

PART B: STATUTORY CONTEXT

3 Authorities sought under the Resource Management Act 1991

The proposed Expressway is a project of national significance and the NoR and resource consent applications to authorise it under the RMA have been lodged with the EPA. This Chapter outlines the requirements under the RMA for obtaining statutory approvals for the Project and assessing the Project as a proposal of national significance under the RMA.

The NoR has been lodged to identify and protect a corridor of land within the Kāpiti Coast District and to authorise the NZTA to construct, maintain and operate the proposed Expressway. A number of applications for resource consent have also been lodged to authorise various associated activities.

3.1 Introduction

This Chapter outlines the key statutory matters under the RMA which are of relevance to the Project, namely:

- the purpose and principles of the RMA (Part 2);
- consideration of proposals of national significance (Part 6AA);
- notices of requirement for designations, outline plans and review of designation (Part 8); and
- applications for resource consent (Part 6).

In this Chapter the relevant statutory matters are set out but **not** assessed. The assessment of the Project in relation to the statutory requirements is provided in Part I of this AEE.

This Chapter also contains details of the NoR for the designation and the applications for resource consent, sought for this Project.

3.2 Purpose and principles of the RMA

The consideration of the NoR and applications for resource consent are subject to Part 2 of the RMA. Part 2 (sections 5-8) sets out the purpose and principles of the RMA.

Under section 5:

“(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

- (2) *In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while -*
- (a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) *safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) *avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

Section 6 prescribes the matters of national importance that all persons exercising functions and powers under the Act shall recognise and provide for, as set out in full below. Paragraphs (a), (c), (d), (e) and (f) are of relevance to the Project:

“In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) *the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (b) *the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) *the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (e) *the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- (f) *the protection of historic heritage from inappropriate subdivision, use, and development:*
- (g) *the protection of recognised customary rights*

'Other matters' to which particular regard shall be given are set out in section 7:

"In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to -

- (a) *kaitiakitanga:*
 - (aa) *the ethic of stewardship:*
 - (b) *the efficient use and development of natural and physical resources:*
 - (ba) *the efficiency of the end use of energy:*
 - (c) *the maintenance and enhancement of amenity values:*
 - (d) *intrinsic values of ecosystems:*
 - (e) *[Repealed]*
 - (f) *maintenance and enhancement of the quality of the environment:*
 - (g) *any finite characteristics of natural and physical resources:*
 - (h) *the protection of the habitat of trout and salmon:*
 - (i) *the effects of climate change:*
 - (j) *the benefits to be derived from the use and development of renewable energy."*

Of particular relevance to the Project are matters (a), (aa), (b), (c), (d), (f), and (i).

Section 8 directs that:

"In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)."

3.3 Proposals of National Significance

Part 6AA (sections 140 – 150AA) of the RMA provides for the consideration of matters (such as notices of requirement for designations and applications for resource consent) which, singularly or collectively, constitute or are part of a proposal of national significance. Section 145 allows certain matters to be lodged directly with the EPA. In particular, these include:

- an application for a resource consent (section 145(1)(a)); and

- a notice of requirement for a designation (section 145(3)).

As has been explained earlier, the NZTA is lodging a NoR for a new designation and resource consent applications for this Project to the EPA in accordance with these sections.

Where an application for resource consent is lodged with the EPA, section 145(5) directs that:

“section 88 applies, except that -

- (a) every reference in that section to a consent authority must be read as a reference to the EPA; and*
- (b) the applicant has no right of objection under section 88(5) if the EPA determines that the application is incomplete under section 88(3).”*

Where a notice of requirement for a new designation is lodged with the EPA, subsection 145(7) directs that:

“section 168 applies, except that every reference in that section to a territorial authority must be read as a reference to the EPA.”

In accordance with section 145(10), in conjunction with the lodgement of these matters with the EPA, notice of the NoR and the resource consent applications have also been served on the relevant local authorities (KCDC and the GWRC).

Where a matter is lodged with the EPA under section 145 of the RMA, the EPA must make a recommendation to the Minister in accordance with section 146. The Minister then makes a direction on how the matter will be heard.

Under section 147(1) the Minister has three options:

- “(a) refer the matter to a board of inquiry for decision; or*
- (b) refer the matter to the Environment Court for decision; or*
- (c) refer the matter to the local authority.”*

Subsection 147(2) directs that:

“The Minister may make a direction under subsection (1)(a) or (b) only if he or she considers that the matter is or is part of a proposal of national significance.”

In accordance with section 147(3), in making a direction, the Minister is to apply section 142(3) which provides guidance in determining whether a matter is, or is part of, a proposal of national significance. It directs that the Minister may have regard to any relevant factors in making a direction, including whether the matter:

- “(a) has aroused widespread public concern or interest regarding its actual or likely effect on the environment (including the global environment); or*
- (b) involves or is likely to involve significant use of natural and physical resources; or*
- (c) affects or is likely to affect a structure, feature, place, or area of national significance; or*
- (d) affects or is likely to affect or is relevant to New Zealand's international obligations to the global environment; or*
- (e) results or is likely to result in or contribute to significant or irreversible changes to the environment (including the global environment); or*
- (f) involves or is likely to involve technology, processes, or methods that are new to New Zealand and that may affect its environment; or*
- (g) is or is likely to be significant in terms of section 8; or*
- (h) will assist the Crown in fulfilling its public health, welfare, security, or safety obligations or functions; or*
- (i) affects or is likely to affect more than 1 region or district; or*
- (j) relates to a network utility operation that extends or is proposed to extend to more than 1 district or region.”*

In addition to the requirements of section 142(3), section 147(4) states that in deciding whether a proposal is a matter of national significance, the Minister must have regard to:

- “(a) the views of the applicant and the local authority; and*
- (b) the capacity of the local authority to process the matter; and*
- (c) the recommendations of the EPA.”*

As discussed in Part A, Chapter 1 of this AEE, the NZTA considers that the NoR and resource consents applications for this Project would best be heard and determined by a Board of Inquiry (BoI), as the Project fulfils the criteria for a proposal of national significance.

If the Minister makes a direction that the NoR and resource consent applications for this Project be heard by a BoI, the processes set out in sections 149A to 149L, 149P to 149S and 149V must be followed. In addition, the Board must release its final decision on the matter within nine months of the Minister's direction being publicly notified by the EPA (section 149R (2)).

If the matters are referred to a Bol, in considering those matters, the Board will be required to have regard to the Minister's reasons for making the direction, and consider any information provided to it by the EPA.

One of the things that the EPA would be required to provide to the Board are reports prepared by relevant local authorities on the key issues in relation to the matters. Under section 149G (3), those reports would need to include:

- “(a) any relevant provisions of a national policy statement, a New Zealand coastal policy statement, a regional policy statement or proposed regional policy statement, and a plan or proposed plan; and*
- (b) a statement on whether all required resource consents in relation to the proposal to which the matter relates have been applied for; and*
- (c) if applicable, the activity status of all proposed activities in relation to the matter.”*

Section 149V directs that the decision of a Bol or of the Environment Court can only be appealed on a question of law.

3.4 Notice of requirement for a designation

As noted above, the NZTA is a requiring authority and has the ability to seek to designate land for the State highway network in accordance with its statutory functions.

The NZTA has given Notice of its Requirement for a new designation of land in the Kāpiti Coast District Plan for the construction, operation, and maintenance of the Project. If confirmed, no district land use consents will be required under the District Plan within the designated area (pursuant to section 176 of the RMA), other than any district land use consents required under a National Environmental Standard that exists when the designation is made, or for any works that fall outside the designated area.

This NoR has been lodged with the EPA under section 145(3) of the RMA and in accordance with section 168(2)²⁰, which together provide that:

“A requiring authority for the purposes approved under section 167 may at any time give notice in the prescribed form to [the EPA] of its requirement for a designation -

- (a) for a project or work; or*

²⁰ Noting that every reference to a territorial authority must be read as a reference to the EPA (section 145(7) of the RMA)

- (b) *in respect of any land, water, subsoil, or airspace where a restriction is reasonably necessary for the safe or efficient functioning or operation of such a project or work.”*

The prescribed form for a NoR is set out in Form 18 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003. The NoR for this Project (contained in Volume 1 of this set of documents) has been prepared in accordance with these regulations.

If the NoR is directed to a Bol it will be considered under section 149P. Section 149P directs that a Bol:

- “(a) must have regard to the matters set out in section 171(1) and comply with section 171(1A) as if it were a territorial authority; and*
- (b) may-*
 - (i) cancel the requirement; or*
 - (ii) confirm the requirement; or*
 - (iii) confirm the requirement, but modify it or impose conditions on it as the board thinks fit;”*

The Bol must have regard to the matters in section 171(1) and comply with section 171(1A). These provisions state that:

- “(1A) When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.*
- (1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to -*
 - (a) any relevant provisions of -*
 - (i) a national policy statement:*
 - (ii) a New Zealand coastal policy statement:*
 - (iii) a regional policy statement or proposed regional policy statement:*
 - (iv) a plan or proposed plan; and*
 - (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if -*
 - (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or*

- (ii) *it is likely that the work will have a significant adverse effect on the environment; and*
- (c) *whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and*
- (d) *any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.*

An assessment of the effects on the environment of allowing the requirement is provided under Part G, Volume 2 of this AEE. Discussion of the consideration given to the necessity of the work and alternatives are considered in Parts A and E respectively. An analysis of the proposal in relation to the relevant policy framework and Part 2 of the RMA is provided in Part I, Volume 2 of this AEE.

3.5 Outline plans

Section 176A sets out the circumstances when an outline plan (which shows the details of the work) must be submitted to a territorial authority before a requiring authority commences construction of a project or work authorised under a designation.

Under section 176A(2) an outline plan need not be submitted to a territorial authority if:

- (a) *The proposed public work, project, or work has been otherwise approved under this Act; or*
- (b) *The details of the proposed public work, project, or work, as referred to in subsection (3), are incorporated into the designation; or*
- (c) *The territorial authority waives the requirement for an outline plan.*

A BoI considering a NoR for a designation has the ability to waive the requirement for an outline plan under section 149P (4) (c).

This application for the NoR and accompanying information is intended to provide significant details of the work for incorporation into the designation in accordance with section 176A(2)(b). Specifically, in accordance with section 176A(3), the following plans have been submitted as part of the NoR in support of the request for an outline plan waiver:

(a) <i>The height, shape, and bulk of the public work, project, or work; and</i>	This information is found in Volume 5 Plan Set - including Scheme Plans, Geometric Plans, Cross sections, Structural - Bridges, Structural General and the Construction Details
(b) <i>The location on the site of the public work, project, or work; and</i>	Refer to Volume 5 Plan Set, in particular the Scheme Plans
(c) <i>The likely finished contour of the site; and</i>	Refer to Volume 5 Plan Set, in particular the Cross Sections and Earthworks Plans

(d) <i>The vehicular access, circulation, and the provision for parking; and</i>	Refer to Volume 5 Plan Set, in particular the Scheme Plans
(e) <i>The landscaping proposed; and</i>	Refer to the plans in Technical Report 5 - Urban and Landscape Design Framework, and Technical Report 7 - Assessment of Landscape and Visual Effects, Volume 3
(f) <i>Any other matters to avoid, remedy, or mitigate any adverse effects on the environment.</i>	All other matters to avoid, remedy or mitigate any adverse effects on the environment are addressed in this Assessment of Environmental Effects and accompanying documents

On this basis, an outline plan waiver is being sought for the Project, with the exception of the details of the two proposed cycleway/walkway bridges over the proposed Expressway (one in the Poplar Avenue to Raumati Road section and another in the Kāpiti Road to Mazengarb Road section), where the details of the work have not yet been determined. The outline plan requirements for these cycleway/walkway bridges and the required connections will be addressed separately at a later stage outside the BoI process.

Should there be any future changes to the detailed design submitted with the NoR, the need for an outline plan to be submitted to the territorial authority for the specific change would be addressed prior to the construction of that part of the Project.

3.6 Land subject to existing designations

The *proposed Expressway* will traverse areas of land which are subject to existing designations. These designations are referenced in the Kāpiti Coast District Plan as outlined in Table 3.1 below.

Table 3.1: Current Kāpiti Coast District Plan Designations

Designation Name	District Plan Identifier	Location	Requiring Authority
Railway purpose	D0301	Various	NZ Railways Corporation
Local Arterial	D0102	"Western Link Road"	KCDC
Roading	D1135	All local roads	
Paraparaumu Sewage Treatment Plant	D1110	Mazengarb Road, Paraparaumu	KCDC
Otaihanga Landfill	D1119	Otaihanga Road, Otaihanga	KCDC
Queen Elizabeth Park -Regional Park and recreation reserve for the purpose of active and passive recreation, including a golf course, conservation, production farming, facilities and buildings associated with recreational and operational activities of the Park.	D0401	MacKays Crossing between Paekākāriki and Raumati South	GWRC
River Management	D0403	Waikanae River, Waikanae	GWRC
State Highway Purposes	D0101	State Highway 1	Transit New Zealand (now NZTA)

Section 177 applies where land is subject to two designations. To undertake Project works on land on which there are existing designations, the NZTA will need the written consent of the relevant requiring authority in accordance with section 177(1)(a). This will require the NZTA to obtain approvals from KCDC, GWRC and the New Zealand Railways Corporation. The relevant consents will be sought after approval from the BoI has been obtained.

3.7 Project designations to be reviewed after construction

Once the Project has been constructed and is operational, the NZTA will review its designation. It is likely that some of the designated land will not be required for the ongoing operation and maintenance of the proposed Expressway: i.e. some of the designated land will be used for construction works, but will not be required for the ongoing operation and maintenance of the proposed Expressway. A review of the Project designation is included as a proposed condition of the designation.

Following such a review, if the NZTA decided that some of the land that was subject to the designation no longer needed to be designated, it may give notice to the Kāpiti Coast District Council seeking to remove the parts of the designation that relate to those areas of land. KCDC would have the ability to decline to remove part of the designation, if it considered that the effect of doing so would be more than minor (section 182(5)).

3.8 Applications for resource consent

The NZTA has also lodged applications for resource consents with the EPA under section 145(1) (a) and in accordance with section 88 of the RMA (as required by section 145(5)). The applications are for regional resource consents under the GWRC regional plans, and land use consents with KCDC with respect to the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES CSHN).

Under section 88(2):

"An application must -

- (a) be made in the prescribed form and manner; and*
- (b) include, in accordance with Schedule 4, an assessment of environmental effects in such detail as corresponds with the scale and significance of the effects that the activity may have on the environment."*

The prescribed form for an application for resource consent is set out in Form 9 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003. The application forms (contained in Volume 1 of this set of documents) have been prepared in accordance with these regulations.

The information to be included in an assessment of effects on the environment to support applications for resource consents is set out in Schedule 4 of the RMA. Clause 1 of Schedule 4 lists the following matters that, subject to the provisions of any RMA policy statement or plan, should be included:

- “(a) a description of the proposal:*
- (b) where it is likely that an activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity:*
- (c) [Repealed]*
- (d) an assessment of the actual or potential effect on the environment of the proposed activity:*
- (e) where the activity includes the use of hazardous substances and installations, an assessment of any risks to the environment which are likely to arise from such use:*
- (f) where the activity includes the discharge of any contaminant, a description of -*
 - (i) the nature of the discharge and the sensitivity of the proposed receiving environment to adverse effects; and*
 - (ii) any possible alternative methods of discharge, including discharge into any other receiving environment:*
- (g) a description of the mitigation measures (safeguards and contingency plans where relevant) to be undertaken to help prevent or reduce the actual or potential effect:*
- (h) identification of the persons affected by the proposal, the consultation undertaken, if any, and any response to the views of any person consulted:*
- (i) where the scale or significance of the activity's effect are such that monitoring is required, a description of how, once the proposal is approved, effects will be monitored and by whom.”*

Clause 2 of Schedule 4 provides direction on matters that should be considered when preparing an assessment of effects on the environment:

“Subject to the provisions of any policy statement or plan, any person preparing an assessment of the effects on the environment should consider the following matters:

- (a) any effect on those in the neighbourhood and, where relevant, the wider community including any socio-economic and cultural effects:*

- (b) any physical effect on the locality, including any landscape and visual effects:
- (c) any effect on ecosystems, including effects on plants or animals and any physical disturbance of habitats in the vicinity:
- (d) any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural, or other special value for present or future generations:
- (e) any discharge of contaminants into the environment, including any unreasonable emission of noise and options for the treatment and disposal of contaminants:
- (f) any risk to the neighbourhood, the wider community, or the environment through natural hazards or the use of hazardous substances or hazardous installations.”

An assessment of effects on the environment (as documented and referred to in Part G, Volume 2 of this AEE) has been undertaken in accordance with Schedule 4 for the Project. A description of the proposal (in Part C, Chapter 6, Volume 2), an assessment of alternatives (Part E, Chapter 9, Volume 2) and a description of consultation (Part F, Chapter 10, Volume 2) have also been provided.

As noted above, if the resource consent applications are directed to a BoI, the Board will consider the applications under sections 149P. Section 149P(2) provides that a Board considering an application for resource consent must apply sections 104 to 112 and 138A as if it were a consent authority.

Section 104 “Consideration of applications” specifies a number of matters, which are subject to Part 2 of the RMA, are to be considered in relation to resource consent applications. A summary of the relevance of these matters, and, where applicable, cross references to where the matters have been addressed is provided in Table 3.2 below.

Table 3.2: Relevant assessment matters under section 104 of the RMA

Section 104	Comment	Cross-reference
Section 104(1)(a) Any actual and potential effects on the environment of allowing the activity	Considered in depth in Part G of this AEE and in the associated Technical Reports	Part G, Volume 2 and Technical Reports, Volume 3
Section 104(1)(b)- Any relevant provisions of certain listed statutory documents	Each of the relevant statutory documents has been identified and assessed in relation to the Project.	Part I, Chapter 35, Volume 2 and Technical Report 32, Volume 3
Section 104(1)(c) - Any other matter the consent authority considers relevant and reasonably necessary to determine the application	There are a number of other statutory and non-statutory documents that have been publicly notified, been through a public process, or are widely available in the public arena. Those considered to be relevant to this Project have been identified and assessed in this report.	Part I, Chapter 35 and Technical Report 32, Volume 3

Section 104	Comment	Cross-reference
Section 104(2) - A consent authority may disregard an adverse effect of an activity on the environment if a NES or Plan permits an activity with that effect	There are no logical or sensible comparisons to the Project that could be constructed as a permitted activity, such as to make a permitted baseline comparison useful.	Not relevant
Section 104(3)(a) - A consent authority must not have regard to trade competition or the effects of trade competition or to any effect on a person who has given written approval to the application.	No written approvals from potentially affected parties have been obtained as at the date of lodgement of this AEE, and trade competition has not been considered to be a factor in relation to an application by the NZTA to authorise an aspect of State highway project.	Currently N/A
Section 104(3)(c) - A consent authority must not grant a resource consent contrary to section 107 of the RMA	Section 107 RMA is discussed in section 3.9.3 of this AEE.	Part B, Chapter 3 (section 3.9.3), Volume 2
Section 104(5) - A consent authority may grant consent on the basis that it is a controlled, restricted discretionary, discretionary or non-complying activity regardless of what type of activity the application was expressed to be for.	The NZTA has discussed the resource consent applications with the GWRC in a pre-lodgement process, and the status of the activities for which NZTA is seeking consent agreed with the Council through this process.	Part F, Chapter 10, Volume 2
Section 104(6) and (7) Ability to decline an application on the grounds of inadequate information	There has been an extensive pre-lodgement process in which the applicants have engaged with the relevant regulatory authorities - including the EPA - to review and consider the adequacy of the information and technical reports provided.	N/A

In addition to the consideration of the matters under section 104, there are further considerations required for particular classes of activity. These requirements are discussed in section 3.10 below.

3.9 Activities requiring resource consent

The Project involves activities which require resource consents under the Wellington Regional Plans and the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health. Section 87 of the RMA lists the different types of resource consents, of which the following types of consent are relevant to this project:

- Land use consent;
- Water permit;
- Discharge permit.

The resource consents required for the Project are described in further detail below. In addition, a summary of all the resource consents sought is provided in Table 3.3 in Section 3.11 of this AEE.

3.9.1 Land use

Section 9 of the RMA imposes the following restrictions on the use of land:

“(1) No person may use land in a manner that contravenes a national environmental standard unless the use-

(a) is expressly allowed by a resource consent; or”

“(2) No person may use land in a manner that contravenes a regional rule unless the use-

(a) is expressly allowed by a resource consent; or”

Project activities that require resource consent (land use consent) in relation to the use of land include:

- roading and tracking activities;
- vegetation disturbance on erosion prone land;
- the construction or alteration of bores; and
- disturbance of contaminated or potentially contaminated soil.

Section 13 of the RMA imposes the following restrictions on certain uses of beds of lakes and rivers:

“(1) No person may, in relation to the bed of any lake or river, -

(a) Use, erect, reconstruct, place, alter, extend, remove, or demolish any structure or part of any structure in, on, under, or over the bed; or

(b) Excavate, drill, tunnel, or otherwise disturb the bed; or

(c) Introduce or plant any plant or any part of any plant (whether exotic or indigenous) in, on, or under the bed; or

(d) Deposit any substance in, on, or under the bed; or

(e) Reclaim or drain the bed -

unless expressly allowed by a national environmental standard, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent.

(2) *No person may do an activity described in subsection (2A) in a manner that contravenes a national environmental standard or a regional rule unless the activity -*

(a) is expressly allowed by a resource consent; or...

(2A) *The activities are -*

(a) to enter onto or pass across the bed of a lake or river;

(b) to damage, destroy, disturb, or remove a plant or a part of a plant, whether exotic or indigenous, in, on, or under the bed of a lake or river;

(c) to damage, destroy, disturb, or remove the habitats of plants or parts of plants, whether exotic or indigenous, in, on, or under the bed of a lake or river;

(d) to damage, destroy, disturb, or remove the habitats of animals in, on, or under the bed of a lake or river."

Project activities that require resource consent (land use consent) in relation to the use of beds of rivers include:

- the disturbance of river beds;
- the placement of structures in river beds;
- the reclamation of river beds and wetlands;
- removal of structures (culverts) in river beds;
- removal of vegetation in beds of rivers.

3.9.2 Water Permits

Section 14 of the RMA imposes restrictions in relation to water. Under section 14(2):

"No person may take, use, dam, or divert any of the following, unless the taking, using, damming, or diverting is allowed by subsection (3):

(a) water other than open coastal water;"

Under subsection 14(3):

"A person is not prohibited by subsection (2) from taking, using, damming, or diverting any water, heat, or energy if -

(a) The taking, using, damming, or diverting is expressly allowed by a national environmental standard, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent;"

Activities forming part of the Project that require resource consent (water permit) in relation to water include:

- temporary diversion of water during construction works;
- permanent diversion of water (surface water and ground water); and
- the take and use of groundwater for construction activities.

3.9.3 Discharge Permits

Section 15 of the RMA places restrictions on the discharge of contaminants into the environment. As defined in section 2 "Contaminant" includes:

"any substance (including gases, odorous compounds, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy, or heat -

- (a) When discharged into water, changes or is likely to change the physical, chemical, or biological condition of water; or*
- (b) When discharged onto or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged."*

Under section 15(1):

"No person may discharge any -

- (a) Contaminant or water into water; or*
- (b) Contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or*
- (c) Contaminant from any industrial or trade premises into air; or*
- (d) Contaminant from any industrial or trade premises onto or into land -*

unless the discharge is expressly allowed by a national environmental standard or other regulations, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent."

Under section 15(2):

“No person may discharge a contaminant into the air, or into or onto land, from a place or any other source, whether moveable or not, in a manner that contravenes a national environmental standard unless the discharge -

- (a) is expressly allowed by other regulations; or*
- (b) is expressly allowed by a resource consent;*

Under section 15(2A):

“No person may discharge a contaminant into the air, or into or onto land, from a place or any other source, whether moveable or not, in a manner that contravenes a regional rule unless the discharge -

- (a) is expressly allowed by a national environmental standard or other regulations; or*
- (b) is expressly allowed by a resource consent; or...”*

Section 105 sets out further matters which are specifically relevant to discharge permits:

“(1) If an application is for a discharge permit or coastal permit to do something that would contravene section 15 or section 15B, the consent authority must, in addition to the matters in section 104(1), have regard to -

- (a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
- (b) the applicant's reasons for the proposed choice; and*
- (c) any possible alternative methods of discharge, including discharge into any other receiving environment.”*

Furthermore, under section 107:

“(1) Except as provided in subsection (2), a consent authority shall not grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A allowing -

- (a) The discharge of a contaminant or water into water; or*
- (b) A discharge of a contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; ... if, after reasonable mixing, the contaminant or water discharged (either by itself or in combination with the same, similar, or other*

contaminants or water), is likely to give rise to all or any of the following effects in the receiving waters:

- (c) The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:*
 - (d) Any conspicuous change in the colour or visual clarity:*
 - (e) Any emission of objectionable odour:*
 - (f) The rendering of fresh water unsuitable for consumption by farm animals:*
 - (g) Any significant adverse effects on aquatic life.*
- (2) A consent authority may grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A that may allow any of the effects described in subsection (1) if it is satisfied -*
- (a) That exceptional circumstances justify the granting of the permit; or*
 - (b) That the discharge is of a temporary nature; or*
 - (c) That the discharge is associated with necessary maintenance work -*
- and that it is consistent with the purpose of this Act to do so.”*

Activities forming part of the Project that require resource consent (discharge permit) in relation to the discharge of contaminants include:

- discharge of sediment and chemical flocculant (during construction) in treated stormwater to water and land where it may enter water;
- discharge of treated cement water to water, and to land where it may enter water; and
- discharge of contaminants to land from contaminated sites.

3.10 Classes of activities

Regional and District Plans set out different classes of activities in accordance with section 87A of the RMA. These classes of activities are:

- Permitted activities;
- Controlled activities;
- Restricted discretionary activities;
- Discretionary activities;
- Non-complying activities; and

- Prohibited activities.

The applications for resource consent for the Project relate to controlled, restricted discretionary, and discretionary activities (refer to table 3.4 in section 3.11 below for further detail on the classes of activity requiring resource consent as part of this Project).

The requirements for the determination of each activity class are set out in sections 104A – 104D as described in the following.

3.10.1 Controlled Activities

Under section 104A:

“After considering an application for a resource consent for a controlled activity, a consent authority -

- (a) must grant the resource consent, unless it has insufficient information to determine whether or not the activity is a controlled activity; and*
- (b) may impose conditions on the consent under section 108 only for those matters -*
 - (i) over which control is reserved in national environmental standards or other regulations; or*
 - (ii) over which it has reserved its control in its plan or proposed plan.*

3.10.2 Restricted Discretionary Activities

Under section 104C there are particular restrictions for restricted discretionary activities:

“(1) When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which -

- (a) a discretion is restricted in national environmental standards or other regulations:*
 - (b) it has restricted the exercise of its discretion in its plan or proposed plan.*
- (2) The consent authority may grant or refuse the application.*
- (3) However, if it grants the application, the consent authority may impose conditions under section 108 only for those matters over which -*
- (a) a discretion is restricted in national environmental standards or other regulations:*
 - (b) it has restricted the exercise of its discretion in its plan or proposed plan.*

3.10.3 Discretionary Activities

Under section 104B:

“After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority -

- (a) may grant or refuse the application; and*
- (b) if it grants the application, may impose conditions under section 108.*

3.10.4 Bundling of Activities

The principle of bundling was established by case law under the RMA. According to the “bundling” principle, where there is a group of activities on one site which are closely associated to each other, or are directed towards one dominant use or purpose, they should be assessed holistically as a single bundle, according to the most stringent activity class. For this Project, the following activities are considered as a separate bundle:

3.11 Resource consents sought

A summary of all the resource consents sought is provided in Tables 3.3 and 3.4 below:

Table 3.3: Groups of activities for which resource consent is being sought

Group	General activity	Application ref#	Relevant form(s)	Council
Resource consents sought by the NZTA from Kāpiti Coast District Council for the construction and operation of the proposed MacKays to Peka Peka Expressway				
A	Undertaking works on contaminated land under the NES CSHH	NSP 12/01.001	Form 9	
Resource consents sought by the NZTA from Greater Wellington Regional Council for the construction and operation of the proposed MacKays to Peka Peka Expressway				
B	Earthworks undertaken for the Project on erosion prone areas and for the purposes of roading and tracking and for associated erosion and sediment control.	NSP 12/01.003-004 NSP 12/01.005 and NSP 12/01.029-030	6e (Tracking, logging and land clearance) 3a (Discharge to land) 4a (Discharge to water)	
C	Crossing, occupation and realignment of streams.	NSP 12/01.006-023	2a (Diversion of water) 4a (Discharge to water) 6a (Works in beds of lakes and rivers) 6c (Culvert design) 6d (Erosion protection structures)	
D	Construction of bores and take of groundwater for construction purposes and diversion of water from wetlands adjacent to the Project.	NSP 12/01.024-026	6b (Construct or alter a bore) 2a (Diversion of water) 2c (Take and use of groundwater)	

Group	General activity	Application ref#	Relevant form(s)	Council
E	Partial reclamation of wetlands and vegetation removal in the beds of various watercourses and wetlands	NSP 12/01.027-028	6a (Works in beds of lakes and rivers)	

The specific resource consents which the NZTA are seeking for the Project are listed in Table 3.4 below.

Table 3.4: Resource consents sought for the Project

Application ref #	Consent type	Activity	Relevant rule	Activity class	Scope of the application
GROUP A: Undertaking works on contaminated land (triggered by NES CSHH)					
NSP 12/01.002		Disturbing soil containing contaminants which may be a risk to human health.	NES Standard for Assessing and managing contaminants in soil to protect human health.	Restricted discretionary	Application for works on land containing contaminants as a restricted discretionary activity.
GROUP B: Bulk earthworks and construction erosion and sediment control					
NSP 12/01.003	Land use consent - s9(2)	Roading and tracking activities located in Area 1 and, during any 12 month period, will result in a road or track having a continuous length of new upslope batter extending for greater than 200 metres, with a height of greater than 1.5 metres measured vertically.	RSP Rule 1	Restricted discretionary	Application for bulk earthworks and vegetation disturbance activities to construct the Project as a restricted discretionary activity.
NSP 12/01.004	Land use consent - s9(2)	Large scale vegetation disturbance on erosion prone land.	RSP Rule 4	Restricted discretionary	
NSP 12/01.005	Discharge permit - s15(1)(b)	Discharge permit to discharge sediment and chemical flocculant in treated stormwater runoff to water, and to land where it may enter water.	RDLP Rule 2	Discretionary	Application for the discharge of chemically treated sediment laden water from erosion and sediment control devices to land in such a way that it may enter water as a discretionary activity.
NSP 12/01.029	Discharge permit - s15(1)(a)	Discharge permit to discharge treated cement contaminated water to water, and to land where it may enter water.	RFPW Rule 5	Discretionary	Application for the discharge of water used in the pre-cast construction yard via erosion and sediment control devices, to water as a discretionary activity.

Application ref #	Consent type	Activity	Relevant rule	Activity class	Scope of the application
NSP 12/01.030	Discharge permit - s15(1)(b)	Discharge permit to discharge contaminants to land from contaminated sites.	RPDL Rule 22	Controlled	Application for potential migration of contaminants across property boundaries as a controlled activity.
GROUP C: Crossing, occupation, realignment, reclamation and use of waterbodies					
NSP 12/01.006	Land use consent - s13(1)(a) & s13(1)(e)	Use, placement and erection of structures (culverts, rip rap and stormwater outlets); the removal of an existing culvert; and the associated diversion and reclamation of a section of the beds of waterways in the Whareroa Stream Catchment.	RFWP Rule 49	Discretionary	Application for placement of structures in, and removal of an existing culvert, in the Whareroa Stream Catchment, the realignment of part of the waterway bed and the temporary and permanent diversion of water as a discretionary activity.
NSP 12/01.007	Water permit - s14(1)	To temporarily divert the flow of the Queen Elizabeth Park Drain during construction of the culvert and associated structures in the bed of the waterway.	RFWP Rule 16	Discretionary	
NSP 12/01.008	Water permit - s14(1)	To permanently divert the full flow of the the Queen Elizabeth Park Drain.	RFWP Rule 16	Discretionary	
NSP 12/01.009	Land use consent - s13(1)(a) & s13(1)(e)	Use, placement and erection of structures (culverts, rip rap and stormwater outlets); the removal of an existing culvert; and the associated diversion and reclamation of a section of the bed of waterways in the Wharemauku Stream Catchment.	RFWP Rule 49	Discretionary	Application for placement of structures in, and removal of an existing culvert, in the beds of waterways in the Wharemauku Stream Catchment, the realignment of part of the beds of waterways and the temporary and permanent diversion of water as a discretionary activity.
NSP 12/01.010	Water permit - s14(1)	To temporarily divert the flow of Drain 7, an unnamed tributary of Drain 7 and the Wharemauku Stream during construction of the culvert and associated structures in the bed of the waterway.	RFWP Rule 16	Discretionary	
NSP 12/01.011	Water permit - s14(1)	To permanently divert the full flow of the the the the the Drain 7 and an unnamed tributary of Drain 7.	RFWP Rule 16	Discretionary	

Application ref #	Consent type	Activity	Relevant rule	Activity class	Scope of the application
NSP 12/01.012	Land use consent – s13(1)(a) & s13(1)(e)	Use, placement and erection of structures (culverts, rip rap and stormwater outlets); the removal of an existing culvert; and the associated diversion and reclamation of a section of the bed of waterways in the Waikanae River Catchment.	RFWP Rule 49	Discretionary	Application for placement of structures in, and removal of an existing culvert, in the beds of waterways in the Waikanae River Catchment, the realignment of part of the beds of waterways and the temporary and permanent diversion of water as a discretionary activity.
NSP 12/01.013	Water permit – s14(1)	To temporarily divert the flow of Mazengarb Drain, Waste Water Treatment Pond Drain, Landfill Drain, Otaihanga Drain, an unnamed tributary of the Muaopoko and the Waikane River during construction of the culvert and associated structures in the bed of the waterway.	RFWP Rule 16	Discretionary	
NSP 12/01.014	Water permit – s14(1)	To permanently divert the full flow of Mazengarb Drain, Waste Water Treatment Pond Drain, Landfill Drain, Otaihanga Drain, an unnamed tributary of the Muaopoko, Muaopoko Stream and the Waikane River.	RFWP Rule 16	Discretionary	
NSP 12/01.015	Land use consent – s13(1)(a) & s13(1)(e)	Use, placement and erection of structures (culverts, rip rap and stormwater outlets); and the associated diversion and reclamation of a section of the bed of waterways in the Waimeha Stream Catchment.	RFWP Rule 49	Discretionary	Application for placement of structures in, and removal of an existing culvert, in the beds of waterways in the Waimeha Stream Catchment, the realignment of part of the beds of waterways and the temporary and permanent diversion of water as a discretionary activity.
NSP 12/01.016	Water permit – s14(1)	To temporarily divert the flow of the Market Garden Drain and the Waimeha Stream during construction of the culvert and associated structures in the bed of the waterway.	RFWP Rule 16	Discretionary	
NSP 12/01.017	Water permit – s14(1)	To permanently divert the full flow of the Market Garden Drain.	RFWP Rule 16	Discretionary	

Application ref #	Consent type	Activity	Relevant rule	Activity class	Scope of the application
NSP 12/01.018	Land use consent – s13(1)(a) & s13(1)(e)	Use, placement and erection of structures (culverts, rip rap and stormwater outlets); the removal of an existing culvert; and the associated diversion and reclamation of a section of the bed of waterways in the Ngarara Stream Catchment.	RFWP Rule 49	Discretionary	Application for placement of structures in, and removal of an existing culvert, in the beds of waterways in the Ngarara Stream Catchment, the realignment of part of the beds of waterways and the temporary and permanent diversion of water as a discretionary activity.
NSP 12/01.019	Water permit – s14(1)	To temporarily divers the flow of the Ngarara Creek, Kakariki Stream (at the local road bridge), Smithfield Drain, an unnamed tributary of the Paetawa Drain and the Paetawa Drain during construction of the culvert and associated structures in the bed of the waterway.	RFWP Rule 16	Discretionary	
NSP 12/01.020	Water permit – s14(1)	To permanently divert the full flow of the Ngarara Creek, Kakariki Stream (at the local road and <i>proposed Expressway</i> bridges), Smithfield Drain, an unnamed tributary of the Paetawa Drain and the Paetawa Drain.	RFWP Rule 16	Discretionary	
NSP 12/01.021	Land use consent – s13(1)(a) & s13(1)(e)	Use, placement and erection of structures (culverts, rip rap and stormwater outlets); the removal of an existing culvert; and the associated diversion and reclamation of a section of the bed of waterways in the Hadfield/Te Kowhai Stream Catchment.	RFWP Rule 49	Discretionary	Application for placement of structures in, and removal of an existing culvert, in the beds of waterways in the Hadfield/Te Kowhai Stream Catchment, the realignment of part of the waterway bed and the temporary and permanent diversion of water as a discretionary activity.
NSP 12/01.022	Water permit – s14(1)	To temporarily divers the flow of the Hadfield/Te Kowhai Stream during construction of the culvert and associated structures in the bed of the waterway.	RFWP Rule 16	Discretionary	
NSP 12/01.023	Water permit – s14(1)	To permanently divert the full flow of the Hadfield/Te Kowhai Stream.	RFWP Rule 16	Discretionary	

Application ref #	Consent type	Activity	Relevant rule	Activity class	Scope of the application
GROUP D: Borehole construction and taking and diversion of groundwater					
NSP 12/01.024	s9(2) – Land use consent	Construction of boreholes (including bores for the purpose of abstracting groundwater and bores for bridge piles where they intercept groundwater).	RFWP Rule 15	Discretionary	Application for construction of bores and the abstraction diversion of groundwater as a discretionary activity.
NSP 12/01.025	s14(2) – Water permit	Taking of groundwater for bore testing, dewatering of excavations, dust suppression and construction purposes.	RFWP Rule 16	Discretionary	
NSP 12/01.026	s14(2) – Water permit	Diversion of groundwater from wetlands adjacent to the proposed Expressway.	RFWP Rule 16	Discretionary	
GROUP E: Partial reclamation and removal of vegetation in the beds of wetlands					
NSP 12/01.027	s13(1)(e) – Land use consent	Partial reclamation of wetlands (defined as lakes), including associated disturbance of the beds.	RFWP Rule 49	Discretionary	Application for partial reclamation and vegetation removal as a discretionary activity.
NSP 12/01.028	s13(1)(c) – Land use consent	Removal of vegetation in the beds of various watercourses and wetlands (defined as lakes), including associated disturbance of the beds.	RFWP Rule 49	Discretionary	