

## PART I: STATUTORY ASSESSMENT

### 34 Approach to the assessment

#### Overview

The purpose of this Chapter is to highlight relevant parts of the AEE which contain further detail regarding the provisions of the RMA applicable to the approvals sought for the Project.

The approvals sought comprise:

- Notice of Requirement to designate land in the Kāpiti Coast District Plan;
- Land use consent from KCDC; and
- Land use consents and water and discharge permits from the GWRC.

#### 34.1 Introduction

This Chapter provides a checklist and cross-reference to the parts of the AEE which discuss relevant RMA assessment matters. The Chapter that follows provides a statutory planning assessment (Chapter 35 – Statutory Assessment) and considers the applicable objectives, policies and regulations contained within these documents, assesses the Project against these provisions and concludes with an assessment of the Project under Part 2 of the RMA.

Part B, Volume 2 of the AEE identifies the designation sought for the Project and also lists the resource consents that are required and the status of the activities to which the consents relate (refer Part B, Chapter 3, Volume 2).

Part B of the AEE also identifies some of 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.

#### 34.2 Approach to the statutory planning assessment

As outlined in further detail in Part B, Chapter 3, Volume 2 of the AEE, the following consents and approvals are sought:

- A NOR by the NZTA to designate land in the Kāpiti Coast District Plan for the purposes of constructing, operating and maintaining an Expressway;

- A land use consent from KCDC to undertake works on contaminated land (in line with the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2012);
- Land use consents from GWRC to undertake bulk earthworks and for earthworks and construction erosion and sediment control; and
- Land use consents, discharge permits and water permits from GWRC to cross, occupy, realign and use water bodies.

### 34.2.1 Approach to assessments for section 104 and section 171

Under section 149P a BoI is required, when considering an application for resource consent, to apply section 104. Section 104(1)(b), in turn, requires that when considering an application for resource consent and any corresponding submissions 'regard' must be had, subject to Part 2, to any relevant provisions contained in the following RMA instruments:

- 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) requires a consent authority to have regard to 'any other matter the consent authority considers relevant and reasonably necessary'.

Section 149P also requires a BoI, when considering a NOR for a designation, to have regard to the matters set out in section 171(1). Section 171(1)(a) requires that in considering a requirement for a designation and any submissions received, 'particular regard' must be had to 'any relevant provisions of' the RMA instruments identified in section 104(1)(b), 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 aspects of any policy statement and plan are of specific relevance, leaving such matters to be judged according to the particular circumstances of the application being considered. The phrases 'have regard to' and 'have particular regard to' also allow discretion to be exercised regarding the weight applied to particular RMA instruments or their associated provisions. It is not a requirement of either section 104 or 171 that an activity upholds, gives effect to or is not contrary to any particular RMA instrument or its objectives, policies or other provisions. However, it is recognised that where any conflict or inconsistency exists between the provisions contained in national, regional or local level RMA instruments, that certain instruments may need to be accorded greater weight due to their relative status or significance.

### 34.2.2 Consideration of Notices of Requirement

The matters outlined in section 171(1)(a)-(d) that have, subject to Part 2, been considered in this AEE are as follows:

- Section 171(1)(a) – Part I, Chapter 35, Volume 2 evaluates the Project against the relevant statutory and non-statutory planning instruments.
- Section 171(1)(b) – Part E, Chapter 9, Volume 2 outlines the history of the Project, the reasons for selecting the route and the integrated design process that informed the location and design of the proposed Expressway with inputs from a comprehensive range of technical specialists.
- Section 171(1)(c) – Part C, Chapter 6 and Part D, Chapters 7 and 8, Volume 2 outline the works required for the Project. The background to the Project, including the rationale for the Project and the Project Objectives, is set out in Part A, Chapter 2, Volume 2.
- Section 171(1)(d) – Part G and Part I, Chapter 35, Volume 2 set out the matters identified and considered in the relevant Technical Reports prepared for the Project (refer Volume 3 of the AEE).

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

- National Policy Statement for Freshwater Management 2011;
- National Policy Statement for Electricity Transmission 2008;
- New Zealand Coastal Policy Statement 2010;
- Proposed Wellington Regional Policy Statement 2009;
- Wellington Regional Policy Statement 1995;
- Wellington Regional Freshwater Plan 1999;
- Wellington Regional Air Quality Management Plan 2000;
- Wellington Regional Soil Plan 2000;
- Wellington Regional Coastal Plan 2000;
- Wellington Regional Plan for Discharges to Land 1999; and
- Kāpiti Coast District Plan 1999.

The relevant provisions of these documents, along with an analysis of the Project against these requirements, are provided in Part I, Chapter 35, Volume 2 of the AEE.

### 34.2.3 Resource consent applications – Section 104

The matters outlined in Section 104(1)(a)-(c) that have, subject to Part 2, been considered in this AEE are as follows:

- Section 104(1)(a) – actual or potential effects of allowing the activities associated with the Project are identified and assessed in Part G, Volume 2 of the AEE and the Technical Reports in Volume 3 of the AEE;
- Section 104(1)(b) – relevant provisions of the statutory documents identified in section 34.2.2 are evaluated in Part I, Chapter 35, Volume 2; and
- Section 104(1)(c) – other matters considered relevant and reasonably necessary to determine the application are evaluated in Part I, Chapter 35, Volume 2.

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

- Documents listed in section 34.2.2 of this Chapter;
- National Environmental Standard for Air Quality 2004;
- National Environmental Standard for Sources of Human Drinking Water 2008;
- National Environmental Standard for Electricity Transmission Activities 2010; and
- National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2012.

Relevant cross-references and a brief commentary relating to section 104 are set out in Table 34.1 below.

**Table 34.1: 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, Volume 2 of the AEE and in the associated Technical Reports in Volume 3 of the AEE.	Part G, Volume 2 and Technical Reports, Volume 3
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.	Part I, Chapter 35, Volume 2
Section 104(1)(c) Any other matters	There are a number of other statutory and non-statutory documents that have either been publicly notified, been through a public process or are widely available in the public arena. Those considered to be of relevance to the Project have been assessed in Chapter 35, Volume 2 of the AEE.	Part I, Chapter 35, Volume 2
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 permitted baseline comparisons that can be made in relation to this Project.	Not relevant

Section 104	Comment	Cross-reference
Section 104(3) A consent authority must not... <i>etc</i>	No written approvals from potentially affected parties have been sought in relation to Section 104(3), and trade competition has not been identified as a relevant consideration for this Project. This situation will be reviewed again following receipt of submissions.	Part I, Chapter 35, Volume 2
Section 104(5) A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for	The NZTA has discussed the resource consent applications with the relevant Councils as part of the pre-lodgement process, and an agreed consenting approach has been confirmed.	Part F, Chapter 10, Volume 2
Section 104(6) and (7) Provision of information	There has been an extensive pre-lodgement process in which the NZTA has engaged with the relevant regulatory authorities, including the EPA, to review and consider the adequacy of the information and technical reports that will be supplied.	Not applicable