

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2021] NZEnvC 174

IN THE MATTER OF a direct referral of a notice of requirement to alter Designation 2501 under s198E of the Resource Management Act 1991

BETWEEN

CITY RAIL LINK LIMITED

(ENV-2021-AKL-107)

Applicant

AND

AUCKLAND COUNCIL

Regulatory Authority

Court: Alternate Environment Judge L J Newhook
Environment Commissioner R Dunlop
Last case event: 11 October 2021
Date of Determination: 8 November 2021
Date of Issue: 8 November 2021

DETERMINATION

A: Designation 2501 is altered subject to the amendments set out in Appendix 1 to this determination.

B: There is no order as to costs under s285 RMA.



REASONS

Introduction

[1] On 25 June 2021 CRRL lodged a Notice of Requirement (**NoR**) with Auckland Council 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, it was agreed by the Council that the NoR be referred directly to this Court for determination.

[2] Five submissions were received on the NoR. The following submitters joined the matter under s 274 of the Act:

- (a) Auckland Transport;
- (b) Body Corporate 095035;
- (c) Body Corporate 107678; and
- (d) Cooper and Company Limited.

The parties' agreement

[3] Following Court assisted mediation on 28-29 September and 4 October 2021, the parties reached an agreement that will resolve this matter. The key changes agreed to the Council's section 198D report were summarised in the memorandum of the parties dated 11 October 2021.

[4] These changes include:

- (a) Concrete delivery manoeuvres

Concrete deliveries and other major deliveries using trucks of the same size are now proposed to occur exclusively through a front-in, front-out manoeuvre from Commerce Street, into Tyler Street and then into the Station Plaza site compound. All reversing of concrete trucks and other

major delivery trucks of the same size will be within the Station Plaza site compound.

(b) Concrete delivery split

Condition 1W(a)(i) requires that the Construction Environmental Management Plan (**CEMP**) be updated to expressly describe how concrete delivery for Stage I will be maximised from the City Rail Link Aotea construction site to achieve at least 50% of concrete delivery from that site. Other consequential amendments have also been made to the CEMP

(c) Completion date for “the Works”

The completion date for “the Works” that are the subject of the NOR remains as 20 December 2023, as proposed in Council's section 1980 report. However, a process has been added for the completion date to be extended where completion is delayed as a result of Alert Level 3 or 4 Covid-19 restrictions or an “Unforeseen Event”. This process includes consultation with the section 274 parties and certification by Council.

(d) Traffic management within Tyler Street

The Construction Traffic Management Plan (CTMP) condition has been updated to clarify and strengthen traffic management for the Works, particularly as it relates to Tyler Street.

(e) Construction support activity in Galway Street

A new condition 5W is proposed, which expressly confirms that construction support activities associated with “the Works” will be significantly more limited in Galway Street than in Tyler Street, being restricted to initial establishment, maintenance and disestablishment of

the site compound and Station Plaza Accommodation building, and reinstatement of Station Plaza

(f) Construction traffic in the balance of the Britomart Precinct

New Condition 6W provides that various construction traffic movements associated with “the Works” shall not use the balance of the streets in the Britomart Precinct

New condition 15W also provides that CRLI shall at all times in carrying out “the Works” use its best endeavours to achieve the amenity and operational outcomes stated in the Development Deed for the Britomart Precinct between Cooper and Company Limited and Auckland Council.

(g) Monitoring and enforcement

A new Condition 7W is proposed, and Conditions 9W and 10W have been updated to strengthen the monitoring and enforcement obligations associated with “the Works”. Condition 71N provides for advance notice of concrete delivery to the Adjacent Properties, and amended Condition 9W provides for an identified contact person authorised to provide immediate responses to complaints regarding to be made available 24 hours, seven days a week for the duration of “the Works”.

(h) Noise

While the proposed noise limits remain the same, proposed Condition 13W has been amended to introduce the concept of a “BPO trigger”, which is lower than the specified noise limits and which shall be the trigger for implementation of the BPO in the Construction Noise Management Plan (**CNMP**). New Condition 14W outlines a reporting and certification process with Council where the BPO trigger is exceeded.

[5] The parties also requested that the Court confirm that an outline plan of works need not be submitted for the “the Works” on the basis that sufficient details of “the Works” are now incorporated into Designation 2501.

Determination

[6] In making this determination the Court has read and considered:

- (a) City Rail Link Limited’s Notice of Requirement to Alter Designation 2501, including the Form 18 and Assessment of Environmental Effects dated 25 June 2021;
- (b) Auckland Council’s report on the NoR under section 198D(5) of the Act dated 31 August 2021;
- (c) The five submissions received by Auckland Council in response to the NoR;
- (d) The four section 274 notices filed in this proceeding; and
- (e) The joint memorandum of counsel in support of the resolution dated 11 October 2021, including the attachments to the joint memorandum.

[7] The Court also understands that all parties are satisfied that the relief sought is within the Court’s jurisdiction and satisfies the relevant requirements and objectives of:

- (a) Section 171 of the Act;
- (b) Section 198E(6) of the Act, including the Court’s jurisdiction under 198E(6)(c) to waive the requirement for an outline plan under section 176A; and
- (c) The purposes and principles of Part 2 of the Act.

[8] In circumstances in which there was a robust and successful mediation producing an outcome fully agreed by all parties, I hold that there is no need for the Court to conduct a hearing.

[9] Therefore, the Court orders, by consent, that:

- (a) Designation 2501 shall be amended as set out in **Appendix 1** to this Determination.
- (b) City Rail Link Limited does not need to submit an outline plan for “the Works” to Auckland Council because sufficient details of “the Works” are incorporated into Designation 2501 in terms of section 176A(2)(b) and (3) of the Resource Management Act 1991.

[10] There is no order as to costs.



L J Newhook
Alternate Environment Judge



Appendix 1

Insertions/amendments are in **bold** and underlined.

Amending the purpose of the designation as follows:

This designation provides for the construction, operation and maintenance of a transport centre and the provision of a rail system **(including the Works)**. The centre comprises an underground Railway Station, attendant facilities and public access to the station through the main portal of the former CPO and at other access points. Above-ground features of the centre include the glazed annex to the CPO building, a series of skylights, ventilation stacks and other servicing plant and equipment

Insert after the blue heading “Conditions”:

The Works conditions

The following conditions apply to the Works.

DEFINITION

The Works

Construction support works to enable construction in adjoining City Rail Link Designation 2500-1, including site office, worker accommodation and storage of materials in the Station Plaza Accommodation, receiving and pumping concrete from the Britomart Transport Centre into the Designation 2500-1 tunnels, establishing and operating ventilation equipment in Station Plaza, and providing access for workers and delivery of materials to the Designation 2500-1 tunnels via the Glasshouse and former Chief Post Office.

Adjacent Properties

Endeans Building and 152 Quay Street on Tyler Street and the Barrington and Sofrana Buildings on Galway Street.

Unforeseen Event

Means an event or circumstance beyond the reasonable control of the Requiring Authority which by the exercise of due care, skill and diligence the Requiring Authority is not able to prevent or overcome and which prevents the Requiring Authority from completing the Works by 20 December 2023, and shall include the following events or circumstances where such requirements are met:

- (a) **fire, landslide, earthquake, lightning, storm, flood, volcanic eruption, tsunami or tempest;**
- (b) **a strike, lock-out or labour dispute; or**
- (c) **an act of terrorism, sabotage, blockade, insurrection, riot, civil disturbance or epidemic.**

CONDITIONS

Condition 1W

The Works shall be undertaken in general accordance with the information provided by the Requiring Authority in the Notice of Requirement being:

- (a) **CRL Notice of Requirement for Alteration of BTC Designation 2501 – 25 June 2021, including:**
 - (i) **Construction Support Activities at Station Plaza – Britomart: Construction Environmental Management Plan, prepared by Aurecon New Zealand Limited: Document reference CRL-BTM-RME-000-RTP-0002, dated 7 October 2021. The Construction Environmental Management Plan describes how delivery of concrete for Stage 1 will be maximised from the CRL Aotea construction site to achieve at least 50% of concrete delivery from the Aotea construction site**

- (ii) City Rail Link: Britomart Transport Centre: Construction Traffic Management Plan, prepared by Flow Transportation Specialists Ltd: Document reference R2A210621, dated 25 June 2021
- (iii) CRL BTC Designation Alteration: Construction Noise Management Plan, prepared by Marshall Day Acoustics: Document reference RP002 20210287, dated 1 October 2021
- (iv) Britomart C7 Works Ventilation Management Plan, Revision A00, dated 22 January 2021

Where there is inconsistency between the documents provided by the Requiring Authority listed above and the requirements of these conditions, these conditions shall prevail.

Condition 1Wa

Concrete truck deliveries and other major deliveries made using 4-axle trucks of 8.1m or less shall be in general accordance with ATCR007-D001-Britomart NOR CTMP Concrete Truck Tracking, dated 4 October 2021.

Condition 2W

The Works shall be completed by 20 December 2023, unless completion is delayed as a result of Covid-19 restrictions or an Unforeseen Event, in which case the Works shall be completed on the new date as certified by Auckland Council following the process set out in the balance of this Condition 2W below.

In the event that completion has been delayed as a result of Level 3 and/or Level 4 Covid-19 restrictions or an Unforeseen Event, the Requiring Authority shall provide Auckland Council a report for certification within 15 working days of the end of Alert Level 3 Covid-19 restrictions (for Covid-19 lockdown restrictions) or the date of the Requiring Authority's knowledge of the an Unforeseen Event that includes (as a minimum):

- (a) Confirmation of the new anticipated completion date of the Works.
- (b) Details of the activities delayed, likely effects on receivers associated with those activities, and any proposed additional mitigation of those effects.
- (c) Evidence that feedback has been sought on matters detailed in Condition 2W(a) and (b) and details of any feedback received from:
 - (i) Auckland Council
 - (ii) Cooper and Company Limited
 - (iii) Auckland Transport
 - (iv) Body Corporate 107678 (152 Quay Street)
 - (v) Body Corporate 095035 (Endeans Building)

The report shall be deemed certified when the Requiring Authority has received written confirmation from Council.

Condition 3W

The concrete truck movements and pumping activities associated with the Works shall be undertaken within the hours of 6.30am to 10.30pm Monday to Friday and 7am to 10.30pm Saturday.

Construction Traffic Management Plan (CTMP)

Condition 4W

A Construction Traffic Management Plan (CTMP) shall be prepared, implemented and complied with for the duration of the Works. The objective of the CTMP is to provide a framework for the

avoidance and mitigation of construction traffic effects on the following (in no particular order of priority):

- (a) **The safe movement of pedestrians.**
- (b) **The operation of public transport services.**
- (c) **Emergency service vehicle access.**
- (d) **Access to Adjacent Properties.**
- (e) **General traffic including deliveries.**

To achieve the objective, the CTMP shall include details of the following:

- (f) **A maximum length of 15m of the existing loading bay on the southern side of Tyler Street, immediately adjacent to the Glasshouse, shall be available to the public for loading at all times for the duration of the Works.**
- (g) **Subject to intermittent disruption permitted under sub-clause (j), how vehicle access to Adjacent Properties shall be maintained for the duration of the Works. Measures shall include (but not be limited to) the provision of a general traffic lane of at least 3.0m wide along the northern side of the construction zone on Tyler Street between lower Queen Street and Commerce Street.**
- (h) **How safe pedestrian access on the northern side of Tyler Street between lower Queen Street and Commerce Street that maintains access to public transport and adjacent sites shall be provided for the duration of the Works. This shall include but not be limited to the provision of a 1.5m wide pedestrian access on the northern side of Tyler Street between lower Queen Street and Commerce Street.**
- (i) **How the existing pedestrian access to Britomart Station, through the Chief Post Office building, shall be maintained.**
- (j) **How vehicle movements associated with the Works (including but not limited to concrete delivery) will be managed in a safe and efficient manner. Measures shall include (but not be limited to):**
 - (i) **Vehicles undertaking major deliveries associated with the Works shall not reverse into Tyler Street at any time, unless otherwise agreed with the Auckland Transport corridor access team prior in accordance with Condition 4W(k) and following consultation with the Adjacent Properties.**
 - (ii) **The timing of concrete delivery shall be coordinated to provide for the safety of and minimise impact on the efficient operation of Commerce Street and Tyler Street, and the movement of pedestrians and all modes of transport on Commerce Street and Tyler Street with priority given to pedestrians and public transport, essential movements including emergency services and access to properties, and lastly private car travel (being extraneous through traffic on Commerce Street).**
 - (iii) **There shall be no more than one concrete truck in the Station Plaza site compound at any one time.**
 - (iv) **There shall be no more than one concrete truck in the Tyler Street concrete truck waiting area at any one time. The time spent in the waiting area shall be minimised to the extent practicable.**
 - (v) **The identification of any required remote waiting locations for concrete trucks waiting to access Tyler Street.**

- (vi) All heavy vehicle movement to and from the site shall be restricted to occurring via Quay Street (east of Commerce Street) and the intersection of Commerce Street and Quay Street.
 - (vii) Vehicle access to the lower Queen Street frontage of 2 Queen Street (Endeans Building) via Tyler Street, as provided for in the Pedestrian Mall Declaration [Resolution 16376A dated 11 June 2021] and the Draft Operational Strategy and Management Plan for Te Komititanga shall be maintained at all times where practicable for the duration of the Works. If this vehicle access cannot be achieved via Tyler Street, access to lower Queen Street via Galway Street shall be provided for.
 - (viii) The use of Tyler Street (between Commerce Street and Lower Queen Street, excluding the area subject to Pedestrian Mall Declaration [Resolution 16376A dated 11 June 2021]) is to be prohibited for any vehicle not heading to or from properties within Tyler Street (including the Endeans Building and 152 Quay Street), or for access to the Station Plaza site compound, or any other essential purpose, for the duration of the concrete deliveries. This is to be achieved by temporary traffic controls within Tyler Street (from immediately west of the intersection with Commerce Street). The measures within Tyler Street are to enable the safe manoeuvring of trucks entering and exiting the site, and to maintain safety of pedestrians and vehicles, and may include but not be limited to, restrictions on car parking, and the location of loading areas.
 - (ix) The restriction of vehicle traffic associated with workers travelling to the site, other than for the temporary purposes of delivery of construction equipment or materials that cannot be readily transported on foot.
 - (x) Non-concrete truck major deliveries shall be scheduled so that they are not undertaken simultaneously with concrete truck deliveries.
 - (xi) Construction, contractor or delivery vehicles associated with the Works shall not use the 152 Quay Street carpark on Tyler Street for parking or turning purposes.
 - (xii) Traffic movements at the intersection of Tyler Street and Commerce Street associated with the Works shall be managed to ensure the safe and efficient movement of traffic turning in and out of Tyler Street.
- (k) Where a change in traffic management from that assessed is a requirement of the Temporary Traffic Management Plan (TTMP), then the CTMP shall be reviewed and updated as necessary following consultation with Adjacent Properties and provided to Auckland Council for certification ten working days prior to Works commencing.

The CTMP shall be provided to Auckland Council for certification at least ten working days prior to the commencement of the Works. The CTMP (and any amendments to the CTMP) shall be deemed certified when the Requiring Authority has received written confirmation from Council.

Advice note

Should removal of on street parking be required to enable provision of a general traffic lane and pedestrian access on the northern side of Tyler Street and accommodate truck manoeuvring in Tyler Street, the Requiring Authority will need to initiate formal removal of these spaces with Auckland Transport prior.

Condition 5W

No construction support activities comprising the Works (including construction vehicle traffic and parking, delivery of concrete, or delivery of other materials and equipment) shall be undertaken within Galway Street (between Commerce Street and Lower Queen Street), except for the following:

- (a) Activities (including delivery of equipment and materials) required for initial establishment, maintenance, and disestablishment of the site compound and construction support facilities within Station Plaza and the Station Plaza Accommodation building, including establishment, maintenance, and disestablishment of the ventilation fans at the southern side of the Glasshouse and deconstruction of the Station Plaza Accommodation building; and
- (b) Activities required for the reinstatement of Station Plaza in accordance with Condition 8W.

The proposed methodology, timing and duration of the activities provided for in (a) and (b) shall be discussed and agreed with Cooper and Company Limited prior to commencement of those activities.

Advice Note

The final paragraph of Condition 5W is an *Augier* condition. The Requiring Authority and Cooper and Company Limited intend that the details of the obligation encapsulated in the final paragraph in this condition will be set out in a side agreement.

Condition 6W

Within the Britomart Precinct, construction traffic associated with the Works shall not use Gore Street or Tyler and Galway Streets (between Commerce Street and Britomart place). Concrete trucks and other heavy goods vehicles (being vehicles with a gross vehicle mass exceeding 12 tonnes) associated with the Works shall not use Britomart Place.

Condition 7W

A minimum of 5 working days' advance notice shall be given to the Adjacent Properties of the intention to commence concrete delivery for each of the Stage 1 and Stage 2 deliveries. The notice shall include:

- (a) The intended start and completion dates for the Stage;
- (b) The expected total number of concrete trucks and the maximum number per day for the Stage;
- (c) The hours of operation for the Stage;
- (d) Any measures to be adopted for the Stage to ensure continued access to Adjacent Properties is maintained at all times;
- (e) A contact number in addition to the person specified at Condition 9W who can be contacted by Adjacent Properties to address any issues of access at short notice.

Condition 8W

Notwithstanding Condition 3.2 of the Project conditions, the Station Plaza Accommodation building shall be retained following completion of the Project in order to enable the Works (and any other contemporaneous works permitted under this designation).

The Station Plaza Accommodation building shall be removed within three months of completion of the Works. The Station Plaza shall be reinstated in accordance with Conditions 33B.1(b) and 33B.4 of the Project conditions.

Condition 9W

The Requiring Authority shall make an identified contact person available 24 hours, seven days a week for the duration of the Works for public enquiries and complaints regarding the Works, and who is authorised to provide immediate responses to complaints regarding non-compliance with the Works conditions and/or management plans, including in relation to access to Adjacent Properties or access to Lower Queen Street in accordance with Condition 4W(j)(vii). Contact

details shall be provided in the Construction Environmental Management Plan (CEMP) described in Condition 1W.

Condition 10W

In addition to Condition 9W, upon receiving a concern or complaint during the Works, the Requiring Authority shall instigate the process to address concerns or complaints received about adverse effects or non-compliance, as set out in the CEMP described in Condition 1W and shall include:

- (a) Identify the nature of the concern or complaint, and the location, date and time of the alleged event(s).
- (b) Acknowledge receipt of the concern or complaint within 24 hours of receipt
- (c) Respond to the concern or complaint, which may include monitoring of the activity by a suitably qualified expert and implementation of mitigation measures

A record of all concerns and / or complaints received shall be kept by the Requiring Authority. This record shall include:

- (d) The name and address of the person(s) who raised the concern or complaint (unless they elect not to provide this) and details of the concern or complaint.
- (e) Where practicable, weather conditions at the time of the concern or complaint, including wind direction and cloud cover if the complaint relates to noise or air quality.
- (f) Known CRL construction activities at the time and in the vicinity of the concern or complaint.
- (g) Any other activities in the area unrelated to the CRL construction that may have contributed to the concern or complaint such as construction, fires, traffic accidents or unusually dusty conditions generally.
- (h) Remedial actions undertaken (if any) and the outcome of these, including monitoring of the activity.

This record shall be maintained on site, be available for inspection upon request, and shall be provided every two months (or as otherwise agreed) to the Auckland Council Consent Monitoring officer.

Where a complaint remains unresolved or a dispute arises, the Auckland Council Compliance Monitoring Officer will be provided with all records of the complaint and how it has been dealt with and addressed and whether the Requiring Authority considers that any other steps to resolve the complaint are required.

Condition 11W

The Requiring Authority shall utilise the existing CRL mana whenua forum for the purpose of undertaking kaitiakitanga responsibilities associated with the Works, including monitoring, assisting with discovery procedures, and providing mātauranga Māori input.

The mana whenua forum may provide written advice to the Requiring Authority in relation to any of the above matters. The Requiring Authority must consider this advice and the means by which any suggestions may be incorporated in the Works.

Condition 12W

The ventilation fans installed at Station Plaza located as shown in figure 2.1 of the *Constructability Report*, prepared by *Link Alliance*, dated, 25/6/21, shall be fitted with noise abatement measures as specified in the report *Britomart C7 Works Ventilation Management Plan, Revision A00*, dated 22/1/2021, prepared by *Link Alliance*. The ventilation noise abatement measures shall remain in place while the ventilation fans are operational.

Condition 13W

The noise level arising from the Works shall not exceed the noise limits in the following table. The BPO in the CNMP shall be implemented if the BPO trigger in the following table is exceeded.

<u>Receiver</u>	<u>Noise limit for concrete pumping</u>	<u>Noise limit for ventilation fans</u>	<u>Any other activity associated with the Works</u>
<u>2 Queen Street (Edeans Building)</u>	<u>75dB LAeq and 90dB LAFmax</u> <u>BPO trigger: 70dB LAeq and 85dB LAFmax</u>	<u>60dB LAeq</u> <u>BPO trigger: 45dB LAeq</u>	<u>Rule E25.6.28 of the Auckland Unitary Plan: Operative in Part applies</u>
<u>152 Quay Street</u>	<u>75dB LAeq and 90dB LAFmax</u> <u>BPO trigger: 73dB LAeq and 85dB LAFmax</u>		
<u>148 Quay Street</u>	<u>80dB LAeq and 95dB LAFmax</u> <u>BPO trigger: 75dB LAeq and 90dB LAFmax</u>		
<u>8 Customs St East</u>	<u>75dB LAeq and 90dB LAFmax</u> <u>BPO trigger: 70dB LAeq and 85dB LAFmax</u>		
<u>13-17 Galway Street / 10 Customs St East (Barrington and Sofrana Buildings)</u>	<u>75dB LAeq and 90dB LAFmax</u> <u>BPO trigger: 70dB LAeq and 85dB LAFmax</u>		
<u>Footpath outside Barrington and Sofrana Buildings</u>	<u>75dB LAeq and 90dB LAFmax</u> <u>BPO trigger: 50dB LAeq and 65 dB LAFmax</u>		
<u>2 Commerce Street</u>	<u>75dB LAeq and 90dB LAFmax</u> <u>BPO trigger: 70dB LAeq and 85dB LAFmax</u>		
<u>25 Galway Street</u>	<u>75dB LAeq and 90dB LAFmax</u> <u>BPO trigger: 70dB LAeq and 85dB LAFmax</u>		

<u>Footpath outside 33 Tyler Street (Ortolana Restaurant façade)</u>	<u>75dB LAeq and 90dB LAFmax</u> <u>BPO trigger: 50dB LAeq and 65 dB LAFmax</u>		
<u>Any other receiver</u>	<u>Rule E25.6.28 of the Auckland Unitary Plan: Operative in Part applies.</u>		

Noise levels shall be measured and assessed in accordance with the requirements of Rule E25.6.1 of the Auckland Unitary Plan: Operative in Part.

Condition 14W

The Requiring Authority shall adopt the BPO where the BPO trigger(s) in Condition 13W are exceeded. Where the BPO trigger(s) in Condition 13W cannot practicably be achieved, the Requiring Authority shall not exceed the noise limit(s) in Condition 13W and will prepare a construction noise schedule that sets out:

- (a) how long the BPO trigger(s) will be exceeded;
- (b) evidence that feedback has been sought and details of any feedback received from receivers affected by the BPO trigger exceedance as determined by the CNMP;
- (c) how the BPO will be applied to achieve the BPO trigger(s) as soon as practicable.

The schedule shall be provided to the Auckland Council noise monitoring officer for certification within ten working days of identification of exceedance of the relevant BPO trigger(s). The schedule shall be deemed certified when the Requiring Authority has received written confirmation from Council. The Works shall thereafter be carried out in general accordance with the certified construction noise schedule.

Condition 15W

In carrying out the Works, CRLL shall at all times use its best endeavours to achieve the amenity and operational outcomes stated in the Development Deed for the Britomart Precinct between Cooper and Company Limited and Auckland Council.

Advice Note

This is an *Augier* condition. The Requiring Authority and Cooper and Company Limited intend that the details of the obligation encapsulated in this condition will be set out in a side agreement.

The Project conditions