



3 Statutory and Policy Context

3.1 Introduction

This Section introduces the relevant legislative, statutory and non-statutory framework against which the Project will be assessed. It focuses particularly on those provisions of the RMA that are relevant to the NoRs and resource consents for the Project, including:

- Part 2 which establishes the purpose and principles of the RMA;
- Consideration of proposals of national significance (Part 6AA);
- NoRs for designations (Part 8); and
- Applications for resource consent (Part 6).

The relevant statutory matters are set out in this Section. An assessment of the Project in relation to these matters is provided in **Sections 11 and 12**. This Section also contains summary details of the NoRs for designations and the applications for resource consent, sought for the Project.

3.2 Purpose and Principles of the RMA

A territorial authority must, when considering a NoR against the matters set out in section 171, do so subject to Part 2 of the RMA. In addition, a consent authority's consideration of applications for resource consents under section 104 of the RMA must also be subject to Part 2 of the RMA.

3.2.1 Section 5 Purpose

Section 5 states the purpose of the RMA:

- (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.*

3.2.2 Section 6 Matters of National Importance

Matters of national importance are set out in section 6 of the RMA:

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 Maori 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 protected customary rights.*

3.2.3 Section 7 Other Matters

'Other matters' 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 derived from the use and development of renewable energy.*

3.2.4 Section 8 Treaty of Waitangi

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 of the RMA provides for the consideration of matters which, singularly or collectively, constitute a proposal of national significance. Section 145 allows certain matters to be lodged directly with the Environmental Protection Authority (EPA). These include:

- A notice of requirement for a designation or to alter a designation (section 145(3)); and
- An application for a resource consent (section 145(1)(a)).



The NZ Transport Agency considers that the Project fulfils the criteria for a proposal of national significance, with consideration to the matters discussed at **Section 2** and the public interest as discussed at **Section 8**. In accordance with section 145, the NZ Transport Agency has lodged its applications for the NoRs and resource consent for the Project directly with the EPA. These applications for resource consent and the NoRs have also been served on AC, being the relevant local authority, in accordance with section 145(10) of the RMA.

3.4 Notices of Requirement

A designation is a planning mechanism that enables existing or future infrastructure to be efficiently managed and land requirements associated with future infrastructure to be signalled in district plans. Where a designation is provided in a district plan, any provisions that might normally apply, including zoning and land use controls, do not apply to public works or projects or works undertaken by the requiring authority (in this case the NZ Transport Agency).

The NZ Transport Agency is a network utility operator approved as a requiring authority under section 167 of the RMA. The Gazette Notice references approving the NZ Transport Agency as a requiring authority are:

- 1992/348; 7 December 1992 - The Resource Management (Approval of Transit New Zealand as Requiring Authority) Order 1992.
- 20/978; 3 March 1994 - The Resource Management (Approval of Transit New Zealand as a Requiring Authority) Notice 1994.
- 2015-go6742; 19 November 2015 - The Resource Management (Approval of NZ Transport Agency as a Requiring Authority) Notice 2015.

Pursuant to section 145 and 181 of the RMA, the NZ Transport Agency is lodging four notices of requirement to alter existing designations. In addition, the NZ Transport Agency is lodging two notices of requirement for new designations under sections 145 and 168 of the RMA. The notices of requirement are set out in **Table 1** below.

Table 1 Notices of Requirement being lodged with the EPA

Notice	Ref No.	Purpose and Authority	Location of Work
NoR1 Alteration to Designation	6750	Auckland-Waiwera Motorway (State Highway 1), including planning, design, supervision, construction and maintenance.	State Highway 1 from Greville Road interchange, Albany to Sunset Road overbridge.
NoR2 Alteration to Designation	6751	Proposed Motorway (Auckland/Waiwera Motorway State Highway 1), including planning, design, supervision, construction and maintenance.	State Highway 1 from Greville Road interchange, Albany to Oteha Valley Road, Albany.
NoR3 Alteration to Designation	6756	State Highway 18 - the control, management and improvement of the State Highway.	State Highway 18 from Albany Highway to State highway 1.
NoR4 Designation	New Designation	Northern Busway from Constellation Bus Station to Albany Bus Station.	Adjacent State Highway 1 from Constellation Bus Station to Albany Bus Station.
NoR5 Designation	New Designation	Shared Use Path.	Adjacent State Highway 1 from Constellation Bus Station to Oteha Valley Road.
NoR6 Alteration to Designation	6758	Upgrade of Station.	Constellation Bus Station.



The sites to which NoR1 – 6 apply, are identified and legally described in the NoR Plans and are associated NoR Property Information Table provided in **Volume 1**. NoR6 seeks to alter only the conditions imposed on designation 6758 (Constellation Bus Station); it does not seek to change the designated land area.

The EPA has standard NoR forms and has asked for these to be supported by an AEE. The matters that should be included in an AEE are set out in Schedule 4 of the RMA. The AEE (as documented in this report) has been undertaken in accordance with Schedule 4 and also fulfils the requirements of the AEE required in support of the resource consents sought for the Project.

As the NoRs will be lodged with the EPA under section 145(3) of the RMA, section 145(7) directs that where a notice is lodged with the EPA, section 168 applies, except that every reference in that section to a territorial authority must be read as a reference to the EPA. If the Minister directs the NoR to a Board of Inquiry (BoI), the BoI, rather than the NZ Transport Agency as the requiring authority, will make the final decision on the NoRs.

If the matters are directed to a BoI, all of the NoRs will be considered under section 149P. Section 149P(4) directs that a board:

- (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; and*
- (c) *may waive the requirement for an outline plan to be submitted under section 176A.*

In making a decision on a NoR under section 171, the BoI will be required to consider the effects on the environment of allowing the requirement, having particular regard to policy statements and plans, whether adequate consideration has been given to alternative sites, routes and methods, whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority and any other matter considered reasonably necessary in order to make a decision. The decision is also subject to an overall assessment under Part 2 of the RMA as to whether the proposal represents sustainable management. **Section 7** provides an assessment of the alternatives considered with an assessment of the effects on the environment of allowing the requirement is provided in **Section 9** of this document. An analysis of the Project in relation to the relevant policy framework and Part 2 of the RMA is provided in **Sections 11 and 12** respectively of this AEE.

3.5 Outline Plan of Works

Section 176A sets out the circumstances when an OPW must be submitted to a territorial authority before commencing construction of a project or work under a designation. In accordance with section 176A(3):

“An outline plan must show-

- (a) *the height, shape, and bulk of the public work, project, or work; and*
- (b) *the location on the site of the public work, project, or work; and*
- (c) *the likely finished contour of the site; and*
- (d) *the vehicular access, circulation, and the provision for parking; and*



(e) the landscaping proposed; and

(f) any other matters to avoid, remedy, or mitigate any adverse effects on the environment.

Upon receiving an outline plan, a territorial authority has 20 working days to request any changes to the OPW. The requiring authority may accept or reject the requested changes. The NZ Transport Agency intends to submit outline plan/s for the Project prior to the commencement of work.

3.6 Land subject to existing NoR and Designations

Set out in **Table 2** below is an overview of the existing NoRs being progressed and designations held by other Requiring Authorities within the Project area.

Table 2 Existing Designations held by other Requiring Authorities

Ref No.	Purpose and Authority	Location	Proposed overlay
1421	Albany Bus Station. Auckland Transport	250 Oteha Valley Road and 125 McClymonts Road, Albany.	NoR2 and NoR4 will be extended over this designation.
417	Rosedale Closed Landfill. AC	62 Greville Road, Albany	NoR1, NoR4 and NoR5 will be extended over this designation.
8842	The installation, maintenance, repair, replacement, inspection and operation of one 110kV underground electricity transmission line. Vector Ltd	410 Albany Highway to State Highway 1 (Constellation Drive), Rosedale and along Currys Lane, Wairau Valley.	NoR3 will be extended over this designation.
9310	Wastewater purposes-wastewater treatment plant odour buffer control. Watercare	Rosedale Park, and reserves, roads and motorway in the vicinity of the RWWTP.	Extends over the existing primary NZ Transport Agency designation 6750 NoR1, NoR3, NoR4 and NoR5 will extend over this designation.
9311	Wastewater purposes – wastewater treatment plant and underground route to outfall to Mairangi Bay. Watercare	Rosedale Road and UHH, Albany, then via various properties and roads to Mairangi Bay.	NoR1, NoR3, NoR4 and NoR5 will extend over this designation.
No reference	Local Roding Network within the district as circumscribed by ACDP:NS. Auckland Transport	Local roading network connections within the Project area.	AT did not seek that this designation be included in the AUP, when this first combined plan for AC was developed.
Notice of Requirement by AT for Designation of the Road Asset 14 June 2012)	NoR over the Road Asset (including the AC owned and AT managed roads in the Auckland Region as identified in the ACDP:NS. Auckland Transport	Local roading network connections within the Project area.	AT gave a NoR to AC for the road asset within the Auckland District on 14 June 2012 in accord with section 168(2) of the RMA. There has been no further progress toward a decision on this NoR pursuant to part 8 of the RMA.
NoR2 North Harbour Watermain (Watercare reference)	NoR by Watercare over SH18 (North Harbour 2 Watermain).	Watermain	Designation 6756 is the primary (first in time) designation.



Ref No.	Purpose and Authority	Location	Proposed overlay
	Watercare		However, the alteration to Designation 6756 will extend over this NoR.

The necessary consents for the Project works required under section 177(1)(a) and section 178(2) will be sought by the NZ Transport Agency prior to works. The interface of the Project with these NoRs and designations is confirmed on the Designation Plans provided in **Volume 1**.

3.6.1 Local roading network connections within the Project extent

Advice received from AT indicates no definitive status relative to the designation or notice of requirement referred to in **Table 2**. AT has further advised the NZ Transport Agency that it considers the prudent approach would be for the NZ Transport Agency, if seeking to undertake any work within the extent of the designation or notice of requirement, that the NZ Transport Agency should seek the written consent of AT prior to undertaking any work in accordance with any designation that might be confirmed by a decision of the Bol.

Such written consent should be sought in accord with both sections 177(1)(a) and 178(2), with regard to the designation and notice of requirement, respectively.

3.6.2 Section 178 Interim effect of requirements for designation

Section 178(b) applies to the situation where a requiring authority gives notice of a requirement for a designation to a territorial authority under section 168. Section 178 provides:

- (2) *In the period that starts as described in subsection (3) and ends as described in subsection (4), no person may do anything that would prevent or hinder a public work, project, or work to which the designation relates unless the person has the prior written consent of the requiring authority*
- (3) *The period starts-*
 - (b) *For the purposes of subsection (1)(b), on the day on which the requiring authority gives notice of the requirement under section 168*
- (4) *The period ends on the earliest of the following days:*
 - (a) *The day on which the requirement is withdrawn*
 - (b) *The day on which the requirement is cancelled*
 - (c) *The day on which the designation is included in the district plan*
- (6) *This section does not prevent an authority responsible for an earlier designation or heritage order from doing anything that is in accordance with the earlier designation or order.*

As identified in **Table 2**, above, Watercare Services Limited (Watercare) has given a Notice of Requirement to AC for the North Harbour 2 Watermain (NH2). The NoR was lodged on 10 May 2016 and at the time of lodgement the NoR has interim effect under section 178. This NoR runs along the northern part of the primary (earlier) SH18 Designation (6756) from Albany Highway to William Pickering Drive. However, there are two locations where this NoR extends northward beyond the SH18 Designation, at the north-eastern corner of Albany Highway and SH18 and the north western corner of SH18 and William Pickering Drive. These locations are identified on the Designation Plans in **Volume 1 - Sheet 9**.



The NZ Transport Agency is aware of the existence of this requirement and as it relates to the two locations identified above. The necessary written consents under section 178(2) will be sought from Watercare at the same time as outline plans are submitted to AC, once the detailed design phase of the Project has been completed, provided the NH2 NoR continues to have interim effect at that time.

3.7 Project Designations to be reviewed after Construction

Once the Project has been constructed and is operational, the area of land required for the on-going operation and maintenance of the Project is likely to reduce (i.e. some of the designated land will be surplus to requirements as it will only be required during the construction stage of the Project).

It is intended that once construction has been completed, the NZ Transport Agency will review the designations and give notice to remove any part(s) of the designation(s) that are no longer required. Review of the Project designations is included as a proposed condition of the designations.

3.8 Applications for Resource Consent

Applications by the NZ Transport Agency for resource consents are being lodged under section 145(1)(a) and in accordance with section 88 (section 145(5)).

Section 88(2) requires that

An application must –

- (a) be made in the prescribed form and manner; and*
- (b) include the information relating to the activity, including an assessment of the activity's effects on the environment, as required by Schedule 4.*

Table 3 below identifies the relevant sections of this AEE which are intended to address the requirements of Schedule 4.

Table 3 Summary of Schedule 4 Matters

Schedule 4 Item – Matters to be included in an AEE	Relevant sections that address the requirements of Schedule 4.
A description of the activities / proposal.	The Project description is outlined in Section 5 of this document and includes a description of the land requirements, stormwater management, construction phasing and land disturbance proposed.
A description of the sites at which the activities / proposal is to occur.	As above.
The full name and address of each owner and occupier of the sites.	A list of the landowners and occupiers is included in Volume 1 – Forms .
A description of any other activities that are part of the proposal to which the application relates	Section 5 provides a description of the Project to which the application relates.
An assessment of the activities / proposal against the matters set out in Part 2	Section 11 contains an Assessment of Planning documents and Section 12 contains a Statutory Assessment of the proposal including an assessment against Part 2.
An assessment of the activities / proposal against any relevant provisions of a document referred to in section 140(1)(b). ¹	Section 11 contains an Assessment of Planning documents and Section 12 contains a Statutory Assessment of the proposal including an assessment against the documents referred to in section 140(1)(b).

¹ In accordance with clause 2(2) of Schedule 4, this assessment must include an assessment of the activity against (a) any relevant objectives, policies, or rules in a document; and (b) any relevant requirements, conditions, or permissions in any rules in a document; and (c) any other relevant requirements in a document (for example, a national environmental standard, or other regulation).



Schedule 4 Item – Matters to be included in an AEE	Relevant sections that address the requirements of Schedule 4.
<p>A description of permitted activities that form part of the proposal to which the application relates.</p> <p>Where reclamation is proposed, information regarding the location and boundaries of reclamation.</p>	<p>Section 6 identifies and describes those activities that are assessed to be permitted against the AUP.</p> <p>Section 6 provides a description of where reclamation is proposed.</p>
<p>If 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.</p>	<p>A range of alternatives have been assessed over the course of the Project's design with the aim of keeping adverse effects to a minimum. An assessment of alternatives is provided in Section 7.</p>
<p>An assessment of the actual or potential effect on the environment of the proposed activity.</p>	<p>The specialist Technical Assessments undertaken to support the AEE are provided in Volume 3 and assess in detail actual and potential effects of the activities that will be undertaken for the Project. These are summarised in Section 9 and include an assessment of effects on the roading network, the natural environment, community, landscape and visual amenity and the historic and cultural environment.</p>
<p>If the activity includes the discharge of any contaminant, a description of –</p> <ul style="list-style-type: none"> 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 into any other receiving environment. 	<p>An assessment of the discharge of contaminants, the sensitivity of the proposed receiving environment to adverse effects and the alternative methods to discharge into any other receiving environment is included in Sections 9 and 10.</p>
<p>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.</p>	<p>Proposed mitigation measures are discussed in Section 9 and listed in Section 10 which includes the provision of a Construction Environmental Management Plan (CEMP).</p>
<p>Identification of the persons affected by the proposal, the consultation undertaken, if any, and any response to the views of any person consulted.</p>	<p>Details of consultation undertaken in relation to this Project are outlined in Section 8. This Section identifies those persons considered to be affected by the Project.</p>
<p>If 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.</p>	<p>Proposed monitoring measures are discussed in Section 9 and listed in Section 10.</p>
<p>Any effect on those in the neighbourhood and, where relevant, the wider community, including any social, economic, or cultural effects.</p>	<p>The assessment of potential and actual effects in Section 9 and the Assessment of Social Effects contained in Volume 3.</p>
<p>Any physical effect on the locality, including any landscape and visual effects.</p>	<p>The visual and landscape effects of the Project are contained in the Assessment of Landscape and Visual Effects provided in Volume 3.</p>
<p>Any effect on ecosystems, includes effects on plants and animals and any physical disturbance of habitats in the vicinity.</p>	<p>The assessment of effects on ecosystems are included in the freshwater ecology, terrestrial ecology (including arboricultural) Technical Assessments contained in Volume 3.</p>
<p>Any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural value, or other special value, for present or future generations.</p>	<p>Technical Assessments relevant to the effects of the Project on recreational, historic and cultural values are contained in Volume 3.</p>
<p>Any discharge of contaminants into the environment, including any unreasonable</p>	<p>Technical Assessments specific to construction and operational noise and vibration, stormwater, surface</p>



Schedule 4 Item – Matters to be included in an AEE	Relevant sections that address the requirements of Schedule 4.
emission of noise, and options for the treatment and disposal of contaminants.	water, construction water, contaminated land and works within the Rosedale Closed Landfill are contained in Volume 3 .
Any risk to the neighbourhood, the wider community, or the environment through natural hazards or the use of hazardous substances or hazardous installations.	Details of the potential risks and mitigation measures associated with working within the Rosedale Closed Landfill are outlined in Volume 3 .

The assessment of environmental effects process (as documented in this report) has been undertaken in accordance with Schedule 4. It also fulfils the requirements of the assessment of effects on the environment required in support of the NoRs².

3.9 Consideration of Applications for Resource Consent

If the Project is directed to a BoI, the BoI will consider the applications under section 149P(1) and (2). Section 149P(2) provides that a BoI considering an application for resource consent must apply sections 104 to 112 and 138A as if it were a consenting authority.

As set out above, the activities for which the resource consents are sought fall into a variety of differing activity classes, ranging from controlled activities to non-complying activities. Applying the principle of bundling, the whole Project is to be assessed as having non-complying activity status. All applications must be considered under section 104 of the RMA, but there are also additional considerations specific to certain classes of activity).

The relevant parts of section 104 of the RMA require:

- (1) *When considering an application for resource consent, and any submissions received, the consent authority must, subject to Part 2, to have regard to-*
 - (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (b) *any relevant provisions of—*
 - (i) *a national environmental standard;*
 - (ii) *other regulations;*
 - (iii) *a national policy statement;*
 - (iv) *a New Zealand coastal policy statement;*
 - (v) *a regional policy statement or proposed regional policy statement;*
 - (vi) *a plan or proposed plan; and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
- (2) *When forming an opinion for the purpose of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*

² An NoR must include details of the effects that the project will have on the environment and the ways in which any adverse effects will be mitigated (Form 18 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003). The effects are then assessed by the Board under section 171(1) of the RMA.



Section 9 assesses the effects on the environment of the elements of the Project that require resource consent.

Section 11 assesses the effects of allowing the Project in terms of relevant provisions of the National Policy Statement for Freshwater Management 2011 (NPS_{FM}), National Policy Statement for Electricity Transmission (NPS_{ET}), the NES_{Soil}, the AUP and legacy plans. Overall, it is concluded that the Project is not contrary to the relevant provisions of these instruments.

In addition to consideration under section 104, there are further considerations for particular classes of activities:

- Non-complying activities under section 104B and 104D; and
- Discharge permits, under section 105 and section 107.

3.9.1 Section 104B – Non-Complying 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.*

The activities to be undertaken as part of the Project that require resource consent are set out in **Section 6**.

3.9.2 Section 104D – Particular restrictions for non-complying activities

Under section 104D:

- (1) *Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*
 - (a) *the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
 - (b) *the application is for an activity that will not be contrary to the objectives and policies of—*
 - (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - (iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*
- (2) *To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.*

An assessment of the Project against section 104D is provided in **Section 12.3**.

3.9.3 Discharge permits

Section 105 requires that regard be had to matters in relation to discharge permits as follows:

- (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.*

In addition, section 107 provides:

- (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; or*
 - (ba) *the dumping in the coastal marine area from any ship, aircraft, or offshore installation of any waste or other matter that is a contaminant,—*
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.
- (3) *In addition to any other conditions imposed under this Act, a discharge permit or coastal permit may include conditions requiring the holder of the permit to undertake such works in such stages throughout the term of the permit as will ensure that upon the expiry of the permit the holder can meet the requirements of subsection (1) and of any relevant regional rules.*

Discharges to land include sediment and stormwater, with discharges to air being required for works within the Rosedale Closed Landfill and from construction works. **Section 9** considers the effects of the discharges and **Section 10** addresses mitigation of effects of the discharges.

3.10 Other Statutory Considerations

When considering the NoRs (under section 171) and the applications for resource consent (under section 104), the Bol must have regard to various matters.



Section 171 requires consideration of any relevant provisions of:

- A national policy statement;
- A New Zealand coastal statement;
- A regional policy statement or proposed regional policy statement;
- A plan or proposed plan; and
- Any other relevant matters that the BoI considers reasonably necessary in order to make a decision on the NoR.

Section 104 requires the consideration of all of the same matters, as well as any relevant provisions of:

- National environmental standards; and
- Other regulations.

3.11 Statutory Planning Documents

Statutory planning documents are considered to be documents required to be produced under legislation. Relevant to this Project are national policy statements (NPS), national environmental standards (NES), regional policy statement, regional plan and district plan.

The purpose of a NPS (other than the New Zealand Coastal Policy Statement) is to state objectives and policies for matters of national significance that are relevant to achieving the purpose of the RMA (section 45(1)). There are two relevant operative NPS with respect to the Project:

- NPS_{FM}; and
- NPS_{ET}.

A NES is a regulation issued under section 43 of the RMA. They generally apply nationally. The relationship between the provisions of the NES and the regional and district plan rules is outlined in section 43B of the RMA.

There are two NES which are considered relevant to the Project:

- The National Environmental Standards for Air Quality 2004 (NES_{AQ}); and
- NES_{Soil}.

3.11.1 National Policy Statement for Freshwater Management 2011

The NPS_{FM} came into effect on 1 August 2014.

It contains eight groups of objectives and policies:

- Water quality (A);
- Water quantity (B);
- Integrated management (C);
- National objectives framework (CA);
- Monitoring plans (CB);
- Accounting for freshwater takes and contaminants (CC);
- Tangata whenua roles and interests (D); and
- Progressive implementation programme (E).

An assessment of the Project in relation to NPS_{FM} is provided in **Section 11**.



3.11.2 National Policy Statement on Electricity Transmission

The NPS_{ET} came into effect on 10 April 2008.

The objective of the NPS_{ET} is:

[t]o recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources to meet the needs of present and future generations, while:

- *managing the adverse environmental effects of the network; and*
- *managing the adverse effects of other activities on the network.*

The effects of the Project on the electricity transmission network will need to be considered and managed.

An assessment of the Project in relation to the NPS_{ET} is provided in **Section 11**.

3.11.3 National Environmental Standard for Air Quality

The NES_{AQ} is intended to protect public health and the environment of New Zealand by, among other things, setting concentration limits for criteria air pollutants. Different parts of the NES_{AQ} came into effect between 2004 and 2006.

There are five ambient air quality standards relevant to the Project. Schedule 1 of the NES_{AQ} sets out the ambient air quality concentration limits for the following:

- Carbon monoxide;
- Nitrogen dioxide;
- Ozone;
- Fine particulate matter (PM₁₀); and
- Sulphur dioxide.

The construction of the Project will not trigger the requirement for resource consent under the NES_{AQ}.

3.11.4 National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

The NES_{Soil} establishes a nationally consistent set of planning controls and soil contaminant values.

The NES_{Soil} contains a national set of soil contaminant standards for 12 priority contaminants for five standard land use scenarios (rural residential, residential, high density residential, recreational and commercial/industrial).

An assessment of the Project in relation to the NES_{Soil} is provided for in **Section 11**. All necessary consents required under the NES_{Soil} for land disturbances will be obtained prior to the commencement of any construction works for the Project.

3.11.5 Auckland Unitary Plan Operative in Part (15 November 2016)

The Proposed Auckland Unitary Plan (PAUP) was notified on 30 September 2013, with AC's Decision Version issued on 19 August 2016, and the appeal period has closed.

On 15 November 2016, AC gave public notice that it had resolved to make parts of the PAUP 'operative in part'. At the same time, AC issued an annotated version of the AUP that identifies those provisions that are operative, and those that are subject to appeal to the High Court or the Environment Court. All rules relevant to the Project (regional plan and district plan) are confirmed as



operative in the AUP. The relevant objectives and policies are discussed in greater detail in **Section 11** of the AEE while those subject to appeal are summarised in **Section 3.11.7** below.

3.11.5.1 AUP: Regional Policy Statement

Relevant resource management issues addressed in the RPS section of the AUP are:

- Urban growth and form (Chapter B2);
- Infrastructure, transport and energy (Chapter B3);
- Mana Whenua (Chapter B6);
- Natural resources (Chapter B7); and
- Environmental risk (Chapter B10).

An assessment of the Project in relation to the RPS in the AUP is provided in **Section 11**.

3.11.5.2 AUP: Regional Plan Provisions

Activities covered by the Regional Plan section of the AUP which are relevant to the Project are:

- Works within Significant Ecological Areas (SEA);
- Earthworks;
- Vegetation removal;
- Works on existing and new structures and associated bed disturbance or depositing of any substance diversion of water and temporary damming of water;
- Groundwater diversion;
- Groundwater take;
- Stormwater discharge and diversion;
- Discharges from high use roads (HUR);
- Stormwater management area – Flow 1 and Flow 2;
- Air quality; and
- Contaminated land.

3.11.5.3 AUP: District Plan

Objectives and policies relating to the following activities covered by the District Plan section of the AUP are relevant to the Project:

- Land disturbance;
- Trees in roads;
- Lighting;
- Flooding; and
- Noise and vibration.

District Plan rules are not relevant because the district aspects of the Project will be authorised by designations.

3.11.5.4 AUP Appeals

The relevant policies of the AUP that are subject to appeal relate to:

- Chapter B2 - Urban Growth and Form (Regional Policy Statement); and
- Chapters E15 – Vegetation Management and Biodiversity and D9 – Significant Ecological Areas Overlay (Regional Plan and District Plan).



While the policies within Chapter E36 - Natural Hazards and Flooding are subject to appeal, the appeals relate to coastal hazards and are not relevant to the Project

3.11.6 Auckland Council Regional Policy Statement

As a result of the appeals relating to Chapter B2 of the AUP, the urban growth objectives and policies from the Auckland Council Regional Policy Statement (ACRPS) are relevant and are considered in **Section 11**.

3.11.7 Auckland Council Regional Plan: Air, Land and Water Plan

As outlined above, Chapters E15 – Vegetation Management and Biodiversity and D9 – Significant Ecological Areas Overlay are subject to appeal and accordingly, the corresponding objectives in the (Auckland Council Regional Plan: Air, Land and Water Plan) ACRP:ALW have been considered as set out in **Section 11**.

3.12 Non-Statutory Strategic Documents

For the resource consent applications, the Bol must have regard to “any other matter the consent authority considers relevant and reasonably necessary to determine the application” (section 104(1)(c)).

For the NoRs, a Bol must also have regard to any other matter it considers reasonably necessary in order to make its decision (section 171(1)(d)).

The RMA does not define what matters are to be considered under these sections, however, it is accepted that these can include matters outside the RMA, including non-statutory processes. Those matters considered relevant have already been identified and discussed in **Section 2.3** and therefore are not repeated here.

3.13 Other Relevant Statutes

In addition to the RMA, there are a number of other statutes which are considered relevant to the Project and these are outlined in the following sections.

3.13.1 Land Transport Management Act

The LTMA provides the statutory framework for New Zealand’s land transport system. It is also the statute under which the NZ Transport Agency operations (in conjunction with the GRPA).

The LTMA was enacted in November 2003 and amended in 2008. The purpose of this Act is set out in section 3 as follows:

The purpose of this Act is to contribute to an effective, efficient, and safe land transport system in the public interest.

Section 94 sets out the corresponding objective of the NZ Transport Agency:

The objective of the Agency is to undertake its functions in a way that contributes to an effective, efficient, and safe land transport system in the public interest.

The NZ Transport Agency’s functions are set out in section 95 of the LTMA. Of specific relevance to the Project is:

(1) *The Agency has the following functions:*

(a) *to contribute to an effective, efficient, and safe land transport system in the public interest;*

[...]



(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 Roding Powers Act 1989; [...]

The principles under which the NZ Transport Agency must operate are set out in section 96. Of specific relevance to the Project are those in subsection (1):

(1) In meeting its objective and undertaking its functions, the Agency must-

(a) exhibit a sense of social and environmental responsibility; and [...]

3.13.2 Government Roding Powers Act 1989

The GRPA grants the NZ Transport Agency certain powers in relation to the construction, operation and maintenance of State highways (including motorways).

3.13.2.1 State highways

Under section 61 of the GRPA, the NZ Transport Agency has the sole power of control for all purposes, including construction and maintenance, of all State highways. Section 103(1)(a) of the LTMA provides that the NZ Transport Agency may, with the consent of the Secretary (being the Chief Executive of the Ministry of Transport), by notice in the Gazette, declare a 'road' to be a State highway. It is proposed that all of the new areas of carriageway for SH1 and SH18 (including the new ramps) as well as the Northern Busway from Constellation Bus Station to Albany Bus Station will be declared State highway.

3.13.2.2 Power to exclude general traffic from the Busway

Section 61(3) of the GRPA provides that the NZ Transport Agency may, from time to time, by notice in the Gazette make bylaws with respect to any State highway in relation to certain matters. This power enables the NZ Transport Agency to make a bylaw to restrict the types of vehicles using the Northern Busway.

3.13.2.3 Motorways

Under section 71 of the GRPA the NZ Transport Agency may request that the Governor-General declare that a road, or land where a road will be constructed, to be a motorway. Motorway status provides particular restrictions on the use of and access to a road. For example, pedestrians are not permitted to walk on motorways, and horses cannot be ridden on motorways (sections 82 to 84 of the GRPA). It is proposed that the land added by the Project to SH1 and SH18 (NoRs1-3) will be declared motorway under section 71 of the GRPA.

3.13.3 Public Works Act 1981

The Public Works Act 1981 (PWA) enables land to be acquired, either by agreement or by the processes set out in the Act, for public works, including roads. It contains provisions for compensation for owners of land required for public works and for the disposal of land no longer required for a public work.

A notice of requirement for the designation of land (taking effect from the date the notice of requirement for the designation is lodged) and a designation of land also allows the owners of the land that is subject to the notice of requirement or designation to apply to the Environment Court for an order obliging the requiring authority to acquire all or part of the land, in particular circumstances (section 185 of the RMA).

As of 30 November 2016, the Crown has acquired approximately 1% of the land required for the Project (in addition to land already held by the Crown within the Project area).



3.13.4 Reserves Act 1977

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

Section 3(1) of the RA states that the purpose of the Act is:

- “(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 values: [...]”*

The Project impacts on nine recreation reserves and one esplanade reserve as indicated in **Table 4**.

Under section 17(1) of the RA, the purpose of a recreational reserve is to provide 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.

The impact of the Project on Rosedale South Reserve will alter its use to one that is inconsistent with its current recreation reserve classification under the RA. AC does not hold the power to change the purpose of the reserve, and therefore a process under section 24 of the RA must be followed. AC is required to notify the Commissioner (an officer designated by the Director-General for the purposes of the RA) in writing, stating the reasons why the classification or purpose of the whole or part of the reserve should be changed to another classification or purpose, or that the reservation of the whole or part of the land as a reserve should be revoked. The revocation of a reserve is required to be publicly notified unless exempt under sections 24(6) or 24(7), and disposal may only occur once the reserve status has been revoked in accordance with the Land Act 1948.

The Reserve Management Plan for Rosedale Park South is a live document, reflecting the changing needs of the park over time. A change to this plan, in accordance with the requirements of the RA, will be necessary once the reserve status is removed from the Rosedale South Reserve portion of the park.

Table 4 outlines the parks and reserve land where both temporary and permanent construction works will be carried out as part of the Project.

Table 4 Parks and Reserve Land affected for the Project

Reserve Name	Location	Legal Description	Owner	Legal Status
Tawa Reserve	Land west of the Greville Road interchange	Lot 153 DP 139731 Lot 151 DP 139732 Lot 152 DP 139732	AC	Recreation Reserve subject to the Reserves Act 1977
Arrenway Reserve	Between SH1 and Arrenway Drive	Lot 57 DP 177699, Lot 62 DP 181967	AC	Recreation Reserve subject to the Reserves Act 1977



Centorian Reserve	Adjacent to Holder Place	Lot 7 DP 191947	AC	Recreation Reserve subject to the Reserves Act 1977
Meadowood Reserve	South of SH18	Lot 360 DP 132246	AC	Recreation Reserve
Rosedale South Reserve	North of Upper Harbour Highway	Pt Lot 1 DP 98275	AC	Recreation Reserve
Constellation Park	North of Upper Harbour Highway	Pt Lot 1 DP 98275	AC	Recreation Reserve
Omega Reserve	Between SH18 and Paul Matthews Road	Lot 103 DP 183219	AC	Recreation Reserve (adjacent lots are Local Purpose Esplanade and Recreation Reserve) subject to the Reserves Act 1977
Alexandra Stream	South of SH18	Lot 302 DP 152320	AC	Esplanade Reserve
Rook Reserve	South of SH18	Lot 300 DP 152320,	AC	Recreation Reserve
Bluebird Reserve	Between SH18 and Bluebird Crescent	Lot 214 DP 197052 Lot 214 DP 212142	AC	Recreation Reserve subject to the Reserves Act 1977

3.13.5 Wildlife Act 1953

The Wildlife Act 1953 (WA) addresses the protection and control of wild animals and birds, and the management of game. Permits are necessary under the WA to deal with certain wildlife. The WA also provides protection to a small number of terrestrial invertebrates and marine species.

Part 1 of the WA addresses the protection of wildlife. It provides varying levels of protection to different species. Most native birds, reptiles, bats and frogs are protected under the Act. Some native and some introduced bird species have limited protection.

The potential effects of the Project on protected species are discussed in **Section 9** of this AEE. If required, an application will be made under the WA for an authority to relocate any protected species prior to the commencement of construction of the Project.

3.13.6 Fisheries Act 1983

The Freshwater Fisheries Regulations 1983 (FFR) are regulations made under the Fisheries Act 1983 (FA). 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 42(1):

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-General of Conservation 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
- Specify that fish passage be provided and maintained.



All culverts required for the Project, have been designed to ensure adequate fish passage is provided where it is necessary.

Approval from the Director-General under the FFR will be sought as required.

3.14 Statutory Acknowledgements

A statutory acknowledgement is a formal recognition by the Crown of a particular cultural, spiritual, historic and traditional associations that an Iwi has with a statutory area. The statutory acknowledgements provided under Treaty Settlement legislation for areas within Auckland are confirmed in the AUP at Appendix 21. While statutory acknowledgements within Auckland under the Ngāti Manuhiri Claims Settlement Act 2012 exist, none relate to the Project area. No other statutory acknowledgements relate to the Project area.