

Chapter 4  
Part B  
VOLUME 2

# Other Statutory Matters

## Overview

In addition to the matters requiring consideration under the RMA, there are a number of additional statutory requirements that are relevant to the Project. This section outlines other legislation which has informed the development of the Project, and/or under which separate approvals may be required. Some of these are not necessarily matters that need to be taken into consideration by a BoI, but rather provide context for the Project and the NZTA and KiwiRail as the applicants.

## 4 Other Statutory Matters

### 4.1 Introduction

In addition to the matters mentioned in the previous chapters, there are some further statutory considerations that the Project either has to be informed by or is legally required to comply with. These may be relevant in regard to section 104(1)(c) or section 171(1)(d) of the RMA. An assessment of these matters is covered in Part I, Chapter 33 of this AEE report.

The additional statutory considerations that are put forward in this section are under the:

- Land Transport Management Act 2003;
- Government Roding Powers Act 2003;
- New Zealand Railways Corporation Act 1981;
- Railways Act 2005;
- Public Works Act 1981;
- Historic Places Act 1993;
- Reserves Act 1977;
- Te Ture Whenua Māori Act 1993; and
- Freshwater Fisheries Regulations 1983 (FFR).

Any authorisations that may be required under other legislation, such as those listed above, are not applied for under this set of documents. They are described briefly below, however, for completeness and to give context.

### 4.2 Land Transport Management Act 2003

The LTMA provides the statutory framework for the management of New Zealand's land transport network. It is also one of the main statutes under which the NZTA operates (in conjunction with the 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 Agency 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 Roothing 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 -*
- (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) use its revenue in a manner that seeks value for money...

The LTMA also recognises the importance of the Treaty relationship between councils and Māori and directs those exercising functions under the LTMA to maintain and improve opportunities for Māori to contribute to land transport decision-making processes.

### **4.3 Government Roothing Powers Act 1989**

The Government Roothing Powers Act (GRPA) provides the statutory framework for the management of New Zealand's land transport system, in conjunction with the LTMA. Part 4 of the GRPA outlines the responsibility of the NZTA in relation to roading, comprising:

- Roads;
- State highways;
- Motorways; and
- Limited access roads.

Section 61 of the GRPA outlines the powers and duties of the NZTA in relation to State highways. Subsection 1 provides that: *Subject to section 62, the Agency shall have the sole powers of control for all purposes, including construction and maintenance, of all State highways under this Act, and any such powers shall be exercisable only pursuant to this Act.* Section 62 outlines that the NZTA can delegate powers and duties to territorial authorities.

Section 88 of the GRPA outlines that the NZTA can declare any State highway, or part of a State highway, to be a limited access road (LAR). The LAR provisions allow the NZTA a higher level of control over where, and the extent to which, access to a State highway can occur. The LAR provisions will apply to the Expressway so the NZTA will control the connections directly onto it.

#### 4.4 New Zealand Railways Corporation Act 1981

The NZRCA is an "Act to establish a corporation to maintain, operate, and develop the services at present carried on by the New Zealand Government Railways Department and to consolidate and amend the law relating thereto". The NZRCA outlines what the New Zealand Railways Corporation (the Corporation) / KiwiRail is and the functions and powers of the Corporation.

Section 12(1) outlines the function of the Corporation:

*The functions of the Corporation shall be—*

- (a) to establish, maintain, and operate, or otherwise arrange for, safe and efficient rail freight and passenger transport services within New Zealand:*
- (b) to establish, maintain, and operate, or otherwise arrange for, safe and efficient road passenger and freight transport services within New Zealand:*
- (c) to establish, maintain, and operate, or otherwise arrange for, a safe and efficient ferry service for freight, including the carriage of passengers and vehicles between the North and South Islands:*
- (d) to provide or otherwise arrange for those ancillary services which, in the opinion of the Corporation, are necessary for it to efficiently carry out its functions:*
- (e) to endeavour to carry on the operations of the Corporation in such a way that revenue exceeds costs, including interest and depreciation; and to provide for a return on capital that may be specified from time to time by the Minister of Finance.*

The Project, in addition to incorporating a realignment of a section of the NIMT through Ōtaki, has other positive effects such as improved safety, by removing 5 of 8 level crossings of the NIMT (being all the public level crossings in the Project area).

#### 4.5 Railways Act 2005

The Railways Act was enacted in 2005 and its purpose is to:

- (a) promote the safety of rail operations by:*
  - (i) stating the duty of rail participants to ensure safety; and*
  - (ii) authorising the Minister to make rules relating to rail activities; and*
  - (iii) clarifying the nature of approved safety systems established by rail participants:*
- (b) restate and amend the law relating to the management of the railway corridor:*
- (c) consolidate legislation relating to railways.*

Safety factors are key aspects in the Railways Act and constitute a substantial portion of the Act. The Project delivers improved safety over the stretch of the NIMT applicable to this application.

#### 4.6 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 and rail. The PWA also contains provisions for disposal of land no longer required for a public work. This AEE report has already noted that the operational land needed for the Project may be less than that required during construction. Therefore, surplus land after construction has been completed may be returned to former owners or uses through the PWA.

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

The Project requires land to be acquired for both the construction of the Expressway and the realignment of the NIMT at Ōtaki. As set out in Chapter 2.7 above, the land acquisition process is at varying stages, with some land already acquired and further land still to be acquired (either entirely or partially) from a number of properties within the Kāpiti district.

#### **4.7 Historic Places Act 1993<sup>14</sup>**

The 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.*

Under subsection 2 the HPA outlines that all persons exercising functions and powers under it shall recognise:

- (a) the principle that historic places have lasting value in their own right and provide evidence of the origins of New Zealand's distinct society; and*
- (b) the principle that the identification, protection, preservation, and conservation of New Zealand's historical and cultural heritage should:
  - (i) take account of all relevant cultural values, knowledge, and disciplines; and*
  - (ii) take account of material of cultural heritage value and involve the least possible alteration or loss of it; and*
  - (iii) safeguard the options of present and future generations; and*
  - (iv) be fully researched, documented, and recorded, where culturally appropriate; and**
- (c) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga.*

Sections 6 to 8 outline heritage covenants under the HPA, the effect of heritage covenants and the register of heritage covenants under a District Plan. Under section 6(1) the NZHPT may negotiate and agree with the owner or lessee or licence of an historic place, historic area, wāhi tapu, or wāhi tapu area for the execution of a heritage covenant to provide for the protection, conservation, and maintenance of that place, area, or wāhi tapu.

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 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

---

<sup>14</sup> The HPA is currently being revised, however at this stage the Heritage Bill is still being considered by Parliament. The current legislation is therefore considered here.

work associated with constructing the Project may result in the destruction, damage or modification to two recorded sites, one unrecorded site, and unknown sites along the alignment. These sites are discussed further below in Chapter 24. Consequently, the NZTA will make applications to the NZHPT under section 12 of the HPA. The NZTA is also working with tangata whenua to agree protocols to address any issues arising through the construction of the Project.

#### **4.8 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. All native animals other than those outlined in Schedules 1-5 of the Act are protected. This includes any 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.

The Project has various effects on watercourses as well as other ecological areas, and as such the implications on wildlife and the applicability of the Wildlife Act 1953, need to be considered. An assessment of the Project in relation to the Wildlife Act 1953 can be found in Part G, Chapter 19.

#### **4.9 Te Ture Whenua Māori Act 1993**

The preamble to the Te Ture Whenua Māori Act 1993 notes that it is desirable to facilitate and promote the retention of Māori land in the hands of its owners, their whānau, and their hapū, and to protect wāhi tapu, and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whānau, and their hapū. The 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 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.

There are five blocks of Māori owned land affected by the designation for the Expressway. These areas of land are subject to the designation in varying degrees; in some cases complete acquisition of parcels is sought, and in others only part of the land is sought to be acquired.

#### **4.10 Freshwater Fisheries Regulations 1983**

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