

BEFORE THE EXPERT CONSENTING PANEL

CONCERNING THE RAIL STATIONS AT DRURY CENTRAL AND PAERATA

IN THE MATTER of the of the Covid-19 Recovery (Fast-Track Consenting) Act 2020 (**Covid Act**) and the deliberations and final decision of the Expert Consenting Panel appointed under Clauses 2, 3, and 4 of Schedule 5 of the Act to consider applications for consents and notices of requirement for the rail stations at Drury Central and Paerata by KiwiRail Holdings Limited.

EXPERT CONSENTING PANEL Alan Webb (Chair)

Steven Wilson – Accredited Independent RMA Commissioner (Member)

Les Simmons – Accredited Independent RMA Commissioner (Member)

COMMENTS RECEIVED UNDER CLAUSE 18 OF SCHEDULE 6 TO THE ACT 17 November 2021 (+ 1 late comment)

DETAILS OF ANY HEARING IF HELD UNDER CLAUSE 21 OF SCHEDULE 6 OF THE ACT: No hearing was held (refer clause 20, Schedule 6 to the Act)

DATE OF HEARING IF HELD: Nil

Date of decision: 3 February 2022 – Date of issue: 3 February 2022

RECORD OF DECISION OF THE EXPERT CONSENTING PANEL UNDER CLAUSE 37 OF SCHEDULE 6 OF THE ACT

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PART A: EXECUTIVE SUMMARY

1. This Expert Consenting Panel (**Panel**) was appointed on 14 October 2021 to consider an application by KiwiRail Holdings Limited (**KRL**) to build rail stations at Drury Central and Paerata (**Project**).¹
2. The Project forms part of the Te Tupu Ngātahi Supporting Growth programme which is a collaboration between the applicant and Auckland Transport, NZ Transport Agency (**Waka Kotahi**), Auckland Council (**Council**) and Mana Whenua. The stations are a central part of a programme to undertake route protection for the strategic transport networks needed to support growth in Auckland’s future urban areas over the next 30 years.
3. The stations will also form part of the New Zealand Upgrade Programme (**NZUP**) which is a Crown-funded infrastructure investment programme announced in early 2020. It is planned to eventually have 3 rail stations as part of this programme (the third station being at Drury West). Development of the stations at Drury Central and Paerata has been brought forward under NZUP.
4. To undertake the Project KRL has applied for:
 - a) Four notices of requirement for a designation – two in respect of each station. One set (of two) is to provide for railway infrastructure i.e., the station platform and buildings, and the other set (of two) is to provide for the interchange facilities and accessways; and
 - b) Various applications for resource consent under the Auckland Unitary Plan (**AUP**) for regional consents (together the **Applications**).
5. KRL has taken the “two sets” approach to provide flexibility in the implementation of the designations, and for reasons explained further below, to address issues arising from the imminent proposed extensive urban renewal of the existing environment. The regional consents relate to use of land, rivers, water, to make discharges, and in respect of soil.
6. In support of the Applications, KRL has provided:
 - a) A comprehensive assessment of environmental effects (**AEE**);
 - b) A full set of technical reports;

¹ This is a referred project under the Covid Act.

- c) Draft conditions; and
 - d) Associated plans and drawings (**Application Documents**).
7. KRL has submitted the Applications as discretionary activities. The Panel accepts that activity status application.²
 8. The Panel also acknowledges the extremely high quality of the Application Documents.
 9. As the Panel worked its way through the documents, various requests for further information were made and the Panel thanks the KRL advisors for their prompt attention to those requests.
 10. The Panel would also like to make a special mention of the assistance provided by Marlene Oliver who is well known to the Panel from her work as an Environment Court commissioner and her significant expertise in managing expert caucusing. For the reasons expanded on below, caucusing was considered to be a useful exercise for this application to address issues that arose both for the Panel on reading the Application Documents, but also raised through the invitations to comment.
 11. In her special way, Ms Oliver was able to isolate the key issues for discussion and facilitate outcomes with the parties which materially assisted the Panel in its deliberations. The Panel is very thankful to Ms Oliver for this input.

Decisions by the Panel

12. The Panel approves the applications for resource consent described in Appendix 1, subject to the conditions expressed in that Appendix.
13. The Panel confirms the notices of requirement described in Appendix 1, subject to the conditions expressed in that Appendix.

PART B: INTRODUCTION

14. KRL is a State-Owned Enterprise that is responsible for the construction, maintenance, and operation of New Zealand's rail network. The rail network has two nationally vital functions, being the movement of people and the movement of freight throughout New Zealand.
15. KRL is a requiring authority pursuant to s 167 of the Resource

² The Panel questioned KRL about the activity status under the National Environmental Standard for Freshwater. The Panel considers KRL provided an adequate response in its letter dated 25 November 2021 and as further discussed by the Panel in the section on National Policy considerations at Part F of this decision.

Management Act 1991 (**RMA**) for its network utility operation, being the construction, operation, maintenance, replacement, upgrading, improvement, and extension of its railway line having been approved as a requiring authority in 2013.

16. At an Auckland regional level, the rail network is critical infrastructure for Auckland's economic wellbeing and within Auckland, KRL is responsible for the operation and maintenance of both the Auckland Metro Rail Network (**AMRN**) and sections of the North Island main trunk line outside the urban area. Auckland Transport (**AT**) is then responsible for the operation of passenger services and related investment utilising that infrastructure.
17. The Auckland Metro Network comprises four lines:
 - a) The southern line – Pukekohe to Britomart;
 - b) The eastern line – Manukau to Britomart;
 - c) The western line – Swanson to Britomart; and
 - d) The Onehunga line – Onehunga to Britomart.
18. This Project will increase the connectivity and resilience of the *southern* line (Pukekohe to Britomart).
19. There are currently 41 rail stations across the AMRN. Significant investment is currently being undertaken in this network including with the City Rail Link (**CRL**) in Auckland which will double passenger capacity in Auckland. The CRL will be transformational for the AMRN and peak hour passenger numbers are expected to rise to 54,000/hr.
20. It follows that associated rail network upgrades will also be required and the Project forms part of such upgrades. The Project has been promoted as the upgrade requirements are more pronounced in South Auckland, due to the identified significant greenfield growth areas between Papakura and Pukekohe.

Drury/Paerata

21. The existing main trunk line runs through the centre of Drury and Paerata but the closest stations to both locations are either Pukekōhe or Papakura.
22. An area a little over 80,000m² is requested for the Drury Central designation and a little over 168,000m² for the Paerata designation.
23. The construction of the stations and associated infrastructure is

proposed to occur in stages – the first stage proposed by 2024/5 and full build out of the Drury Central station (anticipated to be) by 2038. The full build out date for the Paerata station is not yet certain. A description of works for each stage is set out at sections 6 and 13 of the AEE respectively.

24. KRL estimate that during the AM peak 2 hours there will be 700 boardings at Drury and 2,100 at Paerata by 2028, rising to 2,300 and 3,900 respectively by 2048. In the long term, 12 trains per hour will be used to service this demand.

Permitted Baseline

25. KRL has used a permitted baseline comprising existing designations and permitted activities under the Schedule 4 of the Covid Act and the AUP.
26. The Panel agrees that is appropriate in respect of the existing designations and Covid Act Schedule 4 activities.

Plan Changes

27. KRL has listed plan changes it says are relevant to the Applications in Table 4-1.³ The Panel notes that plan changes 48 – 50 are all private plan changes (**Plan Changes**) and all the proponents⁴ were invited to comment on the Applications and have done so.
28. As Table 4-1 notes, these Plan Changes were *accepted* by the Council and hearings have been completed and, at the time of this decision, the parties are waiting for the decision to issue. If approved, the Plan Changes would change the current future urban zoning of the land to enable the comprehensive and dynamic urban development of the existing environment. Further, while s104(1)(b) and s171(1)(a) of the RMA expressly direct the Panel to consider a proposed plan, s43AAC(1)(b) of the RMA defines a proposed plan as one which has been “adopted” by (in this case) the Auckland Council (**Council**) under Schedule 1 25(2)(a). However, as above, the Plan Changes were “accepted” by the Council under Schedule 1 25(2)(b) i.e., not adopted. Therefore, they are not proposed plans under either s104 or s171 of the RMA.
29. That said, they are of course highly relevant to the point where the Panel considers them to be other matters reasonably necessary for consideration under both s104(1)(c) and 171(1)(d) of the RMA and can, (and should) be considered. The Panel will consider them, cognisant of

³ AEE p71

⁴ PC 48 Kiwi Property, PC 49 Fulton Hogan and PC 50 Oyster Capital

the appropriate weight to be given them, considering that at the time of this decision they have not been finalised, they are not incorporated into the AUP, and they are not operative.

30. The Plan Changes are pursuing development largely in accordance with the Drury– Opāheke Structure Plan (**Structure Plan**) for this area which provides guidance on the preferred zoning framework (and which the Plan Changes are largely trying to achieve). The Structure Plan estimates an increase of approximately 22,000 dwellings, 12,000 jobs and an increase of population in the Structure Plan area from 3,000 to 60,000.
31. Change is already occurring within the environment, particularly around Paerata and there is building anticipation around the stations being constructed within the timeframes noted above. They will provide a focal point for, and give impetus to, continuing development.
32. However, the fact of the Plan Changes caused the Panel to reflect on what “environment” the Applications should be assessed against.
33. For example, KRL has “split” its assessment of effects on the environment in two blocks: the existing environment in relation to construction effects; and future build out and operational effects against the future urbanised environment.
34. The Panel can see at once that this approach has been taken for practical reasons, in the sense that if the Plan Changes are approved, an assessment of (the full build out) effects against the existing environment would quickly become redundant. The split-level assessment approach anticipates both that the stations will be built and that the Plan Changes will be approved, and that urban development will follow. The Panel considers these to be objectively reasonable assumptions.
35. In resolving this issue, the Panel reminds itself of the matters listed in s19 of the Covid Act about what purpose the Covid Act is trying to achieve. Section 19 expressly refers to:

...providing infrastructure in order to improve economic, employment, and environmental outcomes, and increase productivity

and describes the Project perfectly.

36. There are strong synergies between the Covid Act and the RMA and the expectation is that key infrastructure projects like this can be approved under the “fast-track” consenting process provided by the Covid Act even while other relevant RMA processes (in this case the Plan Changes)

are being finalised.

37. The Panel balances that against the fact that technically, KRL has not provided any accurate assessment of the future build out effects at this stage and has considered whether this factor should be a reason to decline the application. The Panel does not consider it is.
38. The starting point is that this situation must have been clearly contemplated by Parliament when the Covid Act was passed. There can be no criticism of a planning approach that provides a response to a changing environment, and which enables core infrastructure to be approved at pace, to assist the form of urban development surrounding and using it.
39. The form of that urban development will be finalised by the Plan Changes and the Panel records that it is proceeding on the basis that the Plan Changes will be approved in some form or other. To this extent, the Plan Changes will themselves create a portal for consideration of the Project's build out effects against the relevant planning objectives, policies, and rules in place at the time those effects arise.
40. KRL have codified their undertaking to fully assess and respond to such effects through conditions requiring the use of outline plans (to be submitted before any construction commences). KRL's thinking appears to be that as the Plan Change process continues, and the rules become clearer, KRL can tailor construction to ensure the adverse effects are avoid, remedied or mitigated.
41. The Panel understands this logic, but still wanted to ensure that a proper assessment of effects would occur and that relevant effects would be properly controlled. The Panel raised this concern at an early stage with KRL and parties that responded to the invitations to comment (**Stakeholders**).⁵
42. The focus of the Panel's consideration on this future assessment of effects is whether and if so, how, outline plans can be used to dilute this issue.
43. Outline plans are a common planning tool in the RMA armoury. They are equally applicable to Covid Act fast track applications. However, they are designed for "orthodox" RMA applications and their statutory manifestation has some limits. For example, the Panel notes that s176A of the RMA sets out the statutory requirements for outline plans and s176A(3) refers to things that must be shown in an outline plan,

⁵ See Minute 4 issued by the Panel dated 30 November 2021.

and s176A(1) mandates that such plans must be submitted before construction is commenced.⁶

44. However, there is no provision in s176A for other parties (and in this case the Stakeholders) to have any involvement in the production of outline plans, nor set out any procedures for them to be produced.
45. Accordingly, because of the importance to be assumed by outline plans, the Panel investigated with KRL and the Stakeholders whether the statutory requirements for outline plans could be augmented for example by:
 - a) Noting a time by which a draft outline plan should be prepared;
 - b) Requiring KRL to send the draft outline plan to Stakeholders for comment; and
 - c) Requiring KRL to submit the outline plan to the Council either accepting the comments or explaining why it rejects them.
46. The changes proposed are designed to allow Stakeholders a further opportunity for input and still allows the Council to be the final arbiter on effects.
47. The Panel are very pleased indeed that these suggestions were taken on board by the parties, and they have agreed to update the notice of requirement conditions for both stations to such effect.
48. The Panel has accepted those conditions.

PART C: PROCESS ADOPTED BY THE PANEL

49. The role of any expert Panel appointed under the Covid Act has been described by the Panel Convener⁷ (**Convener**) in the decision on the Matawii Water Storage Reservoir at Kaikohe dated 27 October 2020, which was a listed project (**Matawii Decision**). At paragraph [12] of that decision the Convener stated:

Because this decision is the first to issue under this legislation, we will describe in more detail than will be necessary in subsequent decisions, the workings of the Act in processing listed projects.

50. The Panel respectfully adopts the description set out (mainly) at paragraphs [12] – [43] of the Matawii Decision.

⁶ The process for approval is set out in s176A as well.

⁷ His Honour Judge Newhook, appointed by the Minister under clause 2 of Schedule 5 to the Act.

51. There are several key parts of the Covid Act which will be referred to throughout this Decision, but of paramount importance is Schedule 6 of the Act titled “*Applications and decision making for listed projects and referred projects*” (Schedule 6).
52. This is a referred project by an Order in Council after scrutiny by the Ministry for the Environment (**Minister**) taking into account the criteria and related matters at ss 18 and 19 of the Act.
53. It follows that the Minister was satisfied that the Project would be consistent with the purpose of the Covid Act.
54. The Panel is, of course, not bound by the referral decision and our task is to independently determine whether the Applications should be granted.
55. The process to be followed by a Panel for referred projects has been succinctly recorded in the *Kohimarama Retirement Village* decision.⁸ The Panel respectfully adopts the process set out in that decision and thanks that panel for assessing those issues.
56. With the process outlined in that decision in mind, the Panel specifically reminds itself and proceeds on the basis that:
 - a) The RMA does not trump the Covid Act or vice versa;
 - b) Any assessment of the Applications under Part 2 of the RMA must occur in accordance with the Court of Appeal decision in *RJ Davidson Family Trust v Marlborough District Council*⁹;
 - c) It is important to bear in mind the overarching purpose of the Act as set out in s 4 of the COVID Act;
 - d) The assessment of effects under clause 31 of the Covid Act is the same as that under s 104 of the RMA but it also includes any offsets, benefits and compensation;
 - e) The purpose of the Covid Act must be considered as well as the purpose and principles of the RMA; and
 - f) The approach to the Treaty of Waitangi is similar but the assessment under the Covid Act includes consideration of any treaty settlements.
57. The key difference between listed projects and referred projects is that

⁸ Decision of expert consenting Panel dated 12 May 2021 concerning a comprehensive care retirement village at Kohimarama, Auckland – Ian Gordon (Chair) – see paragraphs [33] – [39].

⁹ [2018] NZCA 316.

the Panel has a wide(r) discretion to consent or decline a referred project. The grounds on which a Panel can decline a referred project are again succinctly set out in the *Kohimarama Retirement Village* decision at paragraphs [51] – [54] which again the Panel respectfully adopts.

Procedural

58. The Panel records the following matters.

Meetings/Site Visits

59. The Panel was asked to consider this Application during an Alert Level 4 lockdown in Auckland. Two Panel members were within the Auckland boundary, and one was not.

60. Accordingly, all the meetings were held by zoom.

61. There were additional practical difficulties with undertaking a site visit, from difficulties in accessing the Paerata Project site. KRL provided very comprehensive drone footage of both Project sites. The Panel reviewed that footage with interest and relied on that in substitution to a site visit.¹⁰

62. The Panel otherwise undertook zoom conferences as follows:

- a) Monday 18 October 2021;
- b) Thursday 21 October;
- c) Thursday 21 November 2021; and
- d) Friday 26 November 2021

Invitations to Comment

63. By letters dated 27 October 2021, the Panel invited comments on the Project from those parties listed in Clauses 17(6) and 17(7) of Schedule 6.

64. The Panel also invited comments from parties under Clause 17(8) of Schedule 6.¹¹

65. In accordance with Clause 18(1) of Schedule 6, responses were required by 17 November 2021.

¹⁰ The Panel notes that Mr Les Simmons did undertake a site visit of the Drury site and the Paerata locality on 20 October.

¹¹ These parties are listed at Appendix 2 to this Decision.

66. Those comments were all sent to KRL and, in accordance with Clause 19 of Schedule 6, the Panel required its response by 25 November 2021.
67. There was one late comment received on 25 November 2021. The Panel asked KRL if it objected to the late comment and if not, to provide its response.¹²
68. A summary of the comments (prepared by KRL but which the Panel adopts) is set out in Appendix 2. These comments have all been considered by the Panel.

Further Information from KRL

69. The Panel sought the following further information from KRL:
 - a) Information about the activity status under the National Environmental Standard for Freshwater (NESFW);
 - b) Clarification in relation to the consents sought to remove three protected willow trees at Paerata. KRL confirmed that the AEE and the Arboricultural Assessment erred in identifying these trees for removal and that consents are not being sought for the removal of these trees. It was noted that these trees are outside the proposed designation boundary; and
 - c) Clarification, of the actual Mana Whenua and Iwi groups, along with alternative names by which they are referred to in the AEE, that were involved in the engagement process.

Caucusing

70. Some of the Stakeholders requested an opportunity for caucusing. The Panel considered that to be a useful initiative and provided timeframes for that to occur¹³. The Panel left it to the parties to otherwise organise caucusing.
71. KRL appointed Marlene Oliver to facilitate the caucusing and Ms Oliver contacted the Chair to double check details and requirements.¹⁴
72. The parties produced caucusing statements as follows:
 - a) Drury Central Station – Transport and Planning, 2 December 2021;

¹² KRL did not object and provided its response on 29 November 2021.

¹³ Again, refer to Minute 4 and also note an extension of time was sought and approved.

¹⁴ For example, the requirement for caucusing statements to be produced, and whether expert/non-experts could attend.

- b) Paerata Station – Transport and Planning, 2 December 2021;
- c) Drury Central Station – Stormwater and Water Supply, 3 December 2021;
- d) Drury Central Station – Conditions, 14 December 2021; and
- e) Paerata Station – Conditions, 15 December 2021

PART D: MANA WHENUA

73. The Panel considers it is important to record at some length issues relevant to Mana Whenua. This is not required to resolve issues, but to explain that the Project is located within an environment that is highly significant to Mana Whenua as explained in the detailed cultural history of the area in the Cultural Impact Assessments (**CIA** or **CIAs**) that formed part of the Application Documents. The CIA summaries and the Projects’ responses, and the Ngaati Te Ata Waiohua CIA were carefully considered by the Panel.¹⁵
74. The Panel will draw on the following discussion further when it considers the Project against the Principles of the Treaty of Waitangi in [Part F] of this Decision.
75. The Projects have been the subject of several specific phases of engagement activity since 2016, including with Mana Whenua. A Mana Whenua forum, that subsequently met monthly, was set up to have input into the Indicative Business Case (**IBC**), the Detailed Business Case (**DBC**), the NoR, and for operational and kaitiaki level interaction. Te Tupu Ngātahi has provided monthly project updates to this forum since mid-2019, with KRL present in July 2020. A summary of the DBC hui presentations is included in the AEE and is not duplicated here.¹⁶
76. During the Programme Business Case (**PBC**) phase, all 19 iwi groups in Auckland were sent letters with an invitation to participate. A total of 18 Mana Whenua groups participated in at least one of the hui in relation to the Project. Some of the groups were more involved in later, more detailed stages of the project, including the Multi Criteria Analysis (MCA) process. These were Ngāti Manuhiri, Ngāti Whātua o

¹⁵ CIA summaries in Appendices E, F, G, of the AEE, Ngāti Te Ata CIA at Vol 4 – 03 of the application – also refer to AEE Chapter 5: Consultation and Engagement, Chapter 10: Drury Central Station: Assessment of Effects on the Environment (particularly 10.7), Chapter 11: Drury Central Station: Summary of Measures to Manage Adverse Effects, Chapter 14: Paerata Station: Existing and Likely Future Environment (particularly 14.4.5), Chapter 17: Paerata Station: Assessment of Effects on the Environment (particularly 17.7), Appendix C Proposed Conditions (particularly proposed conditions Drury Central NoR DC-S & NoR DC-I—13, 17 & 18; Paerata NoR P-S & NoR P-IA—13, 15 & 16).

¹⁶ AEE 5.2

Kaipara, Ngāi Tai ki Tāmaki, Ngāti Maru, Ngāti Whātua Ōrākei, Ngāti Tamaoho, Ngaati Te Ata Waiohua, Te Ākitai Waiohua, Te Kawerau a Maki, Te Ahiwaru Waiohua, Ngāti Pāoa, Te Rūnanga o Ngāti Whātua, Te Uri o Hau, Ngāti Tamaterā, Te Patukirikiri, Ngaati Whanaunga, and Ngāti Wai¹⁷. Waikato–Tainui were initially contacted but confirmed that there were happy to defer to mana whenua and did not wish to engage on the project. The AEE notes that seven of the Mana Whenua groups have a direct interest in these Project sites according to the Auckland Council database. The Panel makes no comment on those direct interests.¹⁸

77. A set of Mana Whenua values that were developed in consultation with these groups, to be incorporated into the Multi Criteria Analysis were:
- a) Papakāinga, Māori land and Marae (existing and future),
 - b) Mana Whenua Heritage (tangible and intangible),
 - c) Giving effect to Treaty settlement outcomes and the principles of redress,
 - d) Te Taiao (air, land, water, coast, taonga),
 - e) Mana Whenua well-being.¹⁹

Summary of Mana Whenua feedback

78. The AEE provides a summary of Mana Whenua feedback as follows:
- a) Overall, and subject to the satisfactory resolution of issues raised, Mana Whenua support stations at Drury Central and Paerata, in particular the provision of park-and-ride facilities to ensure the stations are accessible;
 - b) Through the alternative assessment process, Mana Whenua initially supported the northernmost options for Drury Central Station to reduce impacts on the Hingaia Sream, the Hingaia Stream tributary, and associated ecological and cultural values. KRL and Te Tupu Ngātahi have worked with Mana Whenua to compromise on the final platform location which is located over a culverted tributary due to engineering constraints. Mana Whenua have supported the final location on the basis that offset and mitigation for stream loss is

¹⁷ In the decision the Panel has adopted the use of macrons over vowels (e.g., ā, ē, ī, ō, ū) unless information from the Mana Whenua group suggests they have a preference for the use of the double vowel (e.g., aa, ee, ii, oo, uu).

¹⁸ AEE 5.3.1.1

¹⁹ Ibid.

provided. The proposed location of interchange facilities (including park-and-ride) is consistent with the northern preference of Mana Whenua;

- c) Through the alternative assessment process, Mana Whenua initially supported locations for the Paerata Station which reduced effects on two tributaries of the Whangapouri Stream which are currently culverted under the rail corridor. Subsequent value engineering has resulted in the platform location being moved southwards over one of the culverted tributaries. Mana Whenua have supported the final location on the basis that offset and mitigation for stream loss is provided; and
- d) Mana Whenua have maintained an interest in the stormwater design and ecological mitigation and offset at both Project sites.²⁰

Iwi Environmental Management Plans

- 79. Following a request from Te Tupu Ngātahi, and publicly available information, Iwi Environmental Management Plans (IEMPs) were received from Ngaati Whanaunga and Ngaati Te Ata Waiohua and downloaded from the Waikato Regional Council website for Waikato-Tainui.²¹
- 80. KRL provided an analysis of the Ngaati Whanaunga and Waikato-Tainui IEMPs at 20.4.2.1 of the AEE, summarising in tables the issues they believed are relevant to the Projects and their comment as to the way the Projects resolves those issues.
- 81. The Ngaati Whanaunga IEMP analysis highlighted issues of land, freshwater, coastal and marine areas (not applicable as the Project is not within the coastal environment), biodiversity, air, culture and heritage. KRL's comments to those issues summarise components that are in the AEE and noted, as required in this decision.
- 82. The Waikato-Tainui IEMP analysis highlighted issues of customary activities, natural heritage and biodiversity, valuable historical items, waahi tapu and waahi tuupuna, natural hazards, land use, freshwater, water quality, wetlands, land erosion and management, air, infrastructure development. Similarly, KRL's comments to those issues summarise components that are in the AEE and noted, as required in this decision.

²⁰ Ibid.

²¹ AEE 5.3.1.1, 20.4.1

Cultural Impact Assessments

83. Following several informal requests and a formal request to Mana Whenua, Ngāti Whanaunga, Ngāti Tamaoho and Ngaati Te Ata Waiohua provided a Cultural Impact Assessment (CIA). Those three Mana Whenua were concerned at their CIAs being public information if appended to the AEE and, as such, summaries of the CIAs are provided in the AEE. Ngaati Te Ata Waiohua subsequently confirmed their CIA could be attached and this has been provided in Volume 4 of the application.²² The CIAs and the summary of the CIAs' contents within the AEE are discussed below under the heading of each Mana Whenua group who prepared a CIA.

Wāhi Tapu sites and places of significance, land currently being negotiated for or returned under Treaty settlements

84. There are no identified wāhi tapu sites, places of significance, or land currently being negotiated for or returned under Treaty settlements within close proximity of the Project sites. The applicant did not identify any redress in the Treaty settlement documents which affects the natural and physical resources relevant to the Project. The Projects general context or sites sit within the cultural landscape of Mana Whenua and is discussed below. However, on an ongoing basis, the appropriate Mana Whenua authorities will be consulted regarding the possible existence of such sites, and the recommendations in the AEE²³. Conditions were imposed to ensure this occurred.

85. Approximately 1,800 m north-east of the Paerata Project site, Te Māunu a Tūmatauenga is the closest recorded pā.²⁴

86. The Project land is within an area over which Ngāti Tamaoho have a statutory acknowledgement²⁵, namely over the Hingaia (for Drury Central) and Whangapouri (for Paerata) Streams. Both streams and their tributaries are identified as important features connecting several of Ngāti Tamaoho's most important sites of occupation and key travel routes in the area.²⁶

Ngaati Te Ata Waiohua (CIA and commentary)

87. Within the Ngaati Te Ata cultural landscape are many sites and features around the Project. The Panel appreciated being provided with a copy

²² AEE 5.3.1.1, 20.4.1, Appendices E F, and G, and Vol 4 – 03

²³ AEE 7.4.5, 10.6, 10.7.1

²⁴ AEE 14.4.4.1

²⁵ Refer PART F: NATIONAL POLICY CONSIDERATIONS, Treaty of Waitangi

²⁶ AEE 7.4.5, 14.4.5

of the full Ngaati Te Ata Waiohua CIA²⁷:

- a) Oopaheke (one of the traditional names given to Drury) was viewed as having a strategic position to Taamaki Makaurau. The main occupational site of the Waiohua people within this area were on the western slopes of the Drury Hills,
 - b) Te Maunu a Tuu (Paerata Bluffs),
 - c) Landscape features such as:
 - (a) Settlement (paa) / occupation (kaainga)
 - (b) Battles
 - (c) Waahi Taonga
 - (d) Animals
 - d) Key cultural resources such as:
 - (a) Tuupuna maunga (ancestral mountains)
 - (b) Ngaa taonga i tuku iho (many isolated waahi tapu and waahi taonga)
 - (c) Te Maanukanuka o Hoturoa (the Manukau Harbour)
 - (d) All the waterways
 - (e) Ara hikoi (walking tracks)
 - (f) Ara tapu (walking tracks of the spirits)
 - e) The areas associated with the Project are places traditionally used for gathering resources, particularly from wetlands, swamps and waterways.
88. For the Paerata site, Ngaati Te Ata Waiohua note that the Ngaakoroa catchment would have been a desirable location for Maaori settlement, in particular for the Waiohua people.²⁸
89. Ngaati Te Ata Waiohua considered the Projects under key elements, summarised below:
- a) *Heritage protection and recognition*—considering it imperative that Ngaati Te Ata Waiohua landscapes are

²⁷ AEE 7.4.5.1, Vol 4 - 03 - Cultural Impact Assessment Ngāti Te Ata

²⁸ AEE 14.4.5.1

identified and preserved, proposing a variety of methods. In the Project's area, they recommended flood plains, wetlands and rivers are identified, preserved and returned to their natural state. KRL noted its proposed offset measures and measures to ensure no net loss of ecological value.

- b) *Whenua*—noting Mana Whenua having strong spiritual bonds to the land and being predominantly concerned about the effect of future development and urbanisation on these areas. This includes the effects of changing land use, large-scale earthworks (including stability, erosion and sediment), on a reduction in native ecosystems, cultural heritage (especially waahi tapu), the ability to use soil as a cultural resource (plant and food production), and any risks to taonga and whaariki that may be stored or preserved in peat soils in wetlands. KRL noted Auckland Council has already identified the area for future urban development and further intensification and loss of productive capacity is anticipated in this zone. KRL anticipates that measures to reduce the impacts of earthworks, avoiding significant features, and stormwater design, etc, manages the effects on the whenua. A proposed Cultural Monitoring Plan and accidental discovery protocol will be developed in collaboration with Mana Whenua. Conditions were imposed to ensure this occurred.
- c) *Wai*—Ngaati Te Ata Waiohua aspire to have waters that are drinkable, swimmable, and fishable. Waterways are also home to taniwha who ensure people's physical and spiritual position. Ngaati Te Ata Waiohua advocate the protection of all natural waterways' mauri including encouraging the highest level of stormwater treatment and protecting the food producing and life supporting capacity of natural waterways. Therefore, mauri should not be altered to the extent that waterways are no longer recognisable as waiora. Ngaati Te Ata Waiohua recognise and name many waterways in the Project's area. KRL noted proposed offset, stormwater, sediment, erosion, and wastewater control measures.
- d) *Biodiversity*—As kaitiaki, Ngaati Te Ata Waiohua are responsible for managing and protecting healthy ecosystems and biodiversity. Species or habitat loss may have a detrimental effect on culture, traditional activities and maatauranga. They support the provisions of the AUP: OP, which requires 10m of native planting along riparian margins, recommend riparian margins or setbacks of 20m, and believe that the applicant should encourage local hydrology

improvements (where possible) to support healthy wetland function and locally appropriate wetland restoration and biodiversity. KRL noted offset measures, proposed replacement of native species in appropriate locations to ensure no net loss in ecological values, and measures to manage impacts on native fauna.

- e) *Open space and greenways plans*—Ngaati te Ata Waiohua supports the use of greenway plans and walkways, improving public access so that there is a greater sense of care for restoration.
- f) *Sustainability*—Ngaati Te Ata Waiohua promotes sustainable development and supports energy efficiency, transition away from fossil fuels, zero waste minimisation initiatives and proposals to reduce, reuse and recycle. Managing natural hazards is also a part of sustainability. Ngaati Te Ata Waiohua seek a balance between works to enable the well-being of an individual or group while also protecting areas of significance to Ngaati Te Ata Waiohua and avoiding environmental adverse effects. KiwiRail noted that the Project encourages the uptake of public transport and subsequent reduction in greenhouse gases with a reduction in private vehicle use. Measures to manage the effect of stormwater and earthworks were also noted.
- g) *Infrastructure*—Ngaati Te Ata Waiohua support creating environments for people rather than cars noting that accessible and affordable public transport is essential for tribal duties to be carried out.
- h) *Urban design*—Ngaati Te Ata Waiohua expect Te Aranga Maaori Design Principles to be applied to the Projects in conjunction with meaningful engagement on all design aspects. KRL noted that Mana Whenua will participate in the Urban Landscape and Design Management Plan development.
- i) *Hauora*—Access to safe and affordable public transport is important for contributing to tribal members' safety, ability to access their rohe and carry out tribal responsibilities. Such transport contributes to a healthier environment, improving air quality, reducing oil consumption, reducing commuter stress, encouraging business growth, development, and work opportunities. KRL noted the increased connectivity through the Projects can contribute to health benefits while increasing the transport network's resilience.

- j) *Air*—concern with poor air quality impacting people’s and the environment’s health and well-being, hauanga kai and cultural activities. KiwiRail noted the anticipated reductions in private vehicle air emissions due to increased use of public transport.
- k) *Economic development*—Ngaati Te Ata Waiohua support business and are interested in opportunities which benefit them and the wider community. They are interested in working with the applicant as Treaty partners.²⁹

Ngāti Tamaoho (CIA and commentary)

90. Ngāti Tamaoho list the following features considered relevant in Drury Central³⁰:

- a) Aparangi (a village on the slopes of Pukokoiwiriki) and Pukekoiwiriki (the upper paa site). The cultural landscape for these areas run to the south to the lowlands of Drury.
- b) Te Maketu Paa via Te Ararimu Ara Hikoi – a paa site over 3km from the Project site at Drury Central along with Te Ararimu, which is one of the three main routes to the Waikato. The track connects the Manukau lowlands across the Drury escarpment to Papanui and then south to Mangatāwhiri.
- c) Taenga Waka Maketu Hingaia Ara Hikoi.
- d) Ngakaroa Maketu, Hingaia, Waihoehoe Ara Hikoi.
- e) Te Maunu a Tu wetlands, headwaters.
- f) Ngā Wai o Waipupuke waterways – various waterways of significance to Ngāti Tamaoho, including Hingaia.

91. For Paerata, Ngāti Tamaoho note Tuhimata Paa (west Ramarama) as a papakāinga of Waiohua, located just to the west of the Project, and a former prosperous trading post. They also recognise the Ngakaora, Maketu, Hingaia, Hayes, Whangamaire, Whangapouri, Oiroa and Waihoehoe catchment in this area³¹.

92. Ngāti Tamaoho have asked that KRL consider the Projects’ impacts on these features in relation to:

²⁹ AEE 10.7, Vol 2 - 09 - Appendix G - Ngāti Te Ata CIA Recommendations and Project Response, Vol 4 - 03 - Cultural Impact Assessment Ngāti Te Ata

³⁰ AEE 7.4.5, 10.7

³¹ [AEE 14.4.5.1]

- a) Historical significance,
 - b) Proximity to customary resources,
 - c) Proximity to customary need, and
 - d) Repository for mātauranga for future/present generations.
93. Ngāti Tamaoho concluded that the Projects alter their cultural landscape.
94. The summary of Ngāti Tamaoho key matters in their CIA are:
- a) *Kaitiakianga* — “which includes a holistic environmental management approach.” KRL noted its planned offset features, generally improved public access to these features, no net loss of ecological benefit and asserts that the Projects offer a “more sustainable way to travel” thereby having a “positive impact on the environment as reductions in vehicle air emissions” due to a shift away from vehicles to using the train.
 - b) *Water/wai*—noting that “it is imperative that nothing adversely impacts the mauri of the resource”. KRL noted its proposed sediment and erosion control measures, stormwater management, Contaminated Land Management Plan, and the ecological offset measures.
 - c) *Sustainability*—A belief that all new development should be self-reliant and self-sustainable in some way. KRL responded as in a and b above.
 - d) *Treatment of contaminants*—KRL responded as in a and b above.
 - e) *Groundwater recharge*—KRL noted its proposed stormwater management, and the groundwater and ground settlement in Volume 4 and sections 10 and 17 of the AEE.
 - f) *Native trees and plants*—The protection of native trees and plants. KRL noted its arboricultural assessment in Volume 4 of the AEE and its recommendation to invite Mana Whenua to participate in the development of the Urban Land and Design Management Plan.
 - g) *Landscapes*—The value of landscapes to Ngāti Tamaoho. KRL summarised the Projects’ landscapes and processes to avoid any features and minimise earthworks. KRL also referred to

the offset measures and no net loss in ecological value.³²

95. The Projects' land is within an area over which Ngāti Tamaoho have a statutory acknowledgement³³, namely over the Hingaia (for Drury Central) and Whangapouri (for Paerata) Streams. Both streams and their tributaries are identified as important features connecting several of Ngāti Tamaoho's most important sites of occupation and key travel routes in the area.³⁴

Ngaati Whanaunga (CIA and commentary)

96. Ngaati Whanaunga considered the Project under key tikanga, which are summarised below:
- a) *Mauri*—to respond to mauri preferring any works within the area to be undertaken with best practice and to be as least invasive as possible. KRL notes the Project has sought to reduce earthworks, and the impact of the Project on significant ecological areas and waterbodies, and measures to ensure no net loss in ecological values;
 - b) *Kaitiakitanga*—specifying a duty to care, to protect, and preserve the environment so it can be handed on to succeeding generations in a healthy condition. KRL proposes the requirement for a Cultural Monitoring Plan to be prepared in collaboration with Mana Whenua in the conditions;
 - c) *Tapu*—noting several (unrevealed) waahi tapu are situated near the Project sites, though the Panel notes that no waahi tapu or urupaa have been identified as being affected by the Project. Mana Whenua will be involved in any archaeological plans prepared for the site.
 - d) *Raahui*—requesting the right to exercise raahui in the area and/or the surrounding area during the Project's works, if required, to support their cultural practices;
 - e) *Maatauranga*—noting maatauranga as their ways of knowing and conceptualising their world;
 - f) *Taunahanaha*—the practice of naming places and/or features;
 - g) *Papakaainga*—while no papakaainga have been identified at the Project sites, Ngaati Whanaunga note the physical

³² Vol 2 – 07 – Appendix E – Ngāti Tamaoho CIA Recommendations and Project Response

³³ Refer PART F: NATIONAL POLICY CONSIDERATIONS, Treaty of Waitangi

³⁴ AEE 7.4.5, 14.4.5

evidence of many ancestral papakaainga being completely or substantially destroyed. An accidental discovery protocol is proposed as a part of the conditions.³⁵

Measures to avoid, remedy or mitigate effects Mana Whenua raised

97. Measures to avoid, remedy or mitigate the effects that Mana Whenua have raised are summarised in the AEE at 10.7.2, and discussed at Appendices E, F, and G. In summary:

- a) Design recommendations will be discussed with Mana Whenua;
- b) Establishing a Mana Whenua Engagement Forum (Drury Central Station);
- c) Preparing a Cultural Monitoring Plan prepared in collaboration with Mana Whenua;
- d) Mana Whenua engagement in any archaeological authorities and management plans prepared. KRL notes that preparation of *“an Archaeological Management Plan (AMP) is not proposed as a condition on the NORs but is expected to be prepared as part of the Archaeological Authority process.”*³⁶ The Panel agrees;
- e) Mana Whenua invited to participate in the development of an Accidental Discovery Protocol; and
- f) Mana Whenua invited to participate in the development of the Urban Landscape and Design Management Plan (ULDMP).

98. KRL concludes that it has worked closely with Mana Whenua throughout the Project and have taken their values and concerns into consideration. They note, in particular, the indicative design has responded to minimise impacts on streams and habitat, responds positively to matters Mana Whenua raised, and is consistent with the values Mana Whenua identified during the Project design and engagement processes.³⁷ Having carefully read the comprehensive information provided with the application, including independent information from Mana Whenua, the panel accepts KRL’s conclusion.

99. Various conditions in the Projects’ resource consent conditions provide for Mana Whenua involvement in developing the various Management

³⁵ AEE 10.7, Vol 2 – 08 – Appendix F – Ngaati Whanaunga CIA Recommendations and Project Response.pdf

³⁶ AEE, Table 11-1, p. 205

³⁷ AEE, 10.7.3

Plans that must be developed in the operation of the consents.³⁸

100. Mana whenua matters are referred to again in the Panel's assessment of KRL's obligations under s6 of the Act in Part F of this Decision.

PART E: EVALUATION OF EFFECTS

101. The Panel has touched on the approach to the assessment of effects above.

102. The Covid Act of course establishes an alternative consenting regime for RMA resource consent applications and notices of requirements for both listed and referred projects. This Project is a referred project³⁹ and the process for assessing the Applications relating to the Project is contained in Part 2 of Schedule 6 of the Covid Act.⁴⁰

103. The Covid Act's purpose is set out in section 4:⁴¹

The purpose of this Act is to urgently promote employment to support New Zealand's recovery from the economic and social impacts of Covid-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.

104. The role of an expert panel appointed under the Covid Act has been carefully described in the decision on a Matawii Water Storage Reservoir at Kaikohe dated 27 October 2020. However, the *Matawii* decision was in respect of a listed project. This Project is a referred project i.e. one that is referred to a Panel by an Order in Council after scrutiny by the relevant Ministers taking into account the criteria and related matters at ss 18 and 19 of the FTA.

105. The relationship between the Covid Act and the RMA is set out in section 12 of the Covid Act and is addressed above.

106. The matters the Panel shall have regard to when assessing applications for resource consent or notices of requirement for referred projects are set out at Clauses 31 – 33 of Schedule 6. Those clauses contain all the matters one would expect for an assessment carried out under the RMA: – indeed the assessment is subject to Part 2 of the RMA. These clauses also refer specifically to NPS's and to the principles of the Treaty of Waitangi and Treaty settlements.

107. The Panel also notes the additional matters for consideration for the

³⁸ Refer to Part G: Conditions, and Resource Consent Conditions

³⁹ See Schedule 2 of the Act.

⁴⁰ Clauses 29 and 33 of Schedule 6.

⁴¹ Section 4.

notices of requirement (**NOR**) in Clause 33,⁴² and that clause 32(3) of Schedule 6 specifically excludes reference to s104E of the RMA i.e. so effects on climate change can be considered.

Approach taken in Application Documents

108. The assessment of effects is contained in Volume 2 of the Application which consists of Parts A – G. KRL have included project specific details about the Drury Central and Paerata stations in Parts E and F of the AEE respectively which contains a summary of the existing environment and provides a summary of the environmental effects at Chapters 10 and 17 respectively. Both Chapters follow a similar format and address effects arising from: traffic/transport; economics; social; landscape and natural character and visual; historic heritage; cultural; ecology; arboriculture; storm water; hydrogeology; contaminated land; noise and vibration; network utilities.
109. KRL then summarised the effects and the proposed mitigation in Chapters 11 and 18 by way of Tables 11–1 and 18–1. The Panel found this format very helpful.
110. Parts E and F also directed the Panel to Volume 4 of the Application Documents which contained the detailed reports on each of the topics discussed above.
111. Parts E and F also drew on the matters raised in Parts A – D of the AEE.
112. Volume 2 also contained Appendices A– I as follows:
 - a) Assessment of alternatives;
 - b) Relevant statutory sections;
 - c) Proposed conditions;
 - d) Permitted activities table;
 - e) Ngāti Tamoho CIA;
 - f) Ngaati Whanaunga CIA;
 - g) Ngaati Te Ata Waiohua CIA;
 - h) Adjacent properties; and
 - i) The Referral Order.

⁴² Clauses 33(2)(b) and (c) of Schedule 6 respectively.

113. The Panel has considered all these matters.

Approach of the Panel

114. The Panel will discuss each of the topics discussed in the AEE but will comment on each station together and refer to comments from stakeholders and conditions where appropriate.

Traffic and transport

115. The Panel accepts that both stations will have significant positive operational transport effects in providing a safe, reliable public transport network that supports growth, enables sustainable travel choice, combats safety concern from motor vehicle traffic and significantly improves access to employment and social amenities that would not be achieved if the Project did not proceed.

116. The Panel observes that there will be temporary effects on the road network during construction periods, but they are expected to be minimal and temporary. The Panel accepts that they can be adequately controlled through the proposed Construction Traffic Management Plan (**CTMP**) which is a condition to each of the four NoRs.

Economics

117. KRL has identified how the Project will assist the economic recovery (through economic benefits with travel time savings both in the short and long term, for tourism, hospitality and the retail sector), and has separately assessed the likely job creation benefits. The Panel accepts these assessments and accepts the overall conclusion that the Project will have a net positive effect.

Social

118. KRL has identified several positive social effects arising from:

- a) Increased connectivity of the region particularly beneficial for vulnerable groups who do not or cannot use car travel; and
- b) Provision of reliable alternative transport options.

119. These positive effects are also recorded in the Part 2 analysis⁴³.

120. These are temporarily offset to a limited extent from construction effects. As a result, KRL have proposed a Construction and Environmental Management Plan (**CEMP**) that has as a broad objective to:

⁴³ Chapter 20.1.1 and 20.2.3 – 20.2.6.

... avoid remedy or mitigate any adverse effects associated with Construction Works as far as practicable.

121. The CEMP then lists several criteria it shall include, but the CEMP is not limited to those criteria.
122. The Panel accepts the social effects will be largely positive and any adverse effects will be temporary and that over time, as urbanisation intensifies around the Project area, the positive operational benefits will increase.

Landscape, natural character and visual

123. The full assessment of these issues is contained in Volume 4. What stands out for the Panel is that while there will be temporary adverse effects during construction, the stations will be integrated into the planned future urban environment which enables a sound opportunity for an excellent landscape result. The Panel has no reason to believe this will not be achieved, and that KRL has identified adequate measures to avoid remedy or mitigate the effects of construction.
124. The Panel also accepts that the Project sites do not currently have sensitive or high landscape values given the substantial modification already occurring.
125. The Panel accepts that overall, there will be net positive landscape effects.

Urban design

126. The Panel recognises that this critically important issue spans both visual and urban design issues and that it will interface with the requirements from the Plan Changes once they are finalised.
127. KRL have proposed that an Urban Landscape and Design Management Plan (**ULDMP**) be prepared before the start of construction (after the enabling works).
128. Several parties raised concerns about urban design in their responses to the invitations to comment. As a result, the Panel recommended significant changes to the ULDMP in the draft conditions sent to KRL for comment which have been accepted.
129. The Panel's suggested changes were then overtaken by further changes proposed during caucusing. Given the parties were involved and their better and more direct knowledge of the issues, the Panel was interested to review the outcomes. The Panel considers the mediated process that was undertaken by the parties resulted in a

different, and probably better, outcome than proposed by the Panel. It has been adopted.

130. Accordingly, the Panel is satisfied that the Project is a critical component of the future urban development at Drury Central and Paerata and will contribute to a quality urban environment and that adverse visual and other⁴⁴ effects can be adequately managed.

Historic heritage

131. There was one recorded historic heritage site at the Drury railyards (but not considered to be an archaeological site) and there are no identified significant historic heritage sites at the Paerata site.
132. Heritage New Zealand Pouhere Taonga requested (in its response to the invitation to comment) updates to the conditions which were accepted by KRL and incorporated into the final conditions.

Cultural

133. There have been cultural impact assessments prepared for each site and reviewed with interest and carefully by the Panel. The Panel is satisfied that KRL has worked closely with Mana Whenua and taken their values and concerns into consideration including on ecological values, water quality and cultural heritage. The Panel accepts that overall, the indicative design of the Project responds positively to the matters raised by Mana Whenua and is consistent with the values they identified during the project design and engagement process.

Ecology

134. The Panel considers the effects on terrestrial and freshwater ecology have been competently investigated and assessed. In both Project areas the existing ecological state is generally regarded as low. The nature of the effects from the works will range from very low to high and there will be a range of permanent effects across both Project areas, which after mitigation will be between negligible and moderate.
135. That said, KRL aims for a no net loss or a net gain in biodiversity in both areas. For example, while Wetland 1 in the Paerata Project area will be permanently lost, a net biodiversity gain is proposed from compensation. The theme from KRL is that the Project will ultimately result in better biodiversity, and therefore ecological outcomes than what presently exists. KRL point to the Structure Plan for example which it says already recognises the potential to reverse historical

⁴⁴ For example safe environments, adequate station legibility, architectural treatment etc

impacts caused by land conversion to agriculture mainly through ongoing stream enhancement through riparian planting, and that the project design is aligned with that approach.

136. The effects on aquatic ecology are summarised in Tables 10-3 and 17-3 for Drury Central and Paerata respectively, and for terrestrial ecology in tables 10-4 and 17-4 respectively. The more fulsome ecological assessment is contained in Volume 4 *Assessment of Effects on Ecology*. The Panel sounds a note of caution that in some cases it found the fulsome Volume 4 report a little “over summarised” in the Volume 2 assessment of effects.

137. While the Panel generally accepts the conclusions about effects in the Volume 2 assessment (supported by the Volume 4 report), it recognises that achieving them is entirely dependent on the various management plans being prepared, critiqued and implemented. The conditions require:

- a) For Drury Central- a Stream Enhancement and Management Plan, a Native Fish Capture and Relocation Plan and a specific condition relating to native fish passage; and
- b) For Paerata – a Wetland Restoration and Enhancement Plan (**WREP**) (and an associated implementation condition) and a Native Fish Capture and Relocation Plan.

138. There is also an Advice Note⁴⁵ to the effect that a permit may be required under the Wildlife Act 1953 to address issues arising for bats, birds and lizards. The Panel accepts that KRL is already bound by the statutory permit requirements under the Wildlife Act, and considers that requirement will provide an adequate response to terrestrial ecology effects in relation to birds and bats, but in respect of lizards, KRL’s Ecological Assessment itself states that:

A Lizard Management Plan is required and should form a consent condition.⁴⁶

139. In both sets of conditions there is a Management Plan Certification Process condition with a requirement that the management plans are to be prepared by a suitably qualified and experienced person.

140. The Council ecologist recorded serious concerns with KRL’s ecological response and suggested further information was required from KRL. The Council ecologist also proposed additional ecological conditions to ensure the issues raised (which were the subject of a further

⁴⁵ See Advice Note to condition 8 and 7 respectively.

⁴⁶ Chapter 3.7.2 and 4.8.3. Note fish also have separate management plan requirements.

information request) could be assessed by the Council as part of its ongoing management of ecological issues. These relate to a range of matters including fish passage, birds and bats, propose a lizard mitigation programme, and ecological management plan and suggest a reporting programme to the Council.⁴⁷

141. KRL accepted those conditions as appropriate and the Panel agrees. It will allow KRL to discern a legitimate pathway for the ecological effects to be adequately managed.
142. The one final ecological issue relates to the permanent loss of Wetland 1 within the Paerata Project area. Although a bit clumsy, structurally, the Panel discusses this issue in depth at Part F of this decision dealing with national policy statement considerations. Suffice to say at this stage, that the Panel concludes that issue can be resolved adequately as well.

Arboriculture

143. The AEE and Arboricultural Assessment stated that there were three protected willow trees which required consent to be removed. In response to the Panel's request for further information KRL confirmed that these trees were outside the proposed designation boundary and no works are planned which would require their removal.
144. The Panel accepts that the proposed removal of pests and the landscaping and ecological planting in both Project areas will provide a positive effect.

Stormwater

145. The Panel accepts that the provisional Environment and Sediment Control Plan (ESCP) for both stations will provide for the effective prevention of erosion and control of sediment run off from land disturbance activities during construction.
146. The Panel also accepts that stormwater effects associated with the operation of the Project can be adequately managed.

Hydrogeology and Contaminated Land

147. These two issues have been discussed together as the effects are considered to be negligible and/or capable of management through management plans.
148. In relation to hydrogeology the Panel accepts that changes in

⁴⁷ See Appendix 1 Part B to Council's response to invitation to comment.

groundwater levels are likely to be low and unlikely to be detectable beyond 290m and 440m respectively from the Drury Central and Paerata sites. The Panel also accepts that the potential for bore interference is likely to be low at both sites.

149. In relation to contaminated land the Panel accepts the assessment provided in the AEE and considers the conditions now in place will address any issues arising.

Noise and vibration

150. The conditions have adopted the noise and vibration levels from the AUP. KRL accepts that during construction there will be exceedances of these levels for both commercial and residential receivers (the most impacted being those within 10m of the designation boundary). There is therefore considerable importance placed on the Construction Noise and Vibration Management Plan (**CNVMP**) required by the conditions. In the usual way the CNVMP is designed to achieve the best practicable option for the management of construction noise and vibration effects to achieve the limits in the conditions.
151. KRL has also recognised that site specific CNVMP's may be required to be prepared in consultation with owners when certain criteria are met.
152. The construction noise and vibration effects window is approximately 18 months and within that window the exceedances that require mitigation are expected to be intermittent. Testing and analysis shows that the exceedances can be controlled to meet the limits in the conditions and such controls will be part of the CNVMP.
153. The operational effects are also expected to meet the limits required for new urban development without specific mitigation, but KRL accepts that the predicted effects are based on indicative information and so details are to be finalised at the time of detailed design.
154. The Panel of course has concerns about the efficacy of the CNVMP to control the construction noise and vibration effects and to ensure the detailed design controls the operational noise and vibration effects.
155. However, it is not unusual for such effects to be controlled by management plans and/or to be revisited at detailed design stage. The Panel also notes the requirement in the conditions for site specific CNVMPs as required.

156. The Panel accepts there are sufficient controls on noise and vibration effects in the conditions to ensure they are acceptable.

Network utilities

157. The potential adverse effect on network utilities will be appropriately managed through consultation with network utility operators and the Panel accepts they are appropriately assessed as less than minor.

Climate Change

158. The Application Documents make passing reference to climate change issues by assisting with net reduction in greenhouse gas emissions (reduction in vehicle volumes),⁴⁸ and ensuring the platforms will remain above floodwaters.

159. The Panel accepts these effects have been taken into account.

Summary of Effects

160. There are obvious benefits from the Project including in particular the long-term social and short-term economic effects that directly support the s4 purpose of the Covid Act. It will provide a focal point for other development in the environment to anchor development aspiration to, and to demonstrate that intended residents can be certain of a vital transport link along that southern route to various destinations. The Panel considers many tangible and intangible benefits that will follow as a result.

161. Against those benefits, there are the difficulties in being able to determine precisely all the effects of the future build out against a future environment. This was a primary concern for the Panel to begin with.

162. The iterative process that then followed through engagement with KRL and other stakeholders was designed to address those concerns, and it has done.

163. There has been some “shifting” of assessment of effects to a later stage, particularly in relation to later stages of the Project. However, the Panel considers that the model for such assessment produced in the conditions provides for a real time assessment of effects against the environment that exists now (for the initial stage) and the environment which is to be created via the various Plan Changes. The Panel considers the necessary safeguards for such approach are in place to allow the Project to ensure effects are properly avoided,

⁴⁸ Chapter 20.1.1(a).

remedied or mitigated when such assessments occur.

Planning Documents

164. The Panel agrees that KRL has identified the relevant planning documents as required by clauses 9(1)(h) and 13(1)(d) of Schedule 6 of the Covid Act for consideration.⁴⁹ Unless expressly stated otherwise, the Panel adopts the KRL assessment of those documents.⁵⁰ As one would expect, there is considerable overlap and intersection between the relevant provisions.

165. KRL also provided an assessment of alternatives for both stations including setting out the methodology it used to undertake that assessment.⁵¹ The Panel accepts this analysis as sound recognising it is not for the Panel to choose which is the best alternative, just that an objectively sustainable assessment of such has been undertaken.

PART F: NATIONAL POLICY CONSIDERATIONS

166. In the light of the above assessment, the Panel now considers whether the Project, with or without conditions, would be inconsistent with any NPS, particularly the NESFW/NPSFW, or the principles of the Treaty of Waitangi or Treaty Settlements.

National Policy Statements

167. There are 3 national policy considerations to consider.

National Environmental Standard and National Policy Statement for Freshwater

168. The National Environmental Standard for Freshwater (**NESF**) and the National Policy Statement for Freshwater (**NPSF**) are considered together because of the interactions between them.

169. The NPSF came into effect of 3 September 2020. The Objective of the NPSF is:

To ensure that natural and physical resources are managed in a way that prioritises:

- a) First, the health and well-being of water bodies and fresh water ecosystems;
- b) Second, the health needs of people (such as drinking water);

⁴⁹ Chapter 20.4.1 and Table 20-11.

⁵⁰ Chapter 24 – 4 – 20.6 and Table 20-13.

⁵¹ See Volume 2 Appendix A.

and

- c) Third, the ability of people in communities to provide for their social, economic, and cultural well-being, now and in the future.

170. KRL has relied on the stations being *specified infrastructure*.⁵² The definition for specified infrastructure is contained in the NPSF and, as relevant to this application, includes:⁵³

...infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Act 2002).

171. The Civil Defence Emergency Act 2002 definition of a *lifeline utility* refers to a list in Part B of Schedule 1 to that Act, which includes:⁵⁴

An entity that provides a rail network service.

172. Accordingly, KRL is a lifeline utility, and the stations qualify as specified infrastructure.

173. Therefore, under regulation 45(2) of the NESF:

Earthworks or land disturbance within, or within 10m setback from, a natural wetland is a discretionary activity if it is for the purpose of constructing specified infrastructure.

174. In this case the earthworks within the 241 m² natural wetland extent in question (defined in the Application Documents as “Wetland 1” within the Paerata Project area) consist of fill embankment associated with the proposed new stormwater treatment wetland to the south-east and a maintenance access to that new wetland. There will also be further cut and fill earthworks within 10m, a small extent of the stormwater treatment wetland, a spillway and stormwater pipes.⁵⁵

175. The magnitude of the effect is regarded to be high due to permanent loss of habitat, and the level of effect without mitigation is also regarded to be high.⁵⁶ Even with mitigation, the effects are regarded to be moderate.⁵⁷

176. The NPSF contains an effects management hierarchy that will eventually apply in situations like this. Clause 3.22(3) NPSF requires that every regional council must make or change its regional plan to

⁵² That way earthworks within a wetland are a discretionary activity under regulation 45 NESF.

⁵³ NPSFW clause 3.21(1).

⁵⁴ Section 8.

⁵⁵ KRL response to request for further information dated 25 November 2021

⁵⁶ Table 4-21

⁵⁷ Chapter 4.7.1

ensure that any application referred to in clause 3.22(2) (this Project would be included) is not granted unless:

- (a) the council is satisfied that the applicant has demonstrated how each step of the effects management hierarchy will be applied to any loss of extent or values of the wetland (including cumulative effects and loss of potential value), particularly (without limitation) in relation to the values of: ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, and amenity value; and
- (b) any consent is granted subject to:
 - (i) conditions that apply the effects management hierarchy; and
 - (ii) a condition requiring monitoring of the wetland at a scale commensurate with the risk of the loss of extent or values of the wetland.

177. The AUP has not been amended yet in accordance with clause 3.22 NPSF.

178. KRL has identified the moderate effects, even after mitigation arise from the permanent loss of habitat – therefore a subset of adverse effects on biodiversity. The Panel regards this as a very serious issue.

179. KRL recognises that offset/compensation is required. KRL say that:⁵⁸

A biodiversity offset is a “measurable outcome” that meets certain principles and balances adverse residual effects, to a demonstrable No Net Loss (NNL) or preferably Net Gain (NG) standard (Maseyk et al 2018; Barber et al 2021).

180. KRL refer to the biodiversity offsetting principles in Appendix 8 of the AUP and Appendix 3 of the draft National Policy Statement for Indigenous Biodiversity and recognise both require a NNL or NG outcome.

181. However, KRL’s proposal is to achieve a NNL or a NG outcome within 10 years through compensation, not offsetting, mainly through wetland planting. It is worth setting out in full what KRL say:

For this project, the proposed wetland habitat restoration and enhancement measures are all defined as forms of compensation. The proposed measures do not meet the definition of offsetting, because the loss of degraded exotic habitat will be compensated for using native wetland plants and native wetland margin buffer plantings. The proposed measures do not include the re-creation of an exotic dominated wetland with similar ecological characteristics and function. Rather it is proposed to exchange the permanent loss

⁵⁸ Chapter 4.7.1.1

of a small exotic wetland with the restoration and enhancement of indigenous biodiversity values in a large, degraded wetland. Importantly, this approach is expected to generate better outcomes for wetland biodiversity than a strict offset approach.

Although biodiversity compensation does not involve the same numerical rigour as offsetting, it is generally recognised that ecological outcomes are improved where offset principles are applied as a guideline when designing compensation packages. The type and magnitude of proposed compensation measures for this project will be guided by the application of a Qualitative Biodiversity Model (QBM) (Baber et al., 2021; Tonkin & Taylor 2021). These models provide additional objective transparency, process and justification for the overall compensation package (Baber et al. 2021). In summary, QBMs:

- Use accounting formulas to estimate whether NNL or NG is likely to be achieved;
- Are informed by field investigations at the impact site(s) and by expected gains at the proposed 'compensation' site(s), using science-based qualitative data where quantifiable data is not available or lacks precision;
- Incorporate the use of a discount rate to account for the time lag between impact associated with project activities and the gain at the proposed compensation site; and
- Adjust for the likelihood of success regarding the proposed compensation actions and account for the risk of under-estimating losses at the impact site or over-estimating gains at enhancement sites (**footnotes omitted**).

182. KRL then set out the proposed compensation (wetland planting) at Chapter 4.7.2 and considers that the Wetland Restoration and Enhancement Plan (**WREP**)⁵⁹ will ensure the moderate effects on freshwater wetland will be adequately addressed.

183. KRL have annexed as Appendix 10 to the Ecological Assessment of Effects for both stations a report from Alliance Ecology that contains a Wetland Qualitative Biodiversity Model. The conclusion of the Alliance report is that the WREP will achieve a biodiversity NG of 32.91%.⁶⁰

184. The Panel therefore accepts that the works in relation to Wetland 1 are properly considered to be for a discretionary activity and that while the effects management hierarchy referred to in the NPSF is not strictly adhered to as such, that the compensation offered by KRL will result in

⁵⁹ Conditions 4 and 5 of the Paerata Station proposed resource consent conditions

⁶⁰ That Panel is not clear if this gain is after 5, 10 or 15 years i.e. see 2nd paragraph of page 6 of the Alliance Report.

a net gain for biodiversity and that the application is consistent with both the NESF and the NPSF.

National Policy Statement for Urban Development 2020

185. The National Policy for Urban Development (**NPSUD**) came into effect on 20 August 2020.
186. The NPSUD broadly requires planned growth resulting in a well-functioning urban environment that will enable all people and communities to provide for their social, economic and cultural wellbeing and for their health and safety now and into the future.⁶¹
187. The NPSUD seeks to achieve this through local authorities and infrastructure providers in particular (like KRL) working in a collaborative planning manner⁶² and that specific attention is paid to the Treaty of Waitangi.⁶³
188. Objective 8 of the NPSUD also directs that New Zealand's urban environments should be resilient to the effects of climate change.
189. There has been no suggestion from any of the parties invited to comment that the Project is inconsistent with the NPSUD.
190. The Panel considers that both stations are critical components of the emerging and future urban environments at Paerata and Drury Central and that they are consistent with and/or support the relevant objectives and policies of the NPSUD, particularly objectives 1, 2, 3, 4, 5, 6, 8 and policies 1, 2, 3, 5, 6 and 9. The Panel considers the Project is not inconsistent with the NPSUD.

New Zealand Coastal Policy Statement

191. The purpose of the New Zealand Coastal Policy Statement (**NZCPS**) is to:⁶⁴

... state policies in order to achieve the purpose of the Act [RMA] in relation to the coastal environment of New Zealand.

192. The Panel agrees with KRL that the NZCPS is not relevant.

Treaty of Waitangi

193. Section 6 of the Act expressly provides that in achieving the purpose of the Act:

⁶¹ See NPSUD Objective 1.

⁶² See Policy 1 and Policy 10 NPSUD.

⁶³ See Objective 5 and Policy 9 NPSUD.

⁶⁴ Preamble to NZCPS.

All persons performing functions and exercising powers under it must act in a manner that is consistent with –

- a) The principles of the Treaty of Waitangi; and
- b) Treaty settlements.

194. The Panel notes that these obligations are imposed on the Panel itself, as opposed to KRL as the applicant. However, the Panel has taken the time to set out above, the procedures followed by KRL to develop the Project in partnership with Mana Whenua to reflect the Crown–Māori partnership formalised by the Treaty of Waitangi and achieve adherence to its principles.

195. In respect of Treaty settlements, the Panel has considered whether:

- a) There are any relevant statutory acknowledgements; and whether
- b) The Project involves a temporary occupation of cultural land.

And in its decision, the Panel has had regard⁶⁵ to the Ngāti Tamaoho Statutory Acknowledgement over the Hingaia (for Drury Central) and Whangapouri (for Paerata) Streams. The Project does not involve a temporary occupation of cultural land and so this aspect is not considered further.

196. There has been no suggestion either from Mana Whenua that the Project is (to use the words of the Covid Act) inconsistent with the principles of the Treaty or any Treaty settlements.

197. The Panel also notes that the Covid Act requires the Panel to have regard to any resource management matters and any applicable planning document prepared by a customary marine title group under the Marine and Coastal Area (Takutai Moana) Act 2011. The Panel has considered this and there are not.

198. For these reasons, the Panel finds that the Project is not inconsistent with the principles of the Treaty of Waitangi or with Treaty settlements.

Conclusion on national policy statements and Part of the RMA

199. KRL assessed Part 2 of the RMA in Part G of the AEE and Section 20.1 in particular. The Panel are satisfied that this assessment adequately addresses Part 2 matters as they are relevant to the Project. In particular we find that the Project will promote the sustainable management of natural and physical resources as contemplated by section 5 and recognises and provides for the relevant matters of

⁶⁵ Paragraphs [86] and [95] of this decision

national importance.

200. For these reasons the Panel finds that the granting the Applications, with conditions, would not be inconsistent with any relevant NPS or s6 of the Act.

PART G: CONDITIONS

201. KRL included a set of conditions in the Application Documents.

202. As above, a feature of the conditions proposed by KRL was a heavy reliance on management plans and has proposed a condition accepted by the Panel requiring a certification process for all such plans.

203. The Panel notes that such an approach has been used by Waka Kotahi in the Te Ahu a Tauranga – Manawatu – Tararua Highway and, subject to the further observations below, the Panel considers such an approach is appropriate here.

204. However, in this case KRL did not provide any draft management plans – these are timetabled for production in the conditions. While that approach is also accepted, it meant the Panel had to ensure that the matters to be addressed by the management plans would in fact address all the potential effects identified.

205. In respect of the management plans the key tenets of a “fit for purpose” management plan condition are:

- a) A requirement to prepare it by a suitably qualified person;
- b) A clear objective, a stated scope and performance management requirements;
- c) Specification of a process for council certification;
- d) Specification of process for amending a certified plan; and
- e) A requirement to comply with the management plan once certified.

206. As discussed above, the final conditions have been altered by the Panel to reflect these matters. The Panel has also been careful in relation to:

- a) Cross referencing between conditions;
- b) Reviewing responses to proposed changes to conditions;
- c) Including a s 128 review condition for those consents related to the operational aspects of the Project; and

- d) Providing more specificity about monitoring and reporting and identification of what information has been filed since the Application Documents were submitted.
207. As above, the Panel carefully considered the more substantive matters raised by the Stakeholders and some suggestions from the Stakeholders have been incorporated into the final conditions. The Panel has not included conditions or amendments that would: extend the level of compensation beyond that proffered by KRL; provide a reservation of discretion; or duplicate provisions that have already been addressed by the Stakeholders or indeed us. In addition, the Panel considered that suggested amendments that had the potential to substantially prolong the construction period for the Project would not align with the purpose of the Act.

Summary of conditions

208. Based on the above analysis, the Panel is of the view that final set of conditions adopted by them and included in Appendix 1 are practical and feasible.

PART H: FINAL DECISION

209. The Panel approves the applications for resource consent described in Appendix 1 and approves the notices of requirement described in Appendix 1, both subject to the conditions expressed in that Appendix. The conditions are also set out in Appendix 1 to this Decision.
210. As required by Clause 38 of Schedule 6, the Panel refers to Clause 45 of Schedule 6 which provides a 15-day period for appeal after the persons entitled to appeal (as listed in Clause 44 of Schedule 6) are notified of this Decision.

DATED 3 February 2022



Alan Webb
(Chair)



Steven Wilson
(Member)



Les Simmons
(Member)