

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

Decision No. [2021] NZEnvC 130

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

IN THE MATTER of the proposed direct referral of a
Notice of Requirement to alter
Designation 2501 and of an originating
application under sections 281 and 291
RMA for waivers and directions

CITY RAIL LINK LIMITED (CRRL)

(ENV-2021-AKL-107)

BETWEEN

Appellant

AUCKLAND COUNCIL

Regulatory Authority

AND

Court: Alternate Environment Judge L J Newhook

Counsel: A J L Beatson and S M Cooper

Date of Decision: 16 August 2021

Date of Issue: 30 August 2021

**DECISION ON *EX PARTE* NOTICE OF MOTION BY CITY RAIL
LINK LIMITED UNDER ss 281 and 291 RMA FOR WAIVERS AND
DIRECTIONS**

A: Waivers granted on anticipatory basis as applied for.



B: Directions given on anticipatory basis as applied for, with leave granted to parties to later amend same in case of exigencies arising.

REASONS

Introduction

[1] On 25 June 2021 CRRL lodged with Auckland Council a Notice of Requirement (**NoR**) to alter Designation 2501 in order to enable use of the Britomart Transport Centre as a site to support construction activities in adjoining 2500-1, agreed by the council to be referred directly to this Court for determination.

[2] CRLL applied pursuant to sections 281 and 291 RMA for various anticipatory waivers and directions. Broadly, the proposed waivers and directions were intended to:

- a) Simplify the process of filing section 274 notices;
- b) Facilitate electronic case management of the NoR generally;
- c) In view of CRLL's need for a decision on the NoR by December 2021, confirm dates for a pre-hearing conference, mediation, and expert conferencing in advance; and
- d) Require Council and CRLL to provide notice of the relevant waivers and directions and potential timetable through to a hearing in the Environment Court to submitters, and therefore potential section 274 parties, at the earliest possible opportunity.

Proposed Waivers and Directions and Grounds for same

[3] CRLL sought, on an anticipatory basis, the following waivers and directions in respect of the foreshadowed direct referral application. CRLL relied on the specific grounds below and the grounds appearing in the accompanying supporting memorandum of counsel dated 12 August 2021.

Waivers and directions to facilitate electronic case management and simplify section 274 processes, upon direct referral

[4] CRLI sought the following waivers and directions:

- a) A waiver of the usual requirement to lodge a signed original and one copy of any section 274 notice with the Court, and a direction instead that submitters may, as an alternative to complying with the usual requirements of section 274 and Form 33 in that regard, be allowed to file an electronic copy (i.e. by email) of any section 274 notices with the Court, which may be signed or unsigned, in which case no hard copy need be filed with the Court.
- b) For those submitters who decide to file a hard copy of their section 274 notices with the Court, a waiver of the usual requirement to file an extra copy of the notice.
- c) A direction that otherwise all section 274 notices meet the requirements of section 274 of the RMA, including the requirement in subsection (3)(b) to state “whether the person supports or opposes the proceedings and the reasons for that support or opposition”.
- d) A direction that, unless hard copies are subsequently specifically required to be filed or served by the Court, all other documents relating to the NoR filed by any party may be:
 - i) Filed electronically with the Court by email.
 - ii) Served electronically on CRLI and/or Council, as appropriate, by email at the following email addresses:

	Applicant (CRLI)	Council
By Email	Richard.Jenkins@cityrailink.govt.nz Andrew.Beatson@bellgully.com Simone.Cooper@bellgully.com	unitaryplan@aucklandcouncil.govt.nz
By Post	City Rail Link Limited PO Box 9681 Newmarket Auckland 1149	Auckland Council Level 24 135 Albert St Auckland Central

[5] The above waivers and directions are sought on the following grounds:

- a) The above waivers and directions are intended to simplify the process of filing section 274 notices and to facilitate electronic case management, reducing the burden for submitters.
- b) As an additional environmental benefit, the waivers and directions sought in paragraph 5 above would minimise the quantities of paper which would otherwise be generated by strict compliance with section 274 and Form 33.
- c) It is anticipated that the waivers and directions proposed at paragraph 5 above will generally assist in addressing potential logistical complications that may otherwise arise for the Court and all parties, particularly around filing and service of documents.

Directions relating to initial case management steps, following direct referral, and to ensure early notice of Court's waivers and directions to all submitters (and potential section 274 parties)

[6] CRLI sought the following directions:

- a) A direction that Agreed Statements of Issues are to be filed and exchanged (with no requirement for pre-exchange of ‘will say statements’) by 21 September 2021 (five working days before mediation).
- b) A direction that a pre-hearing conference be scheduled for Friday 24 September 2021 (two working days following the close of the section 274 period).
- c) A direction that two days be allocated for Court-assisted mediation on and Tuesday 28 and Wednesday 29 September 2021.
- d) A direction that Court-facilitated expert conferencing be scheduled for Monday 4 October 2021.
- e) A direction that the draft timetable **attached** to this Notice of Motion (**Draft Timetable**) be provided to submitters in accordance with subparagraph (f) below, as a tentative indication of the timetable through to hearing in mid-November 2021 (subject to further discussion at the pre-hearing conference).
- f) The following directions to ensure early notice is provided to submitters, and therefore potential section 274 parties, of the waivers and directions and the Draft Timetable:
 - i) Council to provide a copy of this Court's decision containing the relevant waivers and directions and Draft Timetable to submitters when it serves its section 198D report on submitters under section 198D(5)(b) of the RMA.
 - ii) CRLI likewise required to provide a copy of this Court's decision containing the relevant waivers and directions and Draft Timetable to submitters when it serves its notice of motion for direct referral on submitters under section 198E(2)(b)(ii) of the RMA.

[7] The above directions were sought on the following grounds:

- a) There is a high level of public interest in the City Rail Link project (the **CRL**) as a critical transport project to address Auckland's transport demands. It is submitted that this public interest extends to ensuring that the regulatory processes for delivery of the CRL and related works are advanced as expeditiously as possible, without of course any substantive predetermination.
- b) Construction timeframes are extremely tight. In order to achieve these, and the benefits of the alteration, a decision on the alteration is required by December 2021.
- c) Background:
 - i) CRL lodged a request with Council under section 198B of the RMA to allow the requirement to be directly referred to the Environment Court for determination on 25 June 2021 (i.e. contemporaneously with the NoR). Council approved that request under section 198C on 23 July 2021.
 - ii) The NoR was publicly notified for submissions on 13 July 2021. Submissions closed on 10 August 2021 and five (5) submissions were received.
 - iii) The NoR is presently being processed by Council in accordance with section 198D of the RMA. Council is endeavouring to complete the reporting required by section 198D by 31 August 2021.
 - iv) It is anticipated that CRL will lodge a notice of motion and supporting affidavit for direct referral of the NoR with the Court on the next working day, 1 September 2021, and serve the direct referral notice of motion and affidavit on submitters and Council as soon as is reasonably practicable thereafter.

- v) On this basis, the section 274 period for submitters to join the Court proceedings would end on 22 September 2021.
- d) Based on the above, there is approximately three and a half months available for the direct referral consenting process (including the Court's deliberations).
- e) In light of the significant time constraints, CRLI considered it highly desirable that the dates for certain key case management steps, namely for a pre-hearing conference, mediation, and expert witness conferencing, be confirmed by the Court in advance, and communicated by the Council and CRLI to submitters/potential section 274 parties at the earliest possible stage.
- f) Council has already written to the categories of persons identified in regulation 10 of the Resource Management (Forms, Fees, and Procedures) Regulations 2003, foreshadowing the potential timetable dates (at a high level) to those persons.
- g) The proposed directions above are intended to ensure early notice is given of the relevant dates (and the proposed waivers and directions generally). Both Council and CRLI would be required to serve a copy of this Court's decision setting out the waivers and directions and a copy of the Draft Timetable on all submitters (the former when serving a copy of the section 198D report, the latter when serving the direct referral application under section 198E).
- h) Provided that the pre-hearing conference, mediation and expert conferencing dates are clearly communicated to potential section 274 parties well in advance in the manner proposed, no parties should hopefully be unduly prejudiced by the proposed directions. For instance, assuming the Court's decision is served by Council on or very shortly after 31 August 2021, and by CRLI on or very shortly after 1

September 2021, submitters / potential section 274 parties would have approximately three weeks' notice of the pre- hearing conference.

[8] The draft timetable is attached as **A**.

Jurisdiction

[9] The Court has previously held that it has jurisdiction to make these kinds of waiver and direction on an anticipatory basis. Rather than repeat the reasons for those findings, reference is simply made to *Re Auckland Council*¹ and *Panuku Development Limited v Auckland Council*².

Waivers and directions

[10] The Court is aware that parties yet to join proceedings that themselves are not yet extant may need to raise the possibility of changes to the waivers and directions. Subject to leave granted to parties to apply for changes for good cause, the Court grants the applications for waivers and directions in the terms applied for above.

[11] In addition, the council is to publish this decision including the draft timetable to its website.



L J Newhook

Alternate Environment Judge



¹ [2016] NZEnvC 153.

² [2018] NZEnvC 067.

APPENDIX A

Draft Timetable

Lodge NoR and Request for Direct Referral	25 June 2021
Public Notification of NoR	13 July 2021 (12 wd from lodgement)
Council Decision on Request for Direct Referral	23 July 2021 (8 wd from public notification)
Submissions Close	10 August 2021 (20 wd from public notification)
Application for Anticipatory Waivers and Directions	12 August 2021
Preparation of Council Report	31 August 2021 (15 wd from submission close)
Notice of motion filed with Environment Court	1 September 2021 (next working day)
Initial Common Bundle of Documents	13 September 2021
Agreed Statements of Issues (rather than will say statements)	21 September 2021 (5 wd before mediation)
Close of Interested Party / s 274 Period	22 September 2021 (15 wd from notice of motion)

Pre-Hearing Conference	24 September 2021 (2 wd from s 274 close)
Mediation	28 and 29 September 2021 (2 wd from pre-hearing conference)
Expert Conference (facilitated by Court)	4 October 2021 (1 wd from statements of issues)
Applicant Exchange of Evidence (together with copies of any documents referred to that are not in the initial Common Bundle of Documents) AND Applicant's Evidence Filed in Court, together with Joint Witness Statements (soft copy only)	11 October 2021 (5 wd from expert conference)
Section 274 Party and Council Exchange of Evidence (together with copies of any documents referred to that are not in the initial Common Bundle of Documents) AND Section 274 Party / Council Evidence Filed in Court (soft copy only)	26 October 2021 (10 wd from Applicant's evidence, accounting for Labour Day)
Updated Common Bundle of Documents (soft copy only) (incorporating any additional documents supplied with evidence)	2 November 2021 (5 wd from s 274 and Council evidence)

Rebuttal Evidence Exchanged (all parties) AND Rebuttal Evidence Filed in Court (soft copy only)	9 November 2021 (5 wd from common bundle)
Hard Copies of All Evidence and Common Bundle of Documents Filed in Court	10 November 2021 (1 wd from rebuttal evidence)
Hearing	15-17 November 2021 (3 wd from hard copy evidence)
Indicative Decision Date	22 December 2021 (25 wd from close of hearing)

