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# Newmarket Level Crossing Project – Notice of Requirement Decision

## Recommendations

That the Board:

- i. Accepts the recommendation of the independent commissioners (Attachment 1) to confirm the Notice of Requirement (NoR) for the Newmarket Level Crossing Project.
- ii. Approves the modification of two conditions:
  - Condition 18.7 (c) Additions shown as underlined and deletion in strikethrough.  
*A description of the mitigation measures proposed to reduce the noise and vibration levels and minimise the degree of non-compliance as far as practicable including how the selected mitigation achieves the Best Practicable Option, including and any options mitigation options that have been discounted due to cost or any other reason;*
  - Condition 18.8  
*Any management schedule produced in accordance with condition 18.7 is to be provided to the Council (Major Infrastructure Projects Team Manager) for ~~approval~~ certification no less than 5 working days prior to the authorised works commencing.*
- iii. Notes the decision of the independent commissioners to approve the resource consent applications.
- iv. Notes the Environment Court Appeal on the decision on the resource consent applications from Cowie Street Residents Association Incorporated, Parnell Community Committee Incorporated and Parnell Incorporated (Attachment 2).
- v. Notes that the General Counsel will notify Auckland Council under delegated authority of the board's decision. Notes that submitters will have 15 working days to lodge an appeal with the Environment Court from when Auckland Council serve the decision on directly affected land owners and occupiers and submitters.

## Executive summary

The Newmarket Level Crossing Project Notice of Requirement (NoR) was lodged, under delegated authority by the Group Manager Property and Planning, on 11 September 2015. The application was publically notified on 7 October 2015 and the submission period closed 18 November 2015. AT extended the submission period from 20 working days to 30 working days given the community interest in the Project. 15 submissions were received - 2 neutral submissions (1 subsequently withdrawn prior to the hearing), 6 submissions in opposition (3 were identical submissions from Cowie Street Residents Association Incorporated, Parnell Incorporated and Parnell Community Committee Incorporated) and 7 in support including 1

**CONFIDENTIAL**

in support from the only directly affected landowner. The hearing was held on 19 – 21 April 2016 before independent commissioners' appointed by Auckland Council.

On 14 June 2016, Auckland Transport (AT) received the independent commissioners' recommendation to confirm the NoR (**Attachment 1** Commissioners' Recommendation) and the decision to approve the resource consent applications.

The resource consent decision has been appealed to the Environment Court by Cowie Street Residents Association Incorporated, Parnell Community Committee Incorporated and Parnell Incorporated for the reasons set out in the attached Appeal Notice (**Attachment 2**).

AT has a statutory timeframe of 30 working days to give written notification to Auckland Council (AC) of its decision in relation to the Commissioners' recommendation (on or before 26 June 2016).

This paper recommends the board accepts the recommendation to confirm the Newmarket Level Crossing Project NoR under section 172 (1) Resource Management Act 1991 (RMA) and approve the modification of conditions 18.7 to align with the Best Practicable Option (BPO) for noise mitigation in accordance with s16 of the RMA and condition 18.8 to alter the word "approval" to "certification" of the construction noise management plan in accordance with the outline plan process.

## Strategic context

The Project will provide for the objectives of the Auckland Plan, and contribute to the Integrated Transport Plan 2012-2041 and Statement of Intent 2015/16-2018/19.

## Background

The at-grade level crossing at Sarawia Street is located on the Newmarket Branch Line which is the busiest section of rail track. Closing the existing level crossing will improve the efficiency and operation of the higher frequency rail network and network performance.

The preferred option for alternative access to Laxon Terrace and Youngs Lane is a new road between Cowie Street and Laxon Terrace.<sup>1</sup>

The new road will be approximately 260m in length and a total of 7.4m in width, consisting of two 2.5m wide traffic lanes, two 0.3m wide drainage channels, and a 1.8m wide footpath on one side. The new road will be designed as a low speed environment, with traffic calming measures at several locations including a pedestrian refuge near 4 Cowie Street and a single-direction chicane near Laxon Terrace. Stormwater treatment measures include a vegetated swale and rain gardens.

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<sup>1</sup> Board Resolution December 2013 - Approved by the Board.

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The NoR for the Project encompasses all proposed works necessary to construct, operate and maintain the new road between Cowie Street and Laxon Terrace. Resource consents were sought and granted relating to matters such as stormwater discharge, earthworks, tree removal from a Significant Ecological Area (Newmarket Park) and works on contaminated land. The grant of consents has been appealed to the Environment Court.

## The Commissioners' recommendation

The Commissioners' were required to consider the Newmarket Level Crossing Project proposal, submissions, and evidence from AT and AC and their experts, and whether the conditions proposed by AT were sufficient to address the effects generated by the Project. The Commissioners' recommended confirming the NoR subject to the conditions put forward by AT with the exception of a recommended change to Condition 18.8 relating to "approval" by AC of a construction noise management plan.

Further discussions between AT and AC have concluded that "certification" is the appropriate term as the construction noise management plan will be provided with a suite of management plans to AC as part of the outline plan process and AT's adaptive management framework. In accepting this change, AC requested additional changes to condition 18.7 in relation to the mitigation proposed by the construction noise management plan. The proposed changes ensure that where AT cannot meet the noise standard, the construction noise management plan as far as practicable will identify suitable mitigation which achieves the BPO under the RMA. The proposed change is considered appropriate and in accordance with the requirements of the RMA and provides a measure for which the construction noise management plan can be certified by AC. It is recommended that the wording of Condition 18.7 and 18.8 be altered (as set out in **Attachment 3**) and issued with AT's decision.

The Commissioners' concluded "that the Newmarket Crossing project has been envisaged for the wider community to benefit from improved rail journey times through the busiest section of rail track in the country and for Auckland Transport and KiwiRail to operate their infrastructure safely and efficiently. It will also contribute to encouraging people to adopt public transport modes, being a long-term strategic objective for the region which is reflected in the relevant planning instruments. Public access to Newmarket Park will be maintained and no longer involve having to pass directly across the railway lines."

The Commissioners noted in their recommendation that "the wider benefits [of the Project] outweigh the interests of the Cowie Street residents whose principal concern is to secure the status quo so far as their street and its amenity is concerned."

## Next steps

Subject to Board approval:

- General Counsel, pursuant to Delegation Instrument ATDI2012/01 from the Chief Executive dated 17 July 2013, will notify AC of AT's decision to confirm the Newmarket Level Crossing Project NoR and conditions as outlined in the recommendation.
- AC must serve a copy of the decision on all submitters and directly affected landowners/occupiers within 15 working days of AT making its decision. Submitters may lodge an appeal to the Environment Court within 15 working days from when the decision is served.

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- It is anticipated that an appeal to the NoR will be received from Cowie Street Residents Association Incorporated, Parnell Incorporated. and Parnell Community Committee Incorporated (in addition to the appeal to the resource consent applications already received).
- Based on experience from other recent appeals, it is expected all parties will agree to participate in Environment Court assisted mediation, likely to occur in September/October 2016. If an Environment Court hearing is required post mediation, the matters will likely be set down for a hearing in December 2016/January 2017.
- A confirmed or modified designation will be included in the operative Auckland Council District Plan (Isthmus Section) and the Proposed Auckland Unitary Plan.

## Attachments

Attachment Number	Description
1	Commissioners' recommendation
2	Environment Court Appeal Notice from Cowie Street Residents Association Incorporated, Parnell Community Committee Incorporated and Parnell Incorporated
3	Amended Condition

## Document ownership

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<b>Approved for submission</b>	David Warburton <b>Chief Executive</b>	

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## Glossary

Acronym	Description
AC	Auckland Council
AT	Auckland Transport
BPO	Best Practicable Option
NoR	Notice of Requirement
RMA	Resource Management Act 1991