

**IN THE ENVIRONMENT COURT
CHRISTCHURCH**

ENV-2020-CHC-057

**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

Appellant

AND

MARLBOROUGH DISTRICT COUNCIL

Respondent

MEMORANDUM OF COUNSEL ON BEHALF OF KIWIRAIL HOLDINGS LIMITED

14 AUGUST 2020

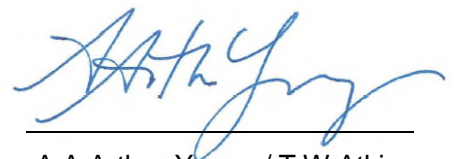
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MAY IT PLEASE THE COURT:

1. We refer to the Minute of the Court dated 21 June 2020, and in particular the directions for Marlborough District Council ("**Council**") to file a case management memorandum by 31 July 2020 and for parties to file any responses to that memorandum by 14 August 2020.
2. KiwiRail Holdings Limited ("**KiwiRail**") has reviewed the Council's case management memorandum and accompanying table of proposed topics and subtopics. KiwiRail is generally comfortable with the Council's proposed approach to topic allocation.
3. However, KiwiRail has identified a number of errors in the table of proposed topics and subtopics as it relates to KiwiRail's appeal and its interests as a section 274 party to other appeals. These errors, along with KiwiRail's proposed corrections and / or matters of clarification, are set out in **Appendix A** to this memorandum.
4. KiwiRail has been in direct discussions with the Council regarding these errors. The Council has confirmed that these errors will be corrected and / or clarified in an updated table of proposed topics and subtopics, in the manner set out in **Appendix A**.
5. Subject to the table of proposed topics and subtopics being amended as agreed between KiwiRail and the Council, KiwiRail has no other concerns with the proposed approach to case management of the appeals.

DATED: 14 August 2020



A A Arthur-Young / T W Atkins

Counsel for KiwiRail Holdings Limited

APPENDIX A

Subtopic	Error	Correction / Query
5.3 – Ecologically Significant Marine Site Buffers 5.4 – King Shag Habitat and Important Bird Areas 17.5 – Climate Change	KiwiRail is listed as a s274 party to each of these subtopics but has no interest in the relevant aspect of the appeals listed (its interested is limited to other aspects of one or more of the appeals listed for each subtopic).	Delete KiwiRail from the list of s274 parties.
14.5 – Woodlot Forestry	KiwiRail is listed as an appellant in relation to Rule 4.1.7. KiwiRail has not appealed this provision, but has appealed Standard 4.3.7.2.	Having reviewed the notations included in the appeals version of the MEP, it appears that the Council has listed KiwiRail as an appellant in relation to Rule 4.1.7 due to its appeal against Standard 4.3.7.2. KiwiRail has requested that the Council confirm whether this is correct.
16.1 – Noise sensitive activities setbacks in all Zones	While it is not entirely clear which aspects of KiwiRail's appeal are covered by this subtopic, it appears to cover KiwiRail's appeal points relating to the proposed setbacks from the railway for all zones and the proposed new rules for certain zones requiring all new noise sensitive activities in proximity to the railway corridor to be acoustically mitigated. However, the setbacks sought by KiwiRail (through amendments to 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) are not limited to noise sensitive activities. If subtopic 16.1 is not intended to cover the rail setbacks sought by KiwiRail, it does not appear that this aspect of KiwiRail's appeal is covered in the table of topics and subtopics.	KiwiRail has requested that the Council clarify which provisions appealed by KiwiRail are covered by this subtopic. If subtopic 16.1 is intended to cover both the acoustic and vibration provisions and rail setbacks sought by KiwiRail, it should be split into two separate subtopics, as follows: <ul style="list-style-type: none"> • 16.1 – Noise sensitive activities setbacks in all Zones Volume 2: New Rules for Rural Zone, Coastal Environment Zone, Urban Residential 1, 2 & 3 Zones, Coastal Living Zone, Business 1 & 2 Zones – acoustic mitigation for noise sensitive activities. • 16.X – Setbacks for new or altered buildings from railway corridor boundary Volume 2: Standards .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. If subtopic 16.1 is not intended to cover the rail setbacks sought by KiwiRail, a new subtopic 16.X (as above) should be added to the table to cover this aspect of KiwiRail's appeal.

Subtopic	Error	Correction / Query
16.4 – Shipping Activity and the National Transportation Route	<p>Apex Marine Farming Limited, Marine Farming Association Inc & Aquaculture New Zealand and the New Zealand King Salmon Co Limited have all appealed the mapping of the National Transportation Route in Volume 4 of the MEP. However, this aspect of these appeals is not listed in the provisions covered under subtopic 16.4.</p> <p>KiwiRail is a s274 party to this aspect of their appeals (and is also a s274 party in relation to their appeals on Policy 13.15.1).</p>	<p>Add "Volume 4: Mapping of the National Transportation Route" to the list of provisions covered by subtopic 16.4.</p> <p>Add KiwiRail as a s274 party for subtopic 16.4.</p>
21.1 – Volume 2 – Forestry Planting	<p>KiwiRail is listed as an appellant in relation to Rule 3.1.6. KiwiRail has not appealed this provision, but has appealed Standard 3.3.6.2.</p>	<p>Having reviewed the notations included in the appeals version of the MEP, it appears that the Council has listed KiwiRail as an appellant in relation to Rule 3.1.6 due to its appeal against Standard 3.3.6.2.</p> <p>KiwiRail has requested that the Council confirm whether this is correct.</p>
21.2 – Volume 2 – Forestry Replanting	<p>KiwiRail is listed as an appellant in relation to Rule 3.1.7 and 4.1.6. KiwiRail has not appealed these provisions, but has appealed Standards 3.3.7.1 and 4.3.6.1.</p>	<p>Having reviewed the notations included in the appeals version of the MEP, it appears that the Council has listed KiwiRail as an appellant in relation to Rules 3.1.7 and 4.1.6 due to its appeal against Standards 3.3.7.1 and 4.3.6.1, respectively.</p> <p>KiwiRail has requested that the Council confirm whether this is correct.</p>
21.3 – Volume 2 – Forestry Harvesting	<p>KiwiRail is listed as an appellant in relation to Rule 3.1.8. KiwiRail has not appealed this provision, but has appealed Standard 3.3.8.2.</p>	<p>Having reviewed the notations included in the appeals version of the MEP, it appears that the Council has listed KiwiRail as an appellant in relation to Rule 3.1.8 due to its appeal against Standard 3.3.8.2.</p> <p>KiwiRail has requested that the Council confirm whether this is correct.</p>