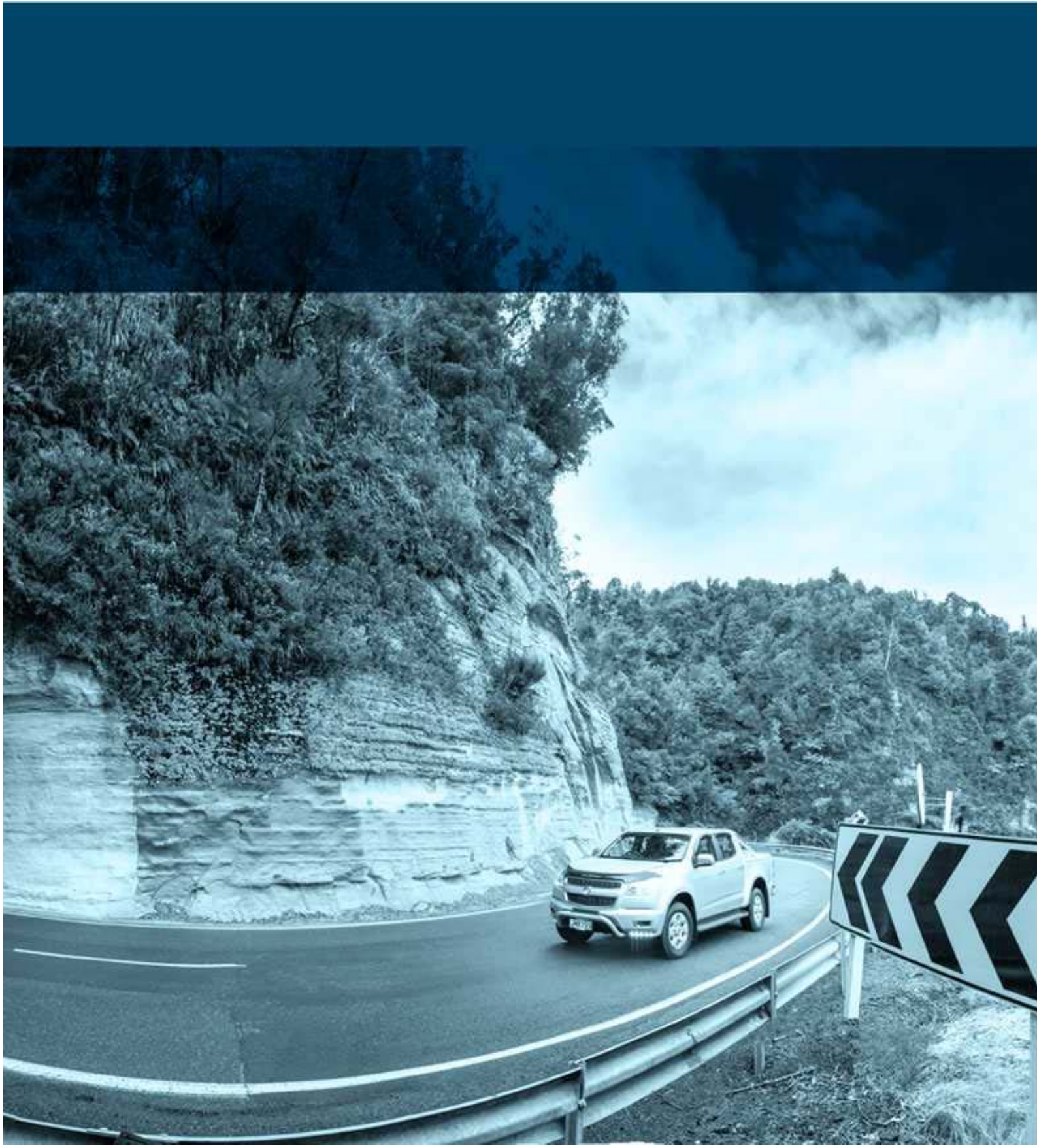


Section 2 - Notice of Requirement and Consents



2 Notice of Requirement and Resource Consents

2.1 Overview

The Transport Agency proposes to designate land for the Project in accordance with s168 of the Resource Management Act 1991 (RMA).

The Project also requires a number of resource consents, which the Transport Agency is seeking under the relevant sections of the RMA.

The scope of the NoR and resource consents sought for the Project are outlined in the following sections. The NoR and resource consent application forms are provided at the front of the application documentation.

2.1.1 Public notification

Due to the nature and extent of the Project, the Transport Agency requests that the NoR and applications for resource consent for the Project be publicly notified.²

2.2 Notice of Requirement

The Transport Agency is a requiring authority under s67(3) of the RMA for:

- the construction and operation (including the maintenance, improvement, enhancement, expansion, realignment and alteration) of any State highway or motorway;³ and
- the construction or operating of cycleways and shared paths.⁴

Pursuant to its requiring authority status, the Transport Agency has lodged a NoR with New Plymouth District Council (District Council) to alter the existing SH3 designation within the Operative New Plymouth District Plan (District Plan) in accordance with s181 of the RMA. The alteration is to add land to the existing SH3 designation, being the land required for the construction, operation and maintenance of the Project, including key associated mitigation and offsetting activities.

The extent of the proposed designation is shown on drawings included in the drawing set (refer drawings MMA-DES-PRP-C0-DRG-1000 to 1004). These drawings are referenced in the NoR. The AEE assesses the effects of the works to be authorised by the NoR.

A schedule of properties directly affected by the NoR, and which are proposed to be added to the designation, is included on the plans showing the extent of the proposed designation (refer drawing MMA-DES-PRP-C0-DRG-1000) and also included as Appendix B of the AEE. This schedule of properties is referenced in the NoR. Under the altered (extended)

² For the resource consents, sections 95A(2)(a) and 95A(3)(a) of the RMA together mean that the applications must be publicly notified if the applicant requests public notification. For the NoR, the equivalent provisions are sections 169(1) and 149ZCB(2)(b).

³ Resource Management (Approval of Transit New Zealand as Requiring Authority) Notice 1994.

⁴ Resource Management (Approval of NZ Transport Agency as a Requiring Authority) Notice 2015.

designation, works will also be carried out on land within the existing SH3 designation. This land together amounts to the Project footprint.

In summary, the proposed designation directly affects the following land:

Table 2.1 – Summary of land directly affected by the proposed designation

Owner type	NoR	Area
Private	16 properties	77.18ha
Road	SH3 (existing designation)	20.93ha

2.2.1 Draft NoR conditions

Draft NoR conditions have been proposed in Appendix D. These will apply primarily during the construction of the Project, and will fall away once the Project is operational. The key exception is in respect of the ongoing mitigation and offset programmes.

2.2.2 Designation to be reviewed after construction

On completion of construction, the Transport Agency will review the extent of the designation, including parts of the current SH3 designation no longer required by the Transport Agency. Areas of the designation not required for permanent works, operations, maintenance, or for mitigation and offsetting activities will be removed where it is reasonable to do so. This is a relatively simple process under s182 of the RMA.

2.2.3 Waiver of outline plan of works

Once the alteration to the designation is confirmed, the Transport Agency will carry out a range of works within the designation. Section 176A of the RMA creates a general requirement for requiring authorities to submit outline plans of works (OPWs) prior to carrying out work within a designation. However, s176A(2)(c) provides that a requiring authority need not submit an OPW if the territorial authority waives the requirement to do so.

As part of this application, the Transport Agency requests that the District Council waive the requirement for an OPW to be provided. Extensive information about the Project is being provided in this application, including the information normally required to be provided in the OPW under s176A(3), being:

- a the height, shape, and bulk of the Project;
- b the location on the site of the Project;
- c the likely finished contour of the Project site;
- d the vehicular access, circulation, and the provision for parking;
- e the landscaping proposed; and
- f the other matters proposed to avoid, remedy, or mitigate the adverse effects of the Project on the environment.

The Transport Agency is also providing a draft Construction and Environmental Management Plan (CEMP) with the application, which itself appends a suite of management plans (refer Volume 5 of this AEE). These will be finalised prior to construction (and updated any time as required thereafter) and will include further detail relating to the above matters.

2.3 Applications for resource consents

The Transport Agency is seeking resource consents from the Taranaki Regional Council (Regional Council) and the District Council for the construction, operation and maintenance of the Project, including the associated mitigation and offsetting activities. The relevant statutory documents under which resource consents are being sought are: the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES Soil); the Regional Fresh Water Plan for Taranaki (the Fresh Water Plan); the Regional Soil Plan for Taranaki (Soil Plan); the Regional Air Quality Plan for Taranaki (Air Quality Plan).

A list of the consents sought and the relevant plan rules is set out in Table 2.2 below. Overall, the activity status of the applications is discretionary.

For the avoidance of doubt, the Transport Agency is seeking resource consents under the rules below and any other rules which may apply to the Project, even if not specifically noted.

Table 2.2 – Resource consent requirements

Council Form	Activity type	Activity	RMA Ref	Rule / Reg.	Activity status D=Discretionary C=Controlled	Geographic Extent	Comment
Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES)							
9	Earthworks under the NES	Disturbance of contaminated soils	S9	Reg 11	D	Construction areas within proposed designation	
Regional Fresh Water Plan for Taranaki (Operative 2001)							
300	Take and use of surface water	Take and use of water for construction-related purposes	S14	Rule 16	D	Take from Mangapepeke Stream/tributary to Tongaporutu River, at location across SH3 at northern end of Project site; and from Mimi River at location near to the tie-in point to SH3. Takes are for dust suppression use.	Total combined daily take volumes are likely to range from 300m ³ /day to 450m ³ /day. No more than 10% of mean annual low flow
210	Damming of water from a stream or rivers	Temporary weir to dam stream and establish a small headpond for taking water.	S14	Rule 20	D	2 small temporary weirs to enable surface water takes at the locations described above, 1 in the Mangapepeke Stream and 1 in Mimi River	The weirs will be in the order of 1m in height.

Council Form	Activity type	Activity	RMA Ref	Rule / Reg.	Activity status D=Discretionary C=Controlled	Geographic Extent	Comment
210	Diversion of streams and rivers	Temporary and permanent diversion of watercourses within Project footprint	S14	Rule 20	D	Diversions within Project footprint, as indicated on drawings in Volume 2: Drawing Set	Sought for all stream diversions
320	Use of stream bed	Placement of temporary weir	S13	Rule 64	D	2 small temporary weirs to enable surface water takes at the locations described above, 1 in the Mimi River and 1 in Mangapepeke Streams	The weirs will be in the order of 1m in height.
201	Use of stream bed	Removal, demolition and decommissioning of culverts in stream beds established for construction access	S13	Rule 56	C	Temporary construction access tracks	Sought for removal of culverts at construction access tracks as track is removed on completion of work during site reinstatement.
201	Use of stream bed	Construction, placement and use of culverts in stream beds	S13	Rule 64	D	All culverts (and any other structures within streambeds) within Project footprint as indicated on drawings	Sought for all culverts, both temporary associated with construction access tracks and permanent culverts associated with road corridor.

Council Form	Activity type	Activity	RMA Ref	Rule / Reg.	Activity status D=Discretionary C=Controlled	Geographic Extent	Comment
						in Voume 2: drawing set	
201	Structures	Construction, placement and use of bridge over stream bed	S13	Rule 64	D	Bridge over Mimi swamp forest on southern approach	Sought for the construction and operation of the bridge associated with the southern side of the works.
500	Use of stream bed	Planting and/or removal of vegetation	S13	Rule 68	D	Restoration planting of diverted streams in Project footprint as indicated on drawings in the drawing set	Potential planting of streambed could occur associated with restoration of diverted streambeds
220	Disturbance of beds of streams and rivers	Realignment / modification of streams	S13	Rule 76	D	Diverted streams in Project footprint as indicated on drawings in the drawing set	All works associated with the realignment, modification or reinstatement of stream channels.
112	Discharge of contaminants to land and water	Discharges of stormwater and sediment deriving from soil disturbance activities during construction	S15	Rule 27	C	All construction areas within proposed designation	The Project will not comply with the area/volume limits set out in Rules 25 and 26. A site erosion and sediment control management plan (Construction Water Management Plan) is attached to the AEE in Volume 5.

Council Form	Activity type	Activity	RMA Ref	Rule / Reg.	Activity status D=Discretionary C=Controlled	Geographic Extent	Comment
500	Groundwater take and diversion ⁵	Groundwater take and diversion	S14		D	Cut excavations along Project alignment and from Tunnel	Take and diversion of groundwater associated with seepage from cut excavations and from tunnel excavation. Total daily groundwater volumes are expected to be small.
Regional Soil Plan for Taranaki (Operative 2001)							
230	Vegetation removal	Clearance of vegetation associated with construction activities	S9	Rule 2	C	Construction areas within proposed designation	The Project is expected to exceed the vegetation clearance limits in Rule 1. A site erosion and sediment control management plan (Construction Water Management Plan) is attached to the AEE in Volume 5.
Regional Air Quality Plan for Taranaki 2001							
120	Discharges of dust	Dust associated with earthworks	S15	Rule 44	C	Construction areas within proposed designation	The Project earthworks exceed the threshold in Rule 43. A dust management plan is attached to the AEE in Volume 5.

⁵ There is no regional rule that addresses the proposed take and diversion of groundwater that will occur as a consequence of the cut excavations along the Project alignment and construction of the tunnel. These activities require consent under Part 3 of the RMA, meaning that s87B(1)(a) of the RMA applies: it provides that where there is no relevant rule in the regional plan or any proposed regional plan, the application for consent for that activity must be treated as an application for consent for a discretionary activity

2.3.1 Land subject to resource consent applications

A schedule of properties to which these resource consents relate is included in Appendix B. Land within the existing SH3 designation where works are to be carried out as part of the Project is also subject to applications for resource consent.

2.3.2 Consent duration

The Transport Agency is seeking resource consents for a duration of 35 years from the date of commencement, in respect of all consents required for the long term operation of the Project. The expiry date for each consent will be detailed in the proposed consent conditions. This duration of consent reflects the level of investment being made by the Transport Agency in the Project works.

2.3.3 Draft resource conditions

Draft resource consent conditions have been proposed in Appendix D.

2.4 Lapse

Construction works are expected to commence in 2018 and be completed in 2021. However, the Project is large and complex and flexibility is required. As a precaution, an extended lapse period of ten years is sought:

- For the alteration to the designation, from the date the alteration of the designation is given effect to in the District Plan (refer RMA s184);
- For the resource consents, from the date of granting of the resource consents (refer RMA s125).

2.5 Permitted activities

The Project involves a small number of activities which are specified as permitted under the relevant statutory plans, as set out in Table 2.3 below.

Table 2.3 – Permitted Activities

Rule	Activity (as set out in relevant Plan)	Activity proposed / conditions	Summary of compliance
Freshwater Plan			
Rule 21	Discharge of water into surface water (excluding the wetlands listed in Appendix II).	Clean water diversions	Activities such as clean water diversions will lead to discharges of water into surface water across the Project area. The wetlands listed in Appendix II of the Plan do not include the Mimi swamp forest or any other areas within where discharges from the Project could occur.
Rule 23	Discharge of stormwater into or onto land or into water (excluding those wetlands listed in Appendix II) that is not provided for by Rules 25–27.	Discharge of stormwater into or onto land associated with operation of road once completed.	The operational discharge of stormwater will meet the permitted activity conditions. Stormwater will be treated in treatment wetlands. Discharge will be managed to ensure no significant erosion, scour or deposition will occur.
Rule 25	Discharges of stormwater and sediment deriving from soil disturbance activities of 1 ha or less; <ul style="list-style-type: none"> • Into surface water (excluding those wetlands listed in Appendix II) and/or • Onto or into land in circumstances where 	<ul style="list-style-type: none"> • The discharge shall not derive from an area of soil disturbance greater than 1 ha; • The discharge shall not derive from a volume of soil disturbance greater than 3000m³; • Soil stabilisation shall be undertaken as soon as practicable after the completion of the works; • Discharge to surface water shall contain less than 100gm³ suspended solids; 	Smaller areas of earthworks, including as part of preparatory works (refer Section 5.5.4), may be carried out in the early stages of the Project. Where these activities meet the conditions of Rule 25 of the Fresh Water Plan, they can be undertaken as a permitted activity.

Rule	Activity (as set out in relevant Plan)	Activity proposed / conditions	Summary of compliance
	<p>sediment from soil disturbance may enter water</p>	<ul style="list-style-type: none"> • Discharge to surface water shall not give rise to any or all of the following effects in the receiving water after reasonable mixing: <ul style="list-style-type: none"> (a) the production of any conspicuous oil or grease films, scums, or foams, or floatable or suspended materials; (b) any conspicuous change in the colour or visual clarity; (c) any emission of objectionable odour; (d) the rendering of fresh water unsuitable for consumption by farm animals; (e) any significant adverse effects on aquatic life. 	
Rule 26	<p>Discharges of stormwater and sediment deriving from soil disturbance activities of between 1 and 8ha;</p> <ul style="list-style-type: none"> • Into surface water (excluding those wetlands listed in Appendix II) and/or • Onto or into land in circumstances where sediment from the soil 	<ul style="list-style-type: none"> • The discharge shall not derive from an area of soil disturbance greater than 8ha; • The discharge shall not derive from a volume of soil disturbance greater than 24,000m³; • The discharge shall not derive from soil disturbance which takes place between 1 May and 31 October; • The discharge shall not derive from soil disturbance which takes place within a defined urban catchment; 	<p>Smaller areas of earthworks, including as part of preparatory works (refer Section 5.5.4), may be carried out in the early stages of the Project. Where these activities meet the conditions of Rule 25 of the Fresh Water Plan, they can be undertaken as a permitted activity.</p>

Rule	Activity (as set out in relevant Plan)	Activity proposed / conditions	Summary of compliance
	disturbance may enter water	<ul style="list-style-type: none"> • Soil stabilisation shall be undertaken as soon as practicable after the completion of the works; • Discharge to surface water shall contain less than 100gm³ suspended solids; • Discharge to surface water shall not give rise to any or all of the following effects in the receiving water after reasonable mixing: <ul style="list-style-type: none"> (a) the production of any conspicuous oil or grease films, scums, or foams, or floatable or suspended materials; (b) any conspicuous change in the colour or visual clarity; (c) any emission of objectionable odour; (d) the rendering of fresh water unsuitable for consumption by farm animals; (e) any significant adverse effects on aquatic life. 	

2.6 Additional considerations including under other legislation

In addition to the matters requiring consideration under the RMA, there are further statutory considerations that are relevant to the Project, as summarised in Table 2.4.

Table 2.4 – Other approvals required

Legislation	Relevance
Public Works Act 1981	Acquisition of land required for the Project.
Heritage New Zealand Pouhere Taonga Act 2014	Archaeological Authority under Section 44(a) (see further discussion in Section 10 of this AEE, in respect of the effects of the Project on archaeological values).
Wildlife Act 1953	Wildlife Act Authority associated with protected species
Freshwater Fisheries Regulations 1983	Application associated with the provision of fish passage in waterways affected by the Project.
Ngāti Tama Claims Settlement Act 2003	Conservation Act 1987 / Reserves Act 1977 covenant and New Zealand Walkways Act 2003 right of way easement over Ngāti Tama Treaty Settlement land need to be addressed.

Where other approvals are required they will be sought either in parallel to these RMA applications or at a time that will permit construction to commence in accordance with the Project's construction programme.

2.6.1 Ngāti Tama Treaty Settlement Land

Part of the land subject to the proposed designation is land vested in Ngāti Tama⁶ through the Ngāti Tama Claims Settlement Act 2003 (Treaty Settlement Act).

The Ngāti Tama historical Treaty of Waitangi settlement was negotiated between the Crown and Ngāti Tama, and was completed in 2003 with the passing of the Treaty Settlement Act. Treaty settlement land is generally held, as in this case, by the iwi 'post-settlement governance entity' as general land, not as Māori land under Te Ture Whenua Māori Act 1993. The Ngāti Tama land was vested as 'cultural redress land' under the Treaty Settlement Act. Cultural redress land is generally vested back in the name of the iwi because it is land that the iwi have a particularly strong cultural and historical association with.

As part of the settlement, Ngāti Tama's title to the land was made subject to two registered interests; a conservation covenant and a right of way easement.

The conservation covenant is expressed to be pursuant to s27 of the Conservation Act 1987, and s77 of the Reserves Act 1977. The Covenant was entered into between Ngāti Tama and the Crown, acting through the Minister of Conservation, and provides (among

⁶ The registered owner is Ngāti Tama Custodian Trustee Ltd

other things) for the continued preservation and protection of the conservation values associated with the land. Prior to its vesting in Ngāti Tama, the land had scenic reserve and conservation area status.

The right of way easement is expressed to be pursuant to the New Zealand Walkways Act 1990. The right of way easement was entered into between Ngāti Tama and the Crown, acting through the Minister of Conservation, granting public access over the area. The controlling authority for the walkway is the Minister for Conservation, and the easement is vested in the Walking Access Commission.

Before the Project is constructed, the Transport Agency will need to acquire the necessary property rights over the relevant portion of the Ngāti Tama land, including to have the conservation covenant and right of way easement uplifted (or otherwise to ensure those instruments do not hinder the construction of the Project). Discussions to that end between the Transport Agency, Ngāti Tama and the Department of Conservation (DOC) are ongoing. Those discussions may continue until after resource consents are in place and the NoR for the Project is confirmed.

