

**BEFORE AN EXPERT CONSENTING PANEL UNDER THE COVID-19
RECOVERY (FAST-TRACK CONSENTING) ACT 2020**

IN THE MATTER OF an application for resource consents and notices of requirement by KiwiRail Holdings Limited for activities associated with a referred project, the Drury Central and Paerata Station Projects

**LEGAL CONSIDERATIONS ON BEHALF OF KIWIRAIL HOLDINGS LIMITED
FOR THE DRURY CENTRAL AND PAERATA STATION PROJECTS**

29 September 2021

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1. INTRODUCTION

- 1.1 KiwiRail Holdings Limited (**KiwiRail**) is a State-Owned Enterprise responsible for the management and operation of the national railway network. Its role includes managing railway infrastructure and land, as well as freight and passenger services within New Zealand.
- 1.2 KiwiRail is a requiring authority pursuant to section 167 of the Resource Management Act 1991 (**RMA**) and is responsible for designations for railway purposes throughout New Zealand, including the North Island Main Trunk Line (**NIMT**).
- 1.3 On an annual basis, KiwiRail transports approximately 25% of New Zealand's exports, carries over one million tourists and provides the infrastructure for 34 million commuter journeys.¹

2. THE PROJECT

- 2.1 This application seeks the approval of the designations and resource consents necessary to authorise the construction, operation and maintenance of the Drury Central and Paerata Station Projects (**Projects**),² a "referred project" as provided for in Part 2 and Schedule 3 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**CRA**). A referral application under section 20 of the CRA was lodged with the Ministry for the Environment on 22 April 2021 and was accepted to be processed under this Act on 12 July 2021. An Order in Council giving effect to the Minister's decision was Gazetted on 30 August 2021.
- 2.2 KiwiRail has provided detailed information on the Projects in the Assessment of Effects on the Environment (**AEE**)³ and supporting documents. These legal considerations set out the legal framework against which the application is to be assessed, including the considerations that the Panel are required to have regard to under the CRA, and how the application addresses these matters.
- 2.3 KiwiRail is currently investing in significant works to improve Auckland's rail network. This investment is driven by the importance of heavy rail in

¹ AEE at 1.3.

² Where we have referred to the "Project" in the singular, we are referring to the individual station (ie Drury Central or Paerata), as indicated by the context in which we have used the term "Project".

³ In some discrete parts of these legal considerations, we have relied on acronyms used in the AEE and have not set out these definitions in full (ie "FUZ").

delivering a quality compact urban form for Auckland, to meet demands for additional passenger service capacity and to address growth in freight volumes. As part of the wider investment in the Auckland rail network, KiwiRail seeks a package of designations and resource consents to undertake the Projects. KiwiRail is an authorised person for the purposes of section 15 of the CRA.

- 2.4 The Projects form part of the New Zealand Upgrade Programme (**NZUP**), a Crown-funded infrastructure investment programme announced in early 2020. At that time, of the three stations planned for the area, Paerata and Drury Central were chosen to be brought forward by the Government.
- 2.5 The Projects were then reconfirmed through an updated NZUP in June 2021, when KiwiRail was allocated \$495 million towards the delivery of three new rail stations in Southern Auckland by 2025 – comprising Drury Central and Paerata Stations (the subjects of this application) by 2024/5, and also Drury West Station (to be the subject of a separate future application) by 2025. As at this time the COVID-19 referral application for the Projects was already well advanced, it was decided to advance the Drury West application separately.
- 2.6 In light of the timeframes set out under the NZUP, both designations and resource consents are sought to enable their early implementation of the Projects.
- 2.7 Strategic planning documents, such as the Auckland Plan, highlight the role that passenger rail has in the coming decades. As the population of Auckland approaches two million, passenger rail becomes even more critical for the efficient movement of people. Given Auckland's existing high levels of road congestion and private motor vehicle dependency, these strategic documents identify the need for passenger rail services to have greater capacity, improved resilience, and greater frequency.⁴
- 2.8 The Projects will provide important rail facilities in an area where significant greenfield growth areas have been identified, including under the Auckland Unitary Plan (Operative in Part) (**AUP**) and the Auckland Plan.⁵ This growth will require reliable and efficient public transport services to serve residents and workers.

⁴ AEE at 1.3.

⁵ AEE at 1.3.

- 2.9 The Projects will provide services to this planned growth over the coming decades, by ensuring that infrastructure is in place prior to completion of urbanisation within South Auckland. The Projects seek to achieve this through new designations for the Drury Central and Paerata Stations and associated resource consents.⁶ The designations seek to provide for the staged construction, operation and maintenance of railways, railway lines, railway infrastructure and railway premises at Drury Central and Paerata.⁷
- 2.10 A staged approach to construction of the Projects is proposed, to reflect the changing usage demands over time, the evolving land use context, and the availability of transport funding. Stage One of all three stations is funded under NZUP and will be completed and operational by 2024/5. A full build-out configuration for each station has been developed to ensure anticipated long-term usage demands can be met.⁸
- 2.11 The exact sequencing and funding arrangements for future stages of these Projects is uncertain beyond Stage One. However, the Projects have been assessed adopting an 'effects envelope' approach to designating land and consenting activities, which allows for the staged implementation of the stations, within limits providing for the full build-out configuration.⁹ The conditions that have been proposed provide for the full-build out of the Projects, in accordance with effects envelope identified in the various technical reports supporting this application.

3. LEGAL FRAMEWORK UNDER THE CRA

- 3.1 Fast-track consenting is enabled by the CRA. The CRA seeks 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.¹⁰
- 3.2 Schedule 6 of the CRA provides the specific form, manner and content requirements for consent applications, with clauses 9 and 12 prescribing the relevant information required. Schedule 6 of the CRA also provides the

⁶ Resource consents under the AUP, NES Freshwater and NES Soil have been sought for the Projects. These are described further in footnote 31 below.

⁷ AEE at Table 1-1.

⁸ AEE at 1.2.

⁹ Ibid.

¹⁰ COVID-19 Recovery (Fast-Track Consenting) Act 2020, s4.

specific form, manner and content requirements for notices of requirements, with clause 13 prescribing the relevant information required.¹¹

- 3.3 As confirmed by the accompanying checklist, this application is compliant with the specific form, manner and content requirements set out in Schedule 6 of the CRA. Appendix A of the Minister's decision on KiwiRail's referral application also includes specific information requirements which must be submitted with the application.¹² This application addresses the information requirements set out in that Appendix.¹³
- 3.4 The Projects meet the purpose and intent of the CRA, operating as an economic stimulus for Auckland and New Zealand by having a project value of approximately \$495 million (for the three stations),¹⁴ with the Drury Central and Paerata Stations predicted to deliver \$671 million of economic benefits by 2038.¹⁵ The Projects are anticipated to create approximately 280 jobs through the construction of the Stage One Drury Central¹⁶ and Paerata Stations,¹⁷ as well as indirectly providing an economic stimulus to project supply chains.¹⁸ As New Zealand faces uncertainty with the COVID-19 pandemic, the Projects act 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.¹⁹
- 3.5 The Projects also meets the purpose of the Act considerations set out in section 19 of the CRA, in particular:
- (a) the Project's effects on the social and cultural well-being of current and future generations;²⁰
 - (b) contributing to well-functioning urban environments;²¹

¹¹ To avoid repetition, all "clause" references in this document are references to clauses contained in Schedule 6 of the CRA, unless otherwise indicated.

¹² COVID-19 Recovery (Fast-Track Consenting) Act 2020, clause 9(6)(c) requires consents applications for referred projects to include all the additional information required by the relevant referral order. Refer to clause 13(2) which contains a similar obligation in respect of NoRs for referred projects.

¹³ AEE at 20.5.

¹⁴ AEE at 10.2.1.

¹⁵ AEE at 10.2.1.3.

¹⁶ AEE at 10.2.1.2 identifies that construction of Stage One Drury Central Station would support approximately 105 full-time equivalent staff (FTEs) in project design and construction jobs between 2021 and 2024/2025 and another 65 FTE during the future expansion of the station to its full build out condition.

¹⁷ AEE at 17.2.1.2 identifies that construction of Stage One Paerata Station would support approximately 175 FTEs in project design and construction jobs between 2021 and 2025, and another 175 FTE during the future expansion of the station to its full build out condition.

¹⁸ AEE at 10.2.1.2 in respect of the Drury Central Station and 17.2.1.2 in respect of the Paerata Station.

¹⁹ AEE at 20.2.1.

²⁰ COVID-19 Recovery (Fast-Track Consenting) Act 2020, s 19(b).

²¹ COVID-19 Recovery (Fast-Track Consenting) Act 2020, s 19(d)(iii).

- (c) providing infrastructure in order to improve economic, employment and environmental outcomes, and increase productivity;²²
- (d) improving environmental outcomes for freshwater quality and indigenous biodiversity;²³
- (e) contributing to New Zealand's efforts to mitigate climate change and transition more quickly to a low-emissions economy (in terms of reducing New Zealand's net emissions of greenhouse gases);²⁴ and
- (f) strengthening environmental, economic, and social resilience in terms of managing the risks from natural hazards and the effects of climate change.²⁵

3.6 The AEE provides an analysis of the Projects against the various considerations set out in section 19,²⁶ and based on that assessment, concludes that the Projects are consistent with the purpose of the CRA.²⁷ The Projects will deliver significant economic benefits (including for industries affected by COVID-19), enhance social and cultural wellbeing, and result in significant public benefits. Moreover, KiwiRail's proactive programme for undertaking detailed design and property negotiations means that these Projects will be well-placed to benefit from the expedited processing timeframes provided for by the CRA.²⁸

Relevant considerations for the resource consents sought

3.7 In the case of referred projects, a panel's ability to decline a consent is not limited as it is for listed projects. Rather, the CRA identifies a range of matters which a panel must consider in determining whether to grant or decline a consent application.

3.8 More specifically, when considering a consent application for a referred project, clauses 31 and 32 of the CRA are relevant. Clause 31(1) sets out the matters which a panel must have regard to when considering consent applications for referred projects (or any comments received regarding the application). A panel must, subject to Part 2 of the RMA and the purpose of the CRA, have regard to:

²² COVID-19 Recovery (Fast-Track Consenting) Act 2020, s 19(d)(iv).

²³ COVID-19 Recovery (Fast-Track Consenting) Act 2020, s 19(d)(v).

²⁴ COVID-19 Recovery (Fast-Track Consenting) Act 2020, s 19(d)(vii).

²⁵ COVID-19 Recovery (Fast-Track Consenting) Act 2020, s 19(d)(ix).

²⁶ AEE at 3.3.4 and 20.2.

²⁷ AEE at 20.2.6.

²⁸ AEE at 20.2.6.

- (a) Any actual and potential effects on the environment of allowing the activity;
 - (b) Any measure proposed (or agreed to) by the applicant to ensure positive effects on the environment to offset or compensate for any adverse effects that will or may result from allowing the activity;
 - (c) Any relevant provisions of any of the documents listed in clause 29(2), which include a National Environmental Standard (**NES**), National Policy Statement (**NPS**), New Zealand Coastal Policy Statement (**NZCPS**), regional policy statement (**RPS**) and planning documents (including a planning document recognised by a relevant iwi authority and lodged with a local authority); and
 - (d) Any other matter the panel considers relevant and reasonably necessary to determine the consent application(s).
- 3.9 Clause 31 also requires a panel to apply section 6 of the CRA (Treaty of Waitangi) instead of section 8 of the RMA,²⁹ and the panel must comply with any relevant obligations imposed in Treaty settlements, that apply to local authorities or other decision-makers when determining a consent application.³⁰ For completeness, the application considers both section 6 of the CRA and section 8 of the RMA, as summarised in this legal considerations document.
- 3.10 Clause 32 sets out additional RMA matters that are relevant to a panel's consideration of a consent application. This includes sections 104A to 104D (matters relevant to determining consent activities), section 105 (matters relevant to certain applications) and section 107 (restrictions on grant of certain discharge permits).
- 3.11 For this application, resource consents are required to authorise activities necessary for the construction, operation, and maintenance of the Drury Central and Paerata Station Projects. KiwiRail seeks resource consents under the regional plan provisions of the AUP, as well as the NES for Freshwater Regulations 2020 (**NESFW**) and the NES for Assessing and

²⁹ COVID-19 Recovery (Fast-Track Consenting) Act 2020, sch 6, cl 31(2).

³⁰ COVID-19 Recovery (Fast-Track Consenting) Act 2020, sch 6, cl 31(10).

Managing Contaminants in Soil to Protect Human Health Regulations 2011
(NES Contaminated Soil).³¹

- 3.12 Overall, resource consent is sought from the Panel for a discretionary activity. In accordance with clause 32 of the CRA, section 104B of the RMA (a relevant consideration for the Panel) provides that after considering an application for a resource consent for a discretionary activity, a consent authority may grant or refuse the application, and if it grants the application, may impose any conditions under section 108 of the RMA.³²

Relevant considerations for the notices of requirement

- 3.13 As with consent applications for referred projects, a panel's ability to cancel a notice of requirement for referred projects is not limited as it is for listed projects. Clause 33 sets out the matters that a panel must have regard to in considering a notice of requirement (and any comments received on the notice). Under clause 33(2), a panel must, subject to Part 2 of the RMA and the purpose of the CRA, consider the effects on the environment of allowing the requirement, having particular regard to:
- (a) Any relevant provisions of any of the documents listed in clause 33(3), which include a NPS, NZCPS, RPS and planning documents (including a planning document recognised by a relevant iwi authority and lodged with a local authority);
 - (b) Whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if the requiring authority does not have an interest in the land sufficient to undertake the work or it is likely the work will have a significant adverse effect on the environment;
 - (c) Whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority seeking the designation; and

³¹ As set out in the AEE, the following resource consents have been sought by KiwiRail as part of this application (refer to Table 9-1 for Drury Central and Table 16-1 for Paerata): consents under the AUP for earthworks, vegetation clearance, stormwater, dewatering, diverting groundwater, stream works, reclamation and contaminated land discharge and contaminated land disturbance; consent under the NES Soil for the disturbance of contaminated land and consent under the NES:F for reclamation and installation of non-compliant culverts.

³² Section 108 of the RMA remains relevant to the conditions of consents granted under the CRA, by virtue of clause 35(3) of the CRA which provides that sections 108, 108A to 112 and 220 of the RMA apply to conditions imposed on consents, subject to all necessary modifications.

- (d) Any other matter the panel considers reasonably necessary in order to make a decision on the requirement.
- 3.14 Clause 33(5) provides that a panel may cancel or confirm a requirement, or confirm it with modifications or conditions on it, as the panel thinks fit. In making its decision, a panel must apply section 6 of the CRA (Treaty of Waitangi) instead of section 8 of the RMA. For completeness, the application considers both provisions, as summarised below.
- 3.15 As with consent applications, if a Treaty settlement imposes an obligation on a territorial authority or other decision maker when determining or making a recommendation on a NoR, a panel must also comply with that obligation.³³

Application of these considerations to the Projects

- 3.16 As set out in these legal considerations and in the AEE, and having regard to section 6 of the CRA and Part 2 of the RMA:
- (a) The Projects will result in significant positive effects, and any potential adverse effects arising from construction or operation of the Projects can be adequately mitigated;³⁴
 - (b) The Projects meet or assist in meeting the relevant provisions of the National Policy Statements, National Environmental Standards, the AUP (which contains the relevant RPS, regional and district planning provisions), and planning documents recognised by a relevant iwi authority;³⁵
 - (c) There are no Treaty settlement obligations that are considered relevant to the Projects or the Panel's consideration of the notices of requirement or consents sought for the Projects;³⁶ and
 - (d) In terms of the designations sought for the Projects:³⁷
 - (i) Adequate consideration has been given to alternative sites, routes and methods of undertaking the work; and

³³ COVID-19 Recovery (Fast-Track Consenting) Act 2020, cl 33(8).

³⁴ Refer to Chapter 10 of the AEE which describes the potential effects of the Drury Central Station Project, and Part 17 of the AEE which describes the potential effects of the Paerata Station Project.

³⁵ Refer to Chapter 20 of the AEE which assesses the application against the relevant statutory matters.

³⁶ Refer to Chapter 20.3 of the AEE which summarises the relevant Treaty Settlement interests in the Project Areas and their application to the Projects.

³⁷ Refer to Chapter 20.6 of the AEE and the Alternatives Assessment Report attached to the AEE (Appendix A) which assesses the designations against these matters.

- (ii) The work and designation are reasonably necessary for achieving KiwiRail's objectives.

- 3.17 These matters are discussed in further detail below. In light of the conclusions reached regarding these matters, KiwiRail respectfully requests that the Panel grant the resource consents sought, and confirm the notices of requirement, subject to any reasonable conditions that it deems appropriate.
- 3.18 KiwiRail has developed a proposed set of comprehensive conditions that will appropriately and effectively manage the adverse effects of the Projects on the environment. The proposed set of conditions is discussed further in section 4 below.

Potential effects of the Projects

- 3.19 The Projects have been assessed by various technical specialists, with their assessments set out in the technical reports submitted as part of the application. The findings of these reports are summarised in the AEE, which describes the actual and potential effects of the construction, operation and maintenance of the Projects, including whether these effects are positive or adverse, and the scale, duration and locality of effects.³⁸ While this legal considerations document does not discuss the conclusions reached in relation to all of the topics considered as part of the effects assessment,³⁹ we set out some of the key findings reached by the experts.

Drury Central – summary of potential effects

- 3.20 In designing the Drury Central Station, the avoidance of adverse effects has been a key driver for the identification, and subsequent refinement, of the designation footprint. Where avoidance has not been possible, measures to remedy or mitigate adverse effects have been proposed. These measures are detailed within the AEE and reflected in the proposed designation and consent conditions.⁴⁰ By way of summary as to some of the conclusions reached regarding effects, we note the following:

- (a) **Transport:** Significant positive transport effects are anticipated as a result of the operation of the Project, including improved access to

³⁸ Refer to Chapter 10 of the AEE in relation to the Drury Central and Chapter 17 of the AEE in relation to the Paerata Station.

³⁹ The topics that have not been covered in this document are set out in paragraph 3.21 (Drury Central) and paragraph 3.23 (Paerata).

⁴⁰ Refer to Chapter 11 of the AEE which discusses the measures proposed to mitigate potential effects including proposed conditions for the Drury Central Station.

the public transport network, to economic and social opportunities for residents in the Drury Central/East growth area, and to key centres such as Manukau and the CBD. The station will improve travel times to key destinations and provide alternative options of travel, adding to the attractiveness of the rail network, which will encourage a shift to public transport use. The Station is also expected to result in an uptake in active modes, a safer transport environment, and will provide a safer transport alternative to private vehicles. The anticipated shift towards public transport and active mode use is also predicted to have associated benefits for the environment in respect of climate change matters.⁴¹

Some adverse effects to the road network are anticipated during construction of the Project, but these are expected to be minimal, given impacts will be temporary, managed with a CTMP and most works will be done offline from the existing road network. Any adverse effects arising during operation of the Project are anticipated to be negligible on the transport network. Overall, the Station will have significant positive operational transport effects in providing a safe, reliable public transport network that supports growth, enables sustainable travel choice and combats safety concerns. Any potential adverse effects arising during construction and operation of the Project will be managed effectively.⁴²

- (b) **Landscape, natural character and visual effects:** Potential landscape and visual effects for the construction phase are considered to be acceptable given the temporary nature of the works. Future development of FUZ areas will substantially change the scale and character of the adjacent landscape, and the Station will be in keeping with the existing and future anticipated development of the area. With proposed measures in place, the proposed features and scale of the Project will be appropriately integrated into the existing and future landscape to adequately remedy the potential adverse effects arising from the Project. Overall, the landscape, visual and natural character effects will be positive, as the Project will better connect the community and

⁴¹ AEE at 10.1.1.

⁴² AEE at 10.1.

provide access to an improved Hingaia Tributary and proposed stormwater wetland.⁴³

- (c) **Cultural effects:** The AEE contains a summary of KiwiRail's understanding of the cultural values and issues of significance to mana whenua, drawing on KiwiRail's engagement with mana whenua (with mana whenua engagement dating back to 2019 with regular, monthly hui on the proposed stations), and inputs mana whenua provided during Project development. This includes three CIA from Ngaati Whanaunga, Ngāti Tamaoho and Ngāti Te Ata Waiohua, which helped KiwiRail understand the perspectives of these mana whenua on cultural impacts, as they relate to the Project and surrounding area. In light of the values and issues expressed to KiwiRail by mana whenua, in developing the Projects, recognition has been given to the relationship of tangata whenua with their lands, culture and traditions in the area. Design details of the Projects have been, and will continue to be discussed with mana whenua, who will also be invited to participate in the development of the UDLMP to provide input into relevant cultural landscape and design matters.⁴⁴ Mana whenua will participate in regular design hui (which commenced at the end of August), which has been provided for as part of the Manawhenua Engagement Forum condition, proposed as a condition on the Projects.⁴⁵
- (d) **Ecological effects:** The Project is anticipated to result in a number of positive ecological effects, including positive effects on downstream hydrology and associated ecological functions as a result of the proposed stormwater treatment devices, as well as water quality improvements. The Project will also result in a net increase in green infrastructure and habitats within the Project area, with the detailed Stream Enhancement and Management Plan outlining ecological enhancement measures for the Hingaia Tributary.⁴⁶

The ecological assessment determined that the terrestrial habitat and species present within the Project Area are of Negligible to Low value. The assessment concluded that effects on these species and

⁴³ AEE at 10.4.

⁴⁴ AEE at 10.7.

⁴⁵ Refer to condition 13 of the proposed designation conditions for Paerata and Drury Central.

⁴⁶ AEE at 10.8.1. Refer to condition 5 of the proposed resource consent conditions for Drury Central.

habitats during construction and operation of the Project are anticipated to be low, with no mitigation required. In terms of freshwater impacts, while the Project has sought to minimise impacts on the Hingaia Tributary and its riparian vegetation, reclamation of part of the Flanagan Tributary⁴⁷ will result in permanent loss of 90m of intermittent stream, and the extension of an existing culvert will result in the loss of 10m of permanent stream. However, these impacts will be offset, with opportunities for stream enhancement identified within the proposed designation boundary. Any adverse effects associated with fish passage will be appropriately mitigated through culvert retrofitting and by avoiding instream works during fish migration periods.⁴⁸

- (e) **Stormwater, flooding and erosion and sediment control:** While receiving aquatic environments have the potential to be affected by sediment runoff during earthwork activities, the potential effects of sediment discharge during construction will be managed through the measures outlined in the Provisional ESCP. Potential adverse stormwater and flooding effects arising from operation of the Project can be adequately mitigated by a wetland, raingarden, dry detention pond and/or similar devices, and flood offset mitigation can also be provided by a new/additional pipe through the railway embankment. Any adverse stormwater effects on the environment have therefore been assessed as low.⁴⁹
- (f) **Noise and vibration effects:** The noise assessment found that for potential construction noise effects, with noise barriers installed around active construction areas, compliance with daytime noise criteria is expected to be achieved at all noise receivers. For construction vibration, predicted vibration levels show compliance with the cosmetic building damage criteria at all existing buildings, with appropriate mitigation in place. Overall, potential adverse construction noise and vibration effects will be managed via the proposed Construction Noise and Vibration Management Plan (**CNVMP**). For operational noise effects, noise level predictions show operational noise levels during peak hours, without mitigation, will meet the relevant day time and night-time criteria at adjacent

⁴⁷ A tributary of the Hingaia Stream.

⁴⁸ AEE at 10.8.

⁴⁹ AEE at 10.10.

existing and likely future receivers, so no mitigation is required. For operational vibration effects, traffic vibration from new accessways do not typically cause an issue as they are designed to be smooth and even and have therefore not been assessed.⁵⁰

- 3.21 The AEE contains further detail regarding the actual and potential effects of the Drury Central Station in terms of social impacts, economic, urban design, historic heritage, arboriculture, hydrogeology, contaminated land and network utilities. Overall, the AEE concludes that the Project will result in a number of significant positive effects, and while some potential adverse effects have been identified as a result of the construction or operation of the Project, these will be adequately mitigated through the measures that have been proposed and reflected in the conditions sought.⁵¹

Paerata Station – summary of potential effects

- 3.22 As with the Drury Central Station, the avoidance of adverse effects has been a key driver for the identification of the designation footprint and the subsequent refinement of the footprint. Where avoidance has not been possible, measures to remedy or mitigate potential effects has been proposed, as reflected in the proposed designation and consent conditions.⁵² By way of summary as to some of the conclusions reached regarding effects, we note the following:

- (a) **Transport effects:** Significant positive transport effects are anticipated as a result of the operation of the Project, including improved access to the public transport network, to economic and social opportunities for residents in and around Paerata and other growth areas, and to key centres such as Manukau and the CBD. The Station will improve travel times to key destinations and provide alternative options of travel, adding to the attractiveness of the rail network, which will encourage a shift to public transport use. The Station is also expected to result in an uptake in active modes, a safer transport environment, and will provide a safer transport alternative to private vehicles. The anticipated shift towards public

⁵⁰ AEE at 10.13.

⁵¹ AEE at Chapter 12.

⁵² Refer to Chapter 18 of the AEE which discusses the measures proposed to mitigate potential effects including proposed conditions for the Paerata Station.

transport and active mode use is predicted to have associated benefits for the environment in respect of climate change matters.⁵³

Some adverse effects to the road network are anticipated during construction of the Project, but these are expected to be minimal, given impacts will be temporary, managed with a Construction Traffic Management Plan (**CTMP**) and most works will be done offline from the existing road network. Adverse effects encountered during construction and operation have been assessed as low and will be appropriately managed. Overall, the Station will have significant positive operational transport effects in providing a safe, reliable public transport network that supports growth, enables sustainable travel choice and combats safety concerns.⁵⁴

- (b) **Landscape, natural character and visual effects:** Potential landscape and visual effects for the construction phase are considered to be acceptable given the temporary nature of the works. Future development of FUZ areas will substantially change the scale and character of the adjacent landscape, and the Station will be in keeping the existing and future anticipated development of the area. With the recommended measures in place, the proposed features and scale of the Project will be appropriately integrated into the existing and future landscape, to adequately remedy the potential adverse effects arising from the Project. Overall, the landscape, visual and natural character effects will be positive as the Project will better connect the community and provide access to improved Whangapouri Creek Tributaries and the proposed stormwater wetland.⁵⁵
- (c) **Cultural effects:** In the AEE, the potential cultural impacts of the Paerata Station Project were assessed in conjunction with the potential cultural impacts of the Drury Central Station. We refer to the discussion in paragraph 3.20(c) above for a summary of some of the matters addressed in the AEE regarding cultural matters for the Projects.
- (d) **Ecological effects:** The Project is anticipated to result in a number of positive ecological effects, including positive effects on the

⁵³ AEE at 17.1.1.

⁵⁴ AEE at 17.1.

⁵⁵ AEE at 17.4.

downstream hydrology and associated ecological functions as a result of the proposed stormwater treatment devices. Existing habitat will also be enhanced through the Wetland Restoration and Enhancement Plan that has been proposed.⁵⁶

The Project will require vegetation removal, but the ecological assessment concluded that the adverse effects of vegetation removal on terrestrial habitat and species during both construction and operation is appropriate, due to the already modified and low-quality environment, the implementation of an effective ESCP, and the presence of common fauna only. In terms of freshwater impacts, the Project requires the removal of a wetland, which is necessary for the construction of the stormwater wetland. While the impacts of this will be high, the permanent loss of wetland values can be offset at another wetland identified within the designation boundary, so that there will be no net loss of ecological value (and potentially a net gain).⁵⁷

- (e) **Stormwater, flooding and erosion and sediment control:** Adverse stormwater effects arising from construction are anticipated to be typical for a local road, but the swales and wetland proposed will adequately mitigate the water quality, stream erosion and peak flow increase effects of the design. The potential effects of sediment discharge during construction will also be managed through the measures outlined in the Provisional ESCP. Potential adverse stormwater effects arising from operation of the Project will be standard for a project of this type, and will be mitigated by a wetland, raingarden and/or similar devices. Flood offset mitigation will also be provided by a new/additional pipe through the railway embankment. Any adverse stormwater effects on the environment have therefore been assessed as low.⁵⁸
- (f) **Noise and vibration effects:** The noise assessment found that for potential construction noise effects, with noise barriers installed around active construction areas and as works move away from the boundaries of the site, compliance with daytime noise criteria is expected to be achieved at all noise receivers. For construction

⁵⁶ AEE at 17.8.1. See also condition 5 of the proposed resource consent conditions for the Paerata Station.

⁵⁷ AEE at 17.8.

⁵⁸ AEE at 17.10.

vibration, predicted vibration levels show compliance with the cosmetic building damage criteria at all existing buildings, with appropriate mitigation in place. Overall, potential adverse construction noise and vibration effects will be managed via the proposed CNVMP. For operational noise effects, noise level predictions show that noise during peak hours, without mitigation, will meet the daytime and night-time criteria at adjacent sites, based on the likely future land use zoning. Mitigation measures have therefore not been recommended. For operational vibration effects, traffic vibration from new accessways do not typically cause an issue as they are designed to be smooth and even and have therefore not been assessed.⁵⁹

- 3.23 The AEE contains further detail regarding the actual and potential effects of the Paerata Station in terms of social impacts, economic, urban design, historic heritage, arboriculture, hydrogeology, contaminated land and network utilities. Overall, the AEE concludes that the Project will result in a number of significant positive effects, and while some potential adverse effects have been identified as a result of the construction or operation of the Project, these will be adequately mitigated through the measures that have been proposed and reflected in the conditions sought.⁶⁰

National Policy Statements

- 3.24 As set out in the AEE, this application has been considered against each of the relevant National Policy Statements, being the National Policy Statement for Urban Development 2020 (**NPS-UD**) and the National Policy Statement for Freshwater Management 2020 (**NPSFM**). The three remaining national policy statements are not relevant to the Project.⁶¹

NPS-UD

- 3.25 The NPS-UD came into effect on 20 August 2020, replacing the National Policy Statement on Urban Development Capacity 2016.
- 3.26 The objectives and policies of the NPS-UD aim to ensure that New Zealand's towns and cities are well-functioning urban environments that meet the shifting needs of the wider community. The Projects have been

⁵⁹ AEE at 17.13.

⁶⁰ AEE at Chapter 19.

⁶¹ National Policy Statement for Renewable Electricity Generation; National Statement on Electricity Transmission; New Zealand Coastal Policy Statement.

considered against the relevant objectives and policies of the NPS-UD.⁶² The Projects are planned rapid transit stations located within proximity to planned commercial centres and high-density residential developments, in areas identified for future growth in the AUP. The stations therefore trigger the requirement that councils do not preclude development of six storeys or more within walking distance.⁶³

- 3.27 As described in the AEE, the Projects enable and support the development of a higher density surrounding land use catchment with access to high quality public transport, thereby giving effect to the NPS-UD aims of well-functioning urban environments,⁶⁴ and accessibility between housing, jobs, community services, natural and open spaces by way of public transport.⁶⁵ Overall, the Projects help give effect to these provisions by providing certainty that rapid transit stations will be delivered as lead infrastructure, in locations with the most developable land, thereby enabling Council and developers to plan appropriate surrounding land use.⁶⁶
- 3.28 Kiwi Property has raised concerns with KiwiRail as to whether the Drury Central Station is conducive to Transit-Oriented Development (**TOD**). In particular, through discussions that the Project team has had with Kiwi Property regarding the Drury Central Station, Kiwi Property has advised that it considers KiwiRail's preferred platform location is too far north, and that the proposed interchange facilities are too large and not conducive to TOD.
- 3.29 KiwiRail considers that the Drury Central Station will provide for an integrated transport and land use outcome in time, but notes that the objectives for the station are more wide-ranging than achieving TOD. In particular, the station both seeks to support the anticipated growth in the area, and contribute to mode shift to public transport.⁶⁷
- 3.30 Stage One of the Drury Central Station will be completed in 2024/25, and accordingly, is likely to be in place prior to substantial urbanisation in the surrounding area. Until this urbanisation occurs, the Station needs to be accessible in the context of current land use, hence why facilities such as the park-and-ride have been provided for.

⁶² AEE at Table 20-13.

⁶³ NPS-UD, Policies 3 and 6.

⁶⁴ NPS-UD, Objective 1.

⁶⁵ NPS-UD, Policy 1(c).

⁶⁶ This is also relevant in terms of NPS-UD, Objective 6.

⁶⁷ AEE at 6.1 (Drury Central) and 13.1 (Paerata).

- 3.31 Notwithstanding the above, KiwiRail has sought to ensure the Station enables/allows the conditions for an integrated transport and land use outcome to be achieved over time, including by:
- (a) Proximity of station entrances to Kiwi Property's land, with the majority of their landholding within walking distance to the Station;
 - (b) Locating the accessways so they can integrate with Kiwi Property's proposed road network (and the urban form created by that road network). Two of the objectives for the Projects are to enable safe access to the railway, and support future growth, so ensuring appropriate integration with proposed development in the area has been a key consideration in the development of the Projects; and
 - (c) 'Right-sizing' the park-and-ride to balance access to rail with land use.
- 3.32 KiwiRail has given consideration to these matters and considers the Station will ultimately enable an integrated transport and land use outcome to be achieved over time. However, it notes that there is no reference to the term "Transit-Oriented Development" in any objective or policy in the NPS-UD or the AUP, and therefore, it is not a matter that has been assessed as part of the statutory assessment contained in the AEE.⁶⁸

NPSFM

- 3.33 The NPSFM came into force on 3 September 2020 and provides local authorities with direction as to how to manage freshwater under the RMA. The following NPSFM policies are relevant to the Project:⁶⁹
- (a) freshwater is managed in a way that gives effect to Te Mana o te wai;⁷⁰
 - (b) tangata whenua are actively involved in freshwater management and Māori freshwater values are provided for;⁷¹
 - (c) freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis;⁷²

⁶⁸ AEE at Chapter 20.

⁶⁹ AEE at Table 20-13.

⁷⁰ NPSFM, Policy 2.2(1).

⁷¹ NPSFM, Policy 2.2(2).

⁷² NPSFM, Policy 2.2(3).

- (d) there is no further loss of extent of natural inland wetlands, their values are protected and their restoration is promoted;⁷³
 - (e) the loss of river extent and values is avoided to the extent practicable;⁷⁴
 - (f) the significant values of outstanding water bodies is protected;⁷⁵ and
 - (g) the habitats of indigenous freshwater species are protected.⁷⁶
- 3.34 The objectives and policies of the NPSFM that are relevant to the Projects have been assessed in the AEE, with some of the key findings of that assessment summarised below.
- 3.35 Through hui with mana whenua and commissioning Cultural Impact Assessments (**CIAs**),⁷⁷ the importance of Te Mana o te Wai has been highlighted. Mana whenua have been actively involved throughout the optioneering and design process and have noted that while the loss of any wetland or stream is not optimal, on balance they recognise the importance of the proposed transport infrastructure.⁷⁸
- 3.36 While no wetlands have been identified within the Drury Central Station footprint, the Paerata Station will involve the replacement of a moderate value exotic wetland with a new stormwater wetland. Given the historical loss of functional value associated with the Whangapouri Tributary, the proposed stormwater wetland may have a positive effect on downstream hydrology and linked ecological functions. While this aspect of the Paerata Station Project does not achieve the NPSFM policy, that there is no further loss of natural inland wetlands, the NPSFM recognises exceptions to this policy direction.⁷⁹
- 3.37 Specifically, clause 3.22 of the NPSFM recognises an exception where the activity is necessary for the construction or upgrade of specified infrastructure, there is a functional need for the specified infrastructure in that location, and the effects are managed through applying the effects

⁷³ NPSFM, Policy 2.2(6).

⁷⁴ NPSFM, Policy 2.2(7).

⁷⁵ NPSFM, Policy 2.2(8).

⁷⁶ NPSFM, Policy 2.2(9).

⁷⁷ The CRA requires CIAs to be provided or, if not, reasons why not. For this project, Mana whenua have provided CIAs to KiwiRail, but Ngaati Tamaoho and Ngāti Whanaunga only wish summaries to be included with this application. KiwiRail understands the reason for these Iwi not wanting to provide the full CIAs with this application is that they do not wish for these to be publicly available. However, a copy of Ngāti te Ata Waiohūa's CIA has been provided with the application, with their permission. Accordingly, the spirit of CRA is being complied with.

⁷⁸ AEE at Table 20-13.

⁷⁹ Clause 3.22 of the NPSFM.

management hierarchy.⁸⁰ As set out in Table 20-13 of the AEE, the Paerata Station is specified infrastructure, and there is a functional need for it to be in this location due to the existing location of the NIMT, the separation distance between existing stations and future growth projected in those areas. It is also necessary to sustain the operation of the infrastructure. The effects of the activity will be managed through the effects management hierarchy, with the effects of this wetland loss offset using a nearby wetland, so there is no net loss of ecological value.

- 3.38 Paerata Station avoids the loss of river extent and values by locating outside of the waterbodies on/near the site.⁸¹ The Drury Central Station Project includes the reclamation of Flanagan Tributary, as a result of approximately 90m of intermittent stream loss. However, as set out in Table 20-13 of the AEE, through the options assessment and form and function analysis, Drury Central Station has a functional and operational need to locate at the site selected. While the design of the station avoids the larger Hingaia Stream tributary and the majority of its riparian vegetation, a smaller lower value tributary along Flanagan Road is unable to be avoided. Offset will be provided for both stream and riparian loss in the form of betterment of a nearby stream to ensure no net loss of ecological value.⁸²
- 3.39 Overall, through the condition set and management plans that will be undertaken and implemented by KiwiRail, the freshwater values associated with the receiving environments will be safeguarded, as directed by the NPSFM.

NZCPS

- 3.40 The CRA requires consideration of the Projects against the NZCPS. As the works are not located within or near the coastal marine area, the NZCPS is not relevant to the proposed works.

National Environmental Standards

- 3.41 As set out in the AEE, the application has been considered against the assessment criteria for each rule triggered under the relevant NES

⁸⁰ Clause 3.22 of the NPSFM. The AUP provides for the exceptions recognised in the NPSFM – refer Chapter E3 of the AUP.

⁸¹ In accordance with NPSFM, Policy 2.2(7), which provides that the loss of river extent and values is avoided to the extent practicable.

⁸² This will be provided for as part of the Stream Enhancement and Management Plan, provided for in condition 5 of the proposed resource consent conditions for Drury Central.

documents, being the NESFW and NES Contaminated Soil.⁸³ The seven remaining NES are not considered relevant to this application.⁸⁴

NESFW

3.42 The NESFW came into force on 3 September 2020 and contains standards to regulate activities that pose risks to the health of freshwater and freshwater ecosystems. Resource consents under the NESFW are required for the Projects, as follows:

- (a) For the Drury Central Station, discretionary consents are required under Regulation 45 (Construction of specified infrastructure), Regulation 57 (Reclamation) and Regulation 71 (Culverts); and
- (b) For the Paerata Station, discretionary consents are required under Regulation 45 (Construction of specified infrastructure) and Regulation 71 (Culverts).

3.43 As discretionary consent activities, no specific assessment criteria have been identified in the NESFW. With the Panel's discretion not limited to any particular assessment criteria, the AEE provides a detailed assessment of the potential effects of the reclamation, culvert works and construction of specified infrastructure. As set out in that assessment:

- (a) For the Drury Central reclamation and culvert works, while some of the remaining effects of these works cannot be mitigated, these effects will be offset, which can be adequately accommodated within the proposed designation boundary;⁸⁵
- (b) For the Paerata specified infrastructure works, removing the wetland is necessary for the construction of the stormwater wetland, but the impacts of this permanent loss will be offset so there will be no net loss of ecological value;⁸⁶ and
- (c) For the Paerata culvert replacement/extension works, effects have been assessed as low and can be managed during construction and operation.⁸⁷

⁸³ AEE at Table 20.16 and 20.17.

⁸⁴ Being the NES for Plantation Forestry 2017, NES for Air Quality 2004, NES for Sources of Drinking Water 2007, NES for Telecommunications Facilities 2016, NES for Electricity Transmission Activities 2009, NES for Marine Aquaculture 2020 and the NES for Storing Tyres Outdoors 2021.

⁸⁵ AEE at 10.8.3 and 10.8.5.

⁸⁶ AEE at 17.8.5.

⁸⁷ AEE at 17.8.5.

NES Contaminated Soil

- 3.44 The NES Contaminated Soil came into force on 1 January 2012 and contains a nationally consistent set of planning controls and soil contaminant values. For the Projects, discretionary resource consents are required under Regulation 5 and 11 of the NES Contaminated Soil in relation to disturbing the soil of a piece of land.
- 3.45 As noted in relation to the NESFW, as discretionary consent activities, the Panel's discretion is not limited to any particular assessment criteria. The AEE therefore provides a detailed assessment of potential contaminated land effects associated with the construction and operation of the Projects. Based on that assessment, any effects related to contaminated land are likely to be minimal and can be appropriately managed via development and implementation of a Contaminated Land Management Plan, proposed as part of the consent conditions.⁸⁸

Other relevant planning provisions – AUP RPS, regional and district plan provisions and iwi planning documents

AUP provisions

- 3.46 The Projects have been assessed against a number of relevant provisions in the AUP.⁸⁹ As Auckland's unitary planning document, the AUP contains Auckland's regional policy statement, and regional and district planning provisions. While not contained in the AUP, the Projects were also considered against the provisions of the Pukekōhe-Paerata Structure Plan and the Drury-Opaheke Structure Plan, which provide further guidance regarding the urban and environmental outcomes sought in these areas.
- 3.47 In light of the range of matters that these planning provisions apply to, the AEE groups the AUP assessment into the following topic groupings: urban growth and development, enabling infrastructure and managing its effects, natural resources, ngā mana whenua, natural hazards, urban form and quality design, historic heritage and contaminated land/land disturbance.⁹⁰ The AEE provides a detailed analysis of the how the Projects will achieve the relevant objectives and policies within these various topic groupings.⁹¹

⁸⁸ See 10.12.2 of the AEE in relation to the Drury Central Station and 17.12.2 of the AEE in relation to the Paerata Station.

⁸⁹ Table 20-13 of the AEE.

⁹⁰ These topic groupings were also used in assessing the Projects against the relevant NPS provisions.

⁹¹ Table 20-13 of the AEE.

Iwi management plans

- 3.48 In terms of iwi planning documents received by KiwiRail, KiwiRail assessed the Projects against the following iwi management plans:⁹²
- (a) The Ngaati Whanaunga Environmental Plan, which has the purpose of providing a robust management framework that promotes effective, integrated and sustainable management of resources. The Plan identifies key issues of concern to the iwi (ie matters relating to land, freshwater, coastal and marine areas, biodiversity, air and cultural heritage), and identifies what "measures of success" look like in relation to these matters. The AEE assesses these issues and measures in light of the Projects and its potential effects, and provides comment on how some of these issues / measures have been, or will be addressed as part of the Projects;⁹³ and
 - (b) The Waikato-Tainui Environmental Plan, which has the purpose of providing an overarching position of Waikato-Tainui on the environment. It provides guidance regarding Waikato-Tainui values, principles, knowledge and perspectives on, relationship with, and objectives for natural resources and the environment. The AEE identifies the issues, policies and objectives considered relevant to the Drury Central and Paerata Station Projects and provides comment on how these matters have been or will be addressed as part of the Projects.⁹⁴

Consideration of Part 2 matters

3.49 Clause 31 (for resource consents) and clause 33 (for notices of requirement), require a panel to have regard to various matters (discussed in the preceding sections of this document), "*subject to Part 2 of the RMA*".⁹⁵ The Projects have been assessed against the matters contained in Part 2, with the AEE confirming the following:

- (a) In accordance with section 5 of the RMA, the Projects will manage the use, development and protection of natural physical resources in

⁹² Best endeavours were made by KiwiRail to obtain all iwi management plans but only some were provided. Table 5-3 of the AEE sets out engagement in relation to iwi management plans. The plans received are summarised in these legal considerations and detailed further in 20.4.2.1 of the AEE.

⁹³ AEE at 20.4.2.1.

⁹⁴ AEE at 20.4.2.1.

⁹⁵ Clauses 9(1)(g)(i) and 13(1)(d)(i) of the CRA also require an assessment of the Projects against Part 2 of the RMA. As noted in 5.3.1 of the AEE, Waikato-Tainui were contacted initially about the Projects but deferred to local iwi groups.

a way, or at a rate, which will enable people and communities to provide for their social, economic and cultural wellbeing and for their health and safety;⁹⁶

- (b) In accordance with section 6 of the RMA, the Projects will recognise and provide for various matters of national importance, while others will be avoided by the Project;⁹⁷
- (c) In accordance with section 7 of the RMA, the Projects have had particular regard and appropriately respond to the matters identified in section 7, including kaitiakitanga, the efficient use and development of resources and the maintenance and enhancement of amenity values;⁹⁸ and
- (d) With regard to section 8 of the RMA, clauses 31(2) and 33(6) of the CRA, state that a panel must apply section 6 of the CRA instead of section 8 of the RMA, which is discussed further below. However, for completeness and following advice received from the Environment Protection Agency as part of KiwiRail's Papakura to Pukekōhe Rail Electrification application, the AEE also assesses the Project against section 8 of the RMA. This relationship between KiwiRail and mana whenua will continue to develop and mature as the Projects are designed and constructed and further engagement continues.⁹⁹

3.50 When considering the regional and local benefits of the Projects alongside the measures proposed to avoid, remedy or mitigate potential adverse effects, it is concluded that the Projects are in accordance with the purpose and principles of the RMA.¹⁰⁰

Te Tiriti o Waitangi principles and applicable Treaty settlements

3.51 Section 6 of the CRA provides that in achieving the purpose of the CRA, all persons performing functions and exercising powers under it must act in a manner that is consistent with the principles of the Treaty of Waitangi and with any applicable Treaty settlements.¹⁰¹

⁹⁶ AEE at 20.1.1.

⁹⁷ AEE at 20.1.2.

⁹⁸ AEE at 20.1.3.

⁹⁹ See in particular, condition 13 of the proposed designation conditions for Drury Central and Paerata, which provides for a Manawhenua Engagement Forum. Further input from Manawhenua is provided in other various parts of the proposed designation conditions including in relation to the ULDM (condition 12).

¹⁰⁰ AEE at 20.1.5.

¹⁰¹ COVID-19 Recovery (Fast-Track Consenting) Act 2020, section 6.

- 3.52 As noted by the Panel in the recent decision on the Matawii application, the CRA does not contain a list of Treaty principles. However, these principles have been developed through case law, which indicates that the principles likely include active protection, good faith consultation and communication, and a spirit of partnership.¹⁰²
- 3.53 In the spirit of partnership, Te Tupu Ngātahi, on behalf of KiwiRail, has been working with local mana whenua through monthly hui, which commenced mid-2019. These hui provided an opportunity for presenting information and identifying areas of concern for mana whenua, to aid in making informed decisions on matters that affect mana whenua interests. KiwiRail is committed to undertaking consultation in good faith and will continue to do so on an ongoing basis.¹⁰³ In recognising the duty to actively protect mana whenua interests and taonga, identifying these aspects and how these areas should be managed has been a major part of the engagement process, and has been assessed through the CIAs.
- 3.54 KiwiRail has also assessed the Projects against the relevant Treaty Settlement documents.¹⁰⁴ The Project team did not identify any redress in these settlement documents which affects natural and physical resources relevant to the Drury Central and Paerata Station Projects or Project Areas.¹⁰⁵ However, the Projects are within statutory acknowledgement areas recognised in the Ngāti Tamaoho Claims Settlement Act 2018, being the Hingaia Stream Statutory Acknowledgment Area in the case of Drury Central Station, and the Whangapouri Stream Statutory Acknowledgement Area in the case of Paerata Station. The potential impacts of the Projects on these areas are described in the AEE,¹⁰⁶ and KiwiRail acknowledges the importance of enhancing and maintaining these environments, particularly as it relates to water quality.
- 3.55 Through the commissioning of CIAs from mana whenua, the Project team has been provided with an improved understanding of the area's cultural values, history and mana whenua aspirations. As a result of the CIAs and

¹⁰² Decision of the Expert Consenting Panel concerning the Matawii Water Storage Reservoir, issued 27 October 2020 at [109].

¹⁰³ AEE at 20.1.4.

¹⁰⁴ AEE at 20.3.

¹⁰⁵ COVID-19 Recovery (Fast-Track Consenting) Act 2020, sch 6, cl 9(i) requires consent applications to identify relevant provisions in Treaty settlements and a summary of any redress provided by those settlements that affects natural and physical resource relevant to the project or project area. See also sch 6, cl 13(e) which contains the same requirement in relation to NoRs.

¹⁰⁶ Refer Chapter 10 (Drury Central) and Chapter 17 (Paerata).

ongoing hui, KiwiRail will continue to involve mana whenua in the planning, design and construction of the Project.

Other matters relevant to the Panel's consideration of the NoRs

Reasonably necessary for achieving KiwiRail's objectives

3.56 The CRA requires a panel to have regard to whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority.¹⁰⁷ The AEE describes KiwiRail's objectives¹⁰⁸ and explains why the work and designation are reasonably necessary for achieving KiwiRail's objectives. At a high level, the objectives draw a clear link between the Projects and the wider strategic objectives. Enabling access to the railway (and by extension rail services) by means of stations is one of the ways in which future growth and urbanisation can be supported and enabled, and sustainable transport mode choices for future growth areas can be provided.¹⁰⁹

3.57 In considering the reasonable necessity of the works proposed, KiwiRail has given serious consideration to the size/extent of the area required for construction and operation of the Projects. The spatial extent of the Projects has been directly informed by the objectives, noting the following matters in particular:¹¹⁰

- (a) The proposed platforms will be located on the NIMT and designed to provide safe access to the railway and railway services. They will be sized to allow for projected future growth and expansion in demand from urbanisation (ie by future-proofing for a 225m platform length and a four-platform layout) (relevant to all of the Project Objectives);
- (b) The sizing of the transport interchange facilities (ie park-n-ride, bus interchange, bicycle parking etc) has been derived from considering the foreseeable demands on access to the stations by different transport modes. In this way, safe access to the railway can be ensured, and mode choice can be improved by maximising access to rail services (relevant to all of the Project Objectives);

¹⁰⁷ COVID-19 Recovery (Fast-track Consenting) Act 2020, sch 6, cl 13(g) and 33(2)(c).

¹⁰⁸ The full wording of the Projects objectives are set out in 6.1 and 13.1 of the AEE.

¹⁰⁹ AEE at 20.6.

¹¹⁰ AEE at 20.6.1.

- (c) The accessways have been designed to integrate with the existing road network, and have been sized to meet the foreseeable demands for access to the stations (relevant to Project Objectives (a) and (b)); and
- (d) The spatial extent of these Projects has also sought to allow for the construction, operation and maintenance of these Projects through allowances for construction yard and laydown areas, earthworks, and stormwater infrastructure within the designation boundaries. In some discrete areas, the spatial extent of the designation boundary allows for ecological offsets to be undertaken for each station.

3.58 The analysis provided in the AEE confirms that the Projects, as proposed, are reasonably necessary to give effect to KiwiRail's objectives for the Projects.¹¹¹

Consideration of alternative sites, routes or methods

3.59 The CRA also requires a panel to have regard to whether adequate consideration has been given to alternative sites, routes or methods of undertaking the work.¹¹² This is similar to the requirement under section 171(1)(b) of the RMA, which also requires a decision-maker to make this evaluation. In making that evaluation, RMA case law has determined the following relevant principles:¹¹³

- (a) The focus is on the process, not the outcome: whether the requiring authority has made sufficient investigations of alternatives to satisfy itself of the alternative proposed, rather than acting arbitrarily, or giving only cursory consideration to alternatives. Adequate consideration does not mean exhaustive or meticulous consideration;
- (b) The question is not whether the best route, site or method has been chosen, nor whether there are more appropriate routes, sites or methods;

¹¹¹ AEE at 20.6.3.

¹¹² Where the requiring authority does not have an interest in the land sufficient to undertake the work, or it is likely that the work will have a significant adverse effect on the environment: COVID-19 Recovery (Fast-track Consenting) Act 2020, sch 6, cl 13(h) and 33(2)(b). KiwiRail does not currently have an interest in all of the land needed to undertake the work, so an adequate consideration of alternative sites, routes and methods is required.

¹¹³ *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project*, Ministry for the Environment, Board of Inquiry, 4 September 2009 at [177] and cited with approval in *Pukekohe East Community Society Incorporated v Auckland Council* [2017] NZEnvC 027, at [21].

- (c) That there may be routes, sites or methods which may be considered by some (including submitters) to be more suitable is irrelevant;
- (d) The RMA does not entrust to the decision maker the policy function of deciding the most suitable site, route or method; the executive responsibility for selecting that site route or method remains with the requiring authority;
- (e) The RMA does not require every alternative, however speculative, to have been fully considered; the requiring authority is not required to eliminate speculative or suppositious options.

3.60 KiwiRail submits that these considerations are also relevant to the Panel's evaluation of alternatives under the CRA. The Alternatives Assessment Report attached as Appendix A to the AEE contains a full evaluation of alternative sites, routes and methods that has been undertaken in relation to the Projects. It summarises the methods used to identify and assess alternatives for each station, and identifies the range of alternatives considered. It also details the reasons that the preferred sites, routes and methods were chosen over other options, and in doing so, demonstrates that adequate consideration has been given to these matters.

3.61 In light of the detailed consideration of alternatives, as described in the Alternatives Assessment Report, KiwiRail considers that adequate consideration has been given to alternative sites, routes and methods, as required under the CRA.

4. CONDITIONS

4.1 The CRA sets out that a panel may grant a resource consent subject to the conditions it considers appropriate.¹¹⁴ The CRA requirements are that a panel must:

- (a) have regard to all comments received via the CRA process on the draft conditions;¹¹⁵ and
- (b) not have regard to trade competition or the effect of trade competition.¹¹⁶

¹¹⁴ COVID-19 Recovery (Fast-track Consenting) Act 2020, sch 6, cl 35(2).

¹¹⁵ COVID-19 Recovery (Fast-track Consenting) Act 2020, sch 6, cl 36(5).

¹¹⁶ COVID-19 Recovery (Fast-track Consenting) Act 2020, sch 6, cl 31(5) and cl 33(1).

- 4.2 Section 108 of the RMA remains relevant to the conditions of consents granted under the CRA, by virtue of clause 35(3) of the CRA. When imposing conditions under section 108, the Newbury principles¹¹⁷ are a key consideration for decision-makers, and conditions cannot be imposed that frustrate or effectively nullify the grant of a consent.¹¹⁸
- 4.3 The CRA also provides that a panel may confirm a requirement but impose conditions on it as the panel thinks fit.¹¹⁹ The intent of the CRA is to urgently kick-start New Zealand's economic and social recovery from the COVID-19 pandemic. It follows that any conditions imposed should be appropriate, practical and actionable to allow the construction of approved CRA projects to begin promptly following grant of consent or confirmation of the requirement.
- 4.4 KiwiRail has prepared an extensive set of proposed conditions, as set out in Appendix C to the AEE. These conditions have been drafted and developed over time, with input and engagement from mana whenua (including a peer review of the proposed conditions) and other key stakeholders. These conditions are appropriate and will adequately avoid, remedy and mitigate the adverse effects of the Projects on the environment so that they are effectively managed. The conditions that have been proposed provide for the full-build out of the Projects, in accordance with the effects envelope identified in the various technical reports supporting the application.

Management Plans

- 4.5 The conditions employ the use of management plans to ensure that effects are appropriately managed throughout the duration of the Projects. The use of management plans is specifically contemplated within the CRA, which provides that the information submitted with an application must be provided in sufficient detail to correspond to the scale and significance of the effects of the activity.¹²⁰ A management plan comprehensively fulfils this obligation.

¹¹⁷ *Newbury DC v Secretary of State for the Environment* [1981] AC 578. The Newbury tests are that the condition must be for a resource management purpose, not for an ulterior one; the condition must fairly and reasonably relate to the development authorised by the consent to which the condition is attached; the condition must not be so unreasonable that no reasonable planning authority duly appreciating its statutory duties could have approved it.

¹¹⁸ *Richmond v Kapiti Coast DC* [2016] NZEnvC 1.

¹¹⁹ COVID-19 Recovery (Fast-track Consenting) Act 2020, sch 6, cl 33(5).

¹²⁰ COVID-19 Recovery (Fast-track Consenting) Act 2020, sch 6, cl 14(1).

- 4.6 The management plans proposed for inclusion in the conditions have been prepared in light of the decision in Te Ara Tupua. Through that decision, the Panel identified that the key tenets of a "fit for purpose" management plan condition are:¹²¹
- (a) a requirement to prepare it by suitably qualified personnel;
 - (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.
- 4.7 The conditions proposed by KiwiRail achieve these tenets. The conditions contain clear objectives and performance management requirements to ensure these objectives are met.¹²² The conditions include a certification process for specific management plans including their amendment.¹²³ Once certified the conditions require compliance with the most recent version of the management plan prepared.¹²⁴
- 4.8 Management plans are considered to be an appropriate approach for these Projects, which will be constructed and operate within a dynamic and changing environment, in light of the future development anticipated in the area, the interface it has with a number of other projects in the area, and wider improvements to the rail corridor. Utilising management plans to identify and mitigate potential adverse effects will ensure that workable solutions to address these potential impacts are identified, in light of the environment existing at the time.

5. CONCLUSIONS

- 5.1 The Projects provide for the construction, operation and maintenance of the Drury Central and Paerata Station Projects, which will provide important rail facilities in an area where significant growth areas have been identified. The

¹²¹ Decision of the Expert Consenting Panel concerning the Te Ara Tupua - Ngā Ūranga Ki Pito–One - Shared Path, issued 5 February 2021 at [265].

¹²² For example, see Appendix C, proposed condition 6 (Construction Environmental Plan) and condition 7 (Construction Traffic Management Plan) of the Paerata and Drury Central designation conditions.

¹²³ See Appendix C, proposed condition 5 of the Paerata and Drury Central designation conditions, and proposed condition 4 of the Paerata and Drury Central resource consent conditions, which sets out the general management plan process.

¹²⁴ See Appendix C, proposed condition 5(e) of the Paerata and Drury Central designation conditions, and proposed condition 4(j) of the Paerata and Drury Central resource consent conditions.

Projects will provide improved public transport services to service this planned growth over the coming decades, ensuring that infrastructure is in place prior to the completion of this planned urbanisation. In addition to servicing this growth, the Projects represent an opportunity to support New Zealand's recovery from the economic and social effects of COVID-19.

- 5.2 The Projects will have a number of positive effects and any potential adverse effects arising from construction or operation of the Projects can be appropriately mitigated. The Projects are not inconsistent with the relevant national policy statements, national environmental standards, AUP, Treaty principles or Treaty settlements. KiwiRail has proposed a suite of appropriate and reasonable conditions which promotes Part 2 of the RMA and the purpose of the CRA, while appropriately avoiding, remedying and mitigating adverse effects.

DATED 29 September 2021