

PROPOSED KAPITI COAST EXPRESSWAY OVERVIEW OF PROCESS

ROADS OF NATIONAL SIGNIFICANCE

The Minister of Transport has developed and issued a Government Policy Statement (GPS) on Land Transport Funding 2009/10 – 2018/19 under the Land Transport Management Act 2003.

Under the GPS the Government has listed seven initial Roads of National Significance as a statement of national road development priorities. This statement serves as a focus for investment to achieve economic growth and productivity. The seven roads listed include the Wellington Northern Corridor (Levin to Wellington) – State Highway 1.

According to the GPS, these listed roads are seven of New Zealand's most essential routes that require significant development to reduce congestion, improve safety and support economic growth. The purpose of listing roads as nationally significant is to ensure these priority roading developments are taken fully into account when the NZTA develops the National Land Transport Programme.

The GPS also states that planning for the future development of the land transport network should reflect the importance of these roads from a national perspective and the need to advance them quickly. The National Land Transport Fund can be used for the future development of the Roads of National Significance. Roads of National Significance will be part of the National Infrastructure Plan.

PROPOSED EXPRESSWAY

The New Zealand Transport Agency (NZTA) have published proposals for achieving a 4-lane 100kmh limited access expressway through the Kapiti District from McKays Crossing to north of Otaki as part of the Wellington Northern Corridor.

Two concept options have been presented, and NZTA are consulting on these and have invited public submissions.

PROCESS

The proposed expressway is a significant public work that involves major administrative and legal processes in addition to the investigation, design and construction phases. In total the project could extend for many years.

Processes include:

DESIGNATIONS

RESOURCE CONSENTS

HERITAGE PROTECTION

LAND ACQUISITION

The principal statutes that are involved are:

THE RESOURCE MANAGEMENT ACT 1991

THE PUBLIC WORKS ACT 1981

THE HISTORIC PLACES ACT 1993

GOVERNMENT ROADING POWERS ACT 1989

DESIGNATIONS (Resource Management Act 1991)

By designating land in a District Plan for a Public Work the ordinary provisions of the District Plan are set aside in favour of the particular provisions of the Designation.

Designations can be included in a District Plan in two ways:

1. By a Requiring Authority issuing a Notice of Requirement (NOR) to the Local Authority
2. By a Requiring Authority requesting that the Designation be included in at the time of a review of the District Plan.

The key matters of process for a NOR are:

- (a) A NOR that includes:
 - a full description of the proposed work
 - the effects on the environment
 - the alternatives considered
 - a statement as to work/designation being reasonably necessary to meet the objectives of the requiring authority

- (b) Public Notification and submissions
- (c) A Hearing by the Council of the NOR and submissions

Matters of enquiry at a hearing include:

- Whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work
 - Whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought
 - Any other matter the Council considers reasonably necessary in order to make a recommendation on the requirement.
- (d) A recommendation by the Council to the Requiring Authority to:
 - confirm the NOR, or
 - modify the NOR, or
 - impose conditions, or
 - withdraw the NOR.
 - (e) Acceptance or rejection by the Requiring Authority of the Council's recommendation
 - (f) Appeal rights

Inclusion in a District Plan

A Council has an obligation when preparing or reviewing a district plan to ask requiring authorities for any proposed designations.

A Council has a discretion to include a requirement in a Proposed District Plan if it is notifying that plan within 40 working days of receipt of the requirement.

Current thinking on the District Plan Review is that it could be notified between 2011 and 2012.

CALL IN POWERS

A Notice of Requirement can be CALLED IN by the Minister if it relates to matters of National Importance.

These powers currently exist but are being strengthened and made more formal under the proposed amendments to the Resource Management Act 1991.

The attached flow charts show the existing and proposed processes.

The key points about a call in (as proposed) are:

- The Minister can refer application to either the Environment Court or a Board of Enquiry
- Board of Enquiry has a 9-18 month maximum time frame depending on the initial referral
- Environment court has no time frame
- The Local Authority has a limited role basically that of a submitter although it has the role of preparing a report on “key planning issues”.
- Board of Enquiry or the Environment Court may waive the requirement for an outline plan - further potential for less Council involvement.
- Council is required to implement final decision

RESOURCE CONSENTS (Resource Management Act 1991)

The proposed expressway could be the subject of an application for resource consent but this is extremely unlikely given the advantages to the Crown of the designation process.

It should be noted that the designation does not cover resource consents that are required under any regional plans for example earthworks, discharges, diversions/piping of water courses etc.

However, it is expected that these regional consents would be “called in” along with the NOR so that the “one stop shop” principle was applied.

HERITAGE PROTECTION (Historic Place At 1993)

The Historic Places Act 1993 is an Act to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand.

All pre-1900 archaeological sites remain protected in designated land and an authority from the New Zealand Historic Places Trust (NZHPT) is required to destroy, damage or modify any archaeological site under the Historic Places Act 1993.

Applications for authority to destroy, damage or modify any archaeological site are made to the NZHPT and are separate from applications for resource or designations.

NZHPT advise that:

“Requiring authorities should be encouraged to seek essential designations outside of, and sufficiently distant from, sensitive historic heritage areas.

Where land must be designated over, or near, historic heritage, particular attention should be paid to the extent of the area involved, the specific location, and the nature of activity involved, so that adverse impacts on historic heritage are minimised to the greatest practical extent. This will require a heritage impact assessment (and normally an archaeological assessment).”

LAND ACQUISITION (Public Works Act 1981)

The Minister (in this case) must make all reasonable endeavours to negotiate in good faith with the owners of land to be acquired in an attempt to reach agreements for the acquisition of the land within 3 months.

Where voluntary agreement cannot be reached on the purchase of land for a public work, the Public Works Act provides for compulsory acquisition by the Crown through the Minister of Lands.

If the Crown intends to compulsorily acquire land the land owners have the right of objection to the Environment Court.

If the Environment Court disallows an objection, subject to appeals on points of law only, construction may begin.

The right of objection to the Environment Court relates to the taking only not any compensation which, in the absence of agreement, is determined by the Land Valuation Tribunal.

LIMITED ACCESS ROAD (Government Rooding Powers Act 1989)

Sections 88 -98 of the Government Rooding Powers Act 1989 provide for the creation and maintenance of Limited Access Roads (LAR). Properties fronting such roads once they are declared that do not have an alternative access are entitled to one only crossing place.

However on new LAR's the rooding agency usually ensures that all properties have alternate access such that no access to or from the LAR is necessary or permitted.

LAR's are not legal road for the purpose of subdivision.

There is no right of objection or appeal against their creation but owners who are adversely affected are entitled to compensation under the Public Works Act 1981.

PROCESS ISSUES – WESTERN OPTION

Although the NZTA report suggests that using part of the WLR designation makes the process shorter and less onerous, that is not necessarily the case.

Even assuming that the Council was prepared to transfer the designation to the Crown, the current designation would not be able to be used because:

- the designation is not for a Limited Access Road;
- it does not meet expressway design standards;
- the noise mitigation measures may not be appropriate for a high speed four land road;
- additional land is required to accommodate an expressway.

It is most likely that a new designation would need to be obtained.

Significant opposition could be anticipated to a designation for a road with any greater dimensions or different geometry than the existing designation, particularly in the proximity of the Waikanae River crossing and because of the potential for significant dislocation of the local rooding network.

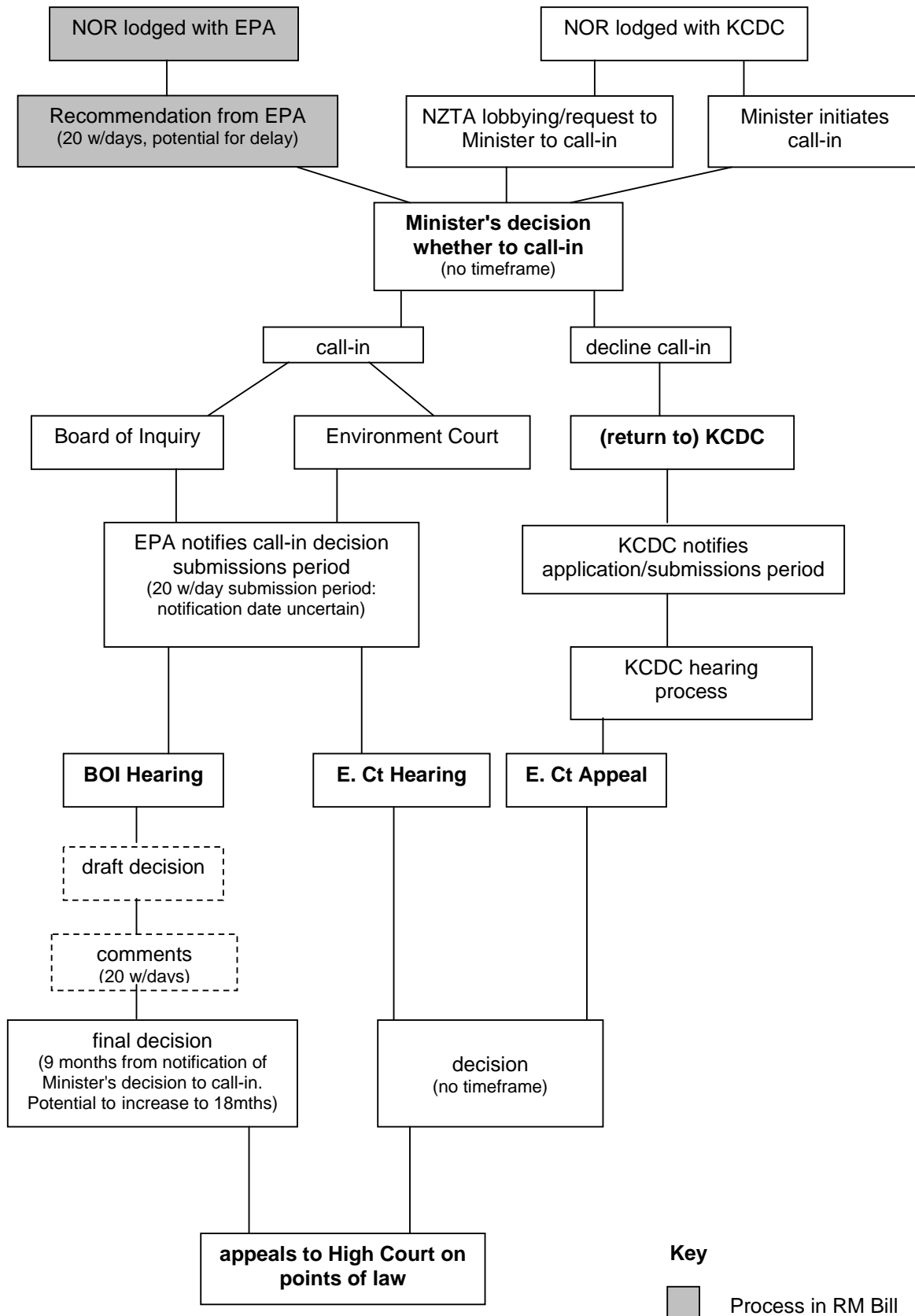
TIMELINES

		Time in Months	0
			Total Time
DESIGNATION			
1.	Investigation and Design	24	24
2.	Notification, further information submissions	6	30
3.	Board of Enquiry/Environment Court decision	9	39
4.	Appeal to High Court	6	45
LAND ACQUISITION			
5.	Good Faith Negotiations	3	48
6.	Objection determined by Environment Court	12	60
CONSTRUCTION			
	Minimum construction period	60	120

Notes:

1. Lead time for investigation and design is estimate – could be longer
2. Times assume “fast track” call in
3. Land acquisition commences when designation is certain. To do so earlier create high risk.

CALL-IN PATHS FOR NZTA NOR



WHEN DESIGNATIONS COMMENCE

(assuming included in an operative district plan and all appeal decisions in requiring authority's favour)

Note: flow chart does not take into account any amendments to the RMA proposed by the RM (Simplifying and Streamlining) Amendment Bill – see Report Back commentary on page 61

