

5 Additional considerations

Overview

In addition to the matters requiring consideration under the RMA, there are a number of additional statutory requirements that are relevant to this Project. This section outlines other legislation which has informed the development of the Project, and/or under which separate approvals may be required.

5.1 Introduction

In addition to the matters outlined in Part B, Chapters 3 and 4, Volume 2 of this AEE, there are some further statutory considerations which have informed the development of the Project. These either have direct relevance to an aspect of the Project and/or are matters which the NZTA is legally required to comply with in undertaking its functions and responsibilities. Some matters also have relevance in terms of the section 104(1)(c) or section 171(1)(d) and this is covered in the statutory assessment contained in Part I, Chapter 35, Volume 2 of this AEE.

The additional statutory considerations discussed in this Chapter are:

- Land Transport Management Act 2003;
- Public Works Act 1981;
- Historic Places Act 1993;
- Reserves Act 1977
- Wildlife Act 1953
- Te Ture Whenua Māori Act 1993;
- QEII National Trust Act 1977; and
- Freshwater Fisheries Regulations 1983.

As discussed in section 1.9 of this AEE any authorisations required under other legislation are not applied for as part of this set of documents and the requirement for additional authorisations is merely noted for completeness.

5.2 Land Transport Management Act 2003

The Land Transport Management Act 2003 (LTMA) provides the statutory framework for the management of New Zealand's land transport system. It is also one of the main statutes under which the NZTA operates (in conjunction with the Government Roadway Powers Act 1989 (GRPA)).

The purpose of the LTMA as set out at section 3 is as follows:

- (1) *The purpose of this Act is to contribute to the aim of achieving an affordable, integrated, safe, responsive, and sustainable land transport system.*
- (2) *To contribute to that purpose, this Act -*
- (a) *provides an integrated approach to land transport funding and management; and*
 - (b) *improves social and environmental responsibility in land transport funding, planning, and management; and*
 - (c) *provides the Agency²⁵ with a broad land transport focus; and*
 - (d) *improves long-term planning and investment in land transport, including planning and investment in coastal shipping and rail; and*
 - (e) *ensures that land transport funding is allocated in an efficient and effective manner; and*
 - (f) *improves the flexibility of land transport funding by providing for alternative funding mechanisms”...*

The NZTA’s objective is set out in section 94 as being:

“to undertake its functions in a way that contributes to an affordable, integrated, safe, responsive, and sustainable land transport system.”

There are a number of functions set out in section 95(1), but of specific relevance to the Project are:

- (a) *to promote an affordable, integrated, safe, responsive, and sustainable land transport system:”*
- ...and*
- (c) *to manage the State highway system, including planning, funding, design, supervision, construction, and maintenance and operations, in accordance with this Act and the Government Roadway Powers Act 1989:”*

The principles under which the NZTA must operate are set out in section 96. Of specific relevance to the Project are those in subsections (1) (a)(i) and (iii) and (b):

“In meeting its objective and undertaking its functions, the Agency must -

²⁵. Agency means NZTA

- (a) *exhibit a sense of social and environmental responsibility, which includes -*
 - (i) *avoiding, to the extent reasonable in the circumstances, adverse effects on the environment; and ...*
 - (iii) *meeting the requirements of section 18H (Māori contribution to decision making);*
- (b) *uses its revenue in a manner that seeks value for money..”*

The Act also recognises the importance of the Treaty relationship with Māori and directs those exercising functions under it to maintain and improve opportunities for Māori to contribute to land transport decision making processes.²⁶

5.3 Public Works Act 1981

The PWA enables land to be acquired, either by agreement or by compulsion, for the construction of public works including roads. The PWA also contains provisions for disposal of land no longer required for a public work.

Under section 185 (1) of the RMA, in certain circumstances, the owner of an estate or interest in the land that is subject to a NoR may apply at any time to the Environment Court for an order obliging the requiring authority responsible for the designation or requirement to acquire or lease all or part of the land under the PWA.

As discussed in section 2.7 of Chapter 2 of this AEE some land has already been acquired for the Project, and further land is required (either entirely or partially) from a number of properties within the Kāpiti Coast District.

5.4 Historic Places Act 1993

The Historic Places Act 1993 (HPA) established the NZ Historic Places Trust (NZHPT) and its role in preserving, marking and recording places of historic interest in New Zealand.

The purpose of the HPA as set out in section 4(1) is:

“to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand, including archaeological sites.

The protection of archaeological sites is covered by sections 9 to 19 of the HPA, with section 10 stating that it is unlawful for any person to destroy, damage or modify the whole or any part of an archaeological site without the prior authority of the NZHPT. This applies regardless of whether the land

²⁶ Refer to sections 4 and 11 (H) and (G) of the LTMA

on which the site is located is designated, the activity is permitted under a District or Regional Plan, or a resource or building consent has been granted.

Under section 12 of the HPA, the NZHPT can grant a general authority to destroy, damage, or modify all archaeological sites within a specified area of land. Earthworks and clearing work associated with constructing the proposed Expressway is likely to result in the destruction, damage or modification to recorded and unknown sites along the alignment. Consequently, the NZTA will be making applications in this respect to the NZHPT under section 12 alongside the RMA process. These applications will also extend to include land contained within the HPA registered 'Takamore Wāhi Tapu Area'. Evidence of consultation with a mandated representative of affected iwi will be included in the supporting information supplied with these applications.

5.5 Reserves Act 1977

The Reserves Act 1977 provides for the acquisition, preservation and management of areas for their conservation values or public recreational and educational values.

Section 3(1) of the Reserves Act states its purpose as:

- (a) *providing, for the preservation and management for the benefit and enjoyment of the public, areas of New Zealand possessing -*
 - (i) *Recreational use or potential, whether active or passive; or*
 - (ii) *Wildlife; or*
 - (iii) *Indigenous flora or fauna; or*
 - (iv) *Environmental and landscape amenity or interest; or*
 - (v) *Natural, scenic, historic, cultural, archaeological, biological, geological, scientific, educational, community, or other special features or value:*
- (b) *Ensuring, as far as possible, the survival of all indigenous species of flora and fauna, both rare and commonplace, in their natural communities and habitats, and the preservation of representative samples of all classes of natural ecosystems and landscape which in the aggregate originally gave New Zealand its own recognisable character:*
- (c) *Ensuring, as far as possible, the preservation of access for the public to and along the sea coast, its bays and inlets and offshore islands, lakeshores, and riverbanks, and fostering and promoting the preservation of the natural character of the coastal environment and of the margins of lakes and rivers and the protection of them from unnecessary subdivision and development.*

The Project affects a section of the QE Park which is a regional park under the Local Government Act 2002 and a recreation reserve under the Reserves Act 1977. This Park is owned by DOC but is managed by GWRC as part of the regional parks network.

Under section 17(1) of the Reserves Act, recreation reserves are to be administered for the purpose of:

“providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside.”

No other reserves are affected by the Project.

5.6 Wildlife Act 1953

The Wildlife Act 1953 deals with the protection and control of wild animals and birds and the management of game. It provides varying levels of protection to different species. The effects of the Project on the species that are protected under the Wildlife Act are discussed in Chapters 21 to 23 of this AEE and in Technical Reports 1 to 5 in Volume 3.

All native animals other than those outlined in Schedules 1-5 of the Act are protected under the Wildlife Act 1953. This includes terrestrial or freshwater invertebrate declared to be an animal under Schedule 7 of the Act, and marine species declared to be animals under Schedule 7A of the Act. On the basis of the findings of the ecological assessment, the following authorisations will/or may need to be acquired under the Wildlife Act:

- an ‘Authority to Disturb Protected Wildlife’ permit for lizard translocations and potentially for freshwater fish through culvert replacement and stream diversions; and
- for the North Island fernbird, permission may be required for translocation/monitoring (if it involves trapping or physical stress e.g. banding) under the Wildlife Act 1953. This population needs to be monitored and adaptive management put in place if required.

5.7 Te Ture Whenua Māori Act 1993

The intent of the Te Ture Whenua Māori Act 1993 is to facilitate and promote the retention, use, development and control of Māori land by its owners and their whanau, hapu and descendants, and to protect wāhi tapu.²⁷The Act sets out the provisions governing dealings that alter the ownership status of Māori land, including alienation. Where any Māori land or interest in Māori owned land is alienated due

²⁷ Refer section 2(2) of the Te Ture Whenua Māori Act 1993

to it being required for a work under the Public Works Act 1991, an application for confirmation must be lodged with the Māori Land Court for determination.²⁸

There are 4 blocks of land in Māori ownership that are either within the area designated for the proposed Expressway alignment.

5.8 QEII National Trust Act 1977

The QEII National Trust Act 1977 sets out the duties, purpose and powers of the QEII National Trust. The Trust is a statutory organisation set up in 1977 to encourage and promote the protection and enhancement of open space. The Trust is managed by a Board of Directors who represents environment and conservation values and interests of rural landowners and the Māori community.

One of the key responsibilities of the Trust is in relation to QEII covenants. A QEII covenant is an open space covenant which is registered on a title to land. The covenant is a legally binding document agreed to between a landowner and the QEII National Trust, with the QEII Trust acting as a perpetual trustee.

The QEII covenant usually contains terms and conditions which are agreed to between the QEII Trust and the landowner. The effect of an open space covenant is for the land to which it applies to be maintained as open space in accordance with the terms and conditions of the covenant.

While there are some covenanted areas located in close proximity to the alignment, there are no QEII covenanted areas within the alignment of the proposed Expressway or the proposed Designation.

5.9 Freshwater Fisheries Regulations 1983

The Freshwater Fisheries Regulations 1983 (FFR) are regulations made under the Fisheries Act 1983. Part 6 of the FFR relates to fish passage and applies to *“every dam or diversion structure in any natural river, stream, or water”*.

Under regulation 41(2):

“no person shall construct any culvert or ford in any natural river, stream, or water in such a way that the passage of fish would be impeded, without the written approval of the Director-General incorporating such conditions as the Director-General thinks appropriate”

These regulations require that the approval of the Director-General²⁹ be obtained for culverts where the passage of fish will be impeded. The Director-General can either:

- issue a dispensation from the requirement to provide fish passage; or

²⁸ Refer Part 8 of the Te Ture Whenua Māori Act 1993

²⁹. The Director-General of Conservation

- specify that fish passage be provided and maintained.

All river and stream crossings required for the Project, whether by ford, culvert or bridge, have been designed to ensure adequate fish passage is provided where it is necessary. Approval from the Director-General under the FFR is therefore not considered necessary for this Project.