

5. Additional considerations

Overview

In addition to the matters requiring consideration under the RMA, there are a number of additional considerations that are relevant to the Project. Some of these are not necessarily matters to be taken into account by a BoI in making a decision on the Project, but rather they provide context for the Project and for the NZTA and PCC as the applicants.

5.1 Introduction

In addition to the matters outlined in Chapters 3 and 4, there are some further statutory considerations that are relevant to the Project. They either have relevance to a particular aspect of the Project or they provide direction on how the NZTA or PCC should operate. Some matters also have relevance in terms of section 104(1)(c) or section 171(1)(d) and this is covered in the statutory assessment contained in Part I of this report.

The NZTA's operating principles and functions are discussed in Section 5.2 and PCC's purpose and function are discussed in Section 5.3.

The rest of the chapter sets out additional considerations that are relevant to the Project:

- the acquisition of land required for the Project (Section 5.4);
- archaeological sites affected by the Project (Section 5.5);
- reserves affected by the Project (Section 5.6);
- the relocation of protected species (Section 5.7);
- the provision of fish passage in waterways affected by the Project (Section 5.8); and
- public walkways affected by the Project (Section 5.9).

As discussed in Section 1.8.5 of this report, any authorisations required under other legislation are not applied for as part of this set of documents and the requirement for additional authorisations is merely noted for completeness.

5.2 NZTA's operating principles and functions

The LTMA provides the statutory framework for New Zealand's land transport system. It is also the statute under which the NZTA operates (in conjunction with the Government Roadway Powers Act 1989 (*GRPA*)).

The NZTA's objective is set out in section 94 of the LTMA as being:

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

The NZTA's functions are set out in section 95. Of specific relevance to the Project is:

“(1)(a) to promote an affordable, integrated, safe, responsive, and sustainable land transport system.”

...[and]

“(1)(c) to manage the State highway system, including planning, funding, design, supervision, construction, and maintenance and operations, in accordance with this Act and the Government Roadway Powers Act 1989.”

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

“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...”

5.2.1 Power to construct and operate roads

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

5.2.1.1 Motorways

Under section 71 of the GRPA the NZTA may request that the Governor-General declare that road, or land where a road will be constructed, 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 GRPA). It is proposed that the Main Alignment will be declared motorway under section 71 of the GRPA.

Section 76 imparts a responsibility on the NZTA to provide alternative access to land cut off or severed by the creation of a motorway in certain circumstances. Subsection (1) directs that:

“If the making of a motorway has -

(a) cut off all access by road to any land other than Crown land; or

(b) separated one piece of the land of any person from another piece of land of that person -

and the Agency⁴⁸ has not provided access to the land so cut off or between the pieces of land so separated, the Agency shall provide access to the land so cut off or between the pieces of land so separated -

(c) by constructing a road, access way, or service lane; or

(d) by constructing a crossing under or over the motorway between the pieces of land that have been separated.”

5.2.1.2 Limited access roads

Under section 88 of the GRPA, the NZTA is also able to declare a State highway, or part of a State highway, 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. It is proposed to declare the Kenepuru Link Road a LAR.

5.2.2 Managing the risk from natural hazards

The NZTA has a responsibility to proactively manage natural hazard risks to its State highway network. The Civil Defence Emergency Management Act 2002 identifies road networks (including State highways) as a lifeline utility⁴⁹. Operators need to demonstrate they have made plans to ensure that the lifelines, such as roads, are able to function to the fullest possible extent, even though this may be at a reduced level, during and after a civil defence emergency.⁵⁰

The Project presents an opportunity to substantially improve security of the regional and national State highway network and reduce the vulnerability of SH1 to the north of Wellington to natural hazards. This has been a major consideration in the development of the Project and is discussed in greater detail in Section 2.4.1 of this report.

5.3 PCC's purpose and functions

PCC is a territorial authority under the Local Government Act 2002 (LGA). The LGA provides a purpose and framework for local government, whilst promoting accountability to the public and sustainable development (section 3). The purpose of local government is set out in section 10 as being:

*“(a) to enable democratic local decision-making and action by, and on behalf of, communities;
and*

48. NZ Transport Agency.

49. Clause 6, Schedule 1, Part B

50. Section 60

(b) to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.”

5.3.1 Power to construct and operate roads

Under the LGA, councils must have particular regard to the contribution that network infrastructure (which includes roads) makes to its community. The provisions for the creation of roads by councils are set out in Part 21 of the Local Government Act 1974.

5.4 Acquisition of land required for the Project

The Public Works Act 1981 (PWA) enables land to be acquired, either by agreement or by compulsion, 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 and a designation of land (taking effect from the date the notice of requirement for the designation is lodged) also allows the owner 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 August 2011, the Crown has acquired approximately 49% of the land required for the NZTA Project and PCC has acquired approximately 0.6% of the land required for the PCC Project.

5.5 Archaeological sites affected by the Project

The Historic Places Act 1993 (HPA) recognises the NZ Historic Places Trust (NZHPT)'s role in identifying, recording and protecting 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.”

Sections 10 and 99 of the HPA provide that it is an offence to destroy, damage or modify an archaeological site without the authority of the NZTPT. Sections 11 and 12 of the HPA allow persons wishing to destroy, change or modify particular archaeological sites, or archaeological sites within a particular area, to apply for an authority to do so. As a precaution, the NZTA will apply to the NZHPT for a general authority to destroy, damage or modify unknown archaeological sites within the area to be designated for the Project.

5.6 Reserves

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

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

“(a) [p]roviding, for the preservation and management for the benefit and enjoyment of the public, areas of New Zealand possessing -

(i) Recreational use or potential, whether active or passive; or

(ii) Wildlife; or

(iii) Indigenous flora or fauna; or

(iv) Environmental and landscape amenity or interest; or

(v) Natural, scenic, historic, cultural, archaeological, biological, geological, scientific, educational, community, or other special features or value:

(b) Ensuring, as far as possible, the survival of all indigenous species of flora and fauna, both rare and commonplace, in their natural communities and habitats, and the preservation of representative samples of all classes of natural ecosystems and landscape which in the aggregate originally gave New Zealand its own recognisable character:

(c) Ensuring, as far as possible, the preservation of access for the public to and along the sea coast, its bays and inlets and offshore islands, lakeshores, and riverbanks, and fostering and promoting the preservation of the natural character of the coastal environment and of the margins of lakes and rivers and the protection of them from unnecessary subdivision and development.”

Under section 17(1) of the RA, the purpose of a recreation 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.”

Under section 19(1) of the RA, reserves are classified as scenic reserves:

“(a) For the purpose of protecting and preserving in perpetuity for their intrinsic worth and for the benefit, enjoyment, and use of the public, suitable areas possessing such qualities of scenic interest, beauty, or natural features or landscape that their protection and preservation are desirable in the public interest:

(b) For the purpose of providing, in appropriate circumstances, suitable areas which by development and the introduction of flora, whether indigenous or exotic, will become of such scenic interest or beauty that their development, protection, and preservation are desirable in the public interest.”

The Project requires land classified under the RA and land classified as regional park, as detailed in Table 5.1.

Table 5.1: Parks and reserve land required for the Project

Reserve name	Location (legal description)	Owner	Legal status
Porirua Park	100 Mungavin Avenue (Pt Lot 1 DP 28193)	Porirua City Council	Recreation reserve under the Reserves Act 1977.
Gillies Place	Gillies Place (Lot 55 DP 27640)	Porirua City Council	Scenic reserve under the Reserves Act 1977.
Battle Hill Farm Forest Park	Multiple land parcels	Greater Wellington Regional Council	Regional park under the Local Government Act 1974.
Belmont Regional Park	Multiple land parcels	Porirua City Council Wellington City Council Greater Wellington Regional Council Landcorp Farming Hutt City Council Department of Conservation (Wellington Regional Council appointed to control and manage)	Regional park under the Local Government Act 1974. Includes some recreation reserve under the Reserves Act 1977.

At MacKays Crossing, the Project will be in close proximity to the QE Park which is a regional park under the Local Government Act 1974 and a recreation reserve under the RA. The Park is owned by the Crown and is part of the DOC estate but is managed by GWRC.

Any exchange of reserve land, revocation of reserve status, or disposal of park land required for the Project, will be carried out in accordance with the requirements of the Reserve Act 1977 and Local Government Act 2002, after the designations for the Project have been confirmed.

5.7 Relocation of protected species

The Wildlife Act 1953 (WA) deals with the protection and control of wild animals and birds as well as the management of game. It provides varying levels of protection to different species.

The potential effects of the Project on these species are discussed in Chapters 21 (terrestrial ecology) and 22 (freshwater ecology) of this report. One of the proposed mitigation measures is the pre-construction translocation of species (e.g. lizards, peripatus habitat, some freshwater fish etc), which may require approval from DoC under the WA. This approval will be sought as required.

5.8 Provision of fish passage in certain waterways

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

Under regulation 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-General⁵¹ 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 crossings required for the Project, weather by ford, culvert or bridge, have been designed to ensure adequate fish passage is provided where it is necessary.

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

5.9 Public walkways affected by the Project

The Walking Access Act 2008 (WAA) contains provision relating to public walkways. The purpose of the WAA, as set out in section 3, is:

“(a) to provide the New Zealand public with free, certain, enduring, and practical walking access to the outdoors (including around the coast and lakes, along rivers, and to public resources) so that the public can enjoy the outdoors; and

(b) to establish the New Zealand Walking Access Commission with responsibility for leading and supporting the negotiation, establishment, maintenance, and improvement of -

(i) walking access (including walkways, which are one form of walking access) over public and private land; and

(ii) types of access that may be associated with walking access, such as access with firearms, dogs, bicycles, or motor vehicles.”

Under Part 3 of the WAA, land may be declared to be a walkway (section 20).

The Belmont Walkway was declared a walkway in 1999 with GWRC being the controlling authority⁵². The Belmont Walkway is affected by the Project in two locations in the vicinity of Cannons Creek and the Takapu Road Substation. The effects of the Project on the walkway are discussed in Chapter 27 of this report.

51. The Director-General of Conservation.

52. Notified in the *Gazette* on 18 March 1999, Notice 2016, Pg. 839, under section 8(6) of the New Zealand Walkways Act 1990.