

Direct Referral Process

City Rail Link Limited has lodged a request with Auckland Council pursuant to section 198B of the Resource Management Act 1991 (RMA) to allow the NoR to be directly referred to the Environment Court for determination under section 198E of the RMA. The direct referral process is a streamlined procedure under the RMA, which allows the requiring authority (CRL) to make a request to the Council that the notified NoR be decided by the Environment Court (instead of a recommendation by the Council and a decision by the requiring authority).

The reasons for the request are as follows:

- (a) The Resource Management (Simplifying and Streamlining) Amendment Act 2009 (the Amendment Act) introduced this alternative method for processing a notice of requirement to address the duplication of process, costs, and time delays as a result of applications going through the Council hearing process and then being heard again de novo in the Environment Court.
- (b) There is a reasonable risk that the NoR will be appealed to the Environment Court for the following reasons:
 - (i) Adjoining stakeholders consider that they have experienced significant disruption, inconvenience and additional cost (including loss of business) as a result of CRL construction works being undertaken at Britomart since 2016. An additional two years of construction related activity in the vicinity of Station Plaza, with construction traffic operating in an already constrained area, is generally considered undesirable by adjoining stakeholders.
 - (ii) Adjoining stakeholders accordingly have a preference that alternative sites are identified for the Works, particularly for the delivery of concrete.
- (c) The construction of CRL involves significant costs for CRL, while the NoR carries significant potential savings of time and cost. Given the scale of the costs and benefits for ratepayers and taxpayers, the need for certainty around this decision-making process is critical.
- (d) Given the extensive public interest in the CRL project, it would be beneficial for all parties to have a streamlined decision-making process that enables a decision to be made by the Environment Court that is final, subject to any appeals on points of law to the High Court.
- (e) CRL anticipates that direct referral will significantly reduce the duration of the consenting process, benefiting both CRL as Applicant and all interested parties:
 - (i) CRL's alteration seeks to expedite construction within CRL Designation 1. In order to meet construction timeframes and achieve the benefits of the alteration a decision on the alteration is required by December 2021. This timeframe is unlikely to be achievable if a two-stage process is followed.
 - (ii) CRL has been in discussion with key stakeholders, namely Auckland Transport as the requiring authority for earlier Designation 1556, the operator of the BTC, and the road controlling authority responsible for public transport (bus) services in relation to adjoining roads affected by the Works, Cooper and Company as a party with substantial landholdings and commercial interests within the Britomart Precinct, and owners and occupants of properties directly

adjoining the northern side of Tyler Street (148 Quay Street, 152 Quay Street and Endeans Building at 2 Queen Street).

- (iii) CRL anticipates that these stakeholders are likely to benefit from direct referral (and Court assisted mediation in particular) as a means of efficiently resolving any outstanding issues they may have with the proposed alteration. In particular, CRL notes that Auckland Transport itself previously utilised direct referral for alteration of a CRL designation in order to accommodate design changes at Mount Eden Station.
- (iv) CRL is continuing to engage with Auckland Transport, Cooper and Company, and the above neighbouring owners and occupiers to Station Plaza. CRL expects that rational stakeholders who are interested in minimising the extent of disruption and expediting the conclusion of CRL-related works, including in the Britomart area, would be supportive of direct referral as a means of efficiently addressing their concerns, particularly if direct referral provides an opportunity for Court-directed mediation.
- (f) Costs for CRL and submitters/interested parties will likely be reduced if they are only required to participate in a one stage hearing process.
- (g) CRL considers it is appropriate for the Environment Court to consider and determine the NoR for the following further reasons:
 - (i) CRL anticipates that there will be evidence provided by experts on a number of technical matters. The Environment Court has experience with large, complex projects of a highly technical nature, and its Commissioners have appropriate expertise in specific technical areas;
 - (ii) Council and its independent experts will be able to provide input through the reporting process; and
 - (iii) The ability of the Environment Court to direct Court-assisted mediation and provide for expert conferencing will potentially narrow and focus contested issues for determination.

The Council is considering CRL's request for direct referral of the NoR, and a decision is likely to be made shortly. If the request is accepted, then the Council is required to prepare a report on the NoR. This report must address the planning issues relevant to the NoR, suggest conditions that should be imposed if the Environment Court decides to confirm the NoR, and provide a summary of written submissions received by the Council. The Council would aim to complete its report by the end of August or early September 2021. A copy of the Council's report would be sent to CRL and to all submitters.

What are the key dates for the proposed Environment Court process?

The Council and CRL have received feedback from the Environment Court on a proposed timetable for direct referral of the NoR. Please take note of the following indicative case management dates:

- A Pre-Hearing Conference is planned for late September 2021;
- Mediation is planned for late September or early October; and
- Court-assisted expert witness conferencing is planned for early October 2021.

These approximate dates may apply if the NoR is directly referred to the Court. The Environment Court has also tentatively approved a draft timetable through to a potential hearing for mid-November 2021.

The Council will provide updates as to process and how you can be involved as this matter progresses.

The Ministry for the Environment has published an information sheet about the direct referral process, which is helpful to submitters, it can be found here:

<https://environment.govt.nz/assets/Publications/Files/direct-referral-guide-for-submitters.pdf>