

**IN THE ENVIRONMENT COURT
CHRISTCHURCH**

ENV-2020-CHC-056

**I MUA I TE KOOTI TAIAO
I ŌTAUTAHI ROHE**

IN THE MATTER of the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER of section 274 of the RMA

BETWEEN **NEW ZEALAND TRANSPORT AGENCY**

Appellant

AND **MARLBOROUGH DISTRICT COUNCIL**

Respondent

**NOTICE OF KIWIRAIL HOLDINGS LIMITED'S
INTENTION TO BE A PARTY TO PROCEEDINGS**

8 JUNE 2020

**Russell
McAugh**

A A Arthur-Young | T W Atkins
P +64 9 367 8000
F +64 9 367 8163
PO Box 8
DX CX10085
Auckland

TO: The Registrar
Environment Court
Christchurch

KIWIRAIL HOLDINGS LIMITED ("**KiwiRail**") wishes to be a party to an appeal by the New Zealand Transport Agency ("**Transport Agency**") against the decision of the Marlborough District Council ("**Council**") on the Proposed Marlborough Environment Plan ("**MEP**").

Nature of interest

1. KiwiRail made a submission about the subject matter of these proceedings.
2. KiwiRail is not a trade competitor for the purposes of section 308C or 308CA of the RMA.

Extent of interest

3. KiwiRail is interested in part of the proceedings. The parts of the appeal KiwiRail is interested in are those parts relating to:
 - (a) new policies under Objective 17.4 – Provision of setbacks and reverse sensitivity protections near land transport network; and
 - (b) new Rule 2.9.X and associated standards – construction of temporary dams.

Setbacks and reverse sensitivity

4. Objective 17.4 recognises the need to avoid conflict between the land transport network and new land use activities. The policies sought by the Transport Agency set out key concepts to enable this objective to be achieved, by ensuring noise sensitive activities are set back from the land transport network and that such activities cannot compromise or limit its existing function.
5. KiwiRail submitted on Objective 17.4 and its associated policies, supporting the recognition of reverse sensitivity effects and the mechanisms provided to achieve this objective. KiwiRail also sought the addition of provisions to the MEP that recognise and provide for potential conflict between the operation of the railway network and new land use activities that locate nearby. KiwiRail relies on these kinds of provisions to ensure the ongoing safe and efficient operation of the railway network is not unduly compromised or restricted.

Construction of temporary dams

6. From time to time, KiwiRail is required to temporarily dam or divert water to enable in-stream works that are necessary to maintain and / or repair the rail network. The decisions version of the MEP does not provide for short term dams or diversions to facilitate construction works. New Rule 2.9.X, as sought by the Transport Agency, would allow for such temporary activities to be permitted under the MEP, in the same way that damming of water is permitted under Rule 2.2.17, subject to compliance with the corresponding standards.

7. KiwiRail's submission sought the introduction of similar rules in Chapter 2 of the MEP to provide for minor and temporary damming and diversion of water as a permitted activity. KiwiRail has also appealed the Council's decision on Rule 2.7.1, which relates to the temporary damming and diversion of water.

Relief sought

8. KiwiRail supports the relief sought by the Transport Agency in relation to the new polices under Objective 17.4 and new Rule 2.9.X.
9. KiwiRail supports the relief sought because it:
- (a) will promote the sustainable management of natural and physical resources within Marlborough, and is therefore consistent with Part 2 and other provisions of the RMA;
 - (b) will meet the reasonably foreseeable needs of future generations;
 - (c) will enable the social, economic and cultural wellbeing of the people of Marlborough;
 - (d) will facilitate the efficient use and development of natural and physical resources;
 - (e) avoids, remedies or mitigates actual or potential adverse effects on the environment; and
 - (f) is the most appropriate way to achieve the objectives of the MEP in terms of section 32 of the RMA.

Alternative dispute resolution

10. KiwiRail agrees to participate in mediation or other alternative dispute resolution of the proceedings.

KIWIRAIL by its solicitors and authorised agents
Russell McVeagh:



Signature:

Allison Arthur-Young / Tom Atkins

Date:

8 June 2020

Address for Service:

C/- Tom Atkins
Russell McVeagh
Barristers and Solicitors
Level 30
Vero Centre
48 Shortland Street
PO Box 8/DX CX10085
AUCKLAND 1140

Telephone: +64 9 367 8000

To: the Registrar of the Environment Court at Christchurch

And to: the Appellant

And to: the Respondent

Advice

1. If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.