

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of the hearing of submissions by the Marlborough District Council on the Coastal Environments Topic of the Proposed Marlborough Environment Plan

MEMORANDUM OF COUNSEL ON BEHALF OF KIWIRAIL HOLDINGS LIMITED

12 APRIL 2018

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MAY IT PLEASE THE HEARING PANEL

Background

1. Counsel refer to Minute 14 of the Hearing Panel dated 10 April 2018 ("**Minute 14**"), and the discussion at the hearing on 9 April 2018 in relation to Rules 13.2.1 and 13.3.6 of the proposed Marlborough Environment Plan.

Request for adjournment

2. Minute 14 appears to proceed on the assumption that modelling required in KiwiRail's request for an adjournment would involve ships travelling in excess of 15 knots outside the existing NTR, which is a prohibited activity under Rule 35.6 of the operative Marlborough Sounds Resource Management Plan ("**MSRMP**").
3. KiwiRail has now received advice from a coastal engineering expert that the required modelling would not need to involve travelling in excess of 15 knots in the area of the proposed extension. Vessel wake characteristics could be measured at speeds of 10 and 15 knots within the outer Queen Charlotte, and then those results extrapolated via a numerical model for increased speeds, ie without breaching Rule 35.6 of the MSRMP.
4. The Panel asked about extrapolation of wake characteristics at the hearing. KiwiRail's response at the hearing related to the extrapolation of wave characteristics as already modelled in Tory Channel and the inner Queen Charlotte Sound, and whether that could take the place of modelling in the outer Queen Charlotte Sound. Modelling of wave characteristics in the outer Queen Charlotte Sound is required before the suitability of the Wave Wash rule for that area can be confirmed, but as noted above the expert advice is that this need not require speeds in excess of 15 knots.
5. KiwiRail respectfully requests that the Panel reconsiders its position on the adjournment sought.

Rules 13.2.1 and 13.3.6

6. At the hearing, Mr Hawes for Marlborough District Council expressed the view that the amendment to Rule 13.3.6 sought by KiwiRail to exclude activities otherwise permitted under Rule 13.2.1 was unnecessary. In his opinion, the distinction between structures "on land above mean high water springs or on an existing wharf" and structures "in the coastal marine area" ("**CMA**") was sufficient to differentiate between the two standards.
7. KiwiRail has given the matter further consideration since Monday's hearing. On reflection, KiwiRail considers that the potential for confusion between these two standards still exists in the rules as notified, particularly the 'structures on an existing wharf' aspect of Rule 13.2.1.
8. Mr Hawes' interpretation appears to start from the assumption that, because wharves sit above the water, they are above mean high water springs. However, there is a difference between sitting "above water" (as wharves do) and sitting above mean high water springs (which wharves generally do not). Being in and over water, the vast majority of a wharf sits below mean high

water springs (even though it may be above water), and so arguably a structure on that wharf is within the CMA.

9. In our view, the relief sought in KiwiRail's submission to make the more general Rule 13.3.6 subject to the more specific Rule 13.2.1 remains a sensible clarification. The clear intent is for Rule 13.2.1 to prevail.



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