

IN THE MATTER of the Resource Management Act 1991
AND
IN THE MATTER of six Notices of Requirement by **Auckland Transport** to enable the construction, operation and maintenance of the proposed City Rail Link for Auckland
BEFORE Independent Hearings Commissioners for the **Auckland Council**

Recommendation of Independent Commissioners

Alan Watson (Chair), Mark Farnsworth, David Mead, Philip Milne, Graham Wheeler

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INTRODUCTION AND BACKGROUND

Introduction

1. We were appointed by the Auckland Council (**AC** or **Council**) as a hearings panel to hear and make a recommendation to Auckland Transport on its behalf, in relation to six Notices of Requirement (**Notices**) for Designations by Auckland Transport (**AT** or **the Requiring Authority**) for its City Rail Link (**CRL**) project, or proposal.
2. Our role is to consider the proposal, the submissions and evidence and make a *recommendation* to the Requiring Authority as to whether the Notices should be confirmed and if so whether the Notices should be modified in any way. We are also required to consider whether the conditions proposed by AT at the close of the hearing are sufficient and what if any changes we should recommend that AT should make to those conditions. In considering conditions, we have had regard to concerns raised and amendments proposed by submitters and the AC reporting team.
3. Our consideration of these Notices is governed by s171 of the Resource Management Act 1991 (**the Act** or **RMA**) which in turn is subject to the purpose and principles of the Act in Part 2 of the RMA. We discuss these provisions later, however we note that we have no role in respect of funding or design decisions. Nor can we go behind the objectives of the Requiring Authority for seeking the designations. Any recommendations that we make in relation to project details, such as construction methods, must be based on mitigation of adverse effects.
4. Our recommendation from this report is not subject to appeal, however, the Council and submitters have a right of appeal to the Environment Court in relation to the Requiring Authority's decision irrespective of whether it accepts our recommendation or parts of it.
5. For reasons we will come to, we have concluded that we should recommend that the Notices be confirmed with some important changes to the conditions. We will summarise our recommendation early on in this document and **Appendix 1** is the final proposed conditions from AT with our recommended changes shown.
6. In coming to our overall recommendation on the Notices and recommendations on the conditions we adopted a consensus decision-making approach, and where there were differences in our points of view the underlying factors that contributed to those differences were identified and closely scrutinised. In the

final analysis our recommendations are unanimous. No Panel member chose to have any alternative view recorded.

Notification and hearing

7. The Notices for the CRL were lodged with the Council by AT on 23 August 2012. On 20 December 2012, AT provided a response to a number of requests for further information from the Council, and subsequently, the six Notices for the CRL project were publicly notified by the Council on 25 January 2013 with a notification period of 35 working days.
8. We heard the Requiring Authority's case and evidence and submissions on behalf of submitters over the course of 10 days starting 7 August 2013. A list of appearances covering the whole hearing is contained in **Appendix 3**. In accordance with our preliminary directions¹, the initial expert evidence for AT and expert evidence for submitters was pre-circulated and pre-read by us. At the hearing we heard evidence but the main focus was on questioning of witnesses and submitters. As a result the hearing process was somewhat inquisitorial in nature. The conditions and other issues were dealt with in an iterative manner by AT, submitters and the AC reporting team. In particular, and as described below, the proposed conditions from AT for the designations evolved considerably during the hearing.
9. The initial hearing was adjourned on 20 August 2013 to allow the Requiring Authority and the AC reporting team to provide further information which we had requested. This period of the adjournment also allowed for caucusing and further investigations in relation to the issues of the submitter MediaWorks NZ Ltd and TVWorks Ltd (collectively **MediaWorks**).
10. During the course of the initial hearing we received two updated sets of proposed conditions from AT and heard interim closing legal submissions on 20 August 2013. Towards the close of the initial part of the hearing, we indicated that we considered that further information and clarification was required in relation to some specific matters. We also concluded that further amendments to the proposed conditions by AT would be necessary. Accordingly, we did not close the hearing.
11. We issued a Memorandum and Directions on 29 August 2013 relating to the process for completion of the hearing, and requesting further information from the Requiring Authority and from the AC reporting officers, including legal

¹ We issued Directions under sections 41B, 41C and 42A of the Act on 15 May 2013 regarding the timing for the section 42A Report from the AC reporting team, the timing for the expert evidence from AT and submitters and the conduct of the hearing. Further Directions were issued on 9 July 2013 regarding the expert evidence.

advice. We also set out a brief general discussion relating to key issues in respect of conditions and other matters as well as our preliminary thoughts as to management plan conditions as proposed by AT.

12. We were scheduled to reconvene on 21 October 2013 but this date was moved out to 11 November 2013 to accommodate the parties providing further information. That further information was received on 27 September, 11, 23 & 30 October and 1, 4 & 6 November 2013.
13. The further information from AT on 27 September 2013 included a revised set of proposed conditions on behalf of the Requiring Authority. The further information from the AC reporting team also included legal advice dated 4 and 10 October 2013 and a set of proposed conditions dated 23 October 2013. We provided for, and received, some further evidence and/or memoranda on 11 October 2013 from some of the submitters who had presented at the initial part of the hearing. We allowed some of this material from these submitters to be provided late in order to accommodate them.
14. As part of this further information we received material on behalf of MediaWorks on 30 October 2013 and a response from AT to all of the above on 6 November 2013.
15. For completeness, we note that we also issued Further Directions dated 21 October 2013 which extended the reconvened hearing date from 21 October to 11 November 2013 and sought some specific information from AT including information in relation to the “top down” / “bottom up” construction methods. That further information was provided by AT on 23 October 2013.
16. The hearing was reconvened on 11 and 12 November 2013.
17. At the reconvened hearing we heard from AT, MediaWorks and other submitters and from the AC reporting team. We also allowed the AC reporting team to provide its final suggestions in relation to conditions relating to the MediaWorks site and for the AC legal Counsel to address us and respond to some questions. AT provided its reply² at the hearing, but requested time to provide a final set of amended proposed conditions.
18. We again adjourned, on 12 November 2013, and in our Further Directions of 14 November 2013 we indicated that the presentations to the hearing had been completed but that we still sought some further information from AT and the AC reporting team regarding their differences in relation to the noise situation applying to the MediaWorks property. That would need to be provided by 22

² Further Closing Legal Submissions for Auckland Transport, Bell Gully, 12 November 2013.

November 2013. We allowed MediaWorks the opportunity to comment on that further information and to do so by 29 November 2013.

19. After receiving all of this material, including closing legal submissions for AT from Mr Andrew Beatson, we closed the hearing on 4 December 2013.

Refinement of the proposed conditions

20. During the adjournment, AT, the AC reporting team and some of the submitters made considerable progress in terms of further narrowing the issues in contention. AT also made significant improvements to its set of proposed conditions.
21. As noted earlier, the proposed conditions from AT were redrafted twice during the initial part of the hearing. There was another iteration provided on 27 September 2013 and a further set on 6 November 2013. The AC reporting team then marked up the latter version with their suggested amendments. On 22 November 2013 we received the final proposed conditions from AT along with indications of the remaining points of difference with the AC reporting team and with MediaWorks. This version of conditions was similar to that provided on 27 September 2013 and submitters had an opportunity to provide comments on those proposed conditions and on the 6 November 2013 set. We were aware that these conditions were still in contention for various submitters but because the final 22 November 2013 set did not change significantly from the 6 November 2013 set, submitters were not provided with an opportunity to comment on the final proposed conditions. As a result of the changes to the proposed conditions, and accommodations which were reached with some of the submitters, the residual issues for us reduced significantly in scope between the initial part of the hearing and its resumption on 11 November 2013.
22. We have necessarily focussed on the final proposed conditions from AT dated 22 November 2013 and all references within this recommendation report relate to the numbering and contents of that set, unless stated otherwise.
23. We note that AT and the AC reporting team did agree on some amendments to the final proposed conditions of 22 November 2013 and provided those in tracked form on 28 November 2013. The amendments were to Condition 1 to refer to the material received during the hearing; to Conditions 21 and 46 relating to ground movement being a consideration; and to Condition 63.1, relating to operational rail vibration to replace the word “industrial” with the

more appropriate word “commercial”. **We recommend** those amendments as part of the final conditions.

24. We detail our recommended amendments, and the reasons for them, below but also state that we have made some very minor edits where there were clearly typographic errors or minor inconsistencies in the final proposed conditions. We have shown those edits in the same manner as the more substantive amendments we recommend. Examples of such minor edits are at Conditions 35.6, 35.8 and 46(d).

Summary of the project and Notices of Requirement

25. The project is to construct, operate and maintain a largely underground two track rail system between the Britomart rail station in central Auckland and Mt Eden. AT’s objectives for the CRL project are as follows³:

AT’s objective in serving this NoR is to enable the construction, operation and maintenance of the CRL including a connection between Britomart and the NAL. In achieving that, AT will also enable the achievement of the Project Objectives, as set out in full in Section 1.6 of the AEE which supports this NoR. For ease of reference these are repeated below:

Improve transport access into and around the city centre for a rapidly growing Auckland

- (a) Future proof for expected growth*

Improve the efficiency and resilience of the transport network of urban Auckland

- (a) Improve journey time, frequency and reliability of all transport modes*
- (b) Maximise the benefits of existing and proposed investment in transport*
- (c) Release the rail capacity constraint at Britomart*

Significantly contribute to lifting and shaping Auckland’s growth

- (a) Support economic development opportunities*
- (b) Provide the greatest amount of benefit for cost*
- (c) Enable a more productive and efficient city*

³ Notice of Requirements 1, section 7

Provide a sustainable transport solution that minimizes environmental impacts

(a) Limit visual, air quality and noise effects

(b) Contribute to the country's carbon emission targets

Contribute positively to a livable, vibrant and safe city

(a) Enhance the attractiveness of the city as a place to live, work and visit

(b) Protect our cultural and historic heritage for future generations

(c) Help safeguard the city and community against rising transport costs.

26. The project is supported by the Council and the Government. It is seen as an essential extension of the current rail network. It will:
- Allow Britomart to be a two way, through-station thus allowing a doubling of its current train capacity;
 - Provide significant additional capacity to the passenger transport system;
 - Improve the efficiency and resilience of the urban Auckland transport network;
 - Assist in providing for additional rail network capacity to support future extensions of the rail network to the Auckland International Airport and to the North Shore;
 - Provide substantially reduced travel time for commuters from west and south Auckland;
 - Increase commuter access to inner city areas from the new Aotea, Karangahape and Newton rail stations which will become transportation hubs for an expanded bus network;
 - Provide an incentive for inner city re-development around the new rail stations;
 - Reduce traffic congestion on inner city streets by making public transport more attractive than private vehicle use; and
 - Complement investment in Auckland's strategic road network by freeing up road space for freight and other commercial or recreational trips.
27. There was no evidence which challenged these benefits and we accept that the project will result in significant overall benefits to the people and economy of Auckland. We note that most submitters in opposition accepted the merits of the project but were concerned regarding the adequacy of proposed mitigation in relation to their individual situation.

The Notices of Requirement

28. There are 6 Notices of Requirement (proposed designations) as follows:

NOR 1: A surface designation which extends from Britomart to Albert Street/Mayoral Drive (in the vicinity of the Aotea Centre car parking entrance on Mayoral Drive).

NOR 2: A sub-strata designation which encompasses the land below the ground surface from Mayoral Drive to New North Road. It does not include sub-strata areas within station designations.

NOR 3: A strata protection designation in respect of land 5m below the ground surface from Mayoral Drive to New North Road, Newton. The designation will be located above the two tunnels (to be designated under NOR 2), it does not include sub-strata areas within station designations.

NOR 4: A surface and sub-strata designation encompassing the land within and in the vicinity of Pitt Street, Beresford Street, Karangahape Road, and Mercury Lane.

NOR 5: A surface and sub-strata designation encompassing the land within, and in, the vicinity of Symonds Street, Dundonald Street, and New North Road.

NOR 6: A surface designation between New North Road, Mt Eden Road and Boston Road in the north, and the North Auckland Rail Line (**NAL**) in the south. It also includes land located on the southern side and adjacent to the NAL between Normanby Road and Mt Eden Road and to the immediate east and west of Porters Avenue.

29. Figures 3 from AT's Volume 1, Notices of Requirement, Overview provides an "Overview Map of the Notices of Requirement". We include that as **Appendix 2** to this recommendation report.

30. We note that the terminology used is as follows:

- **Surface Designations** - means designation of the ground surface (including air space above and land below to the centre of the earth).
- **Sub-strata Designations** - means designation of land starting below the strata designation to the centre of the earth (provides for the rail tunnels).

- **Strata Protection Designations** – means designation of land layer starting 5 metres below the ground surface and above the sub-strata designations. This starts at a nominated distance below the surface and extends down to meets the sub-strata designation (the tunnel envelope). We will discuss the proposed strata protection designation later.

Construction timing and methodology

31. AT plans to have the CRL operational by 2021 and the Government has announced partial funding to allow for that. The actual start date will depend upon funding from the Council and other factors. The construction period from commencement to the start of the commissioning phase is expected to take some five and a half years (January 2016 to April 2021)⁴. The “cut and cover” works up Albert Street, between Customs Street and Wellesley Street where the tunnel boring machine (**TBM**) will take over, are projected to take approximately 24 months⁵. From a traffic, dust, noise and vibration perspective, this will be the most disruptive phase of the project. In terms of property acquisition, the most disruptive part of the project will be in the vicinity of the tunnel portal at Newton. This involves the acquisition of a large number of properties. This phase of works will also involve noise, vibration and traffic impacts on remaining properties, including that of MediaWorks and the Bear Park early childhood centre amongst others.
32. At the northern end the more disruptive works will be those in lower Albert Street between Britomart and Victoria Street. These works will be cut and cover construction. South of Victoria Street to Wellesley Street the proposed construction method is “top down”. This will mean using propped diaphragm walls or secant/soldier piles and covering over of the excavation as soon as possible. The top down approach was stated by AT as being a less disruptive process than the bottom up cut and cover method.
33. The northern portal for the tunnelling operation will be in upper Albert Street, just south of Wellesley Street. The TBM will first work north from Newton and then from upper Albert Street to the south. We note that AT no longer proposes the option of using two tunnelling machines.
34. We heard from a number of submitters (for example, Foodstuffs and Stamford Plaza) who would prefer that AT used the much less disruptive TBM

⁴ Evidence in chief of Christopher Meale, para 33

⁵ Evidence in chief of Bill Newns, para 78

methodology for the Albert Street to Britomart section. We discuss that later in this recommendation report, but in short it is not practicable to do so.

SUMMARY OF KEY CONCLUSIONS AND RECOMMENDATIONS

35. We have carefully considered the original submissions, the s42A RMA Report from the AC reporting team and the evidence, presentations and legal submissions at the hearing by submitters, AT and the AC reporting team.
36. Applying the overall broad judgement and weighing of the evidence required by Part 2 of the Act, and having had particular regard to the matters set out in s171 of the Act, for the reasons set out in this recommendation report, we recommend to the Requiring Authority (Auckland Transport) that all six Notices of Requirement be confirmed without modification in terms of scope but subject to conditions.
37. We have recommended some modifications to the final proposed conditions from AT, noting these “evolved” during the course of the hearing to take account of concerns, and we have made two “non-statutory” recommendations which are unrelated to the conditions. These relate to compensation for business disruption and the relocation of Life Church Central.
38. We have concluded that the proposal represents sustainable management of natural and physical resources and that the final proposed conditions from AT, with some modifications, should ensure that all adverse effects on the environment (which largely relate to the construction phase) will be appropriately avoided, remedied, or mitigated.
39. We acknowledge that in some cases, residual effects after mitigation will still be significant during the construction phase, however the Act does not require that all adverse effects be avoided, or reduced to a minor level. We discuss the issue of “sufficiency/adequacy” of mitigation later.
40. We are satisfied that the Requiring Authority has adequately considered alternative sites, routes and methods for the project. In particular we are satisfied that alternative construction methodologies have been adequately considered.
41. It is not for us to decide whether construction methods are the best or most appropriate. We did however carefully consider submissions as to whether the use of a TBM in lower Albert Street, or the extension of the top down construction method, should be recommended for this area. The former would significantly reduce construction impacts and it appeared at first sight that the latter would also have some benefits. For reasons we will come to, we have

- concluded that there is no sound evidential basis for us to make a recommendation that AT alter its proposed construction methodology.
42. We are satisfied that all six designations are reasonably necessary to achieve the objectives of the Requiring Authority relating to those designations.
 43. We do not accept the submission on behalf of Samson Corporation and Sterling Nominees that NOR 3 (which relates to the protection of the sub-strata above the tunnels) has not been shown to be reasonably necessary. We are satisfied that a protection designation is reasonably necessary and that the Requiring Authority had adequately considered alternatives to this NOR.
 44. We do agree however, that AT has not established that the currently proposed depth of NOR 3 is *reasonably necessary*, for the whole of the length of that NOR, except as a transitional measure. We had considered recommending that this NOR should not be confirmed until it has been modified to reduce the depth of the protection zone to what is reasonably required. We are advised by AT that this is not practical at this stage and are satisfied that the proposed condition offered by AT between the initial part of the hearing and its resumption appropriately addresses this issue. This Condition 3 (on NOR 3) requires AT to reduce the volume of the protection zone as soon as is reasonably practicable but no later than at completion of detailed design.
 45. On balance, we have concluded that all of the NORs should have a lapse period of 15 years, as was proposed by AT during the hearing, rather than the 20 years it originally proposed. We do however observe that it does seem to us that a 10 year lapse period should be sufficient and would be desirable to reduce the potential period of potential “planning blight” and uncertainty. We have addressed the latter issue to some degree, where **we recommend Condition 3.2 includes AT finalising property acquisition as soon as is reasonably practicable after the decision by AT on our recommendation.**
 46. Submitters raised a number of issues regarding AT’s approach to conditions and the management plans included as part of those conditions. In particular, there was significant concern regarding the extent to which the detail of mitigation of adverse effects is to be left to management plans which are to be the subject of the outline plan process in the Act, where submitters have no right to make submissions or to appeal. We shared some of these concerns and sought legal advice on this matter.⁶ At the conclusion of the initial part of

⁶ See our Memorandum and Directions of 29 August 2013 regarding our preliminary discussion on this issue and the questions we asked legal advice on.

- the hearing, AT provided legal submissions on this matter and provided further comment in its Further Closing Legal Submissions dated 12 November 2013.
47. During the adjournment AT also made various improvements to the proposed conditions, based on the hearing proceedings, and provided a clearer guide to the structure of the management plan process including draft outlines of the proposed plans. Although we still have some residual concerns, we have concluded that the management plan approach now proposed by AT is appropriate and lawful within the context of designations and the outline plan process.
 48. As discussed later, the structure and content of the proposed management plan conditions have evolved and improved considerably during the hearing. The adjournment provided a useful opportunity for further refinement and clarification.
 49. The one generic issue that we still had concerns around was the adequacy/specificity/certainty of the objectives and methods specified for the Construction Environmental Management Plan (**CEMP**) and the Transport, Access and Parking Delivery Work Plan (**DWP**). We have sought to see that the objectives of these management plans are now reworded so as to make it clear, that the intention is that so far as is reasonably practicable AT is to *avoid, remedy or mitigate adverse effects*.
 50. Another significant issue at the hearing related to the initial lack of any conditions dealing directly with business disruption and loss of custom to businesses. We have concluded that the CRL construction project has a high potential to cause significant adverse effects on businesses, and in particular small businesses alongside the project route. We sought legal advice as to whether this is a matter for us and if so, how we might deal with it. The advice was that loss of custom and consequential economic effect is an adverse effect on the environment which we must consider. We note that AT had not assessed the potential for such impacts as part of its planning for this project except in a general way.
 51. We had signalled during the initial part of the hearing that our preliminary view was that as a minimum there was a need for a specific management plan dealing with business disruption. During the adjournment, considerable progress was made on this between AT and the AC reporting team. Further minor changes were made by AT to the proposed conditions after the resumed hearing. We are now satisfied that with some further amendments, as recommended by us and carried into the final proposed conditions from AT, the

DWP condition (Condition 61) deals adequately with the aspects of the project which may contribute to business disruption and loss of custom.

52. Notwithstanding this condition, it is possible and perhaps likely, that there will be significant residual adverse effects on businesses as a result of the protracted construction period. Adopting an overall broad judgement, and having regard to the benefits of the project, we have concluded that the effects of the construction works on loss of custom, and therefore on the economic wellbeing of some people/businesses, do not provide sufficient justification for recommending that the Notices not be confirmed.
53. We do consider however, that it is unfair (and arguably unsustainable) for the wider community benefits of the project to be at the economic expense of individuals or businesses. This is a multi-million dollar project being carried out by a public body and supported by the Council and the Government.
54. We are of the view that the Public Works Act (**PWA**) compensation mechanism for “substantial injurious affection” does not adequately address such effects. We are also of the view that in the absence of a more readily available compensation scheme there is potential for the project to have significant adverse effects on some people (businesses). Indeed for some smaller businesses it is possible that construction impacts could render the businesses unviable.
55. Accordingly, we have recommended (informally) that AT put in place a mechanism to provide quick and ready access to compensation for any businesses (or at least small businesses) which suffer a significant loss of custom as a result of the construction project. In view of the legal uncertainty regarding the validity of compensation conditions, we have not recommended that this be a condition of the designations.
56. We discuss issues regarding general effects in relation to the following matters later in this recommendation report:
 - Business disruption
 - Construction noise and vibration
 - Operational noise and vibration
 - Settlement
 - Air quality
 - Transport (traffic, pedestrian and vehicle access, parking)
 - Built heritage
 - Archaeology
 - Urban design.

57. We also address potential effects and mitigation in relation to particular submitters later in this recommendation report under the Submitter Specific Issues section. For the present purposes, and subject to the caveat above regarding business disruption and our recommended amendments to the conditions, we record that we are satisfied that adverse effects on individual submitters, will be adequately avoided, remedied or mitigated. Although the CRL project will have significant adverse effects on some individuals, at least during the construction period, these do not provide sufficient basis to recommend that the Notices be withdrawn.
58. We discuss the conditions dealing with MediaWorks in more detail later in this recommendation report. For present purposes we can indicate that we have largely recommended that the version of the MediaWorks conditions proposed by the AC reporting team be adopted by AT.
59. We have concluded that AT has not adequately addressed the adverse effects of the Notices on the Life Church community. We have concluded that the only way that such effects can be sufficiently/sustainably addressed is for AT to ensure that Life Church Central is relocated as soon as is reasonably practicable at no expense to that community.
60. At the hearing, AT was opposed to any form of condition dealing with this issue and submitted that it was an entirely a matter for the PWA. It also indicated that discussions were under way with Life Church and would be pursued in a timely manner. Subsequent to the resumed hearing, it did propose that the Social Impact DWP include *details of best endeavours steps undertaken with regard to acquisition and/or relocation of the Chinese Community Centre and Life Centre Church under the Public Works Act.*
61. For reasons we will set out later, we have concluded that this does not sufficiently address the adverse effects of the project on the social and economic wellbeing of the Life Church community. Accordingly **we recommend** (not as a condition) that AT itself include a specific condition as follows:
- Following its decision under section 172 of the Act (and irrespective of any appeals) the Requiring Authority shall continue or commence (as the case may be) good faith negotiations with Life Church and the Chinese Community Centre and shall utilise its best endeavours to reach agreement with those parties as to acquisition of their properties and relocation of these community facilities as soon as is reasonably practicable.*

62. We have concluded that this is appropriate and reflects what we were told were AT's intentions. It requires no more than is reasonable, no quicker than is reasonably practicable. We cannot see why AT should find that objectionable.
63. Our preference would have been to recommend that AT ensure that these facilities are relocated to a comparable site and standard within say two years at no cost to the relevant communities. Legal advice we requested advised against this approach in terms of a condition. Notwithstanding that, we do go slightly further in terms of making it an informal recommendation.
64. **We recommend** (not by way of condition) that in negotiating compensation for the Life Church property, AT ensure that the community does not bear any cost of relocating to equivalent premises. **We also recommend** that AT works with Life Church to ensure that it's central campus is relocated to a suitable central city site by December 2015 unless the Church agrees to remain longer.
65. We have largely adopted the conditions as proposed by AT on 22 November 2013. We have however recommended some amendments to those conditions as part of our recommendation as set out in **Appendix 1**. Most are based on the recommendations of the AC reporting team. The principal exceptions relate to our recommendations in relation to management plan objectives; to indicate a clearer intention to apply all reasonable steps to avoid, mitigate and remedy adverse effects; changes to noise and vibration conditions; and our informal recommendations relating to compensation for business disruption and the relocation of Life Church.

SUBMISSIONS

66. A total 258 submissions were received in response to the public notification, including seven submissions received after the notification period. One submission was subsequently withdrawn. A full summary of submissions can be found in the s42A Report at Attachment D, and a copy of the full submissions is also available in the same report at Attachment E⁷.
67. Of the submissions, 69 were in full opposition; there were 156 in support; 20 in conditional support; and 13 were neutral. Many of the of the submissions that supported the proposal also sought that adverse effects, in particular construction effects, be avoided, remedied or mitigated to a greater extent than that proposed and/or that greater certainty be provided in relation to mitigation requirements.

⁷ Section 42A Report at [4.1]

68. The s42A Report provided us with an overview⁸ of the matters raised in the submissions. It was noted that the matters raised in the submissions vary greatly and generally, could be categorised as relating either to the construction or operational / post-construction phases of the project. Some were also about project wide issues, or only relevant on a more local level.
69. The s42A Report split the principal matters raised by submitters into two groupings, those which were relevant across the geographic span of the CRL project and those which were local/site-specific. Matters which were relevant across the geographic span included:
- Impacts on built heritage
 - Impacts on the traffic network, both during construction and once the CRL is operational
 - Pedestrian and vehicular access to property
 - Noise effects, both during construction and once the CRL is operational
 - Vibration / settlement effects associated with cut-and-cover and tunnel boring excavation methodologies
 - Effects on property rights
 - Social impact of displacement
 - The proposed 20 year lapse date.
70. Matters which had a local site-specific focus included:
- Blight (associated with the proposed 20-year lapse date)
 - Pedestrian and vehicular access to property (particularly around the Albert Street cut and cover section of works)
 - Specific effects associated with the operation of studios at the TV3 Building on Flower Street
 - Positive streetscape effects to arise around the three proposed rail stations.
71. The s42A Report offered the opinion⁹ that some of the matters raised in the submissions were beyond the scope of what may reasonably be considered through a NOR process and provided us with a reasoned analysis on economic considerations. It was noted that some economic considerations will be relevant, such as job creation; tourist income; the promotion of economic efficiency through the provision of rail or other infrastructure; and the economic

⁸ Ibid at [4.2] and [4.3].

⁹ Ibid at [4.4]

impact of the project on individual businesses along the alignment, and that these could be considered to be within the scope of the Council's assessment under s171(1) of the Act. However, these considerations need to be distinguished from decisions on the cost and economic viability or profitability of the CRL. We were reminded that RMA case law has confirmed that:

- Decisions on project funding and viability are business decisions, which the decision maker should not be drawn into making or second guessing; and
- The cost, economic risk and profitability of a project are business / policy decisions for the promoter or developer of a project, and should not be challenged.

72. We concur with the reasons set in the s42A Report that matters relating to project funding / economic viability and the Council's business case for the CRL project are matters that fall outside the scope of s171 RMA and are not relevant to our determination.

OFFICERS' REPORT

73. A comprehensive report dated 11 June 2013 was prepared by the AC reporting team, in terms of s42A of the Act, regarding the Notices. That was supplemented as the hearing proceeded by further information from the reporting team in response to our formal Directions and other questions.

74. We acknowledge the helpful nature of that s42A Report, the further information and assistance from the reporting team at the hearing.

SUMMARY OF EFFECTS

Operational effects

75. We have already summarised and accepted the benefits of the project. Once constructed and operational, the project has low potential for adverse effects. Such effects are largely limited to the potential for vibration from trains affecting some very sensitive receivers.

76. The project will result in the loss of some heritage buildings and modifications to others. It also has potential for both adverse and positive urban design impacts.

Pre-construction effects

77. Prior to construction, the confirmation of the designations will have some adverse effects in terms of consequential acquisition of private property either voluntarily or under the PWA. We have concluded that these effects of the project are largely a matter for the PWA rather than the RMA. The exception to that is any disruption to businesses or community facilities caused by any undue delay between confirmation of the designations and acquisition of properties.
78. In the case of the Life Church, there is also an immediate adverse effect from the proposed acquisition. The Church needs to move sooner rather than later to accommodate its growing congregation. As a result of the project it has abandoned its planned building extensions on its current site. For reasons we will return to we have concluded that interim disruption to the Church is an RMA effect of the project which we should consider. We also think that any difference between the PWA compensation paid to the Church and the cost of relocation to an equivalent site (excluding any expansion) may be an RMA effect.
79. Another pre-construction impact from the project is the potential for “property blight” in terms of buildings which may be abandoned or become undesirable because of their planned future demolition.
80. There is also the potential for the blight of nearby properties which are not to be acquired but where there will be business disruption during construction. At least where tenancies come up for renewal prior to construction commencing there is a potential for the project to make the buildings undesirable or less desirable in the interim. Any delay in the project will increase the potential for such adverse effects (this is relevant to the lapse period for the designations). One submitter which is in this category is Tram Lease Ltd, another is Five Flowers Ltd. We note in passing that this effect was not sufficiently assessed or addressed in the initial evidence on behalf of AT. Its focus was on the first type of blight mentioned above rather than what one witness (Mr Michael Foster for Tram Lease) described as *edge effects*. Whilst that is a term more usually applied to ecological considerations, Mr Foster has nonetheless used it to effectively portray the potential effects associated with planning blight.
81. All of these potential pre-construction effects are inevitable and are certainly not a reason to recommend against the project. Nevertheless, we need to be satisfied that such adverse effects will be adequately avoided, remedied or mitigated. We note the exception is compulsory, or at least compelled, acquisition, which is not of itself an RMA effect.

Construction effects

82. The most significant adverse effects of the project are actual or potential effects deriving from the construction phase. Although such impacts will be largely temporary the duration of the construction phase is very lengthy compared to construction associated with road works and new buildings.
83. These effects can be broadly summarised as:
- Traffic impacts, including potential increases in vehicle travel times;
 - Vehicle access restrictions or impediments to private property;
 - Loss of parking;
 - Barriers or impediments to current pedestrian routes;
 - Construction noise;
 - Construction vibration;
 - Dust;
 - Temporary streetscape issues;
 - Business disruption and loss of custom, as a result of traffic and pedestrian effects and/or as a result of noise, vibration and temporary streetscape (amenity) impacts; and
 - Temporary social impacts resulting from all of the above.
84. The traffic and pedestrian effects of construction are both generic and specific in nature. There is the potential for some persons, businesses or agencies (such as the District Court) to be directly affected in a negative way.
85. Noise, vibration, and dust are similarly both general and property specific effects. There are a number of submitters who have particular sensitivities to these types of effects including the District Court, MediaWorks, Stamford Plaza, Stamford Residences and the Roman Catholic Church.
86. To the extent that it occurs, temporary business disruption is a direct effect on businesses and their owners and customers and is also a wider economic impact. Sustainable management includes the economic wellbeing of people and communities and accordingly we need to be satisfied that such adverse effects are adequately avoided, remedied or mitigated.
87. In our view the adverse social impacts from this project will be on nearby residents and businesses and will largely be temporary amenity effects during construction. The impacts on businesses are also assuredly, economic impacts. In this regard, whilst we accept that AT considers it appropriate to

prepare a social impact management plan, we have determined there is a need for a *business disruption management plan*. (whether or not they are within one document). Those plans will be complemented by the other management plans relating to noise, vibration, dust and traffic.

The finished project and its transport benefits

88. We have set out the project objectives earlier and these can be summarised as follows:

- Improve transport access into and around the city centre for a rapidly growing Auckland;
- Improve the efficiency and resilience of the transport network of urban Auckland;
- Significantly contribute to lifting and shaping Auckland's economic growth;
- Provide a sustainable transport solution that minimises environmental impacts; and
- Contribute positively to a liveable, vibrant and safe city.

89. The completed project will provide a two-way connection between the existing Britomart station and the NAL. There will be three new stations at Albert Street (Aotea station), Beresford Street (Karangahape station) and upper Symonds Street (Newton station). The new lines will be underground from Britomart to a point close to Newton station. At that point the lines will emerge from the tunnel and one will join the existing western track and one will join the existing eastern track either side of the existing Mt Eden station. Ms Fiona Blight provided¹⁰ a useful summary of the potential benefits from the new CRL link. The identified potential benefits, described below, were largely uncontested at the hearing:

- The CRL will unlock the existing capacity constraint and allow trains to transit through Britomart by removing the current 'cul-de-sac' arrangement.
- As a result there will be the ability to provide more flexibility in train services and to increase capacity on the Auckland rail network. This will allow:

¹⁰ Evidence in chief of Fiona Blight, para's 68, 69

- i. More frequent passenger trains;
 - ii. The ability to accommodate other future rail links; and
 - iii. Encourage the sustainable mode share targets to be reached (as set by the New Zealand Transport Strategy and the Auckland Regional Land Transport Strategy 2010 – 2040).
- The CRL will provide a more direct passenger rail link between Britomart and stations located on the NAL which will:
 - i. Reduce passenger rail travel times;
 - ii. Allow a greater frequency of passenger trains;
 - iii. Reduce the current capacity constraints on the rail network at the Newmarket and Quay Park Junctions;
 - iv. Provide more direct and better access by passenger trains to the city centre mid-town area through provision of Aotea station and central city locations through provision of Karangahape and Newton stations; and;
 - v. Enable many more rail trips across Auckland to take place as a continuous ride, without the need for passengers to transfer.
- The CRL will promote and support land use intensification around the stations, which is a key component of the Auckland Regional Policy Statement, the Auckland Plan and City Centre Master Plan;
- The majority of the City Centre area will be within a 10 minute walk of a railway station;
- It will assist in building more resilient regional infrastructure, an objective of the Auckland Plan, the Auckland Regional Land Transport Strategy, the Auckland Economic Development Strategy, the Auckland Sustainability Framework, and the Auckland Transport Plan;
- The CRL will assist in providing an integrated transport solution for Auckland through provision of alternative modes which complement the investment in Auckland's strategic transport network (including freeing up road space for freight and other (e.g. commercial and recreational) trips);
- It will assist in meeting the environmental and health objectives, notably air quality standards, sought by the Auckland Plan, the Auckland

Regional Land Transport Strategy, the Auckland Regional Policy Statement and the Auckland Regional Air, Land and Water Plan;

- The CRL will also assist in reducing regional carbon emissions stemming from the transport system, a key component of climate change, and an objective of the NZ Transport Strategy.

90. The transport and wider benefits of the project were largely undisputed and we accept the evidence provided by AT as to these benefits. We agree with Mr Tony Garnier for the Auckland Chamber of Commerce, that this project is a “gamebreaker”. It is essential for the future of Auckland and in particular the CBD.

FRAMEWORK FOR OUR CONSIDERATION OF THESE NOTICES OF REQUIREMENT

Statutory framework and our approach

91. We have been delegated all of the powers and duties of the Auckland Council in relation to the consideration of these Notices. Unlike resource consent applications the Council does not have a power to decline and there are some additional considerations which do not apply to resource consents. The governing provision is s171 of the Act which is as follows:

171 Recommendation by territorial authority

(1)When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—

(a)any relevant provisions of—

(i) a national policy statement:

(ii) a New Zealand coastal policy statement:

(iii) a regional policy statement or proposed regional policy statement:

(iv) a plan or proposed plan; and

(b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—

(i)the requiring authority does not have an interest in the land sufficient for undertaking the work; or

(ii)it is likely that the work will have a significant adverse effect on the environment; and

(c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and

(d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.

(2) The territorial authority may recommend to the requiring authority that it—

(a) confirm the requirement:

(b) modify the requirement:

(c) impose conditions:¹¹

(d) withdraw the requirement.

(3) The territorial authority must give reasons for its recommendation under subsection (2).

92. In summary, our whole consideration is subject to the purpose and principles of the Act in Part 2. Subject to that our primary focus is on the environmental effects of the project and the extent to which related adverse effects will be avoided or remedied or mitigated. We note that the RMA does not require that all adverse effects be no more than minor. Nor does it require that adverse effects be avoided in preference to mitigation or that adverse effects be minimised. It is inevitable with a project of this nature that there will be some significant adverse effects deriving from the construction phase.
93. Ultimately in recommending whether the Notices should be confirmed, we must undertake the same overall broad judgement of matters which is required for resource consent decisions. We do also have to have *particular regard* to the additional matters listed in ss171(1)(b) and (c). We note however, that those matters are not threshold requirements.
94. It is not our role to consider whether the Requiring Authority's objectives are appropriate. Similarly, it is not our role to consider whether the financial costs to the community of the project are justified. Nor is it our role to consider whether the project design and construction methods are the most appropriate.
95. We are required to consider whether AT's consideration of alternative site, routes and methods is *adequate*, given that private land is required and given

¹¹ We make a recommendation to AT as to what it "imposes" on itself in terms of conditions.

that there are likely to be some significant adverse effects, at least from construction works.

96. We are also required to consider whether the designations *are reasonably necessary* in order for AT to achieve its objectives. There is little contention around this matter except in relation to issues raised by Sampson Corporation and Sterling Nominees in relation to NOR 3.
97. Section 5 of the RMA requires that adverse effects be avoided, remedied or mitigated. There is no hierarchy in terms of which of these options is applied although the approach is often to look to avoid such effects in the first instance. Nor is there any statutory guidance as to the extent of mitigation which is appropriate when adverse effects cannot be avoided. There is certainly no requirement that adverse effects all be reduced to be minor or less than significant. Indeed, s171(1)(b) expressly envisages that often designations will result in significant adverse effects.
98. The requirement to avoid, remedy or mitigate cannot mean that the extent of avoidance, mitigation or remediation is entirely up to a requiring authority. It is part of our role to consider whether the mitigation measures proposed are sufficient (sustainable) in the circumstance of this project and to recommend changes where we think that they are not. We must consider the adequacy (sustainability) of mitigation of specific effects both in terms of our overall recommendation as to confirmation of the designations and in terms of our recommendations as to conditions.
99. In our view consideration of whether particular adverse effects will be adequately addressed involves a balance between the cost and practicality of avoiding, remedying or mitigating on the one hand, and the potential extent and severity of the adverse effect on the other.
100. This point is relevant to our discussion regarding management plan conditions which we will come to later. We think that a management plan objective which merely states that the plan must set out how a particular category of adverse effect will be avoided, remedied or mitigated, and which states no clear standards against which that objective is to be judged is somewhat meaningless. Such a formula provides neither us, the submitters nor the Council with any certainty as to what as a minimum, the Requiring Authority is required to do.
101. An associated issue, which arose at the hearing, concerns the extent to which we need to consider the adequacy of mitigation of adverse effects on particular persons. Some persons or businesses including many of the submitters at the

hearing will be directly affected by the project. In some cases these effects will be temporary loss of amenity as a result of construction works. (e.g. Stamford Residences, Bear Park and others). In other cases the project has the potential to have direct adverse economic effects on businesses (in most cases related to business disruption during construction). Some persons will also be affected by their properties being required for the project.

102. We are of the view, that in considering effects on the environment and the adequacy of the proposed conditions, we must consider particular effects on individuals and businesses, rather than just making a judgement based on “overall effects”. In our view, effects on individuals are not just a matter to be thrown into the balance. When considering recommending whether to confirm the Notices and conditions, we believe that we must also consider whether potential adverse effects on specific persons will be adequately (sustainably) avoided, remedied or mitigated. We consider that our role is to make recommendations which aim at ensuring that AT has avoided, remedied or mitigated in a way which is compatible with the purpose and principles of the Act.
103. This last point is not beyond contention. Counsel for AT submitted that we should not focus on the adequacy of mitigation of particular effects, or specific effects on particular persons, but rather should consider the adequacy of mitigation within the context of the overall judgement required of us. Ms Jennifer Caldwell provided similar legal advice to us on behalf of the Council.
104. We need to be satisfied that particular effects (including effects on particular persons) will be addressed (*sustainably managed*) in a manner consistent with the purpose and principles of the Act. We agree that the our judgement in relation to whether we recommend confirmation of the designations requires consideration of overall residual adverse effects. However it is our view that in making recommendations on conditions, our role extends to considering the adequacy of mitigation of adverse effects on particular persons. We also note, consistent with our view, that AT has itself proposed a number of conditions addressing effects on specific named persons.
105. The s171 considerations also require us, subject to Part 2 of the Act, to have particular regard to any relevant provisions of national, regional and district planning documents. Discussion is included in the Assessment of Effects report (**AEE**) and in the s42A Report and Mr Bryce Julyan listed the relevant

documents in his evidence¹². We discuss those documents in the context of the Notices below.

DISCUSSION OF ISSUES

Key issues

106. Submitters raised a number of issues at the hearing, some of these were generic and some were specific to the particular submitter. In many cases there was an overlap between the two categories. Many submitters had specific concerns regarding the effects of the construction works and these concerns extended to the proposed management plan approach. We set out our reasoning and conclusions in relation to specific submitters who presented at the hearing later in this recommendation report. The following is a summary of the principal generic issues/concerns which were raised before we move to discuss some of the specifics.

- The proposed 20 year lapse period and resulting uncertainty potential for planning blight;
- Adequacy of consideration of alternative lower impact construction options (in particular use of a tunnel boring machine for lower as well as upper Albert Street);
- Adequacy of conditions relating to noise and vibration;
- Maintenance of adequate vehicle and pedestrian access in the vicinity of the works....and general traffic and parking impacts during construction;
- Adequacy, certainty, legality of proposed management plan conditions;
- Potential for business disruption and for loss of business as a result of the construction project...adequacy of mitigation....compensation;
- Loss of heritage buildings; and
- Potential urban design impacts of the operative project.

Lapse period

107. AT initially proposed a lapse period of 20 years. A number of submitters requested that this be reduced to 5 years or 10 years or somewhere between.

¹² Evidence in chief of Bryce Julyan, 1 July 2013, para 36.

Mr Julyan gave planning evidence regarding the desirability of a 20 year lapse period, and later revised that to 15 years having heard from some of the submitters. We record that we would not have recommended in favour of a 20 year lapse period. The evidence did not satisfy us that this was necessary or appropriate. Such a long period would give rise to uncertainty and planning blight.

108. At the hearing AT reduced the proposed lapse period to 15 years. Various submitters suggested that this was still more than necessary. Mr Richard Brabant for Samson Corporation and Sterling Nominees submitted that 5 years would be sufficient and appropriate given that AT has already announced that it hopes to have the project completed and operational by 2021.
109. Section 184 of the Act provides that a designation lapses 5 years after it has been included in a district plan (after any appeals are determined) or such longer period as is specified if it has not been *given effect to*. However, the section also provides that in this case the Council can upon application by AT extend that later, to a longer period provided that it is satisfied that AT has *made substantial progress or effort towards giving effect to the designation* and is continuing to do so. There are rights of objection and appeal against a refusal to provide an extension.
110. The evidence for AT seemed to be premised on the notion that the CRL would need to be operational before the designation is given effect to. We were not provided with any legal argument on this point but note that the following from Brookers' Resource Management provides some support for this view.

The High Court in Goldfinch v Auckland CC [1997] NZRMA 117 (HC), qualified the interpretation in GUS with the view that it is unworkable to require that every detail be completed within the lapse period, before it can be said to have been "given effect to."

111. The designations sought will provide for both the operation and construction of the CRL works. It seems to us that provided construction has commenced and is being progressed that the particular designation would have been given effect to. In any event, by this stage it is inconceivable that the Council as a key stakeholder in this project would not grant an extension if that is required.
112. Within this context we cannot see that a 20 year lapse period is required. On the other hand, in view of the fact that full funding commitments have not yet been secured, we consider a 5 year lapse period would be inadequate. That

would at the least require that AT has secured funding commitment and made substantial progress towards starting construction within that period. Although that is its current intention we consider that we should provide for some more flexibility.

113. In our view a 10 year lapse period should be sufficient. We think that given the largely unfettered power for the Council to grant an extension, that would provide sufficient flexibility for AT. It would not need to have even commenced works within 10 years provided that it had made substantial progress and effort in terms of design and property acquisition and was continuing to do so. Further, even if AT stages construction, it seems to us that this would amount to *substantial progress or effort*.
114. On the other hand, we did not hear evidence to suggest that the difference between 10 and 15 years would make any great difference in terms of uncertainty and planning blight and the longer period would provide greater flexibility for AT.
115. We have concluded that there is no compelling reason to recommend that the proposed 15 year lapse period be reduced to 10 years. We also observe that in terms of the evidence we heard from AT in support of the project, there would be a significant negative impact if this project is not operational within the next decade.
116. **We recommend** a 15 year lapse period on the basis of our conclusion that it is essential that AT ensure that property acquisition proceed as soon as is reasonably practicable and not be delayed by funding decisions. In our view it would not be sustainable for AT to blight private property with a designation for any extended period. Accordingly, **we recommend** the following condition (Condition 3.2) in the designations:

Following the inclusion of the designations in the District Plan, the Requiring Authority shall continue or commence (as the case may be) good faith negotiations with the owners of any properties which it requires for the project and shall utilise its best endeavours to reach agreement with those parties as to acquisition of their properties or (as a last resort) pursue compulsory acquisition, as soon as is reasonably practicable.

117. We consider that this condition is necessary and appropriate to address the possibility that if there are funding delays, AT may delay the acquisition process. In our view, that would result in unacceptable adverse effects on the

wellbeing of affected property owners. In this regard we record that we do not consider that the availability of s185 of the RMA adequately addresses the issue of uncertainty and planning blight. That provision may perhaps be sufficient for a 5 year lapse period but in our view does not avoid remedy or mitigate adverse effects on wellbeing beyond that.

118. We record that we do not think that effects in terms of certainty and economic and social wellbeing of “required property” owners are addressed by the conditions as proposed by AT. Condition 60 addresses planning blight, but only after properties have been acquired. While we heard assurances from AT that it will get on with acquisition in a timely manner, that does not provide any certainty for us or property owners.

Whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work

119. As pointed out by Counsel for AT, s171 does not require it to establish that it has considered all possible alternatives for carrying out the works or that it has chosen the best alternative. It is not for us to substitute our own judgement as to the relative costs and benefits of alternatives. Nor is it our role to recommend what we consider the best, better or preferable option. It is sufficient for AT to demonstrate that it has *adequately* considered key alternatives.
120. We also note that although this is a matter to which we must have particular regard it is not a threshold requirement. In other words, failure to adequately consider a particular alternative does not necessarily lead to a recommendation that the Notices not be confirmed.
121. The question of consideration of alternatives is particularly relevant where it is likely that there may be significant adverse effects on the environment including effects on individuals. In such instances we must have particular regard to whether AT has adequately considered alternatives that would better avoid, remedy or mitigate the adverse effects in question. We also think if we consider that a particular alternative merits further investigation then that is a matter which we could recommend to the Requiring Authority. However, there would need to be a sound evidential basis for such a recommendation.
122. Alternatives that have been considered by AT and summary reports were included in the AEE and were particularly addressed in the opening legal submissions for AT by Mr Beatson and in evidence by Mr Julian.

123. The CRL has also been the subject of other earlier feasibility and options studies which were taken into account in the latter studies/evaluations. Between 2004 and 2010 Auckland City Council, the Auckland Regional Transport Authority, ONTRACK and KiwiRail undertook the following investigations:

- Britomart West Rail Extension Feasibility 2004
- Auckland CBD Rail Loop Peer Review 2005
- Review of Options for the CRL alignment between Britomart and Wellesley Street 2008
- Option evaluation of alignment and stations 2009/2010 – interactive workshops.

Transport mode alternatives

124. These have been part of the studies undertaken and rail has been considered by AT to be an essential part of the solution to greater Auckland's transport system. In the City Centre Future Access Study 2012, 46 options were considered to address Auckland's future transport needs. The three shortlisted options included underground rail, surface bus and underground bus. The modelling carried out in this study identified –

125. *The CRL is the option which produced the greatest benefits, although an integrated approach combining the underground rail option with the best aspects of the surface bus was necessary. In particular the CRL was identified as providing the greatest multimodal capacity to transport people into the city centre, having the highest road network speeds within the city centre and as being the only transport solution to deliver increased capacity to serve city centre growth beyond 2030.*¹³

Route alternatives

126. The options evaluation investigations, studies and workshops by AT and its consultants covered in detail 11 route alternatives and 12 station alternatives (5 for Newton, 3 for Karangahape, 1 for the Central Motorway Junction and 3 for

¹³ Opening Legal Submissions, Andrew Beatson, 7 August 2013, para. 44

- Aotea), for the CRL connection between Britomart and the North Auckland Line in Mt Eden. The process has involved taking account of project constraints such as limits on track gradients; ground and groundwater conditions; appropriate construction methodologies; adjacent building impacts; heritage issues; operational impacts; land acquisition; traffic and transportation; major services impact; land use; and urban design as well as adverse environmental impacts such as noise, vibration, air and water quality. Weighting and sensitivity testing has also been carried out to test the robustness of findings.
127. The ultimate AT conclusion from these comprehensive evaluations and studies is that the CRL routing as presented in the Notices is the optimum one.

Construction method alternatives

128. Construction methodology for the rail link route was reported by AT to be controlled by the constraints imposed by existing soil and rock conditions, topography, major existing services issues and operational constraints with respect to track gradients between Britomart and the connection to the NAL at Mt Eden.
129. Four main construction methodologies are proposed for the rail line and stations, each with different environmental impacts.
130. Tunnelling with earth pressure balancing TBM equipment for the bulk of the route is favoured, where rock and cover conditions are suitable. This approach is intended for the dual tunnels between the Aotea and Newton stations and has the potential to be the least disruptive to the public and most cost effective method.
131. Hydraulic equipment and road header type construction is considered relevant for the excavation of the station platforms at Karangahape and Newton stations and for the southern tunnel portals connecting to the NAL.
132. Cut and cover construction is proposed south of the portals connecting to the NAL and for the Britomart to Victoria Street route principally along Albert Street.
133. Top down construction is proposed for the Aotea station between Wellesley and Victoria Streets and also offered through evidence in chief for the Albert Street intersections of Custom, Victoria and Wellesley Streets as an alternative to partial closure of each of these intersections. This option was seen by AT to reduce the time each intersection was not fully operational by several months, albeit that these intersections would then require to be closed sequentially.
134. The principal alternatives which were raised by submitters were:

- (a) The option of using a TBM for the whole of the Albert Street section of works to avoid or mitigate amenity effects and business disruption.
 - (b) The option of extending the top down construction methodology proposed between Wellesley and Victoria Streets to lower Albert Street to minimise the duration of construction impacts for this area.
 - (c) The option of using lower Albert Street as a construction/marshalling area instead of the Downtown shopping area.
135. We note that although the question of adequacy of alternatives was raised by a number of submitters, there was no evidence presented to support the contention that alternatives had not been adequately considered. The focus was more on the potential availability of alternatives rather than any serious challenge to the adequacy of consideration of those alternatives.

The option of using a Tunnel Boring Machine for the whole of the Albert Street

136. The potential for adopting this alternative was raised by a number of submitters, including Foodstuffs. These submitters expressed the view that methodology would considerably mitigate the adverse effects of the construction project on lower Albert Street and beyond. That was not disputed by AT.
137. We are satisfied, based on the evidence, that this option has been thoroughly and adequately considered and has been rejected on a sound basis. We accept the reasons provided by AT for rejecting this option. We are not convinced that use of a TBM for this part of the project is feasible and if so it would be very expensive.

The option of extending the “top down” construction method to lower Albert Street

138. AT has opted to utilise a bottom up construction method for the length of Albert Street from Britomart to Victoria Street. The Victoria Street and Wellesley Street intersections and excavation between (Aotea station), will utilise the top down and cover up, construction method. This will mean that once the excavation is deep enough it will be covered with a permanent “lid”. This method will reduce the time that section of excavation is open and will allow those two intersections to be reopened for vehicle traffic sooner than would the bottom up method. There will also be associated reduction in the duration and perhaps level of adverse noise, vibration, dust and general disruption.

139. Following the initial hearing, it appeared to us that there might be some considerable mitigation benefits in extending the top down and cover up method proposed for the Aotea station area, to lower Albert Street. It appeared to us, that this method of construction would be considerably less disruptive than the bottom up method. This is because with the former, the cutting is covered earlier in the process than with the latter. This method would leave the excavation uncovered for a shorter duration. It seemed to us that this would result in lesser traffic, and amenity effects.
140. We requested information from AT as to why it has chosen not to extend the top down approach utilised between Victoria Street and Wellesley Street to lower Albert Street. In our Memorandum and Directions of 29 August we requested AT to provide us with evidence relating to the costs and benefits of extending the top down cut and cover method of construction from Customs Street to Victoria Street. That evidence was provided on 27 September 2013 in supplementary evidence from Messrs Bill Newns, Craig Fitzgerald and James Whitlock.
141. Mr Newns, in his third supplementary statement received on 27 September 2013, provided a useful outline of the construction issues and costs and delay implications of extending the top down approach from the Aotea station area to lower Albert Street. He indicated that the choice of construction methods was determined based upon considerations of, cost, construction risk, impacts on the overall construction programme and impacts on adjacent stakeholders.
142. We accept his evidence that bottom up construction for the balance of the cut and cover tunnels in Albert Street would deliver lower construction costs because of:
- Reduced excavation and material costs;
 - Optimising the space to only that required for long term railway needs;
 - Ability to achieve better waterproofing standards; and
 - Shorter construction period.
143. He concluded that the additional expenses of extending the top down approach would likely be in the order of tens of millions of dollars. In the absence of any evidence to the contrary we accept this to be the case. We agree with Mr Newns' comment that the additional costs would only be warranted if that provided significant mitigation of significant adverse effects on the environment.
144. We also accept Mr Newns' opinion that although the top down method is appropriate for the Wellesley and Victoria Street intersections to minimise traffic

disruption, it may not deliver significant traffic benefits to extend this through to the Customs Street intersection. We did not have any further evidence from Mr Ian Clark, the AT traffic expert, to confirm that view and so requested that for the resumed hearing. He confirmed that was the case.

145. According to Mr Fitzgerald the top down construction and resultant early covering of the excavation will not avoid non-compliance with the construction noise standards because this will largely be the result of piling works which will occur with both methods. Excavation noise levels are lower and will be at their highest when the works are close to the ground which would be before the “lid” was put on under the top down approach.
146. The 27 September 2013 evidence from Mr Newns did not outline the duration of the open excavation under each method. Nor did we have clear evidence of the relative mitigation of adverse amenity effects of the two methods. In our Further Directions of 21 October 2013 we requested that information prior to the resumed hearing and in particular asked for Mr Fitzgerald to comment on the noise mitigation resulting from the reduced duration of uncovered excavation.
147. Responding to our request we received further details in supplementary evidence from Messrs Newns, Fitzgerald and Clark on 6 November 2013.
148. Mr Newns indicated that with the proposed bottom up method, the excavation would remain uncovered between Customs Street and Victoria Street for a period of approximately 27 months. Using the top down approach the excavation would be uncovered for a period of around 22 months.
149. We requested Mr Fitzgerald and Mr Whitlock to comment on the relative benefits in terms of noise and vibration effects of the decreased duration of uncovered works. In particular this was in relation to, but not limited to, the Stamford Plaza and Stamford Residences.
150. Mr Fitzgerald noted¹⁴ that it was his understanding that the top down construction methodology would require larger piles at closer intervals compared with bottom up. The key implication of the top down compared to the bottom up is the extended piling duration which he understood could be doubled, if not tripled. Piling works are predicted to dictate the period of construction that exceeds the project noise criteria in Condition 31. Mr Fitzgerald was therefore of the opinion that from a noise effects view, bottom up would be preferable to top down construction.

¹⁴ Fitzgerald fifth supplementary statement of evidence of 6 November 2013

151. Mr Whitlock had earlier provided comments on the vibration effects stating that the vibration effects of each method are similar¹⁵.
152. Mr Clark addressed the difference in transportation effects between the top down approach compared with the bottom up approach¹⁶. In doing so he noted that in his evidence in chief he had outlined his predictions for the transportation effects of the full closure of the Albert Street/Customs Street intersection, pointing out that there appears to be the potential for these adverse effects to be experienced for eight months with the top down approach, compared with ten months with the bottom up approach. However, he was of the view that the Customs Street intersection cannot be viewed in isolation, and the construction methodology has to be considered for the entire section of Albert Street including Aotea station. This is because temporary traffic management, including the closure of the main east-west intersections with Albert Street, is an integral part of the construction sequencing logic, and he has been advised that traffic management in Albert Street would be present for 43 months under the bottom-up scheme versus 44 months under the top down method.
153. Mr Clark considered that it was worth noting that the top down approach does not allow the full closure of the Customs Street intersection to be avoided. The greatest period of change in traffic conditions will be immediately following the closure of the intersection. Under either a top down or bottom up approach, residents and workers within the city will become accustomed to the transportation effects in the following months, such that the perceived difference between an 8 month closure and a 10 month closure is likely to be less than the 20% difference in the duration of the effect.
154. Having considered the further evidence and having particular regard to the evidence regarding adverse noise, vibration, and traffic effects, we have concluded that, the additional benefits do not justify the additional costs and delay of the option of the top down construction method. Accordingly we are not recommending that AT modify the project to adopt that option.

The option of using lower Albert Street as a construction/marshalling area instead of the Downtown shopping area

155. The option of using lower Albert Street as a construction/marshalling area instead of the Downtown shopping area was raised by a number submitters

¹⁵ Whitlock fourth supplementary statement of evidence 23 October 2013

¹⁶ Clark fourth supplementary statement of evidence 6 November 2013

and it was a key concern of Precinct Properties. We were told by AT in their opening submissions, and were provided with further explanations in the various statements of evidence of Mr Newns, the reasons why AT requires the Downtown shopping site as a construction/marshalling area. In light of the evidence (explanations provided) we have accepted the proposition of AT that the Downtown shopping centre site is the most appropriate site for the construction area due to its location and in particular because of the tunnels passing underneath.

156. The alternative of lower Albert Street is more constrained. We do acknowledge the keenness of Precinct Properties to acquire as much of the cleared Downtown shopping site as soon as possible for reconstruction and to have the designation lifted without undue delay. However to agree to Precinct Properties' request for a change could potentially have major impacts on construction. Condition 21.2 addresses in part Precinct Properties' concerns providing that the Downtown construction yard will be progressively released as areas are no longer required for construction.

Conclusion on Construction management Alternatives

157. We conclude that adequate consideration has been given to alternative sites, routes, or methods of undertaking the work.

Reasonable necessity for the designations sought and extent of NOR 3

158. We are required to have particular regard to whether the work and the designations are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought. There was no real challenge to the Notices in this regard apart from in relation to the strata protection NOR 3.
159. The intent of the strata protection designation is to provide a layer of protection above the sub-strata designation against any development occurring which could hinder or prevent the CRL being constructed, or impacts on the structural integrity of the CRL tunnels following construction. Section 176 of the Act provides that no person may carry out any works which may hinder the public work without the written consent of the Requiring Authority. If agreement cannot be reached between the parties, there is a right of appeal to the Environment Court.

160. Samson Corporation and Sterling Nominees, represented by Mr Brabant, argued that NOR 3 has not been shown to be reasonably necessary to achieve the stated objectives of the designations. He also submitted that alternatives to this proposed designation have not been adequately considered by AT. The submitters called evidence from a planner, Mr Jeffrey Brown, who offered the opinion that a zoning restriction introduced via a plan change would be a more appropriate alternative and render the NOR 3 designation unnecessary.
161. Having considered this evidence, and that from Mr Newns and Mr Julyan for AT, we have concluded that it is *reasonably necessary* for the objectives of the project for the strata above the tunnels to be protected from inappropriate works. AT has not specified “protection” as being one of the objectives of NOR 6. Despite this, we are of the view that this objective is inherent in the nature of this NOR 3 and is consistent with s168 of the Act which provides that a designation restriction should be *necessary for the safe and efficient functioning or operation of a public work*. We note that the word necessary does not mean “essential” and we also note that the phrase is further qualified by the word “reasonably”.¹⁷.
162. Whilst we accept that such protection could be achieved via zoning we consider that it is more appropriate to utilise the designation mechanism. The availability of this alternative method does not render the designation unnecessary. If that was the case, then it could always be said that a designation is unnecessary because the whole project could be authorised and protected by way of plan change.
163. We are of the view that the zoning alternative has been adequately considered and rejected on a sound basis. In particular it is more efficient that the project be approved and protected by one coherent planning method rather than relying upon Council initiated variations to the now notified Proposed Auckland Unitary Plan.
164. The other argument advanced by Mr Brabant for these submitters was that the vertical extent of the proposed designation has not been shown to be reasonably necessary to achieve the required protection of the tunnels and stations.
165. The top of NOR 3 is 5m below the ground and extends to the centre of the earth. This approach means that where the tunnels are closest to the ground NOR 6 is of minimal thickness/depth above the tunnels and where the tunnels are at their deepest, NOR 3 extends to a much greater thickness of ground

¹⁷ Our initial views on this matter were supported by legal advice from Ms Caldwell which, although not requested, was provided as part of the AC reporting officers’ reply.

between the top surface of NOR 6 and a line 5m below the ground. In general terms then, the depth of the protection layer ranges from around zero at its shallowest point to around 25m at its deepest point. However, much of NOR 3 is below streets or the Central Motorway Junction. Beneath building lots, the depth of the protection layer ranges between around 6m to 25m.

166. We shared Mr Brabant's reservations regarding this approach and sought further evidence from AT as to the basis for the vertical extent of the proposed designation and whether it could be "wound back" prior to the designation being confirmed. We also saw no good reason for the proposed designation to extend to the centre of the earth.
167. Mr Newns and Mr Julyan provided supplementary evidence on 27 September 2013 in which Mr Newns explained the factors which would determine whether a proposed building might compromise tunnel integrity. Mr Julyan proposed that the relevant criteria be included in a condition to guide the exercise of AT's discretion under s176 of the Act. That approach was supported by the AC reporting officers. Given that the Condition 3 on NOR 3 has been offered by AT, albeit in a modified form from that provided in evidence by Mr Julyan, we have included it in our recommendation. We note that it is unusual for a condition to guide the exercise of a future discretion and that this is probably not a condition which we could have imposed. Nevertheless, we can see merit in providing guidance to potential applicants under s176 RMA.
168. Mr Newns' evidence did not provide details about what can be regarded as being reasonably necessary in terms of a maximum thickness of the protection zone. His evidence was that this depends upon a number of variables including, geology, tunnel design and proposed building loads. His evidence related more to the factors that would determine whether approval is given under s176 RMA, than what the trigger for such approval should be.
169. We have concluded that the vertical extent of NOR 3 above the proposed tunnels is in some places likely to be more than is reasonably necessary for the protection of those tunnels. Because such protection brings with it potential restrictions on property rights, it is important that the extent of the designation is no more than is reasonably required. All that is needed is a conservative thickness, sufficient to trigger the need for approval/agreement between the developer/landowner and the Requiring Authority. That will necessarily be a different thickness for each type of building. The purpose of the designation is to allow proposed buildings to be redesigned if necessary or as a last resort to

be prohibited. There are rights of appeal against the Requiring Authority's decision under s176 RMA.

170. We had thought that it was likely that the reasonable extent of NOR 3 could be defined prior to the designation being confirmed. Mr Newns explained why this was not the case, and the evidence from the submitters did not seriously challenge it. In response to questioning from us, Mr Newns agreed that the necessary thickness of the protection zone could be defined at some point prior to final design being completed.
171. The proposed conditions offered by AT prior to the resumed hearing included a new Condition 3 which would require the reasonable extent of NOR 3 to be determined *as soon as is reasonably practicable* after the NOR 3 designation is confirmed but no later than at completion of detailed design. We are satisfied that this approach (along with the appeal rights against a s176 RMA decision) provides an appropriate balance between necessary protection and unnecessary restriction of private property rights.
172. In view of the public announcements by AT of its proposed timeframe for construction, and given that preliminary design work and geological investigations are already well advanced, we do not think that such a timeframe is impractical. From the perspective of the submitters, we heard no evidence of any imminent proposal for buildings which might trigger the need for a s176 RMA approval. Furthermore, if there are appeals of the AT's decision on our recommendation, those may take some time to resolve. In the meantime the restriction (which is already in effect) would remain.

Auckland Transport's approach to mitigation from construction and other impacts

173. AT has avoided or mitigated some of the potential adverse effects of the project by its choice of route and construction methods. As outlined above there will still be some inevitable adverse effects, in particular from the construction of the project and in terms of loss of heritage.
174. Apart from the choice of route and construction methods, the principal form of avoiding, remedying or mitigating adverse effects is by way of mitigation measures which are backed up by conditions to be applied to the proposed designations. AT initially proposed that the details of mitigation would largely be left to management plans. These include the CEMP and various subsidiary plans.

175. The approach proposed by AT, at the outset of the hearing, was that all of these management plans would be submitted to the Council as part of the outline plan process. The Council could then recommend changes to the Requiring Authority. AT could choose to accept those recommendations or not. The Council would have discretion as to whether to appeal to the Environment Court in relation to any recommendations not accepted by AT. Submitters to these Notices would have no right of submission or appeal in relation to the management plans or subsequent amendments.
176. Submitters voiced some concerns regarding this approach during the initial hearing. We shared many of those concerns. The principal concerns/issues were as follows:
- i. There being no process for Council officer level or independent certification or approval of management plans before they are submitted to the Council as part of the outline plan process.
 - ii. The Council has at least a perceived conflict of interest because it is a strong supporter of the project and AT is an Auckland Council Controlled Organisation.
 - iii. There being no fixed standards and clear objectives in the conditions. This approach delegates our consideration regarding the adequacy of mitigation that could be provided to a subsequent non-participatory process.
 - iv. There being no mechanism for dispute resolution if affected persons consider that mitigation measures proposed in management plans need to be strengthened.
 - v. The approach is uncertain because we and submitters could not in many cases, go to the proposed conditions to ascertain what level of mitigation would be applied.
 - vi. The approach removes submitters' rights because they have no legal right to make submissions on the management plans or to appeal the final form of the management plans.
177. By the close of the initial hearing there was some modification of this approach at least in relation to the key issues of noise and vibration. The amended proposal included greater certainty in terms of noise and vibration standards and circumstances when those may be exceeded.
178. In our 29 August 2013 Memorandum and Directions we outlined our preliminary views as to the principles which we thought applied to management plan conditions. We also asked the Council to provide us with legal advice on the

issue. We are grateful to Ms Caldwell, and to Ms Vanessa Evitt, for legal advice on this issue and were also assisted by Mr Beatson's closing submissions for AT. Based on the advice, submissions and from our own experiences with other hearings, we have concluded that:

- i. Leaving matters of detail to management plans is appropriate provided that we can be satisfied that adverse effects will be adequately avoided, remedied or mitigated.
- ii. Management plans need to be backed up with a condition requiring such plans to be adhered to.
- iii. Fundamental matters should not be left to management plans, such matters should be addressed via standards or methods specified in conditions. That is necessary to provide certainty, and enforceability.
- iv. Where submitter specific mitigation is required that should ideally be stated in the relevant management plan condition.
- v. Management plans should be about the method to achieve standards which are stated in conditions.
- vi. Management plans need to have clearly stated and meaningful objectives. That is more important where the relevant conditions provide no standards.
- vii. Leaving management plans to be approved via the RMA outline plan process is legitimate and regularly used for designations.
- viii. There is no need for a dispute resolution mechanism but affected parties views should be obtained and taken into account by AT, the independent reviewer and the Council.
- ix. An independent review process (as now proposed) is highly desirable in lieu of the normal Council officer certification/approval process.
- x. Although AT cannot be compelled to adopt all recommendations of an independent review panel/expert,¹⁸ it should be required to have particular regard to such recommendations.

¹⁸ At least where the management plan is subject to the outline plan process.

- xi. Where recommendations are not adopted, AT should provide reasons for that and both the recommendations and the reasons should be provided to the Council as part of the outline plan process.
- xii. No significant changes should be made to management plans via “review” unless the review goes through the same process as above, including consultation with directly affected persons.
- xiii. There may be some matters which are of such importance that it is not appropriate to leave the final decision with AT (via the outline plan process) because that would be an abrogation of our role.¹⁹

179. Between the outset and conclusion of the hearing, AT made significant improvements to the management plans and related conditions. These included:

- A diagram showing the proposed management plan structure.
- Provision of indicative management plans and an outline table of contents.
- The introduction of an independent peer review panel.
- A requirement to consult with directly affected persons regarding management plan contents and to provide a record of that consultation and responses to requests to the independent peer review panel and the Council.
- A requirement that the Council at outline plan stage be provided with any recommendations from the independent review panel, reasons from AT for rejecting any recommendations and a summary of issues raised by directly affected persons.
- Inclusion of business disruption within the Social Impacts DWP.
- Provision of clearer objectives for the CEMP and the related DWPs.
- The introduction of references to “so far as reasonably practicable” or similar in relation to various measures required by those management plans.

¹⁹ We have concluded that the Site Specific Noise and Vibration Management Plans are in this category.

- An extended set of standards and specific requirements for the Transport, Access and Parking DWP.

180. The most significant adverse effects of this project relate to construction noise, vibration, dust, general amenity impacts, traffic (including access and parking and loss of business) effects. We were pleased to see that AT had strengthened the proposed conditions and management plan contents relating to all of these matters.
181. We still have some reservations as to the certainty of this approach for submitters and ourselves. Nevertheless, we accept that this approach has been sanctioned by the Environment Court and Boards of Inquiry for many projects. We also accept the need for there to be a degree of flexibility in relation to a project which has not yet been fully designed. That flexibility is inherent in the outline plan process provided in the RMA for such projects. Having decided that the project should proceed, the best that we can do, is to ensure that the relevant conditions are as 'tight' as possible.
182. We have concluded that the final proposed conditions go a long way towards addressing our earlier concerns. We will discuss mitigation of particular categories of effect in more detail later. So far as the management plan process is concerned, we have concluded that the revised process, including, consultation with directly affected persons, reference to independent reviewers and consideration by the Council via the outline plan process is appropriate.
183. The conditions now provide much greater specificity as to standards and requirements than before. We consider that this revised approach, combined with specific matters to be addressed in management plans provides sufficient confidence. While there is some residual uncertainty, that seems to be a necessary and accepted corollary of flexibility.
184. We had, and continue to have, some reservations regarding the wording of management plan objectives. The primary role of management plans is to set out methods for achieving the objective of the plans. We were of the view that in order to sufficiently avoid, remedy or mitigate adverse effects, management plans require clear objectives.
185. The various management plan objectives as proposed at the resumed hearing included various formulations for the objectives ranging from....the general*avoid, remedy or mitigate adverse effects*to use of the Best Practicable Option (**BPO**) to avoid, remedy or mitigate. Some further changes were proposed after the resumed hearing.

186. The Construction, Noise and Vibration DWP management plan objective (Condition 36) is worded in terms of the best practicable option to avoid, remedy or mitigate the adverse effects of noise and vibration resulting from construction. A similar formulation is used in Conditions 37 and 38 for the Site Specific Construction Noise Management Plan (**SSCNMP**) and the Site Specific Construction Vibration Management Plan (**SSCVMP**) and Condition 39 for Notable Noise and Vibration Receivers.
187. Given the definition of BPO in the Act and in view of s16 of the Act, we recommend changes for consistency to the noise and vibration plan objectives in Conditions 36 to 39 as set out later in our discussion of the “Appropriateness of the objectives for the noise and vibration plans”.
188. We also recommend the definition of BPO within the conditions be amended so that it is clear that this concept is intended to apply to other construction related effects such as effects on the transport network and heritage values.
189. **We recommend** that the definition of BPO be amended to read:
- Has the meaning under the Resource Management Act 1991, and, for the purpose of these conditions, comprises the best practicable option for minimising the effects of any construction activity (including, without limitation, effects on the transport network or heritage values) on the receiver.*
190. The Air Quality DWP objective in Condition 59 is currently worded in terms of *avoid, remedy or mitigate*. Given that BPO as used in the Act specifically relates to discharge of contaminants and noise, we consider that it would be appropriate, and **we recommend** that this objective be reworded in terms of... *the best practicable option to avoid dust and odour nuisance being caused by the construction works and to remedy any such effects should they occur.*
191. The Social Impact and Business Disruption DWP objective as stated in Condition 61 was worded in terms of *avoid, remedy or mitigate* but subsequent to the hearing AT proposed the addition of the words *so far as is reasonably practicable*. We consider that to be appropriate and sufficient.
192. The Transport, Access and Parking DWP objective in Condition 25 is worded in terms of *avoid, remedy or mitigate*, however some of the specific requirements in Conditions 25 and 26 are worded in terms of BPO or similar.

193. The overarching objective for the CEMP the DWPs as stated in Condition 19 is to avoid, remedy or mitigate any adverse effects” (including cumulative effects) associated with the City Rail Link construction.
194. At the resumed hearing we expressed some concerns regarding the certainty of this form of objective. We were advised that this form of objective has been sanctioned by Boards of Inquiry and the Environment Court for other projects. Notwithstanding this, it seems to us, that on its own, such an objective is inherently uncertain in terms of an intended outcome. Although we are sure this is not the intention, such wording could potentially allow AT to propose mitigation measures that are minimal.
195. As noted earlier we consider that it is part of our role to ensure that adverse effects will be sufficiently/adequately avoided, remedied or mitigated to a degree which is accordance with Part 2 RMA. We are not convinced that this form of objective enables us to be satisfied on that count. We do note that the final proposed conditions from AT contain more specific objectives (and in some cases requirements) for noise vibration and business disruption and some other key matters. That does provide us with some level of comfort.
196. This form of objective may be sufficient where the management plan is to achieve standards or requirements stated in conditions. However where the management plan is the primary method of specifying methods to avoid, remedy or mitigate, we think that this formulation is uncertain and arguably meaningless. By way of example, the peer reviewer when considering the management plan, could conclude that any minimal degree of mitigation achieves such an objective. Similarly the Council could not take enforcement action based on non-compliance with the relevant management plan condition so long as the plan outlined some degree of mitigation, even if inadequate.
197. We discussed this issue during the hearing with the AT’s Counsel and with the AC reporting team and its Counsel. We discussed the possibility of using BPO, as in what is now Condition 26.1, as an objective for other management plan conditions. We considered that there would be some merit in applying the BPO approach to all of the management plans. That term, as defined in the proposed conditions, links back to the RMA definition and includes considerations of cost and practicality. We were advised by Counsel for the AC reporting team that there was no legal barrier to this approach. Nevertheless, this was not considered to be necessary or appropriate by AT or the AC reporting team.

198. We also discussed the possibility of using the term *avoid, remedy or mitigate, so far as is reasonably practicable*. We note that this terminology has now been proposed for the Social Impact and Business Disruption DWP objective (Condition 61) and similar phrases are used elsewhere (see above).
199. We have concluded and **we therefore recommend:**
That the objective in Condition 19 be reworded as follows:
.....to so far as is reasonably practicable, avoid, remedy or mitigate any adverse effects (including cumulative effects) associated with the City Rail Link construction.
That an equivalent change be made to Condition 25.2.
200. These changes are generally consistent with the other objectives we have referred to. They require a focus for the management plans on *minimisation* or adequate remediation of adverse effects rather than some (unclear) degree of mitigation. In our view these changes would provide greater certainty, whilst still providing a high degree of flexibility/latitude for the Requiring Authority. Such a formulation will allow the independent reviewers and/or the Council to recommend more rigorous mitigation or remediation where that is considered appropriate and reasonably practicable.
201. We consider that given the very significant reliance which we and submitters must place on the management plan process proposed by AT, such changes are necessary to provide us with the confidence that sustainable management will, in practice, be achieved.
202. We note that Condition 11 provides that a key role of the Independent Peer Review Panel is to provide recommendations on whether changes are required to the CEMP and DWPs ... in order to meet the objective and other requirements of these conditions. The Council also has the same role in terms of recommendations on the management plans through the outline plan process. AT is required to adhere to the management plans and enforcement action can be taken if it does not. Within that context, we consider that it is essential that there be a clear focus on AT doing as much as is reasonably practicable to avoid, minimise or remedy adverse effects. By definition it cannot be expected to adopt unreasonable or impracticable measures.

Business disruption and adverse financial impacts

203. The most significant adverse effects of this project derive from the construction phase. These comprise adverse effects on amenity values and business disruption including potential loss of custom and consequential adverse economic impacts. In relation to both matters we consider that we need to be satisfied that such impacts will be adequately avoided, remedied or mitigated at both a community level and a personal (including business) level.
204. AT did not initially provide any assessment of social or business impacts. In response to a further information request from the Council, it did provide a brief qualitative social impact assessment. This included reference to potential business disruption but did not attempt to quantify such effects or reach a conclusion as to the likely degree and significance of such effects. This reflects the approach adopted by AT at the hearing. In essence, its approach was that to the extent that business disruption is an RMA matter it would be addressed via measures to mitigate adverse amenity and traffic effects. It took the approach that any residual effects in terms of loss of custom, loss of profit and/or business viability were matters for the PWA provisions relating to “substantial injurious affection”.
205. There was some debate as to whether residual adverse, financial impacts on businesses is a matter for us, under the RMA or a matter to be left to PWA compensation. We addressed these issues in our Memorandum and Directions of 29 August 2013 and also sought legal advice on the matter.
206. Sustainable management is defined (inter alia) as ... managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being...
207. The definition of *environment* includes—
- (a) *ecosystems and their constituent parts, including people and communities; and*
- (d) *the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters.*
208. The Act expressly excludes trade competition economic impacts from consideration. Apart from that exception, the impacts of a proposed activity on the wellbeing of people (which must include businesses) is an environmental

effect which we must consider and which must be adequately/sustainably avoided remedied or mitigated.

209. Ms Caldwell provided legal advice to us as to how economic effects on individuals and businesses are to be dealt with under the RMA. We found that advice to be of considerable assistance. The advice supports the conclusion outlined above. However, Ms Caldwell indicated that although the matter has not been conclusively determined, there is no Environment Court authority to support a condition, requiring an applicant to compensate an adversely affected individual or business. Mr Beatson reiterated that view.
210. Ms Caldwell was also of the view that our focus in terms of the Social Impact and Business DWP should be on business disruption and loss of custom rather than loss of profit. We accept that since loss of profit is caused by loss of custom, it is appropriate to focus on loss of custom within the context of avoidance and mitigation.
211. On the other hand, we consider that where there are significant adverse effects on custom and where these lead to significant loss of profit that is a matter for potential *remediation*. Accordingly, we are not entirely convinced that a requirement to *remedy* adverse economic effects on a persons and businesses by way of compensation is a matter which is beyond our jurisdiction. We accept however that there is little if any precedent for such an approach.
212. Where compensation or environmental offset has been required through conditions, that has either been as a result of an offer by an applicant (the *Augier* principle applies) or has been in the nature of environmental compensation (e.g. biodiversity offsets) rather than private compensation. We note that it is not uncommon for private compensation to be provided, but that has usually if not always, been by way of a “side agreement”.
213. In summary, our understanding is that apart from trade competition effects, we are required to take into account loss of profits and effects on business viability when deciding whether to recommend that the Notices be confirmed. In our view it also follows that if we conclude (as we have) that the Notices should be confirmed, we must consider whether the proposed conditions adequately avoid, mitigate or remedy such effects or whether further mitigation/remediation should be recommended.
214. We did not understand there to be any disagreement between Ms Caldwell and Mr Beatson that in considering these matters we are required to take into account any likelihood of compensation under the PWA for substantial injurious

- affection. It would seem to follow, that we should also take into account any likelihood that such compensation may not be available or may be inadequate.
215. Mr Beatson submitted that we should focus on mitigation measures which would reduce business disruption and that so far as there may be residual adverse effects on businesses or individuals those potential effects are simply matters to be factored into our overall broad judgement rather than being matters on which we should focus in terms of adequacy of conditions. He also submitted that the combined scheme of the RMA and PWA has the effect that we can leave substantial injurious affection to the latter and therefore should not be concerned with that. We took it that his submission was that we are also not required to have regard to lesser adverse private economic effects which fall outside of the PWA. We are not convinced on that point.
216. It is clear that the nature and the duration of the CRL construction works have the potential to cause significant adverse effects on business custom and therefore on business profits. We had a submission (Submission 234) from Ashraf El Khatib (the owner of a small IT business in Victoria Street West) in which he stated that as a result of the designation process his business was now unsaleable with a complete loss of goodwill. Diane Sherwin and John Varouhas (Submission 218) had similar views regarding their gym and chiropractic service in Normandy Road, Mt Eden. For some small business operators the adverse economic effects resulting from construction could be potentially severe. We also heard some evidence from submitters, such as Stamford Plaza, as to the likelihood of such effects. We accept that for small businesses loss of custom has the potential to affect the viability of the businesses.
217. We are satisfied that this is an RMA effect. We have concluded that these potential effects are not sufficient as to warrant us recommending that the Notices not be confirmed. We nevertheless consider that it is part of our role to ensure that such adverse effects are avoided or minimised so far as is practicable. With that in mind, we asked AT during the hearing to ensure that there is a specific business disruption mitigation plan separate from the Social Impact Management Plan. This was also a recommendation of the AC reporting team.
218. Prior to the reconvened hearing AT proposed a Social Impact and Business Disruption DWP. The relevant condition was a significant improvement in terms of more directly addressing business disruption. We do not think that the combined focus of this condition is a problem.

219. We were however concerned that the condition was expressed in terms of a very general *avoid, remedy or mitigate* objective. We were also concerned that it did not directly refer to avoiding, mitigating or remedying the effects of construction work on *loss of business custom*, or otherwise focus directly on this key potential effect.

220. We are pleased to note that the final version of AT's proposed conditions (Condition 61) has largely addressed our concerns in this regard and is accepted by the AC reporting team. In particular we note the following:

- The proposed objective of the SIBD DWP is now to avoid, remedy or mitigate the adverse effects arising from disruption to businesses, residents and community services/facilities so far as is reasonably practicable.
- The DWP is now required to outline: how disruption effects resulting in the loss of customers to businesses as a result of the construction activities will be mitigated.

221. For the reasons discussed below and to ensure consistency with the objective, **we recommend** that AT amend Condition 61.2 (a) and (b) to replace the latter words in those sub-paragraphs with:

...*“avoided, remedied or mitigated so far as is reasonably practicable”*.

222. There are a number of other changes proposed by AT which we regard as commendable and appropriate and which we have relied upon in coming to our overall conclusion.

223. That brings us to the only remaining contentious issue in relation to business disruption and consequential economic impacts. The AT proposed objective, is now, to *avoid, remedy or mitigate* such impacts so far as is reasonably practicable. We remain of the view, that in order to achieve sustainable resource management and achieve its own stated objective, AT should not only mitigate, it should also remedy so far as is reasonably practicable any significant residual adverse effects of the construction project, on business custom and viability (except to the extent that such effects can and will be addressed via PWA compensation). By residual effects we mean effects on business custom after AT has done all that is reasonably practical to avoid or minimise such effects.

224. Condition 61.2 now reflects the Requiring Authority's intention to *mitigate* effects on loss of custom so far as is reasonably practicable. As recommended above we consider this should be worded to be consistent with the objective.
225. If mitigation is all that is intended, there may be still be some businesses which suffer a significant loss of custom and potentially viability, as a result of this lengthy construction project. We do not have any clear evidence regarding this, because such effects have not been assessed by AT except in a very general way. However, we do not understand AT to dispute that this may be or indeed is likely to be the case. The Social Impact Assessment and Ms Amelia Linzey's and other evidence provides some support for that conclusion.
226. In practice, the only way loss of custom and consequential effects on profits, viability and *economic wellbeing* can be *remedied*, is by way of compensation. A number of submitters²⁰ sought that we recommend a compensation condition, or in its absence recommend that the requirements be withdrawn.
227. As already stated, we consider that the benefits of this project are such that we should not recommend withdrawal of the Notices. Nevertheless, were it not for the legal advice and legal submissions, we have received we would recommend a condition requiring AT to compensate any businesses suffering a significant and proven loss of custom where compensation is not paid or payable under the PWA. While the legal advice is that it probably is within our powers to make a non-binding recommendation under s171 that AT include such a condition, the advice is that we should not do so. That is also Mr Beatson's submission. We are not prepared to formally recommend a condition of a type not yet imposed by the Environment Court. We also agree with Mr Beatson that we should not provide potentially false hope to submitters in this regard.
228. This leaves us with a dilemma. We are convinced the project should proceed. We are satisfied that the conditions now require avoidance or mitigation of loss of custom to the extent that this is reasonably practicable. We nevertheless are of the opinion that it there is a high potential that some businesses will be affected to a significant extent, yet may not be entitled to compensation under the PWA.
229. We do not consider this to be consistent with sustainable resource management or "fairness". In particular, it ignores the remedial component of avoid, remedy or mitigate. We are certainly not suggesting that significant

²⁰ Submitters included John Fryer of House of Knives (Submitter 138), Leah Firth (186), Diane Sherwin & John Varouhas (218), Ashrah El Khatib (2334) and Lloyd Morris of James Kirkpatrick Ltd (236).

adverse effects always need to be mitigated or remedied to the extent that they are minor. However, in the context of this project by a public body for public benefits, we believe that it is important that public benefits not be at the expense of significant adverse economic effects on individuals. In our view, it is reasonably practicable (and reasonable) for AT to remedy such effects in this manner.

230. Accordingly, **we informally recommend** to AT (and Auckland Council as the key proponent of this project) that together, they design and implement a process to provide compensation to any businesses which suffer a **significant and proven** loss of custom as a result of the construction process for the CRL.

While we agree that this should take into account any PWA compensation for substantial injurious affection, we are of the view that it would be preferable that the suggested process provide an alternative to that rather cumbersome, litigious and potentially inadequate mechanism.

231. We note that this recommendation is not made under s171 of the Act, because it does not relate to conditions. In that sense it is an informal recommendation and not one which AT is required to respond to under section 172 RMA. Nevertheless it is one which we would hope that AT will respond to as part of its decision on our recommendation.

Construction noise and vibration

The approach

232. We heard noise and vibration evidence from a range of experts for the respective parties.
233. There were a number of submitters in the category of *sensitive* or *notable* noise receivers (to use the terminology used in the final proposed conditions). We will address issues specific to those submitters later in this recommendation report. This part of our discussion relates to generic issues and outlines our overall conclusions in relation to the mitigation methods proposed by the Requiring Authority.
234. The construction of the CRL will have significant adverse temporary effects in terms of noise and vibration. These effects will arise as a result of the nature of the construction methods used and in particular the cut and cover and top down methodologies adopted in areas where the use of a TBM has been ruled out. We have discussed the details of the construction methodologies above

under Construction Method Alternatives. We have looked to conditions to appropriately avoid, remedy or mitigate adverse noise and vibration effects for all parts of the construction project. We now discuss the approach proposed by AT in relation to these effects.

235. At the commencement of the hearing we were provided with a set of proposed conditions including conditions dealing with noise and vibration. Those conditions did include some (rather flexible) baseline standards but left much of the mitigation of noise and vibration effects to be determined by way of management plans to be prepared outside of the current NOR process.
236. The AC reporting team and a number of submitters raised a number of concerns with the detail of the originally proposed noise and vibration management conditions. We also had some concerns. The Requiring Authority has picked up on many of these issues and the final proposed conditions are considerably improved from those originally provided. There have been three later iterations of conditions proposed by AT. We will focus our consideration on the final proposed conditions dated 22 November 2013 along with any evidence or submissions in relation to that set of conditions, including the comments from the AC reporting team and in particular Mr Jon Styles.
237. In summary, the final proposed noise and vibration conditions as proposed by AT adopt the following approach:
- Conditions 31 to 34 set out construction noise standards, blasting noise standards and construction vibration standards.
 - Condition 35 sets out noise and vibration standards specific to MediaWorks (discussed separately in this recommendation report).
 - The proposed construction noise standards are based on the New Zealand Standard 6803,1999 and vary between the following time categories: Monday to Saturday 0700-2200, Sundays and public holidays 0700-2200, all other times 2200-0700.
 - There are different noise standards for occupied commercial and industrial buildings, *sensitive noise and vibration receivers (SNVRs)* as defined and early childhood education centre sleeping areas.
 - The definition of SNVR is in the definitions section of the Conditions and includes amongst others: dwellings, schools, child care centres, hotels, churches and offices (though the latter are then excluded from the specific standards for SNVR).
 - Conditions 31 to 34 all include an exemption from the standards, where a SSCNMP (*site specific construction noise management plan*) or

SSCVMP (*site specific construction vibration management plan*) has been approved or in circumstances where one is not required. (see reference to Condition 37.2 below).

- Where construction noise is predicted to, or is measured to exceed the standards in Condition 31, a SSCNMP (Condition 37) is required to be prepared to address that exceedance.
- Condition 37.2 however exempts the need for a SSCNMP for exceedances of up to 5dBA for:
0700-2200: 1 period of up to 2 consecutive weeks in any 2 months
2200-0700 1 period of up to 2 consecutive nights in any 10 days
- These exemptions apply irrespective of the class of receiver involved.
- Exceedances beyond those provided for in Condition 37.2 would be allowed to occur provided the procedures in an approved SSCNMP are followed.
- Condition 36 requires a Construction Noise and Vibration DWP (**CNVDWP**) to be prepared for all receivers including notable and sensitive receivers.
- The proposed objective of this DWP is to provide a framework for the development and implementation of identified best practicable option (sic) to avoid, remedy or mitigate the adverse effects of noise and vibration resulting from construction.
- As proposed, it must identify methods to achieve the best practicable option for mitigating adverse effects in accordance with section 17 of the RMA.
- Condition 36.3 (b) includes an additional standard, being that piling and road cutting (particularly noisy operations) will be limited to between the hours of 7am to 7pm Monday to Saturday.
- The CNVDWP is to be developed in consultation with sensitive receivers and must include a record of specific measures to address their concerns.
- The CNVDWP is to be independently reviewed by an expert and AT must provide reasons for not accepting any recommendations.
- Condition 10 requires the CNVDWP to be submitted as part of the outline plan and the Council may recommend changes which (like the recommendations of the independent reviewer) AT may or may not adopt.

- The CNVDWP must be reviewed at least annually (Condition 22) to address unforeseen adverse effects and unresolved complaints. Affected parties are to be advised and the review is to be independently peer reviewed (Condition 23). The review is then to be submitted to Council's compliance and monitoring officer. If changes are not approved then a new outline plan is required.
- Condition 37 sets out the requirements for the SSCNMP the proposed objective of which is..... to detail the best practicable option to avoid, remedy or mitigate adverse effects on a receiver resulting from construction noise that does not comply with the Project Noise Standards.
- Condition 37.4(d) requires a summary of communication and consultation undertaken with "the receiver", which must include an explanation of where comments have not been incorporated and the reasons why not.
- There is no explicitly stated independent review or certification process proposed for the site specific plans since it is not clear that they are DWPs (see Condition 11).
- Conditions 22 and 23 imply that SSCNVMPs, SSCNMPs and SSCVMPs are also to be reviewed annually, but the final proposed conditions from AT are not explicit on this point.
- The SSCNMP is to be submitted for the review of the Council through the outline plan process (Condition 37.5). The Council may make recommendations to the Requiring Authority via the outline plan process.
- If those recommendations are not accepted by AT, the Council (but not the sensitive or notable receiver) may appeal such decision to the Environment Court.
- Condition 38 relates to a SSCVMP for vibration and its objectives and approach are similar to that for a SSCNMP. In this case however, a SSCVMP is required if either predicted or measured vibrations exceed Project Vibration Standards in any unoccupied building, structure or infrastructure (without any relaxation of standard). This plan is also required if a complaint or concern is raised and the vibration level exceeds the amenity levels set out in Condition 34.
- Condition 38 also requires site specific vibration criteria to be determined by an independent vibration expert and is subject to review by the Independent Peer Review Panel and the Council.

- Condition 39 sets out the requirements for a SSCNVMP in relation to *notable noise and vibration receivers*. These are defined as public performance theatres, recording studios, medical facilities and laboratories in relation to sensitive equipment and the Auckland District Court in relation to the recording of witness statements.
- The SSCNVMP is a different document from the SSCNMP and the SSCVMP referred to above and only relates to notable receivers.
- The objective of the SSCNVMP is *to detail the best practicable option to avoid, remedy or mitigate adverse noise and vibration effects on each Notable Receiver*.
- There is a requirement to work collaboratively with the notable receiver and to consult with each in the development of the plan.
- The SSCNVMP is to include specific criteria defining the point at which noise and vibration effects will unreasonably interfere with the operations of each notable receiver.
- It will detail mitigation measures to address effects on notable receivers, including potentially relocation (but has no reference to compensation.
- If the parties cannot agree they will each appoint an expert who shall appoint an independent third expert who shall certify the plan in terms of various matters.
- Once the notable receivers' plans are either agreed with that receiver or certified by the expert, the Requiring Authority cannot make any changes to that plan via the outline plan process without the notable receiver's consent.
- Following certification the SSCNVMP is to be submitted for the review of the Council through the outline plan process. The Council may make recommendations to the Requiring Authority via the outline plan process.
- If those recommendations are not accepted the Council (but not the notable receiver) may appeal such decision to the Environment Court.

General comments on the approach

238. It has taken us some time to understand, unravel and summarise (above) the approach, which is very complex and rather cumbersome. It involves three plans dealing with noise plus two more dealing with vibration. We note that in general terms there is no necessary correlation between complexity and effectiveness.

239. Leaving that complexity and caution aside we now turn to address the adequacy of the proposed measures. Firstly, we note that the provisions in the final proposed conditions from AT are largely supported by the AC reporting team. There are some points of difference relating to the standards for early childhood education centres in Condition 31.1 (we have adopted the AC reporting team's recommendation) and relating to the MediaWorks condition (seeking to delete Condition 66.3 which we have also agreed to do).
240. The cost and complexity of administering the above process is not our concern. We need to focus on whether what is proposed will adequately (sustainably) avoid, mitigate or remedy adverse effects. We also need to ensure that the conditions are enforceable and provide sufficient certainty. We consider that we should also ensure that affected persons have a reasonable opportunity to be involved.
241. We observe that a simpler approach would be to just have standards which have to be met and one management plan detailing how those will be met. One of the principal reasons for the complex approach is that AT considers that it will not be able to achieve the NZS 6803-1999 construction noise standards. It has therefore proposed a rather elaborate process to provide itself with the flexibility to exceed those standards.
242. The other reason for the proposed approach is a desire by AT to be able to address notable receivers whose concerns may not be addressed by general provisions. It would be simpler if these concerns could have been addressed by way of "side agreements" between the parties. We accept however that AT is simply not sufficiently advanced in its process to be able to do that and accordingly we accept that this approach is appropriate.
243. Leaving aside those general comments we make the following specific observations and recommendations.

Adequacy of the process

244. We are pleased that the final proposed conditions now more adequately provide for input from directly affected persons and for their views to be taken into account by AT, the independent reviewers and the Council.
245. It seems that (perhaps inadvertently) the SSCNVMPs are not proposed to be subject to the independent review process. These plans seek to set out the best practicable option to avoid remedy or mitigate adverse effects on a receiver from non-compliant construction noise and vibration. They are in effect

the mechanism by which AT will allow itself to further exceed construction noise and vibration levels beyond the exemptions provided in the conditions (Condition 37.2 provides for an exceedance of the noise standards in Condition 31 by up to 5dBA). Accordingly, in our view it is essential that there be independent scrutiny of what is proposed by AT in terms of the SSCNVMPs.

246. It is proposed by AT that these plans be submitted to the Council via the outline plan process just like the CNVDWP so we see no reason why they should not be subject to the same process as applies to that plan.
247. In order to address this issue, (or at least for the avoidance of doubt) we recommend that Condition 11 includes the SSCNMPs and the SSCVMPs as plans for independent review. Also, that Conditions 22 and 23 include SSCNVMPs, SSCNMPs and SSCVMPs. This is effectively done by amending the definition of DWPs to include the site specific plans for both notable and other receivers.
248. **We therefore recommend** that the definition of DWPs is amended as follows:
- Delivery Work Plans will contain specific objectives and methods for avoiding, remedying or mitigating effects and address the following topics:*
- (a) *Transport, Access and Parking;*
- (b) *Construction noise and vibration (including SSCNVMPs, SSCNMPs and SSCVMPs);*
249. We note that Condition 23.3, when referring to affected parties being notified of any material change to the CEMP and DWPs should include, and **we recommend**, the words:

(... including any consequential changes...)

250. As noted earlier, the process for making changes or additions to DWPs is time consuming. The site specific plans deal with predicted exceedances, and also with non-predicted but actual exceedances. The latter may arise after construction has commenced and well after the outline plan process. We think that requiring disputes with the certifying officer regarding changes required to address exceedances (non-compliance) to be resolved via the outline plan process is potentially problematic. If there is a dispute over required changes then there will need to be a revised outline plan submitted, that approach will not deal with exceedances in a timely manner.

251. We accept that it may not be appropriate to recommend that the Requiring Authority be required to accept the recommendations of the independent reviewer in relation to the CEMP and other DWP's. Nevertheless we consider that to be essential in relation to the site specific noise and vibration plans. That is because these plans deal with exceedances and in the case of noise, situations where there is desire to go beyond an already built-in exceedance. We are mindful of the fact that if AT complies with a SSCNMP or SSCVMP (which has been drafted by its consultants) then it will be immune to enforcement action for non-compliance with conditions.
252. In those circumstances we do not consider it appropriate or sustainable for the Requiring Authority to be able to provide itself with the flexibility to ignore the independent reviewer's recommendations. Similarly, if the site specific plans are amended to or added to under Condition 22 we do not think that it is appropriate that AT could reject the Council officer's recommendation.
253. To address these issues, **we recommend** that Conditions 37 and 38 be amended to replace the existing clauses 37.5 and 38.6 as follows:

37.5 Following the above process, the SSCNMP shall be submitted for independent review in accordance with Condition 11. The independent review report and any recommendations shall be submitted for approval to the Auckland Council, compliance and monitoring officer (or equivalent). The officer, after having regard to views of affected receivers, the independent review and any response provided by the Requiring Authority for not accepting any recommendation of the independent reviewer shall approve the Plan, or after consultation with the Requiring Authority may require any further changes to the Plan which are considered to be reasonable and appropriate in the circumstances in order to achieve the objectives of the Plan (for this purpose the officer may take further expert advice).

This Plan shall be reviewed and updated in accordance with Conditions 22 and 23 except that part of Condition 23.6 that provides for an outline plan process shall not apply and Condition 37.5 shall apply in its place.

The Requiring Authority shall at all times adhere to the requirements of this Plan and subject to Condition 37.2 above, shall not commence any activity that is predicted to exceed the noise standards in Conditions 31 or 32 nor

continue to exceed those standards unless such exceedance is authorised by this Plan.

254. **We recommend** that Condition 38.6 (relating to vibration) is amended in similar fashion to be:

38.6 Following the above process, the SSCVMP shall be submitted for independent review in accordance with Condition 11. The independent review report and any recommendations shall be submitted for approval to the Auckland Council, compliance and monitoring officer (or equivalent). The officer, after having regard to views of affected receivers, the independent review and any response provided by the Requiring Authority for not accepting any recommendation of the independent reviewer shall approve the Plan, or after consultation with the Requiring Authority may require any further changes to the Plan which are considered to be reasonable and appropriate in the circumstances in order to achieve the objectives of the Plan (for this purpose the officer may take further expert advice).

This Plan shall be reviewed and updated in accordance with Conditions 22 and 23 except that part of Condition 23.6 that provides for an outline plan process shall not apply and Condition 38.6 shall apply in its place.

The Requiring Authority shall at all times adhere to the requirements of this Plan and shall not commence any activity that is predicted to exceed the vibration standards in Conditions 33 and 34 nor continue to exceed those standards unless such exceedance is authorised by this Plan.

255. **We also recommend** consequential changes to Condition 10.1 to clarify that SSCVMPs and SSCNMPs are not subject to the outline plan process as follows:

10.1 The Requiring Authority shall submit an Outline Plan to the Auckland Council for the construction of the City Rail Link in accordance with section 176A of the RMA. The Outline Plan shall include:

- (a) The Communication and Consultation Plan (Condition 15);*
- (b) The Construction Environmental Management Plan (CEMP);*

- (c) *Delivery Work Plans (DWPs) (including SSCNVMPs for notable receivers); and*
- (d) *Site Specific Construction Noise/Vibration Management Plans (SSCNVMPs) and Notable Receiver Management Plans; and*
- (e) *Any other information required by the conditions of this designation associated with the construction of the City Rail Link.*

256. An alternative view is that AT, rather than the Council, should have the final say as to whether recommendations of the independent reviewer should be included. We have not favoured that approach on balance because these plans are to provide for AT to exercise some exceptions to the noise and vibration standards which are effectively checked by the Council.

257. For completeness and consistency, we have also recommended changes to Condition 23.6 to make it clear that the SSCNMPs and SSCVMPs cannot be subject to an outline plan process as part of a review. We have also deleted the reference to an independent peer review in Condition 23.3 because this is replicated in Condition 25.5.

258. Accordingly, **we recommend** the following be added to Condition 23.6:

... except in relation to SSCNMPs and SSCVMPs to which the approval process set out at Conditions 37.5 and 38.6 respectively shall apply.

259. Also that the following words are deleted from Condition 23.3:

... shall be subject to an independent peer review as required by Condition 11.

260. In summary, we have concluded that whilst it is appropriate for the Requiring Authority to have some flexibility in terms of the contents of the SSCNMPs and SSCVMPs, an approach which potentially allows AT to ignore independent reviewer and/or Council recommendations, is too uncertain in relation to the site specific situations where the noise and vibration standards, and in the case of construction noise, the further exceptions in Condition 37.2, will be exceeded.

261. We have considered the submissions for AT that requiring it to accept the peer reviewer's recommendations would circumvent the intentions of the outline plan process. For the reasons provided above, we do not consider that it is appropriate to leave these site specific (exceedance) plans to the outline plan process. That will not provide any certainty for affected persons (or us in reaching our conclusions). Nor can it deal with unexpected exceedance situations in a timely manner.

262. Our recommended amendments would leave the final decision with the Council's compliance and monitoring team rather than the reviewer. The Council if necessary can take further advice. It is not obliged to accept the independent reviewer's recommendation. In our view this approach does not circumvent the outline plan process. Rather, we have concluded that with the exception of the notable receivers' plans (which follow a separate process), these site specific plans should not be a part of the outline plan process. This is because firstly, that process is uncertain and secondly, because it cannot deal with exceedances in a timely manner and may potentially delay construction while outline plans are approved and potentially appealed.
263. We appreciate that there is earlier case law suggesting that a Council officer should be in certifying rather than an approving role. We were however provided with, by Counsel for AT, examples where management plans have effectively been subject to Council or independent approval. If this approach is unlawful (which we doubt) then it can be legitimised by AT accepting our recommendation. We also note that there are some advantages to AT in not having to go through the outline plan process for these site specific plans and any amendments to them.
264. Finally, on this topic we record that we have some concerns regarding authorisation of exceptions to the construction noise standards and topped by a further process to authorise exceedances beyond those exceptions. The changes we recommend above and below are the minimum which we consider appropriate to address our concerns and ensure sustainable management. We have further to say below on the exception in Condition 37.2, relating to an up to 5dBA noise exceedance, sitting outside the requirements of a SSCNMP.

Appropriateness of the objectives for the noise and vibration plans

265. As noted above, the noise and vibration conditions are drafted in terms of objectives and methods to achieve *the best practicable option to avoid, remedy or mitigate the adverse effects* of construction noise and vibration. This is referenced to s17 RMA which is the general duty to avoid, remedy or mitigate. We note that s16 RMA refers to owners and occupiers of land and their agents operating plant or machinery, adopting the BPO to ensure *that the emission of noise does not exceed a reasonable level*. AT did address the question of whether or not s16 applies to construction noise. At first sight (by reference only to Brookers' Resource Management) we are not aware of case law

suggesting that it does not apply. There is at least one decision where s16 has been reflected in designation conditions.²¹

266. We also observe that the definition of BPO within the Act is defined in terms of *preventing or minimising* adverse effects on the environment in relation to the emission of noise and contaminants rather than the more general *avoid, remedy or mitigate* proposed here.
267. Although AT has included standards, in the proposed conditions, in relation to construction noise and vibration, it seeks to be able to exceed those standards. It places considerable reliance on the various noise and vibration management plans we have referred to above. Within that context and the statutory context, we are not convinced that an objective to simply avoid, remedy or mitigate is sufficient.
268. In view of the significant reliance placed on BPO by AT, and the statutory wording, **we recommend** that Condition 36.1 be amended as follows:

The objective of ... best practicable option to avoid, or minimise the adverse effects of noise and vibration resulting from construction and to minimise the frequency, duration and degree of exceedance of the noise and vibration standards set out in Conditions 31, 32, 33 and 34 and to prevent the emission of unreasonable noise and vibration at times when the construction noise and vibration standards will be exceeded.

269. **We further recommend** that Condition 36.2(c) be amended by replacing the existing wording (reference to s17 RMA) with the following:

Identify other methods to achieve the objective outlined in Condition 36.1.

270. **We also recommend** that Conditions 37.1 and 38.1 be amended so that the respective objectives are as follows:

The objective of a SSCNMP is to detail the best practicable option to avoid or minimise the duration, frequency and degree of noise in excess of the standards in Conditions 31 and 32 and to otherwise remedy such effects.

The objective of a SSCVMP is to detail the best practicable option to avoid or minimise the duration, frequency and degree of vibration in excess of the standards in Conditions 33 and 34 and to otherwise remedy such effects.

²¹ [Dunedin CC v Tranz Rail Ltd](#) EnvC C214/00

271. **We also recommend** that Conditions 37.4(e) and 38.5(e) be amended to
...mitigate and/or remedy...

and that the objectives part of Condition 39.2 be amended as follows:

...The objective of the SSCNVMP is to detail the best practicable option to avoid or minimise the duration, frequency and degree of adverse noise and vibration effects on any notable receiver and to avoid unreasonable interference with the operations or equipment of such receivers or to otherwise remedy such effects.

272. **We recommend** that Condition 39.4(e) be amended as follows:

Details about the methods adopted by the Requiring Authority to achieve the objective of this Plan and the anticipated effectiveness of those methods.

273. **We recommend** that Condition 39.5(e) be amended as follows:

Whether or not the residual effects (being any residual adverse noise and vibration effects once mitigation measures are applied which exceed the certified noise and vibration limit in sub-paragraph (a)) are likely to cause significant disruption to the activities of the notable receiver and/or damage sensitive equipment to the extent that further remediation (including relocation or other measures) or compensation would be appropriate.

274. The above amendment to Condition 39.5(e) includes some explanation of the term “residual effects”.

Appropriateness of the noise standards

275. While management plans have a role to play, affected persons primarily rely on noise and vibration standards to provide certain and enforceable outcomes.

276. With most construction projects the NZS 6803:1999 construction noise standards are appropriate except for particularly sensitive receivers who may require additional protection. With a project of this duration, in the centre of the city, that is not necessarily the case. Those standards may be insufficient for some receivers or may be unachievable in some circumstances. We accept the evidence on behalf of AT (confirmed by Mr Styles) that piling, excavation

and surface road reconstruction will not comply with the construction noise standards at all times.

277. We understand that the construction noise standards are not designed to protect amenity values. They are designed to ensure an adequate sleeping environment and to avoid daytime noise at unhealthy levels. With a construction project such as this, compliance with the construction noise standards will not avoid adverse amenity effects in terms of noise and may not avoid nuisance noise. We also note that in the absence of other controls, construction noise standards become a *de facto* control on the hours of noisy operations.
278. We have concluded that the construction noise levels proposed by AT in Condition 31 are appropriate. Those conditions were largely agreed by the relevant experts for AT and the AC reporting team and were not seriously challenged by any other expert. There was a difference of opinion between Mr Styles and Mr Fitzgerald as to the standards for outdoor areas at early childhood education centres. We have adopted the standards proposed by the AC reporting team, for the reasons we give in the Submitter Specific Issues section of this recommendation report - Bear Park Early Childhood Education Centre.
279. We do have a concern regarding the times set out in the proposed noise standards. Based on NZS 6803:1999 noisy operations are limited to Monday to Saturday 0700-2200. At other times (2200 to 0700) and on Sundays much stricter limits apply which would prevent much construction work. However, further exceedance is allowed by Condition 37.2 and further exceedance beyond that, provided that such is in accordance with an approved site specific plan.
280. Condition 36.3 (b) (as proposed by AT) includes an additional limit, being that piling and road cutting (particularly noisy operations) will be limited to between the hours of 7am to 7pm Monday to Saturday.
281. We heard from a number of submitters regarding the likely effects on them of extended periods of construction noise which at times will exceed the construction standards. By way of example, Stamford Residences, Stamford Plaza, Tenham Investments and Precinct Properties.
282. We gave serious consideration to recommending a reduction in the construction hours provided in Conditions 31 and 37 (Monday to Saturday), particularly for residential and accommodation facilities. Given the lengthy duration of the proposed construction works; the proximity of the work to

residential buildings; the fact that exceedances are provided for in Condition 37.2; the provision for further exceptions via a SSCNMP; and, the high reliance placed upon management plans and BPO, we had reservations as to whether the normal construction hours provided in NZS 6803:1999 and reflected in Conditions 31 and 37 are appropriate in relation to residential and other accommodation receivers. We also note that these standards are intended to provide adequate sleep and provide little protection for amenity values.

283. On balance however (and with some reservations) we have decided not to recommend changes to the hours of higher construction noise, because this would be out of step with what is permitted at other inner city construction sites; could be unduly restrictive to AT; would lengthen the construction period; and was not specifically debated at the hearing. We also note that Condition 36.3(b) does provide some additional respite in relation to particularly noisy operations (piling and road cutting). In our view, given the reasonably generous nature of the noise standards and hours in Condition 31 and the further exemption in Condition 37.2, it is all the more important that the objectives and process for the SSCNMP are tightened up.

Exceptions to the construction noise standards

284. As outlined earlier AT proposes exceptions to the standards in Condition 31 where the exceptions are in accordance with a site (or activity) specific plan but Condition 37.2 provides for an exemption before such plans are required.
285. We had considerable reservations regarding the appropriateness of the exceptions proposed in Condition 37.2 which provide an exemption from the need for site specific plans for exceedances of up to 5dBA for:

0700-2200: 1 period of up to 2 consecutive weeks in any 2 months

2200-0700 1 period of up to 2 consecutive nights in any 10 days.

286. We are not aware of any other projects where such an approach has been applied. If there are to be exemptions then it seems to us that these should be the subject of an approved site specific plan.
287. We asked Mr Styles at the hearing for his views regarding this and he agreed with AT's experts that some exemption was desirable so that site specific plans would not be need to be relied upon or amended on a frequent basis. He also

confirmed his understanding that this exemption would potentially allow up to 6 nights of exemption in any month and during daytimes, up to 6 weeks in 6 months. That was of concern to us.

288. Our initial view was that the exceptions should be deleted. We initially considered that all predicted exceedances of the reasonably generous standards in Condition 31 should be the subject of a SSCNMP. We thought that this approach would cause no great delays if our recommendations regarding the SSCNMP process are adopted (that is, no longer going through the outline plan process).
289. Notwithstanding these views, we have concluded that the daytime exception (0700-2200 hours) is acceptable with the following amendments. We seek by way of these amendments that the CNVDWP specifically cover predicted exceedances (that lie within the exceedances permitted by Condition 37.2) and justify what has been done to minimise the adverse effects. We are of the view that this can be done as part of the CNVDWP and included in the outline plan well in advance of construction and on that basis it will not cause any delays.
290. **We recommend:**

That daytime exemptions listed in Condition 37.2 should be for no more than 2 consecutive weeks in any 3 months and shall not apply to child care centres.

291. Our reasons for the above change are that we consider it could frequently take more than two months for excessively noisy construction phases to pass a specific location and further, that 3 months is a more satisfactory interval over which the exceedance frequency should be permitted. This will impose a more stringent requirement on AT but one that is directed at AT performing more efficiently rather than being an imposition. AT still has the option, where it can be predicted that noise levels will exceed the NZS 6803-1999 construction noise standards, of preparing a site specific plan within the CNVDWP framework.
292. In this respect we consider that to allow a largely unfettered exemption of up to 5dBA from the NZS construction noise standards is not reasonable or justified without some measure of control. We acknowledge the reasons why this is sought by AT. We concluded it was acceptable so long as it is addressed in the Construction Noise and Vibration DWP (Condition 36).

293. **We recommend** adding to Condition 36, a sub clause 36.3(m):

The likely timing (including providing reasonable notice to affected parties) and nature of any exceedances of the standards in Conditions 31 and 32 (including any within the 5dBA exception to a SSCNMP as provided for by Condition 37.2).

294. The night time (2200 to 0700 hours) situation was viewed differently by us. We are concerned that the areas potentially most affected by construction of the project are those where the cut and cover works are proposed at either end of the route. It is in these areas where there are sensitive activities that include hotels and apartments along Albert Street and apartments and residential activities in Mt Eden. We consider those residents and occupants should have the confidence that any night time activities will be in compliance with the NZS construction standards (Condition 31) unless any exceedance is dealt with as part of a site specific management plan.

295. **We recommend** deleting from Condition 37.2:

2200-0700: 1 period of up to 2 consecutive nights in any 10 days.

Sensitive and notable noise and vibration receivers

296. The final proposed conditions provide appropriate opportunities for the views of sensitive and notable receivers to be heard and taken into account by the Requiring Authority, the independent review panel and Council staff. For the CNVDWP and notable receivers' plans, outline plan approval will also be required. This approach also allows for the retention of the daytime, up to 5dBA exceedance in Condition 37.2 that we had otherwise considered removing.

297. We have recommended some further changes to the SSNVMP process, objectives and other provisions which we consider to be appropriate and necessary to address the issues raised by submitters and to ensure that adverse effects are adequately avoided or minimised. In particular, as outlined earlier we have recommended tightening the objectives for the site specific plans, that the exemptions from the need to provide such plans is more limited and adjustments to such plans to address actual or potential exceedances is not be left to the discretion of the Requiring Authority.

298. We have recommended some changes to the notable receivers' condition (Condition 39) as above.

299. Provided that all of the amendments we recommend above are accepted by AT, we are satisfied that adverse effects of noise and vibration on sensitive and notable receivers will be appropriately and sustainably managed.

Construction vibration and settlement effects

300. Works associated with the CRL will see ground vibration during construction and possibly some ground settlement. Both these effects could adversely affect the structural integrity of, or cause other damage to buildings along the CRL route. Vibration also affects amenity values and can interfere with sensitive activities and equipment.

301. We have discussed the management regime for vibration earlier. We have recommended various changes to the relevant management plan conditions.

302. Condition 33 sets out construction vibration standards with respect to potential building damage. (There is a separate condition dealing with vibration standards for MediaWorks which is discussed later in this recommendation report). Whilst there were submitter concerns expressed to us in this regard, there was no expert evidence presented which challenged the construction vibration standards AT initially proposed (route wide) and which are in the final proposed conditions. This standard was confirmed to be appropriate by the caucusing group of experts who advised AT, the AC reporting team and Precinct Properties. Accordingly we have not recommended any changes to Condition 33.

303. At the resumed hearing, following some questions from us and caucusing with the vibration experts for AT, the AC reporting team and Precinct Properties, AT proposed additional construction vibration amenity standards which the AC expert (Mr Styles) considered acceptable. These standards are set out in Condition 34, Project Standards – Construction Vibration (Amenity). We consider this additional control measure to be appropriate. We note that the standard will only apply if a building occupant complains. If that occurs and the complaint is confirmed by measurement, then a SSCVMP will be required for that receiver.

304. Mr Richard Finley (for Precinct Properties) did not accept the consensus view of the AT and AC reporting team members on several matters. Firstly he considered that the limit vibration should be PPV of 1.4mm/sec rather than the 2.0mm/sec for retail and office spaces. He also proposed some “blunt” terms on notification and frequency which he acknowledged could not be fully

supported in the literature because of a lack of documented evidence about acceptable amenity vibration levels. We note Mr Finley's concerns, but have concluded that Condition 34 covering vibration amenity standards is acceptable and that where exceedances occur, they can be appropriately addressed through the SSCVMP process.

305. The Structural Engineering Assessment Report with the Notices noted that buildings that will be subject to vibration in excess of 2.5ppv/mms may see some effects, although this will be at the low end of the scale for buildings where buildings are close to the outer edge of the 2.5ppv/mms contour. In relation to settlement, this may occur from the removal of soil and other material, as well as from dewatering. Settlement of more than 10mm across a slope of more than a 1:500 contour is used to identify buildings potentially at risk.
306. Tonkin & Taylor consultants peer reviewed the AT Structural Engineering Assessment Report as part of the s42A Report. They concluded the proposed construction vibration standards and assessment (as above) were appropriate to define risk contours. They also concluded that the assessment of settlement associated with cut and cover and tunnel boring were reasonably conservative.
307. There was no technical evidence which disputed the process for assessing the triggers for vibration and settlement and we are comfortable in also accepting them.
308. Towards the end of the hearing, the AC reporting team proposed that a Ground Movement Effects DWP should be added and they recommended a new condition. AT opposed this approach on the grounds that ground settlement effects were already covered in the Building Condition Survey (Condition 46). AT and the AC reporting team resolved this issue by including additional wording into the final proposed conditions at Condition 46.1 and Condition 21.1(c) to clarify this aspect. We consider a separate Ground Movement Effects DWP has a high potential to unnecessarily complicate the DWP process and to conflict with the Building Condition Survey process. We accept these changes to the latest AT Conditions in this regard apart from **we recommend** adding "...and settlement." to the first sentence in Appendix One.
309. The criteria for Building Condition Surveys are set out in Condition 46. As a minimum those buildings listed in Appendix One and Appendix Two will be considered for a building condition survey as per Conditions 36 and 41 respectively. In the following paragraphs we discuss Building Condition Surveys for building types covered by Appendix One. Appendix Two contains

a list of Built Heritage buildings and structures and we discuss Building Condition Surveys for this group later in the Heritage section of this recommendation report.

310. A number of submitters asked at the hearing for their buildings to be added to the list in Appendix One. These included the Roman Catholic Church buildings at St Patricks and St Benedicts; Auckland Boxing Association (1 Ngahura St), Bear Park Early Childhood Centre (32 Akiraho St), Tenham Investments (148 Quay St) and the Precinct Properties group of buildings. These and other submitter requests were accepted by AT with the exception of the Downtown shopping centre, which is to be demolished.
311. We note that many submitters have sought assurance that AT will undertake pre and post-building condition surveys for their properties but, AT has not committed to go beyond *considered for*. We can understand AT's position because, at the designation stage, it is premature to determine the cut-off point between buildings which may have a risk of being adversely affected physically by the CRL work and those which are too remote to be affected. So whilst there are buildings in Appendix One which will almost certainly need surveying, there are others which do not warrant a survey because the construction activity is not likely to have an adverse effect.
312. The actual list of buildings for survey can really only be decided on the basis of professional investigations in the knowledge of the detail of the proposed transport works and adjacent building configuration. We do note, however, that a prudent organisation such as AT is bound to take a very conservative approach to choosing at least pre building condition survey candidates because of the risk it faces of having to defend itself against claims for building damages which have actually occurred prior to CRL construction.
313. We also note that Condition 46 provides for an independent suitably qualified person to undertake the building condition surveys taking account of a comprehensive set of relevant considerations and protocols. We do not consider it to be in line with current best practice to require, as sought by some submitters, a further independent review panel (or AC for that matter) to review, and potentially override that independent expert's recommendation for no survey. We are further of the view that Condition 46 appropriately addresses the concern of the submitters who raised the need for their buildings to be included as buildings that will be subjected to pre and post building condition surveys.

314. In conclusion, we accept the AT proposed wording of *considered for* in Appendix One and Condition 46.

Construction blasting noise

315. This Condition 32 applies only to NOR 6, because blasting is only expected to be required to excavate basalt rock to grade levels in forming the rail track in the south east sector of the CRL where it joins into the NAL line.

316. There were few submitters who referenced blasting noise as a major concern. However many submitters located within the vicinity of NOR 6 did raise construction noise and vibration as an adverse effect which they sought to have strictly controlled so as to minimise adverse effects to the greatest extent practicable. We conclude that the source of the construction noise or vibration is not of importance to the submitters and that blasting noise is indeed an adverse effect that these submitters are seeking to have addressed.

317. Mr Fitzgerald recommended the proposed condition on air blast noise as an appropriate framework for managing and minimising adverse effects. The initial condition covered:

- Compliance with NZS 6803:1999 “Acoustics-Construction Noise”.
- Air overpressure at occupied building facades not to exceed 120dB L_{Cpeak} .
- All receivers within 200m of a blast to be notified 24hours in advance.
- Blasts to be performed between 8am and 6pm Monday to Saturday only.
- Air blast noise calculations must be done before explosives are used.
- Blasting not to take place if overpressure is predicted to exceed project criteria at an occupied site.
- Blasting not to take place if overpressure is predicted to exceed 150dB L_{Zpeak} at the facade of an unoccupied building unless a prior building condition survey has been undertaken.

318. Mr Styles for the AC reporting team recommended a number of changes to the proposed conditions from AT which he considered were more appropriate for this project namely:

- Use of the Australian Standard AS2187.2-2006 Explosives-Storage and use of Part 2: Use of Explosives as the governing standard which accords with the adoption of the DIN 4150-3 limits for building damage

from ground vibration where the limits are set at a level where no damage will occur.

- For buildings that are not occupied the air overpressure limit shall comply with 133dB $L_{Z_{peak}}$ unless agreed between AT and the building owner (with a building precondition survey) that a higher limit may apply.
- For buildings that are occupied the air overpressure limit shall not exceed 120dB $L_{Z_{peak}}$.
- Blasts to be performed between 9am and 5pm Monday to Saturday only.

319. Most of Mr Styles' recommendations were accepted by AT. A sticking point was whether for unoccupied buildings, the upper limit should be 150dB $L_{Z_{peak}}$ or 133dB $L_{Z_{peak}}$. Eventually, following caucusing of the noise and vibration experts, it was agreed to adopt the lower limit. The final proposed conditions from AT include this limit and the essence of the above recommendations of Mr Styles. We accept the consensus opinion of the experts in this specialised field as reflected in the final proposed conditions from AT.

Operational noise and vibration

320. We heard evidence relating to operational noise from experts for AT, the AC reporting team, MediaWorks and Precinct Properties. We also heard operational vibration evidence on behalf of these parties.

321. Issues specific to MediaWorks are discussed later in this recommendation report. Aspects unique to other submitters are also covered in the Specific Submitter Issues part of this report.

322. Operational aspects of the CRL which potentially have adverse environmental effects relate to regenerated noise and vibration effects from the passage of trains and noise generated from mechanical plant servicing the underground rail which is primarily at the proposed Aotea, Karangahape and Newton rail stations.

323. The vibration and regenerated noise criteria proposed by AT for operational rail vibration were not seriously challenged during the hearing and these criteria remain the AT recommendation in its final proposed conditions (Condition 63). MediaWorks conditions on this matter are discussed later.

324. Mr Finley recommended additional assessment criteria in general accordance with ANSI S2.71 1983 (R2006), Guide to the Evaluation of Human Exposure to Vibration in Buildings for Dwellings and Commercial Space. He had no recommended changes to Condition 64 – Operational Noise - Mechanical

Ventilation Plant, which we note is the standard applying to the central Auckland business area.

325. Dr John Heilig and Messrs Mark Simpson and Nevil Hegley provided specific recommendations about noise and vibration standards relating to rail transport operations for the MediaWorks site, but also gave helpful expert advice about route wide operations. In particular they noted that the USA Federal Transit Administration - Transit Noise and Vibration Impact Assessment May 2006 does not vary the noise level goals for infrequent train passes. They concluded that it would be inappropriate to allow any exceedance of noise limits and accordingly did not support the AT proposed Condition 63.4 which permits 5% exceedance - 1 out of 20 train passes.
326. The AT noise and vibration experts argued that some leeway was appropriate in meeting operational rail vibration and reradiated noise compliance with Conditions 63.1 and 63.2 and considered 95% achievement per 20 train passes in Condition 63.4 to be reasonable. The AC reporting team expert (Mr Styles) accepted this standard in his final advice note of 22 November 2013.
327. We note that all the experts advised that there are many available construction options for rail configurations, which minimise operational noise and vibration. These include floating track slab, resilient rail fasteners and continuously welded rail. A high standard of maintenance of the rolling stock (particularly wheels) is also important to minimise adverse noise and vibration on an ongoing basis. We are therefore somewhat surprised that AT would consider that non-compliance with the set standard as high as one train pass per 20 train passes is acceptable. However, nor do we consider that 100% compliance for an operational condition is practical. We conclude that a reasonable expectation for an efficient operating system would be 99% compliance and therefore we recommend that Condition 63.4 be amended so that it reads: *shall be achieved for 99% of at least 100 train pass-by events*.
328. We also agree with the AC reporting officers concluding recommendations on 28 November 2013 and we recommend changing the Building Type name in the Condition 63.1 table from "Industrial" to "Commercial" to better reflect the nature of the included activities in Note 1.
329. We also agree with AC reporting officers that Condition 66.3 is inappropriate and we accordingly recommend that Condition 66.3 should be deleted. Non-compliance with the noise and vibration standards needs to be addressed when it occurs rather than up to 12 months later.

Air quality

330. In addressing air quality matters the s42A Report provided us with the following summary information:

- Dust emissions during construction are the most significant predicted air quality issue associated with the CRL project.
- Odour could be a potential issue if contaminated material is uncovered during excavations. This is unlikely but if it did occur this effect would be temporary and mitigation measures are available.
- Exhaust emissions from equipment and vehicles powered by hydrocarbon fuels (typically diesel engines) have the potential, if equipment is improperly operated or maintained, to adversely affect local air quality.
- There are no significant issues likely to result in diminished air quality during the operational phase of the CRL.

331. AT's Air Quality Assessment (**AQA**) was included in its AEE. The AQA was reviewed by the AC reporting officers who in their s42A Report informed us that:

- The discussion of air quality assessment criteria is complete and correctly focuses on the key issues of dust emissions and the assessment of effects.
- The assessment of environmental effects identifies the potential adverse effects of the construction methodologies and the expected effects on air quality.
- Dust is afforded particular emphasis, which is appropriate as it is the most critical potential adverse air quality-related environmental effect. Considerable detail is provided about the ways in which dust releases might occur during CRL construction activities.
- Other potential contributors to adverse effects on air quality are identified (vehicle exhaust emissions and odour).

332. The AQA outlines extensive mitigation measures, particularly for dust control, which form the essence of a dust management plan, which will form part of the CEMP. The s42A Report offered us the opinion that the expected effects of vehicle exhaust emissions, both from construction machinery and diverted

and/or delayed traffic, are not considered to be significant and that they have been addressed in the AQA.

333. Ms Camilla Needham, an environmental engineer for AT, confirmed in her evidence in chief that the principal air quality issue in relation to the construction phase of the project is the potential adverse impacts from the discharge of dust. The possible issues relating to dust include visual soiling of surfaces, such as cars, window ledges, and household washing; and dust deposits on flowers and gardens. Due to the proximity of the construction activities to sensitive residential and retail activities, a high standard of control will be required through implementation of the CEMP, which will include provisions related to air quality management.
334. Ms Needham's 'dust issue' viewpoint was reinforced by submitters. For example, Mr Gavin Fisher for Precinct Properties, in his consideration of air quality, noted that during the construction phase there would be significant potential for localised dust nuisance on people and properties in the immediate vicinity of the works. Mr Fisher's opinion was echoed by other submitters.
335. We find there to be no disagreement that dust during the construction period would potentially be a nuisance. Submitters, were seeking certainty now regarding the way AT would mitigate any potential nuisance. To aid the Requiring Authority, a number of the submitters (Precinct Properties, Stamford Plaza and Stamford Residences) requested amendments to the proposed condition(s) which address how the adverse effects on air quality will be managed during the construction phase. By the conclusion of the hearing AT had responded favourably to the amendments sought with Condition 59, Air Quality DWP, now having clearer objectives.
336. Condition 59 also includes procedures for the continuous monitoring of Total Suspended Particulate (**TSP**) and contingency measures to address verified adverse effects on sensitive receivers such as the cleaning of air filtration intakes or cleaning of other buildings and infrastructure.
337. Submissions highlighted other air quality issues for which we hold the view were satisfactorily addressed in the s42A Report namely:
- The potential adverse effect during the construction period of the exhaust emissions from construction traffic and powered equipment. The expected effects will be subject to the provisions of the Proposed Regional Plan: Air, Land and Water and are not considered not to be significant. The same observation can be made for diverted and/or delayed traffic.

- Odour could be a potential issue if contaminated material is uncovered during excavations associated with the CRL construction. This is an unlikely event, however if this did occur this effect would be temporary and mitigation measures are available.
- “Dangerous gases” might be emitted from the ventilation stacks along the CRL route during the operational phase of the CRL. This will not in fact be the case. The ventilation system emissions associated with the operation of the CRL will be typical of those arising from any confined area where people gather. No hydrocarbon-powered engine exhaust gases will be present.

338. We accept that:

- The major concern for submitters with respect to adverse effects on air quality is from dust emissions during construction activities for the CRL and the potential adverse effects on peoples’ health and/or properties adjacent to the route corridor.
- Once operational the network will use electric trains. Any emissions associated with the operation will be subject to the provisions of the Proposed Regional Plan: Air, Land and Water but otherwise, we were offered the opinion that there will be no adverse effects on air quality arising from the operation of the trains.

339. We find that the potential effects from dust emissions during construction phase of the CRL can be appropriately mitigated as now included in the final proposed conditions and further, that the operation of the CRL will have no significant adverse effects on air quality. In our view, the conditions now largely meet the concerns of the submitters with regards to air quality.

Transport network effects

340. As part of the Notices, AT provided a detailed, and comprehensive, Integrated Transport Assessment (**ITA**). The ITA provided an overview assessment of the actual and potential road transport effects, both positive and adverse, and identified those that are permanent (likely to continue during operation) and temporary (to occur during the construction period). The AEE also provides details²² of the identified actual and potential effects associated with the CRL

²² AEE Table 7.5

by identifying 16 separate “Road Transport Effects” (**RTEs**) and provided a number of recommended methods for managing these effects.

341. For the purposes of our recommendation we do not intend to provide a summary of all the transportation information and of the discussion on the various mitigation measures proposed and considered, other than to reference the key effects and our findings on those effects.

342. The key elements to emerge from the ITA are:

(a) Construction Effects²³:

- There is a potential for significant adverse transport effects during the construction phase;
- It is proposed that the construction effects along and across the route are to be mitigated by the development and implementation of the CEMP; and
- The management of transportation effects that will occur during the construction phase will be outlined in a detailed Traffic Management Plans (**TMP**) which will support the CEMP.

(b) Operational Effects²⁴:

The CRL will significantly improve Auckland rail network. Key benefits include:

- Addressing the capacity constraint at Britomart;
- The entire Auckland centre will be within a 10 minute walk of a railway station;
- Significantly reduce travel times to and through the centre and people will have rail access to more parts of the city centre;
- Significantly increase rail transport capacity;
- Help reduce the growth of congestion in the central city road network and bus corridors;
- Remove two level crossings; and
- Improve transport choices.

343. The principal adverse pedestrian and traffic effects will occur during the construction phase. This is inevitable with a project of this magnitude and once the project is constructed these adverse effects will be offset by transportation

²³ AEE – ITA at [2.2]

²⁴ AEE – ITA at [2.1]

benefits. We have focussed on ensuring that so far as is reasonably practicable the adverse construction impacts are minimised.

344. The main transport effects during construction will occur along Albert Street and at the Mt Eden end of the CRL, in those areas where excavation is required and the TBM is not used.
345. AT, in responding to a s92 RMA request, provided a detailed report entitled - *Traffic Modelling of Alternative Construction Scenarios* – prepared by Flow Transportation Specialists, 22 May 2013. The stated purpose of this additional modelling was to examine the temporary traffic effects of a number of construction scenarios for the project within the Albert Street area, in particular for the section of proposed cut and cover between the Downtown shopping centre (off lower Albert Street) and south of Wellesley Street, and providing an understanding of the underground utilities along Albert Street.
346. The works on Albert Street will be contained within one north-south route and the plans for the three important east-west connections which cut across Albert Street (namely Customs Street, Victoria Street and Wellesley Street) call for the full closure of these intersections with no more than one of the three being closed at any one time. Traffic demand management initiatives will be put in place to seek to reduce the demand for travel to and within the city centre by private vehicles.
347. At the Mt Eden end of the project, AT proposes by way of mitigation, that the temporary works on the roads crossing the NAL through Eden Terrace are undertaken one at a time and the signalling of intersections will be undertaken around Mt Eden in order to address increased demand resulting from road closures.
348. The s42A Report contained an analysis of projected transportation effects against various statutory plan provisions. The analysis of the relevant objectives and policies of the Auckland City Central and Isthmus District Plans identified that there is a supporting framework for the CRL. The policy frameworks support the principle of public transport and the benefits that it provides such as reducing congestion and making the central city more accessible. In addition to this, the policy framework also clearly recognises the need to manage the potential adverse effects associated with the provision of new transport infrastructure.
349. Mr Peter Casey, the Regional Manager Planning and Investments for the New Zealand Transport Agency (**NZTA**), presented a statement in which he noted support for the Notices and looked forward to working with AT to manage the

effects of the construction phase of the project in a collaborative and successful 'one network' partnership. Mr Casey explained to us that NZTA and AT work together to operate the local and State highway networks in Auckland as 'one network'. He pointed out that the Joint Traffic Operations Centre in Auckland, which uses advanced technology (such as closed circuit cameras for monitoring), will be an important tool in managing the short term construction effects.

350. There was no disagreement that there will be positive effects associated with the transport networks and traffic management associated with the operation of the CRL. The benefits as outlined in the ITA and summarised in the s42A Report were largely uncontested.
351. It was also generally acknowledged that there will be potential for significant adverse transportation effects during the construction phase of the CRL, including:
- temporary road closures;
 - impacts on access to properties (especially Albert Street);
 - inconvenience, increased traffic congestion; and
 - the generation of high volumes of truck movements associated with earthworks.
352. The s42A Report considered that the AEE with the Notices had appropriately identified the potential adverse effects associated with both the construction and operation of CRL. However, in terms of the management of the transport network and traffic effects, there were areas that needed further consideration, particularly in terms of acceptable management approaches to appropriately mitigate adverse effects. Key aspects of concern were the management of construction vehicles and vehicle access to properties.
353. Mr Clark in his supplementary evidence endeavoured to provide clarity around the expected effects of concern to specific submitters and provided recommended changes to a number of the proposed conditions in order to give these submitters greater certainty.
354. We recognise the inevitable tension between the need to give a level of understanding of likely effects and mitigation measures during construction and the need for AT to retain a reasonable level of flexibility to allow precise details of the construction method to be determined later.
355. AT's management of the transport effects during the construction phase will be outlined in the detailed Transport, Access and Parking DWP which will support

the CEMP. We acknowledge the comprehensive modelling and in-depth analysis that has gone into addressing road transport issues. AT has recognised the need to give more certainty to individual submitters and as a result we have reached the point where we can agree with, and adopt the approach that is being advocated by it. Traffic management measures and essential requirements are now spelt out in the conditions. These include meeting specific requests for the maintenance of access, control around road closures and clear procedures for communication and consultation in relation to traffic management matters. General and site specific requirements have been included and these conditions address many of the matters raised by submitters.

356. Condition 25 addresses General Transport, Access and Parking. A Transport Access and Parking DWP shall be prepared to manage the adverse effects on the transport network during the construction phase. The objective is to avoid, remedy and mitigate the adverse effects on transport, access and parking. As previously discussed we have recommended that this objective be amended to include "so far as reasonably practicable" This objective will be achieved by the following, which include, at Condition 25.2:

- (a) Managing the road transport network for the duration of the construction by adopting the best practicable option to manage congestion;
- (b) Maintaining pedestrian access to private property at all times; and
- (c) Providing ongoing vehicle access to private property to the greatest extent possible.

357. AT has continued to adopt the stringent approach in (b) of maintaining pedestrian access to private property at all times, without any qualification. We commend that approach. It also adopted, in its final proposed conditions, our recommendation during the hearing for (c) that the vehicle access needs to be "to the greatest extent possible" rather than just "where possible".

358. Condition 26 deals with the monitoring of transport network congestion and sets out how the Requiring Authority will achieve the objective of Condition 25 by:

- Undertaking the monitoring of the transport network by traffic surveys;
- Monitoring specified routes;
- The establishment of the existing baseline traffic congestion;

- The determination of whether the closures of any roads or intersections have increased peak period traffic delays; and
 - A consideration of additional mitigation measures to be implemented if the surveyed timelines exceed those specified in the condition.
359. Conditions 27, 28, 29 and 30 set out details of how the Requiring Authority will give effect to Condition 25. It includes details for the following areas: Britomart to Mayoral Drive; Karangahape station Area; Newtown station Area; and the Mt Eden work site.
360. It is very clear that there will be significant benefits to Auckland from the CRL project, however we also recognise that there will be unavoidable temporary adverse effects on public, and private transport, pedestrians and cyclists. These effects will occur over the anticipated five to six year construction period for the project. We concur with the AC reporting team that the adverse effects are most significant during the construction activities at the Britomart station and QEII Square; the cut and cover construction methodology of the two tunnels along Albert Street and for the new Aotea station; and the construction activities at the NAL section in the vicinity of Mt Eden station and the bridge works at Mt Eden Road and Normanby Road.
361. AT considers that the transport, access and parking conditions as provided by it appropriately mitigate transport effects both in its role as the Requiring Authority and as the Road Controlling Authority. We accept that view and have concluded that the measures now proposed are appropriate and sufficient to address our concerns and will provide the appropriate level of avoidance and mitigation to address most of the needs of the submitters.

Built heritage effects

362. Effects on heritage resources fall into four main areas:
- improved viability of activities in heritage buildings once the CRL is operational;
 - demolition / removal to enable works;
 - possible partial demolition / adaptive reuse arising from works; and
 - effects on other structures during construction (building construction surveys).

363. The first is a positive effect that will flow from the completed project, arising from increased foot traffic in and around stations and the central city in general. There was no dispute as to this effect.
364. The issues in contention related to the three "adverse" effects. The Notices identified the following heritage buildings or features which are proposed to be demolished, substantially altered or potentially significantly affected:
- Bluestone wall - Albert Street (proposed retention);
 - Albert Street toilets (removal);
 - 51-53 Victoria Street, known as Martha's Corner building (possible reuse);
 - Griffiths building;
 - Beresford Square toilets (removal); and
 - Part of building at 223 to 227 Symonds Street²⁵.
365. AT proposed to set in place a three person advisory panel to oversee the preparation of a specific management plan for the Albert Street Bluestone wall. The membership of this panel is to be formed by one nominee from AT, one nominee from AC and one joint appointment. For the Martha's Corner building, AT proposed a condition that required it to explore adaptive re use, with demolition a last resort. No specific mention was made of Griffiths building or 223 to 227 Symonds Street in the proposed conditions with the Notices.
366. In addition to the above heritage resources, the Notices also identified a large number of heritage buildings near the route of the CRL where enabling works (such as construction-related vibration and ground settlement) may result in adverse structural effects. The original proposed conditions provided a schedule (Appendix Two) of these buildings, with a condition stating that these buildings may be considered for pre and post construction building condition surveys.
367. In addition, the CRL requires works under the former Chief Post Office building at the foot of Queen Street. The effects of these works on the structural integrity of this building was raised but it was pointed out to us by AT that the relevant works were covered by the existing "Britomart" designation.

²⁵ AT's 22 November 2013 conditions refer to 229 to 231 Symonds Street. It is correctly referred to as 223-227 in Petry's EIC and in the s42A Report.

Evidence Heard

368. Mr Bruce Petry presented a supplementary statement (on 12 August 2013) for AT in which he said that Griffiths building was likely to be demolished. He considered adaptive reuse of the Martha's Corner building was a possibility. This contrasted with the evidence of Mr John Fellows for AT which strongly indicated that adaptive reuse was unlikely, given operational requirements²⁶.
369. NZHPT (represented by Mr Duncan McKenzie) raised concerns about the specificity of draft conditions, particularly those related to possible partial demolition/reuse of Martha's Corner building and the Griffiths building. For Martha's Corner, Mr McKenzie proposed that the designation conditions should state that retention would be required, but with a process put in place to consider the feasibility of retention as detailed design progresses. If this process resulted in the conclusion being reached that it was not possible to retain the building and demolition was the only feasible option, then an alteration to the designation would need to be sought. He proposed an alternative approach for the Griffiths building, where the proposed conditions provided for demolition, with the proviso that reuse be considered, where feasible.
370. Allan Matson generally supported the Notices but encouraged that greater thought be given to making the most of the opportunities provided by the existing heritage fabric. He drew our attention to opportunities to enhance the future environment around the proposed stations. In particular he noted the potential of Beresford Street in the Karangahape Road area. Mr Matson questioned that, if Martha's Corner building does have to be removed, whether this could be looked at in a modular way. He also requested that Forrester's Hall be added to Appendix Two (that lists the heritage buildings to be considered for building condition surveys) to the proposed conditions. AT agreed to that being done, but the building has been added to Appendix One, not Appendix Two.
371. The representatives for the Roman Catholic Diocese of Auckland raised issues about whether all heritage buildings that might be affected by vibration and/or settlement were included in Appendix Two, and what actual process was to be followed by AT to determine which buildings on the list were to be the subject of pre and post construction affects. Mr Michael Stride sought amendments to proposed Conditions 38 and 44 so that, in the event that condition surveys

²⁶ Evidence in chief, para 45

were not mandatory for the buildings listed in Appendix Two, then there was at least some form of review of the decision as to which buildings to include in the pre and post condition surveys.

Effects of Demolition / Removal to Enable Works

372. The project requires the complete removal of three noted heritage items, these being:

- Albert Street toilets (also called Bluestone toilets)
- Griffiths building
- Beresford Square toilets.

Albert Street Toilets

373. The Albert Street toilets are scheduled as a Category B building under the Auckland District Plan - Central Area. As such this building falls under s6(f) of the RMA, being the *protection of historic heritage from inappropriate subdivision, use, and development*. The toilets are within the footprint of the cut and cover section of the project works. The associated Bluestone wall is to be maintained as discussed below.

374. The evidence from AT was that the heritage values of the toilets have been compromised by internal alterations and were not worth preserving. We agree and a condition on the designations will require the identification of any specific features of merit and their removal and storage, prior to demolition.

Griffiths Building

375. This is a two storey building on the corner of Wellesley Street and Mayoral Drive, dating from the inter war period. It is in the location of one of the entrances to the proposed Aotea Station. This building is not scheduled in the District Plan as a heritage item, nor is it noted as being character supporting or defining under that Plan. The Built Heritage Assessment (**BHA**) included with the Notices identified the building as being a Type C building, that is, having some merit (although this merit is not recognised in any RMA document). The BHA indicated a preference for adaptive reuse of the building, if possible, a view shared by the AC reporting team's heritage assessment. However, the evidence from AT's station designer (Mr Fellows) was that the building could

not be retained. As a result, AT's final proposed conditions noted the building as being demolished.

376. Given the evidence on the operational requirements, and the fact that the building is not noted in the District Plan as being worthy of specific consideration, we agree that the demolition of this building will not have a significant effect on heritage resources. It is appropriate that conditions note that this building is to be demolished.

Beresford Square Toilets

377. These toilets sit within a small plaza area which is part of the road reserve. They are part of what is commonly referred to as the “Supper Club” building. The toilets are not scheduled or listed in the District Plan. The building is affected by the construction of the Karangahape Station. The removal of this item was not seen to be significant in AT's BHA or in the AC reporting team's assessment. We agree with those assessments.

Possible partial demolition / adaptive reuse arising from works; and

378. The three items that fall into this category of effect are:

- Albert Street Bluestone wall
- Martha's Corner building
- Part of building at 223 to 227 Symonds Street.

Bluestone Wall

379. The wall is a scheduled heritage feature under the District Plan. There is the potential for construction activity to affect its integrity. AT intends to retain the wall in its entirety. In response to this potential effect, the proposed conditions from AT require a specific Bluestone Wall Management Plan. There was no dispute that this was an appropriate course of action.
380. The process to prepare the management plan involves a review of the management plan by a panel of three experts. NZHPT requested that they be a member of this Panel. We do not see the need for this, given that they are to be consulted during its preparation. The intention is that the Panel is an independent body.

Martha's Corner building

381. This building is within the site of one the entrances to proposed Aotea Station. It is a building that is identified as being "character supporting" under the District Plan. Our understanding is that this means that the building has some merit in an amenity / character sense, and therefore could be said to fall under s7 of the RMA (*the maintenance and enhancement of amenity*).
382. There was some debate during the hearing as to whether the building, or parts of it, could be retained. The Requiring Authority's BHA stated a preference for "adaptive reuse", an approach supported in the s42A Report and by the NZHPT. The term "adaptive reuse" appeared to us to be a somewhat ambivalent term, and rather than indicating reuse of the building as it currently is formed, the likely outcome was retention of some elements of the building's facade.
383. As with the Griffiths building, the evidence of Mr Fellows was that substantial works were required to accommodate station functions and as a result the interior of the building would have to be completely modified. As a consequence it was unlikely that the exterior of the building could be retained. However, he accepted it was "early days" in the design process.
384. AT proposed a process type condition that seeks adaptive reuse as a first priority, with complete demolition as a last step. Condition 41(d)(iv) reads:

In particular, the Requiring Authority shall explore the adaptive re-use of the buildings at 51-53 Victoria Street West (known as Martha's Corner building) with complete demolition only considered as a last resort. As guidance, an appropriate level of adaptive re-use could include retention of the façade on all street frontages or the utilisation and incorporation of elements of the building into the design.

385. We do not disagree with this "stepped approach". What needs clarifying is the process to be used to determine whether adaptive reuse is feasible, and if so what features can be retained.
386. Mr McKenzie for NZHPT stated that the conditions should require adaptive reuse and not allow demolition. On that basis, should demolition be required after further investigations, then an alteration to the designation would need to be sought. This would mean that there was some "pressure" on the Requiring

Authority to actively pursue the adaptive reuse option, rather than perhaps giving it passing attention.

387. Subsequently AT proposed a revised condition that has the Heritage Advisory Group set up to consider the Bluestone wall also consider the options for retention of the Martha's Corner building.

388. This advisory body is to (Condition 44):

- Certify that the heritage outcomes for Martha's Corner adhere to the intent of Condition 41; or
- Prepare a report as to why the method selected by the Requiring Authority will not adhere to the intent of Condition 41 and set out details as to the recommended reasonably practicable method.

389. The final adopted approach to the Martha's Corner building (and to heritage) will be set out in the required Historic Character DWP. In turn the DWP is to be part of the outline plan that is to be submitted to the Council. Preparation of the DWP is required by the conditions to include consultation with the NZHPT, and as discussed elsewhere in this recommendation, DWPs may be subsequently modified by the Requiring Authority based on a set procedure.

390. We are satisfied that the final proposed conditions provide an appropriate means by which adverse effects are to be appropriately avoided or mitigated. Given the evidence on operational requirements, we do not see the need to recommend that adaptive reuse be the only outcome specified in the conditions, as sought by NZHPT.

223 to 227 Symonds Street

391. This building is within the footprint of the proposed Newton Station. Demolition of part of the rear section of the building is likely to be required. In the District Plan this building is subject to the Upper Symonds Street Character Overlay and is noted as a "character defining" building. The Plan states that these buildings make a significant contribution to the area's sense of place.

392. There is some uncertainty over the extent of demolition. Mr Petry's EIC states that the street frontage of the building and at least the front two rooms will remain²⁷. The s42A Report refers to the rear annex being removed²⁸ and this is how it is referred to in the final proposed conditions from AT.

²⁷ Evidence in chief of Bruce Petry, para 108, page 27.

²⁸ Page 139

393. The annex is within a common private parking / service area and is not visible from the street. Its removal will not affect the amenity of the wider area, nor alter the character of the Upper Symonds Street area, as experienced from public places.
394. Given the uncertainty over final effects on this building, in our view it is appropriate for the conditions to note that partial demolition of the rear sections of the building may occur (Condition 41.2(c)).

Effects on other structures during construction (building condition surveys)

395. The Structural Engineering Assessment report with the Notices noted that heritage buildings that will be subject to vibration in excess of 2.5ppv/mms may experience some adverse effects. Where buildings are located close to the outer edge of the 2.5ppv/mms contour the effect will be at the low end of the scale.
396. In relation to settlement, this may occur from the removal of soil and other material, as well as from dewatering. Settlement of more than 10mm across a slope of more than a 1:500 contour is used to identify buildings potentially at risk.
397. Condition 41 of AT's final proposed conditions deals with structural effects on heritage resources. One of the components of the required Historic Character DWP is managing potential building damage. Condition (41.2 (b)) is:

The proposed methods for monitoring building damage to be undertaken by a suitably qualified person for the duration of construction works. This includes confirming which Built Heritage buildings and structures are to be subject to a pre and post building condition survey through:

- *Using the updated predicted vibration contours undertaken in Condition 36;*
- *Reviewing those buildings in Appendix 2 to these conditions in accordance with Condition 46.1;*
- *Reviewing the Heritage Buildings and Structures scheduled under the Historic Places Act 1993 or the Auckland Council District / Unitary Plan within the designation footprint (including above the sub-strata designation) or located in close proximity.*

398. A number of submitters asked for buildings to be added to the list in Appendix Two. In particular, St Patrick's Cathedral and the Catholic Diocese's buildings along St Benedicts Street; Hopetoun Alpha (15 to 17 Beresford Street); 59 Pitt Street; 50-60 Pitt Street (current Fire Station building); and the former George Courts at 238 Karangahape Road. Mr Matson also noted a building on Beresford Street as being of heritage merit, although not listed in the BHA (known as Forrester's Hall).
399. Submitters also requested clarification on the process by which buildings were to be selected for condition surveys. The AC reporting team raised concerns about ground settlement and whether the above condition dealt with this issue appropriately and initially suggested the need for a specific ground settlement condition.
400. In relation to the buildings listed in Appendix Two, Mr Petry's evidence in chief paragraph 52 stated that most of the buildings raised in submissions have been identified as heritage buildings and will (if practicable) be subject to condition surveys, yet at paragraph 54 he states that the former Wesley Chapel, Hopetoun Alpha and current Fire Station will not be affected by CRL works.
401. The confusion appears to partly arise due to the buildings in Appendix Two being ones that may be affected by vibration, but not settlement. Further confusion arises in that the buildings listed are not just ones that appear in schedules maintained by Historic Places Trust or in the Council's District Plan. They also include buildings of merit identified by the BHA, but not identified in the Council's District Plan.
402. The above discussion leads into how Condition 41 is to be implemented. Condition 41.2 (b) refers to Condition 36. Condition 36 relates to the CNVMP and notes that vibration contours will need to be updated based on the final design and construction activity. Condition 36 makes no mention of recalibrating settlement contours.
403. Condition 46 relates to building condition surveys (including heritage buildings). This condition refers to a suitably qualified person appointed by AT determining when pre and post construction surveys are necessary, based on set criteria. In particular the condition refers to what we understand to be a commonly accepted approach to identifying risk, being Burland (1997) "Assessment of Risk or Damage due to Tunnelling and Excavation". In closing comments, the AC reporting team accepted that this condition would be sufficient to cover settlement effects.

404. In relation to heritage, it was pointed out to us that changes to the construction methodology and hence vibration and settlement contours may mean that more or less heritage buildings will potentially be subject to vibration and settlement effects, compared to initial assessments.
405. As to how heritage buildings are to be identified, Condition 41 refers to those in Appendix Two and those scheduled under the Historic Places Act or in the District Plan.
406. The buildings listed in Appendix Two were identified on the basis of three sources; namely:
- (a) Scheduled as heritage features / buildings by Historic Places Trust / Auckland Council.
 - (b) Buildings listed in the District Plan as being historic character defining / supporting.
 - (c) Noted / identified by the Built Heritage Assessment report.
407. Only the first category can be described as being heritage buildings and structures scheduled under the Auckland Council District / Unitary Plan. The issue therefore arises if the contours shift to the extent that a number of buildings of heritage merit not on the list in Appendix Two are now within the contours, but these buildings are not scheduled (Type A above), then they may not be specifically identified in Appendix Two. We were presented with a number of examples of this issue, one being Forrester's Hall, which while not a scheduled building, still appeared to have some heritage value.
408. In our view, the methodology that has applied to date in relation to identifying heritage buildings should continue. In other words, Condition 41 should be amended to refer to the methodology set out in the BHA. In this regard, **we recommend** that Forrester's Hall should be listed in Appendix Two, not Appendix One as proposed by AT.
409. Turning to the next question of how buildings will be selected for condition surveys, and the process to be followed, it was our initial understanding from the BHA that all identified heritage buildings in the vibration and settlement contours would be subject to a building condition survey. Upon examination, and as raised by submitters, this assumption is not clear from Condition 41. It states that it will be necessary to confirm which heritage buildings and structures (in Appendix Two) are to be subject to a pre and post-building condition survey.

410. Condition 46 then sets out the detail in relation to building condition surveys. The AC reporting team was satisfied that Condition 46 is appropriate, with the decision as to which buildings to include in the condition survey to be left to an independent suitably qualified person. AT pointed out that it was in its interests to cast the condition survey "net" as wide as reasonable, given that condition surveys were one of the main ways of managing any potential claims relating to construction damages.
411. We have earlier concluded that it is appropriate for the conditions to provide for the final selection of buildings to be subject to pre and post-construction effects to be determined via the outline plan process. We find that that conclusion is also appropriate in relation to heritage buildings. More particularly though, the identification of any further heritage buildings requiring building surveys is through the Heritage DWP process in Condition 41. We are of the view that condition requires amendment so that heritage buildings may also be identified for survey by applying the methodology set out in the 2012 Built Heritage Assessment Report.
412. Based on the above, **we therefore recommend** that Condition 41 be amended in one respect only, namely to amend sub-clause 41.2(b)(iii) to read:

Reviewing buildings the Heritage Buildings and Structures scheduled under the Historic Places Act 1993 or the Auckland Council District / Unitary Plan within the designation footprint (including above sub-strata designation) or located in close proximity to identify if any further buildings of heritage value should be considered for monitoring, based on both the methodology set out in the 2012 Built Heritage Assessment Report and the Heritage Buildings and Structures scheduled under the Historic Places Act 1993 or the Auckland Council District / Unitary Plan.

413. This process of review then also needs to be referred to in Condition 46, Process for Building Condition Surveys. **We therefore also recommend** that the first sentence of Condition 46.1 be amended to read:

Prior to construction, as a minimum those buildings listed in Appendix One and Appendix Two or identified pursuant to Condition 41.2(b) will be considered for building condition survey.

Conclusion

414. We conclude that all the relevant considerations are included in the conditions to ensure that the potential adverse effects on heritage are managed in a manner that will see such effects being avoided or satisfactorily mitigated. Subject to the above amendments to the conditions for the designations we are of the view that a realistic approach is being adopted by AT to these considerations.

Archaeology

415. There is potential for the works to affect archaeological resources. Initial investigations indicate few resources present and that it is sufficient for the designations to include a 'discovery process' should archaeological resources be encountered during construction.

416. While in support of this approach, the AC reporting team sought specific recognition of the area in Lower Albert Street where it was possible that there will be some concentration of archaeological items. The concern is that rather than record any items found in the path of the works, there should be some scope for design changes to be made to possibly avoid any significant items that are already present. To this end it was suggested that the following words be added to Condition 42:

How procedures for archaeological investigations and monitoring of preliminary earthworks are to be implemented in areas where there is potential for archaeological remains to be discovered. In respect of NoRs 1 and 5 only, these procedures may include archaeological trial investigations in surface works locations of no more than 5% of the footprint of development, to a maximum depth of 6m in appropriate locations (e.g. archaeological excavation of geotechnical testpits, archaeological monitoring of boreholes, and archaeological investigation of building footprints following demolition and site clearance);

417. AT and its expert Dr Rod Clough did not agree with this suggested amendment. In their view, such preliminary investigations are neither feasible nor necessary. While the AC reporting team noted that the suggested amended condition referred to "may include trial investigations", rather than it being a mandatory requirement, we do not agree that it is reasonable or necessary to mitigate an identified adverse effect, and indeed the concern is covered by the processes

included in the proposed conditions. Either trial investigations are needed or not. Our impression is that there is insufficient information to warrant justification of a mandatory requirement.

418. We are satisfied that the final proposed conditions as proposed by AT are sufficient to address any archaeological issues.

Urban design

419. There is no specific assessment of urban design related matters within the AEE submitted with the Notices, however urban design matters are raised throughout the document for example in the considerations on built heritage, transport and the architectural principles to be applied. AT has developed an Urban Design Framework (“**UDF**”) to support the CRL project, both during construction and the on-going operation. The stated role of the UDF is to *provide urban design direction to deliver high quality urban design outcomes.*

420. The s42A Report noted that relevant urban design principles to be applied can be categorised as:

- Movement and connections principles;
- Public realm and landscape principles; and
- Existing and new building structure principles.

421. To that should be added:

- Mana Whenua cultural design principles.

422. A number of submitters raised urban design issues related to both the construction and on-going operation of the CRL.

423. Construction issues included:

- Potential visual, landscape and amenity effects;
- The adverse visual and amenity effects of the hoardings erected along footpaths to cordon off construction sites, particularly along Albert Street; and
- The design process associated with above ground aspects of the CRL including station design, streetscape and reinstatement works. A number of these submitters expressed a desire to be involved in the design processes.

424. Operational Issues included:

- The importance of station entrances being visible at ground level from areas that are frequented by pedestrians;
- The consideration of pedestrian amenity around each station, with priority given to pedestrian movement;
- Support for applying the principle of creating pedestrian-friendly station surroundings (traffic calming, shared space schemes, pedestrian priority at street crossings);
- The need for cyclists' requirements to be considered and the provision of cycle facilities to ensure that the station is accessible to a wide range of potential users;
- Support for the UDF to reinstate an adaptive building frontage along road frontages particularly along the top end of Symonds Street.; and
- It was also requested that clearly identifiable, accessible (at street level) toilets form part of the Beresford Street development.

425. The detailed urban design related conditions from AT outline a series of principles that are to be applied through an Urban Design DWP, both general as well as area specific principles. The Urban Design DWP will show how those areas within the designation footprint used during the construction of the CRL are to be restored. Also relevant are conditions that require the preparation of station plans as part the DWP (Condition 54).

426. The Urban Design DWP is to be submitted to the Council's Urban Design Panel for review, prior to lodgement as part of the outline plan process.

427. The urban design and station design principles did not attract substantial comment.

428. The AC reporting team raised a number of issues in their opening and interim closing statements, as below, but were generally satisfied with the details presented by AT.

429. **We recommend** the following amendments to the final proposed conditions:

Condition 47.2(b)(vii)

Adding the words "*safe and appropriately designed*" in relation to street crossings. The current text refers to safe crossings.

Condition 47.2(b)(ix)

Removing the word “visual” in order to widen the ambit of assessment under this condition which currently reads: Grade separated rail crossings – structures associated with grade separated rail crossings need to be carefully and sensitively designed to ensure appropriate visual amenity and safety are retained or achieved.

430. In the case of Condition 47.5 the suggestion was that it be made clear that the Urban Design Panel's review should focus on how the Urban Design DWP has implemented the various conditions. The final proposed conditions require the Urban Design Panel to comment on the degree to which the DWP has responded to the principles listed. We also see merit in the urban design panel providing comment as to whether the DWP 'implements' the urban design conditions rather than just 'responds to' the urban design principles. **We recommend** an amendment accordingly.

The extent to which the DWP implements the urban design related conditions of the designations, including if it should be amended to better implement the conditions.

431. This requires the Urban Design Panel, on receipt of the Urban Design DWP, to review that DWP and make recommendations to the Requiring Authority in relation to the extent to which the DWP implements the urban design related conditions of the designations, including if it should be amended to better implement the conditions.
432. Condition 53 covers the large work site area adjacent to the North Auckland Line. The Council indicated that it would work on a long term redevelopment plan for this area, and as such, the issue is one of interim use once construction has finished. The relevant proposed condition reads as follows:

For this designation the Urban Design DWP shall include the following:

- (a) Restoration Plans showing how the worksite area will be maintained during the construction period.*
- (b) Restoration Plans showing how the following are to be restored after construction completion:*
 - The replacement of Mt Eden Road Bridge;*
 - The area used for the grade separation of Porters Avenue;*

- *The area used for the grade separation of Normanby Road; and*
- *The replacement of the pedestrian connection, to be provided over the railway, between Ngahura Street and Fenton Street, including a connection to the Mount Eden Station.*

433. Our observations of this condition are that:

Part (a) is important for amenity reasons, but from an urban design point of view it is post construction that is the issue. In this regard we note that Condition 21.1 (n) refers to *methods for management of vacant areas once construction is completed in accordance with the Urban Design DWP*. We heard much evidence on the uncertainty that the project will create for surrounding businesses, and this uncertainty extends to post construction where large areas are "left over".

434. The condition should therefore refer to a restoration plan showing how the worksite area will be left after construction is completed so that it does not result in adverse amenity, safety and security impacts on surrounding businesses. This should enable temporary uses of the area, and reinstatement of public access routes that existed prior to the works, where feasible. For example, there is currently a public walkway from Mt Eden Road to Shaddock Street which links to Ruru Street. This route should be reinstated post works, even if only on a temporary basis until long term plans are worked out.

435. For Part (b), we consider that this condition should also refer to the design of the bridges over Porters and Normanby Roads, in terms of their amenity effects, not just the "area used for grade separation". This links in with Condition 47.2(b)(ix) viz:

Grade separated rail crossings – structures associated with grade separated rail crossings need to be carefully and sensitively designed to ensure appropriate amenity and safety are retained or achieved.

436. **We recommend** amendments to reword Condition 53 as follows:

(a) Restoration Plans showing how the worksite area will be maintained during the construction period and also post the construction period so as to maintain the amenity of adjacent properties and reinstate public access, where safe/feasible to do so.

(b) Plans showing how the following are to be designed and restored to maintain and enhance the amenity of the area after construction is complete:

- *The replacement of Mt Eden Road Bridge;*
- *The area used for the grade separation of Porters Avenue;*
- *The area used for the grade separation of Normanby Road; and*
- *The replacement of the pedestrian connection, to be provided over the railway, between Ngahura Street and Fenton Street, including a connection to the Mount Eden Station.*

437. Condition 54.1 relates to Station Plan Requirements. It states that the Urban Design DWP shall include a Station Plan/s and details the matters to be included in such plan/s. Sub-clause (viii) seeks to ensure that structures resulting from the City Rail Link should present an active frontage towards public spaces but it provides an exception where “a specific station plaza area is intended”. That would appear to be on the basis that such station plaza areas can be expected to meet or provide such active frontage/s.

438. We are of the view that station plaza areas should be included, rather than exempted, in order that these important areas do link appropriately with public areas. We do not see that would create any difficulties for AT in the development of the stations and any station plaza areas.

439. Accordingly **we recommend** that Condition 54.1(viii) be amended to read as follows:

Active frontage – Structures resulting from the City Rail Link should present an active frontage towards public spaces like streets, squares and pedestrian walkways, including any new station plaza areas developed as part of the City Rail Link, providing that this doesn’t conflict with the operation requirements of the station.

Where no active frontage is proposed, an explanation of the reasons shall be outlined in the Urban Design DWP.

440. In conclusion, we accept that there is a need for the NOR process to endorse clearly defined urban design principles that will be applied both during the construction and the on-going operation of the CRL. We have recommended above a number of amendments to the final proposed conditions accordingly. We find that with some amendments to the conditions on the designations that

the urban design considerations of the CRL project have been satisfactorily addressed.

441. We note the opportunities it will provide for the revitalisation of some of the resultant cleared areas that will be redeveloped.

Maori cultural issues

442. In terms of ss6, 7 and 8 of the Act, we are satisfied that the proposal recognises and provides for the Maori relationships to the affected land and has had particular regard to kaitiakitanga. The project is not in any way at odds with the principles of the Treaty of Waitangi.

443. AT's AEE (Appendix 6 of Volume 2) provided us with a comprehensive Cultural Values Assessment²⁹ (CVA) in support of the CRL project. In setting out the scope of the CVA it is noted:

“The CVA report:

- a. Considers the issues, information and recommendations contained in the Māori Values Assessments (MVAs) received to date and arising out of consultation with mana whenua. For completeness, this CVA is not intended to detract from or substitute the MVAs;*
- b. Represents an independent review of information relevant to the consideration of Māori values and interest in the project area; and*
- c. Provides recommendations on measures to avoid, remedy or mitigate and adverse effects on Māori values, or measures to recognise and provide for the relationship of iwi/hapu with their ancestral lands and tāonga.*

444. It was pointed out to us that mana whenua had had input into the CVA through consultation, reviewing drafts and providing feedback. AT had commissioned MVAs from those mana whenua who had confirmed their interest in the project and the following iwi/hapu had completed their MVAs at the time the CVA was completed³⁰:

- Ngāti te Ata Waiohua
- Ngāti Whātua Orakei

²⁹ *Cultural Values Assessment in Support of the Notices of Requirement for the Proposed City Rail Link (CVA) Project* – Tama Hovell, Atkin Holm Majurey Limited, 11 December 2012

³⁰ *Ibid* at [13] – [14]

- Te Ākitai Waiohua.

445. Ngāti Maru had provided a draft MVA and Ngai Tai ki Tāmaki and Ngāti Pāoa had indicated that they would be providing a MVA at a later date.

446. The CVA referenced the consultation undertaken with mana whenua in the process recording that the following iwi/hapu confirmed an interest in the CRL:

- Ngai Tai ki Tāmaki
- Ngai Maru
- Ngāti Pāoa
- Ngāti Tamaoho
- Ngāti te Ata
- Ngāti Whātua Orakei
- Te Ākitai Waiohua
- Te Kawerau ā Maki

447. We were informed³¹ that there are two Māori heritage sites scheduled in the District Plan along the project alignment namely:

- (a) Ngā U Wera, a headland pā once located in the area which is now the intersection of Albert and Customs Streets.
- (b) Ngā Wharau a Tako, at 87-98 Albert Street, an ancestral settlement in this location which is subject to confidential 'silent files'.

448. It was also pointed to us that the area is rich in former Māori use, occupation and association and there may be other sites that have not been disclosed.

449. The CVA provided us with a summary³² of the potential effects key points include:

1. The project area's cultural landscape has cultural and spiritual importance.
2. For iwi/hapu the project will involve both physical and metaphysical impacts along its alignment.
3. The current urban environment and the transport need for the project are factors that mitigate the impact of the project.
4. Concerns centre on:

³¹ Ibid at [147] – [163]

³² Ibid at [171] – [176]

- Construction works that have the potential to disturb ancestral tāonga;
- There will be substantial work at two significant sites of cultural significance;
- The added development further entrenches the built form further removing the mauri and tapu associated with the cultural landscape and wāhi tapu;
- Part of the development is within the traditional foreshore area.

450. The CVA included a Part 2 RMA consideration and concluded with a series of recommendations. From our perspective a key element of the recommendations is the proposed formation of a kaitiaki or mana whenua forum which AT has incorporated into the draft conditions of the Notices. The terms of reference of the proposed Kaitiaki Forum will provide iwi with an ongoing role with the project in areas which are relevant and of interest to them. Involvement would be across the design, construction and maintenance of the CRL project.

451. The s42A Report recorded that no submissions identified matters relating to tāngata whenua or Māori cultural values. We accept the Council's Māori Strategy and Relations Unit observation³³ that the CVA methodology appears to be robust and those iwi identified as potentially having an interest in the application area appear to align with Auckland Council's understanding of iwi and their respective areas of interest.

452. We have ensured that the conditions adequately set out the requirements for ongoing involvement with iwi, in line with the recommendations of the CVA. Conditions address:

- The establishment of a Kaitiaki Forum for ongoing communication and consultation about the project (Condition 8).
- Engagement with mana whenua as part of the preparation of the Urban Design DWP (Condition 49).

453. We find, with the consultation and work carried out by AT as part of the preparation of the Notices, along with their recognition of the need to continue to engage and consult with mana whenua as the project proceeds, that the interests of mana whenua are accommodated by the project and our recommendation upon it.

³³ AEE at [9.10.5]

Planning provisions

454. A number of statutory and non-statutory plans and documents include objectives and policies that are relevant to the consideration of the effects on the environment of allowing the Notices. These are addressed in the AEE and further in the s42A Report where, in both cases, it is concluded that the requirements for the CRL project are consistent with these documents.

455. We note there are no national policy statements of relevance. The following documents were listed by Mr Julyan³⁴ as being relevant to the consideration of the Notices:

- Auckland Regional Policy Statement 1999
- Auckland Regional Growth Strategy 1999
- Auckland Plan, 2012
- The City Centre Masterplan 2012
- Auckland Waterfront Masterplan 2012
- Auckland Regional Land Transport Strategy 2010-2040
- Auckland Transport Plan 2009
- Auckland Regional Public Transport Plan 2006-2016
- Auckland's Economic Development Strategy 2012
- City Centre Retail Action Plan 2012-2017
- Auckland Draft Unitary Plan March 2013 (now overtaken by the notification of the Proposed Unitary Plan on 30 September 2013).

456. It is the Auckland Regional Policy Statement (**ARPS**) that is the overarching planning document for the region. It includes relevant objectives relating to:

- Promoting sustainable land use;
- Promoting a sustainable transport system;
- Promoting a sustainable economic future; and
- Promoting environmental sustainability.

457. The ARPS also includes more definitive objectives and policies relating to the location of urban growth and how urban growth and the land transport system in Auckland should be integrated. These include the provision of high quality public transport, with specific reference to a rail rapid transit network,

³⁴ Evidence of Bryce Julyan, 2 July 2013, para 36.

contributing to a more effective and efficient public transport network. A transport system is sought which promotes the use of forms of transport which have fewer adverse effects on the environment.

458. The ARPS directly refers to the Regional Land Transport Strategy (**RLTS**) as identifying transport networks (such as the metropolitan passenger transport network) and directs the relevant district plans to protect such networks. One of the main components of the RLTS is the expansion of the rapid transit network by constructing the CRL and further increasing frequency and capacity.³⁵
459. The CRL project is consistent with the associated range of objectives and policies given its support to land use outcomes in the ARPS which will provide improved accessibility; improve frequency of rail services; improved access to growth centres; and, integration of land use, transport, economic and environmental outcomes.
460. The CRL between Britomart and the Central Motorway Junction is covered by the Central Area Section of the Auckland District Plan (**District Plan**). The range of objectives and policies for consideration are included in the following sections of the Central Area Section:
- Strategic Management Areas
 - Transportation
 - Heritage
 - Network Utilities
 - Public Open Space
 - Transport Corridor Precinct
 - Aotea Precinct
 - Britomart Precinct
 - Karangahape Road Precinct
 - Land Contamination.
461. The CRL between the Central Motorway Junction and the NAL is covered by the Isthmus Section of the District Plan. The relevant objectives and policies come under the headers of:
- Resource Management
 - Heritage
 - Business Activity

³⁵ Ibid, para 52

- Special Purpose Activity
- Transportation.

462. All of these various objectives and policies are addressed in the AEE. We find agreement with the conclusions in the AEE, supported by those in the s42A Report and in the evidence of Mr Julyan, that the CRL project is consistent with these provisions. The matters addressed in the objectives and policies have been part of the investigation and preparation of the proposal and, for example, the heritage aspects of certain features and buildings affected by the project, have been taken into account accordingly.

463. The CRL project is clearly in alignment with the aspirations of the other planning, transport and economic related documents in providing for a more effective and efficient transport system and one that is able to realise economic benefits for the region and city.

464. In all of these respects we agree with the analysis in the AEE, in the s42A Report and the evidence of Mr Julyan. We acknowledge too that our conclusion relies on effective conditions that sufficiently address the adverse effects associated with particularly the construction of the CRL.

465. The proposed Auckland Unitary Plan (**AUP**) was notified on 30 September 2013, during an adjournment of the hearing. As such it was not commented on in the Notices, s42A report or earlier evidence we received at the hearing. Limited weight can be afforded to it in our considerations but we did seek, and were provided with, useful information regarding the AUP, in the context of the Notices, in evidence from Ms Blight for AT and from the reporting officers, those being dated 23 October.

466. The AUP is a replacement of the current regional policy statement, four regional plans and seven district plans. We have reviewed the information and note that there is a comprehensive range of objectives and policies relating to:

- Strategic framework
- Enabling quality urban growth
- Enabling economic well-being
- Significant infrastructure and energy
- Protecting historic heritage and special character
- Mana whenua
- Natural resources.

467. In addition there are objectives and policies relating to infrastructure, noise and vibration and to the individual zones that the CRL project will lie in.
468. Ms Blight and the AC reporting team both presented a tabulated analysis of the relevant provisions and agreed that the CRL project is consistent with the AUP. We find that the proposed CRL is consistent with the strategic framework which seeks to see urban growth primarily around centres and alongside public transport routes, and in improving accessibility the CRL will contribute to economic well-being. The relevant objectives and policies recognise the need for infrastructure, the benefits of infrastructure to the community and the need to manage the adverse effects of new infrastructure. We find these matters are all addressed in the CRL project and through the conditions that have been applied to the designations.
469. Having had regard to the relevant provisions of the planning documents in relation to the Notices we come to the conclusion that the CRL project is consistent with these provisions, recognising the measures that have been incorporated into the Notices (such as in relation to heritage items) and the conditions that have been applied to the designations in order to avoid and/or mitigate adverse effects.

Any other matter relevant to our consideration of the Notices

470. There are other plans, strategies and documents, largely of a non-statutory nature, that have some relevance in terms of s171(1)(d) RMA. These are referenced in the AEE and commented upon in the s42A Report.
471. These documents are:

(a) Local Government Act Planning Instruments:

- Auckland Long Term Plan 2012 – 2022
- The Auckland Plan 2012.

(b) Transport Planning Instruments:

- Auckland Regional Land Transport Strategy 2010 – 2040
- Auckland Regional Land Transport Program 2012 – 2015
- Draft Auckland Regional Public Transport Plan 2012
- Auckland Transport Plan 2009
- Auckland Passenger Transport Network Plan 2006 – 2016

- Auckland Rail Development Plan 2006 – 2016.

(c) Auckland Council Strategic Planning Instruments:

- City Centre Master Plan 2012
- Waterfront Plan 2012
- Economic Development Strategy 2012.

472. There is also the Hauraki Gulf Marine Park Act 2000 to take into account given the location of the proposed works.

473. In combination, these various documents are all concerned with economic, environmental and transport related matters seeking, in particular, that transport initiatives are integrated to provide for continued economic and development opportunities to the betterment of the city.

474. Our consideration of these documents as “Other Matters” demonstrates that the project is consistent with them.

SUBMITTER SPECIFIC ISSUES

Introduction

475. We provide here a commentary on the concerns of a number of the submitters. These are submitters who appeared at the hearing. We do however note that all submissions were considered as part of our deliberations. We also note, that in order to traverse the submitters’ issues, we do at times include matters that have already been covered above. That repetition is however necessary for submitters so that they can understand our approach to their issues.

476. There is a high level of support for this project; however a number of submitters, mainly those significantly impacted by the project, offered conditional support dependent on their particular concerns being mitigated. The relatively small number of submitters in total opposition raised quite narrow issues which do not go to the approval of the project, but which do require specific consideration and in some cases specific mitigation measures. As discussed earlier, we are of the view that we are required to consider the potential significance of any adverse effects of the designations and works on directly affected persons and to recommend conditions which, so far as is possible, provide for adequate/sustainable mitigation of any potentially significant adverse effects. Accordingly, a focus of the hearing has been on improving the proposed conditions to this end.

477. In its response to our Directions and Memorandum of 29 August 2013, AT helpfully set out, in tabulated form, its response to the specific submitters, relating this in many cases to an updated set of proposed conditions that it also provided on 27 September 2013. This table was updated just prior to the resumed hearing and was made available to submitters. It provides a useful summary of how issues have been addressed by AT. We make further recommendations to address issues which have been raised.
478. We are satisfied that the issues raised by submitters have now been adequately addressed by the final proposed conditions on 22 November 2013 and by our recommendations. In our discussion below we have perhaps provided more detail in discussing two submitters – The LIFE Church and MediaWorks - as the issues they raised were particularly contentious. We note that a failure to mention any submitter or issue is not indicative of any lack of consideration of that submitter and the issues raised and evidence presented. We have carefully considered all of the material put before us at the hearing.
479. We acknowledge for example the written material from the NZ Transport Agency and the NZ Historic Places Trust and also the tabled material from Ms Penelope Sheerin; “the Network Utility Operators” Chorus NZ Ltd, Watercare Services Ltd & Vector Ltd; and, the Department of Corrections.
480. In addressing specific submitters we start at the Britomart end of the project and generally work to the Mt Eden end. The submitters we address are:
- Body Corporate 164980 and Tenham Investments Ltd
 - Precinct Properties Ltd
 - Foodstuffs Ltd
 - Chapman Tripp
 - Stamford Plaza
 - Stamford Residences
 - James Kirkpatrick Group Ltd
 - The Roman Catholic Diocese of Auckland - St Patrick’s Cathedral and St Benedict’s Parish
 - Ministry of Justice
 - Samson Corporation Ltd and Sterling Nominees Ltd
 - BWT Investments Ltd
 - East and Rainbow Family Trusts
 - Auckland Boxing Association
 - Five Flowers Ltd and Radiation Ltd
 - Dilworth Trust Board

- Tram Lease Ltd
- The LIFE Church
- MediaWorks NZ Ltd and TVWorks Ltd
- Bear Park, Mount Eden Early Childhood Centre
- Other directly affected submitters.

Construction noise and vibration

481. Before proceeding to discuss each of the submitters it is useful to highlight the amendments we have recommended to the construction noise and vibration conditions because concern for the potential adverse effects of particularly construction noise was common to most submissions. The recommended amendments are discussed above under the header of Construction Noise and Vibration. That section of this recommendations report should be referred to directly for the detail but, in brief, we have addressed concerns of submitters, shared by us, by recommending amendments that include:

- Confirming that the SSCNVMPs, SSCNMPs and SSCVMPs are to be independently reviewed.
- Directing the objectives for the various plans at not just avoiding, remedying or mitigating adverse effects but also minimising such effects.
- Having the up to 5dBA exceedances of the NZS construction noise standards addressed in the CNVDWP regarding the details of how the best practicable options are to be adopted to minimise the adverse effects from such exceedances.
- Having advice of such exceedances provided to affected parties.
- Deleting the night time exemption of up to 5dBA from the NZS construction standards.

482. We consider these recommended amendments will address some of the concerns relating to noise and vibration as raised by the submitters discussed below.

Body Corporate 164980 and Tenham Investments Ltd

483. Planning evidence was presented by Mr Alistair White on behalf of these two submitters, one being the management entity and the other the owner of one floor of the 16 level building situated at 148 Quay Street. Access to the car

parks in the building is from Tyler Street to the rear, that street being covered as part of surface requirement NOR 1.

484. The key issues raised by these submitters were:

- Construction effects, notably vehicle access, dust and noise and structural integrity of the building; and
- Lack of possible involvement in the subsequent outline plan of works process.

485. Mr White was of the view that a localised form of the CEMP was required for the affected part of Tyler Street.

486. We acknowledge the concerns expressed by Mr White and are of the view that they can largely be met through the workings of the Communication and Consultation Plan required by Condition 15. This Plan will be used to obtain feedback from affected parties regarding the development of the CEMP. We note Condition 15 has been amended to include, in the list of parties to be consulted with, *Body Corporate 164980 and Tenham Investments Ltd*. In addition, this building has been included to the list of buildings for consideration for a building condition survey – Building No 52 in Appendix One of the conditions.

487. Mr White pointed out to us that the usual approach to the outline plan process excludes submitters. This is a concern of many submitters and to us. This concern has now been addressed by AT through revised conditions, with conditions relating to the Pre-Construction Communication and Consultation Plan (Condition 5) and the CEMP and DWPs now requiring to provide for third party peer review and consideration by the Council, as part of the outline plan consideration, of any information provided by affected parties (Condition 11). Attention is also drawn to the Community Liaison Groups to be set up in each of the key four construction areas (Condition 7) with 7.1(a) listing Britomart and Albert Street (NOR 1) as one of the liaison groups to be formed and 7.3(a) noting that membership would included representative(s) for and/or directly affected and affected in proximity property owners and occupiers.

488. We note that the AC reporting team largely agree in their report of 23 October 2013. In addition they comment, in relation to concerns expressed by these submitters, their agreement with AT as follows:

- The Tyler Street area will be covered in the scope of the CEMP (Conditions 10 and 11);

- Conditions 5 and 15 provide for the consultation sought, the submitters being specifically listed in these conditions;
- Noise and vibration concerns are met by Condition 36;
- Condition 25.3 provides for alternative temporary parking;
- Condition 59 addresses the dust situation; and
- Condition 61 addresses business disruption in a far more substantive manner than was originally considered.

489. The effects of the relocation of bus stops are outside the scope of the Notices but, given AT is also the road controlling activity, it could reasonably be concluded that this would be addressed by it. The workings of the Community Liaison Group could also assist in addressing any concerns.

490. We come to the view that the concerns raised by Mr White do need to be addressed and through his submission, and others, the relevant conditions on the designations have been modified to better take into account those concerns.

Precinct Properties New Zealand Ltd

491. Precinct has 6 properties situated in the CBD that will be affected by the CRL. Precinct told us that they generally support NOR 1 (the CRL), subject to their concerns being addressed by appropriate conditions, or outcomes they require being guaranteed by other means.

492. Mr Gavin Fisher addressed us on air quality effects. He opined that during the construction phase there would be significant potential for localised dust nuisance on people and properties in the immediate vicinity of the works. To address this issue Mr Fisher proposed amendments to the condition which deals with air quality matters. In response AT made modifications to Condition 59. We have accepted that that there could potentially be dust issues during the construction phase and we have discussed this specific issue above where we accepted the viewpoint of the AC reporting officers that Condition 59 now adequately addresses air quality matters.

493. Mr Karl Cook offered us the opinion in planning evidence that provided conditions are included in the designation to ensure that adverse environmental effects are appropriately avoided, remedied and mitigated, AT's requirement (NOR 1) would be in accordance with the relevant planning instruments and with Part 2 of RMA. Mr Cook addressed what he termed the unresolved Precinct's matters, namely:

- The proposed 20-year lapse period;
- Inadequate consideration of alternatives in relation to the proposed Downtown worksite;
- Over-reliance on management plans and inadequate certainty in proposed conditions;
- Instances of largely unfettered exemption from important criteria or standards in conditions;
- The need for pre and post-construction building surveys;
- Pedestrian accessibility, safety and amenity; and
- Access to the lobby of Zurich House at 21 Queen Street.

494. Subsequent to the adjournment of the hearing, we received a further legal submission from Precinct's legal Counsel Ms Paula Brosnahan dated 11 October 2103. Ms Brosnahan recorded that Precinct agreed with AT's proposed conditions with regard to:

- Lapse period;
- Construction methodologies for works adjacent to HSBC House at 1 Queen Street, and Zurich House at 21 Queen Street;
- Pedestrian accessibility, safety and amenity;
- Construction fence/hoarding at north frontage of 21 Queen Street; and
- Property access, including specifically access, to the lobby of Zurich House.

495. Precinct still had a number of concerns which remained unresolved, namely:

- Noise and vibration effects of the CRL arising both from its construction and on-going operation;
- The need for pre and post-construction building surveys;
- Over reliance on management plans and inadequate certainty in proposed conditions; and
- The use of Lower Albert Street and the Downtown site for construction works.

496. Precinct's concerns are closely aligned with those of both Foodstuffs and Chapman Tripp and other submitters along Albert Street. Following the adjournment of the hearing there was communications between the submitters and AT, and a comprehensive response to Precinct's concerns was set out in the tables provided to the Hearings Panel by AT on 27 September 2013, and

again on 6 November 2013. The response was largely further amendments to its proposed conditions. Where suggested changes by submitters to conditions were not adopted clear rational was provided by AT regarding why they were not adopted.

497. We are of the view that uncertainty has been partly addressed by AT and the proposed conditions now reflect the need for clear objectives and constraints especially in relation to the various management plans. AT has also established a clear process for consultation and the feedback of concerns – Conditions 15 and 17.
498. We have discussed at some length the AT approach to noise and vibration and the progression that has led to the conditions that have been proposed. It is our view that the conditions now proposed (including the amendments we recommend) for noise and vibration, building surveys and the management plans largely met the concerns of the submitter.
499. The key outstanding issue in relation to Precinct is the need for the Downtown shopping centre site and lower Albert Street as a worksite. As noted in opening legal submissions, and further indicated in the evidence of Mr Newns, AT does require these sites. While we acknowledge that Precinct is keen to acquire as much of the cleared Downtown shopping site as soon as possible for reconstruction and to have designation lifted without undue delay, we have accepted the proposition of AT that the Downtown shopping centre site is the most appropriate site for the construction area due to its location and in particular because of the tunnels passing underneath. The alternative of Lower Albert Street is more constrained. To agree to Precinct's request could potentially have major impacts on construction. Condition 21.2 now provides that the Downtown Construction Yard will be progressively released where the area is no longer required for construction.

Foodstuffs (New Zealand) Ltd

500. Foodstuffs operates a New World Metro at 125 Queens Street. We were informed that Foodstuffs generally supports the CRL project however it considers changes are required to avoid significant adverse impact on businesses that are accessed from Albert Street. Foodstuffs' principal issues of concern centred on:

- Impact on its business – loss of trade;

- The significant traffic effects that would result for the proposed cut and cover construction methodology; property access (as any disruption to access would have serious implications in terms of the operation of the supermarket);
- Pedestrian (customer) access;
- The acceptability of leaving fundamental access issues to the CTMP; and
- Uncertainty as to how the adverse effects are to be mitigated.

501. AT, through Mr Clark in his evidence in chief, responded to Foodstuffs' concerns (and other submitters with similar concerns) noting that Foodstuffs' issues would be addressed in the proposed conditions namely by:

- (a) Generally retaining vehicle access to properties along Albert Street (but may be limited to left in, left out movements);
- (b) Giving landowners and occupiers advance notice of road closures or diversions;
- (c) Proposed intersections restrictions that will affect through traffic movements along Albert Street.
- (d) Maintaining pedestrian and cycle access to properties at all times; and
- (e) The retention of a minimum of one safe crossing between Customs Street and Victoria Street. (This was later increased to two crossings).

502. In his supplementary evidence he provided further explanation of the effects differences between a "partial closure" of the intersections along Albert Street versus a full closure. It was noted that full closure of Albert Street/Customs Street will have around 30% greater effects on the transport network than a partial closure of that intersection, but will reduce the period of effects by 15-30%, however there has been a move away from full closure to have movements retained such as left turns for Customs Street, west and east.

503. Foodstuffs through Mr John Burgess addressed the issue of 'lack of certainty' suggesting to us that more definite mitigation proposals need to be formulated at an earlier stage and that leaving decisions and flexibility on specific mitigation measures for such a significant project until a future CTMP does not enable the full effects of the proposed works to be fully understood and dealt with by us.

504. Ms Joanna van den Bergen submitted to us that the most effective solution to satisfy Foodstuffs' concerns would be to change the proposed construction

methodology along Albert Street from cut and cover to a TBM methodology; in the absence of amendments to the construction methodology and conditions then Foodstuffs considers that the adverse effects are such that we should recommend that the Notices be withdrawn. It was also submitted by Ms van den Bergen that it was not reasonable to ask CBD business owners to trust AT's assurances that all adverse effects will be both be manageable and will in fact be managed under the CEMP process. Mr Vaughan Smith raised the issue of how Foodstuffs could meaningfully influence the outline plan and any associated management plans. We agree that a minimum level of vehicle access needs to be provided via the current process rather than left to the CEMP. We also agree that submitters should be formally involved in the development of management plans which potentially impact on them.

505. By the adjournment of hearing AT had modified its proposal in two key respects:

- The provision of a second pedestrian crossing to an appropriate standard; and
- Support to a condition requiring that left turn access is provided from Albert Street via Mills Lane and Swanson.

506. It was our initial viewpoint that these changes provide sufficient certainty, and go a long way towards addressing Foodstuffs' concerns, on vehicle and pedestrian access. We consider that in addition greater clarity as to the objectives of the construction traffic management plan will also assist in mitigating adverse effects on Foodstuffs' and other businesses.

507. The supplementary evidence of Vaughan Smith for Foodstuffs provided us with some draft conditions relating essentially to traffic management matters. AT has largely accepted these amendments with a few further modifications:

- (a) Accepting that road access along the service route Customs St – Albert St – Mills Lane – Swanson St and Albert St be retained, via the following conditions;
- (b) Providing for the left turn movement between Albert Street and Customs Street while the Albert Street/Customs Street intersection is fully closed;
- (c) Providing a 3m wide lane along the eastern side of Albert St between Customs St and Victoria St to enable vehicle access to properties currently accessed from or via Albert St;

- (d) Providing for two way access into Mills Lane from either Albert Street or Swanson Street at all times;
- (e) Including a new Condition 26 to provide for monitoring of transport network congestion; and
- (f) Provision of two safe pedestrian crossings over Albert Street in the vicinity of Swanson Street and Wyndham Street.

508. Subsequently Foodstuffs proposed a further set of amendments to conditions. AT amended Condition 26.8 to respond to Foodstuffs' concern. AT did not accept the other proposed amendments.

509. We are of the view that the changes made to the proposed conditions now largely met, or go a considerable way, to mitigating the concerns of Foodstuffs, in particular through:

- (a) Condition 5, Pre-construction Communication and Consultation Plan, has the clear objective of setting out a framework to ensure that there is appropriate communication and consultation with the community, stakeholders, affected parties and affected in proximity parties prior to the commencement of the construction of the CRL;
- (b) Condition 11 provides for the Independent Peer Review of the CEMP and DWPs;
- (c) Condition 15, Communication and Consultation Plan, has the clear objective of setting out a framework to ensure appropriate communication and consultation with stakeholders;
- (d) Condition 17, Concerns and Complaints Management, sets out a process to address concerns or complaints;
- (e) The comprehensive set of Transport, Access and Parking Conditions; and
- (f) Condition 61, Social Impact and Business Disruption DWP, which has the objective to facilitate the avoidance, remediation and social services/facilities, and promote proactive solutions to assist in the mitigation or amelioration of these adverse effects. Loss of customers is a matter that is addressed by this condition.

510. We now agree that the conditions provide for an appropriate level of engagement, feedback and input from affected parties into the management of adverse effects. We do not agree with Mr Smith on the matter of the

construction methodology on Albert Street. As discussed elsewhere in this recommendations report we have concluded that the Requiring Authority has undertaken an appropriate consideration of construction alternatives and in particular the alternative of using a TBM for the whole of the Albert Street works. We suspect Mr Smith may now agree with that position too given the further evidence from AT in this respect.

Chapman Tripp

511. We heard legal submissions from Ms Brosnahan regarding the interests of Chapman Tripp which is a law firm occupying a number of levels in the ANZ Centre located at 23-29 Albert Street. In this location, on the western side of Albert Street, the property is adjacent to the surface requirement NOR 1 which covers the full width of Albert Street.

512. The key issues raised by the submitter were:

- Access restrictions for vehicles and pedestrians across Albert Street and around the ANZ Centre;
- Construction traffic on Swanson Street, Federal Street and Wolfe Street;
- Traffic congestion on Albert Street; and
- Notification of activities affecting the ANZ Centre.

513. Essentially, Chapman Tripp sought certainty that the construction effects of the CRL project will be appropriately avoided, managed or mitigated. Ms Brosnahan submitted that the proposed designation conditions rely heavily on the provision of management plans but that conditions can, and should, be implemented that set bottom lines for adverse effects. Otherwise, affected persons have no say in how such effects should be managed, other than through communication and consultation. Some conditions were provided that the submitter sought be imposed on the designation.

514. We have expressed various concerns about the management plan approach proposed by AT not extending far enough in order to achieve the purpose of sufficiently managing adverse effects in other parts of our recommendations report. Further, the potential adverse effects upon the submitter's interests in this case are clearly identifiable and are effects that we consider are capable of being addressed by way of detailed conditions. In these respects we find agreement with the submitter.

515. We acknowledge the concerns expressed on behalf of Chapman Tripp and note that in its response to our Directions and Memorandum of 29 August 2013, AT has responded to those concerns which appear to us to be largely overcome, or capable of being overcome, through effective implementation of the conditions as at 27 September 2013. Further comment was provided (in tabulated form) by the AC reporting team on 23 October 2013, along with further modifications to the proposed conditions as recommended by them.
516. We note that Conditions 5 (Pre-construction, Communication and Consultation Plan) and Condition 15 (Communication and Consultation Plan) require AT to obtain feedback and input from stakeholders, directly affected and affected in proximity parties regarding the development and implementation of the CEMP or DWPs which will provide this submitter with the opportunity for involvement in those processes. That process will allow consideration of an appropriate period of notice for any construction activities, road closures or diversions that may affect the ANZ Centre.
517. Importantly, a summary of the communication and consultation undertaken by AT is to be provided with the outline plan. It is to include an explanation of why any matters raised by affected parties have not been incorporated into the Communication and Consultation Plan.
518. Further, Condition 25 is relevant insofar as it provides (at 25.2) for the on-going vehicle access to private property *to the greatest extent possible*. We note that Swanson Street, Wolfe Street and Federal Street are not listed in Condition 25.3(c) as part of the proposed routes for construction vehicles and if that was to be required, Condition 25.3(d) provides for communication and consultation in that respect. Condition 27 is also relevant in relation to access to properties. The concerns relating to footpaths being at least 1.5m in width and for a pedestrian crossing to be provided across Albert Street at Swanson Street are covered by Condition 27.1.
519. We find the concerns raised by Chapman Tripp to be valid and to be capable of being satisfactorily addressed through the conditions to be imposed on the designations.

Stamford Plaza Ltd

520. Stamford Plaza is a hotel located at 22-26 Albert Street. In this location, on the eastern side of Albert Street, the property is adjacent to the surface requirement NOR 1 which covers the full width of Albert Street.

521. Ms Brosnahan provided us with legal submissions regarding the interests of Stamford Plaza. She noted that given the location of the hotel, and it being both a high profile and high amenity business, Stamford Plaza has some very obvious and understandable areas of concern, namely:

- Construction noise and vibration;
- Air quality;
- Visual effects;
- Impacts on access;
- The timing, sequencing and length of construction; and
- The loss of trade and business interruption.

522. General Manager Paul Evans, reinforced the concerns raised by Ms Brosnahan, noting that Stamford Plaza's position is that it generally supports NOR 1 subject to its concerns being addressed by appropriate conditions, or the outcomes sought being guaranteed by others. It expects greater certainty and input regarding the nature of the designation conditions that would apply. He stressed that this certainty is especially important given the significance and duration of the CRL's construction effects which would have major implications for Stamford Plaza's business and operations. In terms of economic effects Mr Evans pointed out to us that it is unclear whether the compensation mechanisms of the PWA will apply to Stamford Plaza, and therefore the PWA may not provide an easy answer to economic mitigation. Mr Evans also expressed the view that in the absence of designations conditions sufficient to ensure that any construction effects of the CRL project on Stamford Plaza are adequately avoided, remedied or managed, it requests that NOR 1 be withdrawn.

523. During the hearing AT responded to Stamford Plaza, and other submitters with similar concerns, by:

- Agreeing to an independent peer review of management plans before they are submitted to the Council;
- Acknowledging the need for conditions with clear objectives and constraints especially with regards to the assessment of activities which exceed the noise and vibration project criteria;
- Making further specific requirements dealing with dust management, including a requirement to avoid causing a dust nuisance.

524. Subsequent to the adjournment of the hearing, and our Directions and Memorandum of 29 August 2013, Ms Brosnahan provided us with a further legal submissions in which she noted that some of Stamford Plaza's outstanding concerns have been addressed by AT's proposed conditions which deal with traffic; transport; and access (which we have outlined above in our consideration of the impact of the CRL proposal on Chapman Tripp, who occupy part of the ANZ building on the opposite side of Albert Street), but the majority of Stamford Plaza's concerns remain unmitigated. She agreed with the advice of Auckland Council's legal Counsel that the effects on Stamford Plaza, if unmitigated, may be sufficient to warrant a recommendation that AT's NOR for works in Albert Street be withdrawn. Attached as Annexure 1 to Ms Brosnahan's submissions were Stamford Plaza's proposed conditions, which if adopted would address its concerns.
525. Ms Aimee Barwick, for AT and in her Fourth Supplementary Statement of Evidence, records that since the provision of Stamford Plaza's further legal submissions AT had met with both Stamford Plaza and Stamford Residences to discuss the proposed construction methodology and the proposed conditions for avoiding, remedying or mitigating the adverse effects on those parties. It was agreed that additional noise and vibration testing would be undertaken to provide baseline data to assist with prediction modelling. Messrs Fitzgerald and Whitlock for AT in their Third Supplementary Statements of Evidence, responded to the conditions proposed by Stamford and outlined changes which had been made by AT to the proposed conditions. AT subsequently provided us with a comprehensive table setting out their considerations of Stamford Plaza's proposed conditions; the AC reporting officers also provided comment.
526. AT's legal Counsel's Further Interim Legal Submission of 12 November 2013 noted that this submitter was essentially seeking that all adverse effects are to be addressed to its satisfaction. This may not be practicable in the context of this proposal. In particular, Stamford Plaza requests a number of restrictive noise and vibration conditions. AT considers that the currently proposed conditions are adequate to address noise and vibration effects including effects within bedrooms. It was pointed out to us by Mr Beatson that it was noteworthy that the other major accommodation providers along Albert Street are satisfied with the conditions and willing to work with AT throughout construction of the project.
527. In our view Stamford Plaza will be significantly impacted by the CRL project and we find that, within the RMA statutory framework, conditions have now

been proposed for noise and vibration, customer access (through Condition 61, Social Impact and Business Disruption DWP), air quality (Condition 59, Air Quality DWP) that have taken into account Stamford Plaza's concerns in the process recognising that the major issues of 'loss of trade profit' cannot be addressed through this process. We also note that AT is committed to ongoing engagement with Stamford Plaza in an endeavour to address its concerns.

Stamford Residences

528. Stamford Residences (Residences) were represented at the hearing by Mr Charles Lewin, along with Ms Brosnahan. He provided us with a brief oral submission to supplement the Residences' written submission. The Residences are contained within the Stamford Plaza building.

529. The Residences' position emphasised that the current form of the CRL proposal, insofar as it relates to construction methodology/mitigation, is so defective that NOR 1 should be withdrawn. The specific concerns of the Residences are:

(a) NOR 1 fails to address the high density residential nature of the precinct by:

- Designating daytime noise/vibration limits as ending at 11 pm and the lack of weekend restrictions;
- Inappropriately high noise/vibration limits day and night and/or lack of suitable mitigation measures;
- For the Residences it is like living at the top of a canyon where noise will be greatly amplified; and
- No guarantees as to the frequency of vehicle and pedestrian access.

(b) The presence of high density residential neighbourhood in tall buildings directly atop the construction site and cut and cover method of construction are not compatible.

530. The reality for our consideration is that the concerns of the Residences mirror those of Stamford, even though the relief sought is different.

531. We have considered the submissions of the Residences in our consideration of Stamford Plaza's concerns which can be seen in the above commentary

regarding Stamford Plaza. We are of the view that the conditions described take due account of the concerns of the Residences. We acknowledge the useful approach of Chapman Tripp, Stamford Plaza and Stamford Residences presenting their submissions at the same time and with the support of Ms Brosnahan.

James Kirkpatrick Group Ltd

532. James Kirkpatrick Group Ltd (**Kirkpatrick**) is the owner of Albert Plaza, an 11 storey commercial office tower at 87 to 89 Albert Street. Mr Lloyd Morris summarised the key areas of concern that specifically apply to Albert Plaza namely:

- CRL construction operations – keeping the building ‘open for business’ during the construction phase.
- Operational activities – managing the ongoing effects of the proposal on the building post construction.
- Business impact – loss of tenants during and post construction due to disruption and unmitigated effects.
- Insurance, indemnity and compensation.

533. Kirkpatrick’s submission was in objection until mutual heads of agreement could be reached on all these matters. From our perspective Kirkpatrick’s concerns mirrored those of other submitters along Albert Street (Chapman Tripp, et al).

534. AT’s Further Interim Legal Submission of 12 November 2013 recorded that this submitter had noted that consultation with AT had given them confidence that construction issues can be adequately mitigated.

535. Condition 39 relating to notable receivers addresses Kirkpatrick’s concerns about the potential adverse impacts on the recording studio in their building and Condition 24.4(d) provides for continuation of utility services.

536. Albert Plaza will be impacted by the CRL project but the findings which we have made for Albert Street (Stamford Plaza et al) equally apply to Albert Plaza and will take due account of their concerns.

The Roman Catholic Diocese of Auckland - St Patrick's Cathedral and St Benedict's Parish

537. At the hearing in August 2013 submissions were made to us by Mr Kerry Coleman and Mr Kevin Sherlock. Mr Coleman is the General Manager of the Roman Catholic Diocese of Auckland and his submission addressed matters relating to the effects of the CRL on St Patricks Cathedral, St Benedict's church and associated premises. Mr Sherlock is business Manager for St Patrick's Cathedral and he specifically gave evidence about the Cathedral.
538. St Patrick's Cathedral is located at 1 St Patrick's Square and the Cathedral Presbytery is at 43 Wyndham St. These buildings are scheduled heritage buildings in the Operative District Plan (Category A and B respectively) and the Proposed Unitary Plan, as well as being registered with the NZ Historic Places Trust. These buildings are located between 50 and 110 m east of Albert Street (and NOR 1).
539. It was stressed to us that the Cathedral is a very busy place, open 365 days per year from 6am to 10pm or later if there is a special event. Mass is held every day (1 to 4 times per day) with Sundays attracting in excess of 2500 people on average. These are times of quiet reflection which would be adversely affected by excessive noise and vibrations from the CRL construction. Other important celebrations such as special sacraments or masses, baptisms, marriages, funerals and regular church services would also be adversely affected if construction noise levels are excessive.
540. The St Benedict's complex is at 1 to 3 St Benedict's St, and comprises the St Benedict's Church and presbytery as well as a house and car park. The Church and presbytery are scheduled in the Operative District Plan as Category B heritage buildings, whilst the house is identified as a character defining building in this locality. The proposed designations (NOR 2 and 3) underlie the presbytery and the southern part of the Church. In this locality the CRL is proposed to be constructed using the tunnel boring machine and the proposed rail level is about 30 m below ground surface.
541. The Roman Catholic Diocese does not oppose the CRL but has identified some key issues for the Cathedral and Church properties which they seek to have addressed:
- AT should be required to consult in a timely manner to agree on management plan criteria governing works in the vicinity of these properties.

- Condition surveys and monitoring be put in place for both the Cathedral and Church sites.
- Construction methods, noise and vibration during construction of CRL are managed to assure no damage to Diocese buildings and minimisation of other adverse effects.
- Traffic and pedestrian disruption is minimised, particularly at St Patrick's Cathedral and site.

542. Importantly the Diocese is seeking to set up procedures which will assure that specific construction activities can be timed to minimise adverse noise and traffic adverse effects during times of scheduled celebrations at the Cathedral (weddings, funerals etc).

543. Mr Michael Stride, Property Manager for the Roman Catholic Diocese of Auckland, provided us with further written submissions dated 11 October 2013 and 11 November 2013 which addressed AT's amended proposed conditions which had been prepared in response to our Directions of 29 August 2013 and 21 October 2013. Mr Stride acknowledged that whilst AT had made many significant improvements to the proposed conditions, a number of the Diocese's key submissions had not been satisfied namely:

- (a) No assurance that the Heritage buildings listed in Appendix Two will have pre and post-building condition surveys but rather only be "considered for" these surveys.
- (b) Alternatively, no provisions for appeal by way of review by an independent review panel or AC, if AT decides surveys are not warranted.
- (c) No provision to provide advanced notice of at least 10 days of issue of plans for review by affected parties.
- (d) Insufficient time to review and provide feedback on draft CEMP and DWPs. 15 days should be allowed.
- (e) Provision of more detailed requirements to record and respond to feedback on the CEMP and DWPs.

544. AT responded by confirming that both churches (St Patrick's Cathedral and St Benedicts) are included in the definition of "Sensitive Noise and Vibration Receivers" and as such, noise and vibration effects specific to them will be addressed in the SSCNMP and SSCVMP.

545. AT also stated in response that the proposed conditions dated 11 November 2013 largely address the outstanding concerns with the exception of an assurance of pre and post-building condition surveys. AT's position was that guaranteed surveys are not appropriate. AT also noted that the AC reporting officers agree with this conclusion and with most of the other proposed conditions from AT relating to the Diocese properties.
546. Condition 7.3, Community Liaison Groups, confirms that the Roman Catholic Diocese, St Patrick's Cathedral and St Benedict's Parish can appoint a member to the appropriate Liaison Group. The Diocese's buildings including St Patrick's Cathedral (No 76), St Benedict's Church (No 78) and St Benedict's Presbytery (79) have been included in Appendix Two to the conditions as buildings for which consideration will be given for building condition surveys.
547. In considering submitter involvement in the preparation and approval of both the CEMP and the DWPs we have concluded that the requirements of Condition 5, Pre-Construction Communication and Consultation Plan, and Condition 15, Communication and Consultation Plan, adequately provide for these concerns, particularly both conditions having a clear objective of *set out a framework to ensure appropriate communication and consultation is undertaken with community stakeholders, affected parties and affected in proximity parties...*
548. We find that the proposed conditions now adequately addresses the concerns of these submitters.

Ministry of Justice

549. We heard evidence from Ms Justine Bray, and later from Mr Matthew Kerr-Ridge, planning consultants, which pointed out the unique operational requirements of the Auckland District Court located at 65 to 69 Albert Street. The high level of utilisation of the Court meant there was limited capacity to reschedule hearings should any disruption result from the construction of the CRL. A specific condition was sought that would address communication and consultation with the Ministry. The AC reporting team agreed, as do we, with such a condition given the particular nature of the Courts. Condition 15.4(c) refers and specifically lists this submitter.
550. Further, Ms Bray pointed out that the nature of the Court's operations make it sensitive to effects from outside the building. In particular, the potential effects of noise and vibration from construction activities. Condition 63, Operational

Rail Vibration, now specifies the Auckland District Court as an auditoria/theatre to recognise that it contains an activity that is more sensitive to noise and vibration than an office or residential dwelling. We agree with Mr Beatson that it is not appropriate that the Court be considered as a TV/recording studio and note no evidence was called to support this suggestion. The above approach to it being considered in the Auditoria/Theatres category should serve to meet their concern. The AC reporting team agreed.

551. In these respects the concerns of the Ministry have largely been met.

Samson Corporation Ltd and Sterling Nominees Ltd

552. The initial submission from Samson Corporation and Sterling Nominees (**SCL** and **SNL**) recognised the significant benefits that the CRL will provide for Auckland. We were told that the submitter had 8 properties in Symonds Street; 2 properties in Karangahape Road; 1 property in St Benedicts Street; and 1 property in Mercury Lane, over which a designation is sought by the CRL Notices. The submitters also own 5 other properties in the vicinity of the land to be designated that will be affected.

553. SCL and SNL were represented by legal Counsel Mr Brabant who raised the following issues:

- Necessity and appropriateness of NOR 3;
- AT's proposed condition dealing with review of extent of designation and in particular NOR 3;
- Lapse period/interim property blighting; and
- Certainty of construction noise standards.

554. We have addressed the lapse period separately. We note that the submitters do not accept that the reduced lapse period of 15 years (from 20 years originally sought) as proposed by AT in August, is necessary or appropriate. A 5 year lapse period is still sought. For the reasons we have discussed earlier we have concluded that a 10 year lapse period would be sufficient. However, we have concluded that there is insufficient evidence on which we can conclude that a 15 year lapse period would result in significantly greater adverse effects than a 10 year period in terms of certainty. Accordingly we are not recommending a change to the proposed 15 year lapse period.

555. We have addressed the scope of NOR 3 earlier and are now satisfied that this issue has been dealt with appropriately.

556. While this submitter did not provide any specific wording for conditions to otherwise address issues of certainty, the concerns regarding certainty have largely been met by the conditions. We questioned the certainty of construction noise standards earlier but have concluded that the general approach now proposed by AT (as per its 22 November 2013 proposed conditions) is appropriate with some minor amendments.

BWT Investments Ltd (BWT)

557. Mr Vern Warren, planning consultant, presented submissions (as opposed to evidence) on 15 August 2013 and at the reconvened hearing on 11 October 2013 we received written legal submissions from Mr Robert Makgill; evidence from Mr Warren; and, evidence from Mr Geoffrey Ridley as the owner of the property at 224 Symonds Street.

558. The property lies immediately adjacent to the car parking area on the corner of Symonds Street and Mt Eden Road which is included in the surface designation NOR 5. That car park is used by patrons of the bar and restaurant in the building and the tenants of the first floor offices. The car park is proposed to be used for construction purposes given its close proximity to the proposed Newton Station on the opposite side of Symonds Street.

559. BWT's concern relates to the loss of car parking spaces and the consequential loss of custom during construction. Alternative car parking was sought in the absence of the adjacent site not being used for construction purposes. The evidence highlighted the potential problems for the submitter, and other business operators in the locality. AT's view was that Condition 29.1(d) would address the concerns of BWT. It states:

"The effects of the temporary use of the Symonds Street car park as a construction site are to be mitigated by the Requiring Authority by active parking management and enforcement, within 400m of the car park, to maximise short term parking within this area."

560. Further, AT would provide BWT with alternative parking, on a similar basis to its current occupation arrangements (Condition 29.1(c)(ii)). This is part of the conditions we have confirmed.

561. We raised concerns that parking management and enforcement may not suffice and also that alternative car parking is not readily available. On that

basis, such conditions may become meaningless for want of being able to be implemented. We acknowledge there will be effects of this nature resulting from construction works and further, that the submitter uses the car park on a month to month lease with no guarantee of continued use to this property or any other user. AT responded through Ms Barwick that it was investigating the use of the Burleigh Street car park, which is in proximity, for use by customers of businesses at the southern end of Symonds Street. We sought specific information on this point in our Further Directions of 14 November (clause 6(e)). AT responded that modifications had been made to Condition 61 (Social Impact and Business Disruption DWP) as a result of discussions with the AC reporting officers and a commitment to develop methods to address the concern identified. This includes taking account of how disruption effects resulting in the loss of customers to businesses as a result of construction activities will be mitigated. We note that will be of some assistance to this submitter. We note too that Condition 15 (Communication and Consultation Plan) will also assist BWT's concerns.

562. Ms Barwick³⁶ confirmed later at the hearing that AT was renegotiating a new term of lease for the 102 car park space on the corner of Khyber Pass Road and Burleigh Street. That would allow AT to meet the concern of BWT for alternative car parking in accordance with Condition 29.1(c)(ii).

563. We find that the conditions should resolve BWT's reasonable concerns.

East Family Trust and Rainbow Family Trust

564. We received legal submissions at the reconvened hearing from Mr Makgill along with planning evidence from Mr Warren and a statement from Ms Nina Tasev as a Trustee of the East Family Trust (East) and representative of the Rainbow Family Trust (Rainbow). They respectively own properties on the east side, a renovated residential villa, and west side, a mechanical repairs workshop, of East Street. The former is adjacent to the area sought to be designated by NOR 4 and which is to be used as a construction site for the proposed Karangahape station.

565. The concerns of the submitters are in relation to construction effects that are not adequately addressed by the proposed conditions and with the use of East Street by construction traffic. AT's response was that noise and vibration matters will be the subject of a Site Specific Construction Noise Management

³⁶ Memo of Aimee Barwick dated 22 November 2013

Plan and that spoil trucks will not use East Street as a transport route and on street parking is to be retained. This is specifically provided for in Condition 28.1(b). Further, East Street is not a specified route for construction vehicles, and maintaining access to properties to the greatest extent possible is a key requirement of Condition 25.2.

566. The other concerns of the Trusts, identified by Mr Warren, are keeping the construction area orderly; management of any hazardous substances, and, location of temporary parking. These are dealt with under the CEMP construction works requirements in Condition 21.1. It is also the case that there is now a business disruption condition (Condition 61) that is in response to this and other submitters' concerns with any considerations of compensation being a matter for the PWA.
567. We note that AT and the AC reporting officers are in agreement that the conditions adequately address the concerns of the Trusts. We find that to be the case and that the concerns of East and Rainbow are addressed as far as is practicable in the conditions. It is of course the case that this submission, along with others, has served to highlight such concerns and for these to be addressed accordingly.

Auckland Boxing Association (ABA)

568. ABA was represented by consultant planner Ms Cath Heppelthwaite who provided us with two statements of evidence. The ABA site at 1 Ngahura Street lies adjacent to land, on two sides, included in NOR 6. ABA requested a number of changes to conditions relating to a building survey; the pedestrian linkage; modifications to the Communication and Consultation Plan (Condition 15); and, repositioning of the boundary of the proposed designation away from the Ngahura Street frontage of their site.
569. Condition 53 now addresses the pedestrian linkage and ABA confirmed satisfaction with it. The NOR boundary has also been relocated at Ngahura Street. Amended plans are attached to the Fourth Supplementary Statement of Evidence of Ms Barwick.
570. The further planning evidence provided by ABA requests that they be guaranteed a building condition survey. Building condition surveys are not intended to be guaranteed to any party. Condition 46.1 now sets out how it will be determined whether a building condition survey is required. An independent assessor is to now be involved and Condition 46.1(e) provides for the proximity

of the building to any excavation as a relevant consideration. We consider this should meet ABA's concern in this respect.

571. ABA also requests input into any changes to the Communication and Consultation Plan prior to the changes being finalised. We find that Condition 15.7 relating to material changes is reasonable approach, noting that this is about consultation rather than about any physical works. A number of changes have been made to the relevant condition (Condition 15) in order to better provide for the interests of affected property owners/occupiers to be taken into account.
572. We come to the view that the concerns of ABA are largely addressed and in particular there is the opportunity for input through the Communication and Consultation Plan.

Five Flowers Ltd and Radiation Ltd

573. We heard legal submissions from Mr Paul Cavanagh on behalf of Five Flowers Ltd as the owner of the land and building located at 5 Flower Street, Newton and on behalf of Radiation Ltd as a tenant in part of those premises. The property lies within the surface requirement NOR 6 for the CRL which will pass through the site and require the total demolition of the existing building. No evidence was called in support of the legal submissions.

574. The key issues raised by the submitters were:

- There is no valid reason for extending the lapse period beyond the default provision of 5 years in the RMA because the uncertainties attendant upon a lengthy lapse period would create a blighting effect on the property which must be avoided and, the Government is now committed to this project.
- Business disruption; on the basis of both tenancies having existing leases that provide for renewals to final expiry dates of 31 May 2022 and 31 March 2015. Whilst Five Flowers anticipated that it would be successful in concluding negotiations that lead to the acquisition of the property, the concern was more that the Requiring Authority is not prepared at this stage to negotiate for the acquisition of any tenancies located within the building to be acquired. The submitters therefore sought a condition on the requirement to the effect that if any construction activity is undertaken within the neighbourhood that the Requiring Authority will accept responsibility for the acquisition of any

tenancies that exist at that time, thus avoiding business disruption that would otherwise inevitably take place with an adverse effect on the conduct of the tenants' business operations. The submitters acknowledged that they will retain their rights to recover compensation for business disruption and that any claim for such will be dealt with separately under the provisions of the Public Works Act 1981.

575. AT's response was to address the effects of blight by way of the preparation and implementation of a Property Management Strategy (Condition 60) which would see properties maintained until required for construction. The evidence of AT was that all property acquisition is scheduled for completion by June 2015³⁷.
576. In the interim closing legal submissions on 20 August 2013, AT accepted that a 15 year lapse period would be appropriate, as opposed to the 20 year period it originally sought³⁸. It was also submitted that there are some effects which cannot possibly be quantified at this time, including impacts on businesses during construction. These impacts are intended to be dealt with through the Social Impact condition and the Property Management Strategy³⁹ in AT's conditions. Compensation was submitted as being a matter following our consideration of avoiding, remedying or mitigating adverse effects⁴⁰. Compensation and requests by the submitter that a compensation condition should be imposed, was submitted as being an issue best left to the PWA.
577. We acknowledge the Property Management Strategy and AT's approach to property acquisition are intended to address the concerns raised by the submitter and that in addition, any claims for business disruption will be dealt with separately under the provisions of the PWA. However we do wish to achieve greater certainty, within the bounds of our authority, regarding AT's actions in respect of specific properties where those property owners have come forward as submitters expressing real concerns that do need, in our view, an explicit means of relief.
578. In the case of planning blight, we have for reasons covered in other parts of this recommendation, reduced the lapse period sought from 20 years to 15 years in acknowledgement of some of the concerns raised by this submitter and other submitters.

³⁷ Evidence of Deborah Godinet, para 33

³⁸ Interim Closing Legal Submissions, 20 August 2013, clause 69

³⁹ Ibid, clause 89

⁴⁰ Ibid, clause 51

579. We note that Condition 5, Pre-Construction and Consultation Plan, addresses updates on the property acquisition process but that it gives this submitter little certainty regarding an actual date for acquisition other than Ms Deborah Godinet's evidence that it will be by June 2015. We have recognised the need for certainty and gave serious consideration to making an addition to the conditions recording the intention of AT is to see all property acquisition completed by June 2015.
580. In the case of business disruption, the proposed conditions (Conditions 60 and 61) have been developed further by AT to recognise the concerns expressed by submitters and by ourselves. These changes provide direct reference to business disruption and the potential loss of custom as being the focus of concerns expressed by submitters. We find that the Condition 61 goes as far as we are able to recommend in terms of our authority which does not extend to the issue of economic impact. The condition will however go some way towards meeting the concerns of this submitter and others in seeking to implement measures that manage business disruption and adverse effects on businesses during construction.
581. In legal submissions presented on 11 November, Mr Beatson stated that AT was in negotiation with Five Flowers in relation to the purchase of its premises and similarly in negotiation with Radiation Ltd on the relocation of its tenancy.
582. We acknowledge the concerns expressed by the submitter but find that with the modified conditions, together with the PWA provisions, these concerns can reasonably be addressed.

Dilworth Trust Board

583. We heard legal submissions from Mr Kitt Littlejohn, planning evidence from Mr Craig McGarr and also evidence from Stephen Priest, General Manager of Corys Electrical. Corys are the tenant of the Dilworth Property located at 51 to 63 Normanby Road, Eden Terrace.
584. The property lies alongside that part of NOR 6 that extends over part of Normanby Road and Lauder Road. The Normanby Road frontage operates as the principal access to the property and will be altered as part of the proposed grade separation of Normanby Road and the NAL (North Auckland Railway Line). This would see a change to the road level along this frontage ranging from 0.9m to 1.7m and the necessity therefore for a new means of access to be provided for the site.

585. The key issues raised by the submitter were:

- Despite several meetings with AT representatives, no progress has been made in resolving the details of how future access to the site following the grade separation will be provided.
- A concern that there is no apparent on-going commitment by AT to resolve this matter in any hurry.
- How AT proposes to manage the construction phase of NOR 6 to avoid, remedy or mitigate adverse effects on the Dilworth property.

586. As described in the s42A Report, AT's approach to managing adverse effects is to develop an environmental management framework which proposes a hierarchy of management plans and delivery work plans.

587. This approach of managing adverse effects through the use of management plans is not uncommon, particularly for large projects, where the nature and extent of those effects is uncertain and the outcome of methods proposed to avoid, remedy or mitigate them is also uncertain. These management regimes seek to manage the effects of the given activity in a flexible and proactive manner. We express various concerns about the management plan approach proposed by AT not extending far enough in order to achieve the purpose of sufficiently managing adverse effects in other parts of our recommendation.

588. As described in the section 42A Report⁴¹, the details of the CRL are somewhat silent on the degree to which access should be maintained to ensure the appropriate management of adverse effects. We note that different activities will have different access requirements and that providing vehicle access to properties as practically as possible at all times requires further details from AT to allow us to understand the associated effects from the project on vehicular access and land use activities. For example, just what methods are available and will be adopted by AT to provide vehicular access and/or alternatives, and what likely action will occur should access to properties not be available. An example is raised whereby the conditions only relate to communication and consultation in advance with property owners and do not provide any certainty over retention of access.

589. AT responded initially that access to the Dilworth site would be maintained during construction but without providing any specific details. In the interim closing submissions on 20 August 2013, Mr Beatson indicated there is now

⁴¹ Section 42A Report, part 9.6.2.3

specific provision for maintenance of access to properties in the conditions⁴². He stated that where parties have requested that specific access be maintained and provided throughout construction along with routing options, this has been addressed along with other areas of uncertainty having been clarified. We note that Condition 15, Communication and Consultation Plan was amended to include, in the list of parties to be consulted with, *All property owners and occupiers adjacent to construction sites ... and the works at Normanby Road*. This assists in addressing the concerns of Dilworth.

590. We acknowledge that with the proposed change in grade along the Normanby Road frontage of the Dilworth property that, consistent with Mr McGarr's views, the property should be specifically included in the lists of properties whose owners will be communicated with and consulted with as part of the access to property considerations. It is clear from the evidence that the property has identifiable effects arising out of the change in grade which require specific attention.

591. We note that the conditions have been substantially reworked in the proposed conditions provided by AT on 27 September. The modifications reflect the concerns raised by submitters and by ourselves during the hearing and are also considered to demonstrate the commitment by AT to resolve such concerns. In the case of Dilworth:

- Condition 15 (as above) addresses communication and consultation.
- Condition 11 now includes peer review of the CEMP and DWPs, how the recommendations of the peer reviewer have been incorporated or not and the Council will, when reviewing the outline plan, take into consideration any information provided to the Council by affected parties.
- Condition 25 addresses (as before) on-going vehicle access, to the greatest extent possible.
- Condition 30.1(h) now addresses the specific needs of the Dilworth property (51 to 63 Normanby Road) in relation to access and parking, including the provision of temporary alternative parking if needed.
- Condition 38, Site Specific Construction Vibration Management Plan, can be used to address the matter of sensitive stock such as the light bulb filaments.

⁴² Interim Closing Submissions, 20 August 2013, clause 92

592. We note that the AC reporting team largely agrees with our assessment in their report of 23 October 2013. They do however express concern that Condition 30.1(h), regarding temporary road closures etc, does not include the “agreement” of the owners and occupiers of affected sites as part of the Traffic, Parking and Access DWPs. We would be concerned if any requirement for “agreement” was unreasonably withheld and consider that the processes for the preparation of the DWPs, including consultation and peer review, provide sufficiently for the interests of those affected parties.
593. Dilworth sought that at least one traffic lane of direct access to Normanby Road from Boston Road to the north be provided. This is sought to be addressed in Condition 25.2 as far as is practicable but the advice of AT, supported by the AC reporting team, is that it is not possible due to the work in lowering the rail tracks within the NAL designation and the difference in grades.
594. Mr Littlejohn expressed concern, in his further legal submissions of 14 October, that agreement had not been reached with AT on these matters and that the conditions were overly complicated and confusing. He submitted that the specific matters of concern could be met by the conditions included with Mr McGarr’s evidence of 11 October. He also acknowledged in an email of 12 November that Condition 30(h) effectively addresses his client’s concerns regarding access to the property during the grade separation works and reinstatement if it is intended to apply to both those works and the reinstatement and is to be treated as a standard to be achieved. We find that these matters are capable of being satisfactorily addressed by way of the conditions as discussed above.
595. One point made by Mr McGarr which we agree requires further attention though is the need for the gradient of the completed ramp from the road to the site to comply with the requirements of the District Plan. This has required an additional clause in the conditions.
596. Otherwise, the construction effects of a more general nature relating to matters such as noise etc, can be sufficiently managed through the management plan process as modified from that originally proposed by AT.

Tram Lease Ltd

597. We heard legal submissions from Mr Trevor Daya-Winterbottom along with evidence from Mr Paul Gunn, General Manager of Property of Tram Lease Ltd, and Mr Michael Foster, planning consultant. The Tram Lease property is

located at 32 Normanby Road where it lies at the intersection of that road with the NAL.

598. The property has a very narrow road frontage from which it currently derives vehicle access via a ramp, with a drop of approximately 1.5m, off Normanby Road. The buildings on the site occupy some 75% in order to provide at-grade parking to service the development with almost all of this parking being provided along the northwest boundary of the site adjoining the NAL.

599. In this location the property is generally opposite the Dilworth Trust property that we have discussed above. The concerns of these two parties about potential adverse effects are therefore similar and are discussed above. However, for completeness and recognising the significant work that went into the Tram Lease presentation, we repeat that discussion, where relevant, below.

600. The site is affected by NOR 6, the requirement covering 700sqm of the site and also extending over Normanby Road in front of it. The proposed designation on the site directly affects 33 of the 41 car parks and, in addition, the proposed ramping works associated with the change in the grade of Normanby Road are expected to make access into and out of the car parking more difficult.

601. The key issues raised by this submitter were:

- The potential adverse impacts deriving from a loss of car parking on site and changed vehicular access to it;
- The 20 year lapse period;
- Planning blight; and
- The inadequate consultation to date and the uncertainty with how the adverse effects on this site are to be dealt with as part of the CRL project.

602. As described in the s42A Report⁴³, the details of the CRL are somewhat silent on the degree to which access should be maintained to ensure the appropriate management of adverse effects. We note that different activities will have different access requirements and that providing vehicle access to properties as practically as possible at all times requires further details from AT to allow us to understand the associated effects on vehicular access and land use activities. For example, just what methods are available and will be adopted by AT to provide vehicular access and/or alternatives, and what likely action will occur should access to properties not be available. An example is raised whereby the conditions only relate to communication and consultation in

⁴³ Section 42A Report, part 9.6.2.3

advance with property owners and do not provide any certainty over retention of access.

603. AT responded initially that access to the Tram Lease site would be maintained during construction but without providing any specific details. In the interim closing submissions on 20 August 2013, Mr Beatson indicated there is now specific provision for maintenance of access to properties in the conditions⁴⁴. He stated that where parties have requested that specific access be maintained and provided throughout construction along with routing options, this has been addressed along with other areas of uncertainty having been clarified. We note that Condition 15 Communication and Consultation Plan, (conditions at 20 August) has been amended to include, in the list of parties to be consulted with, *All property owners and occupiers adjacent to construction sites ... and the works at Normanby Road*. This assists in addressing the concerns of Tram Lease.
604. We acknowledge that with the proposed change in grade along the Normanby Road frontage of the Tram Lease property that, consistent with Mr Foster's views, the Tram Lease property should be specifically included in the lists of properties whose owners will be communicated with and consulted with as part of the access to property considerations. It is clear from the evidence that the property has identifiable effects arising out of the change in grade which require specific attention.
605. We note that the conditions have been substantially reworked in the proposed conditions provided by AT on 27 September. The modifications reflect the concerns raised by submitters and by ourselves during the hearing and are also considered to demonstrate the commitment by AT to resolve such concerns. In the case of Tram Lease:
- Condition 15 (as above) addresses communication and consultation.
 - Condition 11 now includes peer review of the CEMP and DWPs, how the recommendations of the peer reviewer have been incorporated or not and the Council will, when reviewing the outline plan, take into consideration any information provided to the Council by affected parties.
 - Condition 25 addresses (as before) on-going vehicle access, to the greatest extent possible.

⁴⁴ Interim Closing Legal Submissions, 20 August 2013, clause 92

- Condition 30.1(i) now addresses the specific needs of the Tram Lease property in relation to access and parking, including the provision of temporary alternative parking if needed.

606. We note that the AC reporting team largely agree with our assessment in their report of 23 October 2013. In addition they comment, in relation to concerns expressed by the submitter, their agreement with AT as follows:

- Condition 3 provides that AT reviews the area and volume of the designated land as soon as reasonably practicable;
- Property acquisition is scheduled to be complete by June 2015, however this is not a condition that we can reasonably impose;
- Conditions 5 and 15 provide for communication and consultation including when the works will commence;
- Condition 30.1(i) provides for the temporary parking needs and for the access needs of the submitter; and
- Condition 61 now addresses business disruption.

607. We heard further from Mr Daya-Winterbottom on 11 October 2013 when he referred to his earlier legal submissions and concerns that remained regarding uncertainty to tenants, car parking and access. He tabled a report of 6 November 2013 from Mr Darryl Hughes, traffic consultant, regarding access to the site. It highlighted shortcomings in the approach by AT to the provision of a new ramp to the site following the road regrading works. Mr Hughes did confirm that a complying ramp could be constructed, albeit with some further amendments to the car parking layout on the site. Mr Daya-Winterbottom provided some options as suitable conditions to address this matter. We find agreement with him and sought specific information on that point from AT in our Further Directions of 14 November (clause 6(c)). A condition (Condition 30.1(i)(i)) is imposed accordingly which also applies to the Dilworth property.

608. Otherwise, the construction effects of a more general nature relating to matters such as noise etc, can sufficiently be managed through the management plan process as modified from that originally proposed by AT. Further, the adoption of a 15 year lapse period will meet some of the concerns of Tram Lease regarding the lapse period for the designations and the matter of potential blight.

609. In our view the concerns expressed by Tram Lease are well founded and demonstrate the need for greater attention to be given (as AT has proceeded to

do) to a number of specific property owners in order to sufficiently address, with some certainty, the manner in which the impacts upon those properties are to be resolved as part of the CRL project.

610. For this reason we have commented during the hearings process on the need for a management plan process that provides for closer liaison with such property owners and a third party process to ensure a satisfactory outcome.

The LIFE Church

611. LIFE Church (LIFE) is a substantial Christian based, community organisation. It has three interrelated centres within the City of which the largest facility and nucleus site is the LIFE Central complex at 95 Mt Eden Road. Each weekend typically around 2,600 to 3,000 people use the facility and during the week typically around 1,100 people, in addition to 114 staff, utilise the site. The site contains a well developed and interlinked series of facilities including a state of the art auditorium, recording facilities, counselling rooms etc.
612. AT requires the LIFE site for construction purposes and intends to acquire it in due course. We were informed that it has commenced acquisition discussions. The AEE for the proposal makes no specific mention of the LIFE site. It is unclear to us what consideration was given to options which would avoid the need to take the facility, but we assume that is impractical. We also assume that acquisition of the site is “reasonably necessary” to enable the works to be carried out.
613. We heard evidence from the General Manager of LIFE, Mr Paul Schnell, that LIFE Central was purchased because of its ideal central location to serve the inner city/central business district area and to be within 20 minutes travel of the north and south campuses of LIFE.
614. The Church had drawn up plans for an expansion of the site to meet the significant growth of the community. It had an initial discussion with the Council regarding those plans. The CRL project has put those plans on hold and the Church will face a shortage of space over the period until it is relocated. LIFE is concerned about this and about the urgent need for it to find another suitable site. It was very concerned about the originally proposed lapse period of 20 years and still has concerns regarding the updated proposal for 15 years. It seeks a lapse period of 5 years. As Mr Schnell put it, the Church is in a state of limbo and uncertainty and seeks certainty as soon as possible. In the absence of any commitment from AT towards relocation of LIFE Central, the

organisation and the community behind it are concerned that the uncertainty might continue for years.

615. We heard that AT did not approach LIFE until August 2012. The Church requested that relocation discussions begin immediately. As we understand it AT has recently commenced PWA compensation/acquisition discussions. There was no proposal by AT for relocation of the Church or any timeframe for the completion of the acquisition of process. However, by the resumption of the hearing, AT had included a reference within the Social Impact DWP condition to providing details as to “*best endeavours steps*” undertaken by it in relation to the acquisition and/or relocation of the LIFE Central site under the PWA.
616. As a consequence of the impacts on it and AT’s response, LIFE seeks as its primary relief, that we recommend that the NOR be withdrawn. As a secondary relief, if the NOR is confirmed LIFE seeks that it is made subject to a condition requiring..... *that LIFE’s property and facilities first being relocated and re established on an alternative site with the same attributes as the LIFE Central site and facilities and within a specified timeframe not exceeding 2 years from the date the designation or approval date.*
617. It also sought that the lapse period be limited to 5 years but at the hearing modified this to 7 years. Counsel for LIFE, Mr Malcolm Maclean, submitted that the already existing and future effects on the LIFE community, were adverse effects on the social, cultural and economic wellbeing of people and “*a community*” (being the LIFE community). He outlined submissions to the effect that reliance on eventual PWA compensation for acquisition of the site did not adequately mitigate the adverse effects on LIFE. As we understood it, his argument based upon Mr Schnell’s evidence, was that there will be the following effects on LIFE:
- Uncertainty/blight until such time as the LIFE is relocated;
 - Pressure on the existing facility if the relocation does not occur soon;
 - Adverse effects on the social and cultural wellbeing of the LIFE community;
 - Ongoing uncertainty and social cultural effects if there is a delay in construction of the project and LIFE has not been relocated in the interim; and
 - Adverse economic effects on the wellbeing of the LIFE community if the cost of relocation to a suitable site exceeds whatever PWA compensation is agreed or awarded.

618. We accept that these are all either actual or potential effects if the designations are confirmed without prior agreement with LIFE as to relocation.
619. As discussed above, the AEE lodged with the Notices did not refer directly to effects on LIFE. The Social Impact Assessment lodged on 19 April 2013 in response did refer to LIFE's land and commented that *"For these and other community and cultural facility sites while relocation may be possible, it is not at this stage assured."*
620. The conditions proposed by AT early in the hearing addressed LIFE's concerns in a rather indirect, and in our view, unsatisfactory manner. A proposed condition would have required the provision of a *"social impact"* section within the CEMP. This was required to *"assess the feasibility of relocation options for community facilities and to determine requirements and assistance for relocation."*
621. The opening submissions and interim closing submissions for AT did not deal directly with the issues raised by LIFE, but did deal with the interrelationship between the PWA and the RMA. We understood AT's view to be that the effects on LIFE and the LIFE community are matters which can and will be addressed under the PWA by way of compensation for the acquisition of the LIFE central property. It assured us that it will proceed diligently with that process, but did not see that as a matter for a condition.
622. We were not entirely comfortable with this approach. The AT evidence did not address the effects on LIFE caused during the period prior to acquisition. Nor does the evidence address the need for relocation of the facility to a suitable site.
623. We requested specific legal advice regarding the LIFE situation. We also asked for AT to clarify what its response was to the concerns raised by LIFE.
624. The legal submissions/memorandum for AT dated 27 September 2013 indicated that:
- "AT does not agree to funding the difference between the costs of a desired new building for LIFE Church and any PWA compensation for the current property. The request by LIFE Church for a condition committing AT to assisting LIFE Church in relocating to an alternative site and equivalent building is a matter for the PWA not the RMA. To circumvent the valuation and compensation mechanisms of the PWA through the conditions of designation would be inappropriate."*
625. In addition, AT presented new evidence from Ms Amelia Linzey, a planner. She had carried out the social impact assessment which was detailed in a report dated April 2013. In her evidence she acknowledges that the dislocation of the

LIFE community is *“potentially a social impact” relating to the “disruption to communities way of life and access to social and support services”.....“this facility is one that “attracts its community (in other words it is a destination in its own right).there may be some scope for appropriate alternative locations for the facility. **As such, while I acknowledge the potential effect of uncertainty relating to the timing of relocation/ acquisition of the facility, I do consider there is scope for these effects to be mitigated.....As a consequence, if the facility is to continue it will need to relocate to a new location, prior to construction commencing.**”*

626. Ms Linzey also acknowledged that there are other potential social effects of the requirement to take the facility. “These effects relate to the community who currently use the facility and the disruption which they may experience (either as a result of relocation or more significantly of the closure of such a facility).” She proposed as a response to this, the Social and Business Impact Delivery Work Plan. The outline for this document includes the following which is of relevance to the LIFE community:

“Facility and community service specific support proposals if required (it is anticipated that such plans may be required if community services/facilities will be closed or relocated as a result of construction activities and the community will need to find either temporary or alternative facilities/services.”

627. The proposed conditions submitted on 27 September 2013 and the revised 22 November 2013 conditions did not include the specific item outlined above, but the latter does refer to *“other measures to assist residents, businesses and social services/facilities to provide for service delivery requirements.”*
628. Counsel for LIFE responded to the AT position by letter dated 10 October 2013. This included a copy of an opinion from Mr Matthew Casey QC. He proposed that the LIFE concerns/effects be addressed by us recommending a condition to the effect that AT proceed with acquisition of the LIFE property *“immediately.”* He further suggested that our recommendation be that NOR be withdrawn if the condition is not accepted by AT. Mr MacLean notes that if this condition is accepted by AT then that will also address the lapse issue. We take this to mean that if this condition is accepted by AT then LIFE will accept the now proposed 15 year lapse period rather than the 7 years it sought at the initial hearing.
629. We asked for legal advice on Mr Casey’s proposal and Mr Beatson also made submissions on that proposal in his Further Closing Legal Submissions of 12

November 2013. Mr Beatson maintained his earlier stated position that the LIFE situation was one for the PWA processes. The Buddle Findlay advice (22 November 2013) we received was useful and largely supported Mr Beatson's submissions. In summary the advice was:

- That we cannot and/or should not recommend a condition regarding acquisition or relocation of the LIFE Church.
- There is an existing statutory remedy available under the RMA (section 185) and the Public Works Act to address disruption and financial effects on LIFE Church.
- It would not be reasonable for us to recommend early acquisition of a particular property under the PWA where the RMA already provides a process to trigger this under the section 185.
- It would be open for us to make a contingent recommendation as proposed by Mr Casey. (accept the condition or withdraw the NOR) but that would not be "best practice".
- We could impose a "best endeavours" requirement.
- If there are effects which cannot be adequately (our word) mitigated by way of conditions (and/or the s 185 and PWA process) then we must decide, applying our overall judgement whether to recommend withdrawal.

Discussion, recommendation and reasoning

630. We agree that the effects raised by LIFE will occur and to a degree are already occurring. We also agree that these effects do not ensure the social cultural economic wellbeing of LIFE and the LIFE community. We agree with the evidence for LIFE and that of Ms Linzey that the only way such effects (disruption and lack of a central facility) can be avoided, remedied or mitigated is by way of relocation of LIFE Central. We also consider that the only way in which the existing constraints on the facility and uncertainty can be addressed is by ensuring that relocation occurs in a timely manner over the next year or so.

631. We accept that the financial consequences of relocation can largely be addressed under the PWA provisions. We accept that to the extent that there is any shortfall between the cost of relocating to an equivalent site and any compensation that this may not be a matter for RMA conditions. Rather, that would reflect a deficiency in the PWA provisions. On the other hand, we think

that any shortfall would be an effect on the economic wellbeing of a community and that it is an effect which should be avoided by AT. It is within AT's powers to avoid that effect by way of offering adequate compensation and assistance with relocation.

632. We have concluded that the complete *closure* of LIFE Central would not represent sustainable resource management. That would have a significant adverse effect on the social and cultural wellbeing of a community of 3,000 or more people. Closure would not avoid, remedy or mitigate such effects. Accordingly, it follows that the conditions need to ensure that closure is not required.
633. In our view, the only appropriate/sustainable form of mitigation of the effects of the CRL proposal on LIFE and the LIFE community is for the Requiring Authority to assist with or facilitate the *relocation* of the LIFE central facility to a suitable metropolitan site and for that to be done over the next few years irrespective of when AT chooses to commence construction. That is because the existing facility is already undersized.
634. We have concluded that the belated proposed condition referring to "best endeavours" does not provide sufficient mitigation of the potential effects on LIFE Church. This is because all that it requires is that the Social Impact and Business Disruption Report outline what best endeavour steps have been taken in terms of acquisition and/or relocation of the Church. If the project is delayed (and perhaps even if it is not) the SIA report may not be prepared for some years. Accordingly it does not directly impose any enforceable "best endeavours" requirement on AT to assist with relocation in a timely manner over the next year or so. No timeframe is provided for the conclusion of the PWA process and there is no requirement for AT to assist with relocation of the LIFE facility beyond providing compensation for acquisition of the property.
635. We have considered whether section 185 of the RMA provides us with any assurance that acquisition will proceed in a timely manner. It does not. LIFE would need to satisfy the Environment Court that it has tried but failed to sell the property at market value that it would have had but for the designation and that the designation prevents reasonable use of the property in the meantime (i.e. pending the commencement of construction).
636. We accept that LIFE Central needs to be relocated within the next few years because of the size constraints of the existing facility. In our view section 184 RMA does not provide a mechanism to ensure that this occurs.

637. On balance, we conclude that even having regard to the significant benefits of the CRL proposal to the wider community, the effects on the LIFE community are such that arguably we should not recommend that the Notices of Requirement be confirmed, unless they are subject to a condition along the lines outlined by Mr Casey.
638. Nevertheless, having regard to the legal advice we have concluded that we should not adopt such an approach (recommending that the Notices be withdrawn unless a recommended condition is accepted). While we think that such a recommendation would be lawful and is justified based on the evidence, we think that it would achieve nothing. It is apparent that AT would not accept such a recommendation. That would then leave LIFE to appeal. That option is open to it in any event if it is not satisfied with AT's approach. In either event, AT has an incentive to get on with the process of making a reasonable offer to LIFE.
639. We have concluded that it is reasonable, appropriate and within our powers to recommend a more meaningful "*best endeavours*" condition and we have set out the wording of that earlier. We cannot see any good reason why AT would not accept such condition if it is genuine in its intention to proceed with good faith discussions in a timely manner. We also note that this would be consistent with the stated objective of the Social Impact and Business Disruption DWP. However, in our view this is a matter which should not await the finalisation of that plan and the Outline Plan, which will be some years away.
640. In addition, we have made a "non statutory" recommendation to AT which we have also detailed in our earlier summary. That is not a recommendation which AT needs to, or is expected to respond to. Nor is it intended to (or able to) influence any formal decisions which may have to be made under the PWA. It is intended to reflect our view of what is necessary or at least desirable in terms of addressing the effect of this project on the LIFE community. It may provide guidance to AT in its negotiations with LIFE which may avoid dispute resolution mechanisms under the PWA.
641. Finally, we note that in our view it would not be acceptable "or best endeavours" for AT to delay the acquisition process until it has funding and project certainty (including resolution of any appeals). That is because the effects on the LIFE community are already occurring and will increase with further delay.

MediaWorks NZ Ltd and TVWorks Ltd

The case for MediaWorks

642. We heard legal submissions from Mr Douglas Allan on behalf of MediaWorks NZ Ltd and TVWorks Ltd (collectively “MediaWorks”) which operate television and broadcasting activities from a complex of buildings covering most of the block of land bounded by New North Road, Flower Street, Nikau Street and Korari Street. The proposed tunnels would run immediately beneath the MediaWorks site and in this respect it is directly affected by NOR 2, being land sought to be designated sub-strata for the purposes of the CRL. Otherwise NOR 6 shows Nikau Street and the land on the opposite side of Nikau Street proposed to be designated for surface purposes (the Mt Eden construction work site) associated with the CRL. For completeness we note that MediaWorks also owns the site at 2 Flower Street opposite its buildings, which is used as a car park.
643. The case for MediaWorks was that the operation of its television studios will be severely and adversely affected by the project, to the point that it considers the activities to be incompatible during the construction phase and probably incompatible during the operational phase. The potential adverse effects of concern relate to noise, vibration and traffic. It considered that those effects have not been adequately identified by AT, let alone avoided or mitigated, and that the aspects of the project that affect MediaWorks operations should be declined approval unless and until the effects on it are addressed. It was submitted that the only realistic options available were for AT to relocate the route of the tunnels and to alter the location and operation of the neighbouring Mt Eden construction work site or for AT to relocate MediaWorks operations.
644. Mr Allan submitted if neither of those courses are adopted and the project is approved, notwithstanding MediaWorks issues, then the conditions will need to require both construction and operation to meet a 25dB L_{Aeq} noise standard in the basement of the premises (where the television studios are located) and provide, if that standard is not met at any time, that the construction or operation of the project is to stop until compliance is ensured. The concern by MediaWorks is based around its activities which need to be isolated from any externally generated noise and/or vibration given the sensitivity of the equipment it operates and the need to maintain the broadcast quality of service.

645. In relation to noise, broadcasting studios are a particularly sensitive activity and it was submitted by Mr Allan that there is a need for a far lower level of ambient noise than is generally acceptable for other commercial activities. He stated that the design level internationally accepted for broadcasting studios is 25dB L_{Aeq} and sought that standard be adopted so as to not compromise the MediaWorks activities. The evidence of Mr Nevil Hegley for AT was that the background noise level in the main TV3 studio in the basement of the building is 27dB L_{Aeq} ⁴⁵. Thus the studio currently experiences a background noise level generally consistent with the accepted design level and given the sensitivity of the activities it is essential the CRL project meets those levels.
646. In relation to vibration, MediaWorks is concerned that the level generated through the construction of the tunnels will result in regenerated noise that will be experienced in the studios. It notes that during future operation of the CRL it is expected that, with all potential mitigation measures being undertaken, the project should be able to comply, albeit narrowly, with the 25dBA (Lmax slow) requirement.
647. In relation to traffic, the concerns are associated with the need to maintain access to its parking areas and buildings and with their premises being adjacent to AT's proposed Mt Eden construction work site.

The evidence for MediaWorks

648. The traffic evidence from Mr Anatole Sergejew addressed MediaWorks concerns and stated that any conditions needed to include requirements for congestion monitoring and for changing mitigation measures should the actual traffic effects be worse than what has been modelled. We are of the view that these matters can largely be addressed by way of conditions, noting that the inclusion of such conditions to provide greater certainty was a concern of the traffic witness for this submitter. We have recommended conditions or amended conditions in this respect and include no further discussion regarding traffic effects.
649. In relation to construction noise, vibration and regenerated noise, comprehensive evidence was provided by Messrs Hegley and Simpson and Dr Heilig. We note that the regenerated noise is caused by a vibration source inducing small momentary deflections in a surface (be that walls, floors and/or ceilings) where the pulse from these surfaces is emitted as an audible sound

⁴⁵ Evidence in chief of Nevil Hegley, para 2.10

wave. It may be caused by tunnelling equipment or by the movement of a train along a railway. Depending upon the source and continuity of the vibration, the regenerated noise is heard as a low frequency hum or constant chatter. The technical evidence of these experts was that it would be difficult for AT to comply with appropriate standards in relation to the potential adverse effects upon MediaWorks activities associated with noise and vibration.

650. In planning evidence, Mr Vaughan Smith highlighted key points that came out of the MediaWorks considerations. He pointed to the uncertainty in terms of the construction methodology and programme and the associated uncertainty in terms of effects on MediaWorks. He expressed concern with the management plan approach and with AT not being able to provide an assurance that the required degree of mitigation will be possible. A principal point in the evidence for MediaWorks was a need for certainty through the current process as to the level of performance that will be required of AT rather than relying on future outline plans of works. This is a point of concern to us and one we cover in other parts of our recommendation.

Caucusing

651. Reference had been made during the hearing to some caucusing being carried out between the respective parties, being MediaWorks, AT and the AC reporting team. It was apparent to us that caucusing needed to be formalised and that it would provide the opportunity for the experts to consider details of the project and to potentially arrive at some areas of agreement in relation to appropriate compliance levels as a measure of acceptable effects. We were informed there was to be further testing and modelling as part of endeavouring to agree upon appropriate noise and vibration standards and mitigation measures. We wished to see that process continued through to the point where there could be a record of agreement, and any disagreement, and for that information to be provided back to us. This caucusing process was accordingly a principal part of our Memorandum and Directions of 29 August 2013 which set out the process for that to occur and for Mr Jon Styles of the AC reporting team to co-ordinate it with the parties and to come back to us at the hearing.

Presentations

652. From that point we received a continuum of legal submissions and evidence that included:

- AT with a memorandum from legal Counsel, further statements of evidence and a revised set of proposed conditions on 27 September 2013.
- MediaWorks with further evidence during the week of 11 October 2013 from its planning and traffic witnesses. They continued to express concern in relation to some of AT's proposed conditions although it was apparent to us that a number of the concerns were being addressed through the revised conditions from AT.
- A memorandum dated 16 October 2013 from Mr Styles reporting on the caucusing. He attached a Memorandum of Joint Discussions on the Noise and Vibration Effects Arising from the Construction and Operation of the City Rail Link on MediaWorks dated 1 October 2013. This is a "final signed joint statement". The joint statement of 1 October 2013 sets out a number of conditions specific to MediaWorks issues along with a procedure for further noise and vibration testing to facilitate agreement on the issues outstanding or at least to narrow the differences between the experts as far as possible.

653. The main points of disagreement that came out of that statement, and hence the issues for consideration were:

- The noise limits applicable to the main studio (on the basis that if that is acceptable it will also be so for the other studios);
- The noise limits applicable to other noise sensitive spaces;
- The appropriate organisation/person to assess the acceptability of construction noise; and
- Setting an appropriate vibration limit for the MediaWorks site.

654. In relation to studio noise limits we had the evidence of Mr Hegley for MediaWorks stating that the upper level of noise in the studios and in the various noise sensitive rooms to ensure the minimum adverse noise effect for any presenting and quality of sound to air is considered to be 27dB L_{Aeq} (5 min) and 30dB L_{Aeq} (1 sec). We also had Mr Simpson stating that MediaWorks is in the best position to assess whether or not an intrusive construction noise

affects the quality of their productions since they are able to assess both the quality of the TV broadcast from both an audio and performance perspective and expressing his view that the existing noise level is an appropriate noise goal for all other occupied spaces (other than the TV studio). We do not accept this view that MediaWorks be left to determine what may be an acceptable level and consider this should be capable of determination through the evidence.

655. In relation to vibration Dr Heilig pointed out the need for vibration in the studio to be controlled to levels below those which impact upon broadcast image quality and in this respect he accepts Mr Harrison's (for AT) suggested value for the camera equipment of 0.1mm/s (peak) during sensitive time. He notes that Mr Whitlock, also for AT, agrees with this position.
656. We received supplementary evidence from Dr Heilig and Messrs Simpson and Hegley for MediaWorks on 30 October 2013. Mr Simpson provided us with the conclusion that there will be some variability in the regenerative noise levels and that it is likely that regenerative noise impacts will occur in the studio irrespective of the model adopted. Dr Heilig offered us the opinion that given the inherent variability in vibration and the potential deleterious effects on MediaWorks operation, the simultaneous operation of MediaWorks and the CRL construction programme can only be assured by ensuring appropriate vibration criteria are applied, that these limits are appropriately monitored and administered and in any instances where the permissible levels are exceeded, mitigation steps are immediately implemented. That seemed to us to be a fair appraisal of the situation, Dr Heilig not stating simultaneous operations could not be affected but rather simultaneous operations could potentially happen but only be acceptable with close attention to the generated effects from the CRL construction.
657. Noise issues were covered further by Mr Styles in a memorandum of 1 November 2013 in which he discussed the conditions that had not been resolved between the parties. In relation to studio noise limits, the debate comes down to the difference between Mr Hegley's views of the noise limits as being 27dBA L_{Aeq} (5 min) and 30dBA L_{Aeq} (1 sec) as compared with those from AT (Mr Whitlock) which are 35dB L_{Aeq} (5 min) and 37dB L_{Aeq} (1 sec) with the associated frequency limits being adjusted to meet the dBA values accordingly. Mr Styles' views of acceptability generally aligned with those of the AT experts although he did have different views on the details. He subsequently agreed following further caucusing for the reasons discussed below in our Findings.

658. It is apparent to us that Mr Hegley's views are based upon the internationally accepted 25dBA and the current operation of the studio at 27dBA as opposed to the testing that was carried out at MediaWorks. In that respect we find that Mr Styles provides a more realistic assessment of the noise impact of the proposed works as opposed to "holding the line" at what the current operating regime may be.
659. Vibration issues were covered by Mr Styles in his memorandum of 4 November 2013. He confirmed that for construction activities during sensitive times (e.g. broadcasting), the limit of 0.1mm/s has been agreed between the experts as being appropriate. Agreement was also reached on a condition relating to a vibration limit for sensitive equipment.
660. A Consulting Advice Note from Mr Styles dated 11 November 2013 was provided to us to clarify his suggested noise limits and the rationale behind it. We also received a jointly signed⁴⁶ Memorandum setting out comment from MediaWorks experts on the information exchanged by AT and the AC reporting team experts. This Memorandum confirmed that MediaWorks site specific conditions remain as those included in its Supplementary Legal Submissions dated 11 November 2013.

Findings

661. We reached a situation whereby MediaWorks and its experts rely more upon the current operating environment as opposed to determining what limits may be applied in a manner that MediaWorks can continue its current operations without being adversely affected by noise and vibration associated with particularly the construction of the CRL. Mr Styles offered us a useful role as a s42A RMA reporting officer in being able to comment upon the respective statements of evidence that have been received and we placed some reliance on his advice in that respect.
662. We find that the MediaWorks activities can continue during the construction and operation of the CRL. This does depend on specific conditions upon the designation that limit the noise and vibration impacts from particularly the construction works and also provide for constant monitoring so that immediate action can be taken if necessary to address any non-compliance and unreasonable adverse effects. On that basis we need to ensure there are robust conditions on the designations that will ensure the MediaWorks

⁴⁶ John Heilig, Mark Simpson and Nevil Hegley

operations are sufficiently addressed. These need to include regular monitoring and action being able to be taken immediately upon any non-compliances with the conditions.

663. In order to be able to determine effective terms for conditions, and to address the differences between the AT experts and Mr Styles in relation to the noise limits applying to Studio 1 during sensitive times, Mr Styles provided us with a Consulting Advice Note dated 22 November 2013. He also addressed the “other noise sensitive” spaces that had arisen as a consideration during the hearing.
664. In that Note, Mr Styles acknowledged the “considerable advancements” in the positions of the AT experts and himself during further discussions. He and AT’s experts agree on the noise limits to be applied to the studios, as per the Consultant Advice note of 22 November 2013 from Messrs Harrison, Whitlock and Fitzgerald. Those limits are 35dB $L_{Aeq(5\text{ min})}$ and 37dB $L_{Aeq(1\text{ sec})}$ with a 5dBA penalty to be applied to any construction noise that contains special audible character which can take account of use of the rock breaker machinery.
665. Mr Styles summarised the options and stated he now agrees with the AT experts in respect of discarding the earlier table of spectral limits to apply in favour of single dBA limits for the 5 minute and 1 second noise limits. That makes the background correction process much simpler and those limits are deemed to be construction limits only. He also agreed with AT that the higher limits apply to all sources in the first instance but that a 5 decibel penalty be applied in the event that the source of interest contains special audible character as defined in NZS 6802: 2008.
666. MediaWorks, in its joint statement dated 28 November 2013 from Messrs Heilig, Simpson and Hegley concluded that these levels will “unreasonably compromise any broadcasting”. They point out that the original joint statement included the sound spectrum which has now been removed and which will therefore allow a level at some frequencies to increase noticeably above the level recommended via the use of the sound spectrum.
667. In summary, we are left to decide between the noise limits proposed by AT, supported by Mr Styles for the AC reporting team (35dB $L_{Aeq(5\text{ min})}$ and 37dB $L_{Aeq(1\text{ sec})}$), and those from MediaWorks experts (27dB $L_{Aeq(5\text{ min})}$ and 30dB $L_{Aeq(1\text{ sec})}$).
668. We are of the view that the MediaWorks witnesses, in relation to noise, did not consider they could move from their initially stated position. AT worked off the information available in reaching their figures, with those supported by Mr

Styles as the reporting officer. Whilst some consideration could be given to adopting a position somewhere between the levels proposed by the parties, there is no technical evidence to support such a position. We are left to choose between the two positions. We find that we prefer the views expressed by Mr Styles.

669. We find that the appropriate limits are (35dB L_{Aeq} (5 min) and 37dB L_{Aeq} (1 sec)). Accordingly, we recommend the limits stated in Condition 35.2, Noise Limits – Studios, remain.
670. In relation to the other sensitive spaces at MediaWorks, Mr Styles and AT reached the view that there was insufficient information to set an appropriate noise limit and that these spaces can be adequately dealt with through the standard notable noise and vibration receiver provisions⁴⁷. MediaWorks however provided noise levels for these spaces based on the existing noise environment⁴⁸.
671. We find agreement with Mr Styles that appropriate levels can be adequately dealt with through the notable noise and vibration receiver provisions, especially given that these levels were not the subject of in depth investigation by all the parties at the hearing. **We recommend** that Condition 35, Project Standards – MediaWorks, has an additional provision as 35.4, with consequential renumbering:

Noise and Vibration Limits for Other Sensitive Spaces

The noise limits and/or other mitigation measures for Other Sensitive Spaces shall be defined through the Notable Noise and Vibration Receiver provisions in Condition 39. Other Sensitive Spaces includes:

- i) Campbell Live Office*
- ii) Newsroom*
- iii) Conference Room*
- iv) Sports Office*
- v) Graphics.*

Vibration limits for those spaces are set out in Conditions 35.8, 35.9 and 35.10 below.

672. **We recommend** further that a new 35.12 be added:

⁴⁷ Consulting Advice Note from Jon Styles, 22.11.2013

⁴⁸ Joint Statement from MediaWorks experts, 28.11.2013

Review

If compliance with the noise and vibration limits in Conditions 35.2 and 35.3 is achieved but the noise or vibration at those limits is considered to be unreasonable in terms of section 16 of the Resource Management Act 1991 by Auckland Council: Compliance Monitoring Manager, then the Notable Receive provisions in Condition 39 may be applied to the MediaWorks studios.

673. This will mean that even if the noise levels in Condition 35 are met but there remains a concern, then the notable receivers' provisions in Condition 39 can be applied. Those include the opportunity for an independent expert to become involved if the parties cannot agree.
674. In relation to operational rail vibration, there was comment that the limits in Condition 63 should apply in perpetuity but only to those receivers that exist at the time of lodgement of the Notices. We agree that it would be unreasonable to require AT to have to comply with the limits in the event that a new and sensitive receiver locates close to the CRL lines after the CRL opens. We are however of the view that the building type term "Industrial" in Condition 63 is not appropriate and that "Commercial" is a better description for the receivers around the CRL. **We therefore recommend** this amendment to Condition 63.
675. **We also recommend** that Condition 63 be amended to read:
The Requiring Authority shall ~~confirm~~ **ensure** that operational rail vibration and reradiated noise levels comply with the following Project Criteria at any noise or vibration sensitive receiver existing at the time of lodgement of the CRL NoR:
676. We record that we have made further comments and recommended amendments to conditions above in our discussion headed Operational Noise and Vibration.
677. In all of the above respects, we are satisfied that the conditions on the designations, in our recommendation, will serve to adequately avoid and/or mitigate any adverse effects on the MediaWorks activities.

Bear Park, Mount Eden Early Childhood Centre (Bear Park)

678. Legal submissions were presented to us by Mr Matthew Gribben. Ms Ximena Reyes, Manager of Bear Park and her husband and fellow director, Mr Moses Tokuma of Moxi Ltd also provided us with an overview of the childcare operations. The Centre is located at 32 Akiraho Street, Mt Eden. Mr Gribben

advised that Bear Park supports the CRL but seeks confirmation that the designation (NOR 6) contains conditions which address their concerns with respect to:

- noise and vibration
- dust
- access to the property
- continuity of services
- communications.

679. The overview informed us that the Centre is licensed for up to 75 children per day with ages ranging from 3 months to 5 years. It has outdoor play areas which are used throughout the year. The Centre is open from 7.30am to 6pm. Preschool children have sleep times between 11.30am and 2.30pm and toddlers can sleep at anytime throughout the day. Ms Reyes noted that children often slept in north facing rooms or covered areas which would receive higher noise levels than the infant sleeping room. The property does not directly adjoin the NAL however the northern outdoor playground has views of the railway line.

680. Ms Reyes observed that the children were not bothered by the noise of passing trains, but she was apprehensive that construction noise (including blasting) for the anticipated extensive time period would be disruptive and potentially harmful to the children. She sought assurance that Bear Park would be consulted and kept informed on construction activities and that the conditions would specifically identify Bear Park as a noise sensitive facility.

681. Mr Fitzgerald, for the applicant in his evidence in chief⁴⁹, stated that the playground was already exposed to high noise levels and therefore the predicted construction noise levels of up to 60-65dBA L_{Aeq} permitted by the proposed Project Blasting and Noise Standards would be reasonable for temporary construction works. He noted that there could be some periods during construction, when noise levels in sleeping rooms could warrant specific noise mitigation measures (such as mechanical ventilation in sleeping areas, acoustic barriers window treatment and other such methods) in order to comply with the noise standard of not exceeding 35dB L_{Aeq} . He considered this would be handled under the CEMP framework. AT also pointed out that Bear Park was included in the conditions as a "Sensitive Noise and Vibration Receiver" and as such would be consulted and kept informed.

⁴⁹ Evidence of Craig Fitzgerald, para's 106 to 111

682. AC's reporting team specialist in noise and vibration, Mr Styles, expressed concern to us that the outside play areas at Bear Park could be exposed to noise levels as high as 75dBA L_{Aeq} through proposed Condition 31 and offered 55dB L_{Aeq} as a more appropriate standard. However, he was persuaded by evidence presented by Mr Fitzgerald (Third Statement) to recognise that the ambient acoustic environment was already in excess of the predicted construction noise levels and accordingly recommended to us in his consulting advice note of 24 Oct 2013 that the construction noise standard in outdoor play areas (whilst occupied during normal opening hours) be 65dBA L_{Aeq} but noted this could be varied through the standard SSCNVMP process. For all other existing or new early childhood centres he recommends 55dBA L_{Aeq} for outdoor play areas which could also be subject to variation through the SSCNVMP process. At the close of the hearing AT and the AC reporting officers were holding to their respective positions described above, on construction noise standards for outdoor areas for Bear Park and any other early childhood education centre.
683. We do not accept that construction of the CRL is a temporary activity in a typical sense. The nearby CRL construction yards and material storage areas will be in operation for several years whilst the project is being built and commissioned. Stringent noise standards and effective mitigation is warranted for Bear Park or other early childhood centres to minimise these adverse effects. We have therefore accepted the AC reporting team's recommended additions to Condition 31.1 for Bear Park and other early childhood education centres which exist or may be established during the CRL construction phase.
684. Bear Park's request for a building pre-condition survey has been accepted insofar as AT has included it in the Appendix 1 list (to the conditions) for consideration for a building condition survey. Bear Park's request to be consulted has also been accepted by AT. Bear Park is specifically named as a participant in the Communication and Consultation Plan, Condition 15.4(c) (viii).
685. The submitter's itemised concerns with respect to dust and vibration control, access to Mt Eden Station, traffic controls, construction access restrictions and utility services are generic and have been addressed by us under the relevant recommendation report headings above and relevant clauses of the conditions.

Other directly affected submitters

686. In our view, the concerns raised by other directly affected submitters are addressed in the revised conditions presented by AT and supplemented by the amendments then sought to be included by the AC reporting officers. These revised conditions incorporate clarifications and additional content to address the management of adverse effects as was sought by submitters and ourselves. The revised conditions now provide:

- opportunities for specific feedback from “directly affected” and “affected in proximity” parties to the processes of the development of the CEMP and the DWPs;
- independent peer review of the CEMP and DWPs including consideration of any information provided to the Council by affected parties;
- improved concerns and complaints management; more specific provisions relating to transport, access and parking; and
- amended noise and vibration conditions all with the view to having a greater regard to the concerns of directly affected parties.

687. Otherwise, we note many of the concerns raised by submitters are addressed through the revised conditions carried forward into our recommendation.

CONCLUSION

688. We have concluded that the Notices of Requirement for the proposed CRL project, with the conditions included as part of our recommendation, are consistent with and meet the s171 provisions of the RMA. We find, in the overall broad judgement we are to make in terms of Part 2 of the RMA, that the project will serve to promote the sustainable management of natural and physical resources and that the draft conditions that had been proposed with the Notices and further developed during the hearing process, with some recommended modifications by us, should ensure that all adverse effects on the environment (which largely relate to the construction phase) will be appropriately avoided, remedied, or mitigated. We find too that the proposal is consistent with those parts of ss6, 7 and 8 RMA that are relevant to the consideration of it.

RECOMMENDATION

689. That pursuant to sections 168 and 171 of the Resource Management Act 1991, the Notices of Requirement by Auckland Transport made to the Auckland Council to designate land and areas below the ground surface, as described below, be **confirmed subject to conditions**, as set out in Appendix 1 to this Recommendation (including recommended amendments) with a lapse period of 15 years.

690. The designations are for the construction, operation and maintenance of the proposed City Rail Link project, that being a 3.4km underground passenger railway (including two tracks and 3 underground stations) running between Britomart Station and the North Auckland Line in the vicinity of the existing Mt Eden Station, and an additional 850m of track modifications within and adjacent to the North Auckland Line.

691. The designations are as follows:

NOR 1: A surface designation which extends from Britomart to Albert Street/Mayoral Drive (in the vicinity of the Aotea Centre car parking entrance on Mayoral Drive).

NOR 2: A substrata designation which encompasses the land below the ground surface from Mayoral Drive to New North Road. It does not include sub-strata areas within station designations.

- NOR 3: A strata protection designation in respect of land 5m below the ground surface from Mayoral Drive to New North Road, Newton. The designation will be located above the two tunnels (to be designated under NOR 2), it does not include sub-strata areas within station designations.
- NOR 4: A surface and substrata designation encompassing the land within and in the vicinity of Pitt Street, Beresford Street, Karangahape Road, and Mercury Lane.
- NOR 5: A surface and substrata designation encompassing the land within, and in, the vicinity of Symonds Street, Dundonald Street, and New North Road.
- NOR 6: A surface designation between New North Road, Mt Eden Road and Boston Road in the north, and the North Auckland Rail Line in the south. It also includes land located on the southern side and adjacent to the North Auckland Rail Line between Normanby Road and Mt Eden Road and to the immediate east and west of Porters Avenue.

692. In addition, the make the following “informal” recommendations to Auckland Transport:

1. *That Auckland Transport puts in place a mechanism to provide quick and ready access to compensation for any businesses (or at least small businesses) which suffer a significant and proven loss of custom as a result of the construction project.*

This recommended action is further to Condition 61 which requires a Social Impact and Business Disruption delivery work plan. This recommended action recognises the merits of Condition 61 but also that significant residual adverse effects upon businesses may result from a protracted construction period and it not being fair that the wider community benefits of the project be at the economic expense of individuals or businesses. It further recognises that the Public Works Act compensation mechanism for “substantial injurious affection” does not in our view adequately address such effects.

In view of the legal uncertainty regarding the validity of compensation conditions, we have not recommended that this be a condition of the designations.

2. *Following its decision under section 172 of the Act (and irrespective of any appeals) Auckland Transport should continue or commence (as the case may be) good faith negotiations with Life Church and the Chinese Community Centre and utilise its best endeavours to reach*

agreement with those parties as to acquisition of their properties and relocation of these community facilities as soon as is reasonably practicable. Further, that in negotiating compensation for the Life Church property, Auckland Transport should ensure that the Life Church community does not bear any cost of relocating to equivalent premises. Auckland Transport should work with Life Church to ensure that its central campus is relocated to a suitable central city site by December 2015 unless the Church agrees to remain longer.

These recommended actions are further to Condition 61 which requires a Social Impact and Business Disruption delivery work plan that is to have particular regard to the Chinese Community Centre and the Life Centre Church. It recognises the merits of Condition 61 in this respect but also recognises that the only way the adverse effects of the project on the Life Church community can be sufficiently addressed is for Auckland Transport to ensure that Life Church Central is relocated as soon as is reasonably practicable (or agreed) at no expense to that community.

A handwritten signature in black ink, appearing to read 'AR Watson', written in a cursive style.

AR Watson (chair)

**For Hearings Panel of Independent Commissioners
(Mark Farnsworth, David Mead, Philip Milne, Graham Wheeler and Alan Watson)**

Date: 28 February 2014

APPENDIX 1

Conditions on the designations

APPENDIX 2

Overview map

APPENDIX 3

List of appearances at the hearing