

# Notification report - notice of requirement for an alteration to City Rail Link Designation 2500-1 in the Auckland Unitary Plan – Operative in Part under the Resource Management Act 1991



**To: Auckland Council**

**From: Alan Watson, Independent Hearings Commissioner**

**Date: 8 November 2019**

Notice of Requirement/Designation Number:	Notice of Requirement for an alteration to Designation 2500-1 in the Auckland Unitary Plan – Operative in Part ( <b>AUP OIP</b> ) for works associated with the City Rail Link ( <b>CRL</b> ).
Requiring authority:	City Rail Link Limited ( <b>CRL</b> ).
Site address:	All the land within the extent of CRL designation 2500-1.
Legal description:	All the land within the extent of CRL designation 2500-1.

## Summary

CRL, as the requiring authority, has lodged a notice of requirement (**NoR**) for an **alteration** of Designation 2500-1 in the AUP OIP, under section 181 of the Resource Management Act 1991 (**RMA**).

The purpose of the designation is for Railway Purposes for the CRL, Britomart to Aotea section, including the associated construction works. The alteration seeks to amend the metric by which operational rail vibration is assessed. The alteration will make the operational rail vibration provisions in condition 63 for designation 2500-1 consistent with provisions now applying to CRL designations 2500-2, 4, 5 and 6 in the AUP OIP.

The alteration includes changes to conditions 63.1, 63.2, 63.3 and 63.4 and the addition of condition 63.5 to CRL designation 1.

## Delegation

I have delegated authority from the Council in terms of the RMA to make the below determination on the matter of notification/non-notification of the NoR from CRL that seeks an alteration to condition 63 for designation 2500-1 in the AUP OIP.

## Process for determination

I have reviewed various papers associated with this NoR in making the below determination, those papers being:

- City Rail Link Limited, Notice Of Requirement For Alteration Of Designation Under Section 181(1) Of The Resource Management Act 1991 dated 6 September 2019.
- Aurecon letter dated 2019-09-06 being Notice Of Requirement to Alter Rail Link Designation 1, Auckland Unitary Plan Reference 2500-1, Condition 63, Operational Vibration, Assessment Of Environmental Effects.
- Pulse Acoustic Consultancy report, Proposed Change to Condition 63 of CRL Designation, dated 19 June 2019.
- Styles Group report dated 1 November 2019 being Section 181(3) RMA, Alteration to CRL Designation 2500-1-Review of condition 63 of Designation 2500-1, as prepared for the Auckland Council.

I am reasonably familiar with the CRL having chaired the hearings for the earlier designations required for it and also made the decision dated 14 June 2017, under delegated authority, for limited notification of the NoR that sought similar alterations to designations 2, 4, 5 and 6 for the CRL.

I have met with Council officers and the Council's consultant expert on noise and vibration matters, Mr Jon Styles. Mr Styles has provided the above referenced report that is a review of the information with the NoR but he understandably, does not make a recommendation on the matter of notification. I note further, that there is no section 42A RMA report as would usually be provided to assist with a determination on notification and that the Council officers have not made a recommendation on notification. That too, is understood given the need to promptly make a determination and perhaps the greater need to receive a report from Mr Styles addressing the technical aspects of this matter.

## Determination

That the Notice of Requirement dated 6 September 2019 for an alteration of Designation 2500-1 relating to the City Rail Link project in central Auckland, proceed on a **LIMITED NOTIFIED** basis in accordance with section 149ZCC of the Resource Management Act 1991 (**RMA**) for the following reasons:

- a. I have considered the provisions of the RMA that apply to public notification and find that none apply. In particular, the NoR is not likely to have adverse effects that are more than minor, there is no rule or national environmental standard that requires public notification and, there are no special circumstances.
- b. In the consideration of limited notification of the NoR, I am not aware of any affected protected customary rights group or affected customary marine title group or statutory acknowledgements and, there is no rule or national environmental standard that precludes limited notification.
- c. In the consideration of any affected persons, I note the AEE with the NoR includes the statement that *"The proposed alteration to condition 63 of CRL designation 1 will allow for slightly higher levels of ground-borne vibration from operational rail activities than currently permitted under the existing condition. While a slightly greater number of people may be able to perceive train vibration where a building is directly located over the CRL tunnels, the threshold of annoyance (as determined by the FTA Manual) will*

*not be exceeded and the slight increase in vibration will not adversely impact upon the amenity of receivers, being occupants of buildings directly over the CRL tunnels.”*<sup>1</sup> The AEE proceeds to state the potential adverse effects of ground-borne vibration resulting from this NoR, based on the supporting technical assessment by Pulse, for occupants of buildings on sites adjacent to designation 1, is considered to be even less.

- d. I note there are other statements in the AEE and in the report by Mr Styles supporting the view that the adverse effects are acceptable and aligning those statements with the “language” of the RMA but nonetheless, it remains the case that the change in the metric sought by the alteration will see *“slightly higher levels of ground-borne vibration ... than currently permitted”* and *“a slightly greater number of people may be able to perceive train vibration where a building is directly located over the CRL tunnels”*.
- e. In those respects, I assess the adverse effects as being minor, as opposed to being less than minor, from the information I have received.
- f. In terms of affected persons, in accordance with section 149ZCF of the RMA, I assess from the information available to me, that it is properties directly above CRL designation 1 that are affected by the NoR. I note from the AEE<sup>2</sup> with the NoR that those properties are:
- 11-19 Customs Street West
  - 32-42 Wellesley Street West
  - 4-10 Mayoral Drive
  - 24 Wellesley Street West
  - 87- 89 Albert Street
  - 99 Albert Street
  - 103, 1C-11F/105, 107 Albert Street
  - 109-125 Albert Street
  - 120-130 Albert Street
  - 135 Albert Street
  - 62A-D Victoria Street West
  - 62 Victoria Street West.
- g. As stated in the AEE<sup>3</sup>, except for 11-19 Customs Street West, CRLL hold an interest in the second, third and fourth listed sites where the CRL rail alignment and station infrastructure will operate. These sites are currently vacant in anticipation of the construction of the new Aotea Station. Further, an email from CRLL<sup>4</sup> confirms that CRLL has a Project Delivery Agreement in place with Auckland Council that provides for the construction and operation of the CRL within the designated land at these sites. The last eight mentioned sites are areas that serve to enable the construction of the CRL and not the operation phase. This is also confirmed in an email from CRLL, dated 7 November 2019.
- h. From the information, other potentially affected persons are on sites adjacent to the CRL. However, I consider any adverse effects there would be less than minor due to those properties being located a greater distance from the rail track and tunnels, that distance also relating to the depth of the tunnels being below ground level.

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<sup>1</sup> Aurecon letter dated 2019-09-06 being Notice Of Requirement to Alter Rail Link Designation 1, Auckland Unitary Plan Reference 2500-1, Condition 63, Operational Vibration, Assessment Of Environmental Effects, section 5.2, paragraph 1

<sup>2</sup> Ibid, section 5.2, paragraphs 3 and 5.

<sup>3</sup> Ibid, section 5.2, paragraphs 4 and 5.

<sup>4</sup> Email dated 8 November 2019 from City Rail Link Limited.

- i. Accordingly, in the consideration of affected persons, it is only 11-19 Customs Street West that remains. That is the property referred to as Commercial Bay. It is owned by Precinct Properties New Zealand Limited (**Precinct Properties**).
- j. I understand that there have been discussions between the requiring authority (CRL) and Precinct Properties on this and perhaps related matters, but I have no information regarding such matters.
- k. The AEE includes a statement that limited notification is not required for the reasons outlined but, it nonetheless states *“Notwithstanding the conclusions regarding limited notification, CRL request limited notification of the NoR to the owner of the site at 11-19 Customs Street West (Lot 2 DP 69547).”*<sup>5</sup> That is not a matter that I address other than to note it is consistent with this determination in which I consider the owner and occupiers of 11-19 Customs Street West to be an affected person(s) in terms of the RMA on the basis that the potential adverse effects of vibration, resulting from the NoR are likely to be minor upon the persons with interests in that property.
- l. The NoR proposes to amend condition 63 of designation 2500-1 in the manner shown in the NoR by means of a Table which shows the amendments sought. It seeks to include the *“Commercial Bay office tower”* which is defined in the Table as meaning *“that part of the building commencing at level 4 above ground level”*. In my considerations of the notification matters, I can see no reason why all of the building levels should not be included in the limited notification. I have no other information apart from an email exchange between Mr Styles, who raised this matter as a concern, and Aurecon. That purports to respond to Mr Styles’ enquiries but I am not satisfied that it does, apart from email exchanges not being entirely satisfactory for the purposes of the notification considerations. That aside, it would appear that most of the lower levels are at this time, unoccupied given on-going construction.
- m. I recognise the benefits of amending the metric by which operational vibration is measured in order to make the provisions consistent with those now applying to CRL designations 2500-2, 4, 5 and 6. However, the process of notification needs to first be addressed.

Accordingly, from all of the above, this Notice of Requirement for an alteration to Designation 2500-1 in the Auckland Unitary Plan – Operative in Part for works associated with the City Rail Link is to proceed on a **limited notified** basis with notice to the property owner and the occupiers of the property at 11-19 Customs Street West, being Lot 2 DP 69547 and being the Commercial Bay property, because:

Under section 149ZCC of the Resource Management Act 1991, the adverse effects on the environment will or are likely to be minor because of the matters discussed above and particularly because that the potential adverse effects of vibration, resulting from the Notice of Requirement are likely to be minor upon the persons with interests in that property.

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<sup>5</sup> Aurecon letter dated 2019-09-06 being Notice Of Requirement to Alter Rail Link Designation 1, Auckland Unitary Plan Reference 2500-1, Condition 63, Operational Vibration, Assessment Of Environmental Effects, para 6.2, page 9.

A handwritten signature in black ink, appearing to read 'Alan Watson', with a stylized, cursive script.

**Alan Watson**  
BSc, DipTP, FNZPI

8 November 2019