

PART I: STATUTORY ASSESSMENT

31. Approach to the assessment

Overview

The purpose of this statutory planning assessment is to provide analysis of the Project against the relevant policy framework within which the designations and resource consents are sought. This assessment has been prepared for both:

- the NZTA Project (the Main Alignment and the Kenepuru Link Road); and
- the PCC Project (the Porirua Link Roads).

As a result of the 'bundling' of resource consents (which themselves have different activity statuses, the most restrictive activity status for the resource consents sought is applied to all of the resource consent applications. In this case, the NZTA resource consent applications that relate to all streamworks and bulk earthworks are bundled together as they cannot occur separately. Those activities of the NZTA Project are rendered non-complying activities (with the exception of the concrete batching plant – which is a discretionary activity) and the equivalent PCC Project activities which are discretionary activities.

The NZTA also seeks designations through six (6) NoRs, and the PCC seeks designations through two (2) NoRs.

31.1 Introduction

This chapter sets out the structure and scope of the statutory assessment of the Project against the relevant policy framework. Chapter 3 contained a list of the resource consents that are required and the status of the activities to which the consents relate. However, as a result of 'bundling' the consents, the most restricted activity classification is applied. On this basis, the NZTA component of the Project is a non-complying activity in terms of the resource consent applications that are to be lodged (within the administrative jurisdiction of GWRC). The PCC component of the Project is discretionary (GWRC). Part B also identifies the designations being sought through eight NoRs – six by the NZTA and two by PCC.

Part B of the AEE identifies the relevant provisions of the RMA in relation to the Project. In particular, under section 104 of the RMA (consideration of resource consents) and under section 171 of the RMA (consideration of NORs for designations), the BoI must have regard to the relevant provisions of any national policy statement, national environmental standard, and regional and district planning documents when considering the applications.

The remainder of this chapter considers the applicable objectives, policies and regulations within these documents and provides an assessment of the Project against these provisions. A separate document

entitled “Statutory Provisions Report” (refer to Volume 2) compiles all the relevant objectives and policies that have been considered as part of the preparation of this assessment.

This chapter concludes with an assessment of the Project under Part 2 of the RMA and in particular against the purpose of the RMA in section 5 as the overriding consideration for the Project.

31.2 Approach to statutory planning assessment

As outlined in Chapter 3, the following consents and approvals are sought:

- Six Notices of Requirement by the NZTA and two Notices of Requirement by the PCC.
- Land use consents for bulk earthworks – both NZTA and PCC
- Land use consents, discharge permits and water permits to carry out works in streams including realignment of streams (divert, discharge and reclaim) – NZTA
- Land use consents, discharge permits and water permits to carry out works in Duck Creek including realignment of streams (divert, discharge and reclaim) – PCC
- Land use consent and discharge permits to operate a concrete batching plant – NZTA
- Discharge sediment laden water to land and water – NZTA and PCC

31.2.1 Bundling of activities

According to the “bundling” principle, where there is a group of activities belonging to a class making it appropriate for them to be considered holistically as a single bundle, they should be assessed according to the most stringent class of their group. Some of the activities of the Project are more closely associated with each other than others. Nevertheless, a conservative approach has been taken such that all activities of the Project for which resource consents are sought in this application are treated as a single bundle:

- For the NZTA Project, the reclamation activities that are proposed to be located within the Appendix 2 listed streams under the RFWP mean that the resource consent applications are treated as a non-complying activity bundle overall.
- For the PCC Project, the most stringent activity category for the resource consents is discretionary activity, and as such these activities have been treated as a discretionary activity bundle to which Section 104B applies.

31.2.2 Approach to assessment under section 104D(1)(b)

The bundling approach has a flow on implication for how section 104D has been applied for the non-complying activity bundle.

Section 104D is specific to the consideration of non-complying activities and requires an additional test to be applied to an application before further consideration can be made of the relevant activities under section 104. Section 104D requires the activities to pass one of the two “gateway” tests of the RMA:

“(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.”

The assessments of the applications indicate that aspects of the Project will not be able to meet the test of Section 104D(1)(a) as some of the activities will generate a more than a minor adverse effect – refer to **Technical Report 11** Assessment of Ecological Effects in particular. Given this, the test in section 104D(1)(b) must be considered.

There are several regional plans applicable to the bundled activities, as follows:

- the RFWP applies to bulk earthworks, works in watercourses and, in particular, to reclamations; and
- The RDLP applies to discharge of contaminants.

The approach to the section 104D(1)(b) test involves a properly balanced and weighted consideration of objectives and policies of relevant plan(s). Depending on the activities, environment and effects in issue, some objectives and policies may have more particular relevance than others. For instance, those objectives and policies focussed on the topic of a particular activity in issue have been given relatively more weight than general objectives and policies of the plan.

The approach applied to this assessment below has been, for each specific activity within the bundle, to start with consideration of the objectives and policies of the plan of most relevance to that activity to determine whether or not the activity “... will not be contrary to the objectives and policies of ... [that] ... relevant plan”. This is on the basis that a basic pre-requisite of section 104D(1)(b) would be that the activity is not contrary to the objectives and policies of that plan.

The assessment also goes on to consider whether there are any other relevant objectives and policies pertaining to the activity in other plans, and the assessment under section 104D(1)(b) is also made on that broader basis.

Having considered each of the activities within the bundle on that basis, the assessment also considers them as a whole, against the relevant plans which are applicable to the bundle.

In each case, the phrase “not contrary to” has been considered in light of established case law to the effect that this phrase contemplates “being opposed to in nature, different to, opposite to”.

31.2.3 Approach to assessments for section 104(1)(b) and section 171(1)(a)

Section 104(1)(b) requires that when considering an application for resource consent and submissions, 'regard' must be had, subject to Part 2, to any relevant provisions of various listed RMA documents, namely:

- a national environmental standard;
- other regulations;
- a national policy statement;
- a New Zealand coastal policy statement;
- a regional policy statement or proposed regional policy statement; and
- a plan or proposed plan.

In addition, section 104(1)(c) refers to "any other matter the consent authority considers relevant and reasonably necessary".

Section 171 requires that when considering a requirement (for a designation) and any submissions received, "particular regard" must be had to "any relevant provisions of" the same listed RMA documents, with the exception of national environmental standards and regulations. Section 171(1)(d) is expressed in similar terms to section 104(1)(c).

Neither provision identifies which of any policy statement and plan are of specific relevance or otherwise, leaving matters of relevance to be judged in the circumstances. The phrases "have regard to" and "have particular regard to" also in effect leave to judgement the weight that should be given to any particular RMA document or provision of it. It is not a requirement of section 104 or 171 that an activity upholds or gives effect to or is not contrary to any particular RMA document or its objectives, policies or other provisions. On the other hand, it is recognised that matters of conflict or discordance with provisions of certain national, regional or local level RMA documents may have weight or significance in the mix of matters to be considered.

31.2.4 Consideration of Notices of Requirement

The matters outlined in section 171(1)(a-c) are considered in this report as follows:

- Section 171(1)(a) – the Statutory Provisions Report and Chapter 32 assesses the NZTA and the PCC Projects (respectively) against the relevant statutory and non-statutory planning legislation.
- Section 171(1)(b) – refer to Chapter 9 – Consideration of Alternatives. This chapter outlines the long history of the Transmission Gully Project, and firstly, the reasons for choosing route, and then the integrated design process within which the design has been further refined and developed with inputs from a comprehensive range of technical specialists.
- Section 171(1)(c) – refer to Chapters 7 and 8 - Description of the Project and Chapter 6 Description of the environment. These chapters set out the works required for the Project. Chapter 2 provides the background to the Project Objectives and the reasons for the Project.

- Section 171(1)(d) – refer to Part G Assessment of Environmental Effects and Chapter 32 Statutory Assessment. These chapters set out those matters considered in specialist reports contained in technical reports.

The documents relevant to consideration of the Project under section 171(1) (a) are as follows:

- the National Policy Statement for Freshwater Management 2011;
- the National Policy Statement for Electricity Transmission 2008;
- the New Zealand Coastal Policy Statement 2010;
- the Proposed Wellington Regional Policy Statement;
- the Wellington Regional Policy Statement 1995;
- the Wellington Regional Freshwater Plan 1999;
- the Wellington Regional Air Quality Management Plan 2000;
- the Wellington Regional Soil Plan 2000;
- the Wellington Regional Coastal Plan 2000;
- the Wellington Regional Discharges to Land Plan;
- the Kapiti Coast District Plan 1999;
- the Upper Hutt City District Plan 2004;
- the Porirua City District Plan 1999; and
- the Wellington City District Plan 2000.

The relevant provisions of these documents and an analysis of the Project against them are set out in the following sections.

31.2.5 Resource consent applications – Sections 104, 104D, 105 and 107

The matters outlined in Section 104(1)(a) - (c) are considered in this report as follows:

- Section 104(1)(a) – any actual or potential effects of allowing the activity (refer to Part G of this report and to the Technical Reports)
- Section 104(1)(b) – any relevant provisions ... of statutory documents
- Section 104(1)(c) – any other matter considered relevant and reasonably necessary to determine the application.

The documents relevant to consideration of the Project under section 104(1)(b) are as follows:

- all those listed above as being relevant under section 171(1) (a);
- the National Environmental Standard for Air Quality 2004; and
- the National Environmental Standard for Sources of Human Drinking Water 2008.

Cross-references, further comments and considerations in relation to section 104 are set out in Table 31.1

Table 31.1: Relevant assessment matters under section 104 of the RMA

Section 104	Comment	Cross-reference
Section 104(1)(a) Any actual and potential effects on the environment of allowing the activity	Considered in depth in Part G of the AEE and in the associated Technical Reports.	Part G and Technical reports
Section 104(1)(b) Any relevant provisions of statutory documents	Each of the relevant statutory documents has been assessed and a conclusion drawn about the Project's consistency with those documents.	Chapter 32
Section 104(1)(c) Any other matters	There are a number of other statutory and non-statutory documents that have been publicly notified, been through a public process, or are widely available in the public arena. Those considered to be relevant have been assessed in this report.	Chapter 32
Section 104(2) May disregard an adverse effect of an activity on the environment if a NES or Plan permits an activity with that effect	There are no logical or sensible comparisons to the Project that could be constructed as a permitted activity, such as to make a permitted baseline comparison useful.	Not relevant
Section 104(3) A consent authority must not...etc	No written approvals from potentially affected parties have been sought in relation to Section 104(3), and trade competition has not been considered to be a factor in relation to an application by the NZTA. This will be reviewed again on receipt of submissions.	Chapter 32
Section 104(5)	The NZTA has discussed the resource consent applications with the relevant Councils in a pre-lodgement process, and the approach to consenting has been confirmed through this process.	Chapter 10
Section 104(6) and (7) Provision of information	There has been an extensive pre-lodgement process in which the applicants have engaged with the relevant regulatory authorities – including the EPA – to review and consider adequacy of information and technical reports intended to be provided.	N/A

31.2.6 Integrated approach to assessment of the two projects

The NZTA and the PCC have been working together to prepare this suite of documents and applications. Whilst the applications have been prepared in an integrated manner and are integrally linked to each other, they are considered to be two separate Projects for the purpose of determining consent status and the structure of Notices of Requirements. There are a number of reasons why each agency's applications should be considered separately in this statutory assessment:

- The PCC and the NZTA are separate requiring authorities who will be responsible for their own designations – a requirement under Section 168(1) of the Act;
- The PCC's regional consent applications are a discretionary activity under the Regional Freshwater Plan whilst the NZTA's regional consent applications are a non-complying activity – requiring the additional tests of Section 104D to be applied; and

- The Proposed Plan Change to the Regional Freshwater Plan does not apply to the PCC's applications.