

**IN THE ENVIRONMENT COURT
CHRISTCHURCH**

ENV-2020-CHC-

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

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

AND

IN THE MATTER of Clause 14(1) of Schedule 1 of the RMA

BETWEEN

KIWIRAIL HOLDINGS LIMITED

Applicant

AND

MARLBOROUGH DISTRICT COUNCIL

Respondent

**NOTICE OF APPEAL TO THE ENVIRONMENT COURT AGAINST DECISIONS
ON THE PROPOSED MARLBOROUGH ENVIRONMENT PLAN**

8 MAY 2020

**Russell
McAugh**

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To: The Registrar
The Environment Court
CHRISTCHURCH

KIWIRAIL HOLDINGS LIMITED ("**KiwiRail**") appeals against parts of the decisions of the Marlborough District Council ("**Council**") in respect of the Proposed Marlborough Environment Plan ("**MEP**").

BACKGROUND AND DECISIONS APPEALED

1. KiwiRail made a submission on the MEP on 1 September 2016.¹ KiwiRail presented evidence and legal submissions in support of its submission.
2. KiwiRail received notice of the Council's decision on the MEP on 21 February 2020 ("**Decision**"). The Environment Court subsequently directed that the appeal period be extended to 8 May 2020.²
3. The parts of the Decision being appealed are the decisions to reject or to accept only in part the matters raised in KiwiRail's submission, or to amend the MEP in a way that is inconsistent with the matters raised in KiwiRail's submission. KiwiRail appeals those parts of the Decision summarised in paragraph 7 below for the reasons set out in paragraphs 8 to 52.
4. KiwiRail is not a trade competitor for the purposes of section 308D of the RMA.
5. KiwiRail is a State Owned Enterprise responsible for the management and operation of the national railway network. Its role includes managing railway infrastructure and land, as well as freight and passenger services within New Zealand. KiwiRail is a requiring authority pursuant to section 167 of the RMA and is responsible for designations for railway purposes throughout New Zealand.
6. KiwiRail's operations in Marlborough include the Main North Line, which runs from Picton to Christchurch. KiwiRail also operates the Interislander ferries between Wellington and Picton, through the Queen Charlotte Sound. KiwiRail's rail network, together with its ferry operations, form an integral part of the regional and national freight network.

SCOPE OF APPEAL

7. KiwiRail appeals the following parts of the Decision:

Volume 1 – Objectives and Policies

- (a) Chapter 13: Use of the Coastal Environment – Policy 13.14.2;
- (b) Chapter 17: Transportation – Policy 17.5.6;

¹ Submission Number 873.

² Environment Court Minutes dated 26 February 2020, 26 March 2020 and 15 April 2020.

Volume 2 – Rules

- (c) Chapter 2: General Rules – Rules 2.7.1, 2.39.1, 2.39.4 and 2.39.5, and Permitted Activity Standard 2.40.1;
- (d) Chapter 3: Rural Environmental Zone – Permitted Activity Standards 3.3.6.2 and 3.3.8.2;
- (e) Chapter 4: Coastal Environment Zone – Permitted Activity Standards 4.2.1.15, 4.3.6.1 and 4.3.7.2;
- (f) Chapter 5: Urban Residential 1 and 2 Zones – Permitted Activity Standard 5.2.1.20;
- (g) Chapter 7: Coastal Living Zone – Permitted Activity Standard 7.2.1.10;
- (h) Chapter 9: Business 1 Zone – Permitted Activity Standard 9.2.1.15;
- (i) Chapter 10: Business 2 Zone – Permitted Activity Standard 10.2.1.11;
- (j) Chapter 12: Industrial 1 and 2 Zones – Permitted Activity Standard 12.2.1.11;
- (k) Chapter 16: Coastal Marine Zone – Rule 16.7.9;
- (l) Chapter 17: Open Space 1 Zone – Permitted Activity Standard 17.2.1.7;
- (m) Chapter 19: Open Space 3 Zone – Permitted Activity Standard 19.2.1.10;
- (n) Proposed new rule for various zones requiring all new or altered sensitive in proximity to a rail network to be appropriately mitigated in relation to rail noise and vibration;³ and

Volume 4 – Maps

- (o) Zoning Maps relating to land designated for railway purposes:
 - (i) Zoning Map 218– Wharenui Beach Road;
 - (ii) Zoning Map 83 – Spring Creek Depot; and
 - (iii) Zone Map 138 – the Elevation, north of Picton.

³ Submissions 873.186, 873.187, 873.188, 873.189, 873.190, 873.191, 873.192.

GENERAL REASONS FOR APPEAL

8. The MEP, in its present form:
- (a) will not promote the sustainable management of the natural and physical resources in Marlborough, and is therefore contrary to or inconsistent with Part 2 and other provisions of the RMA;
 - (b) is inconsistent with other relevant planning documents, including the Marlborough Regional Policy Statement;
 - (c) will not meet the reasonably foreseeable needs of future generations;
 - (d) will not enable the social, economic and cultural wellbeing of the people of Marlborough;
 - (e) does not avoid, remedy or mitigate actual and potential adverse effects on the environment; and
 - (f) is not the most appropriate way to achieve the objectives of the MEP in terms of section 32 of the RMA.
9. In addition to the general reasons outlined above, KiwiRail appeals the Decision for the specific reasons set out below.

SPECIFIC REASONS FOR APPEAL AND RELIEF SOUGHT

Various Zones – Acoustic mitigation of sensitive activities in proximity to rail network – New Rules for Rural Zone, Coastal Environment Zone, Urban Residential 1 and 2 Zones, Urban Residential 3 Zone, Coastal Living Zone, Business 1 Zone and Business 2 Zone

10. In its submission, KiwiRail sought that new rules be inserted into various zones requiring all new or altered sensitive activities in proximity to the rail network to be appropriately mitigated in relation to rail noise and vibration. The rule is the same rule, replicated in each of the relevant zones.
11. Following the lodgement of its submission, KiwiRail worked closely with the New Zealand Transport Agency ("**Transport Agency**") to develop a revised set of noise and vibration provisions to be used for both road and rail (set out in full in **Appendix A**). These provisions are intended to provide a single suite of rules for noise and vibration issues associated with both transport corridors, and to simplify and streamline their application by territorial authorities. KiwiRail and the Transport Agency provided joint acoustic evidence in relation to this topic, and included the proposed new rules as an appendix to that evidence, at the hearing on Topic 18: Nuisance Effects, Temporary Military Training and Noise on 6 November 2018.⁴ Both KiwiRail and the Transport Agency also provided evidence on appropriateness of these provisions from a planning perspective.⁵

⁴ Evidence of Dr Stephen Chiles (Acoustics) on behalf of KiwiRail Holdings Limited and New Zealand Transport Agency (19 October 2018).

⁵ See Evidence of Rebecca Beals (Planning) on behalf of KiwiRail Holdings Limited (19 October 2018) and Statement of Primary Evidence of Kate Searle on behalf of the NZ Transport Agency (19 October 2018).

12. The Decision does not include the rules sought by KiwiRail and the Transport Agency, and there is no reference to KiwiRail's submission or evidence in the Decision report. According to the Decision, where no changes are recorded in response to a particular submission, it is because the Panel has "adopted the reasoning and recommendation of the Section 42A Report Writer [...] as recommended in the Reply to Evidence [or] in the original Section 42A report."⁶
13. In making its Decision, the Panel appears not to have considered the evidence provided on behalf of KiwiRail and the Transport Agency in relation to the revised set of noise and vibration provisions. The only part of the Decision that could be linked to the submissions or evidence on this point is a reference to provisions proposed by the Transport Agency "allowing building within 100m [of the State Highway] subject to noise attenuation".⁷ The Decision records that the Panel "did not have the benefit" of evidence from the Transport Agency on these provisions,⁸ despite both KiwiRail and the Transport Agency providing such evidence at the hearing on Topic 18.
14. In the Council reply to evidence, the reporting officer recommended that KiwiRail's submission should be rejected, because people living in proximity to the rail network are "well aware of noise and vibration from a passing train" and for many people "this will not be a problem", and that the onus should be on KiwiRail to initiate a program to manage rail noise and vibration.⁹
15. The Council's reasoning (and therefore the Decision, which appears to adopt that reasoning) is not supportable when viewed in the context of established case law, controls in other district plans, the objectives and policies of the MEP, and KiwiRail's experience in dealing with complaints from residents located near the rail corridor in relation to noise and vibration.
16. KiwiRail recognises its duties to use the best practicable option to ensure that noise and vibration effects do not exceed a reasonable level and to avoid, remedy or mitigate adverse effects on the environment. However, an appropriate balance must be struck between the onus on the existing lawful emitter to manage its effects, and district plans providing controls on new sensitive activities in proximity to the rail network. Land use controls requiring acoustic treatment of sensitive activities seeking to establish near the rail corridor are an effective mechanism to achieve this balance. This is demonstrated by the fact that various other district plans throughout New Zealand include these types of provisions.¹⁰
17. The MEP also contains a number of objectives and policies that recognise and provide for the potential for reverse sensitivity effects on regionally significant infrastructure, and direct that such infrastructure be protected from these

⁶ Decision of the MEP Hearing Panel – Introduction to Decisions (20 February 2020) at paragraph 13.3.

⁷ Decision of the MEP Hearing Panel – Topic 18: Nuisance Effects, Temporary Military Training and Noise (20 February 2020) at paragraph 34.

⁸ Decision of the MEP Hearing Panel – Topic 18: Nuisance Effects, Temporary Military Training and Noise (20 February 2020) at paragraph 34.

⁹ Nevil Hegley – Reply to Evidence: Topic 18 – Nuisance Effects/Temporary Military Training (Noise) (19 November 2018) at pages 7-8.

¹⁰ See for example Christchurch District Plan, Dunedin City Second Generation District Plan, Palmerston North District Plan or Hurunui District Plan.

effects.¹¹ The relief sought by KiwiRail would give effect to these provisions by providing protection for the rail network from potential adverse effects associated with reverse sensitivity – protection that is not provided in the Decision.

Relief sought

18. KiwiRail seeks that the Rural Zone, Coastal Environment Zone, Urban Residential 1 and 2 Zones, Urban Residential 3 Zone, Coastal Living Zone, Business 1 Zone and Business 2 Zone of the MEP are amended to include the provisions set out in **Appendix A**, or such alternative or consequential relief that addresses KiwiRail's concerns.

Various Zones – Setback of buildings and structures from railway corridor boundary – Permitted Activity Standards 4.2.1.15, 5.2.1.20, 7.2.1.10, 9.2.1.15, 10.2.1.11, 12.2.1.11, 17.2.1.7 and 19.2.1.10

19. KiwiRail's submission sought to include a new permitted activity standard in various zones requiring that all buildings and structures be set back a minimum of 5 metres from the rail corridor.¹²
20. Setbacks are a critical land use control to manage the interface between operations within the railway corridor and activities that may occur near the boundary of adjoining land, and to ensure the health and safety of people and communities. If development near the railway corridor is not appropriately managed, there is a risk of conflict between the operation of the rail network and use of the built environment.
21. A district plan requirement for buildings and structures to be set back from the railway corridor boundary is therefore an appropriate mechanism to reduce the likelihood of adjoining landowners inadvertently accessing the rail corridor. Without such a mechanism, there is risk to the health and safety of people and communities who live and work in proximity to the rail corridor, as well as to the safe and efficient operation of the rail network.
22. The Decision includes a permitted activity standard in various zones requiring all buildings and structures to be set back from the railway corridor, as sought by KiwiRail, but at a distance of 1.5 metres.¹³ While the provision included in the Decision goes some way to addressing KiwiRail's concerns, 1.5 metres is not a sufficient distance to ensure that potential health and safety risks are appropriately managed and that landowners and occupiers can safely conduct their activities and maintain and use their buildings or structures, while minimising the potential for interference with the rail corridor.

Relief sought

23. KiwiRail seeks that Permitted Activity Standards 4.2.1.15, 5.2.1.20, 7.2.1.10, 9.2.1.15, 10.2.1.11, 12.2.1.11, 17.2.1.7 and 19.2.1.10 be amended as follows or such alternative or consequential relief that addresses KiwiRail's concerns:

¹¹ See for example Objective 4.2 and Policy 4.2.2.

¹² Submission 873.125, 873.130, 873.131, 873.134, 873.137, 873.140, 873.167, 873.170.

¹³ Permitted Activity Standards 4.2.1.15, 5.2.1.20, 7.2.1.10, 9.2.1.15, 10.2.1.11, 12.2.1.11, 17.2.1.7 and 19.2.1.10.

A building or structure must not be located within ~~4.55~~m of the legal boundary with the rail corridor of the Main North Line except for a fence up to 2m in height.

Various Zones – Setback of forestry activities from railway corridor boundary – Permitted Activity Standards 3.3.6.1, 3.3.7.1 3.3.9.2, 4.3.6.1 and 4.3.7.2

24. The Decision includes a requirement for woodlot forestry planting to be set back at least 30 metres "of the Main Trunk railway track" within the Rural Environment Zone.¹⁴ While KiwiRail supports the inclusion of this setback in principle, it does not address KiwiRail's concerns. The Decision fails to include a similar requirement within the Coastal Environment Zone, and there is no setback requirement for plantation forestry afforestation or replanting, within either zone.
25. KiwiRail seeks the inclusion of a consistent setback requirement for forestry planting, afforestation and replanting near the rail corridor, as the adverse effects on the operation of the rail network are the same for all of these activities. Trees pose significant safety risks to rail operations due to the potential for obstruction of sight lines, dropping of leaves or branches (and corresponding risk of derailment), and blocking of culverts leading to track instability and poor drainage. There is also risk of "mud spots" resulting from the growth of tree roots beneath the rail corridor (which can damage the track and potentially cause derailment), and shading leading to ice on the track during winter.
26. The setbacks sought by KiwiRail are an efficient and effective means of giving effect to Objective 4.2 of the MEP, which provides for the safe operation of regionally significant infrastructure. KiwiRail's relief is also consistent with Policy 4.2.2, which requires that such infrastructure be protected from the adverse effects of other activities that may compromise its operation.
27. The terminology used in the setback rule included in the Decision, being the "Main Trunk railway track" is also inconsistent with that used elsewhere in the MEP for the same asset. For example, KiwiRail's designation is referred to as the "Main North Line" and the setbacks for buildings and structures within various zones refer to "the rail corridor of the Main North Line". For clarity and consistency, the forestry setback rules should use the same terminology as other similar rules in the MEP.

Relief sought

28. KiwiRail seeks the following relief, or such alternative or consequential relief that addresses KiwiRail's concerns:
- (a) Rule 3.3.9.2 be amended as follows:
- Planting must not be in, or within:
[...]
- (b) 30m of a formed and sealed public road ~~or 30m of the Main Trunk railway track;~~

¹⁴ Rule 3.3.9.2(b).

[...]

(X) 10m of the rail corridor of the Main North Line.

- (b) Rules 3.3.6.1 and 4.3.7.2 be amended as follows:

Planting must not be in, or within:

[...]

(X) 10m of the rail corridor of the Main North Line.

- (c) Rules 3.3.7.1 and 4.3.6.1 be amended as follows:

Replanting must not be in, or within:

[...]

(X) 10m of the rail corridor of the Main North Line.

Coastal Marine Zone – National Transportation Route – Policy 13.14.2

29. KiwiRail has three Interislander ferries in operation in the Marlborough Sounds that operate ferry services between the North and South Islands. The Interislander ferries generally operate 24 hours a day, typically sailing via the National Transportation Route ("NTR") through the Tory Channel and the inner Queen Charlotte Sound. The Interislander service also operates via the outer Queen Charlotte Sound from time to time as required to maintain compliance with maritime regulations.
30. The Decision expands the NTR to include the Northern Entrance of the Queen Charlotte Sound.¹⁵ KiwiRail supports this, having sought the expansion of the NTR to include the outer Queen Charlotte Sound in its original submission.¹⁶ However, the Decision did not include consequential amendments to other parts of the MEP made necessary by the expansion of the NTR.
31. The explanation provided in the Decision version of Policy 13.14.2, which recognises the strategic importance of areas of the Marlborough Sounds as a NTR, refers to the NTR as being limited to the Tory Channel and the inner Queen Charlotte Sound. This is inconsistent with the change to the mapped NTR as amended by the Decision version of the MEP. As sought in KiwiRail's submission,¹⁷ this commentary needs to be amended to reflect the redefined extent of the NTR.

Relief sought

32. KiwiRail seeks the following amendment, or such alternative or consequential relief that addresses KiwiRail's concerns:

Policy 13.14.2 – The strategic importance of areas of the Marlborough Sounds as a transportation route for inter-island shipping will be recognised as a 'National Transportation Route'.

The use of areas within the Marlborough Sounds for shipping provides a particularly important transport link between the

¹⁵ See Planning Map "National Transportation Route".

¹⁶ Submission 873.193.

¹⁷ Submission 873.49.

North and South Islands. Tory Channel/Kura Te Au and ~~inner~~ Queen Charlotte Sound/Tōtaranui comprise a transportation route of national significance for shipping activity. [...]

Transportation – Effects on safety of and accessibility to the road network – Policy 17.5.6

33. The Decision version of Policy 17.5.6, which requires subdivision and land use activities to avoid, remedy or mitigate adverse effects on the safety of and accessibility to the road network, fails to afford the same protection for the rail network.
34. In its submission, KiwiRail sought that Policy 17.5.6 be amended to apply more generally to the land transport network (ie both road and rail), rather than just the road network. This change has not been adopted through the Decisions version of the MEP. As no explanation is provided in the Decision itself, it appears that the Panel adopted the recommendation in the s42A report for Topic 15: Transportation and Signage that no change be made to Policy 17.5.6.¹⁸
35. However, the commentary in the s42A report concluded that the amendment sought by KiwiRail was an appropriate change, as the policy "clearly seeks the protection of both rail and road networks from the adverse effects of activities, and the clarification is appropriate."¹⁹ The recommendation in Appendix 1 to the s42A that no change be made to Policy 17.5.6 (and the Decision that KiwiRail's submission be rejected, which relies on this recommendation) is therefore inconsistent with the discussion provided in the s42A report.
36. Clarification to Policy 17.5.6 remains appropriate and necessary, so that it expressly provides for rail as well as roads. The rail network is regionally significant infrastructure and forms a critical part of Marlborough's freight transport network. It should be granted the same policy protections against the adverse effects of inappropriate subdivision and land use activities as the road network.

Relief sought

37. KiwiRail seeks that Policy 17.5.6 be amended as follows, or such alternative or consequential relief that addresses KiwiRail's concerns:

Policy 17.5.6 – Subdivision and land use activities shall avoid, remedy or mitigate adverse effects on the safety of and accessibility to the ~~road-land~~ transport network by ensuring among other matters: [...]

General Rules – Temporary Damming and Diversion of Water – Rule 2.7.1

38. In the Decision, Rule 2.7.1 provides for the alteration, repair or maintenance of an existing structure, including any associated temporary damming of water, in, on, or over the bed of a lake or river, as a permitted activity. The Decision

¹⁸ Paul Whyte "Report on submissions and further submissions – Topic 15: Transportation and Signage" (20 April 2018) at paragraph 121.

¹⁹ Paul Whyte "Report on submissions and further submissions – Topic 15: Transportation and Signage" (20 April 2018) at paragraph 113.

acknowledges the need to provide a permitted activity rule for temporary dams to enable necessary maintenance work on existing structures.²⁰

39. However, Rule 2.7.1 sits in Section 2.7 of the MEP, the introductory discussion to which expressly notes it does "not cover the taking, use, damming or diversion of water controlled under s14 of the RMA."²¹ It is therefore unclear whether Rule 2.7.1 in fact permits the temporary damming of water, as this activity is controlled under s14 of the RMA. The Decision does not clarify which provision takes priority in the event of a conflict.
40. KiwiRail supports the intention of the Decision, but considers that Rule 2.7.1 should remain as notified, and Rule 2.2.25 should be amended instead. Rule 2.2.25 already provides for temporary damming and diversion of water as a permitted activity – its scope should simply be extended to cover the types of activities the Panel intended to cover in amending Rule 2.7.1.

Relief sought

41. KiwiRail seeks the following amendments, or such alternative or consequential relief that addresses KiwiRail's concerns:
- (a) Rule 2.2.25 be amended as follows:
- Temporary damming and diversion of water ~~or release of detritus~~ associated with the ~~alteration, repair or operation and~~ maintenance of ~~an existing structure-artificial roadside drainage channels~~.
- (b) Rule 2.7.1 be amended as follows:
- Alteration, repair or maintenance of an existing structure, ~~including any associated temporary damming of water or release of detritus~~, in, on or over the bed of a lake or river.

General Rules – Network Utilities – Rules 2.39.1, 2.39.4 and 2.39.5, and Permitted Activity Standard 2.40.1

42. The Decision includes a range of permitted activity standards for network utility infrastructure. However, the list of activities covered by these standards does not include rail or rail related activities and assets as a network utility.
43. The rail network is specifically provided for as a network utility under the RMA, as well as the MEP's definition of network utility.²² By failing to include rail in the list of permitted network utility infrastructure, the Decision fails to give effect to the RMA.
44. Inclusion of rail as network utility infrastructure is also consistent with the approach taken nationally. Network utilities are defined to include rail and / or

²⁰ Decision of the MEP Hearing Panel – Topic 4: Water Allocation (20 February 2020) at paragraphs 372-374.

²¹ See Chapter 2: General Rules at page 12.

²² RMA, s166.

rail related activities or assets in numerous other district plans throughout New Zealand.²³

Relief sought

45. KiwiRail seeks the following amendments, or such alternative or consequential relief that addresses KiwiRail's concerns:

(a) Rule 2.39.1 be amended as follows:

Network utility infrastructure listed as follows:

[...]

(j) rail and rail related activities and assets.

(b) Rule 2.39.4 be amended as follows:

Maintenance and replacement of the following network utility infrastructure:

[...]

(e) rail and rail related activities and assets.

(c) Rule 2.39.5 be amended as follows:

Minor upgrading of the following network utility infrastructure:

[...]

(e) rail and rail related activities and assets.

(d) Permitted Activity Standard 2.40.1 be amended as follows:

Network utility infrastructure listed as follows:

[...]

(j) rail and rail related activities and assets.

Coastal Marine Zone – Use of surface water outside of National Transportation Route – Rule 16.7.9

46. The Decision concurred with KiwiRail's evidence that proposed new Rule 16.7.X, which would prohibit ships from travelling at speeds greater than 15 knots within that part of the Queen Charlotte Sound not within the NTR, was outside of scope and should not be included in the MEP.²⁴

47. However, this prohibited activity rule is included as Rule 16.7.9 in the tracked change version of the MEP provided with the Decision. Given the Panel's conclusion that this rule is outside of scope, its inclusion in the tracked change MEP appears to be an oversight.

Relief sought

48. KiwiRail seeks that Rule 16.7.9 be deleted from the MEP.

²³ See for example the Unitary Plan (includes railway lines) or the Wellington District Plan (adopts the RMA definition).

²⁴ Decision of the MEP Hearing Panel – Topic 11: Coastal Environments (20 February 2020) at paragraphs 180-183.

Zoning Maps

49. In its submission, KiwiRail sought various amendments to the MEP's Zoning Maps to remove the underlying zoning of various areas of land designated for railway purposes, so that these areas are unzoned:²⁵
- (a) Zoning Map 218 – at Wharenui Beach Road and to the north of that Road, there is an area of rail corridor that carries the underlying zonings of Open Space 3 and Rural (shown in light blue outline in **Appendix B1**);
 - (b) Zoning Maps 83 – the Spring Creek Depot has an underlying zoning of Rural (shown in light blue outline in **Appendix B2**); and
 - (c) Zoning Maps 31 and 138 – north of the Elevation in Picton, a section of the corridor carries Rural as its underlying zoning (shown in light blue outline in **Appendix B3**).
50. The Zoning Maps included in the Decision do not categorise these areas as unzoned. The intention in KiwiRail's submission was to provide consistency in zoning across the entirety of the designated rail corridor throughout the region (the vast majority of which is subject to the shell zone, "Road & Rail (White)"). The proposed changes are also necessary to ensure that the Zoning Maps reflect the text of the MEP, which provides that the road and rail corridors are zoned "Road & Rail (White)".²⁶ Without the changes sought by KiwiRail, the MEP does not provide a consistent planning framework for the rail corridor across Marlborough.

Relief sought

51. KiwiRail seeks that Zoning Maps 218, 83 and 138 be amended to remove the underlying zoning from the areas of the rail corridor identified **Appendices B1**, **B2** and **B3** (shown in light blue outline), respectively, and rezone these areas as "Road & Rail (White)", or such alternative or consequential relief that addresses KiwiRail's concerns.

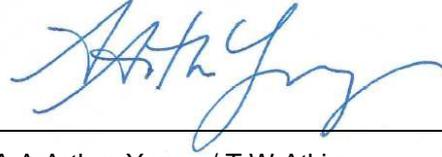
ATTACHMENTS

52. The following documents are attached to this notice:
- (a) A copy of the proposed rules for new or altered sensitive activities in proximity to the rail network sought by KiwiRail.
 - (b) Zoning Maps showing the areas of land that KiwiRail seeks be rezoned to "Road & Rail (White)".
 - (c) A copy of the relevant parts of the Decision.
 - (d) A copy of KiwiRail's submission.

²⁵ Submission 873.194, 873.195, 873.196, 873.197, 873.198, 873.199.

²⁶ See MEP Volume 4 – Legend, which identifies "Road & Rail" separately from the other zones.

KIWIRAIL HOLDINGS LIMITED by its solicitors
and authorised agents Russell McVeagh:



Signature:

A A Arthur-Young / T W Atkins

Date:

8 May 2020

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TO: The Registrar of the Environment Court at Christchurch.

AND TO: The Marlborough District Council.

AND TO: The relevant submitters on the provisions appealed.

Advice to recipients of copy of notice of appeal*How to become a party to proceedings*

1. You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.
2. To become a party to the appeal, you must:
 - (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
 - (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.
3. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.
4. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

Advice

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

APPENDIX A

Permitted activities

3.1.X Noise sensitive activity near a state highway or railway network

Standards that apply to specific permitted activities

3.3.X Noise sensitive activity within 100 metres of a state highway carriageway or 100 metres from the legal boundary of any railway network

3.3.X.1 Outdoor road noise: Any new building or alteration to an existing building that contains an noise sensitive activity where:

- a) external road noise levels are less than 57 dB $L_{Aeq}(24h)$ at all points 1.5 metres above ground level within the proposed notional boundary; or
- b) there is a noise barrier at least 3 metres high which blocks the line-of-sight to the road surface from all points 1.5 metres above ground level within the proposed notional boundary.

3.3.X.2 Indoor road and railway noise: Any new building or alteration to an existing building that contains a noise sensitive activity where the building or alteration:

- a) is designed, constructed and maintained to achieve indoor design noise levels resulting from the road or railway not exceeding the maximum values in the following table; or

<u>Building type</u>	<u>Occupancy/activity</u>	<u>Maximum road noise level $L_{Aeq}(24h)$</u>	<u>Maximum railway noise level $L_{Aeq}(1h)$</u>
<u>Residential</u>	<u>Sleeping spaces</u>	<u>40 dB</u>	<u>35 dB</u>
	<u>All other habitable rooms</u>	<u>40 dB</u>	<u>40 dB</u>
<u>Education</u>	<u>Lecture rooms/theatres, music studios, assembly halls</u>	<u>35 dB</u>	<u>35 dB</u>
	<u>Teaching areas, conference rooms, drama studios, sleeping areas</u>	<u>40 dB</u>	<u>40 dB</u>
	<u>Libraries</u>	<u>45 dB</u>	<u>45 dB</u>
<u>Health</u>	<u>Overnight medical care, wards</u>	<u>40 dB</u>	<u>40 dB</u>
	<u>Clinics, consulting rooms, theatres, nurses' stations</u>	<u>45 dB</u>	<u>45 dB</u>
<u>Cultural</u>	<u>Places of worship, marae</u>	<u>35 dB</u>	<u>35 dB</u>

- b) is at least 50 metres from the carriageway of any state highway or 50 metres from any railway network, and is designed so that a noise barrier completely blocks line-of-sight from all parts of doors and windows, to the road surface and to all points 3.8 metres above railway tracks; or
- c) is a single-storey framed residential building with habitable rooms designed, constructed and maintained in accordance with the construction schedule in Schedule XX.

3.3.X.3 Mechanical ventilation: If windows must be closed to achieve the design noise levels in clause 2(a), the building is designed, constructed and maintained with a mechanical ventilation system that

- a) For habitable rooms for a residential activity, achieves the following requirements:
 - i. provides mechanical ventilation to satisfy clause G4 of the New Zealand Building Code; and
 - ii. is adjustable by the occupant to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour; and
 - iii. provides relief for equivalent volumes of spill air;
 - iv. provides cooling and heating that is controllable by the occupant and can maintain the inside temperature between 18°C and 25°C; and
 - v. does not generate more than 35 dB $L_{Aeq(30s)}$ when measured 1 metre away from any grille or diffuser.
- b) For other spaces, is as determined by a suitably qualified and experienced person.

3.3.X.4 Indoor road and railway vibration: Any new buildings or alterations to existing buildings containing a noise sensitive activity, closer than 40 metres to the carriageway of a state highway or 60 metres from the boundary of a railway network, is designed, constructed and maintained to achieve road and rail vibration levels not exceeding 0.3 mm/s $v_{w,95}$.

3.3.X.5 Design report: A report is submitted to the council demonstrating compliance with clauses (1) to (4) above (as relevant) prior to the construction or alteration of any building containing a noise sensitive activity. In the design:

- a) railway noise is assumed to be 70 $L_{Aeq(1h)}$ at a distance of 12 metres from the track, and must be deemed to reduce at a rate of 3 dB per doubling of distance up to 40 metres and 6 dB per doubling of distance beyond 40 metres; and
- b) road noise is based on measured or predicted noise levels plus 3 dB.

3.5 Restricted discretionary activities

3.5.X Activities sensitive to noise within 100 metres of a state highway carriageway or 100 metres from the legal boundary of any railway network that are unable to meet the permitted activity standards in 3.3.X

Matters over which the Council has restricted its discretion:

3.5.X.1 Whether the activity sensitive to noise could be located further from the state highway or railway network.

3.5.X.2 The extent to which the noise and vibration criteria are achieved and the effects of any non-compliance.

3.5.X.3 The character of, and degree of, amenity provided by the existing environment and proposed activity.

3.5.X.4 The reverse sensitivity effects on the state highway or rail network, and the extent to which mitigation measures can enable their ongoing operation, maintenance and upgrade.

3.5.X.5 Special topographical, building features or ground conditions which will mitigate vibration impacts.

3.5.X.6 The outcome of any consultation with the New Zealand Transport Agency or KiwiRail.

Notification:

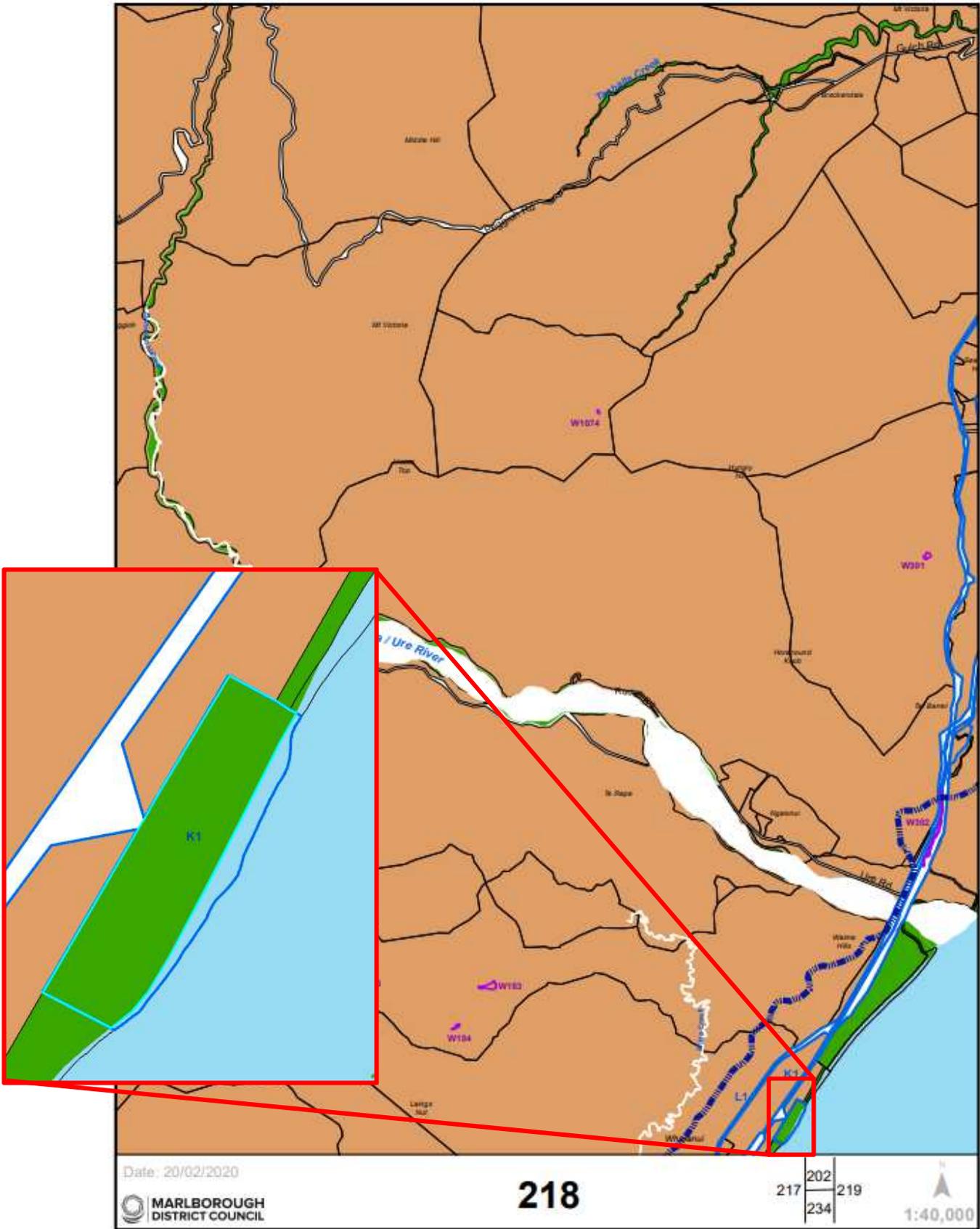
Application for resource consent under this rule will be decided without public notification. The New Zealand Transport Agency or KiwiRail (as relevant) are likely to be the only affected person determined in accordance with section 95B of the Resource Management Act 1991.

Schedule XX Construction schedule for indoor noise control

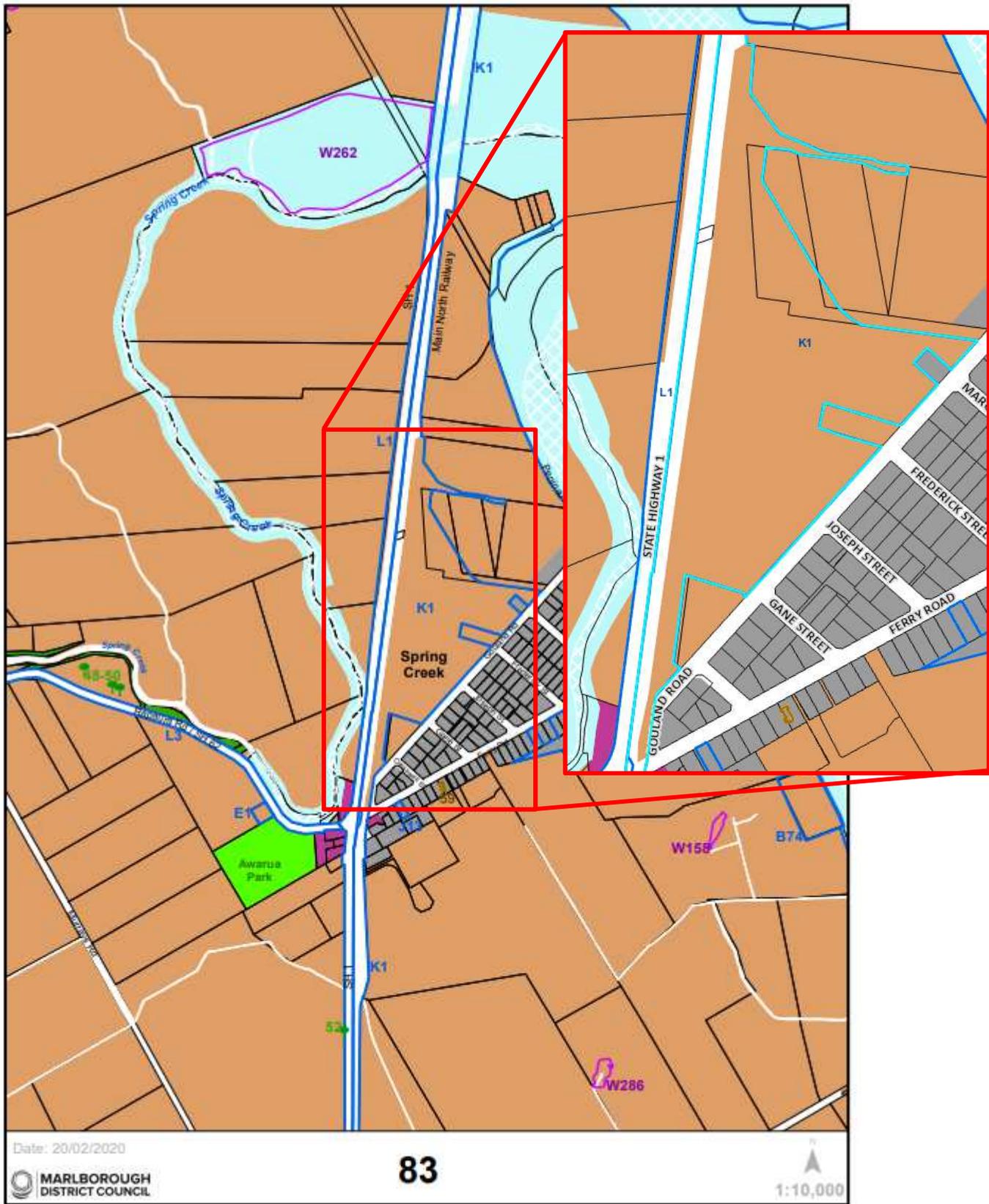
<u>Elements</u>	<u>Minimum construction for noise control in addition to the requirements of the New Zealand Building Code</u>	
<u>External walls</u>	<u>Wall cavity infill of fibrous insulation, batts or similar (minimum density of 9 kg/m³)</u>	
	<u>Cladding and internal wall lining complying with either Options A, B or C below:</u>	
	<u>Option A - Light cladding: timber weatherboard or sheet materials with surface mass between 8 kg/m² and 30 kg/m² of wall cladding</u>	<u>Internal lining of minimum 17 kg/m² plasterboard, such as two layers of 10 mm thick high density plasterboard, on resilient/isolating mountings</u>
	<u>Option B - Medium cladding: surface mass between 30 kg/m² and 80 kg/m² of wall cladding</u>	<u>Internal lining of minimum 17 kg/m² plasterboard, such as two layers of 10 mm thick high density plasterboard</u>
	<u>Option C - Heavy cladding: surface mass between 80 kg/m² and 220 kg/m² of wall cladding</u>	<u>No requirements additional to New Zealand Building Code</u>
<u>Roof/ceiling</u>	<u>Ceiling cavity infill of fibrous insulation, batts or similar (minimum density of 7 kg/m³)</u>	
	<u>Ceiling penetrations, such as for recessed lighting or ventilation, shall not allow additional noise break-in</u>	
	<u>Roof type and internal ceiling lining complying with either Options A, B or C below:</u>	
	<u>Option A - Skillion roof with light cladding: surface mass up to 20 kg/m² of roof cladding</u>	<u>Internal lining of minimum 25 kg/m² plasterboard, such as two layers of 13 mm thick high density plasterboard</u>
	<u>Option B - Pitched roof with light cladding: surface mass up to 20 kg/m² of roof cladding</u>	<u>Internal lining of minimum 17 kg/m² plasterboard, such as two layers of 10 mm thick high density plasterboard</u>
	<u>Option C - Roof with heavy cladding: surface mass between 20 kg/m² and 60 kg/m² of roof cladding</u>	<u>No requirements additional to New Zealand Building Code</u>
<u>Glazed areas</u>	<u>Aluminium frames with full compression seals on opening panes</u>	
	<u>Glazed areas shall be less than 35% of each room floor area</u>	
	<u>Either, double-glazing with:</u>	
	<ul style="list-style-type: none"> • <u>a laminated pane of glass at least 6 mm thick; and</u> • <u>a cavity between the two panes of glass at least 12 mm deep; and</u> • <u>a second pane of glass at least 4 mm thick</u> 	
	<u>Or, any other glazing with a minimum performance of Rw 33 dB</u>	
<u>Exterior doors</u>	<u>Exterior door with line-of-sight, to any part of the state highway road surface or to any point 3.8 metres above railway tracks</u>	<u>Solid core exterior door, minimum surface mass 24 kg/m², with edge and threshold compression seals; or other doorset with minimum performance of Rw 30 dB</u>
	<u>Exterior door shielded by the building so there is no line-of-sight to any parts of the state highway road surface or any points 3.8 metres above railway tracks</u>	<u>Exterior door with edge and threshold compression seals</u>

APPENDIX B

APPENDIX B1

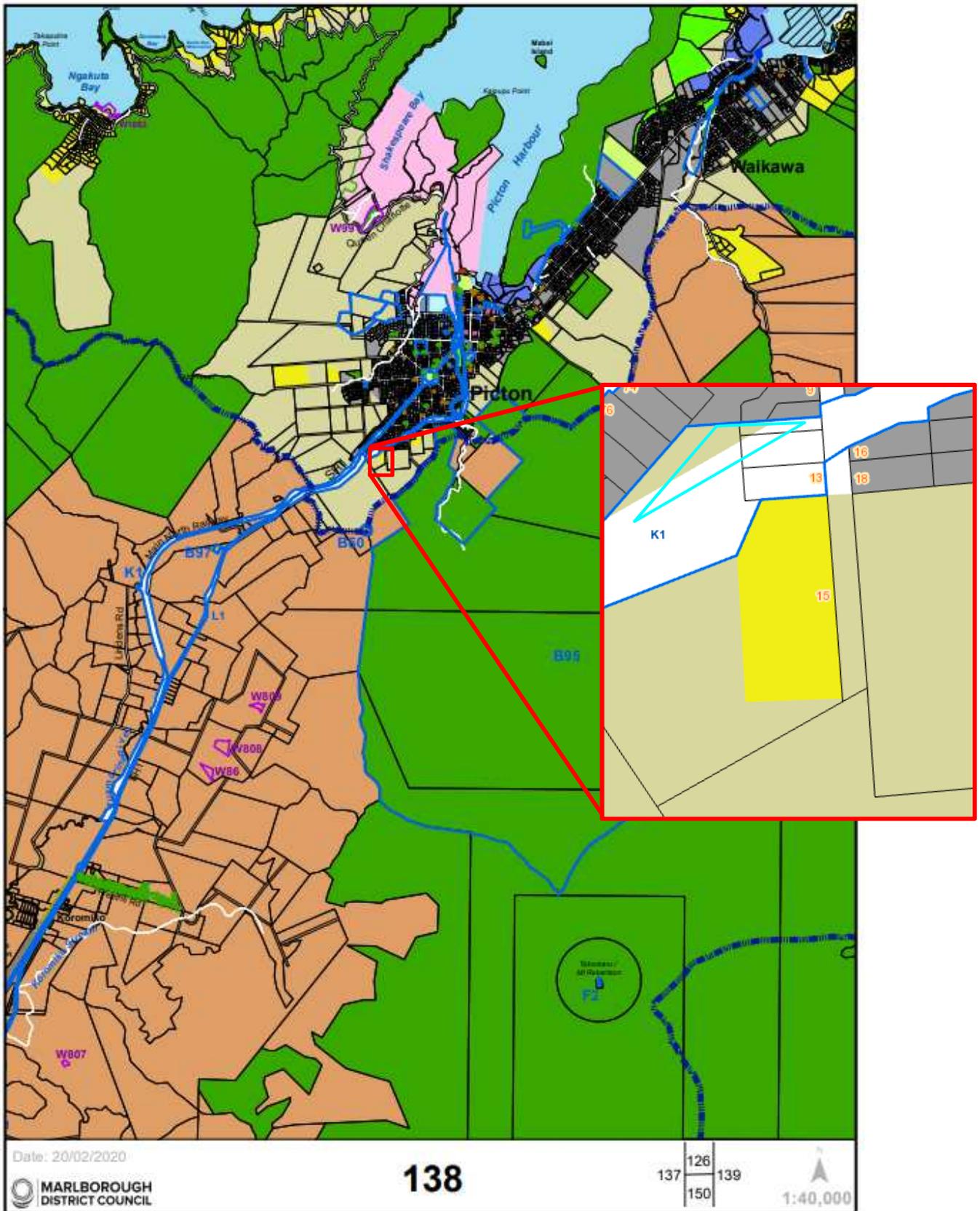


APPENDIX B2



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APPENDIX B3



Structure of Decisions

1. It is important that the topic decision is read as a whole together with the tracked change version of the Plan. The decision on each topic contains the reasons for the Panel's decisions. These comprise either adoption of the reasoning and recommendations of the original Section 42A Report or the replies to evidence, or a specific reasoning by the Panel¹.
2. The tracked change version of the relevant PMEP provisions forms an integral part of the decision. The source of the change in terms of the topic that the subject matter was dealt with is clearly identified in the track changes version of the plan. This records all amendments (additions and deletions) to the notified PMEP provisions made by the Panel.
3. Where the PMEP provisions **remain as notified**, it is because:
 - (a) The Panel has decided to retain the provision as notified for reasons set out in this decision; or
 - (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to retain the provision as notified as recommended in the Reply to Evidence; or
 - (c) The Panel adopted the reasoning and recommendation of the Section 42A Report to retain the provision as notified in the original Section 42A report.
4. Where there is a **change to a provision** within the plan it is because:
 - (a) The Panel has amended a provision for reasons set out in this decision in response to a submission point which the Section 42A report writer(s) does not recommend in their reports; or
 - (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the Reply to Evidence; or

¹ (The only exception to that approach relates to the Noise section of the Nuisance topic where the reasoning and recommendations in the responses to Minutes 54 and 59 may have been adopted, rather than the reasoning and recommendations in the Section 42A Report or the Reply to Evidence report. The reasons for that difference in that topic are dealt with in detail at the commencement of the Noise section of the Nuisance topic decision. In respect of that topic the approach to understanding of the individual submission point decisions addressed in paragraphs 13.3 to 13.5 below should be adjusted accordingly to apply references to the Section 42A Report and/or Reply to Evidence in those paragraphs as being references to the responses to Minutes 54 & 59 for that Nuisance topic.)

- (c) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the original Section 42A report; or
 - (d) A consequential change has been necessary following on from a decision in either a), b) or c).
5. Where there is a **different recommendation** between the Section 42A Report and the Reply to Evidence (i.e., the recommendation by the Section 42A report writer(s) has changed as a result of hearing the evidence of submitters), unless the Panel decision specifically adopts the original report's reasoning and recommendations, the reasoning and recommendations in the (later) reply to evidence has been adopted and it must be taken to prevail.
6. There are limited circumstances where the Panel has taken the opportunity to give effect to national policy statements or implement national environmental standards. Where this occurs the relevant decision clearly sets out the nature of the change and the reason for the change.
7. Finally, there are limited circumstances where the Panel has decided that **alternative relief** is more appropriate than that requested by the submitters, but still within the scope of the relief sought. This is recorded in the Panel's decision.

Dust

(This is a common standard in every zone – the wording being as follows.)

The best practicable method must be adopted to avoid dust beyond the legal boundary of the area of land on which the activity is occurring.

28. There were a large number of submissions in relation to various aspects of the effects of discharge of dust in general terms and specifically particulate matter from the venting of stacks. The Panel accepted the recommendations of the report writer addressing all of those issues for the reasons set out in the Section 42A Report. However the Panel preferred to use the word ‘must’ instead of the word ‘shall’ and the decision reflects that change to the recommendations.

Consideration and decision

29. The Panel accepts the recommendations of the report writer, except for one small wording change. For consistency with the way in which standards are expressed in the PMEP, the ‘shall’ in the relevant recommended provisions is amended to ‘must’.
30. The standard for the discharge of dust is replaced in the relevant chapters to read:

There must be no objectionable or offensive discharge of dust to the extent that it causes an adverse effect (including on human health) at or beyond the legal boundary of the site.

Note 1: For the purpose of this performance standard, an offensive or objectionable discharge of dust is one which can be detected and is considered to be offensive or objectionable by a Council officer. In determining whether an odour is offensive or objectionable, the “FIDOL” factors must be considered (the frequency; the intensity; the duration; the offensiveness (or character); and the location). For the purposes of this performance standard, the “site” comprises all that land owned or controlled by the entity undertaking the activity causing the dust.

NZTA reverse sensitivity/cumulative effects

31. NZTA made a number of submissions relating to reverse sensitivity and/or cumulative effects in respect of the state highway network. It seeks new objectives and/or policies as follows:²⁰

A new RPS and regional objective and/or policy that will ensure an integrated planning approach is taken to managing the effects of growth and development on transport infrastructure.

Ensure noise sensitive activities are set back a sufficient distance from land transport network boundaries to avoid, remedy and mitigate effects.

²⁰ NZTA (1002.89 and .101).

Allow noise sensitive activities to be located near land transport networks only where they do not compromise or limit the existing or planned function of the land transport network.

32. NZTA also suggests adding buffer and effects areas adjacent to the state highway network in which particular activities would be regulated because of reverse sensitivity effects, for example, new residential buildings near the state highway could be affected by traffic noise which in turn leads to complaints about the operation of the state highway.²¹

Section 42A Report

33. The report writer noted that at the Transportation hearing, NZTA advised it no longer wished to pursue the implementation of transport cumulative effects areas as an overlay.²² However, he did recommend some minor changes including reference to cumulative or reverse sensitivity effects in the explanation to Policy 17.4.1.²³
34. The report writer did not favour the introduction of buffer and effects areas as he considers it would add unnecessary complexity to the PMEP. He believes there are sufficient provisions in the PMEP to control these matters including zoning, activity status and setbacks. Additional controls are therefore unnecessary and unjustified.²⁴

As recorded in the Section 42A Report for Topic 15: Transportation and Signage, the report writer advised that the previous “no build provision” within 40m of the state highway sought by NZTA was likely to be replaced by a provision allowing building within 100m subject to noise attenuation. NZTA advised that the provisions would be confirmed prior to the hearing on Nuisance Topic. The Panel did not have the benefit of any such evidence from NZTA.

35. The report writer recommended that Policy 17.4.1 is amended as follows:²⁵

Manage the density, scale and location of subdivision and/or activities to maintain the planned function of the ~~existing~~ land transport network.

A major method in the MEP for managing the efficiency of the road network is through identification of a road's function, which is established by the road hierarchy (set out in Appendix 17 and Policy 17.3.2). It is important that subdivision or and activities that generate traffic (whether on land or in the coastal marine area) are managed so that their location, density, design, and/or scale does not impair the function of a particular

²¹ NZTA (1002.272).

²² NZTA (1002.274).

²³ Section 42A Report (Transportation), Reply to Evidence, page 2.

²⁴ Section 42A Report, paragraph 99.

²⁵ NZTA (1002.89).

road, including as a result of cumulative or reverse sensitivity effects. Management will occur through district rules that describe where there is a need to consider the impacts of activities on the function of a road through the resource consent process.

Consideration

36. For the reasons outlined in the Section 42A Report for this topic, and also for the reasons set forth on similar issues in Topic 15 on Transportation, the Panel was not satisfied that the complexity required to meet the NZTA request is warranted in the Marlborough transport setting. The Panel was satisfied that the existing provisions as recommended to be amended appropriately address reverse sensitivity noise effects.

Decision

37. Policy 17.4.1 is amended as follows:

Manage the density, scale and location of subdivision and/or activities to maintain the planned function of the ~~road~~ land transport network.

A major method in the MEP for managing the efficiency of the road network is through identification of a road's function, which is established by the road hierarchy (set out in Appendix 17 and Policy 17.3.2). It is important that subdivision or and activities that generate traffic (whether on land or in the coastal marine area) are managed so that their location, density, design, and/or scale does not impair the function of a particular road, including as a result of cumulative or reverse sensitivity effects. Management will occur through district rules that describe where there is a need to consider the impacts of activities on the function of a road through the resource consent process.

Definitions

38. The Panel adopted the recommendation that a definition was inserted in to the PMEP of 'reverse sensitivity' for the reasons given in the report. However, the report recommended its insertion in Chapter 19 whereas the Panel directs that it is inserted in Chapter 25 of Volume 2, with all other definitions.

Temporary military training

39. Temporary military training activities are managed by General Rule Temporary Military Training Activity in which Rule 2.41-2.43 allows the activity as a permitted activity subject to standards that relate to:

- the activity not exceeding 31 days;
- no permanent structures;

Decision

23. Insert a new standard in 5.2, 6.2, 9.2, 10.2 and 12.2 as follows:

X.2.x Water supply and access for firefighting

X.2.x.1 New buildings (excluding accessory buildings that are not habitable) shall have direct access to a Council reticulated water supply with fire fighting capability including hydrants.

X.2.x.2 Where a building (excluding accessory buildings that are not habitable) is located more than 75m from the nearest road that has reticulated water supply (including hydrants) access must have a minimum formed width of 4m, a height clearance of 4m and be free of obstacles that could hinder access for firefighting and emergency service vehicles.

24. Insert a new standard in 18.2 as follows:

X.2.x Water supply and access for firefighting

X.2.x.1 New buildings (excluding accessory buildings that are not habitable) shall have sufficient water supply for firefighting.

X.2.x.2 Where a building (excluding accessory buildings that are not habitable) is located more than 75m from the nearest road that has reticulated water supply (including hydrants) access must have a minimum formed width of 4m, a height clearance of 4m and be free of obstacles that could hinder access for firefighting and emergency service vehicles.

New standards - Construction and siting of a building or structure.

25. KiwiRail supports the standards in part, which reference construction and siting of a building or structure¹¹, and seeks an additional clause. It requests for safety reasons that the rail corridor is not publicly accessible. To ensure that access to all buildings can be provided without the need for occupiers to access the rail network, buildings need to be set back from the rail corridor boundary to ensure people's health and wellbeing. Given the consequence of an incident in the event of a neighbour accessing the rail corridor without the necessary safety permits in place, KiwiRail seeks a setback for new structures from the rail corridor, as follows: *A building or structure must not be within 5m of the rail corridor.*¹²

Section 42A Report

26. The report writer considers the setback requested is excessive for the purpose stated. A 5 metre setback would impose a large restriction on the use of a person's property, and seems disproportionate in achieving KiwiRail's desired outcome which seems to be sufficient space

¹¹ Standards 5.2.1, 9.2.1, 10.2.1 and 12.2.1

¹² KiwiRail (873.130, .134, .137, .140).

for property owners to be able to construct and maintain their buildings without having to go into the rail corridor.

27. In the report writer's view, a 1.5 metre setback would be sufficient. It would allow space for people to get around buildings to work on them, and space to erect scaffolding if needed (which typically is 850 mm wide). The report writer has concerns about the words 'any structure' as that would require any fence to be set back 5 metres into a person's property, effectively nullifying use of a significant portion of a person's property. The report writer suggests excluding fences from the setback (as long as the palings or main fence elements can be replaced from within owner's property).
28. The report writer considers a consequential amendment would assist with interpretation of the proposed standard if the term 'rail corridor' was defined. The term is proposed in the KiwiRail submission to be used in a number of provisions throughout the PMEP. In another submission point, in relation to its Designation K1, KiwiRail indicates the rail corridor consists of the Main North Line.¹³ The report writer suggests this term, linked to the designation, also be used.¹⁴
29. In evidence, KiwiRail reasserted they want a 5 metre setback from the boundary, not 1.5 metres as recommended by the report writer. Five metres is already recommended in the Public Access and Open Space Section 42A Report. Some zones permit structures up to 15 metres in height and therefore poles, ladders and other equipment needed for maintenance can be long, needing more space. A 5 metre setback also ensures structures do not interfere with sight lines at level crossings.¹⁵
30. KiwiRail accepts that fences could be caught by the proposed rule and accepts that fences up to 2.5 metres high are unlikely to have safety impacts or a need for access to the rail corridor.
31. Ms Beals proposes amending the rule as follows:¹⁶

... building or structure must not be within ~~1.5~~ 5.0 m of the rail corridor, except for a fence up to 2.5m in height ~~provided the fence is constructed, and palings or main fencing elements are able to be replaced, from within the site and without accessing the rail corridor.~~

¹³ KiwiRail (873.159).

¹⁴ Section 42A Report, paragraphs 199-200.

¹⁵ KiwiRail, Rebecca Beals, Evidence, paragraph 39.

¹⁶ Section 42A Report, Reply to Evidence, page 12.

32. In terms of a definition of ‘rail corridor’, Ms Beals identifies that the company does not support the recommended definition as the legal boundary identifies the rail corridor and this is more precise than a mapped designation.¹⁷
33. The report writer in reply reiterates his concerns outlined in the Section 42A Report – that a 5 metre setback imposes considerable restrictions on other people’s land – but nevertheless accepts that setbacks apply to buildings and private land for various other purposes such as street amenity and sight lines on corners, albeit this is for a private company but with a degree of public benefit.
34. The report writer also accepts:
- In business and industrial zones where buildings are permitted to be taller (10-15 metres), a 1.5 metre setback may not be large enough to manoeuvre, erect and support scaffolding or ladders. He argues a smaller setback could apply in residential zones as the maximum building height is less than 7.5 metres.
 - The 5 metre setback would be appropriate in the Urban Residential Zone and in the other zones KiwiRail submitted on – Business 1 and 2, Industrial 1 and 2.
 - The wording change in relation to fences suggested by Ms Beals, except for the 2.5 metre height. This is higher than the fences permitted in Urban Residential zones standards 5.2.1.15 and 6.2.1.10 and the Business Zone 2 Standard 10.2.1.6. It is better to align the fence height with the zone rules. (Ms Beals responded she would be comfortable with 2 metres.¹⁸)
 - Using the term ‘rail corridor’ in a rule but not defining the term creates potential uncertainty in interpretation. This could be avoided by referring to ‘the boundary with the rail corridor’. This definition fits with the intent of the KiwiRail evidence on the basis that it is legally surveyed with a defined boundary. (Ms Beals is supportive of such wording.)
35. The Panel asked if the term ‘rail corridor’ could be better defined. This raised the question of how to differentiate the Main Trunk Line from the small railway line down to Taylor River and elsewhere. One way to do this is to refer to the ‘Main North Line’. This is the term used in KiwiRail’s submissions and evidence. The rule could then read: *The boundary with the rail corridor of the Main North Line.*

¹⁷ KiwiRail, Rebecca Beals, Evidence, paragraph 47.

¹⁸ Section 42A Report, Reply to Evidence, pages 11-12.

36. The report writer, as a result of the evidence from KiwiRail for consistency across zones, accepted that 5 metres was recommended in the Section 42A Report on the Open Space Zone and in other zones that KiwiRail has submitted on (Business 1 and 2 and Industrial 1 and 2). He accepts that instead of a 1.5 metre setback, a 5 metre setback could be recommended for Standard 5.2.1.21 as follows:

A building or structure must not be within ~~1.5m~~ 5m of the boundary with the rail corridor of the Main North Line, except for a fence up to 2m in height ~~provided the fence is constructed, and palings or main fencing elements are able to be replaced, from within the site and without accessing the rail corridor.~~

37. The same changes are suggested for Rules 9.2.1.21, 10.2.1.11 and 12.2.1.11.

Consideration

38. In spite of the report writer's reconsideration that a 5 metre setback for the KiwiRail corridor was appropriate for consistency purposes, the Panel nevertheless concluded a 1.5 metre setback in the rail corridor was appropriate for other reasons, namely:

- In practical terms, a substantial rail corridor setback commonly exists within KiwiRail's legal boundary and the railway tracks.
- An additional 5 metre setback would be an unacceptable inroad into private property space/availability.
- A 1.5 metre setback on residential property would allow for ladders, scaffolding and building materials to be easily manoeuvred on site without having to access the rail corridor land.
- We consider as a result that access to structures adjoining the rail corridor for maintenance purposes would not compromise health and safety, as suggested by KiwiRail.

Decision

39. As recommended, and for the reasons given, new standards are inserted as 5.2.1.21, 9.2.1.15, 10.2.1.11 and 12.2.1.11, and are to read as follows:

A building or structure must not be within 1.5m of the legal boundary with the rail corridor of the Main North Line, except for a fence up to 2m in height.

Standard 3.3.8.2

Planting must not be in, or within:

- (a) 100m of any land zoned Urban Residential 1, Urban Residential 2 (including Greenfields), Urban Residential 3, Rural Living or Coastal Living;
- (b) 30m of a formed and sealed public road;
- (c) 8m of a river (except an ephemeral river) or lake;
- (d) 8m of a Significant Wetland or 30m of a river within a Water Resource Unit with a Natural State classification;
- (e) 200m of the coastal marine area;
- (f) Steep Erosion-Prone Land, unless replanting harvested woodlot forest lawfully established.

55. Standard 3.3.8.2 Woodlot forestry planting provides for planting distances from zoning, public roads, wetlands, rivers, Water Resource Units, the coastal marine area and steep erosion land.

56. KiwiRail seeks an additional standard to the restrictions on woodlot forestry plantings in the Rural and Coastal Environment Zones and on a formed and sealed road. The intent of the submission is to restrict planting within 10 metres of the rail corridor thereby reducing risk to the safe operation of the main trunk railway by creating a suitable buffer for KiwiRail's rail corridor operations. The purpose of the setback is to try and prevent issues in the future when woodlots and commercial forestry are developed or redeveloped on sites adjacent to the rail network.¹²

Section 42A Report

57. The Report Writer agreed that a setback is appropriate from the rail corridor to ensure the safety of the network but queried why only woodlot forestry should be affected rather than also addressing commercial forestry.¹³

58. In evidence, Ms Rebecca Beale for KiwiRail clarified that this type of planting (along with commercial forestry addressed elsewhere) poses a greater risk to the safe operation of the rail corridor than shelterbelt planting. This led to the Report Writer to restrict the Section 42A Report Standards 3.3.8.2(a) and 4.3.7.2(f) to recommend excluding woodlot forestry from within 10 metres of the edge of the railway track.¹⁴

59. Ms Beale identified that woodlot forestry is non-commercial (Standards 3.3.6.2 and 4.3.6.1) and gave a list of what can take place in the rail corridor with the intrusion of this type of forestry into sight lines, encroachment on the tracks, and harvesting which involves heavy

¹² KiwiRail (873.127 and .122).

¹³ Section 42A Report, paragraphs 179-180. In relation to other forestry planting managed under NESPF, the regulations include a requirement for afforestation (planting) to be set back 10 metres from adjoining properties which would include the boundary within the rail corridor.

¹⁴ KiwiRail, Rebecca Beale Evidence, paragraphs 56-61.

machinery near the tracks. Restrictions on planting location is a means of combatting these effects.

Consideration

- 60. The Panel concluded, having heard the evidence, that the restriction should be consistent with Standard 3.3.8 Woodland forestry planting, that applies to the road reserves in the PMEP Standard 3.3.8.2(b) – [species named] where planting must not be in or within 30m of a formed and sealed public road.
- 61. MLL otherwise seeks that the permitted activity standards in the Rural Environment, Coastal Environment and Rural Living Zones that relate to woodlot forestry and conservation planting require a 40m buffer setback from their distribution circuit.¹⁵
- 62. Ms Straker for MLL in questioning was happy to accept a fall distance setback, however, rather than a 40m buffer. In response to the Panel questions she confirmed that a 40m setback covers the worst case scenario and accepted that a lesser distance would be appropriate. Therefore the Panel agreed to a 30m setback. This is consistent with the setback from the road network for woodlot forestry.
- 63. We concluded that there should be a consistent standard as applies to the road reserve in proposed Standard 3.3.8.2(b) with the addition of the words 'or within 30m of the Main Trunk railway track' as there is uncertainty as to what constitutes a 'rail corridor'.

Decision

- 64. Standard 3.3.8.2 is amended as follows:

[R, D]¹⁶

Standard 3.3.8.2 Planting must not be in or within: ...

(b) 30m of a formed and sealed public road or 30m of the Main Trunk railway track.

Standard 16.3.7

Repair, maintenance or replacement of the existing subsurface Cook Strait cable.

Standard 16.3.7.1

No more than 500 m³ of material must be disturbed in any one calendar year.

- 65. In Minute 48 the Hearing Panel requested that Transpower provide detailed reasons for seeking the deletion of Standard 16.3.7.1 which controls the volume of foreshore and seabed materials that might be disturbed during the replacement or installation of a new submarine

¹⁵ MLL (232.3, .4, .5, .6, .7, .8).

¹⁶ KiwiRail. Ms Beale's Evidence, paragraph 9, pointed out that the provisions sought are both [R, D].

significantly to the social and economic wellbeing of Marlborough. This objective seeks to ensure that this continues.

[C]

Policy 13.14.1 – Enable water transportation activities where ~~these do not have an adverse effects~~ on the coastal environment are avoided remedied or mitigated.

Due to the nature of Marlborough's coastal marine area (the extensive sheltered waterways of the Marlborough Sounds) and its central location within New Zealand, a number of water transportation activities have been in operation here for some time. It is important that provision is made to enable the activities identified in Objective 13.14 to continue where there is ~~little~~ minor adverse impact on the coastal environment.

Comment [48]: Topic 11

[C]

Policy 13.14.2 – The strategic importance of areas of the Marlborough Sounds as a transportation route for inter-island shipping will be recognised as a 'National Transportation Route'.

The use of areas within the Marlborough Sounds for shipping provides a particularly important transport link between the North and South Islands. Tory Channel/Kura Te Au and inner Queen Charlotte Sound/Tōtaranui comprise a transportation route of national significance for shipping activity. It is therefore important to recognise the strategic importance of this route and the need for it to be sustainably managed. This route has been identified by the Council in the MEP as a 'National Transportation Route' and rules apply to ships operating along this route.

[RPS, C]

Policy 13.14.3 – Ensure the following existing ports, marinas and community/commercial jetties/landing areas continue to provide links between land transport modes and water transport to the Marlborough Sounds and beyond:

- (a) ports of Picton and Havelock;
- (b) port landing areas at Oyster Bay (Te Whanganui/Port Underwood) and Elaine Bay (Tennyson Inlet);
- (c) Picton, Havelock and Waikawa marinas; and
- (d) jetties and landing areas in Torea Bay and Onahau Bay (Queen Charlotte Sound Tōtaranui), Elmslie Bay (French Pass), Kapowai Bay (d'Urville Island) and Portage, Te Mahia and Waitaria Bay (Kenepuru Sound).

The linkages between the different modes of transport provided by the existing ports, marinas and community/commercial jetties and port landing areas contribute significantly to the social, economic and cultural wellbeing of Marlborough. In Picton, Waikawa and Havelock, infrastructure is well-established and provides important links between road and rail forms of transport and the various forms of water transportation. In Chapter 4 - Use of Natural and Physical Resources, this infrastructure has been identified as regionally significant. The jetties and port landing areas identified in b) and d) are recognised by the Council as necessary and strategic links in Marlborough's transport network and are also very important to local communities.

[RPS, C]

Objective 13.15 – The efficient and safe use of the coastal marine area for water transportation.

Activities within the coastal marine area, including surface water activities and the placement of structures, have the potential to affect the efficiency and safe use of the coastal marine area for water transportation. Safety is mainly covered by other legislation (the Local Government Act 2002, the Building Act 1991 and the Maritime Transport Act 1994). However, the RMA is also concerned with safety and navigation issues, through part of its purpose in Section 5 in "*enabling people to provide for... their health and safety.*" Therefore an objective seeking efficiency and safety outcomes for water transportation is appropriate, particularly as the use of water transport

routes is for through traffic and locating activities along them can result in safety hazards, creating potential conflict between motorised vehicles and pedestrians.

[D]

Policy 17.5.4 – Avoid the display of outdoor advertising signs that could adversely affect traffic safety by confusing, distracting or obstructing the view of motorists or pedestrians.

Comment [13]: Topic 15

Signs and other forms of outdoor advertising are a necessary part of the community's social and economic activities. However, the potential adverse effects of outdoor advertising on traffic safety are of concern to the Council. Different environments within the district have different levels of sensitivity to the potential adverse effects of signs. In particular, careful consideration must be given to the location, design, size or type of signs along state highways and primary arterial routes, where the potential for conflicts with traffic safety are highest.

The erection of signs on the site where an activity is undertaken is accepted as part of that activity and will generally be a permitted activity, subject to meeting standards. Signs located off-site to attract customers to another site will need to be assessed through the resource consent process to determine whether there will be an adverse impact on traffic safety. In some situations there may be improved traffic safety outcomes through off-site location of signs.

[D]

Policy 17.5.5 – Ensure that convenient and accessible car and cycle parking is available for both staff and visitors for all activities.

The demand for parking generated by activities has the potential to adversely impact on the environment of an area. These adverse impacts are likely to occur when the demand for parking exceeds that provided onsite and there is an overspill of parking onto the adjacent roadside. Furthermore, the efficient use and capacity of a road can be reduced by parked or manoeuvring cars, particularly on main roads where there is a predominance of through traffic. The amenity of an area can also be changed by on-street parking resulting in a perceived loss of privacy and ~~visual~~ amenity values.

Comment [14]: Topic 5

To avoid or reduce these effects, adequate off-street parking for all activities will be necessary. It is considered that parking provision to meet normal generation demands will be primarily the responsibility of the property owner or occupier. The exception is within the Business 1 Zone, where the Council is responsible for providing public car parking space (both on and off street).

[D]

Policy 17.5.6 – Subdivision and land use activities shall avoid, remedy or mitigate adverse effects on the safety of and accessibility to the road network by ensuring among other matters:

Comment [15]: Topic 15

- (a) buildings, vegetation and activities do not reduce clear sight lines for trains and road vehicles at level rail crossings or for vehicles at road intersections;
- (b) vegetation planted on land alongside rural roads is set back so that roads are not shaded and subjected to icing in winter;
- (c) adequate formal crossing facilities are provided where high levels of pedestrian activity are generated from an activity located adjacent to an arterial road or in a Business or Industrial zone;
- (d) activities do not create distractions for any road or rail users, including from glare, inappropriate lighting, smoke, discharges or other distractions;
- (e) vehicle crossing places and entrances from roads are constructed and maintained to standards appropriate to the circumstances of traffic volume, pedestrian and cycle movement and local traffic speed; and
- (f) new urban subdivisions and developments incorporate facilities for non-motorised transport users, including:

- (i) **footpaths or access ways intended to be used by both cyclists and pedestrians and their separation for safety reasons where practicable;**
- (ii) **provision for cycle traffic within road carriageways in such a way that lane width, design and surface finish are adequate to safely accommodate both motorised vehicles and cycles; and**
- (iii) **pedestrian access routes connecting residential areas, schools, shopping centres, recreation reserves and public transport collection points and terminals where appropriate.**

The matters listed in the policy will in some circumstances be prescribed through standards on permitted activity rules. In other circumstances, where a resource consent is required, these matters will be considered, where applicable, in the assessment of resource consent applications. (Not all of these matters will be a relevant consideration in every application.)

Issue 17E – The land transport network can have adverse effects on Marlborough’s natural and physical resources and the wellbeing of the community.

Transport has a direct impact on the natural and physical resources of Marlborough. Contaminants from vehicles (e.g. from tyres, brakes and oil or fuel spills) enter run-off from road surfaces and parking areas, contributing to a reduction in water quality with potentially damaging effects on sensitive aquatic flora and fauna.

Comment [16]: Topic 14

Earthworks associated with the construction and maintenance of roads can also be a source of sediment contamination of waterways if mitigation measures are not put in place. Development of the land transport network can affect areas of natural habitat or outstanding landscape value where these may need to be removed or severed to enable the construction of roads. Sites of significance to Marlborough’s tangata whenua iwi may also be affected by road construction, in particular archaeological sites that could be destroyed or damaged by earthworks.

Impacts from the land transport network can give rise to localised adverse effects on community health and wellbeing, including reduced safety, loss of amenity due to noise and dust and vehicle exhaust emissions (although because of Marlborough’s low population, there is currently no significant issue with exposure to transport pollutants). Road transport noise and vibration can be issues especially in urban areas. Noise levels can vary with the type of vehicle (for example, heavy vehicles are frequently noisier and generate more vibration) as well as the type of road surface and strength, with different seal types resulting in different noise levels. With State Highway 1 running through the middle of Seddon, Blenheim and Picton, people are also potentially exposed to significant noise from through traffic.

Increased traffic volumes can exacerbate existing safety concerns and generate new ones, especially where the road network is not designed to accommodate traffic increases (for example, unsealed roads). Changes in long-haul freight transport patterns and vehicles have also given rise to demands for new facilities within the land transport infrastructure, such as overnight parking areas for heavy goods vehicles and stock effluent disposal facilities. Increased traffic volumes occurring in or near residential areas can create inconvenience from congestion, making it difficult for people to access their properties and generally reducing the amenity values of the area. These effects can also diminish the amenity values of business areas, particularly retail areas where high quality environments are desirable.

Inadequate provision of parking and loading areas can create adverse effects on amenity values (including visual impacts) of an area. Parked vehicles can detract from scenic viewpoints and, where illegally parked, can obstruct footpaths, berms and access to adjacent properties. Additionally, while road networks provide connections between places, the construction of new roads (particularly major roads designed primarily for the passage of through traffic) may sever

Damming – effects on ‘mauri’ – Policy 5.2.22

Policy 5.2.22 – In the determination of any resource consent application, have regard to the following effects of damming of water:

- (a) the retention of sediment flows and any consequent adverse effect upstream or downstream of the dam structure;
- (b) changes in river bed levels and the effects of those changes;
- (c) any downstream effects of a breach in the dam wall;
- (d) interception of groundwater or groundwater recharge; and
- (e) interception of surface water runoff.

369. Ngāti Kuia in its submission sought similarly that protection against ‘degradation of mauri’ be specifically referred to in this Policy. The report writer took a similar view as to that request as for Policy 5.2.21.¹⁶

370. Again the Panel preferred to expand the reference to so that it was to degradation of the ‘mauri of the wai’ to specifically refer to the water body affected.

Decision

371. Amend Policy 5.2.22 by adding in a further sub-clause as follows:

(x). degradation of the mauri o te wai.

Temporary dams – Policy 5.2.22 and Rule 2.7.1

2.7.1. Alteration, repair or maintenance of an existing structure in, on or over the bed of a lake or river.

372. Trustpower and others raised in submissions the need to ensure that Policy 5.2.22 did not have the practical effect of preventing the use of temporary dams as part of river works in riverbeds to carry out necessary maintenance of significant infrastructure, and for that reason sought a specific provision for temporary dams to enable necessary maintenance work on existing structures, and the release of any associated detritus when the temporary dam was removed.¹⁷

373. The Reply to Evidence acknowledged that need, as had the original report. It recommended the following wording amendment for rule 2.7.1:

2.7.1. Alteration, repair or maintenance, including the temporary damming of water, of an existing structure in, on or over the bed of a lake or river.

374. The Panel agreed with that recommendation but considered that a slightly different wording was required.

¹⁶ (501.10)

¹⁷ (1201.38)

Decision

375. Amend rule 2.7.1 to read:

2.7.1. Alteration, repair or maintenance of an existing structure, including any associated temporary damming of water or release of detritus, in, on or over the bed of a lake or river.

376. Amend Standard 2.9.1 heading as a consequence to read:

2.9.1 Alteration, repair or maintenance of an existing structure, including any associated temporary damming of water or release of detritus, in, on or over the bed of a lake or river.

Efficiency of use – Objective 5.4

Objective 5.4 – Improve the utilisation of scarce water resources.

377. This Objective and following policies seek to encourage better utilisation of water resources which are over-allocated. A number of submissions particularly sought that the explanation to the Objective make it clearer what is intended by this Objective and supporting policies. The Section 42A Report did not agree any amendment was needed to the notified version.

378. After considering the submissions the Panel decided some greater clarity could be provided by an amendment as follows to focus on the issue of better utilisation of scarce resources rather than on gaining access to other sources.

Decision

379. Amend the explanatory statement to Objective 5.4 so that it reads:

In a state of full allocation of water resources, and given the implications of full allocation for potential users under the NPSFM, it is essential that ~~an alternative method to gain access to water is found to meet future demand~~ better utilisation of scarce water resources occurs to enable access to water to meet future demand.

Provision for non-irrigation uses – Policy 5.7.2

Policy 5.7.2 – To allocate water on the basis of reasonable demand given the intended use.

380. A number of submissions raised concerns that the Plan needed to specifically acknowledge the demand for water use from non-irrigation users as much as from irrigation users and that this Policy or its explanation provided that opportunity. The Section 42A Report agreed with that and recommended a wording for the Explanation that commenced “In the case of non-irrigation uses...”.

Decision

381. The Panel would prefer to slightly amend the opening words to that recommendation so the addition to the explanation reads, as an addition to the end of the first paragraph:

For non-irrigation uses, the allocation to the user will be assessed on a case-by case basis.

Network Utilities

The district plan zone rules do not apply to network utilities, except where referenced in the following rules. Other General Rules contained in Chapter 2 regional plan zone rules and coastal plan zone rules may also apply ~~in addition to any relevant zone rules for~~ to network utilities.

Comment [172]: Topic 20

2.398. Permitted Activities

Unless expressly limited elsewhere a by rule ~~a~~ in the Marlborough Environment Plan (the Plan), the following activities shall be permitted without resource consent where they comply with the applicable standards in 2.3940:

Comment [173]: Topic 1

[R, D]

Comment [174]: Topic 20

2.398.1. Network utility infrastructure listed as follows:

- (a) an electricity line or facility;
- (b) a telecommunication line or facility;
- (c) a radio communication ~~apparatus or~~ facility;
- (d) a meteorological service apparatus or facility;
- (e) a navigational aid, lighthouses or beacon;
- (f) a reservoir, well or supply intake for the reticulation or provision of public water supply;
- (g) a speed camera installation and associated structures, facility, plant or equipment for traffic purposes;
- (h) a water or sewerage treatment facility, underground pipe network for the conveyance and drainage of water or sewage, and any ancillary equipment;
- (i) a telecommunication kiosk ~~telephone call box~~ or the erection and use of a postal box.

[R, D]

~~2.38.2. (Deleted) Telecommunication line or cable over the bed of a lake or river.~~

Comment [175]: Topic 20

[D]

2.398.23. ~~Trenching for cable laying~~ Undergrounding of network utility lines.

Comment [176]: Topic 20

[D]

2.398.34. Maintenance and replacement of the following network utility infrastructure ~~existing at 9 June 2016:~~

- (a) an electricity line or facility;
- (b) a telecommunication line or facility;
- (c) a radio communication ~~apparatus or~~ facility;
- (d) a meteorological service apparatus or facility.

Note:

Except that this rule does not apply to activities, or those aspects of activities, that are provided for under the National Environmental Standards for Electricity Transmission

[Activities or the National Environmental Standards for Telecommunication Facilities 2016.](#)

Comment [177]: Topic 20

[D]

2.398.45. Minor upgrading of the following network utility infrastructure ~~existing at 9 June 2016:~~

- (a) an electricity line or facility;
- (b) a telecommunication line or facility;
- (c) a radio communication ~~apparatus or~~ facility;
- (d) a meteorological service apparatus or facility.

Note:

[Except that this rule does not apply to activities, or those aspects of activities, that are provided for under the National Environmental Standards for Electricity Transmission Activities or the National Environmental Standards for Telecommunication Facilities 2016.](#)

Comment [178]: Topic 20

[D]

2.398.56. Vegetation trimming or clearance associated with the maintenance, replacement and minor upgrading of a network utility ~~existing at 9 June 2016.~~

Comment [179]: Topic 20

[D]

2.39.6. [Network utilities within the National Grid Yard.](#)

Comment [180]: Topic 20

2.4039. Standards that apply to specific permitted activities

2.4039.1. Network utility infrastructure listed as follows:

- (a) an electricity line or facility;
- (b) a telecommunication line or facility;
- (c) a radio communication ~~apparatus or~~ facility;
- (d) a meteorological service apparatus or facility;
- (e) a navigational aid, lighthouse or beacon;
- (f) a reservoir, well or supply intake for the reticulation or provision of public water supply;
- (g) a speed camera installation and associated structures, facility, plant or equipment for traffic purposes;
- (h) water and sewerage treatment facilities, underground pipe networks for the conveyance and drainage of water or sewage, and any ancillary equipment;
- (i) ~~telephone call boxes~~ [telecommunication kiosk](#) ~~and or~~ the erection and use ~~of~~ postal boxes.

2.4039.1.1. The utility must not be in the Coastal Marine Zone.

2.4039.1.2. The utility must not be in the White Bluffs Outstanding Feature and Landscape.

2.4039.1.3. The maximum height of a building must not exceed 5m.

2.4039.1.4. The maximum gross floor area of a building must not exceed 65m².

New permitted activity status for ferries outside the NTR exceeding 15 knots?

175. The MSRMP applies a prohibited activity status to the use of surface water within that part of Queen Charlotte Sound not on the NTR by high-speed ships or ships that exceed 500 gross registered tonnes while travelling at ship speeds greater than 15 knots.

176. The Section 42A Report proposes the following prohibited activity rule:

16.7.X The use of surface water within that part of Queen Charlotte Sound not on the National Transportation Route by high speed ships, or ships that exceed 500 gross registered tonnes, which are travelling at ships' speeds greater than 15 knots.²⁷

177. QCSRA observed that this prohibited activity rule had not been 'carried through' to the PMEP. A high speed or large ship exceeding 15 knots in other parts of Queen Charlotte Sound not in the NTR would therefore have discretionary activity status under the PMEP.

178. The report writer identified she had not seen any information within the Section 32 Report as to why the prohibited activity rule had not been included in the PMEP, especially given the fact that the Section 32 Report states the management framework for the NTR has been followed from the MSRMP.

179. KiwiRail identifies that the Section 42A Report proposes to include the rule on the basis that it was omitted from the notified Plan without reason, and that the change was not necessary to make the Plan consistent with the suite of provisions agreed through the Environment Court hearing on Variation 3. Its witness Rebecca Beals says this:

The Environment Court hearing was on the provisions of the MSRMP, and simply because it was omitted and is part of the suite from the Environment Court is not justification for its inclusion through this process. There are inferred decisions in relation to ferry speeds and the use of Tory Channel, however I am not aware of a specific submission which would give scope to include this new prohibited activity rule. There is a submission point that notes this is missing (504.87), however that submission does not seek any relief, and the Council did not infer any relief from it in its summary of submissions (unlike the submissions on the use of Tory Channel).²⁸

Consideration

180. MDC staff undertook a review of submissions without success, to confirm none had supported suggested Rule 16.7.X. Not only is the suggested rule out of scope, Ms Beals made an appropriate observation on the role of a prohibitory activity rule from her planning

²⁷ Tranz Rail New Zealand v Marlborough District Council W001/2008, NZEnC 14, 22 January 2008.

²⁸ KiwiRail, Rebecca Beals, Evidence, paragraphs 72-79.

perspective. In this case, a prohibitory activity would not allow consent to be sought to measure effects in order to determine whether or not an increase in speed of any future shipping will comply with the wash rule. Because the effects of increased speed are well understood in this situation, there is already sufficient information to provide for an application for resource consent to be lodged.

181. There is also no inherent incompatibility within the zone given the recognition (in this case) of Queen Charlotte Sound as a shipping route or any significant risk to the environment that justifies prohibited activity status.
182. While there is no guarantee under the discretionary activity rule that consent will ultimately be forthcoming, it provides for an application to be assessed on its merits.

Decision

183. As stated in the MDC report, suggested Policy 16.7.X is out of scope.

[C]

16.7.45. Discharge of treated or untreated human sewage from land based activities into the coastal marine area, except for the discharge of treated human sewage from regionally significant infrastructure.

Comment [42]: Topic 11

[C]

16.7.56. Dredging, bottom trawling, anchoring, deposition and reclamation within any Category A Ecologically Significant Marine Site listed within Appendix 27.

[C]

16.7.7 Dredging, bottom trawling, deposition and reclamation within any Category B Ecologically Significant Marine Site listed within Appendix 27.

Comment [43]: Topic 6

~~Fishing activity that uses a technique that disturbs the seabed within any Ecologically Significant Marine Sites, except Croiselles Harbour Entrance — No. 1.2 and Tennyson Inlet — No. 3.9.~~

[C]

16.7.68. Removal of anti-foul paint from a ship.

[C]

16.7.9 The use of surface water within that part of Queen Charlotte Sound/Tōtaranui not on the National Transportation Route by High speed ships, or ships that exceed 500 gross registered tonnes, which are travelling at ships speeds greater than 15 knots.

Comment [44]: Topic 11

2.39.2.2. *Trenching or undergrounding must not occur in, or within 8m of, a Significant Wetland or Water Resource Unit with a Natural State water quality classification. The 8m setback does not apply to undergrounding which is undertaken within formed legal road.*

2.39.2.3. *Trenching or undergrounding must not occur within such proximity to any abstraction point for a community drinking water supply registered under section 69J of the Health Act 1956 as to cause contamination of that water supply.*

2.39.2.6. *Trenching or undergrounding must not cause any conspicuous change in the colour or visual clarity of any flowing river after reasonable mixing, or the water in a Significant Wetland, lake or the coastal marine area, measured as follows: ...*

Definitions Minor Upgrading

87. The Panel accepted the report writers recommended amendment to the definition of minor upgrading but considers that upgrading should be limited to replacement structures.

Minor Upgrading means an increase in the carrying capacity, efficiency or security of electricity (for the purpose of utilities) lines, telecommunication lines and radio communication facilities, using the existing support structures or replacement structures of a similar scale and character, and includes:

(a) The replacement, reconfiguration, relocation or addition of lines, circuits and conductors;

(b) The re-conductoring of the line with higher capacity conductors;

(c) The re-sagging of conductors;

(d) The addition of longer or more efficient insulators;

(e) The addition of earthwires ~~which may contain telecommunications lines, earthpeaks and lighting rods;~~

(f) Foundation works associated with the minor upgrading.

~~Minor upgrading does not include an increase in the voltage of the line unless the line was originally constructed to operate at the higher voltage but has been operating at a reduced voltage.~~

Maps 218 and 234

88. Kiwirail sought two changes to the designation. One of which was supported by the S42A report writer and one that was not. The Panel was not convinced that the land zoned Open Space 3 was required for rail operations. In contrast the adjoining area, which the Panel did

agree to rezoning, is in the Rural Environment Zone. The map attached below shows those two areas.

Decision

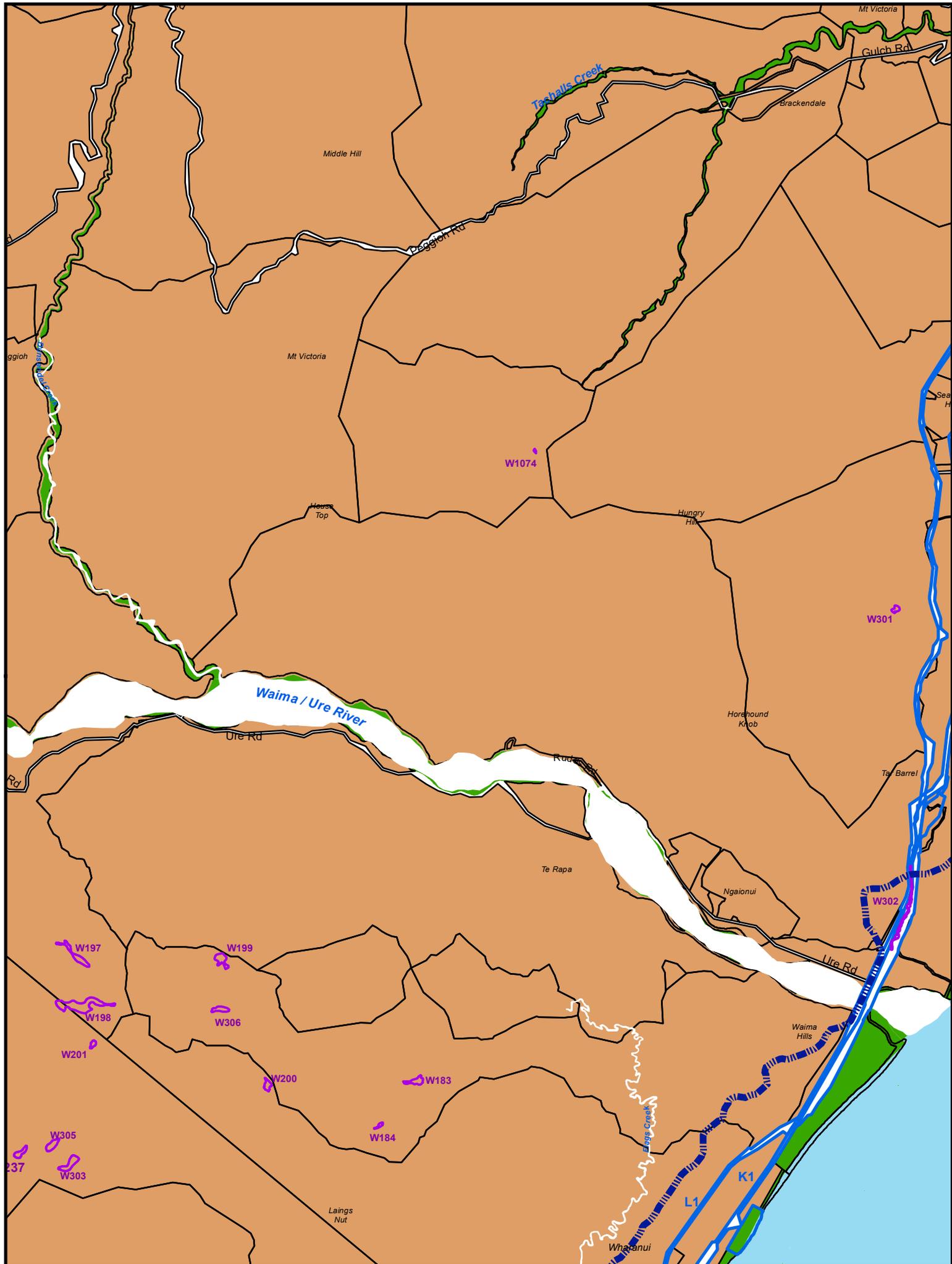
- 89. Maps 218 and 234 are amended as below:



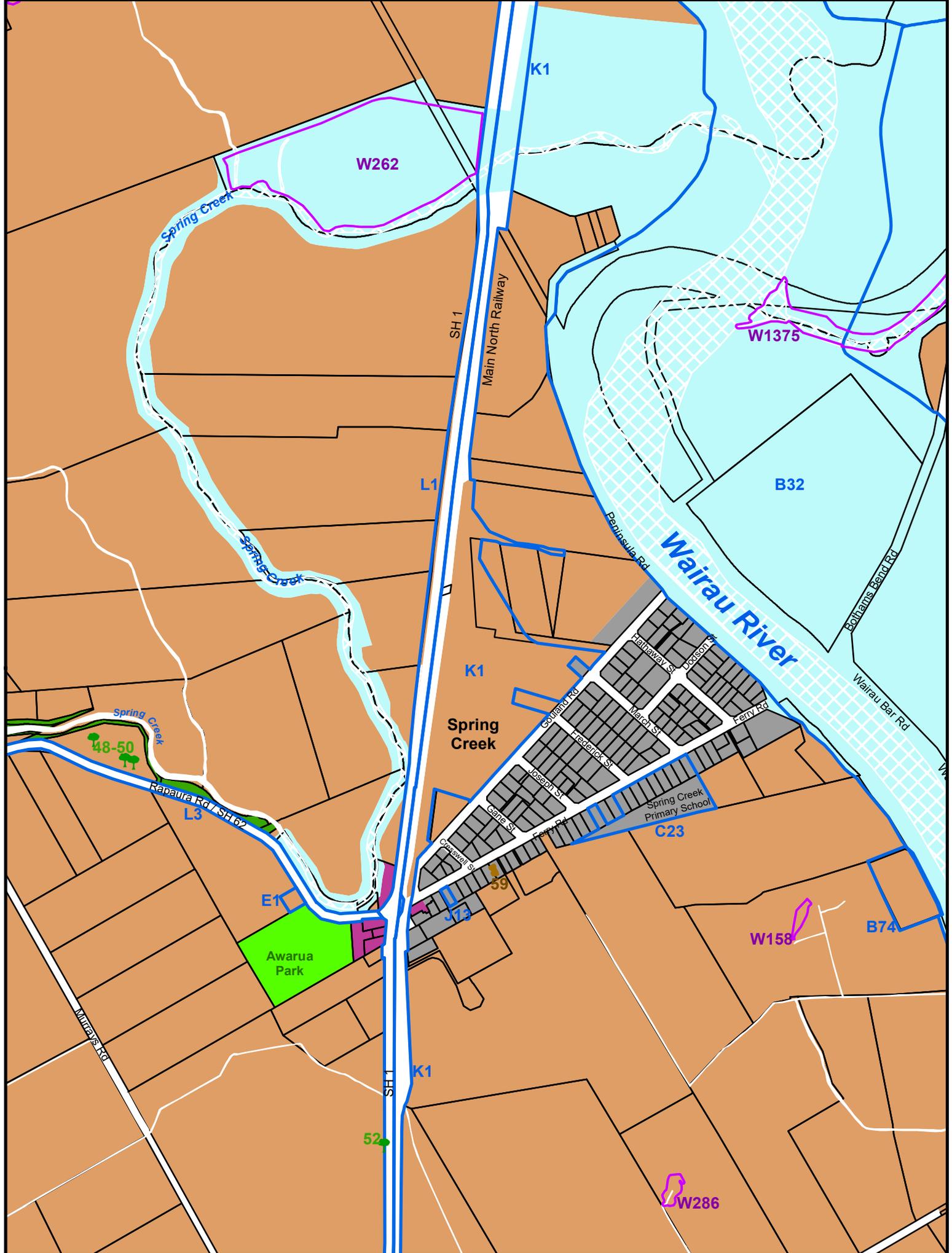
Map 83 and 159

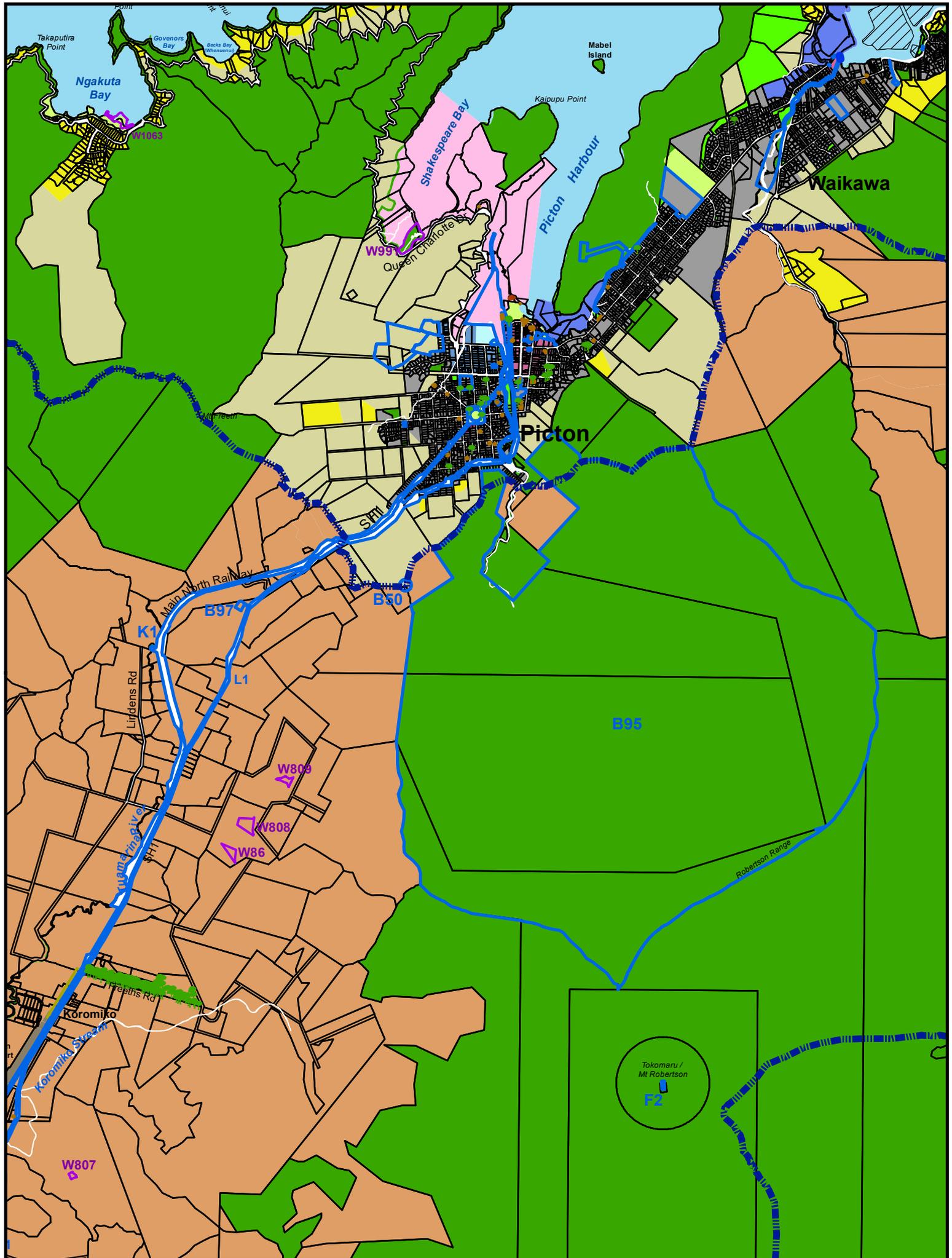
- 90. Amend maps as per the response to Minute 40 from NZTA





Date: 20/02/2020





Date: 20/02/2020

1 September 2016

Planning Technician
Proposed Marlborough Environment Plan
Marlborough District Council
PO Box 443
BLLENHEIM 7240

By email to: mep@marlborough.govt.nz

**SUBMISSION ON PUBLICLY NOTIFIED DRAFT PROPOSAL FOR PLAN CHANGE OR
VARIATION (FORM 5)
Proposed Marlborough Environment Plan**

NAME OF SUBMITTER: KiwiRail Holdings Limited (KiwiRail)

ADDRESS FOR SERVICE: PO Box 593
WELLINGTON 6140
Attention: Rebecca Beals

KiwiRail Submission on Proposed Marlborough Environment Plan

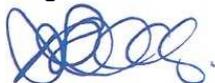
KiwiRail Holdings Limited (KiwiRail) is the State Owned Enterprise responsible for the management and operation of the national railway network. This includes managing railway infrastructure and land, as well as rail freight and passenger services within New Zealand. KiwiRail Holdings Limited is also the Requiring Authority for land designated "Railway Purposes" (or similar) in District Plans throughout New Zealand. The Main North Line runs from Picton to Christchurch, and is within the Marlborough Region. KiwiRail also operates the Interislander ferries between Wellington and Picton, through the Queen Charlotte Sound.

KiwiRail's comments on the Proposed Marlborough Environment Plan (MEP) are set out in the attached table. The focus of the submission is the Objectives and Policies relevant to KiwiRail, the rule provisions that provide for the operations undertaken by KiwiRail, and the zone provisions for adjoining sites to ensure reverse sensitivity effects are managed. Insertions we wish to make are marked in **bold** and **underlined**, while recommended deletions are shown as ~~struck out~~ text.

KiwiRail could not gain an advantage in trade competition through this submission.

KiwiRail does wish to speak to our submission, and are also happy to provide any further detail should this be required by Council in relation to the matters raised in this submission.

Regards,



Rebecca Beals
Senior RMA Advisor
KiwiRail

Submission Number	Proposed Provision	Support/Oppose/ Seek Amendment	Feedback/Comments/Reasons	Relief Sought (as stated or similar to achieve the requested relief)
Volume 1: Issues, Objectives, Policies and Methods				
Chapter 1: Introduction				
1.	Guiding Principles	Support	<p>KiwiRail support that the MEP recognises that the quality of life and wellbeing for the people of the region is influenced by their surroundings. Where those surroundings include the rail corridor, KiwiRail seeks to ensure that the amenity of nearby residents is protected as much as practicable from the effects of the rail corridor.</p> <p>Like other long linear networks, the rail network is unable to easily be relocated. Therefore, KiwiRail submits that mitigation of the effects of new or altered development in the surrounding area and managing reverse sensitivity effects is fundamental to ensuring that the residents and communities of the region are provided with an appropriate quality of life. KiwiRail support that there is a specific Guiding Principle in relation to being aware of the potential for reverse sensitivity and seeking to make sure activities are appropriately located and carried out within appropriate limits.</p> <p>Further, KiwiRail support that Council recognise the connection between a sustainable environment and a sustainable economic situation for the region. KiwiRail is part of delivering that sustainable economic environment as a mover of freight and passengers throughout the region and the country.</p>	Retain as notified
Chapter 3: Marlborough's tangata whenua iwi				
2.	[RPS] Policy 3.1.2 and Method of Implementation 3.M.4	Support	<p>KiwiRail note the policy as worded places an expectation on applicants for resource consents or plan changes to consult early with tangata whenua iwi. KiwiRail support that consultation with tangata whenua occurs, however have a concern that no scale is provided for, implying that for each and every resource consent an applicant is expected to consult with iwi.</p> <p>KiwiRail note that the Method of Implementation in relation to this is 3.M.4 identifying that where the Council officer is aware that there is the potential for issues of cultural or spiritual significance, that consultation with iwi who may be affected will occur. KiwiRail support that this restricts applicants from being expected to consult with iwi for every resource consent and relates the consultation to where there is the potential for an interest, such that the consultation remains meaningful.</p>	Retain as notified.
Chapter 4: Use of Natural and Physical Resources				
3.	Issue 4B	Support	The ferry and rail networks are infrastructure that have the potential to adversely impact on the social and economic wellbeing, as well as the health and safety, of the community if they are not able to operate efficiently, effectively and safely. KiwiRail therefore support Council in ensuring that the infrastructure can continue to operate appropriately.	Retain as notified.
4.	[RPS] Objective 4.2	Support	The efficient, effective and safe operation of regionally significant infrastructure as an objective through the MEP is supported by KiwiRail. KiwiRail also support the commentary under the Objective which notes that the objective includes the ability to maintain, upgrade and replace existing infrastructure.	Retain as notified.
5.	[RPS] Policy 4.2.1(j) and (l)	Support	KiwiRail support the recognition of the rail network (j) and the Picton Port (l) as regionally significant infrastructure networks and that recognition is provided for the social, economic, environmental, and health and safety benefits to the community that arise from those networks.	Retain as notified.
6.	[RPS] Policy 4.2.2	Support	Protection of regionally significant infrastructure from the adverse effects of other activities is supported by KiwiRail. Enabling the effective and efficient operation of infrastructure and protecting it from incompatible activities being established in close proximity is important for KiwiRail in continuing to provide rail and ferry services within the region.	Retain as notified.
7.	[C, R, D] 4.M.10	Support	KiwiRail support that where there is potential for a resource consent application to adversely affect regionally significant infrastructure, the owners and operators of that infrastructure are served notice of the application as an affected party.	Retain as notified.

Submission Number	Proposed Provision	Support/Oppose/Seek Amendment	Feedback/Comments/Reasons	Relief Sought (as stated or similar to achieve the requested relief)
			KiwiRail note that this is not restricted to adjoining infrastructure, and this in particular is supported. For example, any development that results in a change to the use of an existing level crossing, irrespective of whether the rail network adjoins the application site or not, has the potential to result in adverse effects that may require mitigation. The ability for KiwiRail to be involved in the process being explicit in the MEP is supported.	
8.	Issue 4C	Support	Recognition of the value of the Marlborough Sounds, and that the use and development of the natural and physical resources in the Sounds has the potential to detract from the character and intrinsic values of the Sounds, is supported. This includes Plan Commentary recognising that there is a wide range of activities that occur in the Sounds already.	Retain as notified.
9.	[RPS] Policy 4.3.5	Support	KiwiRail support Council in recognising through this policy that the Marlborough Sounds is a dynamic environment, one that will continue to change with or without human intervention.	Retain as notified.
Chapter 5: Allocation of Public Resources				
10.	[R] Policy 5.2.19 (a) and (b)	Support	KiwiRail support specific reference being provided through the Policy to those matters relevant for consideration of a diversion resource consent application. In particular, KiwiRail support consideration of the purpose of the diversion and any positive effects in (a) and the volume of flow remaining in-channel and the duration of the diversion in (b). KiwiRail has many structures over watercourses and these require maintenance and/or replacement, which often involves a need for a temporary diversion to facilitate safe construction. Recognising that temporary diversions can occur is supported.	Retain as notified.
11.	[R] Policy 5.3.5	Support	KiwiRail support recognising that where the take and use of water will have little or no effect on water resources, this can occur as a permitted activity. As with the diversion policy supported above, when undertaking replacement works for structures, groundwater can be intercepted and dewatering required for construction. This is a short term and temporary water take that has little or no adverse effect on water resources.	Retain as notified.
Chapter 6: Natural Character				
12.	[RPS] Objective 6.1	Support	Recognition that there are degrees of natural character within the coastal environment and in relation to rivers and their margins is supported by KiwiRail. The rail network is not able to be easily relocated and given the function it provides for the region and the country, the rail network often crosses over watercourses and runs parallel to the coastal area in places. Further, the ferry service provides a vital link for the movement of freight between the North and South Islands. Recognition of the degrees of natural character when works are proposed to maintain and/or upgrade these networks is therefore supported.	Retain as notified.
13.	[RPS] Policy 6.1.5 (f) and (h)	Support	Recognition of the presence of structures or other human modification features as a means of impacting on natural character as provided for through 6.1.5 (f) and (h) is supported by KiwiRail.	Retain as notified.
14.	[RPS, R, C, D] Policy 6.2.5	Support	Policy direction requiring recognition that development in part of the coastal environment and in relation to rivers and lakes and their margins that has already been altered as a result of present or past activities, has less potential to result in adverse effects on natural character is supported. This links with KiwiRail commentary in relation to the objective and policy above at submission point 13, noting that the rail network crosses over and is often in proximity to watercourses and the coastal environment. Further the ferry service as a means of moving freight also interacts with the coastal environment, and structures associated with the berthing of the ferry often require maintenance and upgrading works.	Retain as notified.

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15.	[RPS, R, C, D] Policy 6.2.8	Seek amendment	<p>KiwiRail support Council in requiring land use activities to be setback from rivers, lakes and the coastal marine area, however this policy as worded gives no recognition to existing encroachments or existing activities.</p> <p>In the event that KiwiRail required resource consent for a proposal which involved works near or over a watercourse, the application could also require land use consent in relation to works that may occur outside the designation – e.g. the site establishment area or vegetation clearance. This is therefore likely to be contrary to this policy as the rail network as a land use activity would not be setback from the river, lake or coastal marine area. Further, there is actually limited scope to relocate the rail network within the region, let alone away from watercourses so that no river crossings were ever required. KiwiRail seek that the policy be altered to reflect that existing activities, or works associated with existing land use activities that are unable to be relocated and yet require resource consent, are not in conflict with this Policy.</p>	<p>Amend as follows:</p> <p><i>Policy 6.2.8 – Require new land use activities to be set back from rivers, lakes and the coastal marine area in order to preserve natural character.</i></p>
Chapter 7: Landscape				
16.	[RPS, R, C, D] Policy 7.1.5	Support	The ability to adapt and refine boundaries of outstanding natural features and landscapes, in response to landscape change and more detailed assessments being undertaken, is supported by KiwiRail. There are some outstanding natural features located near or within the rail corridor and the ability to recognise the changing boundary nature of these over time is supported.	Retain as notified.
17.	[R, C, D] Policy 7.2.1	Seek Amendment	As with the setback from rivers, lakes and the coastal margin, the rail corridor also crosses over areas of outstanding natural features and landscapes. The Policy as worded seeks to ensure that activities and structures have a comprehensive assessment of effects on landscape values, however there is no distinction between replacement for existing structures and new structures, or existing activities that might be altered slightly (in the case of rail for example, where the track is shifted slightly to ease a corner). The Landscape overlays of the Southern Hills and Marlborough Sounds pass over the existing rail corridor and these landscapes are influenced by the existing rail network with its associated structures.	<p>Amend as follows:</p> <p><i>Policy 7.2.1 – Control activities that have the potential to degrade those values contributing to outstanding natural features and landscapes by requiring new activities and new structures to be subject to a comprehensive assessment of effects on landscape values through the resource consent process.</i></p>
18.	[R, C, D] Policy 7.2.6	Support	KiwiRail support the recognition that the effects of development and operation of regionally significant infrastructure, which includes rail as per Policy 4.2.1, need only be mitigated when proposed to take place in an area with outstanding natural features and landscapes, provided the overall qualities and integrity of the wider feature and landscape are retained. KiwiRail note that this specific provision relaxes the direction provided at Policy 7.2.5 for other activities and recognises that regionally significant infrastructure is essential to allowing the community to function on a day-to-day basis.	Retain as notified.
Chapter 8: Indigenous Biodiversity				
19.	Policy 8.1.1	Support	There are a number of wetlands identified in the MEP that are either in full or in part within the rail corridor. These include W302, W62, W23, W29, W847, W108, W804, W805, W820, and W821. Having a clear policy direction that establishes how assessment of the wetlands occurs and whether they have significant indigenous biodiversity values, is supported.	Retain as notified.
20.	Policy 8.2.7	Support	A strategic approach to the containment and eradication of undesirable animals and plants that impact on indigenous biodiversity is supported. There are practicalities in undertaking pest management within a long linear network that passes through the entire region and is able to be influenced by actions or inaction on neighbouring properties.	Retain as notified
21.	Policy 8.3.4	Support	The recognition of the benefit provided through drain maintenance is supported by KiwiRail. The rail network is accompanied by a network of drains which generally run parallel to it, the maintenance of which is pivotal to ensure that the rail network is able to	Retain as notified.

Submission Number	Proposed Provision	Support/Oppose/Seek Amendment	Feedback/Comments/Reasons	Relief Sought (as stated or similar to achieve the requested relief)
			continue to operate. Not managing the drainage network can result in undermining of ballast and the creation of unsupported track structures, with the risk of derailment if not managed properly.	
22.	New Policy	Seek Amendment	<p>As noted above in relation to Policy 8.1.1, there are a number of wetlands that are located in the rail corridor. However the rail network is existing and is already recognised as regionally significant infrastructure within the MEP at Policy 4.2.1. The ability to undertake maintenance and upgrade to the rail network is fundamental to ensuring that a safe and efficient rail network continues to operate. There is recognition within the MEP in relation to landscapes of outstanding value and the impact of regionally significant infrastructure, however there is no equivalent provision in relation to wetlands and biodiversity.</p> <p>Policy 8.3.2(a) requires that adverse effects are avoided where the site is identified in Policy 8.1.1. For the rail network, the ability to replace a bridge and not in some way affect a significant waterway is submitted as not practical. There are mitigation options available, including best practice in relation to sediment control and restrictions on timing and duration of disturbance. These are however mitigation options, as there is no practical way to avoid adverse effects from regionally significant infrastructure which is already established in those areas. Policy 8.3.2(a) as worded does not provide for mitigation options to be considered, and in light of Policy 8.3.2(b) where the wording is 'avoided, remedied or mitigated' it is assumed that this is a deliberate choice of wording.</p> <p>KiwiRail therefore submit that some recognition of the nature of the rail network and instances where effects on indigenous biodiversity area, habitats or ecosystems from that network cannot be avoided, should be provided for within the MEP.</p>	<p>Insert New Policy as follows:</p> <p><u>Policy 8.3.x – Where activities associated with regionally significant infrastructure are proposed to take place in an area, habitat or ecosystem with significant indigenous biodiversity values, any adverse effects on the values of that area, habitat or ecosystem shall be remedied or mitigated, in order to retain the overall qualities and integrity of the area, habitat or ecosystem.</u></p>
23.		Seek Amendment	The Objectives and Policies in the preceding Chapters of the MEP provide guidance as to which is an RPS provision [RPS], a Regional Coastal Plan [C], Regional Plan [R] or District Plan [D] provision. The provisions on Chapter 8 appear not to provide this clarity and certainty and KiwiRail therefore seek that this be included within the MEP.	Amend as necessary to classify provisions within Chapter 8 in relation to RPS, C, R and/or D.
Chapter 9: Public Access and Open Space				
24.	[RPS] Policy 9.1.3	Support	<p>There are undisputed benefits in public access and there are large areas of the Region where public access is highly sought after. This is reflected in Policy 9.1.1, and Council is supported in focusing on enhancing access to and within these areas.</p> <p>Provision 9.1.1 (a) identifies the Wairau River from SH63 bridge to the sea – this therefore encompasses the rail bridge at Tua Marina. The rail network also passes across waterbodies in close proximity to Picton, Seddon and Ward as identified in 9.1.1 (b). The rail corridor is not public land and not publicly accessible for health and safety reasons. Trains are not able to swerve, they don't stop in a hurry, and while the probability might be low the consequence of an incident can often be fatal. Policy 9.1.3(b) seeking to ensure that conflicts between users do not arise is therefore supported.</p>	Retain as notified.
25.	[C, D] Policy 9.1.13	Support	KiwiRail support the detail provided in relation to consideration of applications that impact on public access, and that specifically clause (i) of the policy references Policies 9.2.1 and 9.2.2 and the situations where public access is able to be restricted. KiwiRail support that these include the consideration of public health and safety and a level of security consistent with the purpose of KiwiRail's designation.	Retain as notified.
26.	[RPS, C, D] Objective 9.2	Support	KiwiRail support this Objective in relation to identification of circumstances when public access to and along the coast and the margins of lakes and rivers can be restricted.	Retain as notified.

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27.	[RPS, C, D] Policy 9.2.1	Support	While there are instances where public access can be safely provided, KiwiRail support Council in recognising that public access may need to be restricted in certain circumstances, including where there is a need to ensure a level of security consistent with the purpose of KiwiRail's designation (clause (a) of the Policy), and to protect public health and safety (clause (e) of the Policy).	Retain as notified.
Chapter 10: Heritage Resources and Notable Trees				
28.	[RPS, C, D] Policy 10.1.7 (e)	Support	There are two Railway buildings listed within Appendix 13 of the MEP. Both are found in Table 2, "Category II and Locally Significant Heritage Resources" namely the Picton and Blenheim Railway Stations. KiwiRail is only responsible for the Blenheim Railway station. At Picton, KiwiRail owns the platforms, however the building itself is in separate ownership. KiwiRail support that when assessing consent applications in relation to heritage resources, Policy 10.1.7 (e) identifies consideration of structural stability, accessibility, egress and earthquake strengthening as all being relevant.	Retain as notified.
Chapter 11: Natural Hazards				
29.	Issue 11A	Support	The rail network and the Port at Picton, as regionally significant infrastructure identified under Policy 4.2.1, can be subject to damage from natural hazards, and therefore KiwiRail support that the value and importance of these assets is recognised as an issue for the region.	Retain as notified.
30.	[RPS, R, D] Objective 11.1	Support	KiwiRail support Council in seeking to reduce the risks to regionally significant infrastructure from natural hazards. This is relevant for many of the works KiwiRail undertakes in maintaining or replacing structures, as well as works for the protection of assets, which typically involve the requirement to obtain resource consent. Explicit provisions in relation to reducing that risk will therefore support any such resource consent application.	Retain as notified.
31.	[R] Policy 11.1.3	Support	The policy direction to actively manage flood hazard through the provision and maintenance of flood defences and other flood mitigation works, where there is significant community benefit, is supported by KiwiRail. As regionally significant infrastructure there is significant community benefit in providing flood mitigation works in relation to the rail and ferry assets. KiwiRail note that while much of the Plan Commentary in Policy 11.1.3 appears directed to Council related works and projects, Policy 11.1.5 explicitly references maintenance of Council administered flood defences and flood mitigation works. Therefore, it can be inferred from the lack of any direct reference to Council in Policy 11.1.3 that the Policy is intended to be of general application (and not just able to be relied upon by Council).	Retain as notified.
32.	[R] Policy 11.1.6	Support	Often the build-up of gravel around structures, particularly bridge abutments and piers, can result in an increased flood hazard that requires management. Specific policy direction that recognises and provides for gravel extraction as a means of mitigating the adverse effects of gravel deposition in river beds is therefore supported by KiwiRail.	Retain as notified.
33.	[R] Policy 11.1.7	Support	Recognition that in some instances it is not practicable to avoid gravel extraction from the wet bed of any river is supported by KiwiRail as per Policy 11.1.7 (a). Further, clause (b) of the Policy which seeks to place limits on the timing, method, and location of the extraction and access to those locations, as well as volumes, is supported.	Retain as notified.
34.	[R, D] Policy 11.2.3	Support	KiwiRail support that privately initiated and constructed flood defences should integrate with Council administered flood defences where appropriate. This Policy supports the KiwiRail submission on Policy 11.1.3 above in that flood defences are not anticipated to be only provided by Council.	Retain as notified.

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35.	[D] Policy 11.2.7	Support	KiwiRail support that in the instance of stormwater discharge to surface water, there is required to be sufficient capacity within the waterbody to accommodate the stormwater without overtopping the banks or causing scour.	Retain as notified.
Chapter 12: Urban Environments				
36.	Issue 12A	Support	Recognition that residential development is required to be provided for the community is supported, however also supported is the recognition that the residential activity should not have an adverse effect on the environment. The rail network passes through urban environments, and therefore there is the potential for reverse sensitivity effects, particularly in relation to residential activity. Mitigation of those effects is possible for new or modified structures containing noise sensitive activities, which is also supported by KiwiRail. This mitigation ensures that an appropriate level of amenity is provided, which is explicitly referenced as part of the Plan Commentary discussion under this issue.	Retain as notified.
37.	[D] Policy 12.2.1 (e)	Support	Ensuring the provision of character and amenity in residential areas through the Policy direction in 12.2.1 is supported by KiwiRail. Specific reference to ensuring people's health and wellbeing through good building design at clause (e) is supported.	Retain as notified.
38.	[D] Objective 12.7	Seek Amendment	Recognition of reverse sensitivity effects and that these are required to be managed is supported by KiwiRail, however the Objective as currently worded addresses effects from industrial or business zoned development on nearby residential activity, and does not recognise reverse sensitivity effects generated from new residential activity. In doing so, KiwiRail notes that the Objective is cast much more narrowly than the overarching Issue, which also includes consideration of the "siting of appropriate activities", their "design, location and scale", and the "avoidance of certain activities in sensitive locations and impacts on the efficiency and affordability of infrastructure, services and the transport network". That broader description is consistent with the commonly understood meaning of reverse sensitivity, being "the effects of the existence of sensitive activities on other activities in their vicinity, particularly by leading to restraints in carrying on of those other activities". KiwiRail note that the commentary under the Objective appears to be addressing the interface between zones, rather than managing reverse sensitivity effects. The rail corridor in Marlborough dates from 1875, and has existed before many of the residential units that adjoin it were established. To that end, KiwiRail have suggested wording changes to the Objective to reflect reverse sensitivity effects	Amend as follows:- <i>Objective 12.7 – Reverse sensitivity effects on adjoining residential zones from existing activities within business and industrial zones are avoided.</i>
Chapter 13: Use of the Coastal Environment				
39.	[RPS, R, C, D] Policy 13.2.2	Support	KiwiRail supports recognition of regionally significant infrastructure and the contribution that a use or development in the coastal environment (noting that this is land and water) may provide to those networks. The use of the National Transportation Route by the ferries, and the connection at Picton Port to other regionally significant infrastructure is specifically relevant to consideration of resource consent applications in relation to the appropriateness of the use or development, including scale, form, design, and location.	Retain as notified.
40.	[RPS, C] Policy 13.2.3 (b)	Seek Amendment	KiwiRail acknowledge that there are instances where a shorter duration of consent is more appropriate, however the discussion appears to focus on the historical feature of coastal permits enabling occupation activities having a shorter duration than the maximum provided under the RMA. However, the wording of the Policy is not restricted to occupation, but rather identifies that all coastal permits will be issued for no more than 20 years. Regionally significant infrastructure may also require coastal permits, and should not be caught by this Policy. The ferries, (which, under the proposed rules would require resource consent to exceed speed limits through the National Transportation Route) are a long term strategic investment, and certainty is required that that investment can be	Amend as follows: <i>Policy 13.2.3 – To enable periodic reassessment of whether activities and developments are affecting the values of the coastal marine area, to encourage efficient use of a finite resource and in consideration of the dynamic nature of the coastal environment: (a) lapse periods for coastal permits will be no more than five years; and (b) the duration of coastal permits granted for occupation activities in the coastal marine area for which limitations on durations are imposed under the Resource Management Act 1991 will generally be</i>

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			operated efficiently. The use of the coastal marine area by a vessel passing through the National Transportation Route is submitted as being different to an activity such as a structure that occupies public space. KiwiRail therefore seek that the Council should be able to determine that a use of the coastal marine area for a duration of more than 20 years may, in some instances, be appropriate. The change sought only seeks to enable the consideration of a longer duration, rather than a guarantee that a longer duration will be granted.	<i>limited to a period not exceeding 20 years.</i>
41.	[RPS, R, C, D] Policy 13.2.5	Support	Recognition that there are a range of activities and effects that contribute to the amenity values of the coastal environment and the maintenance and enhancement of these, is supported by KiwiRail. In particular, clause (g) which seeks to recognise that some areas derive their particular character and amenity from a predominance of structures, modifications or activities, and providing for their appropriate management (e.g. Picton Port). Further, clause (k) which seeks to ensure that the operation and speed of boats does not detract from people's enjoyment of the coastal marine area or cause navigational safety issues, is also supported.	Retain as notified.
42.	[RPS, R, C, D] Policy 13.2.6		<p>Consideration of amenity values in relation to subdivision, use and/or development is supported by KiwiRail, however the provision as worded seems to infer that all coastal permit consent applications will be publicly notified in order to ascertain individual and community values about the area subject to the application.</p> <p>Further, it is unlikely that through that process all parties will respond, or a representative view can be reached. Amenity is often a subjective determination made by each individual, which Council are required to consider and evaluate in an objective manner when assessing resource consent applications. Not submitting on a proposal does not mean that parties have no concerns with it. By the same token, submissions on applications can be directed at an applicant rather than the activity, with the effects of the activity being used to direct change which may otherwise be outside the scope of the consent.</p> <p>KiwiRail submit that a balanced approach to consideration of such values should be provided for through the policy, and that the inclusion of regionally significant infrastructure in the Policy recognises the greater good for the community and the country provided by the activity, as part of that balance.</p>	<p>Amend as follows:</p> <p><i>Policy 13.2.6 – In determining the extent to which coastal amenity values will be affected by any particular subdivision, use and/or development, the following shall be considered form part of that determination:</i></p> <p><i>(a) individual and communities values about the area subject to application;</i></p> <p><i>(b) the amenity related attributes of the area; and</i></p> <p><i>(c) in regard to the changing nature of the coastal environment, the extent to which amenity values would be so affected by the proposed subdivision, use or development that those values could no longer be maintained or enhanced.</i></p> <p><u>(d) whether the activity is associated with regionally significant infrastructure</u></p>
43.	[R, C, D] Policy 13.3.1	Support	KiwiRail support the permissive approach to recreational activities, with the exceptions relevant to the ferry operations being clause (d) in relation to public health and safety, and clause (e) in relation to compromising authorised uses.	Retain as notified.
44.	[C] Policy 13.10.5	Support	KiwiRail supports that, in considering resource consent applications for structures, matters such as the reason and benefits arising from the structure, clause (a), are relevant considerations. Further clauses supported are (e) in relation to public, multiple or individual use; (f) the functional need for the structure; and (i) in relation to the structure being connected with the operation of an existing activity or an activity that has been granted resource consent.	Retain as notified.
45.	[C] Policy 13.10.15	Seek Amendment	Clause (a) seeks to limit the width of jetties to two metres. While that may be considered by Council as appropriate for private use structures, in the case of the commercial ferries, 2m width is not sufficient for safe berthage. KiwiRail note that no distinction is made in the MEP between jetties and wharves or structures in the Port Zone providing access to the coastal marine area, thereby this policy would be directly relevant to any works involving a new wharf for berthing the ferries at Picton.	<p>Amend as follows:</p> <p><i>Policy 13.10.15 – Reduce the visual impact of jetties on the coastal environment by:</i></p> <p><i>(a) limiting the width of jetties located outside the Port Zone to two metres; ...</i></p>
46.	[RPS, C] Policy 13.11.2 (c)	Support	Consideration of the Port Zone's location and operational needs of the Port in relation to reclamation or drainage resource consents, as proposed through clause (c) of this	Retain as notified.

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			policy, is supported by KiwiRail, particularly noting that the Plan Commentary in relation to this clause notes that port and marina facilities are regionally significant infrastructure.	
47.	[RPS, C] Objective 13.14	Support	KiwiRail support the recognition of the use of the coastal marine area as part of the overall transportation network for the region, and the contribution of that network to the social, economic and cultural wellbeing of the region and the country.	Retain as notified.
48.	[C] Policy 13.14.2	Support	<p>Recognition of the National Transportation Route through the Marlborough Sounds as proposed in this policy is supported by KiwiRail.</p> <p>KiwiRail notes that the Plan Commentary identifies this as the Tory Channel and inner Queen Charlotte Sound. As per submission point 156, KiwiRail is seeking that the northern entrance to Queen Charlotte Sound through the outer Sound is also recognised and mapped as part of the National Transportation Route (the "alternative route").</p> <p>As part of maintaining currency with Maritime NZ regulations (Rule 90 in particular), and the ability to sail through Tory Channel without a pilot, masters on vessels are required to frequently sail the alternative route. The proposed amendment recognises that there are instances where Tory Channel in particular may not be available to be sailed through. The alternative route is required to be sailed by each person that holds the Pilotage exemption certificate 12 times each year (6 times in, 6 times out). KiwiRail currently have 24 personnel who hold this certificate. This equates to 288 sailings through the outer Sound, per annum as a minimum. In addition, ferries may choose to operate through the Northern Entrance routing in some weather conditions which make the Tory Channel Entrance unsafe, or as a result of certain types of propulsion equipment faults (arising approximately three to four times each year).</p> <p>When travelling through the alternative route, the journey on the Aratere is 55 minutes longer, going from 3 hours 10 minutes to 4 hours 5 minutes. The requirement through the MEP to reduce speed through the Queen Charlotte Sound accounts for an additional sailing time of over 15 minutes each way.</p> <p>The Policy itself is not sought to be changed, as it does not define the National Transportation Route, however the Plan Commentary may be required to be changed in the event that Council accept that the alternative route also forms part of the National Transportation Route.</p>	<p>Retain policy as notified.</p> <p>Amend Plan Commentary in the event that submission point 156 is accepted.</p>
49.	[RPS, C] Policy 13.14.3 (a)	Support	Recognition of the connections between land and water transport modes that Picton Port provides is supported by KiwiRail.	Retain as notified.
50.	[RPS, C] Policy 13.15.1	Support	Recognition of the effects of structures and activities along the National Transportation Route, and seeking to ensure that these avoid adverse effects on the safety and efficiency of ships transiting this route, is supported by KiwiRail.	Retain as notified.
51.	[C] Objective 13.6	Support	Recognition of the potential for ship-generated waves to result in conflict is supported by KiwiRail. A speed restriction on ships through the Tory Channel or Queen Charlotte Sound (noting this Objective does not refer to only the National Transportation Route) is appropriate as a means of managing adverse effects. What the appropriate speed is may be considered different by different parties, however the concept of a speed restriction is not opposed by KiwiRail.	Retain as notified.
52.	[C] Policy 13.16.1	Support	This Policy recognises the use of the wave wash rule as a means of determining the effects of shipping activity in Queen Charlotte Sound and the National Transportation Route. The wave wash rule has been tested through the Environment Court process and KiwiRail note that this is not proposed to be changed in the MEP. This is supported by KiwiRail.	Retain as notified.

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53.	[C] Policy 13.16.5	Support	The adoption of an adaptive management approach to managing the effects of ship generated waves is supported. This allows for changes in speed, or specifically sailing routes, to be made to reflect the outcome of the information continually being gathered.	Retain as notified.
54.	[C] Policy 13.16.6	Support	KiwiRail wish to acknowledge and support Council with its policy direction seeking to work with the community, tangata whenua and the shipping industry in assessing the appropriateness of the overall framework for shipping activities. This policy directly supports the changes to the National Transportation Route as mapped that KiwiRail are seeking. KiwiRail are not the only parties affected by the Maritime Regulations, and therefore any change will benefit other freight and passenger services operating within the National Transportation Route, contributing to the economic and social wellbeing of the community, the region and the country.	Retain as notified.
55.	[C] 13.M.19	Support	The Area Identification Method of Implementation notes already that Queen Charlotte Sound (excluding the National Transportation Route) is part of an established shipping route. Inclusion of the outer Queen Charlotte Sound in the National Transportation Route, and the mapping of that, further provides clarity through the MEP that this area is also an established shipping route which forms part of the wider transport function of the Sounds.	Retain as notified.
56.	[R, C, D] Policy 13.17.3	Support	Recognising and providing for the operational requirements of Picton Port is supported by KiwiRail. This includes recognising and providing for shipping activities, transportation activities and passenger terminals, structures and facilities associated with these activities and the maintenance, repair, removal and replacement of buildings and structures.	Retain as notified.
57.	[C, D] Policy 13.17.10	Support	KiwiRail support Council specifically recognising that public access may need to be restricted to and within Port areas as a means of maintaining public health and safety.	Retain as notified.
58.	[R, C, D] Policy 13.18.2	Support	Recognition that Port activities can create conflicts with surrounding land uses and amenity expectations is supported by KiwiRail. Further, ensuring that water, air and soil quality are not adversely affected through the setting of standards for permitted activities is supported.	Retain as notified.
59.	[C, D] Policy 13.18.3	Support	Further to Policy 13.18.2, KiwiRail support Policy 13.18.3 recognising that reverse sensitivity effects can arise, and therefore avoiding encroachment of residential activities towards and around ports is supported.	Retain as notified.
Chapter 14: Use of the Rural Environment				
60.	[RPS, D] Objective 14.4	Support	KiwiRail support the specific reference to avoiding reverse sensitivity effects. As with the urban environment, the rail corridor passes through the rural environment of the region also. The potential for reverse sensitivity effects on the rail corridor exists irrespective of adjoining zoning. While KiwiRail supports development of adjoining land, mitigation of the adverse effects generated by the existing rail corridor is required to ensure that reverse sensitivity effects are avoided.	Retain as notified.
61.	[D] Policy 14.4.3	Support	KiwiRail support the policy seeking to ensure buildings are setback a sufficient distance from property boundaries to maintain on-site amenity and ensure that reverse sensitivity effects are avoided.	Retain as notified.
62.	[D] Policy 14.4.10	Support	Seeking to control the establishment of residential activity within rural environments as a means of avoiding conflict between rural and residential amenity expectations, including reverse sensitivity effects, is supported by KiwiRail.	Retain as notified.

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Chapter 15: Resource Quality (Water, Air, Soil)				
63.	[R, C] Policy 15.1.9	Support	KiwiRail support that the point source discharge of contaminants or water to water is enabled where the adverse effects are managed and there are no flooding or damage effects to another person's property.	Retain as notified.
64.	[RPS, R, C] Policy 15.1.11	Seek Amendment	Recognition that in some instances there will be a discharge of contaminants to water associated with necessary maintenance works for any regionally significant infrastructure is supported. KiwiRail seek however that this recognition include replacement, to ensure that regionally significant infrastructure can continue to operate. The discharge will remain short-term as a result of either maintenance or replacement activities, and therefore the effects are consistent with those anticipated by the policy. The wording change provides clarity that replacement can also occur.	Amend as follows: <i>Policy 15.1.11 – When considering any discharge permit application for the discharge of contaminants to water, regard will be had to:</i> <i>(a) the potential adverse effects of the discharge on spiritual and cultural values of Marlborough's tangata whenua iwi;</i> <i>(b) the extent to which contaminants present in the discharge have been removed or reduced through treatment; and</i> <i>(c) whether the discharge is of a temporary or short term nature and/or whether the discharge is associated with necessary maintenance or replacement work for any regionally significant infrastructure.</i>
65.	[C] Policy 15.1.19 and [C] Policy 15.1.20	Support	KiwiRail support the progressive elimination of the discharge of human sewage to the coastal waters in the Marlborough Sounds, with the exception being from regionally significant infrastructure as provided for through Policy 15.1.19. KiwiRail also support that, except for Grade A or B treated sewage from ships, Policy 15.1.20 seeks to control the discharge of human sewage from ships.	Retain as notified.
66.	[R, C] Policy 15.1.32	Support	KiwiRail support that, in relation to a resource consent application for disturbance of a river or lake bed, the seabed or land in proximity to a waterbody, the Policy enables consideration of the purpose of the disturbance and any positive effects; as well as the scale, duration and frequency of the disturbance. For the rail network, the maintenance and replacement of structures in, over or near water may result in disturbance, however this is for a short duration only and associated with the safe and efficient operation of the regionally significant infrastructure.	Retain as notified.
67.	[R] Policy 15.4.4	Support	Recognition for the operation and maintenance of regionally significant infrastructure in relation to land disturbance activities is supported by KiwiRail. As with the consideration of discharges however, land disturbance can arise with replacement as well as maintenance of the infrastructure. While the rail network is designated, this provision is identified as a Regional Policy, and therefore would still be applicable in the event that a land disturbance consent was required by KiwiRail.	Amend as follows: <i>Policy 15.4.4 – In considering any land use consent application to undertake land disturbance, regard shall be had to: ...</i> <i>(g) whether the land disturbance is necessary for the operation or maintenance or replacement of regionally significant infrastructure.</i>
Chapter 17: Transportation				
68.	[RPS, D] Objective 17.3 and Policy 17.3.1	Support	KiwiRail support the requirement to ensure the land transport network is efficient and provides for different users, and the recognition in Policy 17.3.1 that the land transport network provides linkages with other districts, regions and transport modes.	Retain as notified
69.	[D] Objective 17.4	Support	Recognising that there can be conflict between the land transport network and subdivision, use or development activities is supported, as is seeking that this be minimised.	Retain as notified
70.	[D] Policy 17.4.1	Seek Amendment	The policy purpose is supported, however the wording is about maintaining the planned function of the roading network. Ensuring the density, scale and location or subdivision and/or activities to maintain the planned function of the rail network is equally important and a consideration for a land transportation section. Development which generates traffic and is inappropriately located can result in safety risks for adjoining parties, as well as a compromised amenity, if not appropriately designed and located. Mitigation through	Amend as follows: <i>Policy 17.4.1 – Manage the density, scale and location of subdivision and/or activities to maintain the planned function of the roading land transport network.</i>

Submission Number	Proposed Provision	Support/Oppose/Seek Amendment	Feedback/Comments/Reasons	Relief Sought (as stated or similar to achieve the requested relief)
			setbacks of vehicle accesses from level crossings and the protection of sightlines at level crossings are already proposed to be included in the MEP. KiwiRail therefore seeks that this provision be amended to enable consideration of the rail network as well as the road network.	
71.	[D] Policy 17.4.8	Support	<p>KiwiRail note that Council are advocating for the use of the rail corridor for alternative transport such as walking and cycling, where this is safe and practicable. The rail corridor through much of the country is often used for shared path facilities, however public safety is paramount and sufficient mitigation, in particular through separation of the users of the shared path from the trains, is fundamental.</p> <p>While KiwiRail will not develop a shared path facility itself, KiwiRail will work with Council in the event that Council have a specific path or route they wish to investigate for walking and cycling.</p>	Retain as notified.
72.	[D] Policy 17.5.6	Seek Amendment	<p>KiwiRail support the Council in the purpose of the policy, noting that there are clauses that relate to rail in this policy, however the main direction of the policy is to roads. KiwiRail therefore seek that where appropriate 'land transport' be used rather than 'road', being a more encompassing term.</p>	<p>Amend as follows:</p> <p><i>Policy 17.5.6 – Subdivision and land use activities shall avoid, remedy or mitigate adverse effects on the safety of and accessibility to the road land transport network by ensuring:</i></p> <p>(a) buildings, vegetation and activities do not reduce clear sight lines for trains and road vehicles at level rail crossings or for vehicles at road intersections;</p> <p>(b) vegetation planted on land alongside rural roads is set back so that roads are not shaded and subjected to icing in winter;</p> <p>(c) adequate formal crossing facilities are provided where high levels of pedestrian activity are generated from an activity located adjacent to an arterial road or in a Business or Industrial zone;</p> <p>(d) activities do not create distractions for any road or rail users, including from glare, inappropriate lighting, smoke, discharges or other distractions; ...</p>
73.	[D] Policy 17.6.2	Seek Amendment	<p>This policy seeks to ensure that the development, maintenance and use of the land transport network occurs in a certain way and that certain effects are avoided, remedied or mitigated. This is supported in relation to development and maintenance, however the rail corridor is a long established network, and its use is protected under designation.</p> <p>To require the use of the land transport network to avoid, remedy or mitigate the loss of natural character, or the loss of visual amenity, or severance effects on communities, is not submitted as being appropriate when the use is existing. Where there is some change, through either the development or maintenance of the land transport network, mitigation of those elements is appropriate. Where there is no change, and the use is an existing land use, policy direction seeking to mitigate existing effects is not supported.</p>	<p>Amend as follows:</p> <p><i>Policy 17.6.2 – The development, and maintenance and use of the land transport network must be undertaken in a manner that protects natural and physical resources and the health, safety and wellbeing of the community through avoiding, remedying or mitigating:</i></p> <p>(a) adverse effects on air and water quality, including from contaminated run-off from roads discharging into water or onto or into land;</p> <p>(b) effects on places of significance to Marlborough's tangata whenua iwi;</p> <p>(c) loss of visual amenity in modifying the landscape;</p> <p>(d) loss of natural character in the coastal environment, wetlands, lakes, rivers and their margins;</p> <p>(e) destruction of areas of significant indigenous vegetation and significant habitats of indigenous fauna;</p> <p>(f) effects of severing communities and/or losing links between parts of settlements; and</p> <p>(g) adverse effects on local amenities, including from noise and vibration.</p>
74.	[D] 17.M.14	Seek Amendment	<p>The method highlights that the New Zealand Railways Corporation (NZRC) will be treated as an affected party in respect of any resource consent application for land use activities or subdivisions of land adjacent to the rail line. The purpose of this is</p>	<p>Amend as follows:</p> <p>New Zealand Railways Corporation KiwiRail Holdings Ltd will be</p>

Submission Number	Proposed Provision	Support/Oppose/Seek Amendment	Feedback/Comments/Reasons	Relief Sought (as stated or similar to achieve the requested relief)
			supported, however the reference to NZRC should be amended to KiwiRail, being the party responsible for the land, the operation and maintenance of the rail network, and the relevant requiring authority responsible for the rail network within NZ.	<i>treated as an affected party in respect of any resource consent application for land use activities or subdivisions of land adjacent to the rail line.</i>
Volume 2: Rules				
Chapter 1: Introduction				
75.	Introduction		<p>The discussion under Zone-based Rules, page 1-3, identifies that the rail corridor is not zoned. When however using the maps, the rail network shows up as 'Proposed Zone: Road'. The rail corridor is not a legal road, and not always in parallel with the state highway.</p> <p>There is no certainty provided in the instance of unzoned land, or land zoned Road, that the provisions of the adjacent zoned land apply, or whether in relation to certain activities, presumptions in Part 3 of the Act apply unless the General Rules chapter addresses those activities.</p> <p>KiwiRail has areas of land that are leased to third parties, who cannot rely on the designation to develop the land. Further, KiwiRail is not obliged to rely on the designation (e.g. for non-rail related uses). Therefore certainty as to what land use provisions apply to un-zoned / Road zoned land would be supported.</p>	Provide certainty as to provisions applying to unzoned land, or clarify zoning of Rail Corridor.
Chapter 2: General Rules – Water Take, Use, Damming or Diversion				
76.	[R] Rule 2.2.11	Seek Amendment	The permitted activity rule as proposed allows for the minor taking of water for road and river control construction works. The water take in relation to road works is anticipated to be for dust management or minor uses associated with construction. These requirements can also arise in relation to rail construction works. KiwiRail therefore seek that in the event that rail construction works are undertaken, an allowance for a water take as a permitted activity is provided for.	Amend as follows: <i>2.2.11. Take and use of water for road, rail or river control construction works up to 50m³ per day per construction site.</i>
77.	[R] Rule 2.2.12 and Permitted Activity Standards 2.3.11	Support	KiwiRail support that the take of water for dewatering a trench is a permitted activity, and support the standards that relate to this activity.	Retain as notified.
78.	[R] Rule 2.2.15 and Permitted Activity Standards 2.3.15	Support	The take, use and discharge of surface water for non-consumptive use as a permitted activity is supported by KiwiRail. KiwiRail also support the permitted activity standards that relate to this rule, particularly as reliance on the rule is anticipated to arise in relation to construction related works on the rail corridor.	Retain as notified.
79.	Permitted Activity Standards 2.3.10	Seek Amendment	As per the submission point above on Rule 2.2.11, the permitted activity standard is sought to be amended to reflect that in the instance of rail construction works, the take and use of water is a permitted activity.	Amend as follows: <i>2.3.10. Take and use of water for road, rail or river control construction works up to 50m³ per day per construction site. 2.3.10.1. Where the take is from a river, except an ephemeral flowing river, the instantaneous take rate must not exceed 5% of river flow at any time. 2.3.10.2. The take must not occur on more than 90 days within any 12 month period. 2.3.10.3. The take must not be from a Water Resource Unit with a Natural State water quality classification, or a Significant Wetland. 2.3.10.4. Road or river control construction works must be undertaken by, or on behalf of, the Marlborough District Council or the road controlling authority.</i>
80.		Seek New Rule and associated Permitted Activity Standard	The ability to undertake a short term dam and diversion of part of a watercourse to facilitate construction works is not provided for within the rule framework as notified in the MEP. There are permitted standards for the damming of water, up to 5000m ³ , and the subsequent use of that water, however that does not provide for temporary damming	Insert new rule as follows: [R] 2.2.x Minor damming and diversions of water associated with

Submission Number	Proposed Provision	Support/Oppose/Seek Amendment	Feedback/Comments/Reasons	Relief Sought (as stated or similar to achieve the requested relief)
			<p>and diversion activities. These would default to a Discretionary Activity status requiring resource consent under Rules 2.5.4 and 2.5.5. KiwiRail seek that a new permitted activity rule be included that enables these activities.</p> <p>The environmental effect of a temporary damming and diversion to allow for maintenance, upgrade or replacement in relation to regionally significant infrastructure would be able to be managed to ensure no disruption to fish passage, no flooding effects on private land, that it would only occur for a short period of time to enable works, and would unlikely be an entire watercourse but rather a part of it at any given time to facilitate the construction works. The effects of these works are submitted as not being significantly different from damming 5000m³ of water.</p>	<p><u>the maintenance or upgrade of regionally significant infrastructure</u></p> <p><u>2.3.x Minor damming and diversions of water associated with the maintenance or upgrade of regionally significant infrastructure</u></p> <p><u>(1) fish passage shall not be impeded as a result of the activity;</u> <u>(2) any activity in the water shall be kept to a minimum to avoid, as much as practicable, discolouration to the river or lake.</u> <u>Where any sediment release occurs, it will be only temporary;</u> <u>(3) any bed disturbance shall be kept to the minimum necessary to undertake the activity and shall be returned as near as practicable to its original channel shape, area, depth, or gradient on completion of the activity (with the exception of revegetation);</u> <u>(4) no fuel storage or machinery refuelling shall occur on any area of the bed;</u> <u>(5) no contaminants, other than sediment released from the bed, shall be discharged to water during the activity unless allowed by a relevant permitted activity rule or resource consent;</u> <u>(6) before any equipment, machinery, or operating plant is moved to a new activity site it shall be effectively cleaned to prevent the spread of “pests” or “unwanted organisms” as defined by the Biosecurity Act 1993;</u> <u>(7) all equipment, machinery, operating plant and debris associated with the bed disturbance activity shall be removed from the site on completion of the activity; and</u> <u>(8) from the beginning of November until the end of May, there shall be no disturbance of the tidal river habitat up to the spring tide level.</u> <u>(9) the diversion is carried out completely within a river or lake bed (i.e. no water is diverted outside of the river or lake bed);</u> <u>and</u> <u>(10) the water is returned to its original course after completion of the activity, no later than one month after the damming and diversion occurs.</u></p>
Chapter 2: General Rules – Activity In, On, Over or Under the Bed of a Lake or River				
81.	[R] Rule 2.7.1 and Permitted Activity Standards 2.9.7	Support	KiwiRail support the ability to undertake alterations, repairs or maintenance of an existing structure on, in or over the bed of a lake or river as a permitted activity, along with the associated standards that this is required to be undertaken in compliance with.	Retain as notified
82.	[R] Rule 2.7.2 and Permitted Activity Standards 2.9.2	Support	The ability to install protection works associated with existing structures as a permitted activity is supported by KiwiRail. The permitted activity standards in relation to undertaking the installation of the protection works are also supported by KiwiRail.	Retain as notified.
83.	[R] Rule 2.7.5 and Permitted Activity Standards 2.9.5	Support	The ability to construct a new structure in, on, under or over an ephemeral watercourse is also supported by KiwiRail. The permitted activity standards proposed for this rule are also supported. The rail network passes over many ephemeral watercourses, and the ability to install culverts as a means of managing water flows, and to replace these culverts where they are in an ephemeral watercourse is supported. Noting that it is a permitted activity to construct a new structure, KiwiRail submit that the temporary damming and diversion to enable that construction, as sought by submission point 80 above, is a further means of ensuring environmental effects are managed.	Retain as notified.
84.	[R] Rule 2.7.7 and Permitted Activity Standards 2.9.7	Support	KiwiRail support the ability to install a culvert in a watercourse as a permitted activity, subject to standards.	Retain as notified.

Submission Number	Proposed Provision	Support/Oppose/Seek Amendment	Feedback/Comments/Reasons	Relief Sought (as stated or similar to achieve the requested relief)
85.	General Standards 2.8.1	Support	The general permitted activity standards for works in, on, under or over the bed of a lake or watercourse, are supported by KiwiRail.	Retain as notified.
86.	Permitted Activity Standard 2.9.4.4	Support	KiwiRail support that dams are not able to be constructed on an ephemeral watercourse as a permitted activity where it is located within 500m upstream of designated rail infrastructure.	Retain as notified.
Chapter 2: General Rules – Drainage Channel Network Activity				
87.	Permitted Activity Standards 2.13.1	Seek Amendment	<p>KiwiRail acknowledge that the Council as the river controlling agency seeks the ability to undertake certain river control and drainage works. The only concern KiwiRail have is that the permitted standards enable a wide range of works including the installation of bank protection works.</p> <p>There is however no restriction on the location of these relevant to assets supporting regionally significant infrastructure, such as the rail corridor. In the event that works are proposed near such assets, even by Council, a level of consultation with the asset owner should be undertaken. Such consultation is supported by Method 4.M.10 and also Objective 11.1 in relation to hazard management and regionally significant infrastructure. While KiwiRail acknowledge Council would not intentionally undertake works that adversely affected the rail assets, the ability to be involved and liaise over the scale and extent of works, and potentially undertake our own maintenance works to support those proposed by Council, would provide greater environmental benefits.</p> <p>KiwiRail therefore seek that a permitted activity standard be included that the works not be within 20m of regionally significant infrastructure, as a means of ensuring that consultation occurs.</p>	<p>Amend as follows:</p> <p><i>2.13.1. General.</i> <i>2.13.1.1. No refuelling or fuel storage or the storage or placement of any hazardous substance including but not limited to oil, hydraulic fluid or other fluid lubricants must take place within 20m of water.</i> <i>2.13.1.2. The activity must not cause flooding or erosion of private land.</i> <i>2.13.1.3. The activity must not be in, or within 8m of, a Significant Wetland.</i> <u>2.13.1.4. The activity must not be within 20m of regionally significant infrastructure.</u></p>
Chapter 2: General Rules – Discharge to Air				
88.	Introduction	Seek Amendment	<p>There is a statement under the heading for the chapter which states ‘These activities apply to roads and railway corridors identified on the zoning maps’ – clarity is required to confirm that these provisions apply <u>only</u> to roads and railway corridors, or to roads and railway corridors <u>as well as zoned land</u>.</p> <p>KiwiRail note that there are zone provisions in relation to discharges to air so it assumes that these provisions <u>only</u> apply to road and railway corridors, however in the instance of zoned land, such as the Port Zoned land at Picton, KiwiRail are uncertain which air discharge provisions apply. Clarity is therefore sought.</p>	<p>Amend as follows:</p> <p><i>These activities apply <u>only</u> to roads and railway corridors identified on the zoning maps. <u>Zone provisions for discharges to air do not apply to roads and railway corridors.</u></i></p>
89.	[R] Rule 2.21	Seek Amendment	<p>KiwiRail note that the only permitted discharge to air is the application of an agrichemical. The discretionary activity rules at 2.23.2 identify that any discharge to air not provided for as a Permitted Activity requires consent. This will mean that trains, cars, trucks, on the road and rail network require a discharge to air consent for each operation, noting that Council already seek to control discharges to air from internal combustion engines in the Port Zone. That is not submitted as being practical or efficient, and potentially not what Council intended. The operation of trains is consistent, already occurs, and maintenance is undertaken to ensure that the train operates as efficiently as possible. Seeking a discharge to air consent for each train or rail vehicle, when there are limited options to reduce the discharge, or mitigate the effects of it given it is a moving vehicle, is not submitted as achieving any RMA purpose.</p> <p>KiwiRail therefore seek that an additional permitted standard is included that permits the discharge to air from the trains, this provision being consistent with the rule proposed in the Port Zone.</p> <p>KiwiRail are aware of the Resource Management (Marine Pollution) Regulations 1998, and in particular regs 15 and 16 and Schedule 4, whereby discharges from ships under</p>	<p>Insert as follows:</p> <p><u>2.21.2. Discharge of contaminants to air from combustion within an internal combustion engine (i.e. internal combustion)</u></p>

Submission Number	Proposed Provision	Support/Oppose/Seek Amendment	Feedback/Comments/Reasons	Relief Sought (as stated or similar to achieve the requested relief)
			propulsion are permitted. Therefore the rule is assumed, consistent with the similar rule within the Port Zone, to not include ferries and only restrict trains and rail related vehicles when in motion.	
Chapter 2: General Rules – Discharge to Water				
90.	[R] Rule 2.16.1 and Permitted Activity Standards 2.17.1	Support	The permitted activity rule and associated standards in relation to the discharge of water to surface water are supported by KiwiRail.	Retain as notified.
91.	[R] Rule 2.16.3 and Permitted Activity Standards 2.17.3	Support	The permitted discharge of stormwater to water, along with the standards which are required to be complied with, are supported by KiwiRail.	Retain as notified.
92.	[R] Rule 2.16.4 and Permitted Activity Standards 2.17.4	Support	The permitted discharge of stormwater to coastal water within the Port Zone is supported, as are the standards which are required to be complied with.	Retain as notified.
93.	[R] Rule 2.16.5 and Permitted Activity Standards 2.17.5	Support	KiwiRail support the discharge of coastal water to coastal water, and the permitted standards that are required to be complied with.	Retain as notified.
Chapter 2: General Rules – Transportation				
94.	Permitted Activity Standard 2.32.4.9	Support	KiwiRail support that a new vehicle crossing is required to be located a minimum of 30m from a level crossing.	Retain as notified.
95.	Permitted Activity Standard 2.32.4.21	Support	KiwiRail support that sightline protections at level crossings are provided for.	Retain as notified.
96.	Permitted Activity Standard 2.32.4.22	Seek Amendment	<p>KiwiRail support that where there are new vehicle crossings that cross a railway, there needs to be a certain amount of sightline protection or setback provided. The rail corridor however is not publicly accessible land and there is no obligation on KiwiRail to provide a level crossing (consistent with s 75 of the Railways Act 2005). Level crossings are licensed by KiwiRail and have strict standards around the formation and risk management of these. Nationally, KiwiRail is working to close level crossings as a means of managing public health and safety risks. Any new crossing of the rail network is required to be grade separated.</p> <p>KiwiRail therefore seek to ensure that the permitted standards are altered to not give the community the impression that a new level crossing is appropriate, or a guarantee.</p>	<p>Amend as follows:</p> <p><i>2.32.4.22. Where a new vehicle crossing is to be formed to a national route (as identified in Appendix 17) and the access crosses a railway and there is less than 25m separation between the national route and the railway the sight distance must be measured from a point:</i></p> <p><i>(a) at a height of 1.15m above the proposed surface level of the access;</i></p> <p><i>(b) on the access;</i></p> <p><i>(c) 5m back from the side of the railway furthest from the national route.</i></p> <p><u>2.32.4.22A No access shall require a new railway level crossing to be formed.</u></p>
97.	[D] Rule 2.33.1	Support	KiwiRail support that where the permitted activity standards are not complied with, resource consent is required as a discretionary activity.	Retain as notified.
Chapter 2: General Rules – Signage				
98.	[D] Rule 2.34.12	Support	KiwiRail support that traffic and safety signs are a permitted activity in the MEP.	Retain as notified.
Chapter 2: General Rules – Network Utilities				
99.	[R, D] Rule 2.38.1, 2.38.4 and 2.38.5, and Permitted Activity Standard 2.39.1.	Seek Amendment	<p>The Rule provides a list of what is determined to be network utility infrastructure. This is inconsistent with the RMA, the definition of 'network utility' and 'utility' within the MEP, and also with the recognition of regionally significant infrastructure through the Policy provisions of the MEP. In particular the rail corridor is not identified as a network utility. While the rail corridor has its own zone, there are no zone standards in relation to it. That in effect means that the upgrade, maintenance and operation of the rail corridor is not specifically provided for through any chapters of Volume 2 of the MEP.</p> <p>While the rail corridor may be designated, the RMA does not place an obligation on a requiring authority to use that designation. Many of the other network utilities identified under the Rule, e.g. an electricity line or facility or a telecommunication facility, are also</p>	Amend to include rail and rail related activities and assets as a network utility provided for under this Chapter.

Submission Number	Proposed Provision	Support/Oppose/Seek Amendment	Feedback/Comments/Reasons	Relief Sought (as stated or similar to achieve the requested relief)
			<p>able to be provided for by designation, and the rule provides the requiring authority with a choice as to whether to use the designation or use the rule in relation to district activities. That choice is not afforded to rail.</p> <p>Subsequent changes to Rules 2.38.4 and 2.38.5, along with the Permitted Activity Standards 2.39.1, will be required in the event that rail is added to the listed network utilities to which these provisions apply.</p> <p>In the event that the permitted activity standards are not altered, and KiwiRail chose not to rely on the designation, or were not able to in the event of works outside the designation, any works proposed would be discretionary under 2.40.2 as 'any land use activity involving a network utility not provided for as a Permitted Activity', noting that the definition of 'network utility' in the MEP references that in the RMA, which includes rail.</p>	
Chapter 3: Rural Environment Zone				
100.	[R, D] Rule 3.1.16 and Permitted Activity Standards 3.3.16	Support	KiwiRail support the proposed permitted activity status in relation to clean fill, and the permitted activity standards proposed in relation to that.	Retain as notified.
101.	[R, D] Rule 3.1.18 and Permitted Activity Standards 3.3.18	Support	On the assumption that the adjacent zoning applies to unzoned land, KiwiRail support that geotechnical investigations in the Rural Zone are a permitted activity and also support the standards identified in the MEP for the undertaking of this activity.	Retain as notified.
102.	Permitted Activity Standards 3.2.1.12	Support	KiwiRail support the requirement for either an 8m (front and rear) or 5m (side) setback from the boundary. The rail corridor is not publicly accessible land and to ensure safety for occupiers of sites, having buildings and structures setback from boundaries ensures that all access and maintenance to those buildings and structures can occur without the need to access the rail corridor.	Retain as notified.
103.	Permitted Activity Standards 3.3.6.2	Seek Amendment	<p>There is no setback proposed for forestry from adjoining property boundaries, only in relation to certain zones. The rail corridor is adjacent to commercial forestry around many parts of the country and increasingly issues are arising with trees being planted in proximity to the boundary.</p> <p>KiwiRail has experienced safety issues with forestry being too close to the rail corridor and therefore wish to ensure that setbacks are imposed to clearly mitigate the potential for safety to be compromised. Forestry can:</p> <ul style="list-style-type: none"> • obstruct sightlines at level crossings, • extend into the rail corridor itself as the trees grow, • block culverts which can cause track instability, poor drainage and mudspots on the track, all leading to potential derailments, • drop leaves / branches onto the track, potentially leading to derailments, • cause shading and ice on the track during winter, which can lead to a 'slippery' track and result in trains not being able to operate. <p>The requirement for a setback is supported through existing policy provisions within the MEP recognising that regionally significant infrastructure should be protected from adverse effects from other activities (Objective 4.2 and Policy 4.2.2), and that there can be conflict between developments and the land transport network that are required to be mitigated (Objective 17.4 and Policy 17.5.6).</p>	<p>Amend as follows:</p> <p>3.3.6.2. <i>Planting must not be in, or within:</i> (a) 100m of any land zoned Urban Residential 1, Urban Residential 2 (including Greenfields), Urban Residential 3, Rural Living or Coastal Living; ... <u>(k) 10m of the rail corridor</u></p>
104.	Permitted Activity Standards 3.3.8.2	Seek Amendment	As with the need for a setback from the boundary for commercial forestry in submission point 103 above, woodlot forestry planting has the potential to raise the same safety concerns in relation to rail. For this reason, a consistent 10m setback standard is proposed in relation to woodlot planting also.	<p>Amend as follows:</p> <p>3.3.8.2. <i>Planting must not be in, or within:</i> (a) 100m of any land zoned Urban Residential 1, Urban Residential 2 (including Greenfields), Urban Residential 3, Rural Living or Coastal Living; ... <u>(g) 10m of the rail corridor.</u></p>

Submission Number	Proposed Provision	Support/Oppose/Seek Amendment	Feedback/Comments/Reasons	Relief Sought (as stated or similar to achieve the requested relief)
Chapter 4: Coastal Environment Zone				
105.	[R, D] Rule 4.1.17 and Permitted Activity Standards 4.3.16	Support	On the assumption that the adjacent zoning applies to unzoned land, KiwiRail support that geotechnical investigations in the Urban Residential Zones are a permitted activity and also support the standards identified in the MEP for the undertaking of this activity.	Retain as notified.
106.	Permitted Activity Standards 4.2.1	Seek Amendment	<p>The permitted standards at 4.2.1 set out the standards in relation to siting buildings or structures. The permitted standard is for a daylight control on sites below 4000m², and for yard setbacks on sites above that area.</p> <p>For safety reasons, the rail corridor is not publicly accessible, therefore to ensure that access to all buildings is able to be provided without the need for occupiers to compromise their safety and access the rail network, buildings being setback from the rail corridor boundary is a means of ensuring people's health and wellbeing through good design. Given the consequence of an incident in the event of a neighbour accessing the rail corridor without the necessary safety permits in place, KiwiRail seek a setback for new structures from the rail corridor be provided for.</p> <p>The provision of a setback as a means of managing reverse sensitivity effects is supported through existing Policy provisions in the MEP (Objective 4.2, Policy 4.2.2, Objective 17.4 and Policy 17.5.6).</p>	<p>Amend as follows:</p> <p><i>4.2.1. Construction and siting of a building or structure except a temporary building or structure, unmodified shipping container or an off-river dam (unless any Standards listed below are specified as Standards for those activities). ...</i></p> <p><u>4.2.1.17 A building or structure must not be within 5m of the rail corridor.</u></p>
107.	Permitted Activity Standards 4.3.6.1	Seek Amendment	There is no setback proposed for commercial forestry replanting from adjoining property boundaries. The rail corridor is adjacent to commercial forestry around many parts of the country and increasingly issues are arising with trees being planted in proximity to the boundary. Supporting commentary for this change is provided in submission point 103 above.	<p>Amend as follows:</p> <p><i>4.3.6.1. Replanting must not be in, or within:</i></p> <p><i>(a) 8 metres of a river (except an ephemeral river) or lake;</i></p> <p><i>(b) 8m of a Significant Wetland;</i></p> <p><i>(c) 30 metres of the coastal marine area.</i></p> <p><u>(d) 10m of the rail corridor.</u></p>
108.	Permitted Activity Standards 4.3.7.2	Seek Amendment	As with the above submission point 103 in relation to commercial forestry replanting, woodlot forestry planting adjacent to the rail corridor can raise the same safety issues, therefore KiwiRail seek a setback be included within the MEP.	<p>Amend as follows:</p> <p><i>4.3.7.2. Planting must not be in, or within:</i></p> <p><i>(a) 30m of a formed and sealed public road;</i></p> <p><u>(f) 10m of the rail corridor.</u></p>
Chapter 5: Urban Residential 1 and 2 Zone (including Urban Residential 2 Greenfields Zone)				
109.	[R, D] Rule 5.1.16 and Permitted Activity Standards 5.3.11	Support	On the assumption that the adjacent zoning applies to unzoned land, KiwiRail support that geotechnical investigations in the Urban Residential Zones are a permitted activity and also support the standards identified in the MEP for the undertaking of this activity.	Retain as notified.
110.	Permitted Activity Standards 5.2.1	Seek Amendment	The permitted standards at 5.2.1 set out the standards in relation to siting buildings or structures. The permitted standard is for a daylight control. Supporting commentary for the change requested as a means of managing reverse sensitivity effects is provided at submission point 106 above.	<p>Amend as follows:</p> <p><i>5.2.1. Construction and siting of a building or structure except a temporary building or structure, or an unmodified shipping container (unless any Standards listed below are specified as Standards for those activities). ...</i></p> <p><u>5.2.1.21 A building or structure must not be within 5m of the rail corridor.</u></p>

Submission Number	Proposed Provision	Support/Oppose/Seek Amendment	Feedback/Comments/Reasons	Relief Sought (as stated or similar to achieve the requested relief)
Chapter 7: Coastal Living Zone				
111.	Permitted Activity Standards 7.2.1	Seek Amendment	The permitted standards at 7.2.1 set out the standards in relation to siting buildings or structures. The permitted standard is for a daylight control on sites below 4000m ² , and for yard setbacks on sites above that area. Supporting commentary for the change requested as a means of managing reverse sensitivity effects is provided at submission point 106 above.	Amend as follows: <i>7.2.1. Construction and siting of a building or structure except a temporary building or structure, or unmodified shipping container (unless any Standards listed below are specified as Standards for those activities)...</i> <u>7.2.1.12 A building or structure must not be within 5m of the rail corridor.</u>
Chapter 9: Business 1 Zone				
112.	[R, D] Rule 9.1.10 and Permitted Activity Standards 9.3.5	Support	On the assumption that the adjacent zoning applies to unzoned land, KiwiRail support that geotechnical investigations in the Urban Residential Zones are a permitted activity and also support the standards identified in the MEP for the undertaking of this activity.	Retain as notified.
113.	Permitted Activity Standards 9.2.1	Seek Amendment	The permitted standards at 9.2.1 set out the standards in relation to siting buildings or structures. The permitted standard is for a setback in relation to certain adjoining sites or zones. Supporting commentary for the change requested as a means of managing reverse sensitivity effects is provided at submission point 106 above.	Amend as follows: <i>9.2.1. Construction and siting of a building or structure. ...</i> <u>9.2.1.16 A building or structure must not be within 5m of the rail corridor.</u>
Chapter 10: Business 2 Zone				
114.	[R, D] Rule 10.1.8 and Permitted Activity Standards 10.3.5	Support	On the assumption that the adjacent zoning applies to unzoned land, KiwiRail support that geotechnical investigations in the Urban Residential Zones are a permitted activity and also support the standards identified in the MEP for the undertaking of this activity.	Retain as notified.
115.	Permitted Activity Standards 10.2.1	Seek Amendment	The permitted standards at 9.2.1 set out the standards in relation to siting buildings or structures. The permitted standard is for a setback in relation to certain adjoining sites or zones. Supporting commentary for the change requested as a means of managing reverse sensitivity effects is provided at submission point 106 above.	Amend as follows: <i>10.2.1. Construction and siting of a building or structure. ...</i> <u>10.2.1.11 A building or structure must not be within 5m of the rail corridor.</u>
Chapter 12: Industrial 1 and 2 Zones				
116.	[R, D] Rule 12.1.31 and Permitted Activity Standards 12.3.20	Support	On the assumption that the adjacent zoning applies to unzoned land, KiwiRail support that geotechnical investigations in the Urban Residential Zones are a permitted activity and also support the standards identified in the MEP for the undertaking of this activity.	Retain as notified.
117.	Permitted Activity Standards 12.2.1	Seek Amendment	The permitted standards at 9.2.1 set out the standards in relation to siting buildings or structures. The permitted standard is for a setback in relation to certain adjoining sites or zones. Supporting commentary for the change requested as a means of managing reverse sensitivity effects is provided at submission point 106 above.	Amend as follows: <i>12.2.1. Construction and siting of a building or structure except a temporary building or structure, or an unmodified shipping container (unless any Standards listed below are specified as Standards for those activities).</i> <u>12.2.1.11 A building or structure must not be within 5m of the rail corridor.</u>
Chapter 13: Port Zone				
118.	[C] Rule 13.1.1	Support	KiwiRail support that shipping activities, including berthing and departure of ships, anchorage, docking, berthage and mooring of ships are identified as a permitted activity within the Port Zone. The continued operation of the ferries within the Port Zone is fundamental to KiwiRail's Interislander business.	Retain as notified
119.	[C] Rule 13.1.2	Support	The use of surface water by a ship as a permitted activity is supported by KiwiRail as this specifically enables the continued ability for the Interislander ferries to use the area of the coastal water that is within the Port Zone as part of the ferry operation between Wellington and Picton.	Retain as notified.

Submission Number	Proposed Provision	Support/Oppose/Seek Amendment	Feedback/Comments/Reasons	Relief Sought (as stated or similar to achieve the requested relief)
120.	[C] Rule 13.1.3 and Permitted Activity Standards 13.3.1	Support	The handling of cargo and loading and unloading of a ship being identified as a permitted activity is supported by KiwiRail.	Retain as notified
121.	[C] Rule 13.1.5	Support	The ability to provide for passenger terminal facilities, along with associated administration, ticketing, tourist related facilities and retail facilities associated with passenger transit, is supported by KiwiRail.	Retain as notified.
122.	[C] Rule 13.1.6 and Permitted Activity Standard 13.3.2	Support	Port Engineering as a permitted activity is supported by KiwiRail as this will provide for the maintenance and mechanical facilities and activities that KiwiRail undertaken within the Picton depot in relation to both ferry and rail assets.	Retain as notified.
123.	[C] Rule 13.1.7	Support	The ability to establish and operate a marine fuel facility as a permitted activity is supported by KiwiRail.	Retain as notified.
124.	[C] Rule 13.1.15	Support	The ability to maintain, repair or replace a building or structure in the coastal marine area as a permitted activity is supported by KiwiRail. While the main ferry operations building is located on land, there are structures associated with the gangways allowing passengers to exit the ferries, and the wharf itself, which are located within the coastal marine area.	Retain as notified.
125.	[D] Rule 13.1.21	Support	Transportation activities, specifically including the construction of a railway, and railway activities themselves, being permitted activities are supported by KiwiRail.	Retain as notified.
126.	[R. D] Rule 13.1.23 and Permitted Activity Standards 13.3.12	Support	As with previous submission points, the ability to undertake geotechnical investigations within the Port Zone as a permitted activity, is supported by KiwiRail.	Retain as notified.
127.	[C] Rule 13.1.24 and Permitted Activity Standards 13.3.13	Support	The ability to undertake dredging and associated disturbance of the foreshore and seabed to maintain necessary water depths for ship berthage and manoeuvring as a permitted activity is supported by KiwiRail.	Retain as notified.
128.	[C] Rule 13.1.33 and Permitted Activity Standards 13.3.22	Support	Taking and using coastal water as a permitted activity is supported by KiwiRail.	Retain as notified.
129.	[R] Rule 13.1.37	Seek Amendment	<p>The discharge of contaminants to air from the combustion of fuel in an internal combustion engine as a permitted activity is supported by KiwiRail. We note however that the rule relates to stationary engines. The trains and ferries operate an internal combustion process, as do vehicles supporting train and ferry operations, and are only stationary for part of the time they are within the Port Zone. Once in motion, the discharge will still be, for part of the journey of both the train and ferry, within the Port Zone.</p> <p>It is anticipated that the rule is intended to address stationary discharges to air such as generators etc, rather than moving ones, however vehicles have an internal combustion engine, including trains and ferries. It is unclear that in the event of the internal combustion engine being in motion, whether the section 15 provisions apply or whether the discharge breaches the permitted standards which permit stationary only, and therefore falls to be a discretionary activity. KiwiRail are aware of the Resource Management (Marine Pollution) Regulations 1998, and in particular regs 15 and 16 and Schedule 4, whereby discharges from ships under propulsion are permitted. Therefore the rule is assumed to not include ferries and only restrict trains and vehicles in motion.</p> <p>The Council's s32 analysis focuses on objectives and policies in relation to air quality rather than the rules and therefore provides little detail in relation to the specific wording of this rule.</p> <p>An amendment is sought to address the concern KiwiRail have with the rule and the</p>	Amend to provide clarity as to application to moving vehicles.

Submission Number	Proposed Provision	Support/Oppose/Seek Amendment	Feedback/Comments/Reasons	Relief Sought (as stated or similar to achieve the requested relief)
			discharge to air arising from moving trains and vehicles within the Port Zone. KiwiRail request that the rule be changed to provide certainty that discharges associated with internal combustion engines in motion are not required to obtain consent. This is based on the Port Zone provisions continuing to apply, irrespective of the Chapter 2 Air Discharge provisions. In the event that only the Chapter 2 Air Discharge provisions apply to the railway land in Picton that is also within the Port Zone, then no change to this rule to address KiwiRail's concerns would be required, however other parties may have an issue with the wording. Further, in light the intent to provide for internal combustion engines and discharge in Chapter 13, KiwiRail seek clarity around whether this is also to be provided for in the Chapter 2 provisions.	
130.	Permitted Activity Standards 13.2.1	Support	KiwiRail support that there are standards proposed in relation to the construction, use, maintenance, repair, replacement or extension of a building or structure on land above mean high water springs, and to an existing wharf to be used for a permitted activity. The berthing of ships in the Port Zone is a permitted activity, therefore the ability to maintain, repair and replace the wharf used for berthing is supported.	Retain as notified.
131.	Permitted Activity Standard 13.2.3.3	Support	KiwiRail support the specific exemptions provided in relation to trains and ships in relation to noise generation as per 13.2.3.3 (a) and (c).	Retain as notified.
132.	Permitted Activity Standard 13.3.6	Seek Amendment	<p>The permitted activity standards restrict the replacement to that which is consistent with the existing structure – no increase in height, size or scale of the building or structure. Certainty is required that these permitted activity standards exclude wharves as these are specifically identified under 13.2.1.</p> <p>In the event that this provision is not altered, any change to the scale of the wharf, i.e. to address the latest health and safety standards, including from the likes of providing hand rails or a wider platform, would not meet the permitted standards, and would then fall to be a discretionary activity under Rule 13.5.1. The application would be assessed against the relevant objectives and policies of the coastal environment – which includes Policy 13.10.15 which restricts jetties to 2m in width. There is no policy or definition distinction between jetties and wharves. Any application for a wharf wider than 2m would therefore be inconsistent with this policy provision, unless changed as per the submission point above, and lead to the potential that such an application would be declined based on being inconsistent with the policy provisions of the MEP.</p>	<p>Amend as proposed:</p> <p><i>13.3.6. Maintenance, repair or replacement of a building or structure in the coastal marine area except as provided for under 13.2.1.</i></p> <p><i>13.3.6.1. In the case of replacement of a building or structure, the original building or structure must have been lawfully established.</i></p> <p><i>13.3.6.2. There must be no increase in the height, size or scale of the building or structure.</i></p> <p><i>13.3.6.3. The effects of the activity occurring in or on the replacement building or structure must be the same intensity and scale as those occurring in or on the building or structure prior to its replacement.</i></p> <p><i>13.3.6.4. There must be no change in the location of the building or structure.</i></p>
Chapter 16: Coastal Marine Zone				
133.	[C] Rule 16.1.1	Support	KiwiRail support the ability for ships to use the National Transportation Route and Queen Charlotte Sound as a permitted activity.	Retain as notified.
134.	Permitted Activity Standard 16.3.1	Seek Amendment	<p>KiwiRail recognise that the rule provides a speed restriction for vessels in the National Transportation Route, and has limited this to 15 knots.</p> <p>The Kaitaki has a resource consent to operate at speeds greater than 15 knots, and this expires in July 2029, at which time either a new consent is required or the Kaitaki is required to slow down through these routes.</p> <p>The Kaiarahi currently operates at 15 knots throughout the Queen Charlotte Sound and Tory Channel, and will therefore be in compliance with this permitted standard. This is consistent with the existing permitted activity rule in the MSRMP.</p> <p>The Aratere however operates under a different provision in the MSRMP, and has a certificate of compliance to operate as a permitted activity at speeds up to 19 knots. That Certificate of Compliance relates to a rule in the MSRMP. KiwiRail have been advised that it will be required to comply with the new provisions regardless of the existence of the CoC. If confirmed as notified, this would require the Aratere to slow</p>	<p>Amend as follows:</p> <p><i>16.3.1. Use of surface coastal water by a ship in the National Transportation Route and Queen Charlotte Sound.</i></p> <p><i>16.3.1.1. A high speed ship must not exceed a ship speed of 15 knots, with the exception of the MV Aratere which must not exceed a ship speed of 19 knots.</i></p> <p><i>16.3.1.2. A ship exceeding 500 gross registered tonnes must not exceed a ship speed of 15 knots.</i></p>

Submission Number	Proposed Provision	Support/Oppose/Seek Amendment	Feedback/Comments/Reasons	Relief Sought (as stated or similar to achieve the requested relief)
			<p>down to 15 knots or seek resource consent to breach that standard within 6 months of it becoming operative under section 20A(2) RMA. We are aware that this is a different opinion to that which appears to be expressed in the Council's section 32 report which provides at p 43 (emphasis added):</p> <p><i>One important change in the MEP to the status quo relates to Rule 35.1.2.10.2 of the MSRMP, a grandfathering rule. This rule enabled three named ships (the Kent, Aratere and Arahura) to continue operating at speeds up to 20 knots without resource consent, subject to meeting standards while other ships were limited to 15 knots without resource consent. However, since the rules were first included in the MSRMP, two of the ships, the Kent and the Arahura, have been withdrawn from operation. Additionally, modifications made to the Aratere resulted in a certificate of compliance being requested by Kiwi Rail Limited under Section 139 of the RMA for operation of the ship for speeds not exceeding 19 knots. There is therefore no need to carry this grandfathering rule through into the MEP.</i></p> <p>That view seems to ignore the requirement that CoCs granted under s 139(11) RMA are granted subject to s 20A(2), and leaves KiwiRail uncertain as to what interpretation the Council would take in the event the MSRMP rule under which the CoC is granted no longer exists. This poses a significant risk on the ferry operations as the additional time required would not enable three return sailings a day, as the current permitted standard enables. The additional time that the ferry sailing will take is approximately 10 minutes, each way.</p> <p>KiwiRail therefore seek that the grandfathering provision be included in the MEP as it relates to the Aratere only, and to 19 knots being consistent with the Certificate of Compliance held for the vessel. If the grandfathering provision is not removed, this would add approximately 1 hour a day to the sailing time for the Aratere, which would mean the number of sailings a day would be required to be reduced from six to four.</p>	
135.	[C] Rules 16.4.1 and 16.4.2	Seek Amendment	<p>KiwiRail note that the controlled activity rules in relation to speed of ships through the National Transportation Route being increased for testing in relation to the wave wash rule, and then operating at faster than 15 knots and not breaching the wave wash rule are as they exist in the MSRMP.</p> <p>The only change KiwiRail seek is the ability to seek consent to sail at faster than 15 knots through the Queen Charlotte Sound as well, given the detail provided in relation to the National Transportation Route and the requirement to use the alternative route through the outer Queen Charlotte Sound for maritime safety purposes.</p>	<p>Amend as follows:</p> <p><i>16.4.1. Use of surface water by a high speed ship or a ship that exceeds 500 gross registered tonnes, which is travelling at a ship speed exceeding 15 knots in the National Transportation Route and Queen Charlotte Sound for the purposes of undertaking measurements of Wave Energy, including any associated disturbance of the foreshore or seabed. ...</i></p> <p><i>16.4.2. Use of surface water within the National Transportation Route and Queen Charlotte Sound by a high speed ship, or a ship that exceeds 500 gross registered tonnes, which is travelling at a ship speed exceeding 15 knots, including any associated disturbance of the foreshore or seabed. ...</i></p>
Chapter 17: Open Space 1 Zone				
136.	[R, D] Rule 17.1.12 and Permitted Activity Standards 17.3.10	Support	KiwiRail support bores for geotechnical investigation purposes as being a permitted activity.	Retain as notified.
137.	Permitted Activity Standards 17.2.1	Seek Amendment	The permitted standards at 17.2.1 set out the standards in relation to siting buildings or structures. Supporting commentary for the change requested as a means of managing reverse sensitivity effects is provided at submission point 106 above.	<p>Amend as follows:</p> <p><i>17.2.1. Construction and siting of a building or structure. ...</i> <u>17.2.1.7 A building or structure must not be within 5m of the rail corridor.</u></p>

Submission Number	Proposed Provision	Support/Oppose/Seek Amendment	Feedback/Comments/Reasons	Relief Sought (as stated or similar to achieve the requested relief)
Chapter 19: Open Space 3 Zone				
138.	[R, D] Rule 19.1.9 and Permitted Activity Standards 19.3.7	Support	KiwiRail support bores for geotechnical investigation purposes as being a permitted activity.	Retain as notified.
139.	Permitted Activity Standards 19.2.1	Seek Amendment	The permitted standards at 19.2.1 set out the standards in relation to siting buildings or structures. Supporting commentary for the change requested as a means of managing reverse sensitivity effects is provided at submission point 106 above.	Amend as follows: <i>19.2.1. Construction and siting of a building or structure. ...</i> <u>19.2.1.10 A building or structure must not be within 5m of the rail corridor.</u>
Chapter 24: Subdivision				
140.	Standards and Terms 24.3.1.4	Seek Amendment	KiwiRail support that the State Highway is given a priority in relation to access being gained from it in relation to a subdivision. As discussed above, the rail corridor is also not publicly accessible land and level crossings (public and private) are licensed, therefore KiwiRail would support that the standard be amended to restrict access being across a level crossing also. This would ensure that in the event access is across a level crossing, the adequacy and safety of the level crossing to accommodate the additional traffic is able to be considered prior to the subdivision being approved, further if the effects are unable to be mitigated this will give Council the option of declining the consent as it would fall to be a discretionary activity under Rule 24.5.1.	Amend as follows: 24.3.1.4. The land being subdivided must not have direct access to or from a State Highway <u>or via a level crossing.</u>
Chapter 25: Definitions				
141.	Bore	Support	The definition as proposed includes structures or holes that are specifically to abstract or discharges liquid substances, or for geotechnical investigation purposes. This is supported by KiwiRail.	Retain as notified.
142.	Determination of Wave Energy	Support	KiwiRail support that the definition references back to Appendix 12 and the detail provided therein in relation to wave wash energy.	Retain as notified.
143.	Dewatering	Support	KiwiRail support the definition of dewatering as proposed.	Retain as notified.
144.	High Speed Ship	Support	KiwiRail support the definition of high speed ship as proposed.	Retain as notified.
145.	Maintenance and replacement	Support	KiwiRail support that the proposed definition of maintenance enables work on the structure to maintain it in a good state of repair and that this specifically includes the activities necessary to continue the operation or functioning of the building or structure.	Retain as notified.
146.	Network Utility	Seek Amendment	KiwiRail note the definition proposed within the MEP for a Network Utility, is the same as network utility operator in Section 2 of the Act. Section 2 references Section 166 for the definition of network utility operator. This is sought to be changed. This definition does however mean that the rail corridor is a network utility. This supports KiwiRail's submission point above seeking clarity that the rail corridor be included within the Network Utility provisions of the MEP.	Amend as follows: <i>Has the same meaning as network utility operator in Section <u>166</u> of the Act.</i>
147.	Network Utility Operator	Seek Amendment	As with the definition of 'network utility' above, this definition references Section 2 of the Act. The section with the definition of network utility operator is however Section 166, so KiwiRail seek that this is altered.	Amend as follows: <i>Has the same meaning as in Section <u>166</u> of the Act.</i>
148.	Noise Sensitive Activity	Support	The definition of Noise Sensitive Activity as proposed in the MEP is supported by KiwiRail.	Retain as notified
149.	Port Engineering Activity	Support	The definition of Port Engineering Activity specifically including reference to ship related activities is supported by KiwiRail.	Retain as notified.

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150.	Ship Speed	Support	KiwiRail support the definition of ship speed and that this is a measure of the speed through water, rather than an equivalent over land measure.	Retain as notified.															
151.	Site	Seek amendment	KiwiRail note that there are four definitions of 'Site' proposed in the MEP, however no clarity is provided as to when each applies other than in relation to frost fans. Rationalisation of the definitions, or insertion of clarity as to when each is to be used, would be supported.	Rationalise four definitions of 'Site' to provide clarity.															
152.	Utility	Support	KiwiRail support the definition of 'Utility' referencing back to network utility operator in Section 166 of the Act. The need for a second definition is questioned, however this definition clarifies that it is the section 166 of the Act that is the correct reference.																
153.	Wave Energy	Support	KiwiRail support the definition of wave energy as proposed and the reference to Appendix 12, noting that this is the same definition as currently exists in the MSRMP.	Retain as notified.															
154.	Wave Record	Support	KiwiRail support the definition proposed, noting as with 'wave energy' that it is the same definition as exists in the MSRMP.	Retain as notified.															
Across Multiple Zones																			
155.	Permitted Activity Standards: <ul style="list-style-type: none"> Rural Zone Residential Zone Coastal Environment Zone Coastal Living Zone Business 1 Zone Business 2 Zone 	New provision	<p>KiwiRail seek that a suite of new rules be inserted requiring all new or altered sensitive activities be appropriately mitigated in relation to rail noise and vibration. This is consistent with the approach proposed in the Standards for permitted activities within certain Zones (e.g. Rural Zone at 3.2.4 and the Coastal Environment Zone at 4.2.3) where acoustic insulation is required for dwellings near frost control fans.</p> <p>The effect of the rail corridor on noise sensitive activities activity is typically noise and vibration. The rail network is a 24 hour a day, 7 day a week operation, and the frequency, length and weight of trains can change without community consultation. Trains do not alter as they cross regional or district boundaries, or zone boundaries. Therefore reverse sensitivity effects are required to be managed. Noise and vibration effects can interrupt people's amenity and enjoyment of their dwelling, as well as people's ability to sleep. Appropriate mitigation being installed to ensure that the health and wellbeing of those living near to the rail network is not adversely affected is, in KiwiRail's submission, pivotal to ensure that undue restrictions are not placed on the operation of the rail network.</p> <p>Objective 4.2 and Policy 4.2.2 anticipate protecting regionally significant infrastructure from adverse effects from other activities. Policy 12.2.1 seeks to ensure amenity in urban environments is provided for, while Objective 14.4 manages reverse sensitivity effects in rural environments. Objective 17.4 and Policy 17.5.6 relate to the management of effects from subdivision and land use where there is the potential for these to conflict with land transport networks. The amended rule sought by KiwiRail provides the ability for land owners and occupiers to ensure potential adverse effects (including conflicts between activities and reverse sensitivity effects) are mitigated.</p> <p>The amended rule sought by KiwiRail in relation to noise sets out the distance that noise can travel from the corridor, and the level of mitigation required to be achieved to ensure an appropriate level of internal amenity in buildings. Often this can be achieved with insulation at the time of construction. The further removed from the rail corridor a building is the less additional mitigation may be required. The noise level proposed is in accordance with World Health Organisation standards, with an adjustment reflecting that trains are intermittent and that often there is a community acceptance of train noise.</p> <p>The two rules proposed in relation to vibration are at different distances to noise, reflecting that vibration does not travel as far. One is designed to address the</p>	<p>Insert new provisions as follows:</p> <p><u>X Sensitive Activities within 100m of a Rail Network – Airborne Noise:</u></p> <p><u>New, relocated and altered sensitive activities shall be designed, constructed and maintained to ensure the following internal design noise limits shall not be exceeded, and shall take into account future use of the rail corridor, by the addition of 3dB to existing measured or calculated sound levels.</u></p> <table border="1"> <thead> <tr> <th><u>Receiving Environment (New, relocated or altered)</u></th> <th><u>Laeq, 1 hour</u></th> <th><u>Compliance Distance (no less than)</u></th> </tr> </thead> <tbody> <tr> <td><u>Residential – Bedrooms</u></td> <td><u>35 dB</u></td> <td><u>100m</u></td> </tr> <tr> <td><u>Residential – Habitable Spaces</u></td> <td><u>40 dB</u></td> <td><u>100m</u></td> </tr> <tr> <td><u>Teaching spaces</u></td> <td><u>40 dB</u></td> <td><u>100m</u></td> </tr> <tr> <td><u>All other sensitive activity building spaces e.g.:</u> <ul style="list-style-type: none"> <u>Hospital and Dementia Care Spaces</u> <u>Commercial Spaces</u> </td> <td><u>To comply with satisfactory sound levels AS/NZS 2107:2000 (nearest specified equivalent)</u></td> <td></td> </tr> </tbody> </table> <p><u>Where it is necessary to have windows closed to achieve the acoustic design requirements, an alternative ventilation system shall be provided.</u></p> <p><u>A ventilation system installed shall comply with the following:</u></p> <p>i) <u>Consist of an air conditioning unit(s) provided that the noise level generated by the unit(s) must not exceed 40dB Laeq(30s) in the largest habitable room (excluding bedrooms) and 35dB Laeq(30s) in all other habitable rooms,</u></p>	<u>Receiving Environment (New, relocated or altered)</u>	<u>Laeq, 1 hour</u>	<u>Compliance Distance (no less than)</u>	<u>Residential – Bedrooms</u>	<u>35 dB</u>	<u>100m</u>	<u>Residential – Habitable Spaces</u>	<u>40 dB</u>	<u>100m</u>	<u>Teaching spaces</u>	<u>40 dB</u>	<u>100m</u>	<u>All other sensitive activity building spaces e.g.:</u> <ul style="list-style-type: none"> <u>Hospital and Dementia Care Spaces</u> <u>Commercial Spaces</u> 	<u>To comply with satisfactory sound levels AS/NZS 2107:2000 (nearest specified equivalent)</u>	
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<u>All other sensitive activity building spaces e.g.:</u> <ul style="list-style-type: none"> <u>Hospital and Dementia Care Spaces</u> <u>Commercial Spaces</u> 	<u>To comply with satisfactory sound levels AS/NZS 2107:2000 (nearest specified equivalent)</u>																		

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			<p>annoyance to occupants to a building from vibration, the other is designed to ensure the integrity of the building in relation to vibration effects. There is no New Zealand standard appropriate for this, therefore alternative standards are referenced which have more specific relationship to rail vibration effects.</p> <p>The mitigation for reverse sensitivity effects proposed through these provisions reflects that in some circumstances, e.g. smaller residential sites near the rail corridor, requiring a greater setback from the rail boundary as a means of addressing noise and vibration effects may not always be practicable. The rules seek to ensure that building development options can still maximise the use of a site, while at the same time having standards for mitigating noise and vibration effects arising from the rail corridor.</p> <p>The provisions within the MEP state that where the permitted standards are not complied with, consent is required as a discretionary activity. This approach is supported by KiwiRail and the ability to consider applications and the effects given rise to as a result of reduced mitigation, along with the ability to required written approval from KiwiRail in regard to that, enable specific circumstances to be taken into account as necessary for each application.</p>	<p><i>when measured 1 metre away from any grille or diffuser; or</i></p> <p>ii) <u><i>A system capable of providing at least 15 air changes per hour (ACH) in the largest habitable room (excluding bedrooms) and at least 5 air changes per hour (ACH) in all other habitable rooms; and</i></u></p> <p>iii) <u><i>The noise level generated by the system must not exceed 40dB Laeq(30s) in the largest habitable room (excluding bedrooms) and 35dB Laeq(30s) in all other habitable rooms, when measured 1 metre away from any grille or diffuser; and</i></u></p> <p>iv) <u><i>The internal air pressure must be no more than 10 Pa above ambient air pressure due to the mechanical ventilation; and</i></u></p> <p>v) <u><i>Where a high air flow rate setting is provided, the system shall be controllable by the occupants to be able to alter the ventilation rate with at least three equal progressive stages up to the high setting.</i></u></p> <p><u>Y Sensitive Activities within 60m of a Rail Network – Ground-borne Noise: Annoyance</u> <u><i>New, relocated, or altered sensitive activities/buildings within 60 metres of the rail corridor shall be designed and constructed to ensure the following levels of vibration from trains shall not be exceeded based on the procedures specified in the Norwegian Standard NS 8176E: 2nd edition September 2005 Vibration and Shock Measurement of Vibration in Buildings from Land Based Transport and Guidance to Evaluation of its Effects on Human Beings.</i></u></p> <table border="1"> <tr> <td><u><i>Receiving Environment (New, relocated or altered)</i></u></td> <td><u><i>Class C criterion: Maximum Weighted Velocity</i></u></td> </tr> <tr> <td><u><i>Sensitive activities/ buildings</i></u></td> <td><u><i>0.3 mm/s</i></u></td> </tr> </table> <p><u>Z Sensitive Activities within 20m of a Rail Network – Ground borne Vibration: Building effects</u> <u><i>All buildings within 20 metres of the rail corridor shall be designed and constructed to ensure the level of vibration from trains shall not exceed the criteria set out in the British Standard BS 7385-2:.</i></u></p>	<u><i>Receiving Environment (New, relocated or altered)</i></u>	<u><i>Class C criterion: Maximum Weighted Velocity</i></u>	<u><i>Sensitive activities/ buildings</i></u>	<u><i>0.3 mm/s</i></u>
<u><i>Receiving Environment (New, relocated or altered)</i></u>	<u><i>Class C criterion: Maximum Weighted Velocity</i></u>							
<u><i>Sensitive activities/ buildings</i></u>	<u><i>0.3 mm/s</i></u>							
Maps								
156.	National Transportation Route	Seek Amendment	<p>As discussed above, KiwiRail seek that the northern entrance and outer Queen Charlotte Sound also be recognised as forming the National Transportation Route.</p> <p>This requires a change to the mapping overlay. The definition of the National Transportation Route in Chapter 25 refers to the mapped route, so no change to the definition is required in the event that Council accept the change to the route.</p>	Amend to include Outer Queen Charlotte Sound				
157.	ZONES		<p>At Wharenui Beach Road and to the north of that road, there is an area of rail corridor that while designated, carries the underlying zonings of Open Space 3 and Rural.</p> <p>The Spring Creek Depot has an underlying zoning of Rural.</p> <p>North of the Elevation in Picton, a section of the corridor carries Rural as the underlying</p>	Amend zone maps as required				

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			<p>zoning.</p> <p>The underlying zoning at these sites is requested to be changed to be consistent with the remainder of the rail corridor – e.g. unzoned.</p> <p>The Interislander terminal and rail depot facilities in Picton are zoned Port Zone – not unzoned like rest of rail corridor. However KiwiRail support that this site retains that underlying zoning of Port Zone.</p>											
Appendices														
158.	Appendix 12: Determination of Wave Energy	Support	KiwiRail support the detail provided within Appendix 12, including the determination of ship speed and wave wash energy. KiwiRail note that the determination of wave wash energy remains as agreed through the Environment Court appeal arising from the MSRMP.	Retain as notified.										
159.	Appendix 14: Designations: K1	Seek Amendment	<p>The detail in relation to the railway corridor designation is supported, however the requiring authority is identified as New Zealand Railways Corporation. As of March 2013, KiwiRail Holdings Ltd is the requiring authority in relation to the railway corridor, assets and operations. KiwiRail therefore seek that the requiring authority in the MEP be updated to reflect this.</p> <p>Further the rail corridor in the region is officially identified as the Main North Line, with signs along the network identifying this as the MNL, e.g. on bridges. KiwiRail therefore seek that the site description be updated to reflect this.</p>	<p>Amend as follows”</p> <p>New Zealand Railways Corporation KiwiRail Holdings Ltd</p> <table border="1"> <thead> <tr> <th>ID No.</th> <th>Map No.</th> <th>Site Description</th> <th>Legal Description</th> <th>Designation</th> </tr> </thead> <tbody> <tr> <td>K1</td> <td>Numerous</td> <td>Picton Terminal and Main North <u>Line</u> Railway</td> <td>Railway Land</td> <td>Railway Purposes</td> </tr> </tbody> </table> <p><i>Explanation:</i> <i>Railway Purposes :</i> <i>The operation, enhancement and maintenance of the railway network through the Marlborough District to support rail passenger services and freight logistics. The rail corridor consists of the Main North Line.</i> <i>New Zealand</i></p>	ID No.	Map No.	Site Description	Legal Description	Designation	K1	Numerous	Picton Terminal and Main North <u>Line</u> Railway	Railway Land	Railway Purposes
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