

Under the Resource Management Act 1991
And in the matter of a request under Section 198B

Between

City Rail Link Limited

Applicant

and

Auckland Council

Territorial Authority

**Request that requirement for alteration of Designation
2501 be determined by the Environment Court**

25 June 2021

BELL GULLY

BARRISTERS AND SOLICITORS

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To Auckland Council

1. City Rail Link Limited (**CRL**) requests that Auckland Council (**Council**) allow the following requirement lodged by CRL to be the subject of a decision by the Environment Court instead of a recommendation by Council and a decision by CRL:
 - (a) A requirement under section 181 (other than a notice to which section 181(3) applies) for an alteration to a designation to which section 168 applied.
2. This request relates to the Notice of Requirement given by CRL to Council to alter Designation 2501 (**BTC Designation**) (the **NoR**).
3. The NoR was lodged with Council on 25 June 2021 (i.e. contemporaneously with this request).

NoR to alter the BTC Designation

4. CRL as requiring authority holds seven designations under the Auckland Unitary Plan (Operative in Part), which together enable it to construct the City Rail Link (**CRL**), a critical transport project to address transport demand in Auckland as the city's population continues to increase. These designations include:
 - (a) The BTC Designation, which provides for the construction, operation and maintenance of the Britomart Transport Centre (**BTC**) and the provision of a rail system; and
 - (b) Designation 2500-1 (**CRL Designation 1**), which enables the construction of two new railway tunnels and the Aotea Station between the BTC and Albert Street/Mayoral Drive.
5. CRL is proposing to alter the BTC Designation to enable the retention of the Station Plaza Accommodation (**SPA**) building at Britomart, so that the building and surrounding Station Plaza area can be used as a construction support facility for works in the CRL tunnels located within the adjoining CRL Designation 1 to the west.

6. In summary, the construction support activity proposed to be undertaken under this NoR is:
- (a) Site office, worker accommodation, and some storage of materials within the SPA building;
 - (b) Establishing and operating ventilation equipment in the Station Plaza area (to provide ventilation for workers in the CRL tunnels to the west);
 - (c) Access for workers and deliveries of equipment and materials via the Glasshouse and former Chief Post Office (**CPO**) building; and
 - (d) Receiving and pumping concrete into the CRL tunnels (to construct the railway track bed) from the Station Plaza area alongside Tyler Street,
- (together, the **Works**).
7. For completeness, CRL notes that the BTC Designation to which the NoR relates is a duplicate of Auckland Transport's Designation 1556 in all respects.¹ CRL is currently seeking Auckland Transport's consent pursuant to section 177 of the RMA in respect of this underlying Designation.

Request for Direct Referral to the Environment Court

8. CRL requests that the NoR is referred directly to the Environment Court for consideration.
9. 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

¹ Auckland Transport was the requiring authority for the CRL designations prior to the advent of CRL. Designation 2501 was confirmed in 2018, authorising CRL as the requiring authority with financial responsibility for CRL construction at the BTC.

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) CRLI 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) CRLI 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, CRLI 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) CRLI is continuing to engage with Auckland Transport, Cooper and Company, and the above neighbouring owners and occupiers to Station Plaza. CRLI 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 CRLI 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.

10. Granting the request would achieve the outcomes intended by the Amendment Act by reducing the duplication of process, time delays and costs by avoiding a two stage process.

11. In all of the circumstances direct referral is the most appropriate way to consider and determine the NoR.



A J L Beatson / S M Cooper
Counsel for City Rail Link Limited
25 June 2021

This document is filed by Andrew J L Beatson, of Bell Gully, solicitor for the applicant. The address for service of the applicant is Level 22, Vero Centre, 48 Shortland Street, Auckland.

Documents for service on the applicant may be left at that address or may be:

- (a) posted to the solicitor at PO Box 4199, Auckland; or

(b) emailed to the solicitor provided that the email is less than 25MB and sent to both andrew.beatson@bellgully.com and simone.cooper@bellgully.com.

Documents served on the applicant should be marked for the attention of S M Cooper.

The telephone number for the applicant is 09 916 8800.