

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**ENV-2016-AKL-**

**IN THE MATTER** of the Local  
Government (Auckland  
Transitional Provisions)  
Act 2010 (**LGATPA**)  
and the Resource  
Management Act

**AND**

**IN THE MATTER** of an appeal under  
section 157(3) of the  
LGATPA against a  
decision in relation to  
Designation 6303

**BETWEEN** **AUCKLAND COUNCIL**  
  
**Appellant**

**AND** **KIWIRAIL HOLDINGS  
LIMITED**  
  
**Respondent**

**NOTICE OF APPEAL**

**TO:** The Registrar  
Environment Court  
AUCKLAND

- 1.** Auckland Council (**Council**) appeals against a decision of KiwiRail Holdings Limited (**KiwiRail**) in relation to Designation 6303: Avondale to Southdown Rail Line from Soljak Place, Mount Albert to Neilson Street, Te Papapa (**Designation**).
- 2.** The Council has the right to appeal the decision under section 157(3) of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**).
- 3.** Further details of the reasons for this appeal are set out below.

4. The Council is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**RMA**).
5. The decision was made by KiwiRail.
6. The Council received notice of the decision on 30 September 2016.
7. The Council appeals against part of the decision relating to the proposed deletion of condition 8<sup>1</sup> which addressed arrangements for where the Designation crossed roads.
8. The reasons for the appeal are as follows:
  - (a) The Designation extends across 24 existing local roads (including 7 arterial roads), and two "t" intersections, owned by the Council and controlled by Auckland Transport. These roads form critical parts of the Auckland transport network and provide for the sustainable management of Auckland's natural and physical resources.
  - (b) The requirement for the Designation included very little detail as to how the effects of the public works it would authorise would be managed by KiwiRail (or others). There was no detail as to how effects on the road network and, in particular, how effects on public safety, would be managed.
  - (c) The Auckland Unitary Plan Independent Hearings Panel recommended to the Council that the Designation be subject to a condition requiring a number of matters to be addressed in an outline plan of works under section 176A of the RMA including:

Detailed arrangements to ensure that vehicle access along New North Road, Richardson Road, May Road, Dominion Road, Hayr Road, Hillsborough Road, Queenstown Road, Pleasant Street, Symonds Street, Forbes Street, Norman Hill Road, Quadrant Road, Hill Street, Selwyn Street, Onehunga Mall, Galway Street, Spring Street, Victoria Street and Alfred Street will be maintained when construction is completed. This should include arrangements, such as grade

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1 As recommended by the Independent Hearings Panel and accepted by the Council under section 148(1) of the LGATPA.

separation, to ensure safety wherever the line crosses any public street.

**(Condition)**

- (d) The Council supported the Condition and accepted this recommendation under section 148(1) of the LGATPA. Pursuant to section 151(1) of the LGATPA, that decision by the Council was to be treated as a recommendation by KiwiRail.
- (e) KiwiRail made the decision under section 151(2) of the LGATPA to reject, in part, the Council's recommendation by deleting the condition (and other conditions).
- (f) The construction and operation of a railway in accordance with the Designation creates potential adverse effects on the local road network, especially in relation to safety and efficiency of the road network.
- (g) It is appropriate to ensure that these potential adverse effects are specifically addressed in the conditions on the Designation.
- (h) The decision is contrary to the relevant provisions, including section 171, of the RMA and does not achieve the sustainable management purpose of the RMA.
- (i) The decision is also contrary to the relevant provisions of the Proposed Auckland Unitary Plan/ Auckland Unitary Plan (Operative in Part).

**9. The Appellant seeks the following relief:**


- (a) that the Designation include the Condition (or a condition to like effect); or alternatively
- (b) that, in the absence of the Condition (or a condition to like effect), the Designation boundaries are altered to exclude all roads; and

- (c) any consequential or further relief to address Auckland Council's concerns set out above.

10. The Appellant attaches the following documents to this notice:

- (a) a copy of the Independent Hearing Panel's recommendation on the Designation;
- (b) a copy of the Council's decision on the Designation; and
- (c) a copy of KiwiRail's decision; and
- (d) a list of names and addresses of persons who have been served with a copy of this notice of appeal.

**Date:** 29 November 2016



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G C Lanning  
Counsel for the Appellant

This document is filed by Gerald Christopher Lanning solicitor for the Appellant of the firm Simpson Grierson.

The address for service of the Appellant is at the offices of Simpson Grierson, Level 27, 88 Shortland Street, Auckland.

Documents for service on the Appellant may be left at that address for service or may be posted to the solicitor at Private Bag 92518, Auckland, or left for the solicitor at a document exchange for direction to DX CX10092 or transmitted to the solicitor by facsimile to 0-9-307 0331.

**Advice to Recipients** of copy of this notice.

*How to become party to proceedings*

1. You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends. You must also serve a copy of that notice on Auckland Council and KiwiRail Holdings Ltd within the same 15-working-day period, and serve copies on all other parties within 5 working days after that period ends.



2. If you are a trade competitor of a party to the proceedings, your right to be a party to the proceedings in the court may be limited (see section 274(1) and Part 11A of the Resource Management Act 1991).
3. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

*How to obtain copies of documents relating to appeal*

4. The copy of this notice served on you does not have attached a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

*Advice*

5. If you have any questions about this notice, contact the Environment Court in Auckland.

AUCKLAND UNITARY PLAN  
INDEPENDENT HEARINGS PANEL

*Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau*

**Report to Auckland Council  
Hearing topic 074**

**KiwiRail Designations  
6300-6306, R6307**

**July 2016**

Report first prepared by Harry Bhana in accordance with the Auckland Unitary Plan Independent Hearing Panel procedure and in accordance with section 142 of the Local Government (Auckland Transitional Provisions) Act 2010, on 30 August 2015, updated 30 September 2015 and further amended on 13 July 2016 following the lodging and hearing of a late submission by KiwiRail

Adopted as Auckland Unitary Plan Independent Hearings Panel recommendations in accordance with the Auckland Unitary Plan Independent Hearing Panel procedure and in accordance with section 144 of the Local Government (Auckland Transitional Provisions) Act 2010 on date of signature.

# Report to Auckland Council – Hearing topic 074 KiwiRail Designations 6300-6305, R6307

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## 1. Introduction

The purpose of this report is to provide an assessment and recommendation in relation to designations, modifications and new designations classified by the Independent Hearings Panel as moderately complex. This classification will generally apply where there is a:

- i. rollover of a designation with no modifications and a submission lodged by third party;
- ii. modification to a designation that will result in more than minor effects and with or without submissions;
- iii. notice of requirement for a new designation for existing works with or without submissions.

## 2. Assessment

The assessment will address:

- i. effects on the environment of allowing the modification or requirement;
- ii. mitigation measures proposed by requiring authority including any proposed conditions;
- iii. other section 171 matters or section 168A(3) (if the requiring authority is Auckland Council) matters where relevant;
- iv. whether land is owned by the requiring authority.

See section 8 of this report for the assessment of each modification and requirement.

On the basis of the assessment, the report concludes as set out below.

- i. The designation/modifications/requirements 6300, 6301, 6302, 6303, 6304, 6305 and R6307 can be recommended for confirmation subject to the amendments shown in Attachment 1 and Attachment 2.
- ii. Submissions by the requiring authority and by third-party submitters have identified issues regarding the accuracy of the delineation of the boundaries of the designations. There is insufficient information to enable an assessment and recommendation on whether or how these boundaries need to be amended. This process needs to be carried out as a comprehensive combined exercise between the requiring authority and the Council and any changes that are identified for correction need to be specifically identified on a before and after basis and in particular any changes affecting private property need to be highlighted so they are easily identified. This exercise should include removing the overlapping designations in respect of: 6300 and 6301; 6303 and 6304; 6304 and 6305. This detail needs to be provided before any changes to the boundaries of the designation can be recommended for confirmation. **Note: This bullet point amended following the Requiring Authority's response and the Pre-hearing Meeting and Report of 16 September 2015.**
- iii. A number of submitters including Housing New Zealand and Duncan McKenzie have requested that Designation 6303, Avondale to Southdown Railway Line, be removed from the proposed Auckland Unitary Plan on the grounds of

uncertainty as to timing and the nature and extent of effects and methods of how those effects might be managed. I have assessed those submissions and am not able to make a recommendation due to insufficient information. **Note this bullet point amended following the Requiring Authority's response and the Pre-hearing Meeting and Report of 16 September 2015.**

### **3. Expert input**

Not applicable.

### **4. Mediation required**

Mediation may be required regarding designations 6302 and 6304 and submissions 3116-3 and 236-1. **Note: amended following the Requiring Authority's response and the Pre-hearing Meeting and Report of 16 September 2015.**

### **5. Hearing required**


A hearing will likely be required for submissions on 6303. **Note: amended following the Requiring Authority's response and the Pre-hearing Meeting and Report of 16 September 2015.**

## 6. Recommendation to Panel

That the Panel:

- i. recommends that the designation/modifications/requirements 6300, 6301, 6302, 6303, 6304, 6305 and R6307 be confirmed subject to the amendments shown in Attachment 1 and Attachment 2;
- ii. recommends that the submissions by the requiring authority relating to checking of the extent of the designation boundaries to ensure that they are accurate is carried out in conjunction with the Council and the work completed in accordance with the Panel directions in its Pre-hearing Meeting Report dated 16 September 2015. This exercise should include removing the overlapping designations in respect of: 6300 and 6301; 6303 and 6304; 6304 and 6305. This detail needs to be provided before any changes to the boundaries of the designation can be recommended for confirmation.
- iii. make provision for a hearing of submissions to 6303.

**Note recommendation 2 was amended, a recommendation regarding lapse dates was deleted, and recommendation 3 was added, following the Requiring Authority's response and the Pre-hearing Meeting and Report of September 2015.**


<b>Author</b>	Harry Bhana
<b>Author's Signature</b>	
<b>Date</b>	30 August 2015 amended updated 30 September 2015 and further amended on 13 July 2016 following the lodging and hearing of a late submission by KiwiRail.

## 7. Panel recommendations to Auckland Council

The Auckland Unitary Plan Independent Hearings Panel recommends that Auckland Council recommends to the requiring authority that it confirms: the modifications in the notices of requirement for designations 6300, 6301, 6302, 6303, 6304, 6305; and confirms the notice of requirement R6307 included in the proposed Auckland Unitary Plan subject to the further modifications shown in Attachment 1 and Attachment 2.

## 8. Panel reasons

The reasons for the Panel's recommendation are set out in section 9 below.

<b>Panel Chair</b>	Judge David Kirkpatrick
<b>Chair's Signature</b>	
<b>Date</b>	22 July 2016

## 9. Assessment of modifications and submissions

Requiring authority	KiwiRail Ltd
Designation number (s)	6300, 6301, 6302,6303, 6304, 6305 & R6307
Designation purpose	6300, 6301, 6302, 6303, 6304, 6305 & R6307 The purpose of the designation is to develop, operate and maintain railways, railway lines, railway infrastructure, and railway premises as defined in the Railways Act 2005.
Location	6300 - North Auckland Railway line from Portage Road Otahuhu to Ross Road Topuni. 6301 – Newmarket Branch Railway Line from Remuera Road Newmarket to the Strand Parnell. 6302 - North Island Main Trunk Railway Line Buckland to Britomart. 6303 - Avondale to Southdown Railway Line from Soljak place, Mount Albert to Bond Place, Onehunga. 6304 - Onehunga Branch Railway Line. 6305 - Southdown Freight Terminal. R6307 - Manukau rail link/branch line/Railway Station.
Designations given effect to	All have been given effect to except 6303 Avondale to Southdown Railway Line.
Lapse date in operative plan	1 November 2015
Land ownership	No information provided
Land owned by the requiring authority	As above
Rollover designation with no modifications	6303 No modifications.
Description of the modification	6300 - Minor modifications only to annotate boundary between former Waitākere City area, Auckland City, and Rodney District where conditions applicable in each area have been identified and included in the rollover other than the addition of a standard statement of purpose for the designation.  6301 - Minor modifications only to annotate boundary between legacy plans, Auckland City District Plans - Isthmus section and Central Area section, where conditions applicable in each area have been identified and included in the rollover other than the addition of a standard statement of purpose for the designation.  6302 - Minor modifications only to annotate boundary between legacy plans, Auckland City District Plans - Isthmus section and Central Area section where conditions applicable in each area have been identified and included in the rollover other than the addition of a standard statement of purpose for the designation.  6304 –No conditions applied under the Auckland City District Plans - Isthmus section and no modifications have been made other than the addition of a standard statement of purpose for the designation.  6305 –No conditions applied under the Auckland City District Plans - Isthmus section and no modifications have been made other than the addition of a standard statement of purpose for



	<p>the designation.</p> <p>R6307 - This is a new designation so no modifications are applicable.</p>
Assessment of rollover modifications and reasons	<p>No assessment of these minor modifications is necessary. None of these changes will have any consequences for the management of effects on the environment arising from the operation of these works/activities.</p>
Notice of requirement	<p>R6307 - Manukau Rail Link from Lambie Drive (off-ramp) to Onslow Drive Wiri.</p>
Assessment of new designation and reasons	<p>The new designation request was accompanied by an assessment which addressed the criteria of section 171 of the Resource Management Act 1991. The works proposed to be designated have already been put into effect after being authorised by way of resource consents.</p> <p>Having reviewed the material supplied by KiwiRail in support of its request for this designation I have reached the following conclusions.</p> <p>The works and activity covered by the designation are in accord with:</p> <ol style="list-style-type: none"> <li>i. The objectives B2.1 and B3.3 of the regional policy statement and with the policies to provide for the development of an effective, efficient and safe integrated transport system that is integrated with and supports urban growth and associated land use.</li> <li>ii. The provisions of the Auckland-wide objectives and policies of C1.1 - Infrastructure which seek to ensure that the benefits of infrastructure are recognised, its adverse effects are managed and that the safe and efficient and secure development, operation and upgrading of infrastructure is enabled, and to service the needs of existing and planned use and development.</li> <li>iii. There is no need to give consideration to alternative sites, routes or methods, or to the necessity for the designation, as the requiring authority has already given effect to the works/activities to be designated.</li> </ol> <p>Accordingly for these reasons I am satisfied that the designation proposed is in accord with the criteria of section 171 and I recommend that the Panel recommends that the designation be confirmed.</p>
Submitters and summary of relief sought in submissions	<p><b>6300, 6301, 6302, 6303, 6304, 6305, R6307</b>  Submissions 371-214 and 371-217 by Heritage New Zealand sought to add a condition and advice note to all designations that contain scheduled historic heritage to address heritage values.</p> <p><b>6300</b>  Submission 2345-1 by Westcon Investments Ltd 6 that the designation be amended or deleted from land owned by third parties.</p>

	<p>Submission 5566-16 by Tram Lease Ltd and Viaduct Harbour Holdings requesting that Designation 6300 be removed from the land surface of 511 Parnell Road.</p> <p>Submission 5747-14 from Parnell Community Committee Incorporated seeking to add conditions requiring the Parnell Diesel Depot building to be preserved and the Waipara Stream to be appropriately managed.</p> <p>Submission 4336-122 by KiwiRail Holdings Ltd seeking retention of the designation and amendment of the reference from New Zealand Railways Corporation to KiwiRail Holdings Ltd.</p> <p>Submission 4336-134 by KiwiRail Holdings Ltd requesting extent of designation be checked to ensure an accurate match with the requiring authority's landholdings.</p> <p>Submission 4336-175 by KiwiRail Holdings Ltd seeking to amend the description of the location to read: "North Auckland Railway Line from <del>Portage Road</del> <u>Bell Avenue</u> Otahuhu to Ross Road Topuni."</p> <p><b>6301</b> Submission 5173-1 from Martyn Hamilton requesting that the designation be removed from buildings at 12, 16, 18, 20, 22, and 24 Heather Street Parnell.</p> <p>Submission 5747-15 from Parnell Community Committee Incorporated seeking to add conditions requiring the Parnell Diesel Depot building to be preserved and the Waipara Stream to be appropriately managed.</p> <p>Submissions 4336-124 by KiwiRail Holdings Ltd seeking retention of the designation and amendment of the reference from New Zealand Railways Corporation to KiwiRail Holdings Ltd.</p> <p>Submission 4336-130 and 4336-135 by KiwiRail Holdings Ltd requesting extent of designation in Condition 1 be checked to ensure an accurate match with the requiring authority's landholdings.</p> <p>Submission 4336-131 by KiwiRail Holdings Ltd requesting the deletion of Condition 2.</p> <p>Submission 4336-174 by KiwiRail Holdings Ltd requesting the amendment of notation on planning maps from 6300 to 6301.</p> <p><b>6302</b> Submission 3116-3 by the Maurice Hayes Family Trust seeking that the purpose be limited to the development, operation and</p>
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	<p>maintenance of railway facilities excluding other non-KiwiRail activities.</p> <p>Submission 5137-564 by Ports of Auckland Limited seeking that the designation be amended so that it does not apply to Ports of Auckland Limited land at Wiri Inland Port.</p> <p>Submission 6449-4 Madill and Smeed Ltd/Halls Transport seeking retention of the designation and its delineation.</p> <p>Submission 872-4 by Whai Rawa Ltd seeking confirmation that the existing height in extent of the designation is not altered and that the requiring authority does not seek changes to the designation height and lateral extent.</p> <p>Submissions 4336-125 by KiwiRail Holdings Ltd seeking retention of the designation and amendment of the reference from New Zealand Railways Corporation to KiwiRail Holdings Ltd.</p> <p>Submission 4336-132 and 4336-136 by KiwiRail Holdings Ltd requesting extent of designation in Condition 5 be checked to ensure an accurate match with the requiring authority's landholdings.</p> <p>Submission 4336-133 by KiwiRail Holdings Ltd requesting that references to legacy District plan provisions be amended to the corresponding Unitary Plan provisions.</p> <p><b>6303</b>  <b>Submissions by third parties opposed to the rollover of the designation.</b></p> <p>Submission 125-1 by the Nasura Family Trust opposing the designation on the basis of uncertainty in respect of timing and effects on their property at 22 Symonds Street Royal Oak, if the works are implemented.</p> <p>Submission 3864-1 from T C Robb and R A Ogden-Robb requesting the removal of the designation on the basis of uncertainty in respect of timing and effects on their property if the works are implemented. The submitters advise there is a reference to the railway line on their Certificate of Title to 62 Hill Road Onehunga.</p> <p>Submission 4612-1 by Duncan McKenzie requesting the deletion of the designation on the grounds that it has been in place since 1940, has never had the benefit of a proper notice of requirement and section 171 assessment and that designation is not required to protect the route since KiwiRail already owns the land.</p> <p>Submissions from Housing New Zealand expressing concern that the designation has been rolled over through two consecutive plan reviews without provision of further</p>
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environmental assessment or demonstration that the requiring authority requires the land or is prepared to take financial responsibility for protecting the corridor. As there has been insufficient information to support a rollover Housing New Zealand seeks its removal. Particular Housing New Zealand properties identified as affected by the designation are as follows:

- i. submission 839-9997 - 26 Normans Hill Road
- ii. submission 839-9978 - 14 Forbes Street,
- iii. submission 839-9979 - 3, 5, 7 Bristol Road and 14, 16 Lowery Avenue, Mount Roskill;
- iv. submission 839-9980 - 35A and 35 Pleasant Street Onehunga.

**Submissions by the requiring authority and the Council**

Submission 4336-126 from the requiring authority requesting retention of the designation and amendment of the reference from "New Zealand Railways Corporation" to "KiwiRail Holdings Ltd".

Submission 4336-171 by the requiring authority requesting that the Council GIS files be checked for accuracy against the KiwiRail landholdings.

Submission 4336-172 by the requiring authority requesting that the notation on the plan be amended from 6304 to 6303.

Submission 4336-176 by the requiring authority requesting that the location for the designation be amended to read "Avondale Southdown Railway Line from Soljak Place Mount Albert to ~~Bond Place, Onehunga~~ Nielson Street, Te Papapa."

Submission 5716-3635 by the Council seeking retention of the designation.

**6304**

Submission 236-1 from All Secure Self Storage (Auckland) Ltd seeking that proposed modifications to designation 6304 be removed.

Submission 3230-20 from New Zealand Starch Limited seeking retention of noise limits and other development controls proposed for the Heavy Industry Zone within the designation.

Submissions 4336-127 by KiwiRail Holdings Ltd seeking retention of the designation and amendment of the reference from New Zealand Railways Corporation to KiwiRail Holdings Ltd.

Submission 4336-138 by KiwiRail Holdings Ltd requesting extent of designation to be checked to ensure an accurate match with the requiring authority's landholdings.

	<p>Submission 4336-177 by KiwiRail Holdings Ltd requesting the location for the designation to read: "Onehunga Branch Railway Line from Onehunga Harbour Road Onehunga to Station Road Penrose and <del>Nielson Street Te Papapa</del>."</p> <p>Submission 4336-174 by KiwiRail Holdings Ltd requesting the amendment of notation on planning maps from 6305 to 6304.</p> <p><b>6305</b> Submission 3230-23 from New Zealand Starch Limited seeking retention of noise limits and other development controls proposed for the Heavy Industry Zone within the designation.</p> <p>Submission 5716-2817 from Auckland Council requesting that the extent of the designation be changed to align with the part of the site zoned Strategic Transport Corridor.</p> <p>Submissions 4336-128 by KiwiRail Holdings Ltd seeking retention of the designation and amendment of the reference from New Zealand Railways Corporation to KiwiRail Holdings Ltd.</p> <p>Submission 4336-139 by KiwiRail Holdings Ltd requesting extent of designation to be checked to ensure an accurate match with the requiring authority's landholdings.</p> <p>Submission 4336-178 by KiwiRail Holdings Ltd requesting the location for the designation to read: "Southdown Freight Terminal at Nielson Street (adjoins number 345 Nielson Street) Onehunga."</p> <p><b>R6307</b> Submission 2745-785 by Vector Ltd and Vector Gas Ltd seeking amendment to the designation to clarify that the submitter is entitled to appropriate access in respect of its works within the designated area.</p> <p>Submissions 4336-123 by KiwiRail Holdings Ltd seeking retention of the designation and amendment of the reference from New Zealand Railways Corporation to KiwiRail Holdings Ltd.</p> <p>Submission 4336-141 by KiwiRail Holdings Ltd requesting extent of designation to be checked to ensure an accurate match with the requiring authority's landholdings.</p> <p>Submission 4336-179 by KiwiRail Holdings Ltd requesting the location for the designation to read: "Manukau Rail Link from <del>Lambie Drive (off ramp)</del>, <u>Davies Avenue</u> Manukau City Centre to Onslow <del>Drive</del> <u>Avenue</u> Wiri."</p>
Assessment of submissions and reasons	<p><b>Designation 6300</b> <b>2345-1</b> The submitter requested that the designation be restricted so that future development of railway infrastructure</p>

should not take place on land in third-party ownership as at February 2014. It is not apparent whether the submitter is concerned that an area of land included in the designation is owned by a third party. The designation concerned has not been modified other than in the statement of purpose and I do not believe that modification has extended the powers that already existed under current legislation. In any event I would be unable to recommend the relief sought to the extent that may attempt to prevent the requiring authority's statutory powers to amend, alter or extend its designations in the future.

**5566-16** The submission concerned a property at the corner of Domain Drive and Parnell Road located above the Parnell Tunnel. It should be noted that submission 4336-174 by KiwiRail Holdings Ltd has requested the amendment of notation on planning maps from 6300 to 6301. That amendment would mean that submission 5566-16 should be related to 6301. The submitter seeks to have the designation map amended so it is not shown as affecting the land surface. However Condition 4 of Designation 6301 makes it clear that the designation in this area applies to the subsoil space only and the strata nature of the designation is clearly illustrated in diagram B09-06(1). I do not recommend any change to the mapping of this designation.

**5747-14** The Parnell Community Committee Incorporated sought to add conditions to the designation that the Parnell Diesel Depot building be preserved. The requiring authority advises that the designation has been uplifted from this part of the site, however the Unitary Plan requires amendment to reflect that uplifting of part of the designation. I recommend that KiwiRail provides the Panel with the necessary amendments to the documentation showing the designation.

4336-122 KiwiRail's request to amend reference from New Zealand Railways Corporation to KiwiRail is recommended for confirmation.

4336-134 KiwiRail request for the extent of the designation to be checked for an accurate match with their landholdings is a matter that needs to be determined between KiwiRail and the Council. I recommend that this submission be rejected for the detailed reasons set out in Sections 2 and 6 above.

4336-175 I recommend that the description of the location be amended as requested by KiwiRail.

#### **Designation 6301**

**5173-17** The designation abuts but does not extend over these properties. KiwiRail advises that the submitter's concern arose from an incorrect letter from the Council advising that the properties were covered by the designation. No action is required or recommendation made in respect of the submission.



	<p><b>5747-15</b> The Parnell Community Committee sought to include a condition within the designation that “Management of the Waipapa Stream and any adjoining works to ensure the natural and historical importance of this watercourse are given regard to”. To the extent that the proposed condition relates to ongoing operational effects of the designated works it does not provide sufficient clarity or precision to enable the application of any assessment of compliance. As I note below KiwiRail is discussing this matter further with the submitter. Unless a more suitable condition or conditions is proposed I recommend against the inclusion of a condition of the kind sought in the submission.</p> <p><b>4336-124</b> KiwiRail’s request to amend reference from New Zealand Railways Corporation to KiwiRail Holdings Ltd is recommended for confirmation.</p> <p><b>4336-130 and 4336-135</b> KiwiRail’s request for the extent of the designation to be checked for an accurate match with its landholdings is a matter that needs to be determined between KiwiRail and the Council. I recommend that this submission be rejected for the detailed reasons set out in Sections 2 and 6 above.</p> <p><b>4336-131</b> KiwiRail advised that this condition related to the provision of a temporary station prior to construction of Britomart Transport Centre. I recommend the condition be deleted.</p> <p><b>4336-174</b> I agree with the requiring authority that the planning maps do not clearly distinguish between the extent of the adjoining designations between 6300 (the main North Island Main Trunk Railway) and 6301 the Newmarket Branch Railway Line from Newmarket to the Strand Parnell. I recommend that this submission be rejected for the detailed reasons set out in Sections 2 and 6 above.</p> <p><b>Designation 6302</b></p> <p><b>3116-3.</b> The submission seeks that the purpose of the designation be limited so as to exclude non-KiwiRail activities. The submission expresses concern that land owned by KiwiRail adjacent to the railway line could be used by an unrelated party for housing and operating a collection of vintage steam locomotives with consequent reverse sensitivity effects for the potential development of the submitters land for urban purposes. I am unable to comment whether the purpose as amended would enable the activity that concerned the submitter to be established under the terms of the designation. I have referred to this matter further with reference to the requiring authority’s engagement with submitters.</p> <p><b>5137-564</b> KiwiRail advises that the submission by Ports of Auckland Ltd arose from an incorrect letter from the Council advising that the Ports of Auckland land was covered by the</p>
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designation. No action is required or recommendation made in respect of the submission.

**6449-4** This submission is in support of the designation and no recommendation is required.

**872-4** The submission seeks assurance that no additional land or airspace/subsoil will be affected or taken by the modified designation and that the submitter would not support any further changes to the designation particularly in relation to designation height and lateral extent. The submission appears to accept that KiwiRail has not altered the designation height or lateral extent in the rollover designation. Whether or not KiwiRail chooses to alter the extent of its designation in the future is not a matter that can be addressed in this Unitary Plan process. Accordingly no recommendation is required in respect of this submission.

**4336-125** request to amend reference from New Zealand Railways Corporation to KiwiRail is recommended for confirmation.

**4336-132 and 136** KiwiRail's request for the extent of the designation to be checked for an accurate match with their landholdings is a matter that needs to be determined between KiwiRail and the Council. I recommend that this submission be rejected for the detailed reasons set out in Sections 2 and 6 above.

**4336-133** This Submission by KiwiRail sought that references to district plan provisions be amended to the corresponding Unitary Plan provisions. I have reviewed the rollover designations and agree that they contain a number of references to legacy plan provisions including the Tamaki Drive Scenic Way and a Scheduled Geological feature (D12-04) around the Orakei basin. However a complete review of all legacy provisions contained in these designations and a correct identification of the relevant proposed Auckland Unitary Plan provision was not able to be undertaken in the context of this assessment and is a task that would be more appropriately carried out by Council planning staff more knowledgeable about the process of transfer of these legacy provisions into the Unitary Plan. I recommend that the submission is rejected.

### **6303**

#### **Submissions by third parties seeking removal of rolled over designation**

In both the submissions by Duncan McKenzie and by Housing New Zealand there is reference to rollovers which I interpret as meaning continuing extension of lapse dates. The issues raised in these submissions by all of the parties submitting in opposition concern the uncertainty that arises from the ongoing imposition of this designation without any indication of when or how it would be implemented and how any effects arising from



its implementation and ongoing operation would be managed. I do not consider that the rollover of the designation provides that opportunity for reassessment. I note that the designation will lapse on 1 November 2015 unless KiwiRail seeks an extension under section 184 of the Resource Management Act 1991. I consider that an application under section 184 would provide an appropriate opportunity for the issues raised in the submissions to be properly assessed.

The issue of lapse dates of submissions and the application of rollover of lapse periods is discussed later in this report.

I refer later in this report to the advice from KiwiRail as to its ongoing discussions/mediation with the submitters.

#### **Submissions by KiwiRail and the Council**

**4336-126** KiwiRail's request to amend reference from New Zealand Railways Corporation to KiwiRail Holdings Ltd is recommended for confirmation.

**4336-137** KiwiRail request for the extent of the designation to be checked for an accurate match with its landholdings is a matter that needs to be determined between KiwiRail and the Council. I recommend that this submission be rejected for the detailed reasons set out in Section 2s and 6 above.

**4336-176** I recommend that the description of the location be amended as requested by KiwiRail.

**4336-172** I agree with the requiring authority that the planning maps do not clearly distinguish between the extent of the adjoining designations 6303 and 6304 the Onehunga Branch Railway Line. I recommend that this submission be rejected for the detailed reasons set out in Sections 2 and 6 above.

#### **Designation 6304**

**236-1** The submitter's property adjoins Designation 6304. However the property summary on the planning maps indicates that the designation covers the property. It may be that reference which has concerned the submitter. I recommend that the property summary be amended to indicate that the submitter's land at 44-46 Galway Street Onehunga is not subject to this designation.

**3230-20** This submitter is concerned to ensure there are no reverse sensitivity effects arising from the submitter's activities particularly in regard to air quality and noise. The relief sought was for the retention of the relevant heavy industry controls within the designation. This relief is not sufficiently specific to enable a recommendation and I accordingly recommend that the submission be rejected.

**4336-127** KiwiRail's request to amend reference from New Zealand Railways Corporation to KiwiRail Holdings Ltd is recommended for confirmation.

**4336-138** KiwiRail request for the extent of the designation to be checked for an accurate match with its landholdings is a matter that needs to be determined between KiwiRail and the Council. I recommend that this submission be rejected for the detailed reasons set out in Sections 2 and 6 above.

**4336-177** I recommend that the description of the location be amended as requested by KiwiRail.

**4336-174** I agree with the requiring authority that the planning maps do not clearly distinguish between the extent of the adjoining designations 6305 (the Southdown Freight Terminal) and 6304 (the Onehunga Branch Railway Line). I recommend that this submission be rejected for the detailed reasons set out in Sections 2 and 6 above.

#### **Designation 6305**

**3230-23** This submitter is concerned to ensure there are no reverse sensitivity effects arising from the submitter's activities particularly in regard to air quality and noise. The relief sought was for the retention of the relevant heavy industry controls within the designation. This relief is not sufficiently specific to enable a recommendation and I accordingly recommend that the submission be rejected.

**5716-2817** The Council has identified errors in the mapping of the 'underlying' zoning of the designation. When viewed in the proposed Auckland Unitary Plan maps the designation boundary and the zone boundary do not align. I recommend this error be corrected.

**4336-128** KiwiRail's request to amend reference from New Zealand Railways Corporation to KiwiRail Holdings Ltd is recommended for confirmation.

**4336-139** KiwiRail's request for the extent of the designation to be checked for an accurate match with their landholdings is a matter that needs to be determined between KiwiRail and the Council. I am not able to make any recommendation in this regard.

**4336-178** I recommend that the description of the location be amended as requested by KiwiRail.

#### **Notice of Requirement R6307**

**2745-785** Vector Ltd is concerned that a number of electricity transmission facilities including underground cables pass under the railway line and requests clarification in the designation that Vector has access rights to maintain its equipment. This is a matter that needs to be settled between the submitter and the requiring authority and as discussed below has been the subject of continuing discussions.

**4336-123** KiwiRail's request to amend reference from New

	<p>Zealand Railways Corporation to KiwiRail Holdings Ltd is recommended for confirmation.</p> <p><b>4336-141</b> KiwiRail's request for the extent of the designation to be checked for an accurate match with their landholdings is a matter that needs to be determined between KiwiRail and the Council. I recommend that this submission be rejected for the detailed reasons set out in Sections 2 and 6 above.</p> <p><b>4336-179</b> I recommend that the description of the location be amended as requested by KiwiRail.</p>
<p>Engagement by requiring authority with submitters.</p>	<p>KiwiRail's memorandum of 11 August 2015 set out a summary of its engagement with submitters.</p> <p>In this part of the report I have only reviewed matters which do not appear to have been resolved at the time that memorandum was issued.</p> <p>Submissions by Duncan McKenzie, the Nasura Family Trust , T C Robb and RA Ogden-Robb and by Housing New Zealand had not been discussed with those submitters as at 11 August 2015.</p> <p>Submission 5566-16 from Tram Lease Ltd has not yet been resolved. It is essentially an issue of how a subsoil designation is shown on the planning maps without the inference that it affects the surface of the ground. The conditions make it clear that only the subsoil is affected and I have no recommendation to make regarding any change.</p> <p>Submission 5747-15 from the Parnell Community Committee regarding the Waipapa stream is still under discussion. As I have noted the proposed condition as worded in the relief sought by the Committee is not sufficiently clear and precise to enable a recommendation that it be included in the designation.</p> <p>Submission 3116-3 arises from a concern that land owned by KiwiRail adjoining the submitter's property could be used by a third party for activities associated with vintage locomotives with associated reverse sensitivity issues. The submitter and requiring authority will need to provide the necessary legal opinion regarding the extent of the purpose as proposed in the rollover provisions.</p> <p>Submission 3230-20 and 23 related to the control of potential reverse sensitivity issues arising from noise and air quality effects generated by the submitter's activities affecting the designated works and activities. KiwiRail advises that it intends to discuss this issue with the submitter.</p> <p>Submission 2745-785. KiwiRail advises that it will review the matter and discuss with Vector.</p>
<p>Recommendation to Panel</p>	<p>That Designations 6300, 6301, 6302, 6304, 6305 and R6307 as recorded in the proposed Auckland Unitary Plan be</p>

	confirmed subject to the amendments set out in Attachment 1 and Attachment 2.
Response from requiring authority	<p>The memorandum by Russell McVeagh - Response by KiwiRail Ltd in relation to the section 142 reports for Topic 074 - Designations, dated 11 September 2015 recorded as follows.</p> <p><b>All KiwiRail Designations</b></p> <p>The requiring authority disagrees with the assessment that there is insufficient information on how the boundaries delineating the designations could be amended for accuracy. It advises that KiwiRail is a significant way through checking the designations and identifying the minor amendments on an electronic GIS layer for consideration by the Council and intends to clarify and discuss these with Council so the amendments can be completed.</p> <p><b>6300</b></p> <p>The requiring authority advises that the recommendation to provide the Panel with documentation on the uplifting the designation from the Parnell Diesel Depot is unnecessary as it will be uplifted through a separate process. It advises that mediation may be required if the Parnell Community Committee pursues their submission. The requiring authority otherwise agrees with the recommendations on this designation.</p> <p><b>6301</b></p> <p>The requiring authority agrees with the recommendation and neither mediation nor hearing is required.</p> <p><b>6302</b></p> <p>The requiring authority agrees that mediation with submitter Maurice Hayes Family Trust submission number 3116-3, would be useful. It disagrees with the recommendation that its submissions seeking the updating of legacy plan references be rejected. The requiring authority otherwise agrees with the recommendations on this designation.</p> <p><b>6303</b></p> <p>The requiring authority does not agree that the submissions against Designation 6303 should be rejected on the basis that the designation lapses on 1 November 2015 unless an application for extension is made under section 184 of the Resource Management Act 1991. The designation has been rolled over with the same lapse reference as in the operative district plan, "12 years from the date of inclusion in the District Plan." It considers that the rollover date has not been amended. Accordingly KiwiRail considers that the matters raised in the submissions should be addressed at mediation and if necessary at a hearing.</p> <p><b>6304</b></p> <p>The requiring authority does not agree that 44-46 Galway Street Onehunga is not subject to the designation and considers that mediation is necessary. The requiring authority otherwise agrees with the recommendations on this designation.</p>

	<p><b>6305</b></p> <p>KiwiRail disagrees with the recommendation to amend the planning map to align the designation with the part of the site zoned Strategic Transport Corridor. It advises it will consult with Council regarding those changes. The requiring authority otherwise agrees with the recommendations on this designation.</p> <p><b>R6307</b></p> <p>The requiring authority is to work with Vector to resolve the submitter's concerns regarding access and otherwise agrees with the recommendations on this designation.</p>
<p>Report writer's further recommendations</p>	<p>I have amended above my recommendations regarding mediation and hearing of submissions. I acknowledge that:</p> <ul style="list-style-type: none"> <li>i. the process of correcting and aligning boundaries of designations is progressing and the Panel has given a direction regarding this process; and,</li> <li>ii. the process of updating legacy plan references is likely to continue through discussion between the Council and KiwiRail;</li> </ul> <p>Accordingly my recommendation that the submissions by KiwiRail on those matters be rejected has been withdrawn. I have also withdrawn the recommended amendment to Designation 6305 which was made to satisfy submission 5716-2817 by the Council. As noted above issues regarding alignment and correction of designation boundaries are being resolved by discussion between KiwiRail and the Council in accordance with the direction given by the Panel.</p> <p>The issue of rollover of lapse dates which was a specific issue in regard to Designation 6303 was the subject of submissions and memoranda from a number of requiring authorities and was addressed at the Pre-hearing meeting for topic 074 on 16 September 2015. After considering those submissions and memoranda the Panel recorded in its report of that meeting that it would apply a number of principles relating to the application of s 144(4) of the Local Government (Auckland Transitional Provisions) Act 2010. The application of these principles meant that the proposed rollover of the lapse date for Designation 6303 was not a matter on which the Panel could make a recommendation.</p> <p>Following the Pre-hearing Meeting of 16 September 2015 it became evident that a hearing of submissions in relation to Designation 6303 would be necessary.</p>
<p>Hearing of Submissions on Designation 6303 on 1 December 2015</p>	<p>There were two submitters who wished to pursue their submissions in relation to Designation 6303, at the hearing on 1 December 2015. These submitters were Heritage New Zealand Pouhere Taonga, and Duncan McKenzie. Heritage New Zealand did not attend the hearing but it had lodged evidence seeking the imposition of a condition requiring</p>

	<p>consideration of historic heritage effects in an Outline Plan of Works where the work would affect a scheduled historic place. KiwiRail opposed that relief on the basis that the scheduling in itself provided the appropriate protection.</p> <p>Duncan McKenzie sought the deletion of Designation 6303 on the basis that it had been in place for at least 70 years and had never been updated or re-assessed in terms of the significant changes that had occurred over that time particularly in terms of the management of adverse effects on the environment. His evidence was to the effect that the designation as currently worded did not provide for adequate control over the effects of the construction and operation of a public work of this scale. KiwiRail responded that there was significant scope for the Avondale to Southdown corridor to provide for some form of passenger rail in the future including the potential for light rail. It confirmed that the designation was required to protect a key part of KiwiRail's future plans for operation and development in Auckland. It advised the Panel that it was continuing to work towards the implementation of this designation and required the protection of the designation in the interim.</p>
<p>Panels recommendation on Kiwirail's designations.</p>	<p>In regard to the hearing of submissions on Designation 6303 the Panel has concluded that the relief sought by Heritage New Zealand should be granted and that the "Type 2 condition" that this submitter sought ought to be included in the conditions attached to that designation. While the Panel was not satisfied that it was not appropriate to grant Mr McKenzie's relief and recommend deletion of the designation it was of the view that more robust conditions ought to be imposed to ensure that any outline plan of works to initiate the project would clearly demonstrate how adverse effects associated with the construction and operation of the works would be avoided, remedy or mitigated. The Panel accordingly recommends that Designation 6303 as recorded in the proposed Auckland Unitary Plan should be confirmed subject to the amendments set out in Attachment 1.</p> <p>In regard to Designations 6300, 6301, 6302, 6304, 6305 and R6307 as recorded in the proposed Auckland Unitary Plan it recommends that those designations be confirmed subject to the amendments set out in Attachment 1 and Attachment 2</p>
<p>Late Submission by Kiwirail</p>	<p>On 10 November 2016 the Panel gave approval to Kiwirail to lodge a late submission to the Unitary Plan. The submission was received by the Council on 26 November 2016 and was notified accordingly. The submission sought the rollover of parts of existing designations that had not been included in Kiwirail's original request for rollover of existing designations. The submission sought the reinstatement of the Kiwirail designation for seven sites as follows:</p> <ol style="list-style-type: none"> <li>1. Extend Designation 6300 by the addition of three areas which are part of 97 Mt Eden Road, 101 Mt Eden Road and 14-22 Boston Road Mt Eden;</li> <li>2. Extend Designation 6302 by the addition of an area of railway land in the vicinity of Jutland Road;</li> <li>3. Extend Designation 6302 by the addition of an area of railway land adjoining 276, 278 and 280 Great South Road</li> </ol>



	<p>Manurewa;</p> <p>4. Extend Designation 6302 by the addition of an area of railway land adjoining 1-15 Spartan Road Takanini;</p> <p>5. Extend Designation 6302 by the addition of an area of land adjoining 65 Ash Road Wiri;</p> <p>6. Extend Designation 6303 by the addition of an area of land including part of 66 Frost Road and that part of the road reserve of Somerset Road extending west from 66 Frost Road for a distance of about 420 metres;</p> <p>7. Extend Designations 6304 and 6305 by the addition of an area of 5 Maurice Road and 218 Station Road</p>
<p>Further submissions in response to the late submission</p>	<p>There were no further submissions in response to sites 1-5. KiwiRail received four further submissions from:</p> <p>(a) All Secure Self-Storage Limited ("All Secure"), in relation to Designation 6304 for the Onehunga Branch Line;</p> <p>(b) Auckland Transport, in relation to Site # 6 on the Avondale to Southdown Railway Corridor at Somerset Road;</p> <p>(c) T&amp;O Properties; a landowner affected by amendments to KiwiRail's designations at Site # 7 at Maurice and Station Roads, Onehunga; and</p> <p>(d) The Rockfield Trust, a landowner affected by amendments to KiwiRail's designations at Site # 7 at Maurice and Station Roads, Onehunga.</p>
<p>Hearing of further submissions in response to the late submission</p>	<p>(a) The submission by All Secure was not made in response to the changes sought in the late submission by KiwiRail but was seeking to further add to their submission 236-1 opposing the designation.</p> <p>(b) Auckland Transport (AT) was concerned about the potential effects of closure of Somerset Road and sought that it should be subject to a condition deeming approval in terms of section 176 and 178 of the RMA, to avoid AT's operations being unnecessarily constrained. At the hearing AT modified its position to request the imposition of the following condition:</p> <p><i>KiwiRail Corporation Limited is deemed to have given its written approval (as requiring authority) under sections 176 or 178 of the RMA to Auckland Transport and parties with Auckland Transport Corridor Access approval to undertake any activity for the purposes of operating, maintaining or upgrading Auckland Transport or utility assets within Somerset Road, Mt Roskill, until either:</i></p> <ul style="list-style-type: none"> <li>• <i>this section of road subject to the designation is stopped or otherwise no longer a road as defined by the Local Government Act 1974; or</i></li> <li>• <i>KiwiRail Corporation Limited gives six months written notice of its intention to construct the Avondale to Southdown Railway in accordance with a legal right of access.</i></li> </ul> <p>In response KiwiRail stated that such a condition was unnecessary and it was committed to working with AT to ensure (through existing processes outside a condition) that AT's ability to continue to utilise Somerset Road is protected until such time as the railway line is constructed. In the light of these submissions and evidence the Panel considers that re-imposition of the designation of Somerset Road is reasonably</p>

	<p>necessary and is unlikely to lead to any significant difficulties in the day to day operations of the road network in this area.</p> <p>(c) T&amp;O properties submission was met by Kiwirail's amendment to the designation so that the submitter's land was no longer affected.</p> <p>(d) The Rockfield Trust was concerned that their land was to remain designated after being earlier informed that the designation was no longer required. That submitter was of the opinion that the additional width of designation was not necessary for double tracking the rail line. The evidence of KiwiRail was that the additional area was required to prevent a "pinch point" being created which would hinder the implementation of double tracking of the rail line in this area. The Panel accepts the evidence of KiwiRail that the additional width is reasonably necessary.</p>
Recommendation from Panel in regard to late submission by KiwiRail	That in regard to the late submission by Kiwirail the extensions to Designations 6300, 6302 and 6304 as shown on the maps in Attachment 2 be included in the areas of those Designations which are recommended for confirmation.
Reasons	The Panel's reasons are as set out in "Hearing of further submissions in response to the late submission".

## 10. Attachment 1 Changes to text of proposed Auckland Unitary Plan

### Designation 6300

Amend the name of the requiring authority from New Zealand Railways Corporation to KiwiRail Holdings Ltd.

Amend the description of the location in the designation header table to read:

North Auckland Railway Line from ~~Portage Road~~ Bell Avenue Otahuhu to Ross Road Topuni.

### Designation 6301

Amend the name of the requiring authority from New Zealand Railways Corporation to KiwiRail Holdings Ltd.

Delete Condition 2

### Designation 6302

Amend the name of the requiring authority from New Zealand Railways Corporation to KiwiRail Holdings Ltd.

### Designation 6303



Amend as follows

**6303 Avondale Southdown Railway Line - updated following alteration to designation pursuant to section 181 of the Resource Management Act 1991**

Designation Number	6303
Requiring Authority	<del>New Zealand Railways Corporation (KiwiRail)</del> <u>KiwiRail Holdings Ltd</u>
Location	Avondale to Southdown Railway Line from Soljak Place, Mount Albert to <del>Bond Place, Onehunga-Nielson Street, Te Papapa</del>
Rollover Designation	Designation G08-05, Auckland Council District Plan (Isthmus Section) 1999
Lapse Date	<del>12 years from when the circumstances in section 175(1) of the Resource Management Act 1991 apply</del> <u>31 August 2029</u>

**Purpose**

The purpose of the designation is to develop, operate and maintain railways, railway lines, railway infrastructure, and railway premises as defined in the Railways Act 2005.

**Conditions**

- ~~1. That prior to implementation of the designation an assessment of environmental effects be undertaken to determine effects the works will have on the environment and the most appropriate means of mitigating these effects.~~
- ~~2. That a landscape plan be submitted for approval to the Council at the time of detailed design including fencing and planting which will be implemented at the boundary of the line with all land zoned residential and open space to minimise noise effects and provide screening.~~
- ~~3. That vehicle access along New North Road, Richardson Road, May Road, Dominion Road, Hayr Road, Hillsborough Road, Queenstown Road, Pleasant Street, Symonds Street, Forbes Street, Normans Hill Road, Quadrant Road, Hill Street, Selwyn Street, Onehunga Mall, Galway Street, Spring Street, Victoria Street and Alfred Street be maintained when construction is completed. All crossings to be grade separated, with the exception of local roads.~~
- ~~4. The short term construction effects including noise, visual effects and dust be reduced through appropriate construction methods.~~
- ~~5. The term for this designation shall be 12 years from the inclusion of the designation in the District Plan.~~  
Detailed conditions covering the following matters shall be submitted as part of the outline plan of works:

1. A construction environmental management plan setting out the details of how the project and its environmental effects will be managed. It must include contact information for the Project Manager and details of how all potential adverse environmental effects including those affecting neighbouring properties will be managed.
2. A report from a suitably qualified noise consultant assessing potential noise effects arising from the project and setting out recommendations how noise and vibration from the works should be managed.
3. A report from a suitably qualified consultant assessing potential effects arising from rock removal required to implement the project and setting out recommendations on how adverse effects resulting from any measures required for rock removal, including blasting and mechanical methods should be managed.
4. A report from a suitably qualified consultant assessing potential effects arising from the ground vibration created by construction machinery involved in the project and setting out recommendations on how adverse effects of vibration from construction activities should be managed.
5. A construction noise and vibration management plan setting out how noise, vibration and blasting effects as determined from the reports set out above can be managed in a manner that will minimise the impacts on affected parties and sensitive receivers in accordance with best practice.
6. An assessment of effects of noise from the operation of the railway activity that is proposed, prepared in accordance with the relevant New Zealand standard if one exists or a relevant overseas standard if no New Zealand standard exists. The assessment shall include recommendations on any methods to be used to avoid, remedy or mitigate the effects of noise from the railway operation.
7. A landscape plan including detailed design of fencing and planting at the boundary of the line where it interfaces with all land zoned residential and open space.
8. Detailed arrangements to ensure that vehicle access along New North Road, Richardson Road, May Road, Dominion Road, Hayr Road, Hillsborough Road, Queenstown Road, Pleasant Street, Symonds Street, Forbes Street, Norman Hill Road, Quadrant Road, Hill Street, Selwyn Street, Onehunga Mall, Galway Street, Spring Street, Victoria Street and Alfred Street will be maintained when construction is completed. This should include arrangements, such as grade separation, to ensure safety wherever the line crosses any public street.
9. Where any works or development involve the demolition of, or, alterations or additions to a scheduled historic heritage place, the following shall be submitted with the Outline Plan of Works:
  - a. An assessment of the effects on the historic heritage values of the place; and
  - b. A consideration of alternative methods and/or appropriate mitigation to prevent or avoid damage, loss or destruction of the values of the historic heritage place.

## **Designation 6305**

Amend the name of the requiring authority from New Zealand Railways Corporation to KiwiRail Holdings Ltd.

Amend the description of the location in the designation header table to read:

Southdown Freight Terminal at Nielson Street (adjoins number 345 Nielson Street) Onehunga.

#### **Designation R6307**

Amend the name of the requiring authority from New Zealand Railways Corporation to KiwiRail Holdings Ltd.

Amend the description of the location in the designation header table to read:

Manukau Rail Link from ~~Lambie Drive (off-ramp)~~, Davies Avenue Manukau City Centre to Onslow ~~Drive~~ Avenue Wiri.

### **11. Attachment 2 Changes to Maps in the proposed Auckland Unitary Plan**

That the designation map be amended as set out in the Panel's GIS viewer map of the designations as of 22 July 2016. No map attachments are provided in this report because of the length of the designations makes this impracticable.

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**Attachment B to the Notice of Appeal - The Council's Decision on the Designations**



**Decisions of the Auckland Council on  
recommendations by the Auckland Unitary  
Plan Independent Hearings Panel on  
submissions and further submissions to the  
Proposed Auckland Unitary Plan**

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**Attachment E**  
Designations (Parts 1, 2 and 3).

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**19 August 2016**

## ATTACHMENT E: PART 1

### Proposed Decisions relating to Introductory Designations Report

#### Introduction

This first part of Attachment E relates to Panel recommendations contained in the Introductory Designations Report. The Introductory Designations Report can be viewed [here](#).

Sections 2.2, 3.2 and 4.2 of the Introductory Designations Report contain recommendations (with accompanying reasons), all of which are proposed to be accepted by the Council. These sections of the Introductory Designations Report are reproduced in their entirety below.

Section 2.2 contains a recommendation that introductory text relating to designations in Part 7 of the PAUP as notified be amended and relocated into a new Chapter K. It is proposed that this recommendation be accepted by the Council with a minor alteration to correct an erroneous reference to the outline colour employed in the planning maps to depict designations.

Sections 3.2 and 4.2, while framed as Panel recommendations, rely on subsequent recommendations in Specific Designation Reports. They contain explanation and recommendations as to the approach to be taken to lapse dates for designations (3.2) and cross-referencing to external plan provisions (4.2). For completeness, however, it is proposed that the Council formally accept the statement of the Panel's approach in each case (in addition to accepting the specific subsequent recommendations in the Specific Designation Reports).

#### Proposed decisions by Council on Panel recommendations:

##### 1. Panel recommendation relating to Section 2 of Introductory Designations Report

- (a) That the following Panel recommendation in section 2.2 of the Introductory Designations Report be **ACCEPTED** subject to the minor alteration recorded below:

##### **2.2. Panel recommendation and reasons**

*The Panel agrees with Auckland Council's amendments to Chapter G1.3 and Using Part 7 as set out in attachment C to the evidence of Bain Cross dated 22 October 2015. The text recommended by the Panel is set out in Attachment 1 to this report. The Panel has renamed and renumbered these sections of the Plan.*

**Panel Reports delivered on 22 July 2016 on Other Requiring Authorities' designations containing recommendations proposed for acceptance:**

1. Report entitled "*Report to Auckland Council Hearing topic 045 – Airports, July 2016*"

That the following Panel recommendation at section 4.2 of the above report be **ACCEPTED**:

*"Therefore the Panel recommends adopting the modifications to the Auckland International Airport designations in the proposed Auckland Unitary Plan, and the further modifications made in mediation, subsequent evidence and rights of reply of Auckland Council, Auckland International Airport Limited and Board of Airline Representatives of New Zealand. The Panel has recommended an additional condition on temporary noise mitigation in designation 1100 Auckland International Airport as proposed by Auckland International Airport Limited. This condition relates to the amended D24 Aircraft Noise Overlay addressed in section five below. The Panel has produced a separate recommendation report on the Auckland International Airport Limited designations (see Report to Auckland Council – Hearing topic 045 Auckland International Airport designations July 2016)."*

2. Report entitled "*Report to Auckland Council Hearing topic 074 – KiwiRail designations 6300-6305 and R6307, July 2016*"

That the following Panel recommendation at section 7 of the above report be **ACCEPTED**:

*"The Auckland Unitary Plan Independent Hearings Panel recommends that Auckland Council recommends to the requiring authority that it confirms: the modifications in the notices of requirement for designations 6300, 6301, 6302, 6303, 6304, 6305; and confirms the notice of requirement R6307 included in the proposed Auckland Unitary Plan subject to the further modifications shown in Attachment 1 and Attachment 2."*

3. Report entitled "*Report to Auckland Council Hearing topic 074 – Designations KiwiRail minor matters, July 2016*"

That the following Panel recommendation at section 4 of the above report be **ACCEPTED**:

*"The Auckland Unitary Plan Independent Hearings Panel recommends that Auckland Council recommends to the requiring authority that it confirms the modifications in the notice of requirement for designation 6306 included in the proposed Auckland Unitary Plan subject to the further modifications shown in Attachment 1."*

4. Report entitled "*Report to Auckland Council Hearing topic 074 – New Zealand Transport Agency designation 6727, July 2016*"

That the following Panel recommendation at section 8 of the above report be **ACCEPTED**:







30 September, 2016

Celia Davison  
Manager Unitary Plan  
Auckland Council  
Private Bag 92300  
**Auckland 1142**

Dear Celia

## **Proposed Auckland Council District Plan: Decision on Council Recommendations on Designations**

### **Background**

1. KiwiRail Holdings Limited ("**KiwiRail**") is a requiring authority for the purposes of the Resource Management Act 1991 ("**RMA**") and Local Government (Auckland Transitional Provisions) Act 2010 ("**LGATPA**").
2. KiwiRail rolled over its existing designations from legacy plans into the notified version of the Proposed Auckland Unitary Plan ("**Unitary Plan**") as follows:
  - (a) **Designation 6300** (North Auckland Railway Line from Portage Road, Otahuhu to Ross Road, Topuni);
  - (b) **Designation 6301** (Newmarket Branch Railway Line from Remuera Road, Newmarket to The Strand, Parnell);
  - (c) **Designation 6302** (North Island Main Trunk Railway Line from Buckland to Britomart Station, Auckland Central);
  - (d) **Designation 6303** (Avondale Southdown Railway Line from Soljak Place, Mount Albert to Bond Place, Onehunga);
  - (e) **Designation 6304** (Onehunga Branch Railway Line from Onehunga Harbour Road, Onehunga to Station Road, Penrose and Neilson Street, Tepapa);
  - (f) **Designation 6305** (Southdown Freight Terminal at Neilson Street (adjoins No. 345), Onehunga);

- (g) Designation 6306 (**Mission Bush Branch Railway Line from Mission Bush Road, Glenbrook to Paerata Road**).
3. KiwiRail also sought to include one new Notice of Requirement ("**NOR**") in the Unitary Plan as follows:
- (a) Designation 6307 (Manukau Rail Link from Lambie Drive (off-ramp), Manukau City Centre to Onslow Drive, Wiri). The NOR was included in the Unitary Plan under Schedule 1, Clause 4 of the Resource Management Act 1991 ("RMA"), and notified under Schedule 1, 5(1B) of the RMA, and section 123(5) of the Local Government (Auckland Transitional Provisions) Amendment Act 2013.
4. KiwiRail sought minor modifications, modifications for consistency and the correction of errors when it rolled over its designations into the Unitary Plan and in its submission on the Unitary Plan, after the Unitary Plan was notified. To that end, KiwiRail filed a number of memoranda of counsel with the Panel, provided evidence in respect of those modifications at the Topic 074 hearing, and attended the hearing of Topic 074.
5. KiwiRail was also granted leave by the Panel to file a late submission on Topic 074, seeking the inclusion of parts of its legacy designations that were not rolled over and included in the notified Plan. Landowners were notified by Auckland Council, and further submissions were received. KiwiRail worked closely with affected landowners, and the Panel heard from KiwiRail and a number of submitters on these issues.
6. The Panel commissioned reports on KiwiRail's designations involving changes classified as minor matters and errors; and those classified as moderately complex in accordance with section 142 of the LGATPA dated 30 August 2015, and amended on 30 September 2015 and 13 July 2016. These reports were also adopted as the Panel's recommendations in accordance with section 144 of the LGATPA on 22 July 2016.
7. The Council notified requiring authorities of its recommendations on their designations on 19 August 2016 ("**Council Decision**"), and accepted the Panel's recommendations in respect of KiwiRail's designations.

#### **Summary of KiwiRail's decision**

8. KiwiRail accepts in full the Council's recommendations in respect of the following Designations:

- (a) 6300 North Auckland Railway Line.
  - (b) 6301 Newmarket Branch Railway Line.
  - (c) 6302 North Island Main Trunk Line.
  - (d) 6304 Onehunga Branch Railway Line.
  - (e) 6305 Southdown Freight Terminal.
  - (f) 6306 Mission Bush Branch Railway Line.
  - (g) 6307 Manukau Rail Link.
9. KiwiRail rejects in part the Council's recommendations in respect of Designation 6303 Avondale to Southdown Railway Line, specifically in regard to the proposed amendments to the conditions in Attachment 1 to the Panel's recommendations. KiwiRail has decided to reinstate the wording of Conditions 1 to 4 to the Designation as notified. The remainder of the Council's recommendations in respect of Designation 6303 are accepted.
10. KiwiRail has also made a number of minor modifications to the mapping of its designations that are either:
- (a) recommended by the Council (but not actioned in the Council's GIS viewer); or
  - (b) not inconsistent with the designations as notified.
11. A copy of the revised texts for each designation, including all conditions, in tracked form (ie using strike through text to show deleted text, and underlined text to show new text) and in clean form have been provided with this decision as **Attachment 1**.
12. Amended maps showing minor mapping modifications made in accordance with paragraph 10 above have been provided with this decision as **Attachment 2**.

### **6303 - Avondale to Southdown Railway Line**

13. The Panel's recommendations regarding Designation 6303 - Avondale to Southdown Railway Line on 22 July 2016 responded to submissions from Heritage New Zealand Pouhere Taonga ("**Heritage NZ**") and Mr Duncan McKenzie. Heritage NZ sought the imposition of a condition requiring consideration of historic heritage effects in an Outline Plan of Works where the work would affect a scheduled historic place. Mr McKenzie sought the deletion of Designation 6303 altogether.

14. In the Panel's recommendation, it recommended the following in respect of the designation:

In regard to the hearing of submissions on Designation 6303 the Panel has concluded that the relief sought by Heritage New Zealand should be granted and that the "Type 2 condition" that this submitter sought ought to be included in the conditions attached to that designation. While the Panel was not satisfied that it was not appropriate to grant Mr McKenzie's relief and recommend deletion of the designation it was of the view that more robust conditions ought to be imposed to ensure that any outline plan of works to initiate the project would clearly demonstrate how adverse effects associated with the construction and operation of the works would be avoided, remedy or mitigated. The Panel accordingly recommends that Designation 6303 as recorded in the proposed Auckland Unitary Plan should be confirmed subject to the amendments set out in Attachment 1.

15. KiwiRail has rejected that recommendation.

16. KiwiRail's reasons for rejecting that recommendation are as follows.

#### *Heritage effects*

17. With respect to the specific relief relating to heritage effects, KiwiRail already addresses issues relating to historic heritage values through the Outline of Public Works process. KiwiRail understands that the intent of Heritage NZ's submission on its designation (and on other requiring authorities' designations) reflects Heritage NZ's poor experiences with some of those requiring authorities in dealing with effects on historic heritage. In contrast, KiwiRail has a positive relationship with Heritage NZ and is required to deal with historic heritage effects on a regular basis, particularly in relation to railway stations it either owns or operates through that are often scheduled buildings.

18. KiwiRail takes the view that the proposed "Type 2" condition proposed by HNZ is an unnecessary repetition of its responsibilities under statute, specifically under s 176A(3)(f) and "any other matters to avoid, remedy or mitigate adverse effects on the environment", which, if it fails to do so, leave it subject to challenge and/or appeal by Auckland Council under s 176A(4) and (5). To the extent HNZ may have an interest in any appeal against a decision to reject changes proposed by Council, it can always seek to participate under the interested party provisions in s 274 of the Act. It could also arguably bring private enforcement proceedings in its own right under s 314 (which it could also do in respect of non-compliance with the proposed condition).

*The Panel's other proposed conditions*

19. In respect of the other conditions proposed by the Panel to address its concerns relating to the detail of any outline plan of works for the designation, KiwiRail takes the view that (for largely the same reasons above) the proposed conditions are unnecessary. The Avondale to Southdown Railway Line runs over a range of different land areas, including industrial land, residential properties, the State Highway corridor, and local roads. As a result of any decision to construct a railway through this land, considerable thought will be required to be given to the proposal to address the range of effects that could result as part of the construction process, and as the result of the operation of rail infrastructure.
20. This was a point acknowledged by the Chair of the Panel in addressing the similar concerns of Auckland Transport at the hearing of KiwiRail's late submission on its designations, when he categorised potential problems of negotiating conflict between amendments to the designation and roads as "the least" of concerns relating to how the designation will be given effect to. The precise wording of s 176A(3) requires that an outline plan "**must** show ... **any** other matters to avoid, remedy, or mitigate **any** adverse effects on the environment".
21. As a result, the conditions contained as notified in the Designation in no way limit the matters which KiwiRail will have to address in the event that it seeks to give effect to its designation and begin construction, and KiwiRail will be required to produce enough material to satisfy Auckland Council that it has sufficiently considered and avoided, remedied, or mitigated the adverse effects of construction, or face (in the result of failure) almost certain appeal.

### **Minor modifications**

22. KiwiRail has also made a number of minor modifications to the mapping of its designations that are either:
- (a) recommended by the Council (but not actioned in the Council's GIS viewer); or
  - (b) are not inconsistent with the designations as notified.

23. Those modifications are shown in **Attachment 2** to this decision.

#### *Rollover modifications*

24. As part of KiwiRail's rollover notices for the proposed designations, KiwiRail identified a number of amendments it sought to make to amend the Unitary Plan Maps to "accurately show lawfully constructed and operational parts of the railway network" in accordance with clause 16(2) of Schedule 1 to the RMA. Modifications were also made to the Designation 6303 Avondale to Southdown Railway Line to include land which was purchased for railway purposes since the previous Auckland Ishtmus Plan became operative. Copies of the relevant rollover notices demonstrating the requested amendments are attached as **Attachment 3** to this decision, and the designations themselves were provided in electronic and hard copy format.
25. In reviewing the designations as recommended in Attachment 2 to the Council's recommendations, KiwiRail has identified a number of amendments in the decisions version of the Plan which were recommended by the Council (but not actioned through its GIS viewer), and are not inconsistent with the designations as notified. As a result, KiwiRail has decided to make modifications under s 151(4) of the LGATPA.
26. Its reasons for those modifications are as follows:
- (a) The modifications are consistent with the GIS dataset provided to Council at the time of notification of the proposed Unitary Plan.
  - (b) Those modifications relate, as the rollover notices suggest, to modifications or amendments that either reflect land purchased for railway purposes (in the case of Designation 6303 Avondale to Southdown Railway Line) or to accurately show lawfully constructed and operational parts of the railway network.

- (c) The modifications sought to correct errors recorded in the Council's GIS mapping software that have been reflected in the Council's recommendations on its online GIS viewer.

*Modifications sought through KiwiRail's original submission*

27. KiwiRail's original submission on the proposed Unitary Plan also sought to make modifications to a number of designations to check the Council's GIS files against those held by KiwiRail to ensure the extent of the relevant designation matches KiwiRail's landholdings (#4336-136). KiwiRail submitted that where a discrepancy occurs, the Unitary Plan maps should be amended to reflect KiwiRail's GIS software. At the time it lodged its submission, KiwiRail was still in the process of identifying those modifications, but gave examples at Appendix 6 of its original submission.
28. Mr Bhana for the Panel originally recommended that the submission be rejected on the basis of inadequate information, but later acknowledged that the process of correcting and aligning boundaries of designations was progressing and the Panel had given a direction in that regard.<sup>1</sup> The Panel's direction in that manner recorded:<sup>2</sup>

The Panel also encourages Auckland Council and the requiring authorities to resolve minor mapping corrections that are not a modification made at rollover or requested in a submission and do not affect third parties. The Panel will not be keeping a record of these and will rely on Auckland Council to advise the Panel of any mapping changes made.

29. Accordingly, Mr Bhana withdrew his recommendation, and noted that issues regarding alignment and correction of designation boundaries were being resolved by discussion between KiwiRail and the Council in accordance with the direction given by the Panel. KiwiRail provided "snips" of the relevant parcels as an attachment to its corporate evidence on Topic 074, and shortly thereafter provided Auckland Council with a GIS shapefile of the minor corrections required.<sup>3</sup>

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<sup>1</sup> See Decision Report on KiwiRail's designations at p 20.

<sup>2</sup> See Pre-Hearing Meeting Report of the Panel on Topic 074 dated 16 September 2016 at 2.2.

<sup>3</sup> Email from Deborah Hewett of KiwiRail to Shelley Glassey of Auckland Council dated 28 October 2015.



30. KiwiRail relies on the recommendation (from both Council and the Panel) that the modifications in the notices of requirement for designations 6300, 6301, 6302, 6303, 6304, 6305 and 6307 be confirmed subject to the further modifications shown in Attachment 2 be accepted. KiwiRail takes the view that its modifications to resolve minor mapping corrections have been recommended by Council (but not actioned in the Council's GIS viewer).

*Modifications sought through KiwiRail's late submission*

31. As noted above, KiwiRail was granted leave to file a late submission on the Unitary Plan to incorporate parts of its legacy designations which it had not rolled over. KiwiRail received further submissions on that point, provided evidence, refined the scope of the modifications it sought, and attended a hearing on that submission.
32. The Panel's recommendation, also recommended by Council, was as follows:

That in regard to the late submission by KiwiRail the extensions to Designations 6300, 6302 and 6304 as shown on the maps in Attachment 2 be included in the areas of those Designations which are recommended for confirmation.

33. The modifications sought by KiwiRail in Attachment 3 in respect of its late submission are consistent with the Council's recommendation, but are not otherwise reflected in the Council's GIS viewer and should be corrected.

**DATED** 30 September 2016



Deborah Hewett  
Senior RMA Advisor  
KiwiRail

PART 7 - DESIGNATIONS»Schedules and Designations»New Zealand Railways Corporation»

6303 Avondale Southdown Railway Line - updated following alteration to designation pursuant to section 181 of the RMA

Designation Number	6303
Requiring Authority	<del>New Zealand Railways Corporation (KiwiRail)</del> <u>KiwiRail Holdings Ltd</u>
Location	<del>Avondale to Southdown Railway Line from Soljak Place, Mount Albert to Bond Place, Onehunga- Neilson Street, Te Papapa</del>
Rollover Designation	Designation G08-05, Auckland Council District Plan (Isthmus Section) 1999
Lapse Date	<del>12 years from when the circumstances in section 175(1) of the Resource Management Act 1991 apply</del> <u>31 August 2029</u>

**Purpose**

The purpose of the designation is to develop, operate and maintain railways, railway lines, railway infrastructure, and railway premises as defined in the Railways Act 2005.

**Conditions**

1. That prior to implementation of the designation an assessment of environmental effects be undertaken to determine effects the works will have on the environment and the most appropriate means of mitigating these effects.
2. That a landscape plan be submitted for approval to the Council at the time of detailed design including fencing and planting which will be implemented at the boundary of the line with all land zoned residential and open space to minimise noise effects and provide screening.
3. That vehicle access along New North Road, Richardson Road, May Road, Dominion Road, Hayr Road, Hillsborough Road, Queenstown Road, Pleasant Street, Symonds Street, Forbes Street, Normans Hill Road, Quadrant Road, Hill Street, Selwyn Street, Onehunga Mall, Galway Street, Spring Street, Victoria Street and Alfred Street be maintained when construction is completed. All crossings to be grade separated, with the exception of local roads.
4. The short term construction effects including noise, visual effects and dust be reduced through appropriate construction methods.

~~Detailed conditions covering the following matters shall be submitted as part of the outline plan of works:~~

- ~~1. A construction environmental management plan setting out the details of how the project and its environmental effects will be managed. It must include contact information for the Project Manager and details of how all potential adverse environmental effects including those affecting neighbouring properties will be managed.~~
- ~~2. A report from a suitably qualified noise consultant assessing potential noise effects arising from the project and setting out recommendations how noise and vibration from the works should be managed.~~
- ~~3. A report from a suitably qualified consultant assessing potential effects arising from rock removal required to implement the project and setting out recommendations on how adverse effects resulting from any measures required for rock removal, including blasting and mechanical methods should be managed.~~
- ~~4. A report from a suitably qualified consultant assessing potential effects arising from the ground vibration created by construction machinery involved in the project and setting out recommendations on how adverse effects of vibration from construction activities should be managed.~~

~~5. A construction noise and vibration management plan setting out how noise, vibration and blasting effects as determined from the reports set out above can be managed in a manner that will minimise the impacts on affected parties and sensitive receivers in accordance with best practice.~~

~~6. An assessment of effects of noise from the operation of the railway activity that is proposed, prepared in accordance with the relevant New Zealand standard if one exists or a relevant overseas standard if no New Zealand standard exists. The assessment shall include recommendations on any methods to be used to avoid, remedy or mitigate the effects of noise from the railway operation.~~

~~7. A landscape plan including detailed design of fencing and planting at the boundary of the line where it interfaces with all land zoned residential and open space.~~

~~8. Detailed arrangements to ensure that vehicle access along New North Road, Richardson Road, May Road, Dominion Road, Hayr Road, Hillsborough Road, Queenstown Road, Pleasant Street, Symonds Street, Forbes Street, Norman Hill Road, Quadrant Road, Hill Street, Solwyn Street, Onehunga Mall, Galway Street, Spring Street, Victoria Street and Alfred Street will be maintained when construction is completed. This should include arrangements, such as grade separation, to ensure safety wherever the line crosses any public street.~~

~~9. Where any works or development involve the demolition of, or, alterations or additions to a scheduled historic heritage place, the following shall be submitted with the Outline Plan of Works:~~

~~a. An assessment of the effects on the historic heritage values of the place; and~~

~~b. A consideration of alternative methods and/or appropriate mitigation to prevent or avoid damage, loss or destruction of the values of the historic heritage place.~~

#### **Attachments**

No attachments.

**Attachment D to the Notice of Appeal**

**List of Names and Addresses of Persons who have been served with a copy of  
this Notice of Appeal**

Heritage New Zealand (Duncan Mckenzie)	Northern Regional Office P O Box 105 291 Auckland 1143 2 Durham Street East Auckland New Zealand
Nasura Family Trust	7 Vuivui Road Muanikau Suva, Fiji
Trevor C Robb and Robyn A Ogden Robb	319 Parker Lane RD2, Pukekohe 2677 Auckland New Zealand
Housing New Zealand	Housing New Zealand National Office P O Box 2628 Wellington 6140 New Zealand
Auckland Council	Auckland Council Private Bag 92300 Victoria Street West Auckland 1142 New Zealand
KiwiRail Holdings Limited	KiwiRail Holdings Ltd Private Bag 92138 Victoria Street West Auckland 1142 New Zealand