

STATUTORY CONTEXT



4.0 The Resource Management Act 1991

Overview

This section sets out the key statutory matters under the RMA for the Project, namely:

- The Requiring Authority / applicant – the NZ Transport Agency;
- The purpose and principles of the RMA (Part 2);
- Duties and restrictions (Part 3);
- Proposals of national significance (Part 6AA);
- Applications for resource consent (Part 6); and
- Notices of requirement for designations, outline plans and alterations to designation (Part 8).

This section also provides commentary on the status of the AUP (OP) and the relevant statutory provisions.

A summary assessment of the Project against the statutory framework is provided in *Part 1: Statutory Matters*. A more detailed context and the relevant provisions is provided in *Volume 3: Report 2-Statutory Context*.

4.1 Purpose and principles of the RMA

Consideration of the NoRs and of the applications for resource consent are subject to the purpose and principles under Part 2 of the RMA as set out in Table 4-1.

Table 4-1: Part 2 Matters of the RMA

Section	Contents
Section 5 (Purpose)	Sets out the purpose of the RMA being to promote the sustainable management of natural and physical resources, and sets out what sustainable management means.
Section 6 (Matters of national importance)	Describes the matters of national importance that all persons exercising functions and powers under the RMA shall recognise and provide for. Matters (a), (b), (c), (d), (e) and (f) are of relevance to this Project. In summary these matters relate to: (a) the coastal environment, wetlands, and lakes and rivers and their margins; (b) outstanding natural feature and landscapes; (c) significant indigenous vegetation and significant habitats; (d) public access to and along the Coastal Marine Area lakes, and rivers; (e) the relationship of Māori and their culture and traditions; and (f) historic heritage. Regarding 6(g) protected customary rights, it is acknowledged that there are still outstanding Treaty claims that relate to the Manukau Harbour.

Section	Contents
Section 7 (Other matters)	Sets out other matters to which particular regard shall be had. Of relevance to this Project are matters (a), (aa), (b), (ba), (c), (d), (f), (g) and (i). In summary matters relate to: (a) kaitiakitanga; (aa) the ethic of stewardship; (b) the efficient use and development of natural and physical resources; (ba) the efficiency of end use of energy; (c) the maintenance and enhancement of amenity values; (d) intrinsic values of ecosystems; (f) maintenance and enhancement of the quality of the environment; (g) any finite characteristics of natural and physical resources; and (i) the effects of climate change.
Section 8 (Treaty of Waitangi)	Requires all persons exercising functions and powers under the Act to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

4.2 Duties and restrictions

Part 3 of the RMA sets out a number of restrictions on the use of resources (including land and the CMA), and on activities that impact on resources (such as the discharge of contaminants).

Section 9 of the RMA imposes restrictions on the use of land. Pursuant to this section, resource consents are sought to use land:

- In a manner that contravenes a national environmental standard (section 9(1));
- In a manner that contravenes a regional rule (section 9(2)); and
- In a manner contrary to a district rule (section 9(3)), including where the activities are to be undertaken on land that is proposed to be reclaimed (section 89(2)).

The Project will involve a number of land disturbance activities controlled under section 9 of the RMA. Many of the proposed activities that are contrary to district rules will be covered by the designations sought for the Project.

Section 12 of the RMA imposes restrictions on activities in, and uses of, the CMA, including in relation to any:

- Reclamation;
- Structures;
- Disturbance or deposit likely to have an adverse effect on the foreshore or seabed;
- Impact on the foreshore or seabed likely to have adverse effects on plants or animals or their habitat; and
- Impact on the foreshore or seabed likely to have adverse effects on historic heritage.

There are two areas of CMA impacted by the Project, being the Māngere Inlet which is part of the Manukau Harbour and the Ōtāhuhu Creek, a tidal upper reach of the Tāmaki River.

Section 13 of the RMA imposes restrictions on activities in, on, under and over the beds of lakes and rivers. There are some streams and channels in the Project area that will be modified including through permanent diversion.

Section 14 of the RMA relates to any take, use, damming or diversion of water, including coastal water. The Project will involve the diversion of groundwater associated with the construction of the road trench at Onehunga Harbour Road and diversion of both stormwater and coastal water during construction.

Section 15 of the RMA restricts discharges into or onto air, land or water. The Project will involve:

- Discharge of contaminants or water to water, including in stormwater;
- Discharge of contaminants onto or into land in circumstances which may result in that contaminant entering water, including contaminants from road surfaces; and
- Discharge of contaminants from an industrial or trade premises to air and to land, from concrete batching activities.

The resource consents triggered by these sections are set out in *Section 5.2*.

4.3 Proposals of national significance

Part 6AA (sections 140 – 150AA) of the RMA provides for the consideration of matters, including NoRs for designations and applications for resource consent, that are or are part of a proposal of national significance.

The Transport Agency has lodged the following matters for the construction and operation of the Project directly with the Environmental Protection Authority (EPA) in accordance with Section 145:

- Applications for resource consent (section 145(1)(a));
- A notice of requirement for a designation (section 145(3)); and
- An alteration to an existing designation (section 145(3)).

Section 147 of the RMA provides that, after receiving a recommendation from the EPA, the Minister for the Environment and Minister of Conservation may make one of three directions; being referral of the matters to a Board of Inquiry (BoI), the Environment Court, or the territorial authority. The Transport Agency considers that the matters should be directed to a BoI, which must then hear and consider the matters in accordance with sections 149J to 149S of the RMA.

4.4 Designations

The Transport Agency is a requiring authority and can give notice of its requirement to designate land for the State highway network in accordance with its statutory functions. This Project involves two NoRs – one new notice and a second to alter the existing State Highway 1 designation already held by the Transport Agency. In relation to NoR2 (to alter the existing designation for works along SH1), the assessment under section 171(1) is limited to the works proposed as part of the alteration. It does not include works or effects that are or could reasonably be generated by the existing designation.

The process for submitting a NoR for a designation and for an alteration to an existing designation is set out in Part 8 (sections 166 – 186) of the RMA and summarised below.

4.4.1 General provisions

Section 168(2), as modified by section 145(7) where a matter is lodged with the EPA, provides that:

“A requiring authority for the purposes approved under section 167 may at any time give notice in the prescribed form to [the EPA] of its requirement for a designation—

(a) For a project or work; or

(b) In respect of any land, water, subsoil, or airspace where a restriction is reasonably necessary for the safe or efficient functioning or operation of such a project or work.”

In accordance with section 181(1) of the RMA the Transport Agency can give notice of its requirement to alter a designation at any time. Section 181(2) directs that sections 168 to 179 and 198AA to 198AD shall apply to a requirement to alter a designation as if it were a requirement for a new designation, with all necessary modifications.

The prescribed form for a NoR is set out in Form 18 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003. The two NoRs for this Project have been prepared in accordance with these regulations.

If the application goes to a Bol, Section 149P(4) provides that the Bol may cancel the requirement, confirm the requirement, or confirm the requirement subject to such modifications or conditions as the Bol thinks fit.

4.5 Resource consents

Section 149P(2) of the RMA requires the Bol considering applications for resource consent to consider and determine the application as if it were a consent authority under sections 104 to 112 and 138A.

4.5.1 General provisions

Section 88(2) (as modified by section 145(5)) provides that an application to the EPA for a resource consent must:

- (a) *Be 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.*

The prescribed form for resource consents is set out in Form 9 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003. The applications for resource consent for this Project have been prepared in accordance with these requirements.

For activities that will take place on reclaimed land, and which will require consent under district rules, consent is also sought pursuant to section 89(2) of the RMA. This section deems the area to be within the district of the territorial authority for the purposes of hearing and determining the applications for consent.

The activities that will be occurring on the new land created by the reclamation include:

- New State highway (arterial road and roads linking to local roads) and associated works including street furniture, signage and safety requirements;
- Walking and cycling paths; and
- Associated works including stormwater wetlands, landscape features and planting.

4.5.2 Matters for consideration

Section 149P(1) of the RMA requires the Bol considering applications for resource consent to have regard to:

- The Ministers' reasons for making a direction; and
- Any information provided to it by the EPA.

Section 104 of the RMA sets out that, when considering any application for resource consent, the consent authority is required, subject to Part 2 of the Act, to have regard to specified items in (1)(a) to (c).

The matters outlined in section 104 are assessed in this AEE as follows:

RMA requirement	AEE reference
104(1): Part 2 of the RMA	Part I: Statutory Matters and Volume 3: Report 2 - Statutory Context
104(1)(a): effects on the environment	AEE Part G: Assessment of effects on the environment
104(1)(b): policy statements and plans	Part I: Statutory Matters and Volume 3: Report 2 - Statutory Context
104(1)(c): other matters	Part I: Statutory Matters and Volume 3: Report 2 - Statutory Context

4.5.3 Additional matters for consideration

Section 105 of the RMA sets out further matters that must be considered in relation to the consents sought for:

- The discharge of water and contaminants (stormwater and sediment) during construction of the Project (including the construction of works within the CMA), and for the discharge of stormwater arising from the operation of the Project; and
- The proposed reclamation of the CMA.

The matters identified in section 105 are assessed in *Part G: Assessment of Effects on the Environment* of the AEE and Part I demonstrates how the requirements of section 105 are met.

Section 107 sets out restriction on grant of certain permits – of relevance to EWL are discharges of contaminants or water into water, and discharge of a contaminant onto or into land in circumstances which may result in that contaminant entering water.

4.5.4 Restrictions on the power to grant consent

Section 104D of the RMA restricts the ability to grant consent for non-complying activities to circumstances falling within either one of section 104D(1)(a) or (b) (the “gateway tests”), being where:

- The effects of the activity will be minor; or
- The application is not contrary to the objectives and policies of the regional and district plan.

The assessments in *Part G: Assessment of Effects on the Environment* of this AEE indicate that aspects of the Project will have more than minor adverse effects. Therefore, for consents to be granted, the BoI must be satisfied that the Project is not contrary to the relevant objectives and policies of a plan and proposed plan. The approach to section 104D(1)(b) involves a properly balanced and weighted consideration of the objectives and policies of the relevant plans, to determine whether or not the Project as a whole, is contrary to the relevant plans.

In addition, Section 107(1) restricts the power to grant resource consent to discharge a contaminant or water where that discharge is likely, after reasonable mixing, to give rise to any of a number of adverse effects. This restriction is subject to the exceptions listed at section 107(2), including where there are exceptional circumstances, or where the discharge is of a temporary nature.

A detailed consideration of sections 104D and 107(1) is contained in *Volume 3: Report 2-Statutory Context* and summarised in *Part I: Statutory Matters* of this AEE.

4.6 Status of the policy and planning documents

Sections 104(1)(b) and 171(1)(a) require the Bol to consider, among other things, any relevant provisions of an operative or proposed regional policy statement, regional plan or district plan. The relevant planning documents for Auckland are currently in a state of transition with the recent release of the decisions version of the AUP (OP) and receipt of appeals both on merit and points of law to the Environment Court and to the High Court. The period for lodging further appeals has passed and, accordingly, those parts of the AUP (OP) regional plan and district plan that are not subject to appeal must be treated as operative (and the provision of any previous plan as inoperative).²⁷ Accordingly, the relevant documents for assessment under sections 104(1)(b) and 171(1)(a) are, at the time of lodgement:

Planning document	Status for purpose of statutory assessment
Regional Policy Statement	There are a number of appeals on the AUP (OP) regional policy statement. These are relatively confined issues and are of limited relevance to the relevant provisions for EWL. Therefore, Operative Regional Policy Statement retains some limited relevance.
Regional Coastal Plan	The AUP (OP) regional coastal plan has not been submitted to the Minister for Conservation for approval, which means it cannot be treated as operative. ²⁸ Therefore, the provisions of the Operative Regional Plan: Coastal still have effect.
Regional Plans	There are appeals on the air quality provisions of the AUP (OP). Therefore all provisions of the Operative Auckland Regional Plan: Air, Land and Water that relate to air remain in effect. There are no relevant appeals that would relate to the Auckland Regional Plan: Sediment Control and therefore it is not considered further. Other AUP (OP) regional plan provisions are considered to be operative.
District Plan	There are broad appeals on district plan residential zones, but not to the Industrial zones. Therefore AUP (OP) district plan provisions retain some relevance depending on the relevant part of the EWL alignment.

[Note: Those parts of the AUP (OP) that are described above as deemed to be operative, became fully operative on and from Tuesday 15 November 2016 (following notice by Auckland Council pursuant to section 160 of the Local Government (Auckland Transitional Provisions) Act 2010 and clause 20 of Schedule 1 of the RMA, dated 8 November 2016). The Supporting Technical and Assessment Reports in Volume 3 and this AEE were prepared before the Council's notice of 8 November 2016, however, the change in status from deemed operative to operative is not considered to materially alter the scope or content of the provisions relevant to this Project.]

²⁷ RMA section 86F.

²⁸ As required by RMA Schedule 1, Clause 19.

5.0 Designations and Consents

Overview

This section sets out the applications required for the construction, operation and maintenance of the Project. In summary there are:

- Two Notices of Requirement – one new NoR and one alteration to the existing State Highway 1 designation; and
- Various resource consent applications.

5.1 Notices of requirement

The Transport Agency is lodging two NoRs for the designation of land required for the construction, operation and maintenance of:

- A new arterial road from SH20 west of the Neilson Street Interchange to SH1 at Mt Wellington Highway and associated works (referred to as NoR 1); and
- SH1 from the Mt Wellington Interchange ramps to Princes Street for road widening and associated works (referred to as NoR 2).

These NoR are shown on Figure 1-2 (in *Section 1.0: Introduction* of this AEE).

5.1.1 Land subject to designations

A schedule of properties directly affected by the proposed designations is included with the NoRs. In summary, the proposed designations directly affect the following land:

Table 5-1: Summary of land directly affected by the designations

Owner type	NoR1	NOR2
Private	23.6ha	3.7ha
Crown	1.5ha	0.7ha
Council (non-road reserve)	30.3ha	0.1ha
Road	24.8ha	2.3ha
Other (unknown, railway, water)	3.7ha	0.4ha

In Anns Creek there is one parcel (Reference 136 on the NoR Schedule) that is identified as being partially within the CMA. However upon inspection, this portion of the coast appears to be land (being located above MHWS) and therefore the status of the land is currently uncertain. Until such time as a survey is completed, a precautionary approach has been taken to designate the entire area of the site which may be deemed as land and simultaneously seek coastal occupation consents for this parcel.

5.1.2 Future Designation – Coastal marine area

Once the reclamation is completed, and the new area of land created, it is envisaged that the Transport Agency would alter the designation area of NoR 1, which by that time will be a confirmed and operative designation. In any case, applications have been made under Section 89 of the RMA to authorise land use activities on the new land created from the CMA.

5.1.3 Outline Plan

Section 176A of the RMA requires that an outline plan must be submitted to a territorial authority before commencing construction of a project or work under a designation.

The Transport Agency intends to submit outline plan(s) for relevant aspects of the Project to Auckland Council prior to the commencement of works onsite. Further discussion is contained in *Section 13.0: Avoiding, Remediating and Mitigating Effects* of this AEE.

5.1.4 Land subject to existing designations

Some of the land to be designated for the Project is already subject to existing designations, as outlined in *Section 11.4.1: Land use* of this AEE and in *Volume 3: Report 2-Statutory Context*.

In order to undertake work in accordance with a designation on land where there is an existing designation in place, the written consent of the requiring authority for the earlier designation is required under section 177(1)(a). As such, approval under section 177(1)(a) will be required from:

- Auckland Council;
- Auckland Transport;
- New Zealand Railways Corporation (KiwiRail);
- Transpower New Zealand Limited;
- First Gas Limited; and
- Watercare Services Limited.

This written approval is required in order to be able to undertake works in accordance with the later designation. It is not required in order to designate the land for those later works. For this reason, written approval under section 177(1)(a) of the RMA has not yet been obtained. Consultation with all of those other requiring authorities has taken place and will continue as the Project is developed. Written approval from these requiring authorities will be obtained by the Transport Agency at a later date once the detailed design of the Project has been completed.

5.1.5 Existing resource consents

There are a number of parties (including the Transport Agency and Auckland Council) that hold existing resource consents to establish and operate activities on sites either within the proposed footprint of the Project, or adjacent to the Project. Directly affected parties have all been engaged with.

5.1.6 Project designations to be reviewed after construction

The proposed designations include land required for both temporary and permanent works. Once construction is complete, the designation area will be reviewed, and will be removed from those areas that are not required for the long term operation and maintenance of the State highway. The Transport Agency will review its designations and remove parts of those designations using the process set out in section 182 of the RMA.

5.2 Applications for resource consent

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

Consents are required under the following plans:

- Operative Auckland Regional Plan: Coastal (ARP: C);

- AUP (OP) in relation to:
 - The regional coastal provisions;
 - Works on land that is currently within the CMA, and works on land generally in some instances;
 - Divert and discharge ground and stormwater;
 - Discharge contaminants to air, land and water;
 - Land uses in relation to works on land that is currently within the CMA;
 - Other regional planning matters;
- Operative Auckland Council District Plan: Isthmus Section in relation to works on land that is currently within the CMA; and
- National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES (Soils)).

The consents being sought are set out in Table 5-2.

Table 5-2: Reasons for Consent

Construction

Consent No.	RMA/consent type	Activity	Geographic location and scope of application	Activity Status
Land Use Activities				
RC1	Land use (s9) - NES Soil	Disturbance of contaminated soils.	Project wide.	Discretionary
RC2	Land use (s9(2)) – land disturbance activities	Earthworks, vegetation alteration and removal.	Project wide.	Discretionary
RC3	Land use (s9(2)) – land disturbance activities	Vegetation alteration and removal.	Vegetation alteration and removal for restoration and rehabilitation works undertaken outside of the designation within Southdown Reserve, adjacent to Southdown Stream, Anns Creek Reserve, Gloucester Park and the Manukau Foreshore Walkway.	Discretionary
RC4	Land Use (s9(3))	Vegetation alteration and removal, tree trimming and works in the protected root zone of trees and establishment of access tracks.	Vegetation alteration, removal associated with the restoration works and the establishment of vehicle access and parking areas undertaken outside of the designation within Southdown Reserve, adjacent to Southdown Stream, Anns Creek Reserve, Gloucester Park and the Manukau Foreshore Walkway.	Discretionary
Coastal Activities				
RC5	Coastal Permit (s12,s14, s15) – construction activities in the CMA and temporary occupation and associated discharge of contaminants	Reclamation, depositing of material in the CMA, disposal of waste or other matter in the CMA including dredged material, CMA disturbance, dredging, vegetation alteration/removal (including mangroves), damming or impoundment of coastal water, taking, use or diversion of coastal water, parking on CMA structures, vehicle use of the foreshore and seabed, demolition or removal of any CMA structures, temporary CMA structures, temporary construction activities, planting of native vegetation, underwater impact and vibratory piling.	Construction activities within the CMA associated with: <ul style="list-style-type: none"> the road embankment, stormwater treatment areas, landscape features and associated structures in the Māngere Inlet; the Anns Creek viaduct in the Māngere Inlet; works in Onehunga Bay associated with public access; and erosion protection and environmental enhancement works at Ngarango Otainui Island. 	Non-Complying

Consent No.	RMA/consent type	Activity	Geographic location and scope of application	Activity Status
RC6	Coastal Permit (s12, s14 and s15) – construction activities in the CMA and temporary occupation and associated discharge of contaminants	Declamation, depositing of material in the CMA, CMA disturbance, vegetation alteration/removal (including mangroves), damming or impoundment of coastal water, taking, use or diversion of coastal water, parking on CMA structures, vehicle use of the foreshore and seabed, demolition or removal of any CMA structures, temporary CMA structures construction activities.	Works associated with the removal of the existing culvert and replacement with a bridge and the construction of a new bridge at Ōtāhuhu Creek.	Non-Complying
Activities in on under of over water				
RC7	Water Permit (s13 and s14) - works in watercourses and associated diversion activities	Depositing of substances, mangrove removal, diversion of a river or stream to a new course and associated disturbance and sediment discharge, demolition or removal of existing structures, reclamation or drainage and associated diversion of water and incidental temporary damming.	Construction works in all fresh watercourses in the Project area including: <ul style="list-style-type: none"> • Hill Street Stream • Southdown Stream • Anns Creek (landward of MWHS) • Clemow Stream • Miami Stream 	Non-complying
RC8	Water Permit (s14) - Drilling of holes	The drilling of holes or bores during construction which will destroy damage or modify any places scheduled in the historic heritage overlay.	Within any areas covered by a historic heritage overlay.	Restricted discretionary
RC9	Water Permit (s14) - groundwater diversion and take	Drainage of groundwater.	Drainage of groundwater from the Pikes Point Landfill to enable construction.	Discretionary (innominate)
Discharges				
RC10	Discharge Permit (s15) - Discharge of contaminants into air or into or onto land or water	Discharges of contaminants from construction activities.	Full extent of proposed works in all land areas and within the coastal marine area.	Controlled
RC11	Discharge Permit (s15) - Discharge of contaminants into air or into or onto land or water	Discharges of contaminants from disturbing contaminated land or potentially contaminated land.	Project wide.	Discretionary

Consent No.	RMA/consent type	Activity	Geographic location and scope of application	Activity Status
RC12	Discharge Permit (s15) - Air Discharges	Storage of cement and manufacture of concrete.	Concrete batching facility within the construction yard proposed in Waikaraka Park.	Discretionary

Permanent works and operation

Consent No.	RMA/consent type	Activity	Geographic location and scope of application	Activity Status
Land Use Activities				
RC13	Activities on new land to be created (s9 and s89)	Use of land for a road, pedestrian and cycleway facilities, stormwater treatment, amenity areas and associated infrastructure and activities.	New land area to be created between existing MHWS and future MHWS, includes road embankment, stormwater treatment and amenity areas, and bund.	Discretionary (innominate)
Coastal Activities				
RC14	Coastal Permit (s12) – occupation and associated use	Occupation and associated use by permanent structures in and below the surface of the CMA including extension or alteration of existing CMA structures, bridge structures in Anns Creek, stormwater outfalls, retaining walls and seawalls, hard protection structures, observation areas, viewing platforms and boardwalks and any other public amenities.	Occupation and use of the Māngere Inlet and at Onehunga Bay including of the: <ul style="list-style-type: none"> Anns Creek Viaducts, boardwalk and stormwater outfalls in the Māngere Inlet; and Structures providing public access in Onehunga Bay. 	Non-complying activity
RC15	Coastal Permit (s12) – occupation and associated use	Occupation and associated use by permanent structures in the CMA including extension or alteration of existing CMA structures, stormwater outfalls, retaining walls and seawalls, hard protection structures and any other public amenities.	Occupation and use of the replacement bridge and new bridge at Ōtāhuhu Creek.	Discretionary
Activities in on under or over water				
RC16	Water Permit (s13 and s14) - works in watercourses and associated diversion activities	Structures (including temporary structures), bridges or pipe bridges, new cables or lines crossing over a river or stream, culverts, erosion protection structure, stormwater outfalls.	The construction and operation of new structures in all fresh watercourses in the Project area including: <ul style="list-style-type: none"> Hill Street Stream Southdown Stream Anns Creek (landward of MWHS) 	Non-complying

Consent No.	RMA/consent type	Activity	Geographic location and scope of application	Activity Status
			<ul style="list-style-type: none"> Clemow Stream Miami Stream 	
RC17	Water Permit (s14) - groundwater diversion and take	Groundwater diversion caused by excavation and associated dewatering or groundwater level control.	Permanent diversion of groundwater from the trench at Onehunga Harbour Road.	Restricted discretionary Activity
RC18	Water Permit (s14) - Permanent damming of surface water	Dams.	Extent of the stormwater treatment wetlands and Miami Stream in Sector 2.	Discretionary
Discharges				
RC19	Discharge Permit (s15) - Discharge of contaminants into or onto land or water	Discharge of contaminated water from leachate interception drain to water (proposed stormwater treatment wetlands)	Discharge into the Māngere Inlet via the stormwater treatment wetlands.	Controlled
Stormwater diversion and discharge				
RC20	Discharge permit (s15) – Discharge of stormwater	Diversion and discharges of stormwater from new permanent impervious surfaces and existing state highways impervious surfaces to land, freshwater and coastal water from SH1 between the Mt Wellington Highway and the Princes Street Interchange, the EWL, walking and cycling facilities and new and altered existing local roads.	Full extent of proposed works in all areas; discharges to both Waitemata and Manukau Harbour catchments and receiving environments, from existing SH1 between Mt Wellington Highway and the Princes Street Interchange and new State highway, local road connections, pedestrian and cycle facilities and other impervious surfaces to be constructed as part of the East West Link project from the vicinity of the SH20 Neilson St interchange to the existing SH1 at Mount Wellington.	Discretionary
RC21	Land Use (s9(2)) – impervious surfaces	New impervious surfaces for high use roads.	All new impervious surfaces within the extent of works.	Controlled

Miami Stream

The following apply specifically to the works outside of the designation footprint at Miami Stream. Note the construction related regional consents for the Miami Stream works have been grouped with Project wide resource consents in the above tables.

Consent No.	RMA/Consent Type	Activity	Geographic location and scope of application	Activity Status
M-RC1	Land use (s9(3)) – land disturbance, and associated discharges	Earthworks and vegetation removal.	Miami Stream	Restricted discretionary
M-RC2	Land use (s9(3)) – stormwater	Stormwater detention and retention.	Miami Stream	Controlled

5.2.1 Permitted activities

The permitted activities that are relevant to the Project are identified within Appendix B to *Report 2: Statutory Analysis Report*. This table identifies a number of typical construction activities and discharges that are permitted. Small-scale vegetation alteration and removal on land and in the CMA, is also permitted. The scale and nature of the Project, however, means that the majority of the major components require resource consent, including reclamation, discharges into the CMA, structures in the CMA and vegetation alteration and removal within SEA.

5.2.2 Bundling of Activities

Where there are a group of activities where the effects overlap or where the activities are intrinsically linked (such that one activity could not occur without the others), it is appropriate for them to be considered holistically as a single bundle according to the most stringent activity status. The Decisions Version of the AUP (OP) also contains guidance that activities should be bundled if the effects overlap.

Given the linear nature of the Project and the large distance between some of the Sectors the effects of some activities will not overlap with others. On this basis it would be possible to unbundle some activities and consider them on an individual or sector basis. However, this would be an unnecessarily complex task as all parts of the Project are necessary for the operation of the Project. Therefore, the resource consents have been bundled together and have been considered as a whole. The most restrictive activity status applies and the Project is considered as a non-complying activity.

5.2.3 Lapse periods – designations and resource consents

Section 184 of the RMA provides that a designation lapses, unless given effect to, on the expiry of 5 years after the date on which it is included in the district plan unless the designation specified a different period. Pursuant to section 184(1)(c), the Transport Agency proposes a lapse period of 15 years for each designation.

Section 125 of the RMA provides that a resource consent lapses, unless given effect to, five years after the date of commencement of the consent unless a date is specified in the consent. Pursuant to section 125(1), the Transport Agency proposes a lapse period of 10 years for each of the resource consents.

The reasons for seeking these longer lapse periods include:

- The national significance of the Project, its broad geographic extent, and its complexity in terms of the range and scale of the works involved;
- The need for adequate time to complete construction procurement and tendering processes;
- The need for adequate time to undertake property acquisition negotiations and processes, including access negotiations;
- The need for adequate time to complete further site investigations and design (preliminary, detailed and construction) of all aspects of the Project;
- The need to protect the alignment for this strategic transport project, so that there is certainty that it can be constructed and operated; and
- The need to provide sufficient time to construct the Project, which it is estimated could take well in excess of five years.

The lapse date for each designation and consent will be detailed in the proposed designation conditions and suggested consent conditions.

5.2.4 Duration

The Transport Agency is seeking resource consents for the following durations:

- Unlimited duration in respect of the coastal permits for reclamation; and
- 35 years from the date of commencement, in respect of all other consents required for the long term operation of the Project.

The expiry date for each consent will be detailed in the suggested consent conditions.

5.3 Additional Considerations under other Legislation

In addition to the matters requiring consideration under the RMA, there are some further statutory considerations that are relevant to the Project. Some of the matters also have relevance in terms of section 104(1)(c) or section 171(1)(d) of the RMA and this is covered in detail in the statutory assessment contained in *Part I: Statutory Matters* of this AEE and in Volume 3: *Report 2 - Statutory Context*.

The additional considerations are summarised in Table 5-3.

Table 5-3: Additional considerations under other legislation

Legislation	Relevance
Public Works Act 1981	The acquisition of land required for the Project
Heritage New Zealand Pouhere Taonga Act 2014	Archaeological sites affected by the Project
Reserves Act 1977	Reserves affected by the Project
Wildlife Act 1953	The relocation of protected species
Freshwater Fisheries Regulations 1983	The provision of fish passage in waterways affected by the Project
Marine and Coastal Area (Takutai Moana) Act 2011	Ownership of reclaimed land. There are no protected customary rights or customary marine titles (or applications for the same) that are relevant to this Project. ²⁹
Te Kawerau ā Maki Claims Settlement Act 2015	Parts of the Project are within the coastal area shown on OTS-106-14 ³⁰ . Te Kawerau ā Maki have a statutory acknowledgement in relation to this area and have been involved in the development of the Project as described in <i>Chapter 6: Description of the Project</i> of this AEE.

Any authorisations required under other legislation are not applied for as part of the current application package and the requirement for additional authorisations is stated for completeness. The additional authorisations will be applied for at the appropriate phase of the Project.

²⁹ As at 27 October 2016, according to the Ministry of Justice record of applications under the Marine and Coastal Area (Takutai Moana) Act 2011, found at <www.justice.govt.nz/maori-land-treaty/marine-and-coastal-area/applications>.

³⁰ Office of Treaty Settlement plan reference.