) Limited [1979] 1 All ER 501, 511 CA per McGaw LJ had to consider the phrase "goods of a kind suitable for use as parts of" trailers carrying boats. His Honour considered that:

"to identify the 'kind' to which a particular article belongs, you must ascertain first what is the common characteristic which turns a collection of individual articles into 'a kind'."

- 3.2 Bearing these two cases in mind and the above comments, in my view it is within the power of the Marlborough District Council to use the provisions of s.70AA for its purposes. However, s.70AA(3) poses a difficulty. It must be taken that the "traffic" referred to in s.70AA(3) refers to the specified kind of traffic identified in the notice i.e. the logging trucks. I do not consider the "traffic" in the context can refer to the contents of the logging truck. It would therefore be open to a logging truck operator to argue that there is no other way reasonably available.
- 3.3 Another potential difficulty is that the territorial authority is restricted to redirecting the traffic from time to time. I would consider this meant that the power to redirect traffic does not extend to a permanent restriction. If a more permanent solution is required beyond the several months anticipated for logging then other methods must be considered.
- 3.4 If these obstacles are surmountable then proceeding under s.70AA of the Transport Act has the added advantage that the Council will be operating under a statutory power as distinct from a regulation or by-law, which, as subsidiary powers, are subject to more close scrutiny.
- 3.5 I am unable to identify any specific requirement within the Transport Act or the Regulations thereunder, which stipulates how the public notice is to be given. Presumably the provisions of s.37T of the Local Government Act governs the situation.
4. Section 72 of the Transport Act provides by-law making power for a territorial authority in respect of roads under its control. Of particular interest are s.72(1)

- (e) *"providing for the giving and taking of security by or from any person that no special damage will occur to any road, bridge, culvert, ferry or ford by reason of any heavy traffic thereon."*
- (f) *Prohibiting any specified class of heavy traffic that has caused or is likely to cause serious damage to any road unless the cost of reinstating or strengthening the road as estimated by the said Minister or the local authority or as the case may be, is previously paid.*
- (g) *Providing for the annual or other payment of any reasonable sum by any person concerned in any heavy traffic by way of compensation for any damage likely to occur therefrom to any road, bridge, culvert, ferry or fjord.*
- (i) *Prohibiting or restricting absolutely or conditionally any specified class of traffic (whether heavy traffic or not), or any specified motor vehicle or class of motor vehicle which by reason of its size or nature or the nature of goods carried is unsuitable for use in the road or roads specified in the by-law."*

I certainly consider that the Council would have no difficulty in proceeding under (e) and (g) as these provide for a by-law in relation to an individual; section 72(1)(f) is concerned with specified classes of heavy traffic and (i) is partly concerned with specified classes of heavy traffic. It is possible to pass a by-law under s.72(1)(i) restricting a specified motor vehicle but this would be cumbersome.

- 4.1 Section 77(1)(j) of the Act provides that regulations may be made for the purpose of providing for the classification of heavy motor vehicles according to their design, weight and carrying capacity. The Heavy Motor Vehicle Regulations has classified heavy motor vehicles according to axle weight.

- 4.2 I am concerned that the use of the words "class of heavy traffic" in this section is to be distinguished from the use of "specified kind" in s.70AA and that there may be difficulties in establishing forestry transporters as a "class" of heavy traffic. The structure of the Act indicates that "class" involves classification of vehicles by weight and axles rather than by description of loads.
- 4.3 In addition the by-law process would be subjected to the requirements of the Local Government Act. This is a longer process and a by-law is challengeable on the grounds of reasonableness.
- 4.4 Finally, the by-law may be disallowed by the Minister of Transport after it has been made, under s.74 of the Transport Act.
- 4.5 Section 77(1)(n) allows for regulations authorising any local authority to prohibit the use of heavy motor vehicles or any class during any specified period or periods on any road under the control of the local authority. This is a reference to the Heavy Motor Vehicle Regulations.
- 4.6 Section 77(1)(v) is a general power regulating the use of vehicles and prescribing conditions subject to which they may be used. Again, the relevant regulations are the Heavy Motor Vehicle Regulations.

5. Heavy Motor Vehicle Regulations 1974/218

- 5.1 These regulations provide, inter alia, for the classification of roads. Regulation 3 makes provision for a change in classification to the road from Class 1 to Class C by application from a controlling authority to the Land Transport Safety Authority. This process requires public notice setting out that objections may be lodged in writing before a date 14 clear days after the publication of the notice. The application and any objections are forwarded to the Land Transport Safety Authority of New Zealand. The Land Transport Safety Authority ("the

Authority") can approve or modify etc the proposed classification. In the case of a dispute over the correct classification between the Authority and the controlling authority and any party objecting, the question is then submitted to the Transit New Zealand. A decision of Transit New Zealand is final.

- 5.2 Regulation 5(5) prohibits the use of a heavy motor vehicle on any Class C road except for the purposes of the delivery or collection of goods or passengers to or from locations directly accessible from such roads. The difficulty with be this approach is that it may well be established that the locations are only directly accessible from such roads so that a re-classification does not achieve the stated aim.
- 5.3 If however, the locations are accessible by sea then the prohibition will stand. Regulation 7 entitles the controlling authority to issue a permit for a heavy motor vehicle to be used on a road where such vehicle is prohibited under Regulation 5. This permit is subject to security being given for any special damage that may occur to the road by reason of the operation of the vehicle or the cost of strengthening or reinstating the road or a reasonable sum by way of compensation for any damage likely to occur to the road.
- 5.4 Regulation 7(3) entitles any other person who is carrying the same commodity on the same road to be able to obtain a permit subject to the same conditions. Therefore once you have issued a permit in relation to a forestry or other kind of truck then all others of that type will receive the same kind of permit.
- 5.5 The regulations do not prevent the controlling authority from recovering by legal process reimbursement for any damage done to roads between trips authorised by the permit.

6. Resource Management Act

- 6.1 Section 17 of the Act sets out the duty to avoid, remedy or mitigating the adverse affect on the environment arising from an activity carried on by or on behalf of that person. The duty is not of itself enforceable against any person nor is any person liable for the breach of that duty. However, an enforcement order or abatement notice may be served under Part XII requiring a person to cease or to do matters necessary to avoid remedy or mitigate the likely adverse effect on the environment. An application for an enforcement order must be made to the Planning Tribunal (s.316). The application may be made at anytime and is required to be served upon persons directly affected (s.317) within five days after making the application.
- 6.2 Section 320 provides for interim enforcement orders without notice and without holding a hearing. An undertaking as to damages may be required. Criteria for an interim order involve familiar balancing exercises of the nature of the damage, harm to the respective parties, whether the damage is transitory etc.
- 6.3 In Hall v McDrury C44-95PT the Tribunal held that it has jurisdiction concerning adverse effects on the environment deriving from use of a public road under both s.17 and s.314 of the Resource Management Act.
- 6.4 The order sought in the case was to prohibit the driving of dairy cows along a road. Transit New Zealand gave notice of its wish to be heard. Its status was left undecided. The decision concerns an interlocutory application to strike out proceedings.
- 6.5 The strike out proceedings were based, interalia, on common law rights, conflict with by laws and/or other legislation. These arguments were essentially jurisdictional.

- 6.6 Amongst the problems outlined by the applicants were damage to grass verges and the road surface. By laws concerning the droving of dairy cows had been made under either s.72 of the Transport Act 1962 or s.684 of the Local Government Act 1974.
- 6.7 The Tribunal, in discussing common law rights, referred to Paprzik v. Tauranga District Council (1991) 1 NZRMA 73. The Tribunal concluded that common law rights to use a public road did not necessarily override the Resource Management Act 1991.
- 6.8 The Tribunal considered that the central issue was whether s.314 of the Resources Management Act 1991 authorised the Tribunal to control the use of a road where it is causing adverse effects on the environment. In deciding this question the Tribunal considered whether provisions of the Transport Act 1962 or the Local Government Act 1974 overrode the general provisions of the Resources Management Act 1991.
- 6.9 The conclusion reached was the neither of those statutes was concerned with the sustainable management of resources and the maxim generalia specialibus non-derogant had no application.
- 6.10 The Tribunal further noted that the provision in the Transport Act 1962 and the Local Government Act were empowering. They did not place an obligation on a local authority to control roads through by laws. If control was not exercised through the Resources Management Act 1991 and there were no by laws then there would be no remedy except possibly an action in nuisance.
- 6.11 The conclusion that the Tribunal had jurisdiction left open the question of the merits of the application for a substantive hearing.

7. Local Government Act 1974

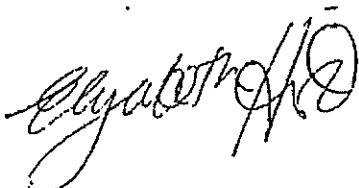
7.1 The by-law power in s.684 does not provide a solution.

7.2 There is power in s.342 to stop a road or close a road on temporary basis but I understand that the Council do not wish to close the road and therefore I mention it only in passing.

Conclusion

In the time available I am only able to identify possible avenues of attack for the Council. In particular I have not been able to consider the prospects of success on the merits of an application, whether interim or not for an enforcement order under the Resources Management Act 1991.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Elizabeth Hird', with a stylized flourish at the end.

Elizabeth Hird

(5) No person shall operate any heavy motor vehicle constructed without springs or other effective cushioning apparatus between its road wheels and its chassis at a speed in excess of the respective speeds hereinbefore set out in this regulation reduced by 50 percent:

Provided that this clause shall not apply when the unsprung axles are connected to the vehicle chassis by a longitudinal walking beam or beams.

(6) Notwithstanding anything in subclauses (3) to (5) of this regulation, and subject to the approval of the Board, the [Director] may give written approval for any specified vehicle or class of vehicles to exceed the speed limits set out in the said subclauses, subject to such conditions as to speed, weight of load, number of trips, roads to be used, or any other conditions as he may think fit to impose.

(7) In any case in which the maximum speed fixed so as to apply to any heavy motor vehicle by a controlling authority for any locality, road, or part of a road is greater than the appropriate speed fixed by this regulation, the maximum speed of that heavy motor vehicle for that locality, road, or part of a road shall be that fixed by this regulation.

(8) Nothing in this regulation or in any approval given under this regulation shall operate—

(a) *Repealed by reg 2(2), SR 1985/145.*

(b) To make it a defence in any proceedings for an offence relating to the use of a heavy motor vehicle, other than an offence against this regulation, that at the time of the alleged offence the heavy motor vehicle was being driven at a speed not exceeding the limits fixed by this regulation or by any approval given under this regulation.

[(9) Where more than one speed limit applies in respect of any vehicle by virtue of these regulations, the lowest speed limit shall be the maximum speed limit in respect of that vehicle.

[(10) Where a speed limit lower than the speed limit specified in this regulation in respect of any vehicle either generally or in respect of any place is fixed by or under section 52 of the Act or any other provision of the Act or regulation 21 of the Traffic Regulations 1976 or any other regulation or any bylaw, that lower limit shall be the speed limit for that vehicle either generally or in respect of the place, as the case may require, and to that extent the speed limits prescribed by this regulation shall be of no effect.]

Subcls (1) and (2) repealed and substituted by new subcls (1), (2), (2A), and (2B) by reg 2(1), SR 1985/145.

Subcl (6) amended by s 35(3) Land Transport Act 1993 (1993 No 88).

Subcls (9) and (10) inserted by reg 2(3), SR 1985/145.

Accuracy of measuring devices: See s 197 Transport Act 1962 as to proof of the accuracy of speed-measuring devices.

Exemptions: Section 53 Transport Act 1962 exempts police, traffic officers, and ambulance and fire-brigade drivers from adhering to speed limits while on duty.

10. Prohibition of certain heavy traffic—(1) No person shall operate upon any road—

(a) Any traction engine, or any heavy motor vehicle other than an agricultural tractor if it is fitted with any tyre which is not pneumatic; or

(b) Any heavy motor vehicle, if it is fitted with any metal tyre or any tyre having lugs, cleats, or similar projections,—

unless the consent thereto in writing is first obtained from the controlling authority of the road, which consent may be given subject to such conditions as the controlling authority thinks fit to impose. In this subclause the term “tyre” includes a self-laying track.

(2) Every person operating any traction engine or heavy motor vehicle under a consent given under subclause (1) of this regulation shall comply with all the conditions subject to which the consent is given.

(3) The controlling authority may, on reasonable grounds, prohibit absolutely or conditionally the use on any specified road of heavy motor vehicles or of any specified class of heavy motor vehicle during any specified period or series of periods.

(4) The controlling authority may, if it considers on reasonable grounds that it is necessary to protect a road from excessive damage, prohibit, during any specified period of not more than 12 months, the use on that road of heavy motor vehicles which exceed a specified axle weight. If, at the expiry of the specified period, the controlling authority still considers a prohibition necessary to protect the road, it may extend the prohibition for a further specified period of not more than 12 months, and, until it considers such a prohibition is no longer necessary, may continue to extend the prohibition for further specified periods of not more than 12 months each.

(5) Notice of any prohibition imposed under subclauses (3) or (4) of this regulation shall be given by the controlling authority in the manner provided in subclause (6) of this regulation at least 7 days before the commencement of the specified period:

Provided that in special circumstances, such as an emergency arising from rain, frost, flood, or other climatic conditions, it shall be sufficient compliance with this requirement if that notice be given as long before the commencement of the period as the circumstances reasonably permit.

(6) The notice referred to in subclause (5) of this regulation shall be given by publication of a statement conveying the grounds of the prohibition and the general effect of the prohibition in some newspaper circulating in the district to which the matter of the notice relates, and by the erection and maintenance of an adequate sign posted in some conspicuous place at all entrances to the road or roads affected by the prohibition. A sign of the type specified in diagram No 3 in the Fourth Schedule to these regulations may be used if appropriate.

(7) No person shall operate any heavy vehicle on any road where its use has for the time being been prohibited by a controlling authority under subclause (3) or subclause (4) of this regulation.

(8) Any consent or prohibition given or imposed under subclause (1), or subclause (3), or subclause (4) of this regulation may be expressed to relate to all roads under the control of the controlling authority, or any particular road or portion thereof.

(9) If as a result of advice by the National Roads Board, or of inquiry, the [Authority] is of the opinion that the power given by subclause (3) or subclause (4) of this regulation has in the case of any road not been exercised in a reasonable manner, [the Authority] may, by notice in writing given to the controlling authority, revoke, wholly or in part, the prohibition of the use of the road by heavy motor vehicles or any class of heavy motor vehicles, as the case may be, as from the date of the notice or from such later date as may be specified in that behalf in the notice, and may give such public notice of the revocation as [the Authority] thinks fit.

(10) On the date on which any such revocation takes effect, the controlling authority shall remove the signs giving notice of the prohibition which has been revoked.

(11) Any sign erected under the Heavy Motor Vehicle Regulations 1955 or the Heavy Motor Vehicle Regulations 1969 at the commencement of these regulations shall remain in force as if it had been erected under this regulation.

Subcl (9) amended by s 35(3) Land Transport Act 1993 (1993 No 88).

Damage to roads: Under s 51(2)(m) Transit New Zealand Act 1989 (Chapter 45), it is an offence to do, cause, or permit any act whatever by which any damage or obstruction is caused to a road.

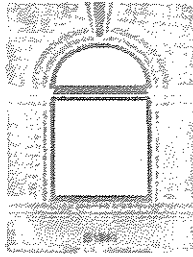
Prohibition of specified traffic: Section 342(1) Local Government Act 1974 and the Tenth Schedule to that Act (Chapter 42) allow a territorial authority to close any road to any specified type of traffic on a temporary basis.

11. Protection of bridges—(1) No person shall operate on or over any bridge which is under the control of a controlling authority any heavy motor vehicle, or any combination of motor vehicles including a heavy motor vehicle, if the heavy motor vehicle or combination exceeds the weight limits for the time being in force and fixed with respect to that bridge pursuant to this regulation within the immediately preceding 12 months.

(2) No person shall cause any heavy motor vehicle to pass over any such bridge at a speed in excess of the speed limit for the time being in force and fixed with respect to that bridge pursuant to this regulation within the immediately preceding 12 months.

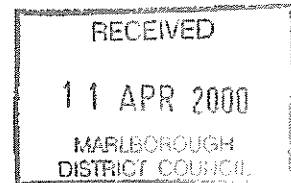
(3) For the purposes of this regulation, a controlling authority may with respect to any bridge under its control fix weight limits or a speed limit or both weight limits and a speed limit for heavy motor vehicles, and combinations of vehicles including a heavy motor vehicle, using that bridge.

(4) Before a controlling authority proceeds to fix any weight limits or speed limit with respect to any bridge under this regulation, it shall obtain from an engineer (who is either registered under the Engineers Registration Act 1924 or is the holder of a certificate of recognition issued by the Engineers Registration Board) a certificate that he has made a detailed inspection of the bridge and that as a result he is of the opinion that the use of the bridge by vehicles exceeding in weight the weight limits, or travelling at a speed exceeding the speed limit, proposed to be fixed would so overstrain the bridge as to be likely to cause its ultimate failure.



TEMPLE CHAMBERS
Est. 1865

fofc



MEMORANDUM

TO: Marlborough District Council **YOUR REF:**
ATTN: Tony Quirk
FROM: Peter Radich **OUR REF:**
DATE: 10 April 2000
SUBJECT: **FORESTRY ROADING – PORT UNDERWOOD**

1. We thank you for your Memorandum 3 April 2000.
2. We agree with Mr. Quirk's Memorandum 28 March 2000.
3. The legislation is very restrictive and places high emphasis on the preservation of the status quo. To get the Department to move from the status quo is not going to be at all easy. For there to be any possibility of a movement then a comprehensive and compelling case will need to be made out.
4. The reality is that these areas of reserve are substantially inaccessible. A road of the kind contemplated would create greater accessibility and may be supportable on that basis. However we can see the impossibility of having public access on a road which is being used for high intensity log extraction.
5. If the log extraction were to be something that would be done and completed then a case could be made for allowing it on the basis that the road would then revert to public use for the purpose of accessing the reserve. However we would expect that the road will be needed on an ongoing basis and will never therefore be able to be made available for public use.

RADICH · DWYER · HARDY-JONES · CLARK

Barristers & Solicitors Temple Chambers 76 High Street Blenheim New Zealand

Partners: Peter Joseph Radich LLB Brian Patrick Dwyer LLB Michael Hardy-Jones LLB Christopher Thomas Clark LLB

Staff Solicitors: Andrew Paul Finch BSc. LLB Miles Matthew Edwards BA LLB Luke Peter Radich BA LLB (Hons)

Telephone: 03 578 5359 Fax: 03 578 0323 P O Box 646 Blenheim DX WC60007 Picton Office Mariners Mall Telephone: 03 5736224

Email: Enq@RadichDwyer.Co.NZ Website: www.RadichDwyer.co.nz/

6. If this option is to be seriously proposed then:
- At least a preliminary environmental impact report will be required. We would have thought that the completion of a full scale report would be a very major matter. A preliminary report would give some indication of the topography to be crossed and the type of flora (and possibly fauna) which would need to be disturbed.
 - Title searches should be obtained to see whose land apart from Crown land will need to be crossed.
7. We may not be able to assume that land outside the reserve will not attract concern from people concerned with the disturbance of the environment.
8. In the first instance we think that some preliminary report is required. This should be accompanied by photographs. This would give some indication of the likely chance of success with the Department.
9. We would like to discuss with you who would be a suitable person to prepare such a report.



P.J. Radich

To
Marlborough District
Council
P O Box 443
Blenheim

For
Mr A P Quirk
District Secretary

From
Denis Sheard
Brianna Parkinson

By
Fax: (03)578 6866

Date
8 September 2000

100
Office

FILE No.:
OFFICER:
DATE RECV'D 12 SEP 2000
MARLBOROUGH DISTRICT COUNCIL

Dear Mr Quirk

Forestry impact on roads - traffic restrictions

1. We refer to your letter of 24 July 2000 and our telephone conversation on 22 August 2000.
2. You have asked us to advise whether there is legislative authority for Council to impose a restriction on certain classes of heavy motor vehicles on a seasonal basis. The restriction would be imposed to minimise damage to the roading network during the winter months of May to October in each year.
3. We note that Council would prefer not to impose such restrictions by introducing a by-law under either the Transport Act 1962 or the Local Government Act 1974. Similarly, the Council would prefer not to have to introduce a change to the District Plan in order to secure its objectives. We also note that the Council has used the enforcement provisions of the Resource Management Act 1991 to abate damage to the roading network and in one case applied a differential rate which is then waived in return for a financial contribution for maintenance of the roading network. We assume the Council has exhausted all options for recovering the cost of damage to the roading network from Transfund (noting that this was the solution most often referred to in our discussions with other local authorities.)

Executive summary

4. The desirability of protecting roads from damage caused by heavy vehicles is recognised in legislation. The Transport Act 1962 ("TA"), in addition to giving the Council the authority to introduce by-laws prohibiting any specified class of heavy traffic or requiring compensation for special damage to roads, gives the Council the power to prohibit heavy traffic on specified sections of road. (But we note that section 70AA TA is to be repealed as from a date to be appointed by Order in

CHRISTCHURCH
Parendon Tower
76 Worcester Street
PO Box 322
DX WP20307
Christchurch
Tel 64-3-379 1747
Fax 64-3-379 5659

AUCKLAND
Telstra Business Centre
191-201 Queen Street
PO Box 1433
DX CP24024
Auckland
Tel 64-9-358 2555
Fax 64-9-358 2055

WELLINGTON
BNZ Centre
1 Willis Street
PO Box 2694
DX SP20201
Wellington
Tel 64-4-499 4242
Fax 64-4-499 4141

Council and the TA in its entirety will be repealed by the Land Transport Act 1998 ("the LTA") from 1 July 2005.)

5. The Heavy Motor Vehicle Regulations 1974 ("HMVR") also gives the Council the power to prohibit heavy traffic for a specified period if it considers on reasonable grounds that such a prohibition is necessary to protect a road from excessive damage. Both the TA and the HMVR allow the Council to control heavy traffic on specified roads on a seasonal basis. However, the power in the TA is expressed in general terms while the power in the HMVR is directed at the mischief of damage to roads by heavy traffic and recognises the need to periodically restrict heavy traffic to minimise such damage. The HMVR also gives a right of appeal, of sorts, to Transit New Zealand ("Transit"). For these reasons (and the fact that the TA will shortly be repealed) we would favour the HMVR over the TA as a means of enforcing seasonal controls on heavy traffic.
6. The main disadvantage with a prohibition under the HMVR is that it does not give the Council the discretion to waive the prohibition on a case by case basis. Once the prohibition is in place it applies, without exception, to every heavy vehicle of a specified class. An alternative to a complete prohibition is to classify the road as a "Class C" road under the HMVR. Heavy traffic is prohibited on any Class C road but dispensations may be granted on such terms as the Council sees fit, including the requirement to give security or pay a sum for any damage likely to occur to the road as a result of the operation of the heavy vehicle.
7. Were Council minded to use these legislative measures in favour of other measures (such as bylaws or controls in the district plan) then we would recommend that Council employ the prohibitions in the HMVR to abate damage to the roading network in the short term but consider classifying those roads most affected as Class C roads in the long term.
8. Our analysis of the HMVR suggests a number of disadvantages with these mechanisms. An alternative option may lie in the Minister's discretion to make ordinary rules under the LTA. However, this mechanism is new and untried. In any case we consider each of the options require further investigation with the relative costs and benefits of each option being carefully considered. Ultimately the Council will need to decide which of the various options provides the most practical and efficient system for achieving its objectives. We have some doubts whether regulation under the HMVR meets this requirement.

Prohibition – Regulation 10 HMVR and Section 70AA TA

9. Section 70AA TA gives the Council a broad discretion to prohibit heavy traffic on specified roads. The section provides that the Council in the case of any road under its control "*may from time to time, by public notice, direct that any heavy traffic, or any specified kind of heavy traffic defined in the notice, shall not proceed between any two places by way of any road or roads specified in the notice*". The Council is required to display notice of this prohibition in a prominent position on every road to which the notice applies. Every person who contravenes the requirements of the

notice commits an offence unless that person can prove that *"there was no other way reasonably available for the traffic concerned"*. The scope of this defence is uncertain but presumably could be relied upon in circumstances where the road in question is the only means of access.

10. The authority in section 70AA TA is stated in broad terms and not restricted to circumstances where heavy traffic is likely to cause damage to the road. The section also does not give operators of heavy vehicles any right of objection or appeal, although operators could probably bring an action for judicial review on grounds of procedural deficiency or reasonableness. In contrast, the power given in regulation 10 HMVR is more focused. Regulation 10(4) HMVR provides that the Council may *"if it considers on reasonable grounds it is necessary to protect a road from excessive damage, prohibit, during any specified period of not more than 12 months, the use on that road of heavy motor vehicles which exceed a specified axle weight"*. The Council's grounds for exercising the power under subclause (4) may be scrutinised by either Transit or the Land Transport Safety Authority ("the Authority"). Regulation 10(9) HMVR provides that *"if as a result of advice by [Transit], or of an inquiry, the Authority is of the opinion that the power given by ...subclause (4) of this Regulation in the case of any road has not been exercised in a reasonable manner, the Authority may, by notice in writing given to [the Council], revoke, wholly or in part the prohibition of the use of the road by heavy motor vehicles or any class of heavy motor vehicles"*. While it is not express an inquiry by either Transit or the Authority may presumably be triggered by a complaint from a heavy vehicle operator.
11. Although regulation 10 HMVR offers a more focused and reviewable power to control heavy traffic when compared with the broad power given in section 70AA TA, in our opinion Regulation 10 HMVR is the more appropriate mechanism for imposing seasonal controls on heavy traffic to prevent damage to roads. The HMVR gives the Council express authority to prohibit heavy traffic on these grounds and contemplates that such prohibitions will be applied on a short term or seasonal basis. Although the prohibition can be revoked by the Authority, we consider that unlikely if the Council can demonstrate that it was necessary to prevent damage to the road and that the power had been exercised in a reasonable manner by, for example, giving affected parties sufficient notice in advance. The "reasonableness" of Council's decision would also be strengthened if, for example, the power was only exercised as a last resort after the affected parties have breached voluntary agreements providing for the protection of roads. We also consider that this express power of review would reduce the risk of a disaffected party bringing proceedings for judicial review. In contrast, if prohibitions were imposed under section 70AA TA an affected party's only option would be to bring proceedings for judicial review.
12. To impose a prohibition under regulation 10(4) HMVR the Council must give public notice of the prohibition at least seven days before the commencement of the period of prohibition. Public notice is given by publication of a statement detailing the grounds for, and the general effect of, the prohibition in a local newspaper and by the erection and maintenance of signs at all entrances to the road or roads affected by

the prohibition. Once the prohibition is operative it is an offence for a person to operate the specified class of heavy vehicle on the road.

13. Where the Council imposes the prohibition on a seasonal basis the procedure of giving public notice and erecting signs will need to be followed each year. If the Council considers that the road requires protection for a period of more than 12 months then the Council may extend the period of prohibition for a further period of up to 12 months by giving public notice.

Classification – Regulation 3 HMVR

14. While the prohibition under regulation 10 HMVR allows Council to protect the roading network from damage caused by heavy vehicles it does not allow Council the flexibility to waive the prohibition. Once the prohibition is in place it is absolute and applies without exception to every heavy vehicle of the specified class. Clearly this lack of flexibility has the potential to hamper co-operative arrangements between the Council and road users. We consider that Council is more likely to encounter opposition in imposing a complete prohibition on the use of certain roads during specified periods than if Council were to regulate the use of roads so as to minimise or mitigate damage caused by heavy vehicles.
15. An alternative to a complete prohibition is to classify affected roads as “Class C” roads under regulation 3 HMVR. Where a road is classified as a Class C road Regulation 5 HMVR provides that no person shall operate any heavy motor vehicle on the road “*except for the purposes of the delivery or collection of goods... to or from locations directly accessible only from such roads*”. Although the word “goods” is not defined it is wide enough to include the products of forestry and marine farming. On that basis this exception has the potential to reduce the effectiveness of a classification under regulation 3 where, for example, the only practical access is along a Class C road. However, the language of the section appears to contemplate casual rather than regular use of the road. The words “delivery or collection” do not seem to have the same intensity as “cartage” or “haulage”, which are the words commonly associated with an intensive forestry activity. Conversely heavy goods “carted” on a daily or once-weekly basis may be said to be delivered or collected. The scope of this exception is therefore not clear. In any case, we would suggest that an operator who may be entitled to rely on this exception might be dissuaded from claiming that right if the alternative is for Council to impose a prohibition under regulation 10 HMVR. Alternatively for casual use, an operator may be persuaded to more frequent use of a smaller vehicle.
16. The prohibition on heavy traffic on Class C roads maybe waived by the Council on a case by case basis. Regulation 7 HMVR provides that the Council may “*issue a permit in writing for any heavy motor vehicle to be used under the authority of an appropriate road user licence on any road (being a road under the control of [the Council] and classified so as not otherwise to be available for the use of that heavy motor vehicle), subject to such conditions ... as [the Council] may think fit to impose*”. The conditions imposed on a permit may include the requirement to either give security to the Council or to make as cash payment to the Council for the likely cost

of repairing any damage that may occur to the road by reason of the operation of the heavy vehicle.

17. A permit issued under regulation 7 HMVR may be revoked by the Council if the Council considers that due to adverse climatic conditions the continued use of a heavy motor vehicle may cause extraordinary damage to the road. This power to revoke a permit, as opposed to suspending all permits for a specified period, would we suggest be both expensive and difficult to administer, since upon revocation reapplication would be necessary. It is however available as a last resort.
18. In our opinion the provisions in regulations 3 and 7 HMVR provide a balance between the Council's need to protect the roading network and the transport industry's need to use the roading network. The discretion to issue permits subject to conditions potentially allows Council to recover the full cost of any likely damage to the roads caused by heavy vehicles. Regulation 7 HMVR offers sufficient flexibility so that if an operator wishes to have a permit to use the road at times of the year when damage to roads is likely to be minimal the Council can structure the required contributions to meet estimated maintenance and upgrading costs resulting from that use. Where however an operator wishes to use the road all year round the Council can increase the contribution to a level that meets the full cost of maintaining, upgrading or repairing the road. This system requires operators to internalise the cost of their use of the roading network. Financial considerations will determine whether the operator then chooses to restrict its use of the road on a seasonal basis.
19. The procedure set down for re-classifying a road and granting permits is detailed. A copy of the relevant regulations is **enclosed**.
20. Regulation 3(4) HMVR provides that the Council may apply to the Authority for approval to reclassify any road in the control of the Council. Although the grounds for making an application are not clear, presumably it is made on the basis that the road would be likely to suffer excessive damage by heavy motor vehicles if not classified as a Class C road. To satisfy the Authority that the road should be re-classified the Council will probably be required to produce an engineering report demonstrating the probability of such damage. The need to satisfy this test may limit the number of roads which may be re-classified as Class C roads. For example, major roads are presumably designed to withstand greater pressures than minor roads and therefore are less likely to suffer "excessive damage" through use by heavy vehicles. The requirements of the Authority in this respect will require further investigation.
21. Before applying to the Authority the Council is required to give public notice identifying the roads to be reclassified and inviting any interested persons to lodge a written notice of objection before a specified date no earlier than 14 days after the date of publication of the notice. The Council could choose to be proactive and send copies of this notice to all owners of land adjoining the road (although this will depend on the number of adjoining owners.) Any objections received are forwarded to the Authority with the application. The Authority may approve the proposed classification as notified by notice in the Gazette or modify the proposed

classification in accordance with any objections received and then approve the classification by notice in the Gazette. Once the re-classification of the road has been approved the Council must give public notice of the classification and erect and maintain prescribed signs on the road.

22. Any person who lodged an objection may appeal to Transit to alter the classification. In addition to the rights of an objector to refer the classification to Transit, regulation 3(17) provides that *“any operator of a motor vehicle to which a current road user licence relates who claims that his or her operations are adversely affected by a classification of a road ... may apply to the controlling authority not earlier than 12 months after the date when the classification was last altered for the classification to be altered”*. The Council may at its sole discretion alter the classification. If the Council does not alter the classification the operator may appeal to Transit to alter the classification.
23. Once a road is classified as a Class C road the Council can waive the prohibition in two ways:
 - (a) The Council can temporarily remove the prohibition on heavy traffic by declaring that a Class C road shall become a Class I road for a specified period (Regulation 10(14) HMVR). Council must send a copy of the declaration to the Authority and give public notification of the declaration no later than 7 days after the declaration is made. Signs giving notice of the temporary classification must be erected on the relevant roads for the whole of the period during which the temporary classification has effect.
 - (b) The Council may issue a permit authorising the holder of a current road user licence to operate a heavy motor vehicle on the road (Regulation 7 HMVR, discussed in paragraph 15 above).
24. The discretion to waive the Class C prohibition on heavy traffic as outlined in subparagraphs 23 (a) and (b) potentially gives Council a considerable degree of flexibility in its control of the road network. A temporary reclassification of a Class C road could be utilised to impose seasonal restrictions on use of the road by heavy traffic. By way of example, the classification could be temporarily altered in the spring and summer months of November to April and reinstated in the autumn and winter months of May to October. This would have a similar effect to a prohibition on heavy traffic imposed under regulation 10 HMVR. The relative ease (or so it appears) of effecting a temporary alteration to the classification also means Council could adopt a “wait and see” approach, only removing the temporary classification as a Class I road when the weather conditions warrant the additional protection provided by a Class C classification. An alternative or complementary option is to grant permits to operators who are willing to make a contribution towards maintenance of the road network. As discussed in paragraph 17 above, we consider that permits, and the contributions in relation to such permits, could be structured to take account of seasonal restrictions.

25. However there are apparent difficulties with the cost recovery system. In utopia the road operator would apply for a permit, accept your calculation and pay you a cheque up front. In reality we suspect there will be difficulties with:
- (a) Establishing the link between use and damage. Where minor roads are involved with little other heavy vehicle traffic this may be relatively easy. That will not be the case with busy roads with multiple users.
 - (b) Calculating the payment. There will be some who will argue for a "100% user pays" approach and others who will say that it is not appropriate in every case. In the latter case it is argued that as the whole community enjoys the economic benefit of increased commerce and employment from activities such as forestry and marine farming there should accordingly be a community contribution through rates to increased roading costs from such activities. Most argument will invariably centre on the appropriate balance between the two extremes.
 - (c) Targeting the cost of the payment. The payments are imposed as a condition of the permit, upon the holder of a road user licence. Invariably this will be an independent contractor to the forest or marine farm owner. Commonly that contractor will be a Council resident and ratepayer. If work is short all that may happen is that margins will be shaved to secure work so that ultimately the cost is met by the contractor.
 - (d) Recovering payment. Contractors stumping up cash bonds for the full amount will be very rare. Bank, or other, guaranteed bonds are a possibility but there is a cost to such guarantees and security is usually required. The level of security required is often not easily achieved. If Council is an unsecured creditor it is not difficult to imagine that some contractors will plead poverty and the risk of redundancies from insolvency will lead to less than rigorous recovery action.

Ordinary rules – Land Transport Act 1998

26. As noted, the TA will be repealed in its entirety by the LTA from 1 July 2005. The new legislation offers a possible alternative to the HMVR system of prohibition and classification.
27. Section 157 LTA provides that the Minister may from time to time make "ordinary rules" for a number of purposes including:
- (a) Regulating the use of roads, and empowering local authorities to control, restrict and prohibit traffic on roads vested in the local authority.
 - (b) Providing for the classification of roads according to their suitability for use by different classes of motor vehicles.

These ordinary rules may apply generally throughout New Zealand or within a specified part or parts of New Zealand (section 160 LTA).

28. The procedure for making an ordinary rule is relatively simple. Before making an ordinary rule the Minister is required to publish a notice in the Gazette and a daily newspaper in each of the main centres. The notice must give interested persons a reasonable period of time in which to make submissions. The Minister must also consult with such organisations and representative organisations as the Minister considers appropriate. An ordinary rule must be notified by notice in the Gazette and comes into force 28 days after notification.
29. Section 157 LTA gives a broad discretion to the Minister and it is difficult to predict how the Minister will exercise this discretion. It is possible the Minister may be willing to make an ordinary rule, either on a district or New Zealand wide basis, which authorises the Council to control heavy traffic on its roads and to require a contribution for damage to the roads. In our opinion this possibility warrants further investigation. Because the legislation is permissive rather than prescriptive an ordinary rule could overcome many if not all of the difficulties raised in relation to the HMVR. On the other hand the Minister may be unwilling to make ordinary rules dealing with matters already covered by the HMVR.

Conclusion

30. While we consider that the provisions of the HMVR could be used to meet Council's objectives the relative advantages and disadvantages of these mechanisms as against other mechanisms, and the exact requirements for re-classifying roads, require further investigation. Some of the advantages and disadvantages we have identified are:
- (a) Relative flexibility allowing the Council to impose controls on a seasonal basis. However, the same degree of flexibility is not available in inclement weather where Council's only option is to revoke all permits authorising heavy traffic. Wet weather is of course not limited to winter.
 - (b) The rights of "appeal" for affected parties.
 - (c) The cost recovery powers in regulation 7(8) HMVR, which could be structured to create a user pays regime. Against this are the difficulties with proof of damage where there are multiple road users, linking the contributions to the operators and security.
 - (d) Limited provision for the recovery of administrative expenses (the fee for issuing a permit is set in Schedule 4A HMVR at \$54.55 or \$63.64 where the application is required to be processed in less than 3 days). We would expect that the administration costs of operating such a system would not be minor.
 - (e) The relatively technical advertising and notice requirements, particularly in relation to re-classification.
 - (f) The need to satisfy the "C" test of likely excessive damage through use by heavy motor vehicles. It is not apparent how the Authority would apply this test nor what engineering evidence would be required.

31. We suspect the provisions of HMVR are rarely used. In the course of preparing this opinion we contacted Selwyn, Hurunui and Banks Peninsula District Councils and were advised that none of these Councils have had cause to use the provisions of the HMVR. It is possible that some of the Council's in the North Island with significant forestry plantations in their districts may have resorted to the HMVR following the failure of voluntary agreements. An inquiry of the Authority may also result in some useful information on the use and application of the HMVR. It may be that the provisions are little used because there are fishhooks not apparent on a first view. If you propose to pursue this option we would recommend such inquiry and would be happy to undertake that inquiry on your behalf. We would also recommend investigating the option of ordinary rules under section 157 LTA, as this section potentially offers a much more flexible system of regulation to the HMVR.
32. If you have any other queries please telephone me.

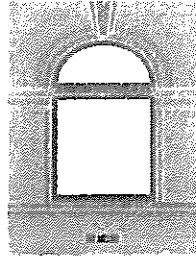
Yours faithfully
BUDDLE FINDLAY

B. Parkinson

Brianna Parkinson
Solicitor

Direct dial: 0-3-371 3572
Email: bparkinson@budfin.co.nz





TEMPLE CHAMBERS
Est. 1865

RECEIVED

15 SEP 2000

MARLBOROUGH
DISTRICT COUNCIL

MEMORANDUM

f04c

DATE: 15 September 2000
TO: Marlborough District Council
Attention: Tony Quirk
FROM: Peter Radich
RE: FORESTRY ROADING

1. We thank you for your Memorandum 11 September 2000.
2. The issue as we understand it is:

Forestry vehicles are continuing to use the Port Underwood road. In dry conditions this is probably acceptable. In wet conditions excessive damage is being done to the road. The questions are what can and should Council do about this.
3. We have reviewed the numerous opinions on our file which go back to January 1979.
4. All of the opinions say that by one means or another Council can control heavy logging traffic should it wish to do so.
5. There are two or possibly three favoured means of doing this, each of the means has advantages and disadvantages. In the end however we believe that effective means of control exist.
6. It is difficult for Council to target forestry vehicles alone. In other words it is difficult to target the nature of the load as opposed to the size and configuration of the vehicle. Thus if a net is to be put out to catch forestry vehicles you have to expect that some other vehicles of similar size will get caught up in it.

RADICH v DWYER v HARDY-JONES v CLARK

Barristers - Solicitors - Notary Public - Temple Chambers 76 High Street Blenheim New Zealand

Partners: Peter Joseph Radich LLB Brian Patrick Dwyer LLB Michael Hardy-Jones LLB Christopher Thomas Clark LLB

Associate: Andrew Paul Finch BSc. LLB Staff Solicitors: Miles Matthew Edwards BA LLB Luke Peter Radich BA LLB (Hons)

Telephone: 05 578 5559 Fax: 05 578 0323 P O Box 646 Blenheim DX WC60007 Pictou Office Mariners Mall Telephone: 05 5736224

Email: Enq@RadichDwyer.Co.NZ Website: www.RadichDwyer.co.nz/

7. We expect that the present problem is not so much a problem about the means of controlling forestry traffic but indeed whether it is seen to be appropriate and politically acceptable to do so especially when controls may well affect other vehicles.
8. We think that before we go further into the means of achieving control Council needs to ask itself some broad questions:
- If it were possible to prohibit specified heavy vehicles from using the road would Council wish to do that Yes in certain conditions.
 - Would such prohibition be year round or would it be targeted to certain months of the year Year round but also closed winter season.
 - If targeted to certain months of the year would Council have a concern if wet weather outside those months resulted in damage Yes.
 - If it were possible to do so would Council like to selectively target logging vehicles leaving other vehicles such as mussel-recovery vehicles free to use the road Should be all heavies - but Timberland unlikely to be needed by mussel trucks.
 - Would the prohibition be intended to be semi-permanent or short duration. Assume Semi permanent.
9. Once we know what your wishes are we can better advise you on the appropriate mechanism to achieve them.



P J Radich

MDC - Forestry Roading.njl

N.B. This is only intended to provide protection in wet weather. It is not a long term solution to the bigger problem obviously.

However if Peter has any ideas or including an interim quota arrangement (around volume) with weather restrictions we'd be happy to listen.

Mark



TEMPLE CHAMBERS
Est. 1865

f-04c

MEMORANDUM



TO: Marlborough District Council **YOUR REF:**
ATTN: Tony Quirk
FROM: Peter Radich **OUR REF:**
DATE: 12 February 2001
SUBJECT: **FORESTRY IMPACTS ON ROADS**

1. We refer to our discussions and Memoranda.
2. We were amongst us, trying to find a means by which we could target certain types of heavy traffic and prevent the targeted heavy traffic from using roads while allowing non targeted heavy traffic of a similar configuration to use the roads.
3. Essentially what we were trying to do was isolate forestry traffic while allowing other heavy vehicles carrying different loads (e.g. mussels) to use the roads.
4. The approach can be justified on the grounds:
 - When full scale forest harvesting is taking place the impacts on the roads are far greater in volume terms than the impacts of other traffic.
 - Forest harvesters may have some other practical means of taking out roads (barging) whereas other users may not.
 - Other users are regular but infrequent whereas forestry users will during harvest periods be high volume and high frequency.

RADICH , DWYER , HARDY-JONES , CLARK

Barristers - Solicitors - Notary Public - Temple Chambers 76 High Street Blenheim New Zealand

Partners: Peter Joseph Radich LLB Brian Patrick Dwyer LLB Michael Hardy-Jones LLB Christopher Thomas Clark LLB

Associate: Andrew Paul Finch BSc. LLB

Telephone: 03 578 5339 Fax: 03 578 0523 P O Box 646 Blenheim DX WC60007 Picton Office Mariners Mall Telephone: 03 5736224

Email: Eng@RadichDwyer.Co.NZ Website: www.RadichDwyer.co.nz/

5. The powers in Section 70AA of the Transport Act 1962 are crude and unsophisticated. They allow Council to direct that *any heavy traffic, or any specified kind of heavy traffic defined in the Notice, shall not proceed between any 2 places by way of any road or roads specified in the notice.*

6. Council can therefore prohibit:
 - Any heavy traffic; or
 - Any specified kind of heavy trafficfrom using a particular road.

7. When there is a reference in the Section to a specified kind of heavy traffic we think that the legislature must have been contemplating the physical characteristics of the heavy traffic or the classification of the heavy traffic rather than the components which result in the characteristics or the classification. In other words the Section does not seem to be sufficiently sophisticated to allow for Council to prohibit logging traffic from using a road while at the same time allowing aquaculture traffic to use the road.

8. As we look at the legislation it occurs to us that there may be another means of achieving the end result. Logging traffic is going to come from points beyond Oyster Bay whereas aquaculture traffic is unlikely to be going beyond Oyster Bay. If it were to be going beyond Oyster Bay then transport arrangements could perhaps be modified to allow all unloading of mussels to be over the wharf at Oyster Bay.

9. If therefore you chose a key section of road which has to be used by logging traffic but does not need to be used by aquaculture traffic, and placed a prohibition on the use of that road by a particular type of heavy traffic, then the purpose ought to be achieved.

10. Under this regime you would not, at least in the initial stages, prohibit the use of the road from Oyster Bay through to Picton by heavy traffic. You would prohibit the use of other roads so that a laden logging truck could not as a matter of reality get onto the section of road from Oyster Bay to Picton.

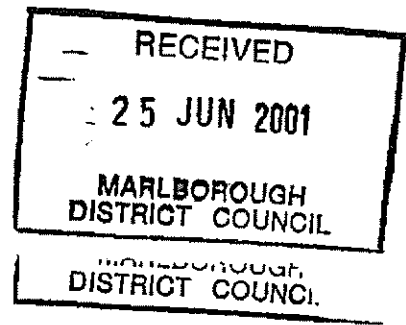
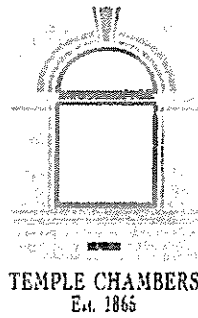
11. What we are saying in other words is that while the legislation in an overall sense is not very sophisticated and may be too unsophisticated to achieve the desired result, we can apply the unsophisticated legislation in a sophisticated way to achieve the end result.

12. We do not know the geography as well as you do and we may have seen an answer which is not there on account of geographical difficulties. The question really is whether a logging truck carrying a load could get onto the roadway between Oyster Bay and Picton by circumventing the roads in respect of which use by logging trucks would be prohibited.
13. We look forward to your advice.

A handwritten signature in black ink, appearing to be 'P.J. Radich', with a large loop at the top and a vertical stroke at the bottom. To the left of the signature are the initials 'PP'.

P.J. Radich

email address: peter@radichdwyer.co.nz



MEMORANDUM

TO: Marlborough District Council **YOUR REF:**
ATTN: Tony Quirk
FROM: Peter Radich **OUR REF:**
DATE: 21 June 2001
SUBJECT: **FORESTRY ROADING**

1. We are giving a short report following our meeting of this morning and while matters are still fresh in mind.
2. The points which came out of the meeting were:
 - Council is not looking at a solution which may give some short term relief but which does not deal with the long term problem (*the cork in the bottle solution*).
 - Council is biased towards a solution which will see the bulk of the logs extracted across the water.
 - It is recognised that some residual logging traffic may have to go across the existing road system.
 - Any residual traffic using the roading system would need to pay a levy of some kind.
 - The option of a Bylaw to keep the bulk of the traffic off the Whatamongo road was favoured.
 - The desirability of Council taking an active role in trying to find some barging solutions was recognised.

RADICH · DWYER · HARDY-JONES · CLARK

Barristers - Solicitors - Notary Public - Temple Chambers 76 High Street Blenheim New Zealand

Partners: Peter Joseph Radich LLB Brian Patrick Dwyer LLB Michael Hardy-Jones LLB Christopher Thomas Clark LLB

Associate: Andrew Paul Finch BSc. LLB

Telephone: 03 578 5339 Fax: 03 578 0523 P O Box 646 Blenheim DX WC60007 Picton Office Marinera Mall Telephone: 03 5736224

Email: Enq@RadichDwyer.Co.NZ Website: www.RadichDwyer.co.nz/

3. Please confirm that we have correctly understood the general thrust of Council's policy. If so we will start thinking about a Bylaw.
4. The question of Opua Bay needs to be revisited against this background.

A handwritten signature in black ink, consisting of a large, sweeping initial 'P' followed by a series of horizontal strokes.

P.J. Radich

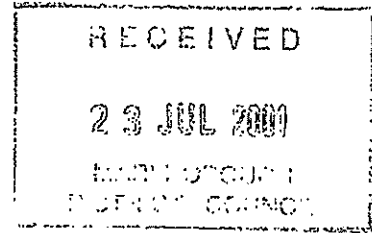
email address: peter@radichdwyer.co.nz

sas.mdc.forestry roading



19813
TEMPLE CHAMBERS
Est. 1865

10



MEMORANDUM

TO: Marlborough District Council YOUR REF: *fotc*
ATTN: Tony Quirk
FROM: Peter Radich OUR REF:
DATE: 23 July 2001
SUBJECT: TRAFFIC BYLAW

1. This Memorandum relates to:
 - Chapter 4 of the Bylaws being the proposed Traffic Bylaw
 - The situation in relation to impacts by logging vehicles on roads
 - The Rainbow Road situation
 - Any other similar situations.

2. Chapter 4 of the Bylaws is a Chapter which is intended to have general application in relation to traffic. We agree with the comment of Tony Quirk, that it is better for all Bylaws relating to traffic matters to be collected in the same general document rather than for there to be *one off* Bylaws to cover particular situations. Not only is that better from a point of view of tidiness, it is also better in that if a general Bylaw is enacted, it will cover similar future situations not just the particular situation in immediate contemplation.

RADICH DWYER HARDY-JONES CLARK

Barristers - Solicitors - Notary Public - Temple Chambers 76 High Street Blenheim New Zealand

Partners: Peter Joseph Radich LLB Brian Patrick Dwyer LLB Michael Hardy-Jones LLB Christopher Thomas Clark LLB

Associate: Andrew Paul Finch BSc, LLB

Telephone: 03 578 6339 Fax: 03 578 0323 P O Box 646 Blenheim DX WC60007 Picton Office Mariners Mall Telephone: 03 5736224

Email: Enq@RadichDwyer.Co.NZ Website: www.RadichDwyer.co.nz/

3. We have therefore commenced drafting a further Section of the Traffic Bylaw and the first draft is as follows:

415 Special Road Use Restrictions

415.1 *This clause 415 of this Bylaw applies to the following roads only:*

- (i) *Roads which on account of their location, type of formation, vulnerability to adverse climatic conditions, vulnerability to excessive damage or other factors may need to become subject to closure or restrictions of use for purposes including safety, and protection of the road structure and surface; and*
- (ii) *Roads which have been designated by Council as being roads to which this clause 415 applies.*

415.2 *In respect of any road to which this clause 415 applies, Council may by resolution:*

- (i) *Close any such road to all motor vehicles for a period not exceeding six (6) months in any one (1) calendar year commencing on 1 January.*
- (ii) *Restrict the type, class, size, or weight of motor vehicles which may use such road for such period or periods as Council shall resolve, including, if Council so resolves, an indefinite future period to be ended by further resolution of Council to the effect of ending the restriction.*

415.3 *Except in the case of an emergency, before any resolution in terms of clause 415.2 may be passed, Council must first give public notice of its intention to consider such resolution.*

415.4 *An emergency such as to remove the need for public notification in terms of clause 415.3, shall be a situation where the needs of safety or the need to protect the road are of such urgency that the public notification requirement cannot reasonably in Council's opinion (as recorded by resolution) be followed.*

415.5 *Every resolution in terms of 415.2 shall specify the date and time of the commencement of the restriction referred to in such resolution.*

415.6 *Every resolution in terms of 415.2 shall forthwith be publicly notified by Council and shall to the extent specified in such resolution be [dealt with by signposting etc].*

415.7 *Except in an emergency [provision to state that no person may use any vehicle on any road contrary to any such resolution].*

4. You will see from the foregoing, the direction in which our thinking is going. Before we go too much further, we need to know whether our thinking is consistent with yours. We also need to have some further inputs from you.

5. Would you accordingly please address the following questions:

(a) Whether in general terms the above approach is acceptable to you

(b) Whether you are happy with the two stage process contemplated in the Bylaw, i.e. first the general designation of relevant roads, and secondly (when the need arises) the resolution by way of restriction. We have suggested this process because the right to pass and repass over roads is seen as a fundamental right not to be lightly interfered with. We think that a two stage process would show that Council had no intention of likely or capriciously interfering with rights of access. Furthermore, we think that the general categorisation of certain roads as being roads to which the situation may be applied, gives people some forewarning. The downside is that in a sudden emergency the provisions of this part of this Bylaw could not be used in respect of a road which had not been generally categorised as being potentially subject to restriction in terms of this part of this Bylaw.

(c) Whether this should correctly be seen as being a Council matter as opposed to one which could be delegated by Council to a committee or to officers

- (d) Whether there are any factors other than safety or road damage which could give rise to a need to restrict the use of the road
- (e) Whether signposting is practicable (we do think there is a need for signposting)
- (f) What form of notification in terms of the Bylaw should be given. For example should it extend to written notification to all landowners with frontage on to the road. If so should that notification be at stage one or stage two or both (we favour stage one only).

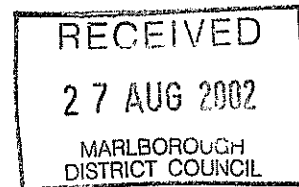
6. There are some major issues arising out of the foregoing but we do believe that it will be possible, with care, to get to a point where an effective Bylaw structure is in place.

7. We look forward to your response.



P J Radich

Draft for Tony
Quirk



YOUR REF:L135-F04C
OUR REF:MAR90000.831

TO: Marlborough District Council
ATTN: Tony Quirk
FROM: Peter Radich
DATE: 27 August 2002
SUBJECT: FORESTRY IMPACTS ON ROADS

1. You have asked us to give you another overview of Council's capacity to deal with the problem of Forestry impacts on roads.
2. Council has available to it pursuant to various authorities a variety of powers. In general terms the powers to deal with this situation arise in the following contexts:
 - By way of Bylaws
 - Pursuant to RMA
 - Pursuant to old planning conditions imposed
 - Pursuant to Section 70 AA Transport Act 1962
 - Pursuant to the Heavy Motor Vehicle Regulations 1974

Bylaw Making Power

3. Council has power to make Bylaws:
 - Pursuant to the Local Government Act 1974 Section 684.
 - Pursuant to the Transport Act 1962 Section 72.
4. The Bylaw making power in the Local Government Act is expressed in this way:

".....Council may from time to time make such Bylaws as it thinks fit for all or any of the following purposes:

- (13) *Concerning roads and cycle tracks and the use thereof, and the construction of anything upon, over, or under a road or cycle track".*

5. The Bylaw making power in the Transport Act 1962 is expressed in this way:

".....any Local Authority in respect of any roads under its control, may from time to time make Bylaws for any of the following purposes:

- (d) Prescribing the routes by which and the times at whichspecified classes of vehicles may pass over any such roads;.....except with the permission of the Local Authority..... and on such conditions.....as the Local Authority thinks fit;*
- (e) Providing for the giving and taking of security by or from any person so that no special damage will occur to any road.....by reason of any heavy traffic thereon;*
- (f) Prohibiting any specified class of heavy traffic that has caused or is likely to cause serious damage to any road unless the cost of reinstating or strengthening the road, as estimated by.....the Local Authority is previously paid.*
- (g) Providing for the annual or other payment of any reasonable sum by any person concerned in any heavy traffic by way of compensation for any damage likely to occur therefrom to any road.....:*
- (h) Providing for the establishment, in accordance with Section 361 of the Local Government Act 1974, of a toll to be levied on any class of heavy traffic.*
- (i) Prohibiting or restricting absolutely or conditionally any specified class of traffic (whether heavy traffic or not), or any specified motor vehicle or class of motor vehicle which by reason of its size or nature or the nature of the goods carried is unsuitable for use on any road or roads specified in the Bylaw.*
- (j) Fixing, for the safety of the public or for the better preservation of the road, the maximum speed of vehicles or of specified classes of vehicles on any road.*

6. In relation to the Bylaw making power we make the following comments:

- The powers are generally directed at a specified class or classes of heavy traffic. We do not believe that it would be permissible to differentiate between different classes of traffic on the basis of, for example, the type of load (as opposed to the weight or other physical characteristics of the load).
- There is broad Bylaw making power.
- Bylaw's of course must be *reasonable*.
- In the case of a Bylaw made under the Transport Act it must be approved by the Minister of Transport. That ought to be seen as a useful means of obtaining some external verification of the Bylaw.



Planning Conditions

7. The preparation of a Bylaw *concerning roads* is a real option.
8. When the forests in Port Underwood were being established the establishment proposals were required to be the subject of applications for planning approval. The potential problem of damage to roads during the extraction phase was recognised and anticipated.
9. In the case of many of the Port Underwood forests conditions were imposed to the effect that the extraction of forest products was not permitted where the extraction involved the use of Council's roads in the area.
10. These conditions in our view remain in place unless they have been waived or unless their effect has in some way been compromised by subsequent planning instruments issued by Council.
11. We urge you to endeavour to hold the strength of those conditions to the extent possible by writing to the forest owners involved and reminding them of the existence of the conditions.

RMA

12. The problem that arises is essentially a resource management problem. Council is given abundant powers under RMA to deal with this issue as a Resource Management issue.
13. The options under RMA include:
 - Taking preventative or prohibitive action to stop or curtail immediate impacts.
 - The putting in place of a proper planning regime to deal with the overall issues.

14. We have previously given you advice that options were available to you under RMA to take prohibitive or curtailment measures in the event of damage to a road occurring or being anticipated. This action however would need to be responsive to a particular situation rather than a general action.
15. On the basis that we consider this to be an overall problem of resource management it continues to be our view that the issues should be addressed and resolved in the District Plan process. We take the view that Council cannot *duck* this issue in resource management terms and should be coming up with a proper planned resolution instead of thinking of one off ad hoc preventative actions.

Transport Act 1962 Section 70 AA

16. This section gives Council power to prohibit specified types of heavy traffic from proceeding along specific roads. We see this power as one to be used for stop gap purposes rather than as a permanent planned solution to the issues. We also note that the section is to be repealed as from 1 July 2005.

Heavy Motor Vehicle Regulations

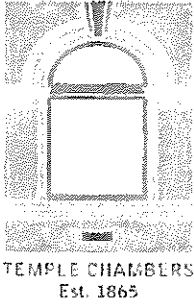
17. There are stop gap powers in the regulations enabling Council to prohibit the use by heavy traffic of roads for specific periods in order to prevent undue damage. Again we do not see a provision of this kind as being appropriate for the resolution of what is a major economic issue.

Our General Opinion

18. We come back to the point that this is a resource management issue which should be dealt with in District Plan terms under RMA. While we appreciate that there are some difficult planning issues to address we nevertheless think that these difficult issues are best addressed in this context.
19. Our second preference is for a Bylaw to be enacted to contain the problem to the extent that it can be.
20. May we therefore suggest that the focus be on dealing with this potential problem in District Plan terms and that a policy be developed under RMA. If the development of a policy is going to take some time and if in the meantime there are likely to be adverse impacts then these can be dealt with in one or more of the following ways:
 - Enforcement action under RMA to prevent damage to resources.
 - Bylaws.
 - Enforcement of old planning conditions.

- In specific situations action under the Transport Act or the Heavy Motor Vehicle Regulations.

PETER RADICH



Radich Dwyer

BARRISTERS · SOLICITORS · NOTARY PUBLIC

76 High Street
PO Box 646
DX WC60007
Blenheim
New Zealand
Tel: +64 3 578 5339
Fax: +64 3 578 0323
Email: enq@radichdwyer.co.nz
Web: www.radichdwyer.co.nz

YOUR REF: L135-FO4C
OUR REF: MAR90000-831

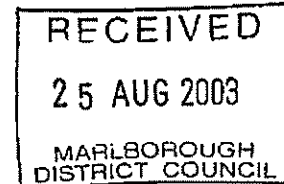
TO: Marlborough District Council

Attention: Tony Quirk

FROM: Peter Radich

DATE: 25 August 2003

SUBJECT: **FORESTRY ROADING ISSUES**



1. We refer to our discussions earlier this week.
2. The same issues which we have been collectively addressing for near 30 years remain problematic. The basic problem is the reconciliation of the interests of forest owners who wish to extract logs with those of Council which wishes to protect its roading system but nevertheless wishes to allow it to be properly used and those of the public where issues of safety and absence of undue disturbance arise.
3. For the record there are various mechanisms available to Council to enable it to control the use of its roading system. We have been through these mechanisms so many times that we do not set them out again in detail but merely make some short comments:

(a) **The Resource Management Act 1991.**

- (i) This allows Council to take immediate action where there is undue damage to a resource such as Council's roading system. The Act also allows Council to put in place long term resource management measures providing for the use of its roads and the logging of forest produce.
- (ii) The immediate protection measures are only available where there has been some damage or there is some imminent damage. They are more in the way of reactive mechanisms than forward looking planning mechanisms.
- (iii) The long term forward looking resource management measures that could be put in place would in our view be the best means of dealing with this issue. However, over the years nothing has been done to develop such measures as part of the planning process as probably these have been in the

Partners: Peter Joseph Radich LLB, Brian Patrick Dwyer LLB, Michael Hardy-Jones LLB, Christopher Thomas Clark LLB, Not. Pub., Andrew Paul Finch LLB, BSc.

Associate: Miriam Radich LLB(Hons), LL.M(Duke), Attorney at Law (New York)

Staff Solicitors: Martyn Wilson LL.M (Hons), BCM, Stephanie Ginders LLB, BA, Claire Mills LLB, BSc.

Practice Manager: Jim Ward

too hard category. Before any measures could be introduced now there would need to be thought as to what those measures should be, there would need to be consultation and then a long statutory process would follow before any effective impact could be achieved. This latter process would be too slow to deal with the existing situation. Ideally such a process should have been started years ago.

(b) **The RMA conditions.**

- (i) Some 25 years ago the then Marlborough County Council imposed conditions prohibiting the use of Council's roading system in certain circumstances for harvesting of forest produce. Those conditions remain in place and probably have some effective power.

(c) **Heavy Motor Vehicle Regulations.**

- (i) The Heavy Motor Vehicle Regulations 1974 contain power in Regulation 10 allowing Council to prohibit absolutely or conditionally the use on any specified road of heavy motor vehicles or of any specified class of heavy motor vehicle during any specified period or series of periods.
- (ii) This power can be effectively used in certain circumstances and has been effectively used by Council in the past. However the power is a blunt instrument which can only be applied as against all heavy motor vehicles or any specified class of heavy motor vehicle. Thus you would not be able to differentiate between heavy motor vehicles according to the commodity carried. The mechanism is like a net which can be designed to catch creatures of a certain size and configuration such that any creature which meets that size and configuration gets caught. In the case of your roading system if you set out to catch logging trucks you would also end up with a bycatch of livestock and mussel trucks.

(d) **Transport Act 1962.**

- (i) Section 70 AA allows Council to exclude heavy traffic or any specified kind of heavy traffic from passing over a particular road. However there is a qualification which allows the use of the road notwithstanding the prohibition if there is *no other way reasonably available* for the traffic concerned.

(ii) The problems with Section 70 AA are similar to those with Regulation 10. There is the additional problem of Section 70 AA not being effective if there is no alternative access.

(e) **Bylaws.**

(i) Council has under the Transport Act 1962 and, to a lesser extent under the Local Government Act 2002 the power to make bylaws. In our view the bylaw making power under LGA 2002 is too narrow to be effective in this context. However, we believe that the bylaw making power under the Transport Act 1962 is wide enough to enable effective bylaws to be produced in the present context.

Evaluation

4. Looking at all of the options it seems to us that the option likely to be most effective is the bylaw option. All of the other options have problems associated with unsophisticated blunt instruments or problems on account of time delays. There would be time delay problems under the bylaw option but these are likely to be less than under some other options.

Bylaws

5. As a general proposition we think that the power of bylaws is often underestimated in the community and indeed by some lawyers. The strength of bylaws was demonstrated by Council's navigation bylaw relating to the fast ferries. Where bylaws are carefully and properly shaped and where a proper process has been gone through they can become effective control mechanisms.
6. Your present intention is to endeavour to establish a regime whereby some logging traffic will be allowed over Council's roads and other logging traffic will be kept off Council's roads.
7. In your existing bylaw there is a bald power given to Council to prohibit the use of roads. This prohibition is similar to the prohibition powers contained in Regulation 10 and Section 70 AA.
8. At the present time there is no exemption power under Council's bylaws and therefore if you applied the prohibitory mechanism in Council's bylaw it would be an application which would impact 100% against all of the traffic involved in the particular classification.
9. The question has been asked whether that impact could be ameliorated by now introducing an exemption provision which would allow the desired traffic to pass but not the undesired traffic to pass. The suggested distinguishing feature would be whether the logs were destined for export or destined for local consumption.

10. We consider that it ought to be possible to develop a bylaw which will allow you to keep the undesirable traffic off the road yet allow the desirable traffic onto the road. For obvious reasons we cannot give you an absolute assurance about this and what we are expressing is a matter of opinion.
11. We do not like the idea of trying to add to the existing bylaw structure by including an exemption power of a general nature to then allow the exemption power to be used for the specific purposes of addressing logging traffic. We recognise that you would like to take this course to avoid undue controversy being created during the bylaw stage. If the exemption power is expressed in general terms and does not refer to logging traffic then, the argument goes, it is more likely to get through without difficulty and in combination with Council's existing bylaws produce a result which could be used in the logging context.

Preferred Course

12. Our preferred course is:
 - To be open about what is intended to be produced as a bylaw mechanism for dealing with forestry traffic
 - To draft a bylaw which contains specifics relating to particular traffic situations and to circumstances where an exemption may be granted.
13. We know that you take the view that this will attract a lot of opposition and that it might be difficult to complete the process. The fast ferry bylaw produced some firm opposition from shipping interests yet nevertheless the desired outcome was accomplished.
14. Our concern is that if we go about the option you would prefer, it will not be effective. Our concern is that you will end up thinking that you may have an effective bylaw structure but that it will break down under pressure causing Council discomfort in the public arena.
15. We think that a specific bylaw properly addressed and produced after a proper consultation process would be far less likely to break down under pressure.
16. While there may be a view that if any bylaw produced breaks down under pressure then so be it our own view is that this can only be the case if the bylaw produced is the best that can be produced. We are not happy about going forward with a second or third best option, having it break down under pressure and then having to face all of the consequences of no adequate mechanism being in place.

17. We need to recognise that at some point the bylaw and the process leading to the bylaw will come under heavy pressure. That may be during the formation stage if our preferred course is taken. If what may be your preferred course is taken then the pressure will come at a later stage when attempts are made to enforce the bylaw. Frankly we would rather face problems in the formation stage than face problems during the attempted enforcement phase.
18. Our final reason for taking this position is one of intuition. It is sometimes not possible to articulate all of the reasons why one course is preferred over another. It becomes a matter of intuitive judgement based on past experience which is hard to isolate into its components. Put another way, our broad judgement is that our preferred course of a properly crafted bylaw is the best course.
19. We look forward to receiving your further comments and instructions.

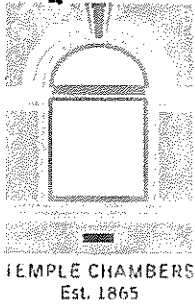
Yours sincerely



P.J. Radich

email address: peter@radichdwyer.co.nz

Sp.MDC – Forestry Roding Issues.pr



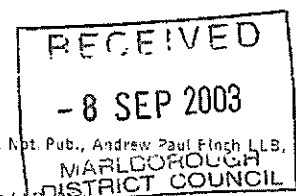
Radich Dwyer
BARRISTERS · SOLICITORS · NOTARY PUBLIC

76 High Street
PO Box 646
DX WC60007
Blenheim
New Zealand
Tel: +64 3 578 5339
Fax: +64 3 578 0323
Email: enq@radichdwyer.co.nz
Web: www.radichdwyer.co.nz


YOUR REF: L135-FO4C
OUR REF: MAR90000.831

TO: Marlborough District Council
ATTN: Tony Quirk
FROM: Peter Radich
DATE: 8 September 2003
SUBJECT: FORESTRY ROADING ISSUES

1. We thank you for your Memorandum of 27 August, 2003.
2. We are giving thought to a form of *contract*.
3. We believe that there are real difficulties in trying to enforce a contract where the entitlement surrendered by forestry interests is a lawful entitlement to use Council's roading system (in the absence of special circumstances).
4. Generally we do not believe that such a contract would be enforceable.
5. We think that what you are perhaps meaning is something in the nature of an accord or understanding. While this would not be legally enforceable it would indicate the circumstances in which Council may take other action of a legally effective kind. Any such document would of itself need to be carefully drawn as Council cannot tie it's hands against using its legal remedies. Put another way Council cannot say to the forestry industry that if the forestry industry does x then Council will not use its prosecutory or regulatory powers.
6. We are all in an area of considerable novelty and difficulty and will need to proceed carefully.
7. When you have been thinking about the parties to this *contract* could you please tell us who these parties are. Is it landowners, trucking companies, an industry representative body or something else or all of them.



8. Please do not think that we are saying that what you are groping for cannot be found. What we are saying is that while we grope to find an outcome we have to be careful that we do not grope inappropriately.

A handwritten signature in black ink, consisting of a large, sweeping initial 'P' followed by a series of connected, slightly irregular horizontal strokes.

P.J. Radich
email address: peter@radichdwyer.co.nz

sas.mdc memo.forestry roading issues

File TRIM
Legal - Forestry

RICHARD FOWLER
— QUEEN'S COUNSEL —

16 May 2016

Miriam Radich
Radich Law
Solicitors
PO Box 842
BLENHEIM 7240

Email: Auto

Dear Miriam,

Marlborough District Council – Forestry Harvesting

1. I thank you for your memorandum dated 4 April 2016 seeking my advice on Council control of logging trucks using Council's roads for the purposes of carting logs to market under three scenarios.
2. Those three scenarios are:
 - 2.1 Where conditions in resource consents or previous planning instruments restrict or prohibit the use of roads by logging trucks associated with commercial forestry;
 - 2.2 Where commercial forests have been established without planning approvals that were required at the time of establishment but where consent to establishment is not required now;
 - 2.3 Where no planning approval was required to establish a commercial forest and there are no restrictions under RMA instruments to control associated use of the roads.
3. I address each scenario below.

Where conditions in resource consents or previous planning instruments restrict or prohibit the use of roads by logging trucks associated with commercial forestry

4. In my view, the issues of enforceability of such conditions are unequivocally answered by the Environment Court in *Aubade NZ Ltd v. Marlborough District Council* decision No [2015] NZEnvC 154 (2 September 2015). As you know, the condition in that case unsuccessfully challenged was as follows:

"The county roads not be used for vehicles associated with log extraction without the permission of Council."

5. The challenge was broad ranging and included the arguments that the Council could not create a condition stopping use of all roads under the local authority's jurisdiction, that such a condition was uncertain or ambiguous, that the condition contained an unlawful delegation or deferral, or that it was unreasonable, or an unlawful reservation of a discretion. None of those arguments prevailed.
6. It therefore seems to me that this Environment Court decision settles the enforceability issue under this scenario firmly in the Council's favour, and I would go so far as to suggest that that would extend to all similar conditions unless they contained something on their face that was distinctly and discretely challengeable compared with the *Aubade* condition.

Where commercial forests have been established without planning approvals that were required at the time of establishment but where consent to establishment is not required now

7. This seems equally straightforward to me where the issues must be resolved in Council's favour – at least in the case of commercial forests within the ambit of the operative Marlborough Sounds Resource Management Plan (“the Plan”).
8. The starting point of any analysis is that these forests, by definition, required a planning approval under the previous district planning regime, but did not have such approvals. Accordingly, there are no existing use rights.
9. Therefore the analysis must next turn to the Plan. Are the activities at issue permitted activities under the Plan?
10. The term “commercial forestry” is defined in the Plan as;

A land based activity having as its primary purpose, the growing of trees for commercial wood production. This includes the planting and replanting of trees. However, aspects of forest management such as vegetation clearance, land disturbance and application of agrichemicals are dealt with under relevant rules within the Plan. This definition does not include wood lot and conservation forestry. (emphasis added)
11. The term “vegetation clearance” is defined in the Plan as:

Cutting, destruction or the removal of vegetation so that more than 20m² of bare ground is exposed within 100m² of land except clearance that takes place as a result of excavation, road maintenance or cultivation.
12. Vegetation clearance is a permitted activity under the Plan if it meets particular conditions – refer Rule 36.
13. The issue of whether harvesting of a commercial forest would fall within the term “vegetation clearance” or the requirements of Rule 36 was considered by a Hearings Commissioner in an application by AL Cassels in U140068 in an interim decision dated 30 November 2015. While that was not a Court determination, the particular Commissioner (Mr John Milligan) is a very experienced and knowledgeable Hearings Commissioner. In para.[24] of that decision he records the evidence of what is involved in harvesting – at least in that particular case. At

paras.[26]-[27] the Commissioner concludes that such harvesting does not fall within the term "vegetation clearance" and would not be otherwise permitted under the Plan. I agree with his analysis and he makes the interesting point that Condition (i) of Rule 36.1.5.4.1 appears to draw a distinction between "the harvesting of an existing plantation forest" and whatever vegetation clearance may occur in the course of such harvesting.

14. In short, in my view harvesting of commercial forests involves activities that go beyond "vegetation clearance" as defined in the Plan and permitted under Rule 36 and falls outside the ambit of "commercial forestry" as defined in the Plan.
15. I therefore conclude that under this scenario Council would be entitled to take enforcement steps to prevent such harvesting. In that sense, enforcement action could bite at an earlier point than the exit of logging trucks from the commercial forest onto the local roading network, but the end point remains the same – such harvesting would require a resource consent and, if granted, Council would be entitled to attach conditions to address effects on the local roading network.

Where no planning approval was required to establish a commercial forest and there are no restrictions under RMA instruments to control associated use of the roads

16. First of all, as to the RMA analysis, if particular commercial forests required no planning approval at the time of planting and there are no planning restrictions (either by way of conditions of consent or District Plan rules) that impose restrictions or require resource consents for harvesting then there is no basis for raising any issue under the RMA vis-à-vis controlling the use of the roads with the possible exception of an enforcement order premised on s.17. But that would be a very challenging task.
17. Secondly, you were good enough to include a copy of advice given to the Council on 27 August 2002 which addresses a variety of powers available to Council as well as planning conditions and the RMA jurisdiction. Although the particular legislation and sub-legislation has changed since 2002, many of those same powers are still available. In the annexed schedule, I have drawn those various powers together and updated them.
18. However, as to the overall position on this scenario, I emphasise that in the absence of an exercise of those powers on an RMA analysis, there is nothing restricting the commercial forest owner from harvesting activities that include use of the roading network.
19. I trust that this is of some assistance but if there are any further queries I would be happy to address them.

Yours sincerely,



Richard Fowler QC

SCHEDULE OF POSSIBLE POWERS TO CONTROL LOGGING TRUCKS ON ROAD NETWORK

Land Transport Act 1998

1. Previous advice referred to the s 70AA of the Land Transport Act 1962 which allowed a territorial to direct, by public notice, that heavy traffic shall not be allowed to proceed on the road or roads specified in the notice.
2. The Transport Act 1962 was repealed as from 10 May 2011 by s 98 of the Land Transport (Road Safety and Other Matters) Amendment Act 2011.
3. An equivalent section to s 70AA is found in section 16A of the Land Transport Act 1998 ("LTA"), being:

16A Restriction of heavy traffic on roads

- (1) The Agency (in relation to a State highway, the control of which has not been delegated to a territorial authority under Part 4 of the Government Rounding Powers Act 1989) or another road controlling authority (in relation to any road under its control) may, by public notice, direct that any heavy traffic, or any specified kind of heavy traffic defined in the notice, may not proceed between any 2 places by way of any road or roads specified in the notice.
 - (2) A copy of every notice under this section must be displayed in at least 1 prominent position on every road to which the notice applies.
 - (3) Every person commits an offence, and is liable on conviction to a fine not exceeding \$1,000, who contravenes the requirements of any notice under this section unless the person proves that there was no other way reasonably available for the traffic concerned to proceed.
4. A "road controlling authority" means the authority, body, or person having control of the road, and includes a person acting under delegation or authorisation from the controlling authority (s 2 LTA 1998).
 5. "Heavy traffic" is defined in section 2 of the LTA 1998 as including the use of any heavy motor vehicle and a "heavy motor vehicle" is defined as meaning a vehicle having a gross laden weight exceeding 3,500kg.
 6. **Section 22AB** of the LTA 1998 allows road controlling authorities to make certain bylaws including:

Vehicle and road use

- (c) prohibiting or restricting, absolutely or conditionally, any specified class of traffic (whether heavy traffic or not), or any specified motor vehicles or class of motor vehicle that, by reason of its size or nature or the nature of the goods carried, is unsuitable for use on any road or roads:

...

Heavy traffic

- (i) providing for the giving and taking of security by or from any person that no special damage will occur to any road, bridge, culvert, ferry, or ford by reason of any heavy traffic:
- (j) prohibiting any specified class of heavy traffic that has caused or is likely to cause serious damage to any road, unless the cost of reinstating or strengthening the road, as estimated by the Minister or the relevant road controlling authority, as the case may be, is paid previously:

- (k) providing for the annual or other payment of any reasonable sum by any person concerned in any heavy traffic by way of compensation for any damage likely to occur as a result of the heavy traffic to any road, bridge, culvert, ferry, or ford:
- (l) providing for the establishment, in accordance with section 361 of the Local Government Act 1974, of a toll to be levied on any class of heavy traffic...

Heavy Motor Vehicle Regulations 1974

- 7. The Heavy Motor Vehicle Regulations 1974 ("HMVR") allow a controlling authority to restrict and control the use of heavy motor vehicles on roads if there are reasonable grounds for such action.
- 8. Included in those restrictions and controls are
 - 10 Prohibition of certain heavy traffic
 - ...
 - (3) The controlling authority may, on reasonable grounds, prohibit absolutely or conditionally the use on any specified road of heavy motor vehicles or of any specified class of heavy motor vehicle during any specified period or series of periods.
 - (4) The controlling authority may, if it considers on reasonable grounds that it is necessary to protect a road from excessive damage, prohibit, during any specified period of not more than 12 months, the use on that road of heavy motor vehicles which exceed a specified axle weight. If, at the expiry of the specified period, the controlling authority still considers a prohibition necessary to protect the road, it may extend the prohibition for a further specified period of not more than 12 months, and, until it considers such a prohibition is no longer necessary, may continue to extend the prohibition for further specified period of not more than 12 months each.
- 9. Regulation 11 allows a controlling authority to control fix weight or speed limits for heavy motor vehicles on bridges.

Local Government Act 2002

- 10. Part 8 of the Local Government Act 2002 ("LGA") contains the provisions relating to "*regulatory, enforcement, and coercive powers of local authorities*".
- 11. Sections 145 and 146 provide for the bylaw making powers of a territorial authority. Marlborough District Council is included as a territorial authority under Part 2 of schedule 2 of the Act.
- 12. Section 145 allows a territorial authority to make bylaws for its district for the following purposes
 - (a) protecting the public from nuisance:
 - (b) protecting, promoting, and maintaining public health and safety:
 - (c) minimising the potential for offensive behaviour in public places.
- 13. According to WestlawNZ commentary the words "*protecting, promoting, and maintaining public health and safety*" in s 145(b) should be widely interpreted, and read in conjunction with the bylaw powers contained in other enactments, for example, the Land Transport Act 1998.
- 14. Section 151 is a general section relating to bylaws made under the Act. It says:

151 General provisions applying to bylaws made under this Act

(1AA) This section applies to a bylaw only if it is made under this Act or the Maritime Transport Act 1994.

- (1) A bylaw may require anything to be done in any manner, or within any time, that is required by the local authority or by a person referred to in the bylaw.
- (2) A bylaw may leave any matter or thing to be regulated, controlled, or prohibited by the local authority by resolution either generally, for any specified classes of case, or in a particular case.
- (3) A bylaw may provide for the following:
 - (a) the licensing of persons or property;
 - (b) the payment of reasonable licence fees;
 - (c) recovery of costs incurred by the local authority in relation to an activity licensed under a bylaw.

15. Sections 155-157 address the procedure for making bylaws.

Local Government Act 1974

16. The majority of the LGA 1974 has been repealed.
17. Previous advice had referred to s 684 which was repealed on 10 May 2011 by the Land Transport (Road Safety and Other Matters) Amendment Act 2011.
18. There remain some temporary control powers in the LGA 1974.
19. Section 319(h) and s 342 of that Act allows a council to temporarily stop or close any road or part of a road if such an action is in accord with the conditions set out in schedule 10.
20. Item 11 in schedule 10 provides
 - 11 The council may, subject to such conditions as it thinks fit (including the imposition of a reasonable bond), and after consultation with the Police and the [[New Zealand Transport Agency]], close any road or part of a road to all (traffic or any specified type of traffic (including pedestrian traffic)
 - (a) while the road, or any drain, water race, pipe, or apparatus under, upon, or over the road, is being constructed or repaired; or
 - (b) where, in order to resolve problems associated with traffic operations on a road network, experimental diversions of traffic are required; or
 - (c) during a period when public disorder exists or is anticipated; or
 - (d) when for any reason it is considered desirable that traffic should be temporarily diverted to other roads; or
 - (e) for a period or periods not exceeding in the aggregate 31 days in any year for any exhibition, fair, show, market, concert, film-making, race or other sporting event, or public function:
21. Subsection (d) could be utilised by a local authority to divert heavy traffic temporarily, however, controlling heavy traffic does not seem to be within the purpose of these temporary control measures.