

21 December 2021

Environmental Protection Authority  
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Attention: Alexander Erceg

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Tēnā koe,

**Final KiwiRail response regarding conditions – Drury Central and Paerata Stations under the COVID-19 Recovery (Fast-track Consenting) Act 2020**

1. This letter responds to Minute 6 of the Drury Central and Paerata Stations Expert Consenting Panel (“**the Panel**”), and specifically the invitation for KiwiRail to respond to comments received from commenting parties on the conditions.
2. KiwiRail notes that seven parties commented on the conditions as directed by Minute 6. Responses to the comments received from these parties are attached as **Appendix A**.
3. KiwiRail proposes further changes to the conditions circulated following Expert Conferencing, including in response to commenter requests. These changes also respond to changes identified by the Panel in its 30 November draft conditions, and matters identified in KiwiRail’s final internal review. The rationale for these changes is attached as **Appendix B**.
4. A final marked up set of proposed conditions incorporating the changes identified in Appendices A and B is attached as **Appendix C**.

Yours faithfully,



**Pam Butler**  
Senior RMA Advisor  
KiwiRail Holdings Limited



## APPENDIX A: KIWI RAIL RESPONSE TO COMMENTS FROM PARTIES 15-17 DECEMBER 2021

INDIVIDUAL(S) / ENTITY(IES)	RELEVANT STATION	RELEVANT CONDITION	SUMMARY OF COMMENT / PROPOSED CONDITIONS / CHANGES TO CONDITIONS (IF ANY)	KIWI RAIL RESPONSE
Auckland Council	Both	Definitions	Oppose deemed certification provision (i.e. certification deemed if ten working days pass with no written confirmation has been received).	KiwiRail considers that the certification requirements in the proposed conditions are appropriate.
		NoR condition 5 (and consequential changes to all management plan conditions)	All Management Plans, and material changes to Stakeholder and Communication Management Plans and Construction and Environmental Management Plans to be provided to Council for certification rather than information.	KiwiRail considers that the certification requirements in the proposed conditions are appropriate.
		RC condition 4(d)	Request for ten working days rather than five for the consent holder to confirm if changes are required to enable certification.	KiwiRail agrees with this change and has incorporated into the final marked up set in Appendix C.
		New RC conditions – bird, bat, lizard management	Request that conditions on bird, bat, and lizard management are included as per Council comments on 17 November.	KiwiRail agrees with this addition and has incorporated into the final marked up set in Appendix C.
		New RC conditions – ecological management plan	Request that ecological management plan condition is included as per Council comments on 17 November.	KiwiRail does not agree with this addition. The proposed Stream Enhancement and Management Plan (Drury Central RC condition 5) and Wetland Restoration and Enhancement Plan (Paerata RC condition 5) provide for the enhancement of the stream and wetland environments at Drury Central and Paerata Stations respectively. There are no other ecological effects requiring specific management that will not be adequately addressed by other management plans.
		New RC conditions – fish passage monitoring and maintenance	New conditions proposed regarding fish passage monitoring and maintenance pursuant to regulation 69 of the NES:FW.	KiwiRail agrees with this addition and has incorporated it into the final marked up set in Appendix C.
	Paerata	New NoR condition – heritage monitoring	Alternative condition suggested given that the monitoring condition for the Rail Yards is only applicable to the recorded heritage site at Drury Central.	KiwiRail does not agree with this addition, The proposed monitoring condition was included at Drury Central due to the presence of a recorded heritage site within the Project extent (Drury Rail Yards). There are no known or recorded heritage sites at Paerata, so an equivalent condition is not justified or necessary. Furthermore, KiwiRail will be obtaining an Archaeological Authority for the Projects which will control any potential heritage effects. In addition, KiwiRail has proposed an Accidental Discovery Protocol condition for areas not covered by an Archaeological Authority.
Kiwi Property Holdings No. 2 Limited, Fulton Hogan Land Development Limited, and Oyster Capital	Drury Central	Schedule 2 to both NoRs	Addition of one property to the surrounding land schedule, missing legal descriptions, and updated legend in map.	KiwiRail agrees with this addition and has incorporated the property into the final marked up set at Appendix C.
		RC condition 17(a)(i)	Addition of the following reference to the stormwater system design condition as an outcome to be achieved:  “ <u>Stormwater solutions to integrate with development and enable growth in the catchment by aligning to the Drury East Stormwater Management Plan prepared by Tonkin and Taylor Ltd and Woods dated June 2021 or subsequent Auckland Council approved versions.</u> ”	KiwiRail does not agree with this addition. The full suite of stormwater solutions identified in the Drury East Stormwater Management Plan includes the upgrade or duplication of the railway culvert to facilitate urban development in the Fitzgerald catchment. These culvert upgrade works remain unfunded, and an appropriate alternative flood mitigation solution (i.e. recontouring within NoR DC-1) therefore needs to be provided for. Such a solution is shown in the application material.  KiwiRail notes that the parties represented in Expert Conferencing on Stormwater (3 December) have agreed to progress discussions on funding, apportionment, design, and timing of the culvert works. KiwiRail further notes that the culvert works are not precluded by its proposed design.
Newland Holdings Pty Limited	Paerata	NoR P-IA condition 2	Retain reference to completion of the Accessway agreed in Expert Conferencing.	KiwiRail reiterates agreement with these changes in general. Minor clarifying amendments have been made to the wording of this part of the condition and these are incorporated into the proposed marked up set in Appendix C.

INDIVIDUAL(S) / ENTITY(IES)	RELEVANT STATION	RELEVANT CONDITION	SUMMARY OF COMMENT / PROPOSED CONDITIONS / CHANGES TO CONDITIONS (IF ANY)	KIWI RAIL RESPONSE
		NoR P-IA condition 2	Addition of a requirement for a six-monthly review of designation extent.	KiwiRail does not agree with this addition and notes that the condition drafting agreed in Expert Conferencing already requires review of the extent as soon as practicable following completion of the Accessway. The proposed condition is unnecessary, inappropriate and excessively onerous for a long-term designation.
		NoR P-IA, new condition	Addition of new condition 7X setting out requirements for consultation and outcomes regarding permanent access to 933 Paerata Road.	KiwiRail does not agree with this addition. KiwiRail is happy to consult with this landowner and notes proposed condition 7 as drafted requires a Construction Traffic Management Plan to demonstrate how access to property will be maintained. It is premature to specify outcomes regarding the location of permanent access. This is because this property is located in a complex and dynamic environment and final details of this receiving environment are yet to be settled. This stakeholder will be able to participate in discussions about those solutions through the framework set out in condition 12. KiwiRail notes that if it is unable to provide reasonable access to landlocked land it will have to acquire that property under the PWA. KiwiRail is therefore strongly incentivised to ensure that such access is provided, however the possibility of that outcome should not be precluded by these conditions. The proposed conditions along with the PWA threshold for acquisition and compensation process provides the landowner with appropriate protection
		NoR P-IA, condition 12 / definitions	Add a definition for "Stage One works".	KiwiRail agrees with this addition and has proposed a definition for Stage One works in the final marked up set in Appendix C. This has been included for the Drury Central NoRs also.
		NoR P-IA, condition 12	Addition of further clauses regarding design principles for the Accessway.	KiwiRail does not agree with this addition, and notes that amendments to condition 12 agreed in Expert Conferencing already require the Urban Landscape and Design Management Plan to demonstrate how the works will integrate with the surrounding planned urban environment.
		NoR P-IA, Schedule 2	Addition of 933 Paerata Road to the Surrounding Land schedule.	KiwiRail does not agree with this addition, as the site is already captured twice within the definition of "Stakeholder" – both Newland as an entity, and the owners of land on which the Project is to be undertaken (which includes 933 Paerata Road).
Paerata 5 Farms	Paerata	NoRs, condition 6, 7, 11	Addition of clauses specifically identifying need to provide for farming operations on site.	KiwiRail does not agree with these additions. Part of this private property is required for the Project and so will be subject to Public Works Act negotiations and these matters can and will be addressed in that context. KiwiRail considers that it is more appropriate for such matters to be provided for in a property agreement rather than through designation conditions.
		NoRs, condition 12	Addition of a new clause requiring an invitation to participate in the development of the Urban Landscape and Design Management Plan.	KiwiRail considers that the addition is not necessary. NoR conditions 4 and 12 as agreed in Expert Conferencing set out a four-month process in which Stakeholders are required to be invited to comment on Outline Plans which include an Urban Landscape and Design Management Plan. Paerata 5 Farms is included in the definition of Stakeholder as agreed in Expert Conferencing.
		General	Request for a reduction in the extent of NoR P-IA.	KiwiRail considers that the extent of NoR P-IA is reasonably necessary to meet the Project objectives. If the reduction proposed was accepted, KiwiRail would be unable to deliver the Project as proposed. In addition, the submitter will be fully and fairly compensated for the land that is to be acquired for the Project.
Counties Power	Both	Definitions	Include Counties Power in the definition of "Stakeholder".	KiwiRail agrees with this addition and has incorporated into the final marked up set in Appendix C.
Heritage New Zealand Pouhere Taonga	Both	NoR heritage conditions.	Confirmation of agreement of changes to heritage conditions at both stations (NoR conditions 18 and 19 at Drury Central; and NoR condition 16 at Paerata).	KiwiRail reiterates its agreement with these changes, and has incorporated them into the final marked up set in Appendix C.

**APPENDIX B: KIWIRAIL FURTHER PROPOSED CHANGES TO CONDITIONS – 21 DECEMBER (over and above changes identified in Appendix A)**

RELEVANT STATION	RELEVANT CONDITION	PROPOSED CHANGE	RATIONALE
Both (all NoRs)	Definitions	New definition added for “ <u>stakeholder</u> ” in addition to “Stakeholder”.	The “Stakeholder” definition specifically refers to the parties to be consulted under the process outlined in conditions 4 and 12 in relation to Outline Plans requiring an Urban Landscape and Design Management Plan. There is a need for a definition to cover instances in which the term “stakeholder” is used more generically.
	NoR condition 4(d)(ii)	Change the word “receipt” to “ <u>submission</u> ”.	KiwiRail considers that this amendment clarifies/removes ambiguity on when the four-month consultation process begins – i.e. upon submission of the Draft Outline Plan documents to the Stakeholders.
	NoR condition 5(a)(iii)	Removal of “unless otherwise certified”.	The management plans referred to in this clause are to be provided for information only, so “unless otherwise certified” is redundant.
	NoR condition 12	References to the existing and planned urban environment to include the words “ <u>to the extent known by the Requiring Authority</u> ”.	KiwiRail considers that this amendment clarifies the intent that the Project demonstrates integration with the existing and planned urban environment, whilst acknowledging the uncertainty inherent in the planned urban environment.
	NoR condition 12	Deletion of “ <u>including ecological linkages and integration as identified in the relevant Structure Plans, Blue-green Networks, or any subsequent plans, in association with Parks Sports and Recreation, Waka Kotahi, and Auckland Transport</u> ”.	KiwiRail considers that this reference is not appropriate given that these plans are generally high level and unfunded. The more general reference to “walking and cycling connectivity” adequately captures the desired outcome.
	NoR condition 12	Minor drafting changes for consistency between Drury Central and Paerata NoR condition sets.	The drafting of condition 12 for the Drury Central and Paerata Station NoRs was undertaken in two separate Expert Conferencing sessions, between which minor differences in drafting conventions emerged. KiwiRail has proposed minor amendments for consistency.
	NoR condition 12	Replacement of “KiwiRail” with “ <u>the Requiring Authority</u> ”.	Change made to maintain consistency in drafting of conditions.
	NoR condition 14	Corrections to references to “Stakeholder” and “stakeholder” in light of new definitions.	See explanation of definition above.
Both (NoRs DC-I and P-IA only)	Road safety audit condition	New condition included as requested by Auckland Transport and the Panel.	KiwiRail has added the Road Safety Audit condition that was requested by Auckland Transport.
Both (resource consents)	Condition 1	Finalisation of drafting and document references for general accordancy condition.	The references in Condition 1 were incomplete at the time of lodgement and the condition has now been completed.
	Schedule	Inclusion of a schedule for the hydrogeology monitoring location plan (and consequential changes to conditions).	Hydrogeology monitoring location plans were appended to the conditions without specific reference at the time of lodgement. The plans have been scheduled cross-referenced in the conditions.
	Fish passage condition	Change from “the Council” to “ <u>the Manager</u> ”.	Change made to maintain consistency in drafting of conditions (noting that the “Manager” is a defined term).
Drury Central Drury Central	NoR condition 12(c)(i)(c) and (d)	Removal of the words “ <u>provision for</u> ” from each of these clauses.	The intent of condition 12(c)(i) as agreed in Expert Conferencing was that the Urban Landscape and Design Management Plan would identify how the Project would address a range of urban form integration matters. The intent was not that KiwiRail was solely responsible for the provision of all of these items, and it was clearly identified that some of the works were beyond the scope of the Project. KiwiRail considers that this amendment captures the intent of the drafting more appropriately.
	NoR condition 6(b)(xiii)	Clause (b)(xiii) to be amended to include the words “ <u>to the extent known by the Requiring Authority</u> ”.	KiwiRail considers that this amendment clarifies the intent that the Project coordinates with/does not preclude works that can be reasonably anticipated and are known by KiwiRail.
Paerata	NoR P-IA condition 2	Minor amendments have been made to the reference to “Accessway” to ensure clarity.	KiwiRail has added reference to the relevant drawings to ensure that the reference to “Accessway” in the condition is clear.