

**BEFORE THE EXPERT CONSENTING PANEL
CONCERNING THE PAPAURA TO PUKEKŌHE RAIL ELECTRIFICATION**

IN THE MATTER of the COVID-19 Recovery (Fast Track Consenting) Act 2020 (**the Act**) and the deliberations and final decision of the Expert Consenting Panel appointed under clauses 2, 3, and 4 of Schedule 5 of the COVID-19 Recovery (Fast-Track Consenting) Act 2020 to consider an application for resource consent by KiwiRail Holdings Limited

Expert Consenting Panel: Lachlan Muldowney
Shane Solomon
Michael Parsonson

Legal Representation: Ian Gordon

All Comments received: 29 June 2021

Date of Decision: 30 July 2021

Date of Issue: 30 July 2021

RECORD OF DECISION OF THE EXPERT CONSENTING PANEL

UNDER CLAUSE 37 OF SCHEDULE 6 OF THE ACT

Section 1: Decision of the Panel

1. This Expert Consenting Panel (**Panel**) was appointed under Schedule 5 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**Act**) on 12 May 2021 to consider an application by KiwiRail Holdings Ltd (**Applicant**) for resource consents to enable the electrification of rail between Papakura and Pukekohe (**Project**). The Project is a listed Project as set out in Schedule 2 of the Act.
2. The Applicant seeks resource consents for the Project in respect of:
 - a) bulk earthworks across the entire Project footprint;
 - b) the construction of two temporary access tracks outside of the rail corridor that are located within Stormwater Management Area - Flow 1 overlays;
 - c) the disturbance of contaminated material at Pukekohe Station and Stabling Yard;
 - d) the use of 60 Mercer Road as a construction yard and site office for five years;
 - e) the removal of up to approximately 34,750 m² of vegetation from the riparian areas of 35 streams; and
 - f) the removal of up to approximately 9,120 m² vegetation within 10m of 11 wetlands.
3. For the reasons set out, the Panel grants the resource consents sought by the Applicant set out in Appendix 1 on the conditions set out in Appendix 2 of this decision (**decision**).

Section 2: Procedural background and comments received

A listed Project

4. The Act came into force on 8 July 2020 and has the following stated purpose:

4 Purpose

The purpose of this Act is to urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.

5. The Panel's consideration of the application must be made subject to this stated purpose, and the provisions of Part 2 of the Resource Management Act 1991 (**RMA**).
6. The Project is a "listed Project" under Schedule 2 of the Act, and KiwiRail is an authorised person for the purposes of s 15 of the Act, which entitles it to apply under the Act instead of under the RMA, for the necessary resource consents.
7. The application was lodged with the Environmental Protection Agency (**EPA**) on 10 March 2021, and pursuant to clause 3(1) of Schedule 6 of the Act, the EPA was required to determine whether the application complied with the mandatory criteria prescribed under clause 3. That determination was made, in positive terms, on 17 March 2020. The application was referred to the Panel on the date of its appointment, 12 May 2020.

Request for comments

8. The Panel immediately addressed the issue of who should be invited to comment on the application. Pursuant to clause 17(4) of Schedule 6 the

Panel must invite written comments on the application from the persons or groups listed in that clause. In addition to the requirements of clause 17(4), the Panel may invite written comments from any other persons that the Panel considers appropriate under clause 17(5) of Schedule 6 of the Act.¹

9. In its determination of who should be invited to comment the Panel considered the extent of land on which the Project is undertaken, and the land adjacent to that land. In identifying the extent of land parcels that were considered “*adjacent to the land on which the Project is undertaken*”, the Panel took account of land parcels that are adjoining, or across the road from land on which the Project is to be undertaken (over the length of the rail electrification). The Panel also considered adjacent land to include land parcels that are not directly adjoining land on which the Project is undertaken, nor are they across the road, but formed part of the context of the site.
10. Applying that methodology, the Panel issued a minute (**Minute 1**) on 21 May 2021, which set out the methodology adopted to identify those parties who would be invited to comment. In total, 845 invitations to comment were sent out by the EPA. The invitations to comment were issued by the EPA on 28 May 2021, and pursuant to clause 18(1) of Schedule 6, responses were required to be lodged with the EPA by no later than 14 June 2021.
11. Of that list, in addition to Auckland Council, 21 parties lodged comments by 14 June 2021. Set out at Appendix 3 of this decision is a list of the parties who provided comment, together with a summary of the issues raised. A more detailed analysis of the core issues raised is set out later in the decision.

¹ Limited or public notification is prohibited under clause 17(1) of Schedule 6.

12. One party who was invited to comment was Environmental Defence Society (EDS). EDS raised concerns regarding the adequacy of information supplied with the application, particularly related to potential ecological offsets, and requested that the Panel seek further information from the Applicant on this topic. EDS sought an extension of the timeframe to comment until after the information was provided.

13. On 3 June 2021 the EPA wrote to the Applicant stating:²

The ecological effects assessment identifies certain mitigation measures to address potential adverse effects on ecology. Section 4.2 item 6 identifies that an ecological offset may need to be considered once the aggregate stream length disturbed/removed or modified is known. Please provide detail of;

- a. any potential stream disturbance/removal or modification (noting that the Panel's understanding is that the application does not seek consent, nor anticipate, works within a stream bed);
- b. the range of likely ecological offsets that might be deployed; and
- c. how this factor is addressed in the proposed conditions of consent.

14. That information was required by 10 June 2021. On 11 June 2021 the Applicant wrote to the EPA setting out its response, advising:

Section 4.2, item 6 of the Ecological Effects Assessment identifies that an ecological off set may need to be considered once the aggregate stream length disturbed / removed or modified is known. This assessment was prepared in the context of the Papakura to Pukekōhe Rail Electrification Project as a whole. KiwiRail subsequently lodged an application with the EPA for the first package of consents required for the Project ("Application 1"). We confirm the Panel's understanding that Application 1 does not seek consent for, nor anticipate, works within a stream bed. Any stream works will be applied for as part of a separate consent application, and the ecologist's comment was noted in anticipation of this later package of culvert works.

Accordingly, Section 4.2, item 6 of the Ecological Effects Assessment is not relevant to Application 1 before the Panel. No stream length will be disturbed, removed or modified as part of the works for which consent is being sought as part of Application 1 and therefore no ecological offsets are proposed as part of Application 1 for stream works. For completeness,

² Letter from EPA to KiwiRail dated 3 June 2021.

we note that Application 1 does seek consent for vegetation removal from the riparian areas of several streams. However, as set out above there are no works proposed within any streams themselves.

15. The Panel resolved to accept this late response, and immediately forwarded the response to EDS to enable completion of its comments by 14 June 2021. EDS provided its comments by 17 June 2021, and the Panel resolved to consider those comments, albeit late.³
16. Pursuant to clause 19 of Schedule 6 of the Act the Applicant then provided its response to all comments received by 22 June 2021.

Additional consents

17. On 23 June 2021 the Applicant advised the EPA that as a result of the comments received from Auckland Council, it had determined that two additional resource consents were required to enable the Project to proceed. The consents relate to works contemplated as part of the application, and while permitted activities under the Operative Auckland Unitary Plan (**AUP(OP)**), are discretionary activities under the National Environmental Standards for Freshwater 2020 (**NES-F**) and therefore require consent.
18. The first consent is for the discharge of sediment laden water. The Assessment of Environmental Effects (**AEE**) submitted with the application included a description and assessment of the effects of this activity, with conditions proposed to manage these effects. Accordingly, although resource consent is required under Regulation 45(4), because the AEE had already considered the activity and its effects, the only amendments required to the application are to list it in the summary of consents sought

³ Clause 18(6) of Schedule 6 provides this discretion.

for the Project. No additional information is required to be included in the AEE or specialist reports.

19. The second consent is for the diversion of groundwater. The Applicant has advised that it is applying for this consent on a precautionary basis as earthworks and construction of the foundations for the overhead line equipment foundations may encounter groundwater and therefore require diversion of groundwater within 100m of a natural wetland. To update the application, additional text has been added to sections of the AEE and Erosion and Sediment Control Report (**ESC Report**) to supplement the resource consent application for this activity. Although the diversion of groundwater was not described in the original AEE, this activity has been assessed in the updated AEE as having no more than minor effects. The Applicant contends that any effects can be appropriately managed through the ESCR Report.
20. On 24 June 2021 the Panel issued a minute (**Minute 3**) establishing procedural directions addressing this issue. The Panel required the Applicant to submit any amended application which incorporated the additional consents by 25 June 2021, together with legal submissions addressing all procedural issues arising. Minute 3 also required that the amended application documents be immediately provided to those parties who had previously provided comments under Clause 17 of Schedule 6 of the Act. Those parties were then required to provide any updated comments, both substantive and process related, by 29 June 2021.
21. The amended application documents, together with legal submissions addressing the relevant procedural issues were received by the Panel on 25 June 2021.
22. The Applicant states that the works requiring these additional consents were always contemplated as part of the original application, are only a

small part of the Project, and have no more than minor effects. Its experts are confident that any effects can be appropriately managed by conditions of consent. The Applicant contends that the Act does not prohibit the Panel's ability to consider the new applications as part of the current application and that the Panel has scope to do so.⁴ The Applicant's position is that considering the additional applications as part of this decision is wholly consistent with the purpose of the Act to urgently promote employment to support New Zealand's recovery from COVID-19, and the direction in the Act to expert Panels to regulate their procedure "in a manner that best promotes the just and timely determination of an application".⁵ Requiring the additional applications to be considered separately or restarting the process for the entire application would be inefficient, and inconsistent with the provisions of the Act.⁶

23. These materials were provided to those parties who provided initial comments on the Project, and responses were received from three parties, being Auckland Council, Mrs Ann Richardson, and T L Roose Holdings Ltd. None of these parties took any objection to the application being updated in the manner sought, focussing instead on substantive matters affecting their interests. EDS chose not to provide further comment, instead registering its frustration at the timeframes imposed.⁷
24. The Panel sought independent legal advice in respect of the procedural issues arising due to the proposed amended application, which was provided on 5 July 2021.⁸ That advice, which is consistent with the Panel's own analysis, is that we may accept and assess a further consent application together with the original consent application as a result of our duty to take all practicable steps to use efficient processes in the exercise of our powers under the Act, and the power to regulate our procedure.

⁴ Legal submissions for the applicant dated 25 June 2021; paragraph 1.3.

⁵ Act; Schedule 5, clause 10.

⁶ Legal submissions for the applicant dated 25 June 2021; paragraph 1.4.

⁷ Email from Gary Taylor to EPA dated 25 June 2021.

⁸ Legal opinion from Ian Gordon dated 5 July 2021.

25. Relevantly, s 10 of the Act, and Clause 10(1) of Schedule 5 provide:

10 Procedural principles

(1) Every person performing functions and exercising powers under this Act must take all practicable steps to use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions, duties, or powers being performed or exercised.

Clause 10(1)

A Panel must regulate its own procedure as it thinks appropriate, without procedural formality, and in a manner that best promotes the just and timely determination of an application.

26. Accordingly, the Panel is satisfied that the Act does not constrain us from incorporating these additional consents into our evaluation of the Project. We consider that the purpose of the Act is best served by adopting a pragmatic approach which does not require a complete restart, or a delay while the new applications are processed separately.
27. Having regard to the nature of the consents, the extent to which they relate to works clearly in contemplation under the original application, and by providing those parties who have previously commented the opportunity to comment further, the Panel is satisfied that no material prejudice to any party arises. Furthermore, we have taken account of the further comments received in respect of the amended application and incorporated those comments within the overall body of evidence and information which has informed our decision making.
28. Accordingly, the Panel considers that the additional consents are incorporated into the application and are within the scope of the Panel's decision making function.

Section 3: The Project

29. KiwiRail is the State-Owned Enterprise responsible for the construction, maintenance, and operation of Aotearoa's rail network. KiwiRail is currently investing in significant works to improve Auckland's rail network. This investment is driven by the importance of heavy rail to delivering a quality compact urban form for Auckland, to meet demands for additional passenger service capacity and to address growth in freight volumes. KiwiRail seeks a package of resource consents to undertake the Papakura to Pukekohe rail electrification Project (**P2P**). The AEE accompanying the application describes P2P as a regionally significant transport Project, providing for improved rail services and safety through:

- a) The electrification of more than 19 km of the North Island Main Trunk Line (**NIMT**) between the Papakura and Pukekohe stations;
- b) Enabling works for bare platforms at three new stations (Drury, Drury West and Pāeratā) to serve identified greenfield growth areas;
- c) The upgrading of five level crossings, including the addition of pedestrian gates;
- d) The closure of two private level crossings;
- e) The upgrading and replacement of existing rail tracks and associated infrastructure along the rail corridor; and
- f) The upgrading of Pukekohe Station, including the provision of sidings for electric motor units (**EMUs**).

30. The Project is one of several major rail Projects underway in the Auckland Region, including the Wiri to Quay Park upgrading and the City Rail Link.

These improvements to the Auckland Metro network will ensure that the network can accommodate the planned urban growth of Auckland, while also helping meet the public transport patronage and greenhouse gas emission goals set by both Auckland Council and Central Government.

31. The physical works for P2P have been broken into a series of phases. The first of these, the enabling works, commenced in late 2020 following approval via an Outline Plan (**OP**) waiver and an archaeological authority. The second phase, involving the main works, was planned to commence by mid-2021. The main works phase is subject to two separate planning applications, with the application for this Project being the first of those.

32. The activities addressed by the Project include:
 - a) Bulk earthworks across the entire Project footprint, including with the riparian margins of 11 wetlands;

 - b) The construction of two temporary access tracks outside of the rail corridor that are located within Stormwater Management Area – Flow 1 (**SMAF-1**) controls;

 - c) The disturbance of contaminated material at Pukekohe Station and Stabling Yard;

 - d) The use of 60 Mercer Road as a construction yard and site office for five years;

 - e) The removal of up to approximately 34,750 m² of vegetation from the riparian areas of 35 streams;

 - f) The removal of up to approximately 9,120 m² vegetation within 10 m of 11 wetlands.

33. Resource consents for the Project are required under the AUP(OP), the National Environment Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (**NES-CS**) and the NES-F. An OP will also be submitted to Auckland Council to address relevant matters under s 176A of the RMA 1991. The OP will include assessment of matters such as building location and urban design.
34. The second application package of approvals for future works is signalled to be lodged in late 2021 and will address the modification/upgrading of culverts along the entire rail corridor and the designation of additional land for rail purposes (for electrical power infrastructure).
35. The separation of P2P phases, including into two distinct applications, warrants comment, particularly in terms of the need to deliver integrated resource management decisions.
36. Phase 1, which involves enabling works required to facilitate the Project has already commenced, beginning in late 2020 following approval via an OP waiver from Auckland Council, with other works undertaken either as permitted activities under the Act or the AUP(OP), and an archaeological authority from Heritage New Zealand. These works include safety improvements to level crossings, upgrades to signals, construction of access tracks and construction of a combined services route to carry power and communication cables along the rail corridor.⁹
37. These works do not form part of the application and the Panel has no jurisdiction to make determinations relating to these works. This is particularly relevant to works within the KiwiRail designation boundary. Pursuant to ss 176 and 176A of the RMA the Applicant is entitled to undertake works within the rail corridor in accordance with an OP which

⁹ A complete description of the enabling works is at Table 4-3 of the AEE.

must be approved by Auckland Council. The Applicant has signalled that it intends to undertake the enabling works on this basis, and will apply to Auckland Council for approval of a further OP to enable future works relating to new structures such as the overhead line equipment (**OLE**), stations, and carparks.¹⁰

38. Phase 2 works require regulatory approvals, and has been broken into two separate applications. The first of those is the subject of this decision, and has been described above. The second application relates to works on culverts, the potential designation of limited additional land outside the rail corridor and works on a private crossing.¹¹ The second application requires further design, option assessment, stakeholder engagement and environmental related fieldwork for these works. In support of this two part approach the Applicant points to Part 6 of the fast track application form, which recognises that applications may be considered in stages, and subject to separate applications. Reliance is also placed on the purpose of the Act which is to urgently promote employment to support economic recovery through fast tracking infrastructure Projects. The Applicant also points to the urgency arising from the need to ensure the Project is completed in advance of the Central Rail Link (**CRL**) coming online.¹²
39. The Panel is satisfied that the application can be considered separately, recognising however that it is a component of the overall works intended. With the background of the enabling works set out, and the second package of applications clearly signalled, the Panel is well positioned to ensure that its decision on the application is integrated with the other components. In this way the requirement for integrated resource management decision making is met.

¹⁰ Legal submissions for application dated 10 March 2021; paragraph 3.12.

¹¹ Ibid; paragraph 3.2.

¹² Ibid; paragraph 3.3.

Section 4: The application

40. The application was lodged with the EPA on 10 March 2021. It comprised:
- a) Volume 1: Application form, Legal submissions on behalf of the Applicant, and the AEE;
 - b) Volume 2: Technical Reports (Part 1) including a Cultural Values Assessment, Summary of Cultural Values' Issues and Responses, and an Archaeological Assessment;
 - c) Volume 2: Technical Reports (Part 2) including a Detailed Site Investigation;
 - d) Volume 2: Technical Reports (Part 3) including an Ecological Assessment, Outline Plan Waiver, Archaeological Authority for Enabling Works, and Proposed Conditions;
 - e) Volume 2: Technical Reports (Part 4) including a Fast Track Act and AUP (OP) Permitted Activity Assessment, Erosions and Sediment Control Report, Stormwater Report on engagement with Auckland Council Consents Team, Contaminated Site Management Plan, Construction Noise and Vibration Assessment, Construction Traffic Report, and the Existing Rail Designation;
 - f) Volume 3: Drawings and Maps including Location Maps, Access Track Plans, Plans of open route works, Plans of Pukekohe Station, OLE Plans, Plans of new stations, 60 Mercer Street site plan, Landowner and Occupier addresses, Records of Title for Project sites.
41. The Panel considered these application documents to be comprehensive in their coverage of relevant matters. These documents were also

supplemented by the further information supplied on 11 June 2021, and the amended application documents supplied on 25 June 2021. Overall, this total package of information was considered by the Panel to be comprehensive, and sufficient for it to make a full and considered evaluation of the Project (**application documents**).

Section 5: Expert Consenting Panel Provisions and Procedures

42. Schedule 6 of the Act prescribes the decision making process that expert consenting Panels must follow for listed Projects and referred Projects. Notably, for listed Projects, such as this application, the Panel's ability to refuse consent is confined to two matters, being an inconsistency with a national policy statement, or an inconsistency with the Treaty of Waitangi. If neither of these two exceptions apply, the Panel must grant consent.¹³
43. Schedule 6 contains a series of detailed provisions relating to the determination of consent applications.¹⁴ Clause 29 directly relates to the consideration of an application, and provides:

29 Consideration of consent applications for listed Projects

- (1) When considering a consent application in relation to the conditions to be imposed on a listed Project, and any comments received in response to an invitation given under clause 17(2), a Panel must, subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act, have regard to—
- (a) any actual and potential effects on the environment of allowing the activity; and
 - (b) any measure proposed, or agreed to, by the consent Applicant to ensure positive effects on the environment to offset or compensate for any adverse effects that will or may result from allowing the activity; and
 - (c) any relevant provisions of any of the documents listed in subclause (2); and
 - (d) any other matter the Panel considers relevant and reasonably necessary to determine the application.
- (2) The documents referred to in subclause (1)(c) are the following:
- (a) a national environmental standard;
 - (b) other regulations made under the Resource Management Act 1991:

¹³ Clause 34 of Schedule 6.

¹⁴ See clauses 17-26 for processing related matters, clauses 29-34 for determinations, and clauses 35-36 for conditions.

(c) a national policy statement:

(d) a New Zealand coastal policy statement:

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

(f) a plan or proposed plan:

(g) a planning document recognised by a relevant iwi authority and lodged with a local authority.

(3) In respect of the matters listed under subclause (1), a Panel must apply section 6 of this Act (Treaty of Waitangi) instead of section 8 of the Resource Management Act 1991 (Treaty of Waitangi).

(4) If a Treaty settlement imposes an obligation on a local authority or other decision maker when determining an application for a resource consent, a Panel must comply with that obligation as if it were the local authority or other decision maker (*see example*).

(5) Subclause (4) is subject to clause 5 of Schedule 5 (conduct of hearings and other procedural matters in context of Treaty settlements).

44. Clause 35 governs conditions being imposed on consents, generally as a Panel considers appropriate, but also applying ss 108, 108A to 112 and 220 of the RMA as though the Panel were a consent authority.
45. Clause 36 requires a Panel to provide copies of draft conditions to the Applicant and every person or group who provided comments in response to an invitation under clause 17(2), which occurred in this case. The clause makes provision in sub-clause (4) applying ss 123 and 123A of the RMA requiring the Panel to set durations of resource consents.
46. Each of the Panel members had access to all of the application documents and all additional materials including comments. The Panel met via Zoom on multiple occasions during the review and evaluation of the Application, and during the preparation of this decision.
47. The Panel conducted a site visit on 2 June 2021 which commenced at the Project base at 60 Mercer Street, Drury. The site visit involved a comprehensive viewing of the rail line from Drury to Pukekohe including viewing current works and laydown around at Old Opaheke Station, viewing the Drury Central Station Site and understanding the area's relationship to Te Tupu Ngatahi Southern Growth Alliance, viewing Ngakoroa Reserve and Drury West Station, Paerata Station relative to the Paerata Rise Development and Paerata laydown Area, viewing access

arrangements at Crown Road and viewing works underway at Pukekohe Station. The site visit also viewed the terrain at Sim Road.

48. Based on the informative site visit, and the comprehensive nature of the application documents, the Panel determined that no hearing was required, and exercised its discretion accordingly.¹⁵

Section 6: Legal framework

49. The statutory framework necessarily starts with s 4 of the Act, which sets out its purpose.
50. Section 5 provides a useful overview of the main part of the Act, Part 1 preliminary provisions; Part 2 the substantive elements of the scheme for fast-track consenting; Schedule 1 with its transitional, savings, and related provisions; Schedule 2 describing the listed Projects; Schedule 3 setting out requirements for referral orders of referred Projects; Schedule 4 providing for location requirements, permitted activities and permitted activity standards for work on infrastructure; Schedule 5 relating to expert consenting Panels; and Schedule 6 dealing with applications and decision making in relation to listed and referred Projects.
51. Section 6 addresses the Treaty of Waitangi and is noteworthy in that it offers more stringent requirements than those found in s 8 of the RMA.
52. Section 12 addresses the relationship between the Act and the RMA, and provides:

Relationship between this Act and Resource Management Act 1991

- (1) This section applies except as otherwise provided in, or required by the context of, this Act.

¹⁵ Clause 20 of Schedule 6.

Listed Projects and referred Projects

- (2) If an application for resource consent for an activity is made under this Act, —
- (a) the process for obtaining a consent under Schedule 6 applies instead of the process for obtaining a consent under the Resource Management Act 1991; and
 - (b) a resource consent granted under this Act has the same force and effect for its duration, and according to its terms and conditions, as if it were granted under the Resource Management Act 1991...

General

- (9) Every person who carries out an activity as part of a listed Project or a referred Project, or in the course of work on infrastructure, is subject to—
- (a) the duty to avoid unreasonable noise under section 16 of the Resource Management Act 1991; and
 - (b) the duty to avoid, remedy, or mitigate adverse effects under section 17 of the Resource Management Act 1991.
- (10) The provisions of the Resource Management Act 1991 otherwise apply, to the extent that they are relevant and with any necessary modifications, to a listed Project or a referred Project and to any activity carried out as a permitted activity in the course of work on infrastructure.

53. Based on that framework and in particular the decision making criteria set out in clause 29 of Schedule 6, the key topics for the Application to address and for the Panel's consideration include:
- a) Actual and potential effects on the environment of allowing the activity (clauses 9(4), 10, 11, 29(1)(a) and 30(2) and (4) of Schedule 6 of the Act);
 - b) Any measures to ensure positive effects on the environment to offset or compensate for adverse effects (Clause 29(1)(b) of Schedule 6 of the Act);
 - c) Analysis against relevant statutory documents (Clause 29(1)(c) and (2) of Schedule 6 of the Act);
 - d) Other matters considered by the Panel relevant and reasonably necessary to determine the application (Clause 29(1)(d) Schedule 6).

Section 7: Existing environment and permitted baseline

54. The area between the existing urban core of Auckland and the satellite communities of Pāeratā and Pukekohe is undergoing rapid change. This change is best represented by the intensification occurring in existing urban areas and the large swathes of current farmland which have been identified as future urban areas.
55. While rural activities are present in each of the three sections, the majority of these rural activities will be supplanted by new urban land uses once Auckland Council rezones the Future Urban zone to “live” urban zones. This growth is planned to occur over the next three decades, with development already occurring at Pāeratā (Pāeratā Rise) and Drury (485 Burt Road).
56. The entire length of the Project runs through a gently undulating landscape. Within the existing urban areas, the NIMT runs through a mixture of land uses, with both commercial and residential sites abutting it. Outside these urban areas, the landscape opens up to pasture, crops, greenhouses and packing sheds. This rural landscape also features numerous individual dwellings, both as lifestyle blocks and larger farms. The landscape is also crisscrossed by a number of public roads and two state highways, as well as sections of Transpower’s national grid.
57. The area’s geology consists of Puketoa Formation, Quaternary tuffs and basalt flows of the South Auckland Volcanic Field (including those of Pukekohe Hill). In addition, recent alluvial sediments including loose and sandy silts, muds and gravels of varying origins will likely be encountered near waterways, drainage features, rivers and streams. Further afield are the Hūnua Ranges and the Bombay Hills.

58. As highlighted by this general description, the underlying environment surrounding the NIMT is highly modified. The introduction of farming in the 19th Century and its continuation to the present has seen the removal of native bush, with only fragments of native vegetation present around watercourses and in Council owned reserves. In addition, many of the area's natural wetlands and watercourses have been modified, both through drainage to allow farming and horticultural, as well as by culverting and reclamation under roads and the NIMT. The Project passes through the catchments of seven significant streams/creeks and beside 11 wetlands. These streams and creeks feature multiple smaller tributaries which cross through and beneath the NIMT.
59. For the purposes of reporting on its assessment of the actual and potential effects on the environment, the Applicant has divided the length of the Project into three sections. Each is described below.
60. Section One runs between Pukekohe Train Station and the northern edge of urban Pāeratā. Rail services along this section of the NIMT run through Pukekohe Station, before entering a deep rail trench between the two branches of Stadium Drive. After this point, the rail corridor begins along an embankment above the adjoining sites, before crossing over Cape Hill Road via a rail bridge. As the NIMT reaches Pāeratā it starts to run level with the surrounding road network (including State Highway 22) and sites, with separate level crossing for road and pedestrian traffic. As the NIMT leaves Pāeratā, it meets the junction with the Bush Mission Branch (which runs to Glenbrook).
61. The majority of Section One runs through urban commercial and residential areas of Pukekohe, and residential and rural areas of Pāeratā. The existing rural landscape of Pāeratā is currently undergoing a land use change to urban activities, including a large development at Pāeratā Rise.

62. Section Two runs through Pāeratā and Karaka. Rail services along this section of the NIMT run below the surrounding sites but as it reaches Karaka it starts to run level with the surrounding horticultural properties. Section Two runs through the rural areas of Pāeratā and Karaka. The existing rural landscape of Pāeratā and Karaka has a mixture of farmland and horticultural businesses adjacent to the rail corridor. The existing rural landscape of Pāeratā is currently undergoing a land use change to residential with a plan change recently approved enabling a growing satellite suburb.
63. Section Three runs through Karaka, Runciman, Drury and through to Papakura. Rail services along this section of the NIMT start on the outskirts of Runciman and Drury, entering a deep rail trench that passes underneath Great South Road, the Southern Motorway and Waihoehoe Road before running at ground level with the surrounding properties and the road networks, with separate level crossings for road and pedestrian traffic. In addition, at Opāheke there are is a single private level crossing at Sutton Road and several public level crossings (including Opāheke Road and Boundary Road).
64. The majority of Section Three runs through urban and commercial as well as rural and residential areas of Drury, Runciman, Opāheke and Papakura. The existing rural landscape of Drury and Opāheke is currently undergoing change to residential and other activities. Further change is being authorised by a range of plan changes which are being processed by Auckland Council.
65. A significant feature of the existing environment are the existing rail designations which have as their purpose, to develop, operate and maintain railways, railway lines, railway infrastructure, and railway premises as defined in the Railways Act 2005.¹⁶ In addition there are a

¹⁶ Designations 6302 and 6306; AEE Appendix V.

range of permitted activity standards set out in the AUP(OP) , the NES-CS and the Act, as set out at section 6.1 of the AEE.

Section 8: Cultural Considerations

66. During our deliberations we read and considered the following documents bearing on this topic:
- a) The Application;
 - b) The Cultural Values Assessment (**CVA**) Reports commissioned by the Applicant from Ngati Te Ata (Waiohua), Ngati Tamaoho Trust, and Te Akitai Waiohua (volume 2);
 - c) Proposed conditions of consent by Applicant;
 - d) Iwi Environmental Plans; and
 - e) Legal submissions on behalf of the Applicant (V 1).

Actual and Potential effects

67. The issue of the effects on Māori values and interests during Project works was addressed in Sections 3.2.1, 3.3.1, 3.4.1, 3.4.4, 6.7.3, 6.14, 6.16, 7.4, 7.4.1, 7.4.2, 8.2.2 of the AEE and in Appendix B; CVAs, Appendix C; Summary of Cultural Values' Issues and responses, Appendix D; Archaeological Assessment and Volume 2 Technical Reports sub Volume 2A.
68. There are a number of culturally significant sites within or near the vicinity of the NIMT: ¹⁷

¹⁷ AEE at 6.7.3 and 8.2.2

- a) Numerous awa, including the Ngakoroa, Hingaia and Whangapouri;
 - b) A statutory acknowledgement area for Ngati Tamaoho (the Whangapouri);
 - c) Proposed statutory acknowledgements areas Te Akitai Waiohua at Paerata Scenic Reserve and Camerontown Historic Reserve;
 - d) A proposed Treaty of Waitangi settlement to Te Akitai Waiohua being Te Ngahere o Pukekohe (Roose's Bush) Scenic Reserve;
 - e) Oira Creek and its tributaries; and
 - f) Otuwairoa Stream and its tributaries (Waipokapu, Mangapu, and Waihoehoe.)
69. It was noted that with the exception of a paa site beside the Ngaakaroa which the NIMT already passes through there are no other discrete cultural sites that will be affected by the proposed works. The Applicant will however seek an archaeological authority covering the entire footprint of the main works (an archaeological authority has been approved for the enabling works). Cultural monitoring alongside staff inductions will allow mana whenua to observe and advise on any cultural values and taonga. The Applicant also acknowledges mana whenua's cultural values with their awa and wetlands and will develop and implement management plans to address the effects of construction and vegetation clearance. The Applicant also considers the Project will respond to the issues of potential economic and social benefit identified in the CVAs.
70. Formal engagement between the Applicant and iwi began in August 2020 (engagement is ongoing). A number of hui were held between August 2020 and February 2021 where a number of issues were raised, including:

- a) The results of archaeological site visits and desk top assessments;
 - b) The accidental discovery protocols for archaeological material;
 - c) The identification of culturally significant sites and features in the Project area;
 - d) The identification of culturally significant flora and fauna;
 - e) Cultural monitoring; and
 - f) Integration with other transport Projects (e.g. SGA works).
71. The Applicant considers regular Hui as an ideal forum to engage with mana whenua kanohi ki kanohi where possible. One aim for future engagement is to establish a cultural monitoring schedule which would identify opportunities for iwi to be onsite for either inductions and/or cultural monitoring.
72. Ongoing engagement around archaeological planning and processes will help inform the application for an archaeological authority and in developing environmental management plans, future planning applications and the detailed design of Pukekohe Station.
73. The three CVAs also identified a number of potential effects for mana whenua/tangata whenua.¹⁸
74. The AEE concludes that the Project will have no more than minor adverse effects on the environment and that is consistent with the relevant statutory planning documents and the Act.¹⁹

¹⁸ AEE page 85/86

¹⁹ AEE section 9 page 146

Comments Received

75. We received a number of comments from parties invited to comment under clause 17(2) of Schedule 6.
76. The Ministers for Māori Crown Relations and Treaty of Waitangi Negotiations had no comments to make. Other Ministers' comments and the Applicants response are referenced earlier in this decision.
77. Heritage New Zealand Pouhere Taonga (**HNZ**) sought amendments to conditions to clarify the extent of works that an archaeological authority is expected to cover including where and if archaeological accidental discovery protocols should apply. The Applicant considered the suggested amendments by HNZ noting that any works on the Project will be subject to an archaeological authority, statutory controls and cultural monitoring. HNZ supports the ongoing engagement with mana whenua and the implementation of recommendations from Hui and contained within the CVAs. HNZ expressed disappointment in the possible relocation of Pukekohe Station. The Applicant responded that it is engaging with community groups and mana whenua on Pukekohe Station noting it cannot retain the building due to the need for a safe and functional station layout.
78. Auckland Council commented that there are four unscheduled historic heritage sites which could be potentially affected and these are not covered by Authority 2021/307 therefore additional management processes need to be considered. Another concern expressed is the relocation of Pukekohe Station. The Applicant responded that the imposition of conditions is not supported and that it is unable to retain the station within the Project footprint given the need for a safe and functional station layout.

Conditions Imposed

79. Except as modified by the conditions, the activity is to be carried out in general accordance with the CVAs commissioned by the Applicant and provided by mana whenua.
80. The Consent Holder shall engage cultural monitor(s) to recognise and provide for mana whenua values in the work area. The monitor(s) shall be engaged by the Consent Holder to monitor excavation works and assist in identifying any Maori cultural material/sites and archaeological material which might be discovered. The Consent Holder shall invite the cultural monitor(s) to provide pre-earthworks cultural induction(s) for key Project staff and contractors as well as any appropriate blessings and tikanga during the duration of the Project. Specific conditions are addressed below.
81. Condition 7: The Cultural Management Plan (**CMP**) shall detail how the purpose of the CMP is to be achieved and shall include: (c)...the key environmental (including cultural) considerations that may be impacted by construction, and the potential effects of the construction work on the environment, including values of mana whenua.
82. Condition 7 (g): Set out protocols required for the accidental discovery of Maori cultural material/sites and archaeological material, including the presence of cultural monitors.
83. Condition 7 (h): Include the external organisations, including iwi, local authorities and stakeholders, and other affected parties, community groups, commercial businesses, and adjoining residents, who may be affected by the construction work.
84. Condition 7 (i): Include the key personnel, roles and responsibilities of the various iwi, stakeholders and parties involved in the Project and demonstrate how communication is to be managed between these Project parties and the external parties described above. This includes

demonstrating the process for identification and management of any issues that may arise, and implementation of corrective measures as required in consultation with those parties. This shall include preparation of a Project Communications Plan (**PCP**) that sets out the specific process for iwi, public and affected parties to register a complaint and for processing complaints received.

85. Condition 8: The CMP shall require that the Consent Holder ensure that personnel responsible for supervising contractor site staff (e.g. forepersons, supervisors, and managers), undergo environmental awareness training as part of the induction process. Specifically, training may include (as relevant), but shall not be limited to:
- a) The environmental management requirements and the processes included in the CMP;
 - b) The accidental discovery protocols for archaeological material and contaminated materials; and
 - c) Briefings on the Māori cultural values of the area, and the requirements for cultural engagement and monitoring.
86. Condition 16: Prior to the commencement of any earthworks, the Consent Holder shall hold a pre-start meeting.

The following information shall be made available at the pre-start meeting:

- a) Timeframes for key stages of the works authorised under this consent;
 - b) The archaeological authority for the works.
87. Condition 17: The consent holder shall invite iwi representatives to earthworks pre commencement meeting(s) to provide for identification and protection of cultural values in work areas.

88. Overall, the Panel is satisfied that with the imposition of the conditions identified above, the effects of the Project on cultural considerations will be minor, and acceptable.

Archaeological effects and effects on Heritage

89. The effects of the Project on natural and physical resources are addressed in Section 6.10.2 of the AEE and the archaeological assessment at Appendix D.
90. The archaeological assessment (Appendix D) noted that there are 19 archaeological sites within 200m of the proposed works recorded in the NZAA SRS database.
91. The assessment confirms there is a low number of sites identified due to a lack of targeted research rather than a lack of potential sites.²⁰
92. The proposed works are not located within any AUP(OP) historic heritage or special character overlay. There are seven archaeological sites within the Project footprint, six are pre 1900 and one site is pre-European Maori occupation.²¹
93. The archaeological assessment²² suggested the following mitigation measures:
- a) An authority to be applied for to cover all areas where archaeological risk has been identified;
 - b) Monitoring as per the archaeological works plan;

²⁰ AEE at page 76, Appendix D at page 37.

²¹ AEE at page 76, Appendix D at page 37.

²² Ibid; Appendix D at page 46.

- c) The works to take place under the accidental discovery protocol;
- d) Across the whole Project people working on the Project will be provided with education through inductions, morning sessions and tool box exercises; and
- e) Where possible, minimisation of earthworks by utilising alternative methods.

94. The assessment made a number of recommendations:²³

- a) An authority to destroy, damage or modify;
- b) Appropriate tikanga should be followed as advised by mana whenua;
- c) In the event koiwi is uncovered, work should immediately cease and the appropriate tangata whenua Authorities contacted and appropriate arrangements made;
- d) Tangata whenua should be contacted about sites of significance and wahi tapu; and
- e) We note the application for archaeological authority for enabling works under the Heritage New Zealand Pouhere Taonga Act 2014.²⁴

95. The AEE concludes that the Project will have no more than minor adverse effects on the environment and that it is consistent with the relevant statutory planning documents and the Act²⁵.

²³ Ibid; Appendix D at page 46.

²⁴ Appendix H of AEE.

²⁵ AEE Section 9 at page 146.

Comments Received

96. As identified above, HNZ sought amendments to conditions to clarify the extent of works that an archaeological authority is expected to cover including where and if archaeological accidental discovery protocols should apply.²⁶
97. Auckland Council commented that there are four unscheduled historic heritage sites which could be potentially affected and these are not covered by Authority 2021/307 therefore additional management processes need to be considered. The Applicant responded that relocation of Pukekohe Station within the Project footprint is not possible given the need for a safe and functional station layout.²⁷

Conditions imposed

98. As discussed above, the Consent Holder shall engage cultural monitor(s) to recognise and provide for mana whenua values in the works area. The monitor(s) shall be engaged by the Consent Holder to monitor excavation works and assist in identifying any Māori cultural material / sites and archaeological material which might be discovered. The Consent Holder shall invite the cultural monitor(s) to provide pre-earthworks cultural induction(s) for key Project staff and contractors, as well as any appropriate blessings and tikanga during the duration of the Project.
99. The CMP shall detail how the purpose of the CMP is to be achieved and shall include: (g) Set out protocols required for the accidental discovery of Māori cultural material / sites and archaeological material, including the presence of cultural monitors.

²⁶ Correspondence from Applicant to EPA dated 22 June 2021.

²⁷ Ibid.

100. The CMP shall require that the Consent Holder ensure that personnel responsible for supervising contractor site staff (e.g. forepersons, supervisors, and managers), undergo environmental awareness training as part of the induction process. Specifically, training may include (as relevant), but shall not be limited to:
- a) The environmental management requirements and the processes included in the CMP;
 - b) The accidental discovery protocols for archaeological material and contaminated materials; and
 - c) Briefings on the Māori cultural values of the area, and the requirements for cultural engagement and monitoring.
101. Prior to the commencement of any earthworks, the Consent Holder shall hold a pre-start meeting that:
- a) Is located on the subject site;
 - b) Is scheduled not less than five days before the anticipated commencement of earthworks;
 - c) Includes Auckland Council monitoring staff; and
 - d) Includes representation from the contractors who will undertake the works.
102. The meeting shall discuss the erosion and sediment control measures, as well as the earthworks methodologies to ensure all relevant parties are aware of and familiar with the necessary conditions of this consent. The following information shall be made available at the pre-start meeting:

- a) Timeframes for key stages of the works authorised under this consent;
- b) The archaeological authority for the works.

103. Subject to the imposition of these conditions, the Panel is satisfied that the archaeological effects are acceptable and minor.

Section 9: Overall assessment of actual and potential effects on the environment

Positive effects

104. Rail passengers to and from Pukekohe currently have to transfer at Papakura Station and rely on aging diesel locomotives to travel between Papakura and Pukekohe. This current arrangement is unsatisfactory from both a rail user and operator perspective.
105. Rail users can experience delays due to transfer wait times at Pukekohe Station, while the diesel locomotives are unable to achieve the travel speeds of the fleet. These increased travel times reduce the desirability of rail travel and undermine transport goals to increase public transport usage. In addition, the diesel locomotives and carriages are older and noisier than the further diminishing the attractiveness of rail travel.
106. The Project will resolve these issues by providing the public with a seamless rail journey between Pukekohe and the entire Auckland Metro network. Passengers to and from Pukekohe will no longer have to change and wait for rail services at Papakura, and they will also have a more pleasant rail journey in modern EMU carriages. Operational and network benefits

relating to rail timetables, maintenance, operational costs, faster and more frequent services, and overall efficiency gains will accrue.²⁸

107. At a strategic level the Project will deliver benefits to the Auckland Region, and beyond. The rural areas of South Auckland will experience substantial change, as urbanisation occurs over the next 30 years. Large areas of Future Urban zoned land about the NIMT and these land parcels will move from farming and horticulture to business, residential and other urban land uses with new suburbs and communities to be planned and developed along the NIMT. By undertaking rail improvements prior to urbanisation, the Project enables works largely without the presence of sensitive receivers and provides the transport infrastructure for these new communities. This investment will also serve the growth plans of Waikato District Council, providing improved public transport services to the North Waikato communities of Pokeno and Tuakau. While not extending directly to these communities, their proximity to Pukekohe Station provides them with similar benefits as those living in Pukekohe and its immediate surrounds.
108. The Project encourages a modal shift from private vehicles to public transport. This supports both regional and national climate change goals by making rail services more efficient, frequent and comfortable, and enabling Auckland's transport related greenhouse gas emissions to be stabilised and reduced. The switch from diesel to electric also helps with reducing emissions and climate change mitigation.
109. The Project also supports local communities and those served by the wider network given the enhanced connectivity public transport can bring. By providing reliable rail services, these communities will have greater access to the employment, educational, recreational and health opportunities located along the Metro network.

²⁸ AEE Section 6.3.

110. Finally, the Project provides an economic stimulus for Auckland and New Zealand. The Project is worth \$371 million and will directly create more than 200 jobs. In the context of an economy seeking to adjust to the effects of the COVID-19 pandemic, the Project will serve to support the recovery from the economic and social impacts of the pandemic.

Land disturbance and earthworks effects

111. The potential effects on ecosystems are addressed in Section 6.4 of the AEE (Land Disturbance/Earthworks Effects), Appendix F (Ecological Assessment) and the ESC Report (Appendix Q: Preliminary Erosion and Sediment Control Report - Main Works Rev C).

112. Consistent with the overall description of Project, the **ESC** Report addresses the following works that will require earthworks:

- a) The installation of overhead line equipment;
- b) Signalisation upgrades to increase capacity;
- c) Three new platforms for three new stations at Drury Central, Drury West and Pukekohe;
- d) Alterations to tracks and platforms at Pukekohe Station;
- e) Construction of rail sidings and staff change facilities at Pukekohe Station; and
- f) Track formation, sleeper and rail maintenance upgrades throughout the corridor.

113. The volumes and areas of earthworks proposed are provide in Table 2-1 of the ESC Report (and as provided below), noting that these totals will be

distributed across the 19km of the Project alignment and will be staged over a three year period. The Applicant does not break down the earthworks into total areas and volumes that may occur at any given time.

Activity	Volume (m ³)	Area (m ²)
Pukekohe Station and Stabling Yard	18,500	21,000
Within any Sediment Control Protection Area ²⁹	1,472	1,090
Open Route	314,599	214,294
Total Earthworks	334,571	236,384

114. The general erosion and sediment control (**ESC**) principles to be adopted are:

- a) Diverting clean surface water around the worksite using bunds (with 1 in 20-year ARI capacity or minimum 550mm high) in areas where the existing ground slopes towards the rail corridor;
- b) Utilising silt fences to capture sheet flow on the site;
- c) Any existing stormwater inlets such as catch-pits within the site to be protected with filter cloths, silt socks or other means (catchpits are only present at existing stations); and
- d) Protecting permanent/intermittent streams and natural wetlands with bunds (or similar approved) to prevent sediment laden runoff.

115. Works within close proximity to streams and wetlands have been given specific consideration and will include maintaining a 1m wide undisturbed vegetation buffer adjacent to the water body, establishing bunds and silt fencing (where required), having a dewatering device available where

²⁹ Based on proximity to streams, wetlands and the coast.

trenching or deep cuts are proposed, stabilisation of exposed work faces and monitoring weather for potential storm/flood events. The Applicant anticipates that these controls will be subject to cultural monitoring by mana whenua.

116. Section 6 of the ESC Report details the range of specific ESC measures that will be adopted during the various earthworks activities and locations, including dewatering techniques. These measures are consistent with those detailed in the Auckland Council Guideline Document 2016/005 *Erosion and Sediment Control Guideline for Land Disturbing Activities in the Auckland Region (GD05)*.
117. Section 7 of the ESC Report describes the ESC monitoring and maintenance procedures that will be implemented during the works. This will include inspections and maintenance of all active controls daily, and pre and post rainfall.
118. Conditions have been proposed that require:
 - a) The submission of an ESC Plan (**ESCP**) to Auckland Council for certification (prior to any works commencing);
 - b) An on-site pre-commencement meeting between KiwiRail (or its representatives) and Auckland Council staff. This meeting also will include any mana whenua who wish to attend;
 - c) Certification of ESC construction by a suitably qualified and experienced person;
 - d) Information and certification requirements for winter works;
 - e) Dust management;
 - f) The completion or abandonment of any works;

- g) General performance standards (e.g. dust, post-storm inspections);
and
- h) Provision of 1m wide vegetation buffer strips at stream and wetland edges.

Comments Received

119. Comments specifically relating to land disturbance were received from Donald and Lynley Bray, TL Roose Holdings Limited (**TL Roose**), First Gas Limited (**First Gas**), Watercare Services Limited (**Watercare**) and Auckland Council. Comments from Royal Forest and Bird Protection Society of New Zealand Inc (Forest and Bird), and EDS also raised matters associated with potential adverse effects of sediment-laden discharges on stream and wetland ecology.
120. Mr and Mrs Bray live at 69 Mercer Street, Drury, immediately adjacent to the existing Project office and compound at 60 Mercer Street. That office and compound was established in late 2020 as a temporary permitted activity. It is now included in the consents sought as an activity that will occur for more than 24 months, in this case up to five years.
121. We have sympathy for the concerns raised by the Brays, given the scale and apparent level of general activity that occurs within the site, with associated effects e.g. dust, noise and traffic. Their frustration has been compounded by the location of stockpiles adjacent to their boundary, and the potential impact that dust may have on their roof-derived drinking water.
122. The Applicant responded that it is aware of the issues raised and has engaged with the Brays and Auckland Council. The operation of the site has been modified, including the relocation of stockpiles, restrictions on

noise generation, repositioning of lights, installation of dust control scrim and additional dust suppression measures. These and other measures will be addressed and enforced through the Construction Management Plan which includes a requirement for measures to monitor and ongoing management of dust, communications and complaints procedures; and the adoption of other management plans e.g. Construction Traffic and Construction Noise and Vibration. Having reviewed the various conditions that require and engage the various management plans, we are satisfied that the operation of the 60 Mercer Street compound should minimise potential nuisance effects to an acceptable level. We find that the inclusion of the Project office and compound into the consented activities (as opposed to its current quasi permitted activity status), will clarify and strengthen the site management requirements and the Council's ability to enforce those requirements.

123. TL Roose owns multiple properties on Isabella Drive, Torrie Way and Roosevile Mews, Pukekohe. The tenants at some of those properties have identified dust effects that they associate with the existing works. On behalf of the tenants, TL Roose requested specific measures to eliminate that effect. In their further comments dated 29 June 2021, they suggest that a high fence may achieve that outcome. As discussed above, we are satisfied that the consenting of the Project will clarify and strengthen the site management requirements and the Council's ability to enforce those requirements. The Panel is satisfied that the consent will provide for an appropriate range of measures to ensure dust effects onto the TL Roose properties is avoided. These matters will be addressed through the certification of the Construction Management Plan that will include methods for minimising dust emissions, monitoring procedures and contingency procedures in the event of a dust nuisance event.
124. First Gas sought to ensure earthworks did not disrupt gas transmission infrastructure that cross or are in proximity to the works footprint or

compromise its ability to maintain and upgrade that infrastructure. First Gas also expressed concern that the use of Drury West Station and associated congregation points will change the risk profile for the gas line at that location from a rural class location to a class location of High Density (T2) and a secondary class of Sensitive (S).

125. First Gas sought the inclusion of conditions that impose various requirements and restrictions on the Applicant in relation to works within the vicinity of the pipelines, including a requirement for an Electrical Hazard Assessment for all metallic pipelines within 1km of the railway, and a requirement for First Gas approval for the finalised location of Drury West Station.
126. Watercare provided general support but raised similar concerns to First Gas in relation to the potential of the Project to conflict with the operation, maintenance, and upgrading of Watercare assets through damage because of construction activity and / or through restricting access to its assets for routine operation and maintenance purposes. Watercare was also unclear of the Applicant's intentions regarding confirmation of the location of Watercare assets and undertaking condition assessments, and any relocation processes that may be required. Watercare offered potential consent condition outcomes to address these matters.
127. The Applicant responded that the existing and upcoming construction management and design processes will identify existing infrastructure. The Applicant will engage with First Gas and Watercare, and address the concerns raised. The Applicant did not support the inclusion of additional conditions. We accept this response. We find that various construction management requirements and approval processes that are required between network utility providers will ensure that the Project works appropriately address and avoid damage and risk to other infrastructure.

128. We find that the impact that the use of Drury West Station may have on the risk profile of the gas line at that location is beyond the scope of the activities for which consent is sought, and correspondingly beyond our jurisdiction. That matter must be addressed through subsequent OP or consent processes relating to the construction and use of any future station.
129. Forest and Bird and EDS included comments relating to the potential effects of sediment-laden runoff on streams and wetlands. We address these comments in conjunction with the comments received from Auckland Council.
130. Auckland Council provided extensive comments regarding the ESC measures proposed and associated consent conditions, and the need for consent under Regulation 45(4) of the NES-F i.e. for the taking, use, damming, diversion, or discharge of water within, or within a 100m setback from a natural wetland.
131. As we have already discussed, the Applicant accepted that requirement and has lodged the corresponding application under the NES-F, the diversion and discharge of treated sediment laden water and, on a precautionary basis, the diversion of groundwater which might occur during the construction of the foundations for the OLE that is within 100m of a natural wetland.
132. We find that the potential adverse effects of the diversion and discharge of treated sediment-laden water has already been addressed in the original application documents. No additional assessment is required.
133. The Applicant has updated the AEE to address the potential adverse effects of diverting groundwater. Due to the location and scale of works it cannot be confirmed that such an effect will occur. But if it does, the Applicant has assessed it as temporary and minor. Additional comments were

received for Mr Richard Simonds, Senior Geotechnical Engineer of Auckland Council, requesting further assessment of the proposed works under Rule E7.6.1.6 of the AUP(OP) that imposes additional standards on the diversion of groundwater. The Applicant addressed this in a further response dated 2 July 2021. In that response the Applicant provided an additional assessment of the activities that might result in the temporary diversion of groundwater and confirmed that they would comply with all relevant permitted rules and standards.

134. Additional comments were also received from Sam Langdon, Specialist – Earth Streams and Trees of Auckland Council. Ms Langdon commented that if changes to surface water flows were permanent, they would require additional assessment under the NES-F. We accept the Applicant’s commentary provided with the additional application that no additional assessment is required. We are satisfied that such changes that might occur during the proposed construction activities will be temporary and will not result in any more than a minor and temporary adverse effect on a natural wetland.

135. Auckland Council also queried whether consent may be required under Regulation 45(3) of the NES-F for:

Earthworks or land disturbance outside a 10 m, but within a 100 m, setback from a natural wetland is a discretionary activity if it—

(a) is for the purpose of constructing specified infrastructure; and

(b) results, or is likely to result, in the complete or partial drainage of all or part of the natural wetland.

136. As discussed below, we are satisfied that the management of sediment laden runoff will ensure that the earthworks will not result in the complete or partial drainage of all or part of the natural wetland. We are also satisfied that the Project will not result in changes to post-construction surface water or groundwater characteristics.

Conditions Imposed

137. Various conditions relate to potential effects of earthworks. Conditions 5 and 5A address management plan submission and certification. Conditions 6 to 8 require the Consent Holder to submit a Construction Management Plan which addresses a number of effects that may result from earthworks. Conditions 16 to 28 specifically address earthworks.
138. Auckland Council has requested various editorial changes that the Panel has accepted and adopted. Those include changing the directive “shall” to the imperative “must” in all relevant conditions, the inclusion of a 5 year expiry condition for the earthworks, consistent with the term of consent sought, and other standard wording of conditions and advice notes that are of no real significance.
139. On the basis of the likely need for dewatering of various excavations, Auckland Council seeks the inclusion of a Dewatering Management Plan as one of the management plans required to be submitted before the consented activities commence. The Applicant does not support that inclusion on the basis that the earthworks for the Project will not be significant at any one time in any one location, and the need for minor dewatering can be addressed in the relevant ESCP rather than by a separate document. The Panel accepts this response and has included a requirement to address the methodology for any dewatering required within the corresponding ESCP for a given area of works.
140. Proposed Conditions 5a, b and c were not supported by Auckland Council. Those conditions impose timeframes and requirements on the Council for responses to management plans submitted for certification. Council acknowledged the need for timely responses by all parties involved in significant infrastructure Projects, including regulators, and committed to achieving that, as it has done in various other significant Projects

constructed within the region. We accept the intent of that commitment. We also acknowledge the need for certainty in the timing of approvals and certifications that are required by consents. While we do not accept Condition 5 as drafted by the Applicant, we have provided a simplified version of the condition that retains the certainty of a 20 working day response period. Such a period is sufficient for the review and provision of certification or comments by Auckland Council.

141. Various amendments to Condition 16 have been requested by Auckland Council, which imposes the requirement for a pre-commencement meeting with Council for each stage of work. The Applicant does not respond to this matter. With the exception of the reference to a Dewatering Management Plan, we accept and adopt these changes as useful clarifications of matters that must be brought to the attention of key personnel prior to works commencing within a given stage. The delineation and extent of stages will be determined by the Applicant.
142. Council recommends the inclusion of a 100mm depth of clarity standard that would apply to all discharges of treated sediment-laden water from the site works. No technical basis was provided. The Applicant did not respond but we do not support that inclusion. The depth of clarity is specified in GD05 as a target to be achieved for dewatering under controlled conditions but is not imposed or required for general sediment controls that discharge in response to rainfall. As we have noted, the management of dewatering is to be addressed in the relevant ESCPs. The Council will have the opportunity to consider the provision of a clarity standard for dewatering through the certification of those plans against GD05. The Panel has not imposed a general discharge standard for sediment control devices.
143. Auckland Council recommends modification of Condition 23 to allow the staged submission of ESCPs to correspond with the staged design and

construction of the Project. We adopt this as a useful amendment, to the advantage of the Applicant and contractor undertaking the works, and impose the standard term of 'Site Specific Erosion and Sediment Control Plan' (**SSESCP**) for those documents.

144. Council also recommends modification of Condition 23 to require the SSESCPs be 'approved' by Council rather than 'certified' and to add the requirement that works covered by a SSESCP cannot commence until approval has been obtained. We do not accept those recommendations. Having viewed the site and considered the relevant technical assessments, we do not consider the scale and nature of earthworks required at any given location to be particularly complex. We see no reason why the works cannot achieve consistency with GD05, and the SSESCPs are required to be prepared in accordance with that guideline. Thus, in conjunction with the other specified requirements of the SSESCPs, sufficient specificity is provided to allow the Council to act in a certification capacity. Nor do we consider it necessary to impose the hold-point on works in this condition. That is addressed in the certification process of all management plans under Condition 5.
145. Consistent with Auckland Council's suggestion for staged submission of SSESCPs, we have provided minor amendments to proposed Condition 28 to allow for the progressive as-built certification of erosion and sediment control measures as they are implemented.
146. Council has requested the deletion of the second sentence of proposed Condition 33, which states the intended purpose of retaining a 1m vegetated buffer along the edge of streams and wetlands is as a natural filter for any sediment discharges from earthworks into surrounding waters. The deletion requested is on the basis that the 1m buffer will not achieve that outcome and is not consistent with GD05. We agree and have deleted it accordingly. The requirement for the buffer has been retained

as it is a key element of the construction methodology considered in the Ecological Assessment and will provide a visual and physical barrier between the construction activities and those water bodies.

147. Overall, the Panel is satisfied that implementation of the conditions imposed will ensure that the potential adverse effects of land disturbance and in particular, the effects of sediment laden discharges, will be acceptable and minor.

Stormwater discharge effects

148. The potential effects of stormwater from the completed Project works are addressed in Section 6.5 of the AEE (Stormwater Discharge Effects), 6.12.1 (Flooding Effects) and Appendix R (Stormwater Memo).
149. The control of stormwater, as a reason for consent, is triggered by the proposed formation of stabilised construction access tracks across land that is within a Stormwater Management Area – Flow 1 (SMAF-1) and outside the rail corridor. The tracks will be located at 933 Pāeratā Road and 485 Burt Road and are required for machinery and trucks to access areas of the corridor that cannot be accessed by public roads or the corridor itself. Their formation will comprise the removal of topsoil, the laying of geotextile and aggregate in a cut and cover methodology to minimise the exposed ground and risk of erosion at any one time. The land surrounding the tracks will remain in pasture. They will be in use for the duration of the Project and following the completion of works will either be returned to pasture or retained by the landowner as farm tracks.
150. The AEE states that “No noticeable effects are anticipated given the minor scale of new ‘impervious’ surfaces within a largely rural catchment, the lack of downstream development, the similarity of the activity to a permitted farm track and its temporary nature. Furthermore, neither track is located

near a significant ecological area nor any known significant streams". The AEE also states "Stormwater attenuation is not considered necessary given the temporary nature of the discharge, the lack of any discernible downstream effects and the need to avoid unnecessary occupation of productive farmland".

151. With specific regard to flooding effects, in Section 6.12.1 of the AEE the Applicant states that:³⁰

...it is not proposed to increase flooding risk or alter the entry and exit points of an overland flow paths. All stormwater designs for P2P will employ Auckland Regional Council's Technical Standard 108 "Guidelines for stormwater runoff modelling in the Auckland Region" and Auckland Council's Guidance Document 01 "Stormwater Management Devices in the Auckland Region".

...

KiwiRail's own infrastructure assets that will be located within OLFPs or floodplain will be designed to be flood resilient, thereby minimising the potential for flood water to impact on either rail service reliability or the safety of rail users.

152. The Stormwater Memo provides discussion by the Applicant and confirmation from Auckland Council that alteration of existing impervious areas within the rail corridor associated with the Wiri to Quay Park Project will comply with permitted activity Rule E8.4.1(A3) of the AUP(OP). The Applicant adopts the same interpretation for this Project.

Comments Received

153. Comments relating to potential stormwater effects were received from Margaret Richardson and Auckland Council.

154. Ms Richardson owns a property at 18 Pratt Street, Papakura, approximately 290m south of Onslow Road and Papakura Station. She

³⁰ AEE Section 6 at page 79.

raises concern about erosion of a stream³¹ that passes between her boundary and the rail line embankment. The eastern bank of the stream has been eroding into her boundary, and she is concerned that widening of the embankment may accelerate the erosion. Ms Richardson reaffirmed her concerns in her further comments dated 29 June 2021.

155. The Applicant has responded that the proposed works will not create any new impervious surfaces or stormwater runoff that will affect her location. Nonetheless, the Applicant has communicated her concerns to its design team. We accept the Applicant's response. The Project drawings do not indicate any widening of the embankment adjacent to her property, or other cause to think that works north of her property will cause further erosion of the stream.
156. Auckland Council confirmed that no specific stormwater controls will be required for the access tracks. Council indicated that further engagement would be required regarding the opportunity for stormwater discharges from the proposed stations to be authorised under the Council's network discharge consent.
157. Healthy Waters, Auckland Council's stormwater management unit, provided additional comments regarding the lack of detailed analysis of potential stormwater effects of the Project. It raises the potential, in the absence of detailed analysis, of the works creating adverse stormwater effects, with particular regard to works and structures within flood plains and overland flow paths. The potential for cumulative effects to occur in conjunction with the potential effects of other infrastructure and land development Projects in the area was also raised. Healthy Waters indicated that no consultation with that department had occurred. If future impervious areas cannot be authorised under the Council's network

³¹ 'Stream' being Ms Richardson's description. The channel that arises adjacent to 20 Pratt Street and extends between the railway embankment and residential properties.

discharge consent, a separate consent may be required by KiwiRail. Healthy Waters also questioned, on an effects basis, the relevance of the interpretation provided in the Stormwater Memo for Wiri to Quay Park.

158. In response, the Applicant reiterated the relevance of the Stormwater Memo. The Applicant also confirmed that any new impervious surfaces outside the corridor that are associated with the future stations will be captured by future RMA approvals that will be sought. We accept that response and we acknowledge that the stormwater consent currently sought relates to the formation of construction access tracks, which Council has agreed do not require specific mitigation.
159. The Panel recognises the need for earthworks to avoid creating adverse flooding effects through the diversion of overland flow paths and flood storage. In the absence of a designation, those effects are managed under the provisions of Chapter E12 of the AUP(OP) (Land disturbance - district). In this case those activities are covered by the designation and must be addressed in an OP.
160. In terms of the relevance the Stormwater Memo, we find that the planning interpretation provided by the Council for existing impervious areas must prevail, while the ongoing design and any future approvals of additional impervious areas will be addressed through future processes.

Conditions Imposed

161. No conditions specific to stormwater management have been proposed by the Applicant or requested through comments. We agree that none are required.

Contaminated soil discharge effects

162. The potential stormwater effects from the completed Project works are addressed in Section 6.6 of the AEE (Contaminated Soil Discharge Effects) and Appendix S (Contaminated Site Management Plan) (**CSMP**).
163. The CSMP comprises a framework for the management of contaminated or potentially contaminated soil associated with soil disturbance necessary for the Project, including offsite disposal and actions in the event of an unexpected discovery of contamination. Desktop and detailed site investigation (**DSI**) were undertaken, and results are reported to indicate:
- a) The risk to human health and the environment from contaminants in soil within the Project site is generally low;
 - b) From a contamination standpoint, excavated soils are generally suitable for reuse within the rail corridor;
 - c) If soil needs to be removed from the Project site, the soils would likely be suitable for disposal to managed fill, potentially including the Hunua Managed Fill site, subject to application and acceptance by the disposal facility operator;
 - d) Further assessment of soil contamination may be required in specific areas of the rail corridor and within Pukekohe station prior to soil disturbance, to confirm soil management requirements; and
 - e) An accidental discovery protocol will be required to facilitate the management of previously unidentified contaminated soil that could be encountered during soil disturbance works.
164. The CSMP provide earthworks procedures and stormwater and sediment management protocols to be adopted in accordance with the relevant

SSESCP. The CSMP was prepared on the assumption that no groundwater diversion or dewatering was proposed.

165. Consistent with the CSMP, the Applicant proposes conditions to address the management of contaminated soils.

Comments Received

166. Auckland Council provide comments on the management of potentially contaminated soils.

167. The Council agreed with the reasons for consents under the NES-CS and consider that the DSI and CSMP have been prepared by a suitably qualified and experienced person in general accordance with the relevant guidelines and adequately details the likely soil contamination profile of the works area.

168. Council also confirmed that the proposed discharges from the disturbance of soils containing elevated levels of contaminants is a Permitted Activity under Rule E30.4.1(A2) of the AUP(OP).

Conditions Imposed

169. Auckland Council considered the draft conditions relating to contamination matters are appropriate for the level of contamination identified and the CSMP provides suitable management procedures.

170. Council recommended that proposed Conditions 36 and 37 be replaced by Council's standard dust management condition. The Applicant responded that the proposed conditions are appropriate. The Panel prefers to adopt the Council's standard condition and imposes that accordingly.

171. With regard to the absence of consideration of groundwater contamination, the Panel must note the inclusion of potential for dewatering as an activity now covered by the ESC Report and the consent application. Consequently, we impose an additional condition that requires the CSMP to be updated to address dewatering of excavations and the management of potentially contaminated groundwater.
172. Overall, the Panel is satisfied that implementation of the conditions we have imposed will ensure that the potential adverse effects of the disturbance of potentially contaminated soil will be acceptable and minor.

Effects on ecosystems

173. The potential effects on ecosystems are addressed throughout various sections of the AEE, primarily Sections 6.4 (Land Disturbance / Earthworks Effects); 6.5 (Stormwater Effects); 6.6 (Contaminated Soil Discharge Effects); and 6.9 (Effects on Ecosystems); and in Appendix F (Ecological Assessment).
174. Potential ecological effects are also addressed in the ESC Report that we have addressed separately.
175. The majority of vegetation within the NIMT is exotic species, with approximately half being pest species. No Significant Ecological Areas (**SEAs**), as mapped in the AUP(OP), have been identified within the footprint of the proposed works. Native species identified included manuka and kanuka distributed throughout the Project area. The only notable area of native vegetation is a stand of totara at chainage 632400 and these trees will be retained. A stand of mature eucalyptus trees at chainage 635500 will be removed for safety reasons. There are also relatively young pine trees at various locations along the corridor.

176. Thirty five streams and 11 wetlands have been mapped within the Project area. No works are proposed within these water bodies but the proposal will result in the loss of up to 9,120m² of vegetation within 10m of wetland and up to approximately 34,750m² of vegetation within 10m of streams. A minimum of 1m undisturbed setback will be maintained from all streams and wetlands. Native restoration planting will be undertaken in accordance with the specifications provided in Appendix C of the proposed consent conditions. Species selection is based on location and substrate type, with a particular need to be compatible with the safe operation of the rail corridor, and to minimise ongoing maintenance requirements.

177. The Applicant applied the Institute of Australia and New Zealand (EIANZ) matrix approach to assess the significance of effects on:

- a) Indigenous bird species as a group;
- b) Copper skinks;
- c) Threatened long-tailed bats;
- d) Exotic trees, and native scrub vegetation as habitat for native birds, bats and lizards;
- e) All permanent and intermittent streams; and
- f) Wetlands within 10 m of the rail corridor.

178. Section 4.1 of the Ecological Assessment provides the following contextual information considered in the analysis:

- “Vegetation onsite largely consists of exotic scrub that we understand can be cleared as a permitted activity. The native vegetation confined to discrete rail corridor margins is seral (young and developing) in composition and situated within areas dominated by environmental pest plants. Off track zones cleared will be reinstated in accordance with KiwiRail’s vegetation standards for off track zones;

- Long-tailed bats are listed as a Threatened species and have been recorded 3 km from the site. When considering the very small proportion of vegetation clearance in relation to the surrounding landscape, there is a very low likelihood of bats using the site as an important roosting area. However, they could also pass through the area, and the presence of bats cannot be discounted. Whilst the removal of a small proportion of habitat may not be deemed ecologically significant, any direct effects on long-tailed bats is considered significant. If bats are present, the possibility of harming bats triggers provisions of the Wildlife Act 1953 that require avoidance of effects – which is usually achieved by a pre-clearance site survey and, if necessary, relocation of bats if roosts are substantial or permanent (which is unlikely in this type of environment). At this site, the low likelihood of bats being present (based on our assessment and that of B. Lloyd) indicates that undertaking a survey as described above would serve to minimise the risk of harm to bats. A survey resulted in no bats being detected (see section 3.4 above).
- Copper skinks are listed as a Not Threatened species. There is a low likelihood that they will be present on the site, however the range of habitats is scattered and of poor quality. Numbers are likely to be low overall amongst an extremely large area of complex habitat along the rail corridor. Copper skinks are distributed over a broad area of the upper and mid North Island. Whilst the removal of skink habitat is not deemed as ecologically significant, any potential effects on native lizards will trigger provisions of the Wildlife Act 1953. This is discussed in the section on ecological mitigation.
- The wetlands within the subject site are predominantly of low ecological value, and are positioned such that works will not occur within wetlands, and works adjacent to these wetlands should be able to avoid direct effects on the wetlands.
- The streams within the subject site comprise a very small part of the overall extent of streams locally. In addition, 22 of the 31 streams (70 %) currently have poor ecological condition, including limited water surface shading and riparian margins consisting of pasture or a monoculture of low weeds (e.g. gorse/ pampas). Works adjacent to streams should be able to avoid direct effects through; Erosion Sediment Controls, by providing an immediate buffer along the stream margins, and reinstating cleared areas in accordance with KiwiRail’s standard native planting schedule.”

179. The outcome of the EIANZ matrix analysis was that the predicted level of effect on threatened long-tailed bats and streams was low, and for all other ecological factors assessed, very low.

180. Section 4.2 of the Ecological Assessment recommended the following mitigation measures, which are to be adopted by the Applicant.

1. The implementation of an Erosion and Sediment Control Plan in accordance with Council’s GD05 design guidelines to prevent the

mobilisation of sediments into waterways that are connected to the proposed development area (we address this matter separately);

2. The preparation of a Construction Method Statement for clearance of vegetation adjacent to watercourses and wetlands including:
 - a) Creating setbacks to prevent sedimentation into streams and wetlands, with the intention of providing interim shading for streams until the Main Works are undertaken;
 - b) Delineating wetlands/ stream buffer extents with fencing/ bunting prior to clearance;
 - c) A list of the methods for clearance, ensuring large machinery is restricted adjacent to streams and wetlands to prevent tracking in soft soils; and
 - d) The expected period of time between vegetation clearance, site works and remedial planting.
 - e) If the Method Statement requires works that may affect wetlands, an assessment by the Project ecologist and Project planner should be undertaken to jointly assess the scale of potential adverse effect, and the degree to which the NPSFM and AUP OP are relevant to avoiding, mitigating or offsetting adverse effects.
3. The eucalyptus stand at chainage 635500 provides suitable habitat for long-tailed bats. Where practicable, these trees should be felled between October and April, outside of the hibernation period, in general accordance with best practice protocols. In addition, prior to felling the eucalyptus stand at chainage 635500, a suitability qualified ecologist should undertake a pre- clearance survey for long-tailed bats. If no bats are detected then the trees should be felled with no restrictions with regards to bat roosts. Should any bats be discovered, the Consent Holder should comply with the controls of the relevant Wildlife Act permits, as issued by the Department of Conservation.
4. Should the removal of mature trees that provide suitable nesting habitat be required during the main bird nesting season (1 September and 28 February), a suitably qualified ecologist should complete a survey at least one week before any vegetation is to be cleared to ensure that there is no 'At Risk' or 'Threatened' native bird nesting occurring at that time. If any active nesting of native birds classified as 'At Risk' or 'Threatened' in the latest threat classification are recorded within the vegetation scheduled for removal, vegetation clearance should not be undertaken until the birds have finished fledging. The Project ecologist should monitor the birds until they have finished fledging, and provide written confirmation to the clearance contractor when clearance may commence.
5. The remediation of all cleared areas, where practicable, outside the rail corridor through the reinstatement of native plants in accordance with KiwiRail's vegetation standards for off track zones.

181. As a sixth item, the Ecological Assessment recommended that for future works an ecological offset may need to be considered once the aggregate stream length to be disturbed, removed or modified by those future works is known. Such works are not proposed by the applications currently lodged.

Comments Received

182. Comments on potential ecological effects from Forest and Bird, EDS and Auckland Council. All three parties supported the proposal in principle but sought additional measures to address potential adverse effects.
183. Each party provided extensive comments and EDS and Auckland Council also provided suggested additions and amendments to conditions. The issues raised are summarised below.

Forest and Bird

- a) Lack of clarity in location of riparian margins that will be affected by the works and the specific proximity of works to wetlands and streams;
- b) Potential loss of indigenous vegetation along the rail corridor;
- c) Lack of consideration of potential impacts on connectivity with nearby SNAs [SEAs],
- d) Clarification of activity status for vegetation outside of riparian margins;
- e) Potential sediment effects;
- f) Lack of certainty in management plan conditions;

- g) Lack of offset measures in relation to loss of ecological values, particularly within the margins of streams and wetlands and integration with the effects of future consents for works within stream and wetlands; and
- h) Rejection of permitted baseline afforded by the designation and permitted activity rules.

EDS

- a) Lack of detail and clarity in plans to allow a satisfactory assessment of potential effects;
- b) Lack of integration in the assessment the impacts of the proposal in conjunction with potential future stage impacts on wetlands and streams;
- c) Potential underestimate of indirect impact on wetlands;
- d) Lack of clarity around the areas to be revegetated and what areas are considered to be “off-track” zones and what areas are to remain cleared for safety and operational reasons;
- e) Need to adopt the effects management hierarchy, in line with the NPS-FM;
- f) Overall greater level of riparian restoration and ecological offsetting required than has been proposed;
- g) Support for the proposed ESC measures and retention of vegetated buffer adjacent to streams and wetlands;

- h) General support for the proposed approach to management and mitigation of potential effects on nesting bird life, lizards and long-tailed bats; and
- i) Provision of comments and suggested amendments to various conditions.

Auckland Council

- a) Uncertainty on the exact location of streams and wetlands and a request to require agreement to be achieved on site;
- b) Failure to adequately address pre-application feedback provided;
- c) Ecology Assessment assumptions regarding the number and location of copper skink recorded within proximity of the rail line, with the Council citing one recorded within 100m, and failure to constitute a comprehensive survey using a range of methods;
- d) No recognition of the most recently available data on recorded fauna;
- e) Requirement to expand the scope of Condition 30 to include lizards and a wider range of locations, to be included in pre-construction ecological surveys; and
- f) Need to strengthen Condition 32 to provide greater specificity in keeping machinery out of streams and wetlands.

184. The Applicant's responses to these matters are summarised as follows:

- a) The permitted baseline has been appropriately applied, including those matters provided for under the designation and OP process;

- b) Confirmed that no works will be undertaken within, or within 1m of any stream or wetland;
 - c) The estimated extent of vegetation removal is a worst-case scenario. It may be less;
 - d) The works for which consent is sought do not trigger any AUP(OP) rules relating to works in streams or wetlands and do not occasion the need for associated offsets. The potential effects of future stream works will be addressed at that time;
 - e) The Ecological Assessment is appropriate and its conclusions and recommendations sound;
 - f) The corridor is a highly modified environment. The majority of vegetation impacted are exotic species and many of those are pest species. No endangered or threatened native species were identified within the rail corridor;
 - g) The safety risks of undertaking further lizard trapping and relocation within the live rail corridor is not commensurate with the likelihood of capturing native lizards, which is low;
 - h) Potential impacts on bats, which are assessed as low, will be appropriately managed through additional bat survey and timing of tree removal; and
 - i) The proposed conditions and mitigation planting will appropriately address potential adverse ecological effects.
185. Having carefully considered all application materials, comments and responses received and having undertaken an extensive site visit of the Project area, the Panel agrees with the Applicant that the works most likely to impact on vegetation and fauna are those within the existing designated rail corridor. Moreover, those works will not encroach within 1m of any

stream or wetland and will be managed in a way that minimises potential sediment discharges to an acceptable level.

186. We find that the application of the permitted baseline, as raised by Forest and Bird, somewhat conflates the status of activities covered by a designation with the effects associated with permitted activities. The designation negates the need to obtain resource consent for activities that would otherwise require resource consent under the AUP(OP), and that are consistent with the purpose of the designation. An OP will be submitted to Council for those works, which cover all effects not governed by regional rules or a national environmental standard. We accept that the Applicant has correctly sought consent under the regional rule infringements occasioned by the proposed works. We also note that the Applicant has, to some extent, taken a precautionary approach in seeking to include earthworks in the regional consent application, rather than seeking to adopt compliance with the corresponding regional permitted standards for infrastructure. This, we understand, is due to the need to concurrently work in multiple areas.
187. The Panel is not persuaded that any further ecological mitigation, including offsetting, is required to address the potential ecological effects of the proposal. While there will be habitat and ecological values in areas of pest plant or other exotic vegetation within riparian areas of streams and wetlands, we must acknowledge that pest plants, which are dominant across these areas, could be removed as a permitted activity and without mitigation. In this regard, the Applicant has taken a precautionary approach to the consenting of vegetation removal.
188. Auckland Council has queried the accuracy of the Ecological Assessment in relation to lizards but has not provided information that confirms that the assessment is significantly in error with regard to the population density of native lizards or the probability of identification and capture through

additional surveys. Again, the extent of impacts that are to be occasioned by the works incorporate impacts that might otherwise occur through maintenance and upgrade of the corridor, and activities such as pest plant management. We accept the Applicant's response that the safety risks of undertaking further surveys are not outweighed by the low probability of capture and relocation of native lizards. This acceptance is reinforced by the extent of works that can be, and are presently being, undertaken as permitted activities.

189. Auckland Council also raises concern about the accuracy of identifying the location and extent of streams and wetlands within and adjacent to the corridor and seeks a requirement to form agreement on site prior to the commencement of earthworks. We are satisfied that conditions require all activities to remain outside of streams and wetland regardless of where those features are located. We also acknowledge the pre-commencement meeting conditions at which any streams and wetlands can be identified prior to the commencement of works in a given stage. Consequently, the Panel does not consider any specific additional requirement to be necessary.
190. Our overall finding is that the Applicant has undertaken an assessment of effects that is appropriate to the scale and likely effects of the works proposed and has offered on-site measures and resource consent conditions that will ensure that the potential ecological effects are appropriately avoided, remedied or mitigated. No further application of the effects management hierarchy is necessary to address the potential adverse ecological effects of the Project. Effects of future works can be addressed at that time, and to the extent necessary to achieve the outcomes sought through the effects management hierarchy.

Conditions Imposed

191. Conditions 29 to 33 specifically address the management of ecological effects. As stated above, overall, the Panel finds that those conditions will ensure that potential adverse effects of the Project on ecosystems will be appropriately avoided, remedied and mitigated.
192. Conditions 29 and 30 control the timing and pre-works requirements of vegetation clearance to avoid or minimise effects on birds and bats. As stated above, we do not find additional lizard surveys to be necessary and accordingly, do not adopt the Auckland Council request to include lizards in Condition 30, which requires a pre-works bat survey of the eucalyptus stand at chainage 635500.
193. Condition 31 requires the preparation and certification of a Riparian Vegetation Management Plan. The required content of the plan appropriately addresses the management measures identified and proposed in the Ecology Assessment and application documents. The requirements and outcomes listed in the condition will provide sufficient specificity for the Council to assess it in a certification capacity. While we consider the listed matters will necessitate exclusion of machinery from watercourse and wetlands, we have for absolute clarity at the suggestion of Auckland Council, provided additional wording to the condition to ensure that outcome is clearly stated.
194. For reasons explained earlier, we have deleted the second sentence of proposed Condition 33 which states the purpose of the required 1m wide vegetated buffer is to be retained at the edge of streams and wetlands. A 1m wide buffer will not provide sufficient filtration of sediment laden runoff and does not meet the requirements of GD05. Rather, the buffer will be a visual barrier to prevent direct impacts on those water bodies and retain some ecological functions until restoration planting is established.

195. Overall, the Panel is satisfied that implementation of the conditions imposed will ensure that the potential adverse effects of the Project on ecosystems will be acceptable and minor.

Effects on landform, landscape and visual values

196. The Applicant addresses effects on landform, landscape and visual values in Section 6.8 of the AEE, noting that for the purposes of the current consent applications, those effects are limited to those associated with land disturbance and vegetation clearance. The Applicant and Panel address cultural landscape effects separately, while associated effects of new structures are addressed through the OP process.

197. The landform effects are assessed as negligible, given the modified nature of the Project corridor and relatively limited land disturbance at any given location. The Applicant acknowledges that earthworks required to form the new platform will be somewhat more significant and require retaining but concludes that overall, “there will be little apparent visual change to casual observers for the works that are the subject of this consent application package”.

198. The main impact on landscape and visual values will arise from the removal of vegetation. The works area is not subject to any AUP(OP) landscape overlays. As previously described, the vegetation clearance will primarily comprise exotic species. Thirty six of the 68 species identified are classified as environmental pest plants, with 27 of those listed in the Auckland Council Regional Pest Management Plan (2020 – 2030). The removal of that vegetation does not trigger a consent or associated consideration of landscape or visual effects. Much of the corridor is integrated or masked within the rural environment such that the vegetation does not contribute significant landscape value.

199. The Applicant notes that the stand of totara at chainage 632400 will be retained. The Panel also notes that the stand of eucalyptus at chainage 635500 will be removed for safety reasons. During the site visit it was noted that the stand is not a significant landscape feature in the context of its rural environment.

Comments received

200. No specific comments were received on landform, landscape and visual values although EDS provided one reference to offsetting enhancing landscape connectivity. The Panel has provided its findings on offsetting earlier in this decision.

Conditions imposed

201. No conditions specifically address landform, landscape and visual values but the replacement planting requirements of the Riparian Vegetation Clearance Plan will mitigate loss of riparian vegetation which currently comprises a significant proportion of pest species.

202. Overall, the Panel is satisfied that the effects of the Project on landform, landscape and visual values will be acceptable and minor.

Noise and vibration effects

203. The potential noise and vibration effects of the proposed construction activities are addressed in Section 6.11 of the AEE and Appendix T (Construction Noise and Vibration Assessment).

204. The construction activities that may generate noise and vibration are:

- a) Piling for any retaining walls, platform foundations and OLE foundations including vibro-piling, rock breaking and vibratory rolling;
- b) Demolition of existing structures;
- c) Bulk earthworks with associated machinery; and
- d) Laying of rail sleepers including rail tamping.

205. As described in the AEE:

While most of these works will be undertaken during standard construction hours, it will be necessary to undertake some works during night-time hours, weekends or on public holidays. This is due to some works requiring a block of line when rail services are either stopped or reduced along the NIMT. BoL works ensure that rail construction can occur in a manner which keeps both workers and rail users safe, and are a common occurrence across the Auckland Metro network.

While the majority of works will occur within the NIMT designation and are not subject to any AUP(OP) noise (or vibration) rules, some activities are located outside the designation. This includes the operation of 60 Mercer Street and the access tracks. The "other" construction activities are controlled by the noise limits set in E25.6.27 of the AUP(OP) contained in Table 6-2 below⁷³. These limits apply to construction activities that take place for up to 20 weeks, which is consistent with the majority of construction activities proposed by KiwiRail.

206. The Construction Noise and Vibration Assessment identifies that:

- a) Daytime construction noise limits can be complied with at 20m assuming effective noise barriers are used, but construction noise could exceed at times, depending on the location and activity type (e.g. if rock breaking or vibro-piling is required locally);
- b) The frequency and magnitude of exceedances will depend on where the high-noise machines are working, whether they are working simultaneously, and whether they are being operated considerately; and

- c) Rail tamping, rock breaking, or vibro-piling should be avoided at night-time near noise sensitive receivers.
207. The Construction Noise and Vibration Assessment includes a draft Construction Noise and Vibration Management Plan (**CNVMP**) that sets limits, procedures and responses for the management of noise and vibration during the works. The limits are included in consent conditions and the CNVMP is to be updated and certified prior to the commencement of construction works.
208. The Construction Noise and Vibration Assessment identifies that some vibration exceedances of amenity levels may occur during occasional night works, but those are already exceeded by train and traffic movements.
209. The AEE concludes that “while noise and vibration levels may be exceeded on occasion, primarily due to block of line works, these exceedances are anticipated by the AUP(OP) and will be managed by both the proposed standards and the CNVMP. As such, the noise and vibration effects will be no than minor”.

Comments Received

210. Comments on potential noise and vibration effects were received from Anil Sachdeva, Shannon Shaw, Lessa Wright; Donald and Lynley Bray; TL Roose Holdings Ltd; Counties Manukau District Health Board (**District Health Board**) and Auckland Council.
211. Several of the persons providing comments raised concerns about noise and / or vibration effects generated by train operations. Those effects are not occasioned by the construction activities for which consent is sought. Accordingly, they have not been assessed as part of the current consent applications.

212. Various other comments relate to the effects of construction activities that have been considered in the Construction Noise and Vibration Assessment and are addressed in the CNVMP and associated conditions. We accept that construction activities will, from time to time, adversely impact amenity. The timing and extent of that effect will be managed through the CVNMP and conditions and for most of the Project alignment, will be transitional as works advance along the Project corridor. Also, and importantly, the Construction Noise and Vibration Assessment concludes that, with the possible exception of some commercial properties, vibration effects will be limited to amenity and will not cause cosmetic or structural damage to adjacent buildings. For some buildings if vibro-piling is used to install OLE structures within 3m of the building, some cosmetic damage may occur. Management procedures are included to address this potential and for any other buildings potentially affected. In its response, the Applicant confirmed that pre and post construction conditions surveys will be undertaken for residential properties within 10m and commercial properties within 6m of the centre of the rail. As in the case of dust effects, we find that the consent will clarify and strengthen requirements for monitoring and managing noise and vibration effects, and the Council's ability to enforce those requirements.

213. The District Health Board provided extensive comments regarding potential construction noise and vibration effects on the Papakura Primary Birthing Unit at 2-4 Clevedon Road, Papakura. Of specific concern is:

- a) The construction noise and vibration effects of the Application on the Birthing Unit have not been adequately considered or addressed;
- b) The proposed conditions in the Application do not consider and provide for the unique sensitivities of the noise and vibration receivers at the Birthing Unit. For example, the noise and vibration

standards as currently drafted set up a blanket rule of seven days a week (no allowance for weekends, or any other circumstance), and cover very long hours (7am – 8 pm), without consideration of how this may affect birthing mothers and new-born babies. Additionally, the proposed limits are higher than those in the AUP(OP);

- c) KiwiRail has not clearly outlined the effects of noise and vibration at the Birthing Unit when making its conclusion that no operational noise conditions are necessary (AEE, section 6.11);
- d) Through the 27 November 2020 waiver of the OP of works (AEE, section 4.4, Table 4-2), KiwiRail has avoided assessing the ongoing operational effects of the proposal on the Birthing Unit; and
- e) More generally, KiwiRail has not fully considered the potential effects of the Application on the Birthing Unit, and any measures to mitigate these.

214. The District Health Board sought a site-specific noise and vibration management plan, adoption of amendments to conditions, and ongoing engagement through the consent process.

215. In response, the Applicant notes that the northern most point of works is occurring at Chainage 646.941 which is approximately 380m south of the Papakura Primary Birthing Unit, with no direct line of sight between Birthing Unit buildings and the proposed works. Consequently, the Applicant anticipates that given this separation distance, and the proposed works methodology, noise and vibration levels at the Birthing Unit will be within AUP(OP) permitted activity standards, including at night. As a result, the Applicant considers that a site-specific noise and vibration management plan is not required for the Birthing Unit and that potential effects on the Birthing Unit (if any) will be appropriately managed via the CNVMP. The Panel agrees.

216. While we accept that the Birthing Unit has particular sensitivities to construction effects, it has significant separation from the works, much greater than other buildings where amenity effects have been assessed as likely to be within permitted standards. We have not received any technical assessment to refute that conclusion. We also note that the CNVMP will set the process for engagement with affected receivers and timely management of complaints. The CMP will provide the process for identification and management of any issues that may arise, implementation of corrective measures as required, and a PCP that sets out the specific processes for registering and responding to complaints, including those regarding noise and vibration effects.
217. Auckland Council commented that the assessment undertaken is appropriate, the proposed approach to the management of construction noise and vibration is consistent with other rail Projects and is acceptable, and that the proposed consent conditions are supported.

Conditions Imposed

218. Conditions 12 to 15 address the management of potential construction noise and vibration effects of the Project. Those include day time and night time noise limits, vibration standards, and the requirement to prepare and implement the CNVMP.
219. The Panel is satisfied that those conditions will appropriately manage construction noise and vibration effects such that they are acceptable and minor.

Effects on natural hazards risks

220. Potential flooding effects have been addressed in the consideration of stormwater effects. The Applicant addresses potential land stability effects in Section 6.12.2 of the AEE as follows:³²

In addition to flooding risks, the P2P design process has also considered the potential for land instability. This has included undertaking geotechnical investigations across the construction footprint to determine ground conditions. This information will be used in the design of retaining walls and the foundations for P2P's structures (e.g. OLE). Furthermore, all structures will be subject to a four-gate design process, requiring an engineering review of structure designs at each gate.

It is noted that minimal cuts and retaining will be required for P2P, while the majority of such works will occur in rural locations where there are no structures or infrastructure at risk from land movement (where it is to occur). In addition, given the national importance of the NIMT, KiwiRail will ensure that any such works are stable to avoid risks to rail services and the NIMT's infrastructure.

Lastly, during bulk earthworks, any exposed areas will be progressively stabilised to avoid any instability. This will include around streambanks and other sections of the corridor where larger cuts and filling will be required. This earthworks approach will be imposed via a Council certified ESCP and the proposed conditions.

Given these factors, the effects on land stability are less than minor.

221. The Panel accepts the Applicant's assessment that no other natural hazards are encountered by the Project.

Comments Received

222. No comments have been received that specifically address geotechnical stability. Comments relating to sediment effects have been addressed separately.

223. Comments relating to potential effects of construction vibration have been separately addressed in this decision.

³² AEE Section 6 at page 81.

224. Auckland Council does not provide any comments specifically relating geotechnical stability.

Conditions Imposed

225. No conditions are imposed that specifically address natural hazards.
226. The Panel accepts the Applicant's assessment and acknowledges that geotechnical stability is addressed through engineering design and approval processes, and will be covered by OP processes. No further consideration is required in the context of the current resource consent applications.

Effects on the community

227. Most effects on the community generally have been addressed in other sections of this decision.
228. The Applicant addresses 'Effects on the Community' in Section 6.7 of the AEE. Therein it identifies economic and social benefits that have been previously listed, and acknowledges temporary construction effects due to road closures, construction traffic volumes and corridor works near to or beside recreation reserves. Those are to be mitigated through the adoption of various management plans, discussed later.
229. Construction traffic effects are addressed in Section 6.7.2 of the AEE and Appendix U (Construction Traffic Assessment (**CTA**)). The CTA considered 23 proposed and / or operative construction access points and associated traffic volumes, and the effects of the use of the 60 Mercer Street compound.

230. The CTA identified the potential congestion associated with the compound as a result of Project related traffic and recommended the use of a staff travel plan to minimise this congestion from light vehicles and KiwiRail. This is addressed in conditions.

231. The AEE reports that:

In addition to regular staff movements, there will occasionally be safety briefings that will attract about 100 staff at once. At these briefings, some parking on the street will be required. It is recommended that these briefings be scheduled to avoid peak traffic times. If the briefings are held early in the morning, as is common practice, the CTA has stated that it is not likely that there will be an impact on traffic on SH22, as long as staff are not leaving at the morning peak.

With regard to the truck movements at Mercer Street, the CTA states that there would be 25 trucks per day per direction over a 10-hour day. If spread evenly throughout the day, this would equate to 2-3 trucks per hour (one every 20 to 30 minutes per direction). During off-peak hours with free-flowing traffic, these truck movements will have a less than minor effect. During peak hours, any heavy vehicles exiting Mercer Street will turn left-in-left-out to avoid causing congestion on Mercer Street. This will also reduce potential traffic congestion effects on the residents and the childcare centre present on Mercer Street.

The other areas of the Project which will generate construction traffic are the laydown areas at Pukekohe Station and Ōpaheke, as well as the three new station sites. The CTA finds that the construction traffic generated by these sites can be safely accommodated by the local road network and controlled via the CTMP61.

Post-construction, the only traffic generated by P2P will be restricted to any maintenance activities within the NIMT, as well as train crew changes at Pukekohe Station. The finished Pukekohe Station will include a car park for rail staff, which may operate on a 24/7 basis. Further details regarding the car park design and its operation will be addressed by the future OP for the station.

Lastly, it is noted that the majority of works will be occurring within a rural environment. As such, there are few sensitive receivers (i.e. schools, dwellings, hospitals, care centres/homes) within close proximity to the NIMT. As such, the lower population present in these rural areas also limits the potential for any social disruption generated by the proposed works.

Comments Received

232. Comments relating to construction traffic effects were received from KR and JO Morrow Family Trust, Milly Sue, Waka Kotahi and Auckland Transport.
233. The KR and JO Morrow Family Trust raised concern about impacts on parking spaces and deliveries to their business at 6/236 Great South Road, Drury. They made particular reference to impacts on access via Waihoehoe Road. The Applicant responded that such effects would be addressed through Site Specific Traffic Management Plans (**SSTMPs**). The SSTMPs are required by a proposed condition and the Applicant has added a requirement to address “temporary traffic management measures required to manage impacts on local businesses, schools and council reserves”, and a corresponding requirement to communicate those measures to those parties. Subject to further comment on conditions below, the Panel is satisfied that the potential impacts on businesses, and in particular 6/236 Great South Road, can be appropriately minimised through the implementation of SSTMPs prepared in conjunction with those immediately affected parties.
234. Milly Su identified damage that the existing works has caused on her driveway at 248 Sutton Road, Drury. The Applicant responded that eTRACS (the Applicant’s construction partner) has been in contact with the property owner and has repaired the damage. The Panel makes not further comment in regard to Ms Su but does acknowledge that the Construction Management Plan will include processes for registering complaints and the process for responding to complaints. This strengthens that process over the existing situation of construction being undertaken as permitted activities.

235. Waka Kotahi supports the proposal but sought an additional condition requiring the Construction Traffic Management Plan (**CTMP**) and SSTMPs to be reviewed by Waka Kotahi prior to implementation. In response, the Applicant proposes the inclusion of a requirement in the CTMP and SSTMP to report details of Waka Kotahi's review of each document. The Panel considers that this directly addresses the request made by Waka Kotahi and should ensure that potential impacts on the function of local and state highway network are appropriately managed.
236. Auckland Transport provided general agreement with the CTA and overall support for the Project. Auckland Transport requested the inclusion of a standard condition to address the avoidance of damage to assets (damage to public roads, footpaths, berms, kerbs, drains, reserves or other public asset), on the basis that the condition is minor, not inconsistent with the application documents and would not require revision of the proposal. Auckland Transport also sought the inclusion of a standard advice note regarding the need for the Applicant to submit Corridor Access Requests as necessary during the works. The Panel considers these requests to be reasonable and presents no disadvantage to the Applicant. Accordingly, they are imposed.

Conditions Imposed

237. The conditions relevant to the management of construction traffic effects have been discussed above through the description of the proposal and comments received.
238. An overarching CTMP will be prepared that addresses the following activities on a Project-wide basis:
- a) The management and minimisation of traffic congestion arising from construction vehicles;

- b) The safe movement of vehicles to and from construction sites;
- c) The safety of other road users, including public transport providers, pedestrians and cyclists; and
- d) That adequate on-site parking or other transport arrangements are provided for the Project's construction workers.

239. Detailed requirements of the CTMP that achieve the listed outcomes are included.

240. As noted, the SSTMPs will address the management of traffic effects on specific sites and localities. The corresponding conditions list the specific requirements of the SSTMPs. The Panel has noted and accepted additions provided by the Applicant in response to comments.

241. The Panel addresses two additional matters.

242. First, the Panel finds that the CTMP should identify works sites and activities that will, or are likely to, engage the need for a SSTMP. This links the function of the management plans and ensures forward planning of the effects.

243. Secondly, the Panel includes an additional requirement that each SSTMP must include 'evidence of consultation with, and feedback from, the owners and operators of properties and businesses directly affected by the activities addressed in the SSTMP'. This inclusion builds on the comments received by the KR and JO Morrow Family Trust and strengthens the ability of the SSTMPs to address impacts on specific properties and businesses by understanding the particular activities that occur at those sites. As proposed by the Applicant, the SSTMP condition did not explicitly require engagement with those parties.

244. Finally, the Panel notes that the Applicant proposes that CTMP and SSTMPs are to be submitted to Council for information only. It is unclear why this is the case. The requirements of the plans are explicit and could reasonably be subject to certification. If construction traffic management is a potential effect that is associated with the consents sought, it follows that they should be subject to the same certification process as other management plans required by conditions. Accordingly, those conditions have been modified to require certification by Council.
245. Overall, the Panel is satisfied that implementation of the conditions imposed will ensure that the potential adverse construction traffic effects of the Project will be acceptable and minor.

Other effects

246. In addition to the effects which have been examined in detail and referred to in this section of the decision, the Panel has given consideration to the full range of effects identified in the AEE, and by those parties which provided comment. In respect of those further effects we make the following findings.
247. We consider that the economic effects of the Project are overwhelmingly positive, and have been addressed earlier in the decision. It is acknowledged that there may be some short-term adverse economic effects, particularly during the construction phases, such as through traffic disruption and access inconveniences, but these will be short lived, and appropriately addressed via the management plans identified in the conditions.
248. Like the economic effects, the social effects are overwhelmingly positive, and while there will be some short-term adverse effects, again arising during construction, mostly as a consequence of inconvenience associated

with traffic management. We consider these effects can be appropriately managed via conditions.

249. Similarly, there are some short-term effects on recreational facilities, namely public reserves such as Opāheke Reserve, Drury Domain and Ngakoroa Reserve. Conditions of the management plans will ensure continued enjoyment of these public spaces during construction.

Section 10: Measures to Ensure Positive Effects on the Environment to Offset or Compensate for Adverse Effects

250. This matter calls for consideration under clause 29(1)(b) of Schedule 5 to the Act. The Applicant has not proposed conditions to offset or compensate for any adverse effects arising as a result of the Project proceeding. Nevertheless, there are a range of mitigation measures intended to be deployed by the Applicant, and those are summarised in Section 6.13 of the AEE.

Section 11: Analysis against relevant statutory documents

The Act

251. The Act allows specific works on existing infrastructure by identified agencies (including the Applicant) to occur as permitted activities, provided they meet permitted activity standards. Works are limited to the operation, maintenance, replacement or minor upgrades of existing infrastructure. The proposed works include activities that are provided for as permitted activities under the Act's fast-track consenting process. Those works include:

- a) Ground disturbance and earthworks including diversion, damming and discharge of sediment-laden water;

- b) Diversion and discharge of stormwater run-off;
- c) Transport, disposal and tracking of soil and other materials removed;
- d) Discharge of dust to land and air;
- e) Construction noise and vibration; and
- f) Construction signage.

252. An assessment of those works against the permitted activity standards and criteria of the Act is set out at Appendix P of the AEE. The Panel is satisfied that the performance standards referred to in the Act in respect of the identified works can be complied with in the manner identified by the Applicant.

253. In its assessment of the application against the purpose of the Act, the Panel is required to assess the application against the criteria set out in s 19 of the Act.³³ That criteria is focussed on the extent of the Project's economic costs and benefits, its effect on social and cultural well-being, any adverse effects, and whether proceeding under the Act expedites the Project.³⁴

254. We consider that the Project will deliver significant benefits to the Auckland Region and beyond. Those benefits will include economic stimulus, critical public transport infrastructure, improved environmental outcomes and enhanced social connections and cohesion between places of employment and where people live. Processing the application using the Act will progress the Project, and deliver these outcomes, faster than would otherwise occur under the RMA.

³³ Clause 9(1)(g) of Schedule 6.

³⁴ Section 19 of the Act.

AUP(OP)

255. The Project has been considered under the provisions of the AUP(OP). The relevant operative provisions and how they relate to the Project are summarised in Table 5-1 of the AEE. Although the Act's permitted standards are relevant for certain of the proposed activities, resource consent under the AUP(OP) has been triggered for the majority of the Project works given that the Act's permitted standards apply to work on existing infrastructure, whereas the works proposed involve the construction of new infrastructure (e.g. tracks, signals, platforms); and due to work occurring beside Statutory Acknowledgement Areas, including the Whangapouri Creek, Hingaia Creek, Ngākoroa Stream, and Otūwairoa Stream.

256. A full assessment of the proposed works against the permitted activity standards and criteria of the AUP(OP) is set out at Appendix P to the AEE. Overall the Panel is satisfied that the Applicant has correctly assessed the proposed works against the provisions of the AUP(OP) and correctly determined that the overall activity status of the application is for a discretionary activity under the AUP(OP).

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS)

257. The NES-CS sets out planning controls for assessing contaminants in soil when managing effects on human health. The NES-CS applies to specific activities on land where a Hazardous Activities and Industries List (**HAIL**) activity has or is more likely than not to have occurred. Activities covered under the NES-CS include soil disturbance, soil sampling, fuel systems removal, subdivision and land use change.

258. The relevant parts of the railway corridor within the Project boundaries are not determined to be a HAIL site. However, according to the Applicant, any yards, workshops, maintenance areas and refuelling areas are treated accordingly.
259. The land which is subject to soil disturbance is largely within the existing rail corridor. The sites adjacent to the rail corridor are potential sources of contamination as a result of contamination migration via mechanisms such as soil relocation and dispersion as a result of groundwater flow and/or overland stormwater flow paths.
260. Under Regulation 9 of the NES-CS the proposed activity is provided for as a controlled activity if certain requirements are met. The requirements include that a DSI must exist for the affected land and it must state that the soil contamination does not exceed Regulation 7. In addition, the report must be provided to the consent authority.
261. These requirements are met and accordingly, activity is a controlled activity.
262. Pukekohe Station and Stabling Yard is however considered a HAIL site. The proposed soil disturbance does not meet the permitted activity thresholds in Regulation 8(3)(c), (d)(ii) and (f) as greater than 25m³ per 500m² will be disturbed, greater than 5m³ per 500m² will be taken off site and the works will take place for longer than 2 months. A DSI has been provided with the application and the soil sampling confirms that the soil contamination does not exceed Regulation 7. Overall, consent is required as a controlled activity under the NES-CS.

National Environmental Standard for Freshwater (NES-F)

263. The NES-F came into effect on 3 September 2020 and sets out national planning controls for assessing works within and in proximity to watercourses and wetlands across New Zealand.

264. The NES-F applies to specific activities, including the removal of riparian vegetation, the culverting of streams and the reclamation of natural wetlands. The following consents under the NES-F are required:

- a) The removal of up to approximately 9,120 m² of vegetation within 10 m of 11 wetlands is a discretionary activity pursuant to Regulation 45(1); and
- b) Earthworks within 10m of 11 natural wetlands is a discretionary activity pursuant to Regulation 45(2).
- c) Under Regulation 45(4) for the diversion and discharge of sediment laden water and the possible diversion and discharge of groundwater within 100m of a natural wetland. That also has a discretionary status.

265. Overall, consent is required as a discretionary activity under the NES-F.

Summary of consents required

266. Overall, the proposed works require consent as a discretionary activity and will require the following land use consents under the provisions of the AUP(OP), NES-CS and NES-F:

- a) Rule E26.5.3.2(A103): Greater than 50,000m² where land has a slope less than 10 degrees outside the Sediment Control Protection Area

other than for maintenance, repair renewal, minor infrastructure upgrading is a restricted discretionary activity;

- b) Rule E26.3.3.1(A77): Vegetation alteration or removal that does not comply with Standards E26.3.5.1 to E26.3.5.4 is a restricted discretionary activity;
- c) Rule E40.4.1(A24): Specific temporary activities that are not provided as a permitted activity in rules (A12) to (A23) is a restricted discretionary activity;
- d) Rule E10.4.1(A4): Development of new or redevelopment of existing impervious areas greater than 50m² within Stormwater management area control – Flow 1 that do not comply with Standard E10.6.1 or Standard E10.6.4.1 is a discretionary activity;
- e) Regulation 9 of the NES-CS: Disturbing soil at Pukekohe Station and Stabling Yard is a controlled activity;
- f) Regulation 45(1) of the NES-F: Vegetation clearance within 10m of a natural wetland is a discretionary activity;
- g) Regulation 45(2) of the NES-F: Earthworks within 10m of a natural wetland is a discretionary activity; and
- h) Regulation 45(4) of the NES-F: The taking, use, damming, diversion, or discharge of water within, or within a 100m setback from, a natural wetland is a discretionary activity if it is for the purpose of constructing specified infrastructure.

Section 12: Other matters considered by the Panel relevant to determine the Application

Treaty Settlement obligations on local authorities or decision makers (section 6(b) of the Act and clause 29(4) of Schedule 6

267. Refer to the Cultural Considerations section. On the basis of the analysis set out the Panel considers that approval of the application, on the conditions identified, would be consistent with the relevant obligations arising under the relevant Treaty settlements.

Disregarding certain effects under Clause 29(1)(a) concerning certain permitted activities (Clause 30(2))

268. Under the Act the Panel retains the ability of a decision maker under the RMA to disregard the effects of an activity if a national environmental standard or relevant plan permits an activity with that effect.

269. In the assessment of actual or potential effects arising from the application the Panel has exercised its discretion to apply the permitted baseline. The key elements of that baseline are set out in Section 6.1 of the AEE. The Panel's evaluation of the relevant planning instruments confirms that assessment and is satisfied that while the baseline has been applied to the effects assessment, the suite of consent conditions addresses all effects to the extent necessary.

Planning documents prepared by customary marine title group under s85 Marine and Coastal Area (Takutai Moana) Act 2011 (Clause 30(3))

270. This section of the Act is not applicable in this case.

Having no regard to matters of trade competition or effects of trade competition (Clause 30(4))

271. No trade competition issues have arisen in this case.

Rules for consideration of consent applications for activities with various status, including limitations on refusal and on imposition of conditions of consent (Clause 30(5), (6), (7) and (8a))

272. The Panel has considered these matters in the course of its decision making. Refer to sections of the relevant sections of this decision addressing the expert consenting Panel, the disregarding of certain effects, limited grounds for refusal, and Part 2 of the RMA.

Limited grounds for refusal of consent application for listed Project (Clause 34)

273. Under clause 34 the Panel may only decline the consent application on two grounds. First, if it finds that the granting of the resource consents would be inconsistent with any national policy statement, including the New Zealand Coastal Policy Statement. Secondly, if doing so would be inconsistent with Section 6 of the Act, which requires the Panel to act in a manner consistent with the principles of the Treaty of Waitangi, and Treaty settlements.

274. Overall the Panel is satisfied that neither of these two grounds apply to the application. Accordingly, consent cannot be declined.

Section 13: Conditions applying to resource consents (Clause 35(2) of the Act)*Comments on draft conditions*

275. As required under clause 36 of Schedule 6 of the Act the Panel issues its draft set of consent conditions to the Applicant and to those parties which had provided earlier comment of the application. Comments on the conditions were received from Auckland Council, Waka Kotahi, HNZ Pouhere Taonga, D and L Bray, and the Applicant.

276. The Panel has evaluated all comments and has taken consideration of them in the final drafting of the conditions.

Final conditions

277. The final set of consent conditions is set out at Appendix 2 to this decision.

Section 14: Part 2 Resource Management Act 1991

278. Part 2 of the RMA is relevant to our decision making. Section 12(10) of the Act provides:

- (10) The provisions of the Resource Management Act 1991 otherwise apply, to the extent that they are relevant and with any necessary modifications, to a listed Project...

279. Schedule 6, clauses 29(1) and 33(2) both provide:

- (1) When considering a consent application in relation to the conditions to be imposed on a listed Project, and any comments received in response to an invitation given under clause 17(2), a Panel must, subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act, have regard to... [emphasis supplied]

280. Schedule 6, clause 9(1)(g)(i) provides that every application for a listed Project must include an assessment of the activity against Part 2 of the RMA. The AEE provides a detailed assessment of the proposed works against the provisions of Part 2.³⁵ We note the decision of the Court of Appeal in *R J Davidson Family Trust v Marlborough District Council*³⁶ in which it was held that when a plan has been prepared having regard to Part 2 of the RMA, with a coherent set of policies designed to achieve clear environmental outcomes, then resort to Part 2 would not likely add any value to matters considered under s 104(1)(b) of the RMA. In this way reference to Part 2 cannot justify an outcome contrary to policies.
281. The present case is not one where the relevant plan has been prepared in a manner which fails to reflect the provisions of Part 2, and which therefore requires the Panel to exercise an overall broad judgement against the provisions of Part 2. Nevertheless, we do make the following observations.
282. We consider that the Project is aligned with the purpose of the RMA as set out in s 5. The provision of more efficient and reliable rail services expands the multi-modal transport options for Auckland, with associated roading, congestion and emission benefits. The works provide for the social, economic and cultural wellbeing of the community through improvements to regional connectivity that will be provided by the proposed rail improvements. Aucklanders will more easily be able to access employment, recreation, health and education facilities as a result of the Project.
283. In terms of s 6, any works at wetland and stream margins will be controlled by the proposed conditions. This includes the use of an ESCP, the protection of native birds, and bats, and restoration planting. Cultural impacts have been described above, and the Panel is satisfied that through

³⁵ Section 8.3.1 of the AEE.

³⁶ [2018] NZCA 316.

the consent conditions, the relationship of Māori and their culture and traditions, with their ancestral lands, water, sites, waahi tapu, and other taonga will be recognised and provided for. In the same way the requirements of s 8 are also met.

284. In conclusion, noting the overall consistency of the Project with Part 2 of the RMA, our assessment of the application against the relevant Part 2 matters has not led us to further amend any of the conditions for the consents.

Section 15: Final decision of the Panel (clauses 37 and 38)

Consents granted and conditions of consent

285. The full record of resource consents and related conditions are set out at Appendix 1 and Appendix 2 to this decision.

286. As required under clause 38 of Schedule 6 of the Act, we refer to clause 45 of Schedule 6 which provides a 15-day period for any appeal to be lodged after those persons entitled to appeal (as listed in clause 44) are notified of this decision.

Dated 30 July 2021

Lachlan Muldowney (Panel Chair)



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Shane Solomon (Panel Member)



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Michael Parsonson (Panel Member)



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APPENDIX 1

The following land use consents have been applied for and granted under the provisions of the AUP(OP), NES-CS and NES-F:

- a) Rule E26.5.3.2(A103): Works greater than 50,000m² where land has a slope less than 10 degrees outside the Sediment Control Protection Area other than for maintenance, repair renewal, minor infrastructure upgrading (a restricted discretionary activity);
- b) Rule E26.3.3.1(A77): Vegetation alteration or removal that does not comply with Standards E26.3.5.1 to E26.3.5.4 (a restricted discretionary activity);
- c) Rule E40.4.1(A24): Specific temporary activities that are not provided as a permitted activity in rules (A12) to (A23) (a restricted discretionary activity);
- d) Rule E10.4.1(A4): Development of new or redevelopment of existing impervious areas greater than 50m² within Stormwater management area control – Flow 1 that do not comply with Standard E10.6.1 or Standard E10.6.4.1 (a discretionary activity);
- e) Regulation 9 of the NES-CS: Disturbing soil at Pukekohe Station and Stabling Yard (a controlled activity);
- f) Regulation 45(1) of the NES-F: Vegetation clearance up to approximately 9,120 m² within 10m of a natural wetland (a discretionary activity);
- g) Regulation 45(2) of the NES-F: Earthworks within 10m of a natural wetland (a discretionary activity);

- a) Regulation 45(4) of the NES-F: The taking, use, damming, diversion, or discharge of sediment laden water within a 100m setback from a natural wetland (a discretionary activity);

APPENDIX 2

APPENDIX 3

Summary of comments received from parties invited to comment on the Papakura to Pukekōhe rail electrification

Name/organisation	Summary of comments
Te Waihanga New Zealand Infrastructure Commission	Supports application as reduces reliance on finite fossil fuels, and increases safety at road/rail interfaces. Ensure that rail upgrades are not dependant on power installations of Stage 2 application
Noeline and Robert Krogh	Support application
KR and JO Morrow Family Trust	Access into Waihoehoe Rd being restricted Loss of or restricted car parking in front of business (NPC Health)
Michael Norsworthy	Support application
Anil Sachdeva	Construction noise Impact on property of potential road widening
Shannon Shaw	Vibrations from earthworks causing damage to property Construction noise Pest control – rats exiting disturbed drains
Milly Sue	Construction vehicle damage to Sutton Road driveways needs fixing
Waka Kotahi NZ Transport Agency	Condition be placed on the resource consent/s regarding Construction and Site Specific Traffic Management Plans to be reviewed by Waka Kotahi prior to implementation of any traffic management.
Lessa Wright	Train vibrations impacting residential housing
Donald and Lynley Bray	Construction noise Stockpiling of construction spoil
Counties Manukau District Health Board	Construction noise and vibration on the birthing unit
First Gas Ltd	Earthmoving equipment working in area of gas pipelines Installation of OLEs in vicinity of gas pipelines Drury West Railway station situated too close to gas pipeline Proposed conditions
Minister for Arts Culture and Heritage	Support proposal and want to review draft conditions
Auckland Council	Large amount of information from technical experts (see list below)
Royal Forest and Bird	Proposed works within riparian areas Vegetation removal Mitigation and offset measures
TL Roose Holdings Ltd	Landlord of properties in Isabella Drive, Torrie Way and Roosevelt Mews, Pukekohe, tenants

	<p>have provided comments to landlord to compile and submit.</p> <p>Outside paint cracking</p> <p>Train noise, vibration and dust increased since boundary trees removed</p> <p>Gates not closing properly</p> <p>Removal of boundary trees</p> <p>Loss of privacy</p>
Margaret Richardson	<p>Stream erosion (Slippery Creek)</p> <p>Masonry cracking of building bordering train tracks</p>
Heritage NZ	<p>Relocation of Pukekohe Railway Station</p> <p>Amendments to some proposed conditions</p>
Minister of Maori Crown Relations	<p>Requested Panel to invite comment for certain iwi authorities/treaty settlement entities</p>
Minister for Treaty of Waitangi Negotiations	<p>Requested Panel to invite comment for certain iwi authorities/treaty settlement entities</p>
Minister for Land Information	<p>Support application</p> <p>Draft conditions appear generally suitable to mitigate adverse effects</p>

Auckland Council Specialist	Summary of comments
Development Engineer	<p>Traffic management plan recommended</p> <p>Supports stormwater assessment in application</p>
Franklin Ward Councillor	<p>Supports the extension of the electric rail network</p>
Earthworks and Stormwater	<p>Recommends proposed conditions to confirm and agree on the location and extent of streams and wetlands prior to any earthworks</p> <p>Amendments to some proposed conditions regarding erosion and sediment control</p>
Watercare	<p>Supports application</p> <p>Protection of all asset from construction works</p>
Healthy Waters	<p>Lack of confirmation that no increase in flood or stormwater effects will occur</p> <p>Lack of modelling results on impact of new rails lines on existing/new culverts</p> <p>Height of rail track in relation to flood levels</p>
Archaeology	<p>Recommended Historic Heritage Condition to be added</p>
Compliance Monitoring	<p>Amendments to condition wording to assist with Council monitoring</p>
Contaminate land	<p>Agree with findings of DSI and CSMP in application</p>
Auckland Transport	<p>In agreement with Appendix I – Construction Traffic Assessment</p>
Acoustic	<p>Recommended daytime noise limits</p>

	Monitoring noise management plan
Built Heritage	Construction noise Stockpiling of construction spoil
Ecology	Desktop analysis for fauna is incomplete Amendments to some proposed conditions
Franklin Local Board	Supports clearance of vegetation along entire route Construction noise and dust from Mercer Road site Road restrictions Utilise access roads for walking and cycling Location and name of Drury West Station
Papakura Local Board	Supports proposal Provide shelter at new stations Upgrade 5 level crossings Impact of bulk earthworks on riparian margins Construction noise, dust and stormwater run off
Council Parks	New stations and impact on open spaces and esplanade reserves Removal of riparian vegetation
Built Heritage	Relocation of the Pukekohe Railway Station Lack of consideration of built heritage Management of heritage effects during construction