

WILL THE CITY RAIL LINK SHAKE YOUR FOUNDATIONS?

It's official. Auckland Transport has now lodged Notices of Requirement (**NORs**) with Auckland Council for designations for works to be undertaken in relation to the City Rail Link.

Consultants are sharpening their pencils and sending cold call letters to various property owners along the designated route. They are offering their services in acting as experts on behalf of those property owners in relation to sale of land and/or the granting of easement rights, which will need to be negotiated with Auckland Council and Auckland Transport before the City Rail Link proceeds.

So, the question is, what do land owners really need to do at this time?

The simple answer is nothing for the moment.

The process is going to be a relatively long one with the NORs being the first step. The NORs outline changes to the Auckland Council District Plan identifying land and substrata land to be designated to permit Auckland Transport to construct the rail line and associated buildings and tunnels, and to protect the proposed route.

Auckland Council must now decide whether to publicly notify the NORs. It is certain to do so in this instance, although it may first require further information. It is anticipated that many of the property owners along the route will wish to make submissions, whether opposing the NORs or seeking conditions that mitigate the effect of the works. The hearing process is similar to that for an application for resource consent, and it is most likely that all seven NORs will be heard jointly. At the conclusion of the hearing process the Council may recommend to Auckland Transport that it:

- Confirm the requirement;
- Modify the requirement;
- Impose conditions;
- Withdraw the requirement.

The Council's recommendation is served on submitters and affected landowners or occupiers, and it is then up to Auckland Transport to advise the Council whether it accepts or rejects the recommendation. Any submitter or the Council can appeal that decision to the Court of Appeal, and the Court can cancel or confirm the requirements, or confirm subject to conditions.

Once the NORs are confirmed Auckland Transport will then be approaching owners of the various lands identified to negotiate contracts to either buy land or take easements on or under the lands as necessary. In some cases surface land is required and the whole of the land in a title will be acquired. But in many more instances it is only sub-surface land that is required, and only a sub-strata of land will be acquired.

This is the stage when owners need to take professional advice, including valuation and legal advice, to best

negotiate a fair price for the land/rights they are giving up and effecting the transfer of land/granting of such easements in accordance with normal legal practice.

Acquisition will be undertaken under the Public Works Act 1981, and Auckland Transport will be hoping that it will not have to use the compulsory acquisition powers contained in that Act. But in the event Auckland Transport is unable to negotiate a fair price direct with owners, it does have the power to acquire compulsorily, and to have the value of the interests acquired determined by the Land Valuation Tribunal.

There is an added complication for unit owners in body corporate complexes along the route, and there are a number of these. Although individual apartment owners may have been contacted by consultants offering services, and received the NORs and Notice of Intention to Take, the bodies corporate will need to actually run any negotiation process with Auckland Transport. This is because any rights will need to be granted by the body corporate rather than an individual apartment owner.

This is an issue that body corporate committees will need to grapple with over the next twelve months. Like individual owners they should take professional advice from suitable experts to guide them through the processes, which of course will be more complicated for bodies corporate.

A further refinement is that the scope of the designation will exceed the land area to be acquired. This is because much of the length of the tunnels will be at a depth far below actual ground level. This means that in addition to the actual sub-strata to be acquired, there will be a further sub-strata above the tunnels where effects such as vibration will be felt, and where other works such as foundations for new buildings may be constrained. These effects will need to be taken into account when compensation is negotiated.

Once Auckland Transport has acquired the necessary land and rights (which is likely to be a two year programme), and subject to funding, construction of the City Rail line could begin by 2015.

The designation process is the first step in a very long process before construction commences. With a five year construction programme, the opening of the rail link is aimed at 2021.

So in summary, owners need not rush to react, but once the NORs are publicly notified, owners should consider whether they wish to make submissions. Then, once the NORs are confirmed, owners will need to enter into negotiations with Auckland Transport to agree terms for the taking of land or the granting of easements, as required.

Brookfields has a wealth of experience in each of these areas, so owners should not hesitate to contact us for advice and guidance as matters progress.

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