

Recommendation following the hearing of a Notice of Requirement under the Resource Management Act 1991



Proposal

A Notice of Requirement for the alteration to existing Designation 6302 - to develop, operate and maintain railways, railway lines, railway infrastructure and railway premises as defined in the Railways Act 2005

This Notice of Requirement is recommended to be **CONFIRMED**, subject to conditions. The reasons are set out below.

Application Numbers:	Designation 6302
Site Address:	North Island Main Trunk Railway Line
Requiring Authority:	KiwiRail
Hearing Panel:	Peter Reaburn David Wren Nigel Mark-Brown
Appearances:	<p><u>For the Applicant:</u> KiwiRail represented by: Lauren Rapley, Legal Counsel (Russell McVeagh) Alice Gilbert, Legal Counsel (Russell McVeagh) Timothy Hegarty, Planning Brent Lancaster, Corporate Craig Fitzgerald, Noise and Vibration Andrew Prosser, Transport</p> <p><u>For the Submitters:</u> Watercare Services Limited represented by: Lindsay Wilson, Policy Planner Rachel Abraham, (Simpson Grierson) Tim Barry, Service Delivery Manager (Watercare)</p> <p>Counties Manukau District Health Board (CMDHB) represented by: Paula Brosnahan (Chapman Tripp) Pooja Upadhyay (Chapman Tripp) Mike Nixon (transport) Jon Styles (noise and vibration) Bryce Julyan (planning)</p>

	<p>Alan Greenslade (Corporate) Brujen Holdings Limited represented by Craig McGarr</p> <p>Accident Compensation Corporation represented by: James Tait (JTA) Mandeep Singh (Wilson Parking – NZ Operations Manager) Ian Purdy</p> <p>Auckland Transport represented by Kevin Wong-Toi</p> <p><u>For Council:</u> Craig Cairncross, Team Leader Vanessa Leddra, Planner Wes Edwards Arrive Ltd, Transport Consultant Andrew Gordon, Acoustic/Vibration Specialist Gavin Donaldson, Tree and Vegetation Specialist Bevan Donovan, Hearings Advisor</p>
Commissioners' Site Visit	Thursday 24 June 2021
Hearing Commenced	Tuesday 13 July 2021, through to Wednesday 14 July 2021
Hearing Adjourned:	14 July 2021
Hearing Recommended:	Friday 3 December 2021, and Tuesday 7 December 2021
Hearing Closed:	20 January 2022

Abbreviations

ACC	Accident Compensation Corporation
AEE	Notice of Requirement and Assessment of Environmental Effects for KiwiRail Holdings Ltd, Wiri to Quay Park project, dated September 2020, Jacobs
AT	Auckland Transport
AUP	Auckland Unitary Plan [Operative in Part]
BPO	Best Practicable Option
DHB	Counties Manukau District Health Board
NoR	Notice of Requirement
OPW	Outline Plan of Works
Middlemore	The Middlemore Hospital (east and west campuses) and surrounding residential areas
Middlemore station	The Middlemore railway station
RMA	Resource Management Act 1991 and all amendments
the council	Auckland Council

W2QP	Wiri to Quay Park project
NIMT	North Island Main Trunk Railway
CTMP	Construction and Traffic Management Plan
NES:CS	National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011
SWMP	Storm Water Management Plan
TA	Transport Assessment
CNVMP	Construction Noise and Vibration Management Plan
ESCP	Erosion and Sediment Control Plan
SMP	Site Management Plan
SCA	Special Character Area

INTRODUCTION

1. This recommendation is made on behalf of the Auckland Council by Independent Hearing Commissioners Peter Reaburn, David Wren and Nigel Mark-Brown appointed and acting under delegated authority in accordance with sections 34 and 34A of the Resource Management Act 1991. This recommendation contains the findings from our deliberations on notice of requirement and has been prepared in accordance with section 113 of the RMA.
2. Pursuant to section 168 of the RMA, KiwiRail, as the requiring authority, has lodged a NoR for an alteration to Designation 6302 in the AUP, more particularly to support the delivery of works associated with the Wiri to Quay Park project.
3. The NoR was limited notified on 22 October 2020 with submissions closing on 20 November 2020. Six submissions were received, from:
 - Auckland Transport
 - Watercare
 - Counties Manukau District Health Board
 - B Herring and JL Herring (Brujen)
 - Accident Compensation Corporation
 - New Zealand Transport Agency Waka Kotahi [NZTA]
4. This recommendations report assesses the NoR under section 171 of the RMA. It addresses the issues raised in the submissions and contains our recommendations to the requiring authority, KiwiRail under section 171(2) of the RMA.

SUMMARY OF THE PROPOSAL

5. The proposal as notified was explained in the Council officer's s42A report prepared by Vanessa Leddra (section 2.2), and in the submitted AEE. In brief the proposal, or the project, is to provide for the construction of a third track (known as the third main) for the NIMT, including: -
- Installation of a new 3.6 km track between Middlemore Station and Wiri Junction;
 - An upgraded Middlemore Station, including an extension of an existing pedestrian bridge and the provision of a 6-car platform (with provision for a future 9-car platform);
 - Reorganisation of car parking at Middlemore Hospital to address physical severance;
 - Installation of above ground rail infrastructure including overhead lines and their support poles along the length of the corridor;
 - The construction of retaining walls to stabilise railway cuttings mostly at Papatoetoe Station at the western edge of the corridor at the rear of the Station Rd properties;
 - Utility relocations and stormwater infrastructure.
6. Most of the physical works required for the third main line will be located within the existing designation. The NoR also seeks to designate an area of land which forms part of the outer northbound track that runs below State Highway 20 at Wiri but does not currently show as being designated.
7. The NoR was modified through the hearing, although the fundamental elements as outlined above remained.

RELEVANT STATUTORY PROVISIONS CONSIDERED

8. KiwiRail is a Requiring Authority in terms of s166 of the Act.
9. Section 171 of the RMA sets out the matters to which a territorial authority must have regard when considering a requirement and any submissions received, and in making its recommendations to the requiring authority. Section 171 is subject to Part 2, which states the purpose and principles of the RMA.
10. Section 171(1) of the RMA states:
- (1) *When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—*
- (a) *any relevant provisions of—*
- (i) *a national policy statement:*
 - (ii) *a New Zealand coastal policy statement:*

- (iii) *a regional policy statement or proposed regional policy statement:(iv) a plan or proposed plan; and*
 - (b) *whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—*
 - (i) *the requiring authority does not have an interest in the land sufficient for undertaking the work; or*
 - (ii) *it is likely that the work will have a significant adverse effect on the environment; and*
 - (c) *whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and*
 - (d) *any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.*
11. After considering these matters, the council needs to make a recommendation to the requiring authority under section 171(2) of the RMA which states:
- (2) *The territorial authority may recommend to the requiring authority that it –*
 - (a) *confirm the requirement:*
 - (b) *modify the requirement:*
 - (c) *impose conditions:*
 - (d) *withdraw the requirement.*

Reasons must be given for the recommendation under section 171(3) of the RMA

PROCEDURAL MATTERS

12. The NoR was limited notified. Submissions had been received from Kāinga Ora and Heritage New Zealand Pouhere Taonga but had not been considered as these persons were not considered to be affected parties under the limited notified process. We received no advice that these submitter parties have contested the conclusion reached by the Council that they have no standing and accordingly have not considered these submissions.

ADJOURNMENT

13. At the commencement of the second day of hearing (14 July 2021) the Panel was addressed by KiwiRail's counsel, Ms Rapley. KiwiRail sought that the Panel allow time for KiwiRail to address outstanding concerns that had been raised through the hearing. This confirmed the Panel's own view that further information and clarification was required, including in relation to issues that arose in respect of 100 Hospital Road (the Counties Manukau District Health Board Middlemore Hospital site). The areas the Panel wished to see addressed were subsequently confirmed in the Panel's Direction #2. Amongst other matters, the noise and vibration experts were directed to convene and produce Joint Witness Statements relating to construction and operational noise and vibration. The Panel agreed to KiwiRail's request that the hearing be adjourned, with the indicated recommencement date being the week of 30 August 2021. KiwiRail then requested two further adjournments due to the impacts of Covid-19 alert levels and to enable further engagement with relevant submitter parties. Prior to the reconvened hearing KiwiRail submitted further information, including a modified NoR. KiwiRail's counsel advised that agreement had not been reached with all parties on all matters. Accordingly, in its Direction #6, the Panel directed, pursuant to Section 41C of the RMA, that the order of proceeding at the hearing would be the presentation of further information by KiwiRail and its witnesses followed by any response to the further information by submitters and by Council. The Panel agreed that KiwiRail's counsel would provide written closing submissions within two weeks of the reconvened hearing. The reconvened hearing was conducted on-line on 3 December and 7 December 2021. Closing submissions with some of the further information requested in the Panel's Direction #7 were received on 21 December 2021. Following consideration of the material provided, the Panel closed the hearing on 20 January 2022.

MODIFIED NoR

14. The NoR as notified comprised temporary (2.45ha) and permanent (1.15ha) occupation requirements.
15. KiwiRail modified the NoR in the further information provided prior to the hearing reconvening after the adjournment period. As will be further detailed below, a number of modifications were proposed, the net result being modified areas of temporary (2.53ha) and permanent (0.5ha) occupation requirements. Not all of the modifications had been agreed to by submitters, notably the Counties Manukau District Health Board (Middlemore Hospital site) and B Herring and JL Herring (Brujen – 12 Wyllie Road). There was also the matter of whether other parties, not already involved, were affected by the modifications.
16. It was accordingly necessary for the Panel to consider whether the modifications proposed raised any procedural issues. At the Panel's request, that matter was addressed in KiwiRail's closing submissions¹. The matter was also addressed in

¹ Part 4 of KiwiRail's closing submissions dated 21 December 2021

submissions given at the adjourned hearing on behalf of the Counties Manukau District Health Board². The Panel has carefully considered the submissions and other evidence relating to procedural issues.

17. The Panel notes that, while the spatial extent of the NoR has changed for some affected landowners, in all but three locations the modifications to the NoR are to reduce the footprint of the NoR. Of those three locations only one involved a site that had not drawn a submission on the NoR. In respect of that site, 17 Station Road, we were advised that the NoR footprint had been amended to enable the demolition of a rear garage at the site, as agreed with the landowner³.
18. In respect of modifications affecting 100 Hospital Road and 12 Wyllie Road, there were clearly outstanding concerns on the part of, respectively, Counties Manukau District Health Board and Brujen, who were submitters. Both of those parties indicated concerns that they had not been fully informed, in the discussions that were held between the parties, of all of the modifications that were finally proposed, and had not had sufficient opportunity to fully consider the implications of those changes. Reservations were also expressed by the expert witnesses about the time that had been available, including to fully consider appropriate conditions.
19. We have reviewed the information and evidence that was supplied by all parties, and on balance find that the information and evidence provided, including at the adjourned hearing, was comprehensive, and in our reading of it, well considered. We consider we have sufficient information and evidence on which to make our recommendations. We record our appreciation of the efforts made by the parties to provide that information and evidence.
20. The Panel finds that there are no other additional affected parties. Particular attention has been given to parties who may have been considered affected by the changes proposed in Orakau Road. In that respect, support that has been given to the modifications by Auckland Transport has been important to the conclusion the Panel has reached in that those modifications can be considered.
21. As there are no procedural obstacles, the modified notice of requirement may be considered on its merits.

SUMMARY OF EVIDENCE

22. Section 113 RMA states that every decision in respect of an application for resource consent that is notified shall be in writing and state *inter alia* a summary of the evidence heard. That is not required for recommendations on NoRs. Be that as it may, we provide a summary of the presentations we received at the hearing for the NoR. We

² Counties Manukau District Health Board's further submissions, dated December 2021

³ Table page 4 of Mr Timothy Hegarty's Planning Memorandum dated 30 November 2021

note, in addition, that the key evidence we received is discussed as part of our findings on the principal issues in contention and, in particular, the evidence that has contributed to, or that is determinative of, the recommendations we have made on the NoR.

23. We include, as part of the summary of evidence, the legal submissions for the parties, given those are a significant part of our considerations. We also summarise relevant evidence from throughout the hearing, albeit with an emphasis on the modified version of the NoR that was presented to us at the adjourned hearing.
24. The Council planner's section 42A RMA report was circulated prior to the hearing and taken as read. The evidence presented at the hearing responded to the issues and concerns identified in the Council planner's report, the NoR and the submissions made on the NoR.

REQUIRING AUTHORITY

25. **Ms Lauren Rapley**, supported by **Ms A E Gilbert**, presented opening legal submissions on behalf of KiwiRail which focussed on the outstanding matters that have arisen either from submitters or the Council officers. Ms Rapley submitted that:
 - (a) In respect of planning provisions, these include alteration and removal of vegetation which is not protected under the AUP. The Council Officer had not provided any reason as to why the permitted baseline should not be applied.
 - (b) In respect of alternative options, KiwiRail had undertaken an adequate assessment of alternatives, including those works relating to Middlemore.
 - (c) The work and proposed alterations were reasonably necessary for achieving the requiring authority's objectives. In terms of the meaning of "reasonably necessary", the courts have held that it falls between "desirable and essential".
 - (d) In respect of to any other matter considered reasonably necessary in order to make a recommendation on the NoR the evidence was that the NoR gives effect to both the Auckland Plan 2050 and the Heritage New Zealand Pouhere Taonga Act.
 - (e) The NoR is consistent with the sustainable management purpose of the RMA and other Part 2 matters.
26. With regard to adverse effects Ms Rapley submitted territorial authorities have the ability to oversee the activities carried out by requiring authorities through the NoR process and then (unless waived, otherwise approved or incorporated into the designation) through an outline plan of works. An outline plan is required to address a variety of matters, including vehicular access, circulation, and the provision for parking, the landscaping proposed, and any other matters to avoid, remedy or mitigate any adverse effects on the environment. Ms Rapley further submitted the scope of the effects' assessment is limited and conditions can only be imposed to address the effects of the alteration.

27. Within this context, Ms Rapley submitted that:
- (a) The evidence was that nearby landowners will be unable to distinguish between construction or operational noise / vibration inside the existing designation and those in the area forming part of the NoR. Imposing a CNVMP as a condition on the designation was unnecessary and would not be an efficient management of resources. The RMA provides a specific outline plan process for works in designations, and the CNVMP can be appropriately addressed via the outline plan process. With particular regard to Middlemore, noise modelling of rail noise at Middlemore Station, inclusive of indicative noise barriers, confirmed these measures will be effective in mitigating the operational noise effects of the Third Main on the western campus, including the Home Health Care Building [Building 38].
 - (b) The potential adverse traffic effects arising from the NoR can be appropriately addressed through a CTMP, and the conditions proposed by KiwiRail. Given that the NoR relates to small sections of a much wider designation, it would be unnecessary to impose this as a condition when it can be managed through the outline plan process.
28. **Mr Brent Lancaster** is KiwiRail's Head of Delivery Management for Major Projects. Mr Lancaster described the Wiri to Quay Park project as being to increase corridor capacity on the NIMT by enabling a third main to be built, and to equip Middlemore Station to accommodate nine-car services (although this would not be before 2024 at Middlemore Station). This NoR specifically related to 'Package 2' of the project and is required to enable construction access and works / or structures associated with the third main.
29. Mr Lancaster said that the project was a response to several pressures facing the NIMT in Auckland, including increased freight movement such as from Ports of Auckland, increased Metro rail passenger services to accommodate commuter demand, and Auckland Council's strategic goals of increasing patronage of public transport services. The current system was capacity constrained, and the project was fundamental to enable Auckland's infrastructure to keep pace with a growing population and presents a more time, cost and energy efficient alternative to reliance on the road network.
30. In his further evidence given after the hearing adjournment, Mr Lancaster summarised modifications that had been made to the NoR as notified after what Mr Lancaster described as being extensive discussions with parties including Brujen, Counties Manukau District Health Board and Auckland Transport.
31. In respect of Brujen and 12 Wyllie Road, Mr Lancaster acknowledged that the proposed use of this site for construction purposes was a key issue for Brujen and

referred to a collaborative discussion regarding the purchase of the 12 Wyllie site, less a retained portion adjacent to Brujen owned rest home.

32. In respect of Middlemore Hospital Mr Lancaster acknowledged the continuing concerns of the Counties Manukau District Health Board which he described as stemming from the master planning that the CMDHB is undertaking for its site, for which he had seen no plans as yet. Mr Lancaster was concerned that the Wiri to Quay Park project cannot wait for the CMDHB's wider master planning process to be completed.
33. In his further evidence Mr Lancaster further clarified that, while the improved resilience being provided by the third main did not necessarily mean an increase in the number of freight trains on the network it was prudent for KiwiRail to plan and expect some incremental growth in the future. He acknowledged the noise experts' view that a floating track would further mitigate vibration, however considered that "the implementation of floating track would make the project totally unviable from a cost perspective".
34. **Mr Craig Fitzgerald** is an Associate at Marshall Day Acoustics. In his original evidence Mr Fitzgerald confirmed that he had limited his rail operations noise and vibration assessment to the effects of rail movements on the Third Main section proposed outside the existing designation at Middlemore Station. Provisions he identified in AUP Chapter E25 were however relevant in respect of both construction and operational noise and vibration. He stated that the project will result in exceedances of the AUP noise and vibration standards for some nearby receivers during construction of the works. To respond to this, he had recommended that BPO measures be implemented through a CNVMP, which he considered would address noise and vibration effects during construction. In respect of operational noise and the Middlemore area in particular, Mr Fitzgerald had undertaken noise modelling which indicated that there were seven buildings that would be eligible for noise mitigation. These included buildings at 52, 54, 60 and 3/64A Rosella Road, 10A and 12 Orakau Road; and the Home Health Care⁴ at Middlemore Hospital). The same buildings, except 3/64A Rosella Road, were predicted to require vibration mitigation.
35. Mr Fitzgerald took part in noise / vibration expert conferencing and was a signatory to JWS #1 – Construction noise and vibration and JWS #2 – Operational rail noise and vibration. In his further evidence at the adjourned hearing Mr Fitzgerald stated that the expert conferencing had in his view significantly narrowed the issues in contention. He stated that there was general agreement between the experts on the modelling assumptions, assessment methods and mitigation approach for both construction and operational noise and vibration. Residual differences related to the operational noise and vibration mitigation trigger levels that should apply. Overall, he supported the revised conditions proposed by KiwiRail. He considered that the noise and vibration effects of the NoR (during both construction and operation) could be mitigated and in

⁴ Referred to in other evidence as "Building 38"

most cases would result in betterment in the receiving environment (i.e. noise and vibration levels were predicted to be lower than they currently are).

36. **Mr Andrew Prosser** is an Executive Transport Advisor for Jacobs New Zealand Limited. His conclusion in relation to the NoR as notified was that the proposed designation alteration would have no noticeable impact on the operational characteristics nor the overall performance of the local transport network. In respect of Middlemore, the creation of an extended station platform would require the relocation of access to the northern car park at Middlemore Hospital to be from 64 Rosella Road. There would be a loss of existing car parks, a reduction Mr Prosser considered to be minor and partially addressed through the reorganisation of other on-site parking areas. What Mr Prosser described as being an extension of Orakau Road – a new turning area within the DHB land, was a “private road extension” off the public road. The existing pedestrian overbridge would be extended over the Third Main with a new platform in a similar position to its current location.
37. Also in his original evidence, Mr Prosser considered adequate provision could be made for access during construction stages, and later maintenance purposes. Due to the gradient of the land at 10 Bridge Street (a steep angle from the property to the rail corridor), this property would not be used as a heavy construction access. At Middlemore, relocation of all northern car park access would be required to enable the station works to be undertaken.
38. In his further evidence at the adjourned hearing Mr Prosser advised that KiwiRail had investigated six alternative design options for the proposed works at Middlemore in order to address the range of concerns raised by the Counties Manukau District Health Board and Auckland Transport in their submissions and evidence. These included variations of accesses off Gray Avenue which were discounted due to the need to provide a new right turn pocket and the impact of this turning facility on an existing bus stop, queued vehicles over the existing raised pedestrian crossing and residential driveways. Multiple alternative accessways were also considered on Orakau Road and these too were considered less favourable to the final revised design as they also required the removal of a larger volume of hospital car parking and also had impacts on the existing multi-storied carpark. Mr Prosser stated that consultation with the Counties Manukau District Health Board and Auckland Transport had led to KiwiRail's revised design.
39. Mr Prosser described the key elements of the revised design as follows⁵:
 - (a) *Relocation of the pedestrian overbridge with access at the end of Orakau Road and the formation of a turnaround head in Orakau Road (previously proposed on CMDHB land). The turnaround head includes a concrete footpath around its periphery to enable pedestrian access to the overbridge and has also been designed to meet AT's standards and to accommodate emergency vehicles and*

⁵ Mr Prosser's Summary Evidence dated 3 December 2021, Paragraph 1.5

a rubbish truck. The extent of this proposed turning head will therefore require the road reserve to extend into CMDHB land which I have calculated to be 135sqm.

- (b) *the new access on Orakau Road will service CMDHB's At-Grade and Multi-Storied carparks. This access will:*
 - (i) *require the removal of 15 At-Grade carparks (on CMDHB land) and 17 on-street public carparks;*
 - (ii) *be controlled by swipe card boom gates for security which is the same system as currently used at the site. The entrance will operate with a dual entry and single exit during the AM (when arrivals outweigh departures) and alternate in the PM to have dual exit and single entry.*
- (c) *The revised design (like earlier designs) also provides access to the Northern Carpark via 64 Rosella Road (as the NoR is severing the existing connection to this carpark). As stated in my earlier evidence, this access can accommodate two vehicles to pass each other (or a vehicle pass a CMDHB staff pedestrian or cyclist), will be limited to CMDHB staff and will be controlled to restrict rail patrons accessing Middlemore Hospital.*

- 40. Mr Prosser further advised that the redesign included 10 new parking spaces on land that KiwiRail owns (64 Rosella Road). Overall, the number of parking spaces lost would be 23, compared to the earlier design 30. A further 17 parking spaces would be lost from Orakau Road.
- 41. Mr Prosser considered that the revised design has no detrimental transport effects and would provide additional benefits in terms of access and pedestrian safety compared to earlier designs.
- 42. **Mr Timothy Hegarty** is an Associate Planner at Jacobs New Zealand Limited. Mr Hegarty considered that the permitted baseline can and should be applied to the NoR. He considered the NIMT to be a critical feature which related directly to both the assessment of the Project's effects and any relief sought or provided.
- 43. In respect of vegetation effects Mr Hegarty noted that the AUP does not provide for any tree protection, with all affected trees being able to be removed or modified as a Permitted Activity. As these trees can be removed as a right, Mr Hegarty considered that these activities form part of the permitted baseline, and these effects should be disregarded in assessing the NoR.
- 44. In respect of historic heritage, Mr Hegarty confirmed that no works are proposed to either the station building or railway cottages. However KiwiRail would obtain an Archaeological Authority from Heritage New Zealand for the sub-surface station remains and any other areas of potential archaeological risk.

45. In respect of cultural values, Mr Hegarty noted a number of initiatives that were planned, including regular hui.
46. At the adjourned hearing Mr Hegarty presented a memorandum dated 30 November 2021 and further evidence dated 6 December 2021. Mr Hegarty summarised KiwiRail's key proposed changes as⁶:
- *the removal of the NoR at 212 Cavendish Drive, 12 Langley Road and Puhinui Station;*
 - *a redesign of the works proposed at Middlemore Station with the relocation of the landing of the Middlemore station pedestrian bridge into Orakau Road, the construction of a turnaround facility in Orakau Road, and the relocation of vehicle access from Orakau Road into 100 Hospital Road with corresponding changes to the NoR to reflect these changes; and*
 - *minor alterations to the NoR's "permanent" and "temporary" footprints at 12 Wyllie Road, the properties at Station Road and 10 Bridge Street.*
47. Mr Hegarty summarised KiwiRail's proposed updated suite of conditions as follows:
- *require a Construction Noise and Vibration Management Plan (CNVMP) and a Construction Traffic Management Plan (CTMP) to provide additional certainty around the mitigation of noise and vibration, and transport effects during construction;*
 - *amend the conditions requiring the installation of noise and vibration mitigation to provide further detail on the standards to be achieved;*
 - *require KiwiRail to prepare a design plan for Middlemore Station to enable stakeholders to provide feedback on the station design prior to its inclusion in the related outline plan of works;*
 - *require access to be provided to the northern carpark for CMDHB via 64 Rosella Road and secure this access by way of a legal instrument until such time as the CMDHB no longer requires this access;*
 - *require KiwiRail to review and uplift the NoR's temporary areas at the completion of W2QP's construction (or until such time it is no longer required for mitigation purposes); and*
 - *amend the proposed condition requiring KiwiRail to prepare a Watercare Utility Protection Plan (in consultation with Watercare Services Limited) to mitigate any effects on their assets.*
48. Mr Hegarty considered the modified NoR would give rise to effects that were similar in their character, intensity, scale and location to those generated by the notified NoR and would will give rise to no more than minor adverse effects on the environment. He considered that NoR will deliver significant positive effects for Auckland – including

⁶ Greater detail is given in Table 1-2 of Mr Hegarty's 30 November 2021 Planning Memorandum

improving rail network resilience and improving accessibility for rail users, and that the NoR was consistent with the relevant planning instruments.

49. **The evidence presented by the submitters is summarised as follows:**

Counties Manukau District Health Board

50. **Ms Paula Brosnahan** provided submissions on behalf of the Counties Manukau District Health Board. At the first stage of the hearing Ms Brosnahan outlined a range of issues CMDHB had with the NoR and submitted that the only reasonable solution was for the NoR to be withdrawn as it related to Middlemore Station. This would provide an opportunity for KiwiRail to carry out sufficient investigation, consultation, analysis and assessment of effects for an adequate NoR to be processed under s171.
51. As detailed above, the hearing was adjourned, at KiwiRail's request, to enable further consultation and investigation to be carried out.
52. Ms Brosnahan presented supplementary legal submissions at the adjourned hearing which responded to the further information provided by KiwiRail. CMDHB acknowledged KiwiRail had adopted some of CMDHB's specific suggestions, however there still remained a number of substantive issues for CMDHB, including⁷:
1. *first and foremost, the lack of time CMDHB has had to consider these new changes and the lack of opportunity given to CMDHB to seek fulsome advice with respect to these;*
 2. *the removal of a number of carparks (both permanently and during construction) from the Hospital Site, which CMDHB considers to be material;*
 3. *the removal of the current vehicle access to CMDHB's multistorey carpark from the end of Orakau Road;*
 4. *the replacement of the current vehicle access along Orakau Road, closer to Grays Ave;*
 5. *the removal of the Hospital's visitor, patient and staff pedestrian access from the western campus, to the eastern campus;*
 6. *the access to Building 38 through 64 Rosella Road as currently proposed;*
 7. *the incorrect effects assessments tests (existing environment) resulting in an inappropriately constrained noise and vibration assessment, and inadequate mitigation;*
 8. *inadequate assessment of all of the effects of the NOR, including the amenity and landscape effects of the proposed noise barrier;*
 9. *procedurally, the significant changes to the proposal at a late stage (including removal of hospital access), which have meant that CMDHB has had insufficient time to appropriately consider the effects; and*
 10. *the inappropriate use of legal mechanisms – the 'temporary' versus 'permanent' designation areas.*

⁷ Supplementary legal submissions on behalf of Counties Manukau District Health Board, Paragraph 17

53. On this basis, Ms Brosnahan submitted that CMDHB continued to strongly oppose the NOR as currently proposed in the vicinity of Middlemore Station and considered it is still inappropriate for confirmation. If, however, the Panel was minded to recommend that the requirement be confirmed, the CMDHB's expert team had proposed amendments to KiwiRail's conditions that went some way to address CMDHB's concerns.
54. **Mr Alan Greenslade** is CMDHB's Director of Infrastructure. He gave an outline of the hospital buildings in the eastern campus (including the Galbraith building) and western campus (including Building 38⁸ and the Home Therapy Dialysis building), and the activities conducted within those buildings. He said that CMDHB did not oppose a new railway line, and even recognised some benefits of one. However, it did not support such development resulting in the permanent removal of the CMDHB's existing and future rights to use its own land for hospital purposes and did not support such development at the cost of the health and safety of its patients and its staff, or at the cost of the safe and efficient provision of critical community and healthcare services at the Hospital Site. In particular, the NoR would permanently hinder the DHB from fully utilising the western campus.
55. **Mr Jon Styles** is a noise and vibration expert from Styles Group. He noted that the KiwiRail assessment of operational noise and vibration effects only assessed the change in effects arising from creating the physical Third Main along the western campus of the Middlemore Site. In contrast, Mr Styles' assessment extended to the effects that would be permitted or facilitated by the NoR, over and above those which are currently permitted under the Existing Designation, which in his experience was the correct approach to determining "effects" under the RMA. His understanding was that the Third Main will enable more trains (including more freight trains), faster trains (from 20km/hr to 80 km/hr for freight trains) and train movements closer to Building 38.
56. **Mr Styles** had undertaken noise and vibration measurements on the foundations of Building 38 and on the corner of the Home Therapy Dialysis building, and vibration monitoring in three areas on floors of the first three levels of the Galbraith Building, all near to its western façade. In respect of vibration this analysis found that freight trains generate significantly more vibration than commuter services. The vibration levels at Building 38 and the Home Therapy Dialysis building were considered by Mr Styles to be excessive given the nature of the operations in these buildings.
57. In respect of operational vibration and noise, Mr Styles considered the effects of the NoR should be controlled to ensure that there is no increase in the noise and vibration effects in the Galbraith Building, and a reduction in noise and vibration effects on the western side of the Middlemore Site. Based on the assumptions he had utilised, Mr Styles predicted that, in the absence of vibration mitigation measures, the vibration increases on the western side of the Middlemore Site will be significant and

⁸ Building 38 contains Whitiora, Home Health Care and Home Therapy Dialysis

incompatible with healthcare activities, residential activities and most commercial activities, and in his opinion, would be unreasonable. The increases in the Galbraith Building would in his view likely be untenable in the absence of any mitigation measures. He also considered that the increase in operational noise levels would be significant, and unreasonable.

58. In respect of construction vibration and noise, Mr Styles outlined levels he considered should not be exceeded if unreasonable disruption to hospital activities was to be avoided. He considered these limits should be set as absolute values, noting that the hospital activities are considerably more sensitive to noise and vibration effects than typical commercial or residential receivers. The CNVMP proposed by KiwiRail would then be used to set out how those limits are achieved. However he considered it would be impracticable to achieve the limits he recommended, particularly in relation to Building 38.
59. Mr Styles took part in noise / vibration expert conferencing and was a signatory to JWS #1 – Construction noise and vibration and JWS #2 – Operational rail noise and vibration. Mr Styles referred to a number of areas where he did not agree with Mr Fitzgerald. We discuss these further under our assessment of the issues.
60. In his supplementary evidence, Mr Styles assessed the future noise and vibration environment, informed by Mr Julyan’s analysis and what Mr Styles referred to as “the reasonably foreseeable future environment”. Under KiwiRail’s proposal, Mr Styles considered that the CMDHB would be liable for significant future costs in mitigating the “much higher” noise levels that would result from the third main. He proposed condition amendments to address this issue. In respect of vibration, Mr Styles referred to the experts agreeing in JWS#2 that installing floating track slab mitigation will generally achieve agreed outcomes (ideally, Class A vibration levels, noting that Class C is referred to in KiwiRail’s proposed conditions), with ballast mat being the next-best mitigation option. Mr Styles was concerned that KiwiRail’s proposed conditions did not achieve a reasonable degree of certainty, and he proposed replacement conditions.
61. With regard to KiwiRail’s proposed construction noise and vibration conditions proposed Mr Styles did not consider that they deliver adequate certainty that the outcomes discussed in JWS#1 will be delivered. He proposed replacement conditions.
62. **Mr Michael Nixon** is a transport expert from Commute. In his original evidence Mr Nixon’s main concern was that the NoR’s permanent designation resulted in a public transport facility being provided on the (private) CMDHB land. This included station stairs, an extension to Orakau Road, pick up and drop off facilities, and the public pedestrian overbridge. He considered an additional pedestrian bridge connecting to Orakau Road would better serve the public travelling between Middlemore Station and the catchment to the west.

63. In his supplementary evidence after the adjournment Mr Nixon acknowledged the changes removing the turning head from within the Hospital site to Orakau Road, and provision of a pedestrian overbridge to Orakau Road, however noted his concern that there was now no direct bridge connection between the hospital campuses. Mr Nixon was concerned about the queuing effects back to Gray Avenue and considered an option that retains hospital vehicle access to the car park at the end of Orakau Road has less significant impacts. He also considered a shared space option on Orakau Road should be required without the need to acquire hospital land. In respect of the loss of carparking spaces, Mr Nixon did not fully agree with the analysis undertaken by Mr Prosser.
64. **Mr Bryce Julyan** is a senior planner from Beca. In his opinion the effects of the NoR that needed to be assessed were the “delta” between what effects could occur under the Existing Designation and what effects could occur if the Alteration is confirmed. He considered KiwiRail had relied on works enabled by the Existing Designation to establish a baseline of effects without acknowledging the potential cumulative effects from construction and/or operational effects that the Alteration will generate. Mr Julyan detailed deficiencies in the information and assessments provided by KiwiRail and considered, to the extent relevant to CMDHB, the NoR and accompanying documentation had failed to provide adequate details to conduct a full and adequate assessment of effects on the Alteration, and/or to consider appropriate mitigation measures. He considered the assessment of alternatives should have considered public access to the station and alternatives for DHB access and reconfiguration of carparks, with the DHB consulted as part of this process. Mr Julyan agreed with Mr Nixon’s concerns about access to the hospital site and loss of carparking and added concerns about sterilisation of CMDHB hospital zone land and inadequacies in the proposed conditions.
65. In addition to the concerns raised by Mr Styles in relation to noise and vibration, Mr Julyan referred to what he described as significant impacts amenity effects on staff and patient amenity, including the loss of green outlook (trees and vegetation currently within the DHB land), potential or perceived safety and security risks for staff, particularly at night and potentially unclear or confused access to hospital facilities resulting in forced rearrangements (e.g. staff and/or patient access to the renal unit).
66. Mr Julyan noted that, while the Outline Plan of Works process provided Council with a mechanism to review the detail of works it did not provide an opportunity for others to comment. He recommended the introduction of a wider mitigation package which holistically responded to the Alteration, in order to effectively mitigate the cumulative impact of the Alteration’s adverse effects. He considered a master plan should be developed prior to any works commencing and agreed between CMDHB and KiwiRail in order to address the interface between the hospital and the railway and any effects of the Alteration. He further considered that the NoR conditions should clearly outline expected outcomes, including with regard to noise and vibration – the Outline Plan of Works would outline how these outcomes were to be achieved. In any case, the

Outline Plan of Works could only relate to works within the designation and could not address works beyond the designation.

67. In his supplementary evidence after the adjournment Mr Julyan reiterated his view that the assessment of effects should include in the existing environment the permitted future environment enabled by the Auckland Unitary Plan. Mr Julyan acknowledged that KiwiRail's revised conditions intended to ensure that KiwiRail is required to provide access to the Hospital's western campus's northern carpark, however he was concerned that details remain unclear or unresolved. In respect of the pedestrian overpass, Mr Julyan was concerned that removal of the existing inter-campus link and its replacement with a less efficient connection would exacerbate health and safety risks for hospital staff, patients and visitors. Mr Julyan agreed with Mr Nixon's concerns regarding access to the hospital site and loss of parking and added concerns about sterilisation of CMDHB hospital zone land and inadequacies in proposed conditions. Mr Julyan did not consider the loss of carrying [??] would be sufficiently compensated by improvements to the rail network.

Brujen Holdings

68. **Mr Craig McGarr** is a planner and resource management consultant with Bentley & Co Limited. He appeared on behalf of the Submitters (Brujen) land holdings at 12 Wyllie Road, Papatoetoe.
69. In his original evidence Mr McGarr raised concerns about inconsistencies in the application drawings which created significant uncertainty for the submitter in terms of the interim and future land use opportunities for their property. This included a concern that no timeframe had been given for the temporary designation and there were no details as to how the temporary designation would be used. He considered there had been no meaningful assessment or response to the matters raised in the Brujen submission in respect of the effects of the substantial removal of THAB zoned land from 12 Wyllie Road, or the resultant implications on the remaining opportunities/constraints on the reduced area and width of the residual land following the land take. Mr McGarr raised further concerns about the need for adequate conditions on the NoR to address construction effects, and operational noise.
70. In his reply evidence after the adjournment Mr McGarr referred to a lack of engagement between KiwiRail and Brujen during the adjournment. This had meant that the approach taken to address the issues that Brujen has raised have not been satisfactorily addressed by the responses provided by KiwiRail. Mr McGarr acknowledged that the extent of land proposed to be permanently taken had been clarified. He considered the length and height of the proposed acoustic wall should correspond to a building envelope provided for by the Terrace House and Apartment Building zoning of the adjacent site at 12 Wyllie Road. He was also concerned that no assessment had been undertaken of the visual/amenity effects of the wall from within 12 Wyllie Road. In respect of the temporary designation area Mr McGarr referred to the absence of a defined timeframe which he considered unreasonably prejudices the

landowner, and creates a planning blight on the site, preventing any development taking place.

Accident Compensation Corporation

71. **Mr James Tait** gave corporate evidence on behalf of the Accident Compensation Corporation which operates the DHB carpark. He considered it necessary that the Corporation should be included in discussions about how to avoid or mitigate the loss of carparking and to ensure continuing operation of the carpark during construction.
72. **Mr Mandeep Singh** also gave evidence on behalf of the Accident Compensation Corporation. Mr Singh described the current operation of the carpark and identified impacts that would arise from the NoR, including a net loss in carparking spaces, access and safety being compromised and traffic flow during peak hours being impacted by the concentration of ingress and egress routes of the carpark. He raised a concern about how adequate management could be secured in respect of the 64 Rosella Road access, including a concern about the limited access width available. Mr Singh was further concerned about effects arising from the loss of land through the construction period and effects on the carpark network infrastructure.

Auckland Transport

73. **Mr Kevin Wong-Toi** is a Principal Planner at Auckland Transport. His original evidence was that Auckland Transport supported the NoR. The s42A report's recommended CTMP condition was broadly consistent with what AT is seeking in terms of the provision of a CTMP, with some amendments including that the CTMP was prepared in consultation with Auckland Transport. In his reply evidence after the adjournment Mr Wong-Toi indicated that the revised Middlemore station design is supported in-principle, subject to further refinement of the design.

Watercare

74. **Mr Tim Barry** is the Service Delivery Manager for Watercare Services Limited. On behalf of Watercare, Mr Barry was concerned that the designation of several sites and proposed works had the potential to adversely affect the operation, maintenance, and appropriate upgrading of the existing water and wastewater service infrastructure through damage as a result of construction activity and / or by preventing Watercare from accessing its assets for routine operation and maintenance purposes. Watercare sought new standalone conditions to ensure regular consultation and engagement with Watercare throughout design and construction stages.
75. After the adjournment, the Panel was provided with a Joint Memorandum of Counsel from KiwiRail and Watercare⁹. Watercare confirmed that a proposed condition in KiwiRail's revised set of conditions fully resolves the matters raised in its submission

⁹ Joint Memorandum of Counsel from KiwiRail and Watercare dated 16 December 2021

and evidence presented to the Panel at the earlier hearing. The Panel has included that condition in its recommendations (Condition 33).

Council

76. The Council's officers/consultants were in attendance and provided comments further to their respective inputs to the section 42A report. At the original hearing Ms Leddra confirmed that her positive recommendation in the s42A report had been based on the assumption that questions she had in her report would be resolved or clarified at the hearing. She considered that had not been the case and that further discussions were necessary.
77. At the conclusion of the adjourned hearing Ms Leddra acknowledged some of the changes that had been made by KiwiRail, however was concerned that there were outstanding issues.

KiwiRail's closing

78. KiwiRail's right of reply was given by Ms Rapley in writing at the reconvened hearing. It was comprehensive in addressing the various issues raised during the hearing. It was submitted that the NoR, including the refinements made, satisfies the legal test in section 171 of the RMA, and should be recommended for confirmation as modified, subject to the conditions proposed by KiwiRail. The submissions addressed:
- (a) benefits of the NoR;
 - (b) engagement undertaken by KiwiRail and further refinements to the NoR footprint;
 - (c) power for the Panel to modify the NoR as now proposed by KiwiRail;
 - (d) level of information required to support a notice of requirement;
 - (e) duration and effect of a designation;
 - (f) key adverse effects and outstanding issues; and
 - (g) KiwiRail's proposed conditions.

ISSUES IN CONTENTION

79. After analysis of the NoR and the evidence (including proposed mitigation measures), undertaking a site visit, reviewing the Council's section 42A report, reviewing the submissions and concluding the hearing process, the proposal raises a number of issues for consideration. The principal issues in contention are:
- 1. Adequacy and Timing of Information
 - 2. Extent to Which the Proposed Modifications Can be Considered
 - 3. Relevant Scope of Effects
 - 4. Permanent vs Temporary Designation Areas
 - 5. Permitted Baseline / Future Environment
 - 6. Noise
 - 7. Vibration
 - 8. Middlemore – 64 Rosella Road

9. Middlemore –Traffic
 10. Middlemore – Parking
 11. Middlemore – Pedestrian Overbridge
 12. Visual Amenity
 13. Other Matters - Vegetation / Trees and Heritage
80. We record that other potential adverse effects were canvassed in the s42A report and the evidence before us. We have considered matters relating to land disturbance, soil contamination, archaeology, natural hazards, housing supply and cultural values. None of these matters were in contention. We further note that mana whenua have indicated to KiwiRail that they would like to be involved in the detailed design of the landscaping around Middlemore Station and the inclusion of cultural elements into the design of the station itself. We were advised that KiwiRail are committed to continuing engagement with mana whenua. Finally, we record the agreement that was reached during the hearing between KiwiRail and Watercare and note that we agree with the condition on which that agreement was based.

FINDINGS IN RELATION TO ISSUES IN CONTENTION

Adequacy and Timing of Information

81. In Paragraphs 14 – 21 we have concluded, from a procedural perspective, that we have sufficient information to enable the NoR to be assessed. While we had significant reservations at the original hearing we are now satisfied that the design of the project has progressed to a sufficient level of detail to provide the Panel with an adequate degree of certainty as to what will be delivered through the NoR.
82. We do note that, in respect of 12 Wyllie Road, that the Panel requested a larger scale plan of the noise barrier. That was not provided in the information subsequently provided by KiwiRail, however on balance we accept their submission that this is a degree of detail not necessary for an assessment of the NoR.
83. We have also concluded that, while earlier provision of information and better consultation may have assisted the submitters in preparing their responses to the design and conditions changes made by KiwiRail, we are satisfied that the parties have assessed that information and provided responses sufficient for the Panel to consider the NoR and make recommendations on it.

Extent to Which the Proposed Modifications Can be Considered

84. In paragraphs 14 – 21 we have concluded, from a procedural perspective, that we are able to assess the modifications to the NoR that have been proposed by KiwiRail. While some parts of the NoR at Middlemore have changed in location and extent the key remain the same: the construction and operation of the Third Main, formalisation of the turning head (i.e. drop off facility to Middlemore Hospital and station) and reinstatement of a pedestrian overbridge. The extent to which adverse effects have

changed is addressed in greater detail below, however overall the Panel finds that they are not materially different and in some cases result in improvements.

Relevant Scope of Effects

85. Counsel for CMDHB submitted that the effects that need to be considered is the 'delta' between what the current designation enables, and what the NOR allows over and above this¹⁰. KiwiRail submitted that a large amount of the works for the Third Main can occur within (and is therefore authorised by) the existing designation, with only 100 Hospital Road requiring land for the operation of the Third Main itself. Designation 6302 authorises the noise and vibration (and other effects) from the operation of the Third Main in all parts of the corridor except at Middlemore.
86. The Panel notes that the existing Designation 6302 does not contain conditions on noise and vibration – the effects of primary concern. The evidence relating to noise and vibration was that the primary effects arose from introduction of the Third Main, and in particular freight trains.
87. In respect of Middlemore, Mr Lancaster provided information that included acknowledgment of the flexibility the Third Main would introduce in relation to freight train movements on the Third Main. As further detailed below, there has been evidence relating to the noise and vibration effects that will arise from those changes.
88. In respect of 12 Wyllie Road, as the Third Main itself is to be located within the existing designation KiwiRail did not accept that mitigation was required. However KiwiRail has, on an *Augier* basis, offered mitigation through a commitment to construct an acoustic wall. Ballast matting is also proposed for the Third Main.
89. There is no other part of the rail corridor where an alteration of Designation 6302 is required to accommodate the Third Main.
90. The Panel is therefore satisfied that sufficient information is available on which it can assess and make recommendations, including cumulative effects resulting from the NoR. Our assessment of the appropriate conditions to recommend has been informed accordingly.

Permanent vs Temporary Designation Areas

91. CMDHB maintains that KiwiRail's 'temporary' and 'permanent' classifications, as proposed, are inappropriate, and not provided for under the RMA¹¹. CMDHB and Brujen Holdings have raised concerns that there is a lack of certainty as to the duration of the designation and the impact that the designation will have on their ability to develop their landholdings.

¹⁰ Legal submissions for CMDHB dated 13 July 2021

¹¹ Paragraph 30

92. On behalf of the CMDHB Ms Brosnahan submitted at the original hearing that KiwiRail was seeking to create permanent infrastructure (for example a proposed turning head and drop off area) within areas on CMDHB land that were shown on the NoR documents as notified for "temporary occupation for contractors (during construction)". At the adjourned hearing Ms Brosnahan maintained concerns, including the proposed accessway to Building 38 (64 Rosella Road) which was marked on the modified NoR plans as 'temporary'.
93. KiwiRail has submitted that the RMA does not distinguish between "temporary" and "permanent" designations and that the "temporary" designation notation was simply shown on the plans to signal to landowners that KiwiRail's intention is to uplift the designation over those areas in the future. It was submitted that all of the land in the revised land requirement areas is reasonably necessary for the NoR¹².
94. The Panel is satisfied that any jurisdictional issue relating to the originally proposed turning head and pedestrian overpass areas on the CMDHB land has been addressed in the modified NoR by relocating those features and, where the revised turning head does encroach on the CMDHB land, shown as being designated as a permanent land requirement area.
95. Overall the Panel finds that the land to be designated by the NoR is all of that land shown in the NoR, as modified after notification. While the NoR (as notified and as modified) identifies areas that would not be required on a permanent basis KiwiRail has not proposed dates by which parts of the designation will be removed. As considered further below, a condition has been proposed which is intended to address the Rosella Road access issue. It became apparent at the adjourned hearing that some information regarding timing of works appears to have been made available to parties during the discussions that were held in the adjournment. Mr Lancaster indicated at the hearing that he expected the construction site at 12 / 14 Wyllie Road to be required for only 6 – 8 months and Mr McGarr suggested there should be a condition confirming that. KiwiRail proposed a condition that the designation at 12 and 14 Wyllie Road be removed within 3 months of construction being completed or the site no longer being required as a construction yard (Condition 35). Beyond that, the Panel finds that it has insufficient basis on which to recommend expiry dates. Considering the more detailed work that will need to be carried out in relation to the construction phase, and other events that could delay schedules for work, we would consider it impracticable and unreasonable to do so. Section 182 of the RMA provides the legal ability for KiwiRail to remove the designation. That ability exists at law and is not strictly required as a condition on the NoR and we find the condition KiwiRail has proposed to review and remove parts of the altered designation¹³ upon completion of works is appropriate.

¹² Reply submissions, Paragraph 2.5

¹³ Condition 34

Permitted Baseline / Future Environment

96. There was discussion during the hearing with respect to the “permitted baseline”, or the extent to which activities that CMDHB and Brujen would be entitled to carry out as of right should be considered in the assessment of effects of the NoR. We address this matter first due to its significance to some of the effects that need to be considered, in particular noise and vibration. As an example, Mr Styles referred to the large gap in their proposed noise barrier between 12 Orakau Road and Building 38¹⁴. The noise barrier was intended only to address existing buildings, not potential new ones.
97. The Panel was not provided with any information in relation to unimplemented consents for the CMDHB land or 12 Wyllie Road.
98. Mr Julyan provided the Panel with evidence that the CMDHB land is zoned specifically in the AUP for the purpose of providing for Healthcare Facility and Hospitals with hospital and healthcare activities and buildings being permitted activities in the zone. He considered that CMDHB could meet relevant AUP standards including those relating to building coverage, impervious surfaces, front and side yards, height (up to 26m) and parking. His view was that any designation over CMDHB land that limits the permitted future development of the hospital and healthcare buildings must consider the effects on the CMDHB permitted future development, and in that respect the assessment provided by KiwiRail was incomplete.
99. Mr Hegarty was of the view that, while construction of new buildings within the hospital site is a permitted activity, National Environmental Standards as they relate to earthworks may apply and the activity within the building itself would likely require consent, for example to meet car parking standards in the AUP¹⁵. He considered there to be limited potential for activities to be built as of right and he was not aware of any approved and unimplemented resource consents relating to redevelopment of the western campus that would form part of the reasonably foreseeable future environment.
100. Mr Julyan provided the Panel with cross-sections of what was titled “Permitted Future Development”¹⁶. In response to questions from the commissioners Mr Julyan confirmed that this was not a proposed building but rather one that he considered was enabled, and feasible. He stated that stated that CDMHB’s master planning was still at the stage that there were a number of iterations being considered.
101. For KiwiRail, Ms Rapley submitted that the case law is clear that when assessing the environment, a “real world” approach is required, without artificial assumptions¹⁷. She submitted it would be unreasonable for KiwiRail to have to design, plan and put in place mitigation for some future, unplanned buildings and that it would not be an

¹⁴ Mr Styles’ Reply Evidence, Paragraph 13

¹⁵ Mr Hegarty’s Planning Memorandum; 1.5.1

¹⁶ Attachment A to Mr Julyan’s Supplementary Evidence dated 3 December 2021

¹⁷ CMDHB Reply Submissions, from Paragraph 7.16

efficient use of resources to require KiwiRail to design and meet the cost of mitigation for something that may never be built in the future.

102. In her closing comments, Council's reporting planner Ms Leddra was of the view that the Panel should focus on the existing environment ("what was in front of us") and that future development "would take care of itself".
103. The Panel notes that master planning for the CMDHB land has not reached the point that there is a definite proposal, such as for the partial building illustrated by Mr Julyan. In the absence of a fully developed proposal the Panel is not able to know whether a permitted activity status could apply. Further, it is unclear whether factors such as the existing noise / vibration environment near the rail corridor, as it currently exists, would be a factor in the design and location of new buildings in close proximity to the rail corridor. Accordingly, we agree with KiwiRail and find that it would not be an efficient use of resources to require KiwiRail to design and meet the cost of mitigation for something that may never be built in the future.
104. Mr McGarr similarly considers that potential future buildings at 12 Wyllie Road should be assessed and mitigated¹⁸. The Panel notes that 12 Wyllie Road is within the Residential – Terraced Housing and Apartment Buildings Zone and that dwellings require consent as a restricted discretionary activity. While there are permitted activities (e.g. supported residential care) there was no information before the Panel to confirm relevant AUP standards could be met or whether it would be a "real world" approach for a supported residential care facility to be developed on that site. The Panel accordingly has insufficient basis on which to confirm a permitted baseline for that site.
105. Overall, the Panel finds that the focus of consideration when assessing the effects of the NoR should be the existing environment.

Noise

106. Two Joint Witness Statements were produced, JWS#1 on construction noise and vibration issues and JWS #2 on operational noise and vibration issues. Mr Fitzgerald noted that the experts accepted the modelling assumptions, methodology and resulting noise contours¹⁹. In his reply evidence Mr Styles that the experts had no choice but to accept those assumptions as they were provided by KiwiRail and are largely related to operational matters that the noise and vibration experts have no ability to challenge. Those reservations were recorded in the JWS. The Panel also relies on the assumptions as given. We consider they should be reviewed as necessary at the OPW stage and have incorporated reference to the JWSs, including their appendices in the additional conditions we recommend relating to OPWs (Conditions 8 – 10).

¹⁸ Mr McGarr's Reply Evidence, Paragraph 3.3

¹⁹ Marshall Day Acoustics memorandum on noise and vibration matters dated 29 November 2021, Page 4

107. The key outstanding issues between the noise experts relate to the approach to the assessment of operational effects and mitigation of those effects. There were also differences in opinion between the experts in relation to the construction noise conditions.

Construction Noise

108. In respect of construction noise the experts agreed on the outcomes with Mr Styles' concerns being that KiwiRail's proposed conditions were uncertain and in some cases unclear. CMDHB proposed replacement conditions.
109. The Panel acknowledges that the conditions proposed by KiwiRail are similar to those approved as part of the recent Papakura to Pukekohe electrification project, referred to in JWS#1. We are not aware of the context of that project in relation to the sensitivity of the receiving environment. In this case, where there is clearly a sensitive receiving environment, the Panel agrees with CMDHB that the conditions should be more certain and that the procedure relating to departure from the standards needs clarifying. The Panel has accordingly recommended amendments to Conditions 14 and 17 to address these matters and finds those conditions should relate to the entire area of the NoR. The Panel finds that, with these amendments, construction noise will be appropriately managed.

Operational Noise

110. In respect of operational noise a key issue for both CMDHB and Brujen was their view that a future environment needed to be considered. We have addressed that matter in Paragraphs 96 – 105 above and concluded that the focus of attention should be on the existing environment.
111. The experts agreed that freight train movements control the overall noise emissions from the rail corridor and that commuter train movements have very little effect on the overall levels. The modelling undertaken (and outlined in JWS #2) was prepared on the assumption that the number of freight trains passing Middlemore will not increase because of the alteration. In his supplementary evidence Mr Fitzgerald stated that a sensitivity test of the earlier modelling had been conducted to assess whether, in the event that there is an increase in the number of freight trains, that would have any impact on the noise and vibration effects from the rail corridor once the Third Main is operational.²⁰ The noise mitigation design requirements are proposed to be controlled by the LAF_{max} descriptor. On this basis, Mr Fitzgerald's conclusion was that the proposed noise barriers that KiwiRail is required to install in accordance with the proposed conditions would remain sufficient to mitigate a future high growth scenario. No changes were required to the mitigation or to the proposed conditions. Mr Styles' agreed that the changes will not result in an increase in the LA_{max} noise level from a freight train pass-by noting that it would result in the transient effects being

²⁰ Marshall Day Acoustics memorandum on noise and vibration matters, Page 5

experienced more often throughout the day and night. He considered this made it more important to ensure that the designation conditions will adequately manage these effects in a clear, robust and certain manner²¹.

112. Ms Rapley submitted that KiwiRail 's proposed conditions were based on modelling that determined the difference in the effects on the environment between what is already authorised under Designation 6302 and the effects of the alteration and included the noise generated from all three rail tracks (once the Third Main is operational) at Middlemore and 12 Wyllie Road. Mitigation for noise effects from the operation of the rail corridor was then to be triggered by an onset threshold and an increase of at least 3 decibels.
113. The JWS#2 assessment of noise changes up to +3dBA was a “Just perceptible increase”. Mr Styles presented a different assessment of the subjective effect of noise level changes than was contained in JWS#2, the description of noise changes up to +3dBA being “A just-detectable change to no change”.
114. The Panel agrees with KiwiRail that a change threshold is appropriately applied given that this is an alteration to an existing designation which requires an assessment of the changes in the effects. The Panel finds that provision in conditions for an up to 3 decibel change in noise level is appropriate, noting that some areas the mitigation that will arise from the acoustic wall will result in betterment in noise levels predicted to be lower than they are currently. The Panel further notes that the revised conditions proposed by CMDHB retained the up to 3 decibel allowance.
115. The Panel accordingly finds that the conditions relating to operational noise as proposed by KiwiRail are appropriate, with a minor change recommended that ensures the current noise level baseline is to be that which applies at the date the NoR is confirmed.

Vibration

116. In respect of vibration at the construction phase, the same issues about certainty and clarity of KiwiRail's proposed conditions were raised as with construction noise. Changes to the conditions recommended by the Panel are similarly intended address these issues (Conditions 15 and 17).
117. In respect of operational vibration, as with operational noise the modelling was based on the difference in the effects on the environment between what is already authorised under Designation 6302 and the effects of the alteration and included vibration generated from all three rail tracks. The future high growth scenario modelling did not change the predicted level of vibration.
118. For the reasons outlined previously, our focus of attention has been on the existing environment.

²¹ Mr Styles Reply evidence dated 3 December 2021, Paragraph 11(a).

119. KiwiRail's proposed vibration conditions have been based on mitigation of vibration which exceeds Norwegian Standard NS 8176:2017 Class C, and by installing ballast mats. The experts agreed in JWS#2 that vibration levels should be reduced to be as low as practicable, and ideally down to Class A. Installing floating track slab mitigation was agreed to generally achieve these outcomes but if that was an impracticable option the experts agreed that ballast mat was the next-best mitigation option²². Mr Fitzgerald agreed that ballast mat is an appropriate measure to mitigate the effects of the NoR²³.
120. Mr Styles maintained his view that the Class A standard and a floating track to achieve that standard was appropriate. He was also concerned that there are many different types, thicknesses and brands of ballast mat and, with so many options available, did not consider that the conditions proposed by KiwiRail deliver any reasonable degree of certainty that the Class C vibration level will be achieved.
121. As has been noted, Mr Lancaster acknowledged the noise experts view that a floating track would further mitigate vibration, however considered that "the implementation of floating track would make the project totally unviable from a cost perspective". In his evidence at the hearing Mr Lancaster indicated that a floating track would be six times the cost of ballast mats and the construction methodology required would significantly extend the time of construction. On that basis, Mr Gordon agreed in his closing remarks that the Class C standard and ballast mats were appropriate²⁴.
122. The Panel finds that ballast mats are the best practicable option, considering all factors including costs and construction time. However the Panel considers, noting the concerns raised by Mr Styles, that the proposed conditions need to be worded with more certainty. In that respect we note that the modelling predicts vibration levels are remaining approximately Class D at the closest point of Building 38²⁵. The reworded condition recognises this, while ensuring that the most appropriate ballast mats are used to achieve as close as possible a Class C standard.
123. The Panel accordingly finds that the conditions relating to operational noise as proposed by KiwiRail are appropriate, subject to recommended changes that should ensure the most appropriate ballast mats are used to achieve as close as possible a Class C standard.

Middlemore – 64 Rosella Road

124. CMDHB raised a number of issues in relation to 64 Rosella Road²⁶. These were addressed by KiwiRail at the adjourned hearing and in the Reply Submissions.

²² JWS#2 Paragraph 30.

²³ Mr Fitzgerald's Summary Evidenced dated 3 December 2021, Paragraph 3.6

²⁴ Mr Styles Reply Evidence, Paragraphs 41-42

²⁵ JWS#2 Paragraph 29(b)

²⁶ Mr McGarr's Reply Evidence, Paragraph 8

125. The parties agree that, from the time the northern carpark area is not able to be accessed from Orakau Road it will need a legally secure access from Rosella Road. This will apply during the construction phase, and subsequently, or at least until such time, and if, an alternative access is provided. The parties also agree that the access should not be available to the public, including pedestrians. Adequate provision therefore needs to be made for managing the access, including its ongoing maintenance.

126. The Panel finds that these matters can be addressed through appropriate conditions. KiwiRail proposed revised conditions that have been further refined in the Panel's recommendations. In summary:

- (a) Vehicular and pedestrian access for hospital purposes to the northern carpark is a matter to be addressed in the CTMP (Condition 13).

The Panel finds that this condition will adequately address access through the construction phase.

- (b) Legal access is to be provided to the northern car park via 64 Rosella Road for hospital purposes, until such time as an alternative access is provided and agreed by CMDHB. (Conditions 30 and 31).

The Panel finds that these conditions will ensure the legality of access irrespective of whether or not there is an ongoing designation. While the designation remains in place it is expected KiwiRail will remain responsible for the access and maintenance of it, subject to and pending any alternative arrangements as may be agreed with CMDHB.

- (c) Measures must be taken to ensure there is no public pedestrian connection to the rail station and that (staff) pedestrian access is safe (Condition 32).

The Panel finds that this condition will adequately address who is able to access the northern car park area.

Middlemore –Traffic

127. The Panel was presented with a revised turning head location and hospital access plan at the adjourned hearing. Mr Prosser's evidence for KiwiRail was that a total of six options were investigated, with the proposed design being preferred. In respect of what would become the sole hospital access point to the hospital from Orakau Road, Mr Prosser concluded that the 55m of available queuing space (20m of driveway and 35m on Orakau Road) could support the peak hour AM arrival demands and that the revised design will not have a discernible impact on traffic at Gray Avenue / Orakau

Road intersection or Middlemore staff arriving / departing through this intersection based on the current situation²⁷.

128. Mr Nixon's evidence for CMDHB was that there were access options that did not appear to have been assessed. These included an option involving a shared space turning head in Orakau Road which would not require CMDHB land, maintaining a vehicular access to the multi-storey carpark from the end of Orakau Road, even if only one-way, separate at-grade and multi-storey car park accesses on Orakau Road, and access from Gray Avenue²⁸. Mr Nixon did not agree with Mr Prosser's queuing analysis. His own analysis was that estimate that the 95th percentile queue will range between 91 m and 143 m depending on service rate. He predicted that vehicle queues will extend back onto Gray Avenue in the morning peak hour and that this would be compounded due to through vehicles on Gray Avenue getting trapped amongst the vehicles waiting to enter the Hospital car park. Mr Nixon acknowledged that, queueing already occurs back onto Gray Avenue but as he had not seen any assessment on existing queuing he was unable to determine whether the proposed queuing is better or worse than existing²⁹.
129. Ms Rapley submitted that KiwiRail did not have to investigate all options to demonstrate that it has adequately considered alternatives and it did not need to pick the best option. The Panel asked a number of questions about other options at the adjourned hearing and finds overall that there is an adequate basis on which to make an assessment.
130. The Panel notes that the revised design continues to provide a single-entry point. That entry point is in a different location. It may or may not result in extra queueing onto Gray Avenue. Importantly, Auckland Transport did not oppose the revised design. Mr Wong-Toi generally agreed with the assessment to discount the option of a new entranceway on Gray Avenue (at the south-western corner of CMDHB carpark) based on the road safety reasons identified as part of the design options evaluation³⁰. Mr Edwards³¹, in his closing comments for the Council was concerned about queue lengths and considered a redesign may be necessary, such as an entry further into the site, an additional entry off the end of Orakau Road or measures such as number plate recognition that may speed up access into the site.
131. Auckland Transport and Mr Edwards preferred the proposed turning head design to the reduced shared arrangement proposed by Mr Nixon. In response to questions from the Panel Mr Nixon was reluctant to confirm his view as to whether the proposed design would have lesser adverse effects than his suggestion. The Panel agrees with

²⁷ Mr Prosser's Further Evidence, Paragraph 1.7

²⁸ Mr Nixon's Supplementary Evidence dated 3 December 2021, Paragraphs 2.8 – 2.13

²⁹ Ibid Paragraphs 2.2 – 2.7

³⁰ Mr Wong-Toi's Reply Evidence dated 3 December 2021, Paragraph 6.4

³¹ The Panel was advised that Mr Edwards was not invited to take part in discussions between KiwiRail, and the CMDHB

KiwiRail, Auckland Transport and the Auckland Council and finds that a design that separates pedestrian and vehicular movements is to be preferred.

132. The Panel notes that, while it may be physically possible, the proposed design does not maintain vehicular access through to the end of Orakau Road. The Panel has not considered it necessary to further investigate that possibility in making its recommendations.
133. KiwiRail has proposed conditions requiring a Middlemore Design Plan (Conditions 25 – 29). A draft of that plan must be provided to Auckland Transport and CMDHB for comment. When submitted with the OPW, there must be an explanation of why any feedback has not been incorporated and the OPW must incorporate any mitigation works in accordance with the design plan. Amongst other matters the Middlemore Design Plan must address the turning head and access to 100 Hospital Road during the construction phase. As relevant, those matters will need to be addressed in the CTMP.
134. Subject to the amended conditions we have recommended the Panel finds that the KiwiRail proposals are appropriate.

Middlemore – Parking

135. There will be a permanent loss of parking, both on Orakau Road and on the CMDHB land. There will be an additional loss of parking during the construction phase.
136. In respect of the loss of permanent parking Mr Prosser calculated the loss on Orakau Road to be 17 spaces, the loss of at-grade parking around the new access point 15 spaces and the northern carpark a net of 8 spaces. The total was accordingly *40 parking spaces* lost - 23 on the CMDHB land and 17 on the road.
137. Mr Edwards had a concern that more parking spaces may be lost in Orakau Road to achieve adequate visibility from the new access and / or to provide adequately for fire appliances and ambulances. He was also concerned about the 90-degree replacement parking and conflicts to through traffic arising from necessary turning movements. He advised that there was currently a 90-minute restriction on parking in Orakau Road which meant that parking was most likely to be used by visitors to the hospital.
138. Mr Nixon agreed with Mr Prosser's calculations for the loss of parking on Orakau Road and at-grade parking around the new access point. However in respect of the northern carpark he discounted the proposed parking on 64 Rosella Road and did not agree with Mr Prosser's plan for reconfiguring the northern car park. Rather than the 8 spaces lost in Mr Prosser's calculation, Mr Nixon considered the loss would be 29 spaces, or a total loss of *61 parking spaces*. Council's traffic expert Mr Edwards also had concerns about the proposed parking layout for the northern car park.

139. The Panel notes that the quantum of parking losses was the subject of disagreement between KiwiRail and CMDHB at the original hearing. The Panel expected that there would have been agreement reached on this matter by the adjourned hearing and had issued directions accordingly. In relation to the effects on parking during the construction phase in particular, KiwiRail did not provide the information the Panel requested. More concerning, the KiwiRail and CMDHB traffic experts did not agree on the quantum of permanent parking that would be lost. In view of the concerns CMDHB had in relation to parking loss the Panel considers it unfortunate that consultation and agreement was not achieved on what the Panel considers should not have been a complex matter to determine. The Panel has been left to make its own conclusions on these matters, using the information and KiwiRail commitments that have been provided.
140. The Panel is satisfied that it is KiwiRail's intention, through the conditions it has proposed, to provide parking on 64 Rosella Road as mitigation for parking lost on the CMDHB land, with that parking to remain in place until and if the CMDHB confirms it no longer requires it. Should there be any confusion about that matter, the Panel has recommended some changes to the relevant condition so that it is clearer (Condition 30).
141. The Panel notes Mr Nixon's evidence in relation to issues relating to Mr Prosser's proposed northern carpark layout plan. These relate to parking in front of garages, a narrow aisle and a difficult turning manoeuvre³². While amendments appear necessary to respond to those concerns the Panel considers it would be sensible, in an area which will undergo significant change, to consider a most efficient car park layout as Mr Prosser has done.
142. With these amendments the Panel expects the net loss of carparks in the northern car park to be in the range 12 – 15 spaces, with the combined loss of parking on the CMDHB site therefore being 27 – 30 spaces. Adding the 17 spaces lost on Orakau Road, the total loss of parking would be 44 – 47 spaces.
143. There was conflicting evidence as to whether the permanent loss of parking spaces would create a significant adverse effect such that further mitigation is required.
144. Auckland Transport's expert Mr Wong-Toi recognised³³ that mitigating the reduction in parking was unlikely to be through the provision of replacement parking spaces, and that the improvements to the Middlemore Station coupled with the increase in rail service frequency enabled by KiwiRail's third main upgrade would encourage an increase in public transport uptake/ reduction in private vehicle trips and in turn a decrease in demand for parking³³. Mr Wong-Toi responded to a question from the Panel with the view that the loss of parking was acceptable in relation to public

³² Mr Nixon's Supplementary Evidence, Paragraph 2.20 (Figure 3)

³³ Mr Wong-Toi's Reply Evidence, Paragraph 6.5

transport effects. He described the on-road parking as “not being a permanent fixture”.

145. Mr Prosser’s view was that the effects would be minor, and the establishment of the extended rail station and its improved rail services will assist in mitigating the removed staff parking spaces³⁴.
146. Mr Nixon’s view was that there are already frequent passenger services on the rail line and any staff and patients able to use the train, likely already do³⁵. He considered mitigation may be necessary in the form of providing for parking on neighbouring sites.
147. In his closing comments Mr Edwards was of the view that any mitigating effect arising from improved rail services would be small. His view was that effects from the proposed loss of parking would be significant and may include overflow effects of staff parking on Rosella Road, which would be an amenity effect.
148. For KiwiRail, Ms Rapley submitted that the RMA is not a "no effects" statute. Each adverse effect does not have to be avoided, remedied or mitigated to the extent that there is no effect remaining after mitigation. Reference was made to a previous resource consent application by the CMDHB where a parking requirement memorandum (dated 28 September 2016) concluded that a shortfall in carparking of 26 parking spaces resulted in less than minor adverse effects - without the increased passenger capacity that this NoR will enable at this location. It was submitted that Mr Nixon’s view was unrealistic (and without basis) to say that no hospital staff, visitors or patients will benefit from the increased passenger rail services and modal shift.
149. The Panel has carefully considered all of these matters and on balance finds that it prefers the evidence of KiwiRail. While there may be adverse effects arising from the loss of permanent parking we do not consider there will be significant adverse effects on the environment.
150. In respect of the loss of parking during the construction phase, Ms Rapley submitted on behalf of KiwiRail that the exact number of carparks affected, and the duration will be dependent on construction methodologies which will be determined with the contractor for the project and in consultation with relevant stakeholders. Mr Nixon estimated this to be 54 parking spaces that may be lost in the northern car park, and 20 parking spaces that may be lost in the southern car park, for an uncertain timeframe³⁶. In response to the Panel’s questions at the adjourned hearing Mr Nixon confirmed his view that the loss of parking would be at least that amount, with there

³⁴ Mr Prosser’s original evidence dated 30 June 2021, Paragraph 8.5 (NB: the original NoR was assessed by Mr Prosser as resulting in a loss of 26 parking spaces on the CMDHB land. In Paragraph 3.8 of his Rebuttal Evidence dated 12 July 2021 Mr Prosser was of the view that a loss of 47 spaces was not significant – Paragraph 3.8).

³⁵ Mr Nixon’s Supplementary Evidence, Paragraph 2.25

³⁶ Ibid, Paragraph 2.20

being further losses of on-road parking as a result of the proposed construction activities affecting the road.

151. For KiwiRail, Ms Rapley submitted that the CTMP as required under the proposed conditions must be developed in consultation with the CMDHB where it relates to works at Middlemore Station and must detail measures to minimise the temporary occupation of at-grade parking, including details of the number of spaces to be occupied and the duration of this occupation.
152. In the absence of detailed information from KiwiRail, as was requested by the Panel, the Panel prefers the evidence of Mr Nixon in respect of the potential loss of CMDHB parking during the construction phase. That potential loss is significant and, particularly as the time over which losses will occur is uncertain, is an effect the Panel finds needs to be adequately mitigated.
153. The Panel finds that the necessary mitigation can be detailed in the Middlemore Design Plan and the CTMP. CMDHB will have the opportunity for feedback on draft proposals. Wording amendments to the proposed conditions have been recommended by the Panel (Conditions 25 – 29).
154. Subject to the amended conditions we have recommended the Panel finds that effects of temporary loss of parking are acceptable.

Middlemore – Pedestrian Overbridge

155. The original design of the overbridge has been modified so that the overbridge is relocated approximately 55 metres and connects directly with the end of Orakau Road.
156. Mr Julyan was concerned that the relocated overbridge would create a less efficient connection between the hospital campuses than currently exists. He considered this would exacerbate health and safety risks for hospital staff, patients and visitors, and would fail to meet a fundamental requirement of Part 2 RMA by not providing for the safety and wellbeing of the people and community including hospital staff and patients³⁷. Mr Nixon considered the revised proposal would serve the public reasonably well but at the expense of Hospital connectivity³⁸. In response to questions from the Panel Mr Nixon agreed that this essentially meant a longer walk.
157. Mr Hegarty's view was that the relocated overbridge had a reduced impact of the NoR on CMDHB's land whilst still allowing passengers as well as CMDHB staff to directly move between the station itself and its western campus. He considered the revised arrangement removed potential conflicts between hospital traffic and pedestrians, while also addressing CMDHB's concerns regarding security and loss of hospital

³⁷ Mr Julyan's Supplementary Statement, Paragraph 14

³⁸ Mr Nixons' Reply Evidence, Paragraph 2.30

zoned land³⁹. Mr Prosser considered the new location would provide clear legibility and access for dropped off passengers and pedestrians walking to the station and also be able to be used by hospital staff walking to and from the eastern and western campuses of Middlemore Hospital⁴⁰.

158. Auckland Transport supported KiwiRail's proposal in principle.
159. The Panel was informed that the existing pedestrian overbridge is operated and maintained by Auckland Transport, which is generally secured by way of leasing arrangements. While CMDHB own part of the land on which the overbridge is located, CMDHB does not appear to have any formal role in managing the overbridge.
160. The Panel finds that Mr Julyan's concerns are overstated. On balance, the Panel is satisfied that the relocated pedestrian overbridge will still serve its current functions, and that the proposed positioning is consistent with other aspects of the redesign, including the pedestrian drop-off area now proposed on Orakau Road. The relocated bridge also removes the need for the CMDHB to provide land for public access to western end of the bridge.

Visual Amenity

161. During the adjournment KiwiRail engaged Boffa Miskell to produce a Visual Effects Assessment⁴¹. Mr Hegarty considered the visual effects of the noise barriers will be no more than minor and would be mitigated through the use (in part) of transparent building materials⁴².
162. Mr Julyan considered the Boffa Miskell assessment was constrained to the noise barrier only. It did not address the loss of trees which in his view would reduce the naturalness of the visual outlook for patients and hospital users. He recommended elements of soft (planting) landscaping as well as hard (the wall) landscaping would be appropriate to alleviate the imposing concrete and "glass" structure (over 5m high in parts) and to mitigate the impact on the outlook for patients and hospital users⁴³. Mr McGarr noted that no assessment had been undertaken of the visual/amenity effects of the noise barrier from within 12 Wyllie Road. He was concerned that the proposed conditions did not make provision for the design elements of the wall to be developed with the owners of 12 Wyllie Road⁴⁴.

³⁹ Mr Hegarty's Planning Memorandum, 1.4

⁴⁰ Mr Prosser's Summary Evidence, Paragraph 1.6

⁴¹ Appendix I of the Planning Memorandum on Design Changes and Responses to Panel Queries dated 30 November 2021

⁴² Mr Hegarty's Supplementary Evidence, Paragraph 3.4(d)

⁴³ Mr Julyan's Supplementary Statement, Paragraph 35

⁴⁴ Mr McGarr's Reply Evidence, Paragraphs 3.4, 3.5

163. The Panel finds that consultation should be carried out with CMDHB and Brujen on the matter of visual mitigation relating to the design of the noise barrier and loss of existing vegetation. Conditions / advice notes have been proposed / amended accordingly (Conditions 8 and 27).

Other Matters - Vegetation / Trees and Heritage

164. In her closing comments Ms Leddra repeated Council's concern that that the arborist report in Appendix H of the lodged documents had not adequately addressed the effects of tree works envisaged by the proposed alteration to the designation⁴⁵. This is a matter that remained outstanding. The Panel finds that this is an appropriate matter to address in the OPW. The additional advice note to Condition 8 alerts KiwiRail to the need for this to be done.
165. Mr Hegarty considered that the NoR will have less than minor effects on historic heritage, noting that the NoR no longer includes the residential dwellings at the front of 5 and 9 Station Road and only temporarily designates the rear (non-heritage feature) structures of these properties to enable construction activities associated with the NoR⁴⁶. The Panel finds that effects on heritage are acceptable.

FINDINGS UNDER SECTION 171

Section 171(1)(a) – Any relevant provisions of a national policy statement, a New Zealand coastal policy statement, a regional policy statement or proposed regional policy statement, a regional plan, a district plan or proposed district plan.

166. Pursuant to section 171(1)(a), when considering the requirement we must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to any relevant provisions of a national policy statement, the New Zealand Coastal Policy Statement, the regional policy statement, the proposed regional policy statement and the relevant regional and district plans and proposed plans.
167. Collectively the NoR and the section 42A report provided a comprehensive commentary on the relevant national and regional policy statements and the AUP: OP. We do not repeat this material in this recommendation, rather we rely on the NoR documents and section 42A report in this regard, except to indicate that the following documents were considered of particular relevance in reaching our recommendation:
- Auckland Unitary Plan – Operative in Part, including Chapter B Regional Policy Statement
 - National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Public Health

⁴⁵ Hearings Report, 4.3.5.5

⁴⁶ Mr Hegarty's Supplementary Evidence, Paragraph 3.4(f)

- National Policy Statement for Freshwater Management
- National Policy Statement on Urban Development

168. We further note that AUP includes objectives and policies that relate to urban growth and form; infrastructure, transport and energy; natural resources; water quality and integrated management; streams and wetlands; land disturbance; vegetation management and biodiversity; and noise and vibration. Our consideration of all of these is that the NoR is consistent with, and does not conflict with, the provisions or the intention of these provisions.

Section 171(1)(b) – Adequate consideration has been given to alternative sites, routes, or methods of undertaking the work or that it is likely that the work will have a significant adverse effect on the environment.

169. The Panel finds that, whilst not being entirely satisfactory for submitters, KiwiRail has met its statutory responsibilities in respect of the consideration of the NoR. We acknowledge the points raised by submitters and have done as much as we believe we can to accommodate their concerns in the consideration of alternatives. Further, whilst the effects on privately owned land are unable to be avoided, the designation footprint can be reduced following construction in order to limit those effects. We find that the considerations of alternatives is adequate for the purposes of this section of the RMA.

Section 171(1)(c) - Whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought.

170. KiwiRail's specific objectives for the project, as stated in the NoR, are to:

- facilitate the expected / planned growth of freight and passenger services on the Auckland Metro rail network;
- operate rail services in a manner which protects the safety of operators, passengers and adjoining residents / workers;
- operate rail services in a manner which minimises adverse environmental effects; and
- future-proof the corridor for additional rail capacity improvements.

171. All parties supported the principle of introducing a third main to the NIMT although there were issues presented in relation to the NoR and its effects. The issues that were raised, addressed earlier in these recommendations, have not resulted in any fundamental changes recommended by the Panel. Overall the Panel finds that the work and designation are reasonably necessary for achieving the objectives of the requiring authority. The works enabled by the NoR will support an increase in the service capacity of the NIMT through the Auckland region, allowing for more efficient, safe and reliable freight and passenger transport and, including through provision for future nine-car passenger services, will allow for a further increase in rail passenger capacity.

Section 171(1)(d) Other matters considered reasonably necessary in order to make a recommendation on the requirement.

172. We have had due regard to all the various documents referred to during the hearing on the NoR. We do not consider them to be necessary considerations in the context of the recommendations we are to make, noting however that the NoR is consistent with directions for transport planning as outlined in the Auckland Plan.

Conclusion on section 171 RMA

173. We find that the requirements of section 171 relating to NoRs have been met by the details of the proposal and supported by conditions as part of our recommendation on the NoR.

PART 2 RMA

174. We have had due regard to Part 2 RMA considerations and note these were addressed in the submitted documents and particularly in the evidence of. We find agreement with that evidence and that the project will meet the purpose of the RMA; recognise and provide for the relevant section 6 matters; has had particular regard to section 7 matters; and, has recognised the section 8 principles of the Treaty of Waitangi through the engagement that has occurred and is to be ongoing throughout the course of the project.

CONCLUSIONS

175. Section 171 of the RMA provides the means by which the NoR can be recommended to be confirmed or otherwise. In terms of section 171 we consider that the NoR is appropriate, subject to the conditions we are recommending to be adopted (as Attachment A), and should be confirmed.
176. We have concluded that the 10-year lapse period sought for the designation is appropriate given the project's scale and the expected timeframes anticipated in respect of funding, land acquisition and outline plan approval processes to be completed, as well as its actual construction.
177. Other issues raised will be appropriately dealt with at the Outline Plan of Works stage, which must occur before work commences, and is subject to overview by the Council.

RECOMMENDATION ON THE NOR

In accordance with section 171(2) of the Resource Management Act 1991, the Auckland Council **recommends** to KiwiRail that the Notice of Requirement for be **confirmed** and be subject to the conditions set out below.

REASONS FOR THE RECOMMENDATION

Under section 171(3) of the Resource Management Act 1991, the reasons for the recommendation are:

1. The Notice of Requirement is consistent with section 171 of the RMA as the designation is reasonably necessary for achieving the objectives of the requiring authority and adequate consideration has been given to alternatives for doing the works.
2. The conditions attached to the Notice of Requirement and designation are intended to avoid, remedy or mitigate any adverse effects that may be associated with the works and take account of the concerns of submitters, to the extent we are able to do so.
3. The designation is in accordance with relevant objectives and policies of the Auckland Unitary Plan, Operative in Part and with the other relevant planning documents.
4. The designation is consistent with Part 2 of the RMA.

AMENDMENTS TO THE UNITARY PLAN (OPERATIVE IN PART)

That the Auckland Unitary Plan (Operative in Part) be amended as set out in Attachment A.



Peter Reaburn
Chairperson

Date: 23 February 2022

ATTACHMENT A

RECOMMENDED CONDITIONS ON THE NOR

WIRI TO QUAY PARK PROJECT – GENERAL CONDITION (LAND REQUIREMENT PLANS)

7. Conditions 7 to 35 of this designation only apply to in respect of works for the Wiri to Quay Park Project undertaken including on land shown in yellow and red shading on the following land requirement plans:
- drawing entitled "3rd Main – Papatoetoe Land Requirement Layout Plan (Sheet 1)", Reference DR-NIMT-CV-HS-00169 and dated 22 November 2021;
 - drawing entitled "3rd Main – Papatoetoe Land Requirement Layout Plan (Sheet 2)", Reference DR-NIMT-CV-HS-00170 and dated 16 December 2021;
 - drawing entitled "3rd Main – Papatoetoe Land Requirement Layout Plan (Sheet 3)", Reference DR-NIMT-CV-HS-00171 and dated 22 November 2021;
 - drawing entitled "3rd Main – Papatoetoe Land Requirement Layout Plan (Sheet 4)", Reference DR-NIMT-CV-HS-00172 and dated 22 November 2021;
 - drawing entitled "Middlemore Station Land Requirement Layout Plan, Reference DR-NIMT-CV-HS-00179 and dated 16 December 2021; and
 - drawing entitled "Wiri Junction Land Requirement Layout Plan (Sheet 2)", Reference DR-NIMT-CV-HS-00175 and dated 22 November 2021.

Advice Note: *The following terms relate to Conditions 7 to 35*

Term	Definition
Existing Building	Any building that physically existed and was being used as a dwelling or healthcare facility as at [the date this NoR is confirmed] .
Third Main	Third rail line to be constructed as part of the Wiri to Quay Park Project.
NIMT	North Island Main Trunk Line
CMDHB	The Counties Manukau District Health Board (<u>or any successor body</u>).

Outline Plan of Works

8. Pursuant to s176A of the Resource Management Act an outline plan of the work (**OPW**) to be constructed must be submitted by the requiring authority to the Council to allow the Council to request changes before construction is commenced.

Advice Notes:

1. *The OPW should address methodologies for removal or alteration of trees as required for the proposed works and the mitigation proposed.*
 2. *The OPW should address visual amenity matters including, but not limited to, mitigation of the proposed noise barrier wall at 12 Wyllie Road, including evidence of consultation with the owner of that property.*
9. The management plans required by conditions 11 and 16 shall not be submitted to the Council prior to the submission of the OPW.
10. The Middlemore Design Plan required by condition 26 must be prepared prior to submitting the OPW and the Middlemore Design Plan must be submitted to the Council with the OPW in accordance with s176A(f).

Construction Traffic Management Plan

11. The Requiring Authority must prepare and submit a Construction Traffic Management Plan (CTMP) to Auckland Council for certification prior and obtain certification prior to the commencement of works for the Third Main. If the Requiring Authority has not received a response from Auckland Council within 20 working days after the date of submission of the CTMP it will be deemed certified.

12. The CTMP must be prepared by a suitably qualified and experienced person in consultation with Auckland Transport, and where it relates to works at Middlemore Station, also with CMDHB. The purpose of the CTMP is to ensure:
- a) the management and minimisation of traffic congestion arising from construction vehicles;
 - b) the management of temporary reductions in on-site parking at 100 Hospital Road including temporary parking provision;
 - c) the management of internal vehicle and pedestrian movements at 100 Hospital Road;
 - d) the safe movement of vehicles to and from construction sites;
 - e) the safety of other road users, including public transport providers, pedestrians and cyclists; and

- f) that sufficient on-site parking or other transport arrangements are provided for the project's construction workers.

Advice Note: *Auckland Council's certification role is limited to ensuring that the CTMP addresses all matters listed in Conditions 9 and 10.*

13. The CTMP must detail how the purpose of the CTMP is to be achieved and must include:
- a) methods to manage the effects of temporary traffic management activities on traffic capacity, operations and movements during construction periods;
 - b) measures to manage the safety of all transport users on construction routes during construction works;
 - c) hours for construction activities, the estimated numbers, frequencies and timing of traffic movements, including any specific non-working or non-movement hours to manage vehicular and pedestrian traffic near schools or to manage traffic congestion;
 - d) site access points to be used by construction related traffic;
 - e) methods to manage any road closures that will be required and the nature and duration of any traffic management measures such as the identification of detour routes or diversions and other methods for the safe management and maintenance of traffic flows, including general traffic, buses, pedestrians and cyclists on existing roads;
 - f) methods to maintain pedestrian and/or vehicle access to property and/or private roads where practicable, or to provide alternative access arrangements where access cannot be maintained;
 - g) methods to communicate traffic management measures to affected road users, CMDHB and other relevant parties;
 - h) details of a construction staff travel management plan to reduce the potential impact of staff vehicles on the road network; and
 - i) for works at Middlemore Station:
 - i. measures to manage heavy vehicle movements at the Gray Avenue/Orakau Road intersection (if and when these are required) and to manage these movements to minimise peak staff arrival and departure times;
 - ii. measures to manage two-way hospital and construction traffic via the 64 Rosella Road access;
 - iii. measures to safely manage pedestrians travelling between the multi-storey carpark and at-grade parking areas on 100 Hospital Road west of Middlemore Station, and Middlemore Hospital's eastern campus, during construction; and

- iv. measures to minimise the temporary occupation of at-grade parking on 100 Hospital Road, including details of the number of spaces to be occupied and the duration of this occupation.
- v. the identification of temporary parking provision for the CMDHB.
- vi. the provision of pedestrian and vehicular access to facilities within 100 Hospital Road.
- vii. Any other matter identified in the Middlemore Design Plan (refer to Conditions 25 – 29).

Construction Noise and Vibration

14. Construction noise must be measured and assessed in accordance with the provisions of New Zealand Standard NZS6803:1999 “Acoustics - Construction Noise” and comply with the noise standards in Table 1 at any occupied building unless provided for in condition 17 below.

Table 1: Construction Noise Standards

Receiving Environment	Day (0700 – 2200 hrs.)	Night (2000 – 0700 hrs.)
Occupied activities sensitive to noise	75 dB _{L_{Aeq} (30 min)}	60 dB _{L_{Aeq} (30 min)} 75 dB _{L_AF_{max}}
All other occupied buildings	75 dB _{L_{Aeq} (30 min)}	80 dB _{L_{Aeq} (30 min)}

15. Construction vibration must be measured and assessed in accordance with German Standard DIN 4150-3:1999 “Structural Vibration – Part 3: Effects of Vibration on Structures”, and comply with the vibration standards in Table 2 unless provided for in condition 17 below.

Table 2: Construction Vibration Standards

Line	Type of Structure	Vibration limits (mm/s PPV)
1	Buildings used for commercial purposes, industrial buildings and buildings of similar design.	10

	2	Dwellings and buildings of similar design and/or occupancy including hospitals.	5	
<p>16. Prior to the commencement of construction works for the Third Main, the Requiring Authority must prepare and submit a CNVMP for certification and obtain certification by the Council. If the Requiring Authority has not received a response from the Council within 20 working days of the date of submission of the CNVMP it will be deemed certified.</p>				
<p>17. The CNVMP must be prepared by a suitably qualified and experienced person. The purpose of the CNVMP is to:</p> <ul style="list-style-type: none"> a) identify and adopt the Best Practicable Option to avoid, remedy or mitigate construction noise and vibration effects; b) define the procedures to be followed when construction activities cannot meet the noise and vibration standards in Conditions 14 and 15, which shall include evidence of any feedback from consultation with affected parties; c) inform the duration, frequency and timing of works to manage disruption; and d) set out procedures to record engagement with affected receivers and timely management of complaints. 				
<p>18. The CNVMP shall include:</p> <ul style="list-style-type: none"> a. the relevant measures from NZS 6803:1999 "Acoustics - Construction Noise", Annex E2 "Noise management plans"; b. the relevant measures from DIN 4150-3:1999 "Structural vibration - Part 3 Effects of vibration on structures", Appendix B "Measures for limiting the effects of vibration"; c. a requirement and process to offer and if accepted, undertake, a pre-construction condition survey for any building where the construction vibration levels are predicted to exceed the cosmetic building damage limits in Condition 15 above; and d. relating to works at Middlemore Station: <ul style="list-style-type: none"> i. the following site-specific standards that must be used to trigger engagement with the CMDHB to enable the effective management of noise and vibration effects in Building 38 (including Home Healthcare and the renal unit): <ul style="list-style-type: none"> a. 1mm/s PPV measured on the foundation of the building (for vibration); and b. 75 dB LAeq measured 1m from the façade(s) of the occupied and noise sensitive spaces of the building (for noise); and 				

- ii. The methods used by the Requiring Authority to manage construction noise and vibration on activities at 100 Hospital Road.

Advice Note: *Auckland Council's certification role is limited to ensuring that the CNVMP addresses all matters listed in Conditions 14 and 15.*

19. Where engagement is triggered with the CMDHB in condition 18 d) i., the Requiring Authority shall maintain records of the outcomes of the engagement and the responses of the Requiring Authority to any feedback received by CMDHB, including any additional temporary mitigation measures undertaken (e.g. rescheduling works, changing construction methodologies).

Operational Noise and Vibration

20. The Requiring Authority shall mitigate in accordance with condition 21 total operational rail noise emitted from all lines in the rail corridor where the predicted noise levels at the external façade of Existing Buildings within points 659+715 to 660+005 (works in vicinity of 12 Wyllie Road) and 662+117 to 662+519 (works in vicinity of 100 Hospital Road, Mangere East) of the NIMT:
- a. exceed the thresholds in Table 3; and
 - b. increase by at least 3 decibels above levels as at **[the date this NoR is confirmed]** as a result of the operation of the Third Main.

Table 3: Operational Rail Noise Mitigation thresholds

Day (0700 – 2200hrs)	Night (2200 – 0700hrs)
65 dB LAeq	60 dB LAeq
85 dB LAFmax	85 dB LAFmax

21. Prior to the operation of the Third Main, the Requiring Authority shall install noise barriers on the western side of the NIMT to mitigate rail noise received at Existing Buildings identified in condition 17. The noise barriers shall ensure the increase in rail noise level as a result of the operation of the Third Main is less than 3 decibels and shall be:
- a) at least 3.8 metres in height above rail track level within the rail corridor between points:
 - i. 659+715 and 659+926 of the NIMT (works in vicinity of 12 Wyllie Road); and
 - ii. 662+102 and 662+191 of the NIMT (works in vicinity of 100 Hospital Road, Mangere East); and

<ul style="list-style-type: none"> iii. 662+249 to 662+545 of the NIMT (works in vicinity of 100 Hospital Road, Mangere East); and b) constructed with a surface mass of at least 10kg/m²; and c) constructed without gaps (except for station access, where required); and d) constructed in accordance with the memorandum from Boffa Miskell (Oliver May) dated 30 November 2021.

22. (no condition 22)

<p>23. Prior to the operation of the Third Main, the Requiring Authority shall install ballast mats under ballasted track to mitigate rail vibration at Existing Buildings between points 659+715 to 660+005 NIMT (works in vicinity of 12 Wyllie Road) and 662+117 to 662+519 NIMT (works in vicinity of 100 Hospital Road, Mangere East). The objective is to achieve NS 8176:2017 Class C. The ballast mats shall be installed between points:</p> <ul style="list-style-type: none"> a) 659+715 and 660+005 of the NIMT (works in vicinity of 12 Wyllie Road); and b) 662+102 and 662+545 of the NIMT (works in vicinity of 100 Hospital Road, Mangere East).

<p>24. Within three months of the commencement of freight operations on the Third Main, the Requiring Authority shall engage a suitably qualified and experienced person to:</p> <ul style="list-style-type: none"> a. undertake representative noise monitoring to quantify the noise mitigation provided by the noise barrier(s) in condition 21; and b. undertake representative vibration monitoring to quantify the vibration mitigation provided by the ballast mats in condition 23; and c. prepare a report confirming compliance with conditions 21 and 23, which shall be provided to the Council for certification and a copy shall be provided to CMDHB. d. If the report required in condition 24c) above indicates non-compliance with conditions 18 and 20 remedial measures shall be undertaken to ensure compliance and this condition repeated for that work.

Middlemore Design Plan

<p>25. The works in the vicinity of the Middlemore Station shall be undertaken in accordance with the Jacobs plan DR-NIMT-CV-HS-00701 entitled “Middlemore Station Works Plan” dated 26/11/21.</p>
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<p>26. Prior to submitting an Outline Plan of Works for Middlemore Station, the Requiring Authority must prepare a Middlemore Design Plan.</p>
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27. The purpose of the Middlemore Design Plan is to demonstrate how safe, efficient and well integrated transport facilities to enable access to Middlemore train station will be provided, as well as how the transport effects of the Third Main on 100 Hospital Road and the surrounding road network will be avoided, remedied or mitigated. The Middlemore Design Plan shall include details of:

- a) parking and other road markings on Orakau Road;
- b) the turning head facility to access Middlemore Station;
- c) the pedestrian overbridge / lift to provide access to Middlemore Station and between Middlemore Hospital Campuses;
- d) vehicular access to 100 Hospital Road;
- e) the reinstatement of any at-grade parking areas at 100 Hospital Road affected by these works; and
- f) access to the northern carpark at 100 Hospital Road, including measures to prevent pedestrians from using the access at 64 Rosella Road as access to and from Middlemore Station.
- g) noise barriers;
- h) mitigation planting, including in relation to the loss of existing trees;
- i) temporary vehicular and pedestrian access to and within 100 Hospital Road during construction;
- j) mitigation for the temporary loss of parking during construction;
- k) an effective engagement process that is designed to involve the CMDHB in the design and programming of the works to ensure that effects on the CMDHB are minimised as far as practicable.

28. The Requiring Authority shall provide a draft of the Middlemore Design Plan to Auckland Transport and CMDHB at least two months prior to submitting the Outline Plan of Works for Middlemore Station and invite them to comment on the plan within 15 working days of receiving the draft plan. The Requiring Authority must consider any feedback received and amend the draft Middlemore Design Plan to incorporate that feedback. If aspects of the feedback are unable to be incorporated, the Requiring Authority shall provide reasons in writing to those parties and to the Council as to why that feedback was not included, prior to submitting the OPW.

Advice Note: *Where the Middlemore Design Plan requires changes within the existing road reserve of Orakau Road or any potential extension of the existing road reserve to be vested with Auckland Council, Engineering Plan Approval will be required.*

29. Any outline plan of works and the construction of the Third Main and any mitigation works shall be undertaken in accordance with the Middlemore Design Plan.

Access and parking at Middlemore Station

30. The Requiring Authority shall, in consultation with CMDHB, provide legal access to the northern car park at 100 Hospital Road for CMDHB staff via 64 Rosella Road (LOT 13 DP 19404 NA82C/132) and provide 10 carparking spaces on 64 Rosella Road for CMDHB staff use. The designation shall remain in place with access and carparks continuing to be provided and maintained until such time as:
- a) an alternative legal access to the northern car park and replacement carparking is provided by CMDHB; or
 - b) CMDHB confirms in writing to the Requiring Authority that it no longer requires access to the northern carpark via 64 Rosella Road and the carparking spaces on 64 Rosella Road.
31. The Requiring Authority shall secure CMDHB's use of 64 Rosella Road for access and car parking in condition 30 by way of legal instrument.
32. The Requiring Authority shall ensure that the access through 64 Rosella Road:
- a) is limited to those accessing 100 Hospital Road only and not as a public pedestrian connection to the Middlemore train station; and
 - b) includes a pedestrian facility designed to ensure safe passage of pedestrians, considering CPTED principles and patient accessibility requirements.

Watercare Utility Protection Plan

33. Prior to undertaking any works for the Wiri to Quay Park project within the land requirement area shown on the plans listed in condition 7, the Requiring Authority shall, in consultation with Watercare, prepare a Watercare Utility Protection Plan that:
- a) ensures Watercare's existing assets within the land requirement area are protected from any damage that may arise as a result of the works;
 - b) does not preclude Watercare's ability to construct and operate new infrastructure in the land requirement area in the future, where it is compatible with the works the Requiring Authority is undertaking;
 - c) establishes a process for consultation with Watercare on the proposed relocation of any existing Watercare assets that is required as a result of works undertaken by the Requiring Authority within the land requirement area;
 - d) makes the Requiring Authority wholly responsible for the cost of any relocation of Watercare assets that are required as a result of works undertaken by the Requiring Authority within the land requirement area; and

- e) ensures Watercare maintains access to its assets within the land requirement area 24 hours a day, 7 days a week for maintenance, safety and operation, provided that:
 - iii. Watercare holds a permit to enter the land requirement area; and
 - iv. Watercare staff and / or contractors provide advance notice to Train Control before entering the land requirement area.

Review of Designation

34. As soon as practicable following completion of construction of the Third Main in the locations set out in condition 7, the Requiring Authority shall:
- a) review the designation extent between these locations;
 - b) identify areas of designated land that the Requiring Authority considers are no longer necessary; and
 - c) give notice to the Council and other parties required under section 182 of the RMA to remove those parts of the designation that it no longer requires under (b). For the avoidance of doubt, this will include those parts of the designation identified as "temporary" on the plans listed in condition 7 (except in the case of the designation over 64 Rosella Road which shall remain in place until such time that condition 30(a) or (b) is satisfied).
35. Notwithstanding condition 34, the Requiring Authority must apply to Council to remove the designation at 12 and 14 Wyllie Road (being Lot 1 DP 152288 NA90C/848 and Part Lot 1 DP 136372 NA80B/675) within 3 months of construction being completed ~~and~~or the site no longer being required as a construction yard, whichever occurs earliest.