

Version
as at 8 July 2023



COVID-19 Recovery (Fast-track Consenting) Act 2020

Public Act 2020 No 35

Date of assent 8 July 2020

Commencement see section 2

COVID-19 Recovery (Fast-track Consenting) Act 2020: repealed, on 8 July 2023, by section 3(1).

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry for the Environment.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the COVID-19 Recovery (Fast-track Consenting) Act 2020.

2 Commencement

This Act comes into force on the day after it receives the Royal assent.

Part 1
Preliminary provisions

3 Repeal of this Act

- (1) This Act is repealed on 8 July 2023.
- (2) *See* section 8 and Schedule 1, which make provision for transitional, savings, and related matters.

Section 3(1): replaced, on 3 November 2021, by Schedule 3 clause 7 of the COVID-19 Response (Management Measures) Legislation Act 2021 (2021 No 42).

4 Purpose

The purpose of this Act is to urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.

5 Overview

- (1) This Part contains preliminary provisions.
- (2) Part 2 sets out the substantive elements of the scheme for fast-track consenting.
- (3) Schedule 1 sets out transitional, savings, and related provisions.
- (4) Schedule 2 describes the listed projects.
- (5) Schedule 3 sets out requirements for referral orders of referred projects.
- (6) Schedule 4 provides for location requirements, permitted activities, and permitted activity standards for work on infrastructure.
- (7) Schedule 5 relates to expert consenting panels.

- (8) Schedule 6 deals with applications and decision making in relation to listed projects and referred projects.

6 Treaty of Waitangi

In achieving the purpose of this Act, all persons performing functions and exercising powers under it must act in a manner that is consistent with—

- (a) the principles of the Treaty of Waitangi; and
- (b) Treaty settlements.

7 Interpretation

- (1) In this Act, unless the context otherwise requires,—

application for referral means an application under section 20

authorised person,—

- (a) in relation to a listed project, means a person identified as such in Schedule 2; and
- (b) in relation to a referred project, means a person identified as such in the relevant referral order (*see* clause 2(a) of Schedule 3)

coastal marine area has the meaning given in section 2(1) of the Resource Management Act 1991

consent applicant means a person that has applied for a resource consent under clause 2 of Schedule 6

consent application means an application made under clause 2 of Schedule 6 for a resource consent for a listed project or a referred project

customary marine title, customary marine title area, customary marine title group, and customary marine title order have the meanings given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

designation has the meaning given in section 166 of the Resource Management Act 1991

effect has the meaning given in section 3 of the Resource Management Act 1991

Environment Judge—

- (a) means a judge appointed under section 250 of the Resource Management Act 1991; and
- (b) includes a Māori Land Court judge who holds a warrant to sit in the Environment Court

EPA means the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011

existing means existing before this Act comes into force

expert consenting panel or panel means a panel appointed under Schedule 5 to determine a consent application or notice of requirement for a listed project or a referred project

infrastructure has the meaning given in section 2(1) of the Resource Management Act 1991

iwi aquaculture organisation has the meaning given in section 4 of the Maori Commercial Aquaculture Claims Settlement Act 2004

land returned under a Treaty settlement includes land vested in or transferred to a Treaty settlement entity under a Treaty settlement

listed project means a project that is listed in Schedule 2

local authority has the meaning given in section 5(1) of the Local Government Act 2002

mandated iwi organisation has the meaning given in section 5 of the Maori Fisheries Act 2004

Minister means—

- (a) the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act; and
- (b) in subpart 1 of Part 2, may mean both Ministers referred to in section 16, if that section applies

Ministry means the department of State that, with the authority of the Prime Minister, is responsible for the administration of this Act

notice of requirement means a notice of requirement for a designation as contemplated by section 168 of the Resource Management Act 1991, and includes a notice of requirement to alter a designation

permitted activity, in subpart 2 of Part 2, has the meaning given in section 31

permitted activity standards, in relation to a permitted activity under subpart 2 of Part 2, means the standards for the activity that are set out in Schedule 4

person has the meaning given in section 2(1) of the Resource Management Act 1991

post-settlement governance entity—

- (a) means a body corporate or the trustees of a trust established by a claimant group for the purposes of receiving redress or participating in arrangements established under a Treaty settlement Act; and
- (b) includes an entity established to represent a collective or combination of claimant groups

project includes any part of a project

proposed plan has the meaning given in section 43AAC of the Resource Management Act 1991

protected customary right, protected customary rights area, and protected customary rights group have the meanings given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

referral order means an Order in Council made under section 27 referring a project to an expert consenting panel

referred project means a project that is referred (by a referral order) to an expert consenting panel

relevant iwi authority means,—

- (a) in relation to work on infrastructure referred to in subpart 2 of Part 2, an iwi authority whose area of interest includes, overlaps with, or is immediately adjacent to the area in which the work will occur; and
- (b) in relation to listed projects and referred projects and in the rest of this Act, means an iwi authority whose area of interest includes the area in which a project will occur

relevant local authority means,—

- (a) in relation to work on infrastructure referred to in subpart 2 of Part 2, the local authority whose district or region the work is in and, if the work is in 2 or more districts or regions, each local authority whose region or district part of the work is in; and
- (b) in relation to listed projects and referred projects and in the rest of the Act, means the local authority whose district or region the project is in and, if the project is in 2 or more districts or regions, each local authority whose region or district part of the project is in

requiring authority means a requiring authority within the meaning of section 166 of the Resource Management Act 1991 that has lodged a notice of requirement for a designation or to alter a designation under clause 2 of Schedule 6

sustainable management has the meaning given in section 5(2) of the Resource Management Act 1991

Treaty settlement means—

- (a) a Treaty settlement Act; or
- (b) a Treaty settlement deed

Treaty settlement Act means—

- (a) an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975; or
- (b) for the purposes only of this Act, the following:
 - (i) Maori Commercial Aquaculture Claims Settlement Act 2004;
 - (ii) Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014;
 - (iii) Nga Wai o Maniapoto (Waipa River) Act 2012;

- (iv) Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010

Treaty settlement deed means a deed or other agreement that—

- (a) has been signed by or on behalf of a Minister of the Crown and representatives of a group of Māori; and
- (b) is in settlement of the claims of that group, or in express anticipation, or on account, of that settlement; but
- (c) does not include an agreement in principle or any document that is preliminary to a signed and ratified deed

Treaty settlement entity means any of the following:

- (a) a post-settlement governance entity;
- (b) a board, trust, committee, authority, or other body, incorporated or unincorporated, that is recognised in or established under a Treaty settlement Act;
- (c) an entity or a person that is authorised to act for a natural resource with legal personhood;
- (d) a mandated iwi organisation;
- (e) an iwi aquaculture organisation

work on infrastructure means work that meets the criteria set out in section 30

working day has the meaning given in section 2(1) of the Resource Management Act 1991.

- (2) Terms used in this Act that are not defined in this Act have the same meanings as they have in the Resource Management Act 1991, if they are defined in that Act.
- (3) Terms used in this Act that are not defined in this Act have the same meanings as they have in the Marine and Coastal Area (Takutai Moana) Act 2011, if they are defined in that Act and not in the Resource Management Act 1991 (but modified as applicable if the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 applies).

8 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

9 Act binds the Crown

This Act binds the Crown.

10 Procedural principles

- (1) Every person performing functions and exercising powers under this Act must take all practicable steps to use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions, duties, or powers being performed or exercised.
- (2) This includes a duty to act promptly in circumstances where no time limit has been set for the performance or exercise of a function, power, duty, or requirement under this Act.
- (3) However, a failure to comply with this section does not of itself invalidate the performance of a function or duty or the exercise of a power under this Act.

11 Electronic service of documents

- (1) This section applies to any document that is to be served on a person for the purpose of this Act, including—
 - (a) an application; and
 - (b) comments sought on any matter; and
 - (c) notice of a decision and any document related to the decision; and
 - (d) written notice of any other matter.
- (2) Unless it is impracticable to do so, the document must be sent electronically to the electronic address provided for that purpose.
- (3) Any time frame that applies under this Act, and that is expressed in relation to when notice is given, or an application made, or comments sought, must be calculated, if the document is sent electronically, from the date of electronic receipt.
- (4) However, subsection (2)—
 - (a) does not apply to a document that is to be served on a person to commence, or in the course of, court proceedings if the court requires a different method of service (whether expressly or in its rules or practices); and
 - (b) does not override the provisions of the Electronic Courts and Tribunals Act 2016.
- (5) If electronic service of the document is impracticable, the document may be served in accordance with section 352(1)(b) and (2) to (5), and, if applicable, section 353, of the Resource Management Act 1991.

12 Relationship between this Act and Resource Management Act 1991

- (1) This section applies except as otherwise provided in, or required by the context of, this Act.

Listed projects and referred projects

- (2) If an application for resource consent for an activity is made under this Act,—

- (a) the process for obtaining a consent under Schedule 6 applies instead of the process for obtaining a consent under the Resource Management Act 1991; and
 - (b) a resource consent granted under this Act has the same force and effect for its duration, and according to its terms and conditions, as if it were granted under the Resource Management Act 1991.
- (3) If a notice of requirement is lodged under this Act,—
- (a) the process for confirming or modifying a designation under Schedule 6 applies instead of the process for confirming or modifying a designation under the Resource Management Act 1991; and
 - (b) a designation confirmed or modified under this Act has the same force and effect for its duration, and according to its terms and conditions, as if it were confirmed or modified under the Resource Management Act 1991.
- (4) A certificate of compliance issued by a panel under clause 27 of Schedule 6 has the same force and effect as if it were issued by a consent authority under section 139 of the Resource Management Act 1991.

Work on infrastructure

- (5) If an activity is undertaken, in reliance on this Act, as a permitted activity in the course of work on infrastructure,—
- (a) subpart 2 of Part 2 and Schedule 4 apply to the activity despite anything to the contrary in—
 - (i) the relevant plan or proposed plan; or
 - (ii) the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011; but
 - (b) the permitted activities and associated permitted activity standards in Schedule 4 do not override or replace—
 - (i) any other national environmental standard; or
 - (ii) any conditions that apply to an existing resource consent or designation.
- (6) Subsections (7) and (8) apply where—
- (a) an activity is already classified as a permitted activity under the relevant plan or proposed plan, or under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (the **regulations**); and
 - (b) a resource consent is not required for the activity if it complies with the requirements, conditions, and permissions, if any, specified in the plan or the regulations (the **existing requirements, conditions, and permissions**).

- (7) If the existing requirements, conditions, and permissions are more stringent than the applicable permitted activity standards,—
- (a) the activity may be undertaken in the course of work on infrastructure as a permitted activity in reliance on this Act, subject to the conditions in section 29(2); and
 - (b) subsection (5) applies in respect of the activity.
- (8) However, if the existing requirements, conditions, and permissions are more lenient than the applicable permitted activity standards, the activity may be undertaken in the course of work on infrastructure in reliance on the plan or the regulations rather than in reliance on this Act.

General

- (9) Every person who carries out an activity as part of a listed project or a referred project, or in the course of work on infrastructure, is subject to—
- (a) the duty to avoid unreasonable noise under section 16 of the Resource Management Act 1991; and
 - (b) the duty to avoid, remedy, or mitigate adverse effects under section 17 of the Resource Management Act 1991.
- (10) The provisions of the Resource Management Act 1991 otherwise apply, to the extent that they are relevant and with any necessary modifications, to a listed project or a referred project and to any activity carried out as a permitted activity in the course of work on infrastructure.

13 Appeals and judicial review

- (1) Nothing in this Act limits or affects any right of judicial review a person may have in respect of any matter to which this Act applies.
- (2) However, if a person wishes to apply for judicial review of a final decision of a panel under clause 37 of Schedule 6 and also appeal to the High Court against the same decision, the person must lodge the applications for judicial review and appeal together, unless the High Court grants leave for the person to lodge the applications separately.
- (3) If an application for judicial review and an appeal are lodged together, the High Court must try to hear the proceedings together, but need not if the court considers it impracticable to do so in the circumstances of the particular case.

Compare: 2010 No 37 s 159

Part 2

Fast-track consenting

Subpart 1—Projects considered by expert consenting panel

Listed and referred projects

14 Expert consenting panel considers listed projects and referred projects

An expert consenting panel must be appointed under Schedule 5 for—

- (a) each project described in Schedule 2 (a **listed project**); and
- (b) each project or part-project referred to an expert consenting panel in accordance with this subpart (a **referred project**).

15 How expert consenting panel considers projects

- (1) An authorised person for a listed project or a referred project—
 - (a) may apply under this Act, instead of under the Resource Management Act 1991, for a resource consent relating to the project; and
 - (b) may, if the person is a requiring authority, lodge a notice of requirement under this Act, instead of under the Resource Management Act 1991, for a designation or to alter a designation relating to the project.
- (2) The authorised person for a project is,—
 - (a) for a listed project,—
 - (i) any person or entity authorised to undertake the project, as identified in Schedule 2; and
 - (ii) if that person or entity is KiwiRail Holdings Limited, the New Zealand Transport Agency, or a government department, any person they authorise to act on their behalf for the purposes of this Act; and
 - (b) for a referred project, the person identified as the authorised person in the Order in Council made under section 27 (the **referral order**).
- (3) Schedule 6 sets out—
 - (a) the requirements for consent applications to be made to, and notices of requirement to be lodged with, the EPA; and
 - (b) how the EPA provides applications and notices of requirement to the panel appointed for a project; and
 - (c) how the panel makes decisions.
- (4) To avoid doubt, a person—
 - (a) cannot apply under this Act for a change or cancellation of an existing consent (*see* section 127 of the Resource Management Act 1991); but

- (b) may lodge a notice of requirement under this Act to alter an existing designation.

Referral of projects

16 Who makes referral decisions

- (1) Decisions under this subpart that relate to the referral of a project to an expert consenting panel must be made—
 - (a) jointly by the Minister for the Environment and the Minister of Conservation, if any part of the project would occur in the coastal marine area; or
 - (b) by the Minister for the Environment alone in any other case.
- (2) In relation to a decision that must be made jointly by both Ministers, any reference in this subpart to **the Minister** must be read as if it were a reference to both Ministers.

17 How Minister satisfies obligations under section 6 (Treaty of Waitangi)

- (1) The Minister's obligations under section 6 (Treaty of Waitangi), as they apply to a decision under section 24 to refer a project to an expert consenting panel, are satisfied if the Minister, before making the decision, obtains and considers a report on the application for referral that is prepared in accordance with this section.
- (2) The report must be prepared by the Ministry in consultation with the Office for Māori Crown Relations—Te Arawhiti.
- (3) The report must identify the following:
 - (a) the relevant iwi authorities and relevant Treaty settlement entities;
 - (b) the Treaty settlements that relate to the project area;
 - (c) the relevant principles and provisions in those Treaty settlements, including those that relate to the composition of a decision-making body for the purposes of the Resource Management Act 1991;
 - (d) any recognised negotiation mandates for, or current negotiations for, Treaty settlements that relate to the project area;
 - (e) any court orders that recognise, in relation to the project area, protected customary rights or customary marine title, whether the court orders are granted under the Marine and Coastal Area (Takutai Moana) Act 2011 or another Act.

18 Criteria for projects that may be referred

- (1) A project is not eligible to be referred to an expert consenting panel unless it meets all the criteria set out in this section.

- (2) The Minister must be satisfied that the project will help to achieve the purpose of this Act (*see* section 19).
- (3) The project must not include any of the following activities:
 - (a) an activity that is described as a prohibited activity in the Resource Management Act 1991, regulations made under that Act (including a national environmental standard), or a plan or proposed plan:
 - (b) an activity that—
 - (i) would occur on land returned under a Treaty settlement; and
 - (ii) has not been agreed to in writing by the relevant landowner:
 - (c) an activity that—
 - (i) would occur in a customary marine title area under the Marine and Coastal Area (Takutai Moana) Act 2011; and
 - (ii) has not been agreed to in writing by the holder of the relevant customary marine title order issued under that Act:
 - (d) an activity that—
 - (i) would occur in a protected customary rights area under the Marine and Coastal Area (Takutai Moana) Act 2011 and have a more than minor adverse effect on the exercise of the protected customary right; and
 - (ii) has not been agreed to in writing by the holder of a relevant protected customary rights recognition order issued under that Act.
- (4) To avoid doubt,—
 - (a) a project may be in the form of a single large project or any number of related projects, and the projects may cross local authority boundaries; and
 - (b) even if a project or part of a project meets all the criteria in this section, the Minister may decide not to refer it to an expert consenting panel (*see* section 23).

19 Whether project helps to achieve purpose of Act

In considering, for the purpose of section 18(2), whether a project will help to achieve the purpose of this Act, the Minister may have regard to the following matters, assessed at whatever level of detail the Minister considers appropriate:

- (a) the project's economic benefits and costs for people or industries affected by COVID-19:
- (b) the project's effect on the social and cultural well-being of current and future generations:
- (c) whether the project would be likely to progress faster by using the processes provided by this Act than would otherwise be the case:

- (d) whether the project may result in a public benefit by, for example,—
 - (i) generating employment:
 - (ii) increasing housing supply:
 - (iii) contributing to well-functioning urban environments:
 - (iv) providing infrastructure in order to improve economic, employment, and environmental outcomes, and increase productivity:
 - (v) improving environmental outcomes for coastal or freshwater quality, air quality, or indigenous biodiversity:
 - (vi) minimising waste:
 - (vii) contributing to New Zealand’s efforts to mitigate climate change and transition more quickly to a low-emissions economy (in terms of reducing New Zealand’s net emissions of greenhouse gases):
 - (viii) promoting the protection of historic heritage:
 - (ix) strengthening environmental, economic, and social resilience, in terms of managing the risks from natural hazards and the effects of climate change:
- (e) whether there is potential for the project to have significant adverse environmental effects, including greenhouse gas emissions:
- (f) any other matter that the Minister considers relevant.

20 Application for referral

- (1) Any person may apply to the Minister for a project to be referred to an expert consenting panel.
- (2) The application—
 - (a) must include the information specified in subsection (3); but
 - (b) need only provide a general level of detail, sufficient to inform the Minister’s decision on the application, as opposed to the level of detail that an expert consenting panel would require to be provided in applications for resource consents or in notices of requirement.
- (3) The information to be included in the application is as follows:
 - Proposal and effects*
 - (a) a description of the proposed project and the activities it involves:
 - (b) the approximate geographical location of the project (which may be included in the form of a map):
 - (c) the anticipated commencement and completion dates for construction activities (where relevant):
 - (d) a statement of whether the project is planned to proceed in stages and, if so, an outline of the nature and timing of the staging:

- (e) a description of the anticipated and known adverse effects of the project on the environment:
- (f) a general assessment of the project in relation to national policy statements and national environmental standards (as those terms are defined in the Resource Management Act 1991):
Alignment with criteria
- (g) an explanation of how the project meets the criteria in section 18:
Persons affected
- (h) a list of the persons the applicant considers are likely to be affected by the project, including relevant local authorities, relevant iwi authorities, and relevant Treaty settlement entities:
- (i) a summary of any consultation already undertaken on the project with the persons referred to in paragraph (h):
- (j) a list of any Treaty settlements that apply to the geographical location of the project, and a summary of the relevant principles and provisions in those settlements:
What is needed to complete the project
- (k) a description of the applicant's legal interest (if any) in the land on which the project will occur, including a statement of how that affects the applicant's ability to undertake the work:
- (l) an outline of the types of resource consents and any designations, or changes to designations, that the applicant considers are needed to authorise the project, including any that the applicant considers may be needed by someone other than the applicant:
- (m) a description of other legal authorisations (other than contractual) that the applicant considers may be required to commence the project (for example, authorities under the Heritage New Zealand Pouhere Taonga Act 2014 or concessions under the Conservation Act 1987):
Other matters
- (n) a statement of whether the applicant has already made consent applications or lodged notices of requirement under the Resource Management Act 1991 in respect of the same or a similar project and, if so, details of those applications and notices and any decisions made on them:
- (o) a description of whether and how the project would be affected by climate change and natural hazards:
- (p) a summary of compliance or enforcement actions (if any) taken against the applicant by a local authority or the EPA under the Resource Management Act 1991, and the outcome of those actions.

- (4) The Secretary for the Environment must approve an application form for the purpose of this section and ensure that it is made available on an Internet site maintained by or on behalf of the Ministry.
- (5) The application must be made in the approved form.

21 Process after Minister receives application

- (1) This section applies if the Minister receives an application under section 20.
- (2) Unless the Minister decides to decline the application before inviting comments (*see* section 23), the Minister must copy the application to, and invite written comments from,—
 - (a) the relevant local authorities; and
 - (b) the relevant Ministers.
- (3) The Minister may also copy the application to, and invite written comments from, any other person.
- (4) Anyone who is invited to provide written comments under this section has 10 working days from the receipt of the copy of the application to do so.
- (5) The Minister is not required to consider any comments received after that time, but may do so, in the Minister's absolute discretion, as long as the Minister has not already made decisions on the application.
- (6) In this section, **relevant Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for any of the following Portfolios:
 - (a) Arts, Culture, and Heritage:
 - (b) Conservation:
 - (c) Climate Change:
 - (d) Defence:
 - (e) Education:
 - (f) Housing:
 - (g) Infrastructure:
 - (h) Land Information:
 - (i) Local Government:
 - (j) Māori Crown Relations—Te Arawhiti:
 - (k) Transport:
 - (l) Treaty of Waitangi Negotiations:
 - (m) Urban Development:
 - (n) any other Portfolio to which the Minister considers the application is relevant.

22 Minister may request information

- (1) The Minister may request further information about an application for referral from the applicant or the relevant local authorities, to be provided within the time frame specified in the request.
- (2) The Minister is not required to consider any information provided after that time, but may do so, in the Minister's absolute discretion, as long as the Minister has not already made decisions on the application.
- (3) A request may be made at any time before a decision on the application is made under section 23 or 24.

23 Decision to decline application for referral

- (1) The Minister must decline an application for referral if the Minister is satisfied that a project does not meet the referral criteria in section 18.
- (2) The Minister may decline an application for any other reason, whether or not the project meets the referral criteria.
- (3) A decision to decline an application may be made—
 - (a) before or after a report on the application is obtained under section 17; and
 - (b) before or after comments on the application are invited under section 21; and
 - (c) whether or not further information on the application is requested and provided under section 22.
- (4) However, if a report has been obtained, or if comments or further information have been sought and provided within the required time frame, the Minister must consider those things, along with the application, before deciding to decline the application.
- (5) Reasons to decline an application under subsection (2) include, without limitation,—
 - (a) the applicant has not provided enough information for the Minister to determine whether the project meets the criteria in section 18;
 - (b) it would be more appropriate for the project, or part of the project, to go through the standard consenting or designation process under the Resource Management Act 1991;
 - (c) the project is inconsistent with a relevant national policy statement;
 - (d) directing the project to a panel would be inconsistent with a Treaty settlement;
 - (e) the project involves an activity that would occur on land that the Minister for Treaty of Waitangi Negotiations considers necessary for Treaty settlement purposes;
 - (f) the applicant has a poor history of environmental regulatory compliance;

- (g) there is insufficient time for the application to be referred and considered before this Act is repealed.
- (6) Subsection (5) does not prevent the Minister from accepting an application even if 1 or more of those reasons apply.
- (7) A decision under this section may be made in respect of all or part of the project that is the subject of an application for referral, and the Minister may decline some parts of an application and accept others.

24 Decision to accept application for referral

- (1) Before deciding to accept an application for referral, the Minister must consider—
 - (a) the application; and
 - (b) the report obtained under section 17; and
 - (c) any comments received under section 21 within the required time frame; and
 - (d) any further information requested and provided under section 22 within the required time frame.
- (2) If the Minister is satisfied that all or part of a project meets the referral criteria in section 18, the Minister may decide—
 - (a) to refer all or part of a project to an expert consenting panel:
 - (b) to refer the initial stages of a project to the panel while deferring decisions about the project's remaining stages:
 - (c) to specify restrictions that apply to the project (for example, on its geographical location, duration, or the activities that comprise the project):
 - (d) to specify information that must be submitted to the panel—
 - (i) with a consent application (in addition to the information required by clause 9 of Schedule 6); or
 - (ii) with a notice of requirement (in addition to the information required by clause 13 of Schedule 6):
 - (e) to specify persons or groups, in addition to those specified in clause 17 of Schedule 6, from whom the panel must invite comments on a consent application or notice of requirement relating to the project:
 - (f) to set specific time frames for the panel to process a resource consent or notice of requirement, which may differ from the time frames specified in clause 37 of Schedule 6.
- (3) A decision under this section may be made in respect of all or part of the project that is the subject of an application for referral, and the Minister may accept some parts of an application and decline others.

25 Notice of decisions on application for referral

- (1) The Minister must give notice of the decisions made on an application for referral, and the reasons for them, to—
 - (a) the applicant; and
 - (b) anyone invited to comment on the application under section 21.
- (2) If the decisions include a decision to refer all or part of the project to an expert consenting panel, the Minister must also give notice of the decisions and reasons to—
 - (a) the EPA; and
 - (b) the panel convener appointed under clause 2 of Schedule 5; and
 - (c) the relevant iwi authorities and Treaty settlement entities identified in the report obtained under section 17; and
 - (d) any other iwi authorities or Treaty settlement entities that the Minister considers have an interest in the matter; and
 - (e) any group that is a party to—
 - (i) a joint management agreement under the Resource Management Act 1991 that relates to the project area; or
 - (ii) a Mana Whakahono a Rohe entered into under the Resource Management Act 1991 that relates to the project area.
- (3) After making decisions on an application for referral, the Minister must ensure that the decisions, the reasons for them, and the report obtained under section 17 are made available to the public by publishing them on an Internet site maintained by or on behalf of the Ministry.

26 How project is referred

- (1) This section applies if the Minister decides to refer a project or part of a project to an expert consenting panel.
- (2) The Minister must—
 - (a) recommend that a referral order be made under section 27 to give effect to the Minister's decisions under section 24; and
 - (b) provide to the EPA, and to the panel convener appointed under clause 2 of Schedule 5, all the information received by the Minister that relates to the matter, including—
 - (i) the report obtained under section 17; and
 - (ii) any comments received under section 21.

27 Order in Council to refer project to expert consenting panel

- (1) The Governor-General may, by Order in Council (a **referral order**), refer a project or part of a project to an expert consenting panel.

- (2) A referral order may only be made on the recommendation of the Minister and must give effect to the Minister's decisions under section 24.
- (3) A referral order must comply with the requirements set out in Schedule 3.
- (4) A referral order may be amended by Order in Council,—
 - (a) in the case of a substantive amendment, only if an application for referral is made and considered under this subpart for the project as amended; and
 - (b) in the case of an amendment to correct a minor error or omission, without any need for an application to be made or considered under this subpart and without having to comply with the requirements set out in Schedule 3.
- (5) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 27(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Functions of EPA

28 Functions of EPA

- (1) The purpose of this section is to ensure that the functions of the EPA, as set out in section 13 of the Environmental Protection Authority Act 2011 (the **EPA Act**), include the function of exercising the powers, and carrying out the functions and duties, conferred on it by or under this Act.
- (2) For the purpose of section 13(b) of the EPA Act, the definition of **environmental Act** in section 5 of the EPA Act must be treated as if it included a reference to this Act.

Subpart 2—Work on infrastructure

29 Work on infrastructure: permitted activities

- (1) In the course of work on infrastructure, certain activities may be undertaken as permitted activities (that is, activities for which a resource consent is not required under the Resource Management Act 1991).
- (2) However,—
 - (a) the work must meet the criteria set out in section 30; and

- (b) the activities must meet the criteria set out in section 31 (which include not being excluded by section 32); and
 - (c) the agency must comply with section 33 before commencing the work.
- (3) *See* section 12(5) to (8), which clarifies the relationship between this subpart and the Resource Management Act 1991, relevant plans or proposed plans, and national environmental standards.
- (4) *See* section 34, which provides for Schedule 4 to be amended by Order in Council.

30 Criteria for work on infrastructure

- (1) For the purposes of this subpart, work on infrastructure must meet all the criteria set out in this section.
- (2) The work may only be carried out by the following agencies:
- (a) KiwiRail Holdings Limited;
 - (b) the New Zealand Transport Agency;
 - (c) the following agencies, if they are added to clause 1 of Schedule 4 by an Order in Council made under section 34:
 - (i) Kāinga Ora—Homes and Communities;
 - (ii) the Ministry of Housing and Urban Development;
 - (iii) any local authority.
- (3) The work may only be carried out on existing infrastructure.
- (4) The work may only be carried out at a place that meets the location requirements that apply to the agency, as set out in Schedule 4.
- (5) In this section, **existing infrastructure** means infrastructure that is completed and operational before the commencement of this Act.

31 Criteria for permitted activities

For an agency that undertakes work on infrastructure in reliance on this subpart, an activity is a **permitted activity** if—

- (a) the activity is—
 - (i) identified in Schedule 4 as a permitted activity for the agency; and
 - (ii) not excluded from being a permitted activity by section 32; and
- (b) the agency, when carrying out the activity, complies with the permitted activity standards that apply to the agency, as set out in Schedule 4.

32 Activities excluded from being permitted activities

- (1) This section sets out the activities that are excluded from being permitted activities for the purpose of this subpart.

- (2) An activity is excluded if it is a discretionary, non-complying, or prohibited activity under—
 - (a) the relevant plan or proposed plan; or
 - (b) the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.
- (3) An activity is excluded if it would occur in any of the following places:
 - (a) a place identified or listed in the relevant plan or proposed plan as—
 - (i) a wāhi tapu; or
 - (ii) any other site of cultural or historical significance; or
 - (iii) an outstanding water body:
 - (b) a wāhi tapu identified for the purpose of this section during the engagement process required by clause 5 of Schedule 4.
- (4) An activity is excluded if it would involve a non-temporary take of water that would require a resource consent under the relevant plan or proposed plan.
- (5) An activity is excluded if it would be contrary to a water conservation order (as defined in section 200 of the Resource Management Act 1991).
- (6) An activity is excluded if it can be undertaken within the scope of an existing designation without requiring—
 - (a) an outline plan of works to be lodged under section 176A of the Resource Management Act 1991; or
 - (b) a consent under the relevant regional plan or proposed regional plan.
- (7) An activity is excluded to the extent that it has an existing resource consent.

33 Requirements before commencing work on infrastructure

- (1) An agency seeking to carry out work on infrastructure in reliance on this sub-part must—
 - (a) begin the iwi and hapū engagement process required by clauses 5 to 7 of Schedule 4 at least 30 working days before the work commences; and
 - (b) serve notices of intention in accordance with clauses 8 and 9 of Schedule 4 at least 10 working days before the work commences.
- (2) The agency must also comply with any other applicable permitted activity standard that requires something to be done before the work commences.

34 Order in Council to add agencies for work on infrastructure

- (1) The Minister must not recommend that an Order in Council be made under this section unless the Minister is satisfied that—
 - (a) the change made by the order will help to achieve the purpose of this Act; and

- (b) the recommendation is consistent with section 6 (Treaty of Waitangi).
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, amend clause 1 of Schedule 4 to add any of the following as an agency that may carry out work on infrastructure in reliance on this Act (*see* section 30(2)):
- (a) Kāinga Ora—Homes and Communities:
- (b) the Ministry of Housing and Urban Development:
- (c) any local authority.
- (3) The order must also amend Schedule 4 to—
- (a) set the location requirements for the agency’s work on infrastructure; and
- (b) specify the permitted activities for the agency; and
- (c) specify any activities, in addition to those listed in section 32, that are excluded from being permitted activities for the agency; and
- (d) specify the permitted activity standards that apply to the agency.
- (4) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 34(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

35 Monitoring and enforcement

- (1) A local authority may—
- (a) monitor activities carried out as permitted activities in reliance on this subpart, if the activities are located in the authority’s region or district; and
- (b) take appropriate action using the methods available to it under the Resource Management Act 1991.
- (2) A local authority may fix charges, payable by agencies carrying out work on infrastructure, for monitoring the activities.
- (3) Sections 36(1A) to (8), 36AAA, and 36AAB of the Resource Management Act 1991 apply to the fixing of charges under subsection (2).
- (4) A local authority may rely on charges fixed under section 36(1)(c) of the Resource Management Act 1991 (which relate to resource consent and

resource management functions) to recover the costs of carrying out its functions under this subpart.

Schedule 1

Transitional, savings, and related provisions

s 8

Part 1

Provisions relating to this Act as enacted

1 Revocation of Act and Orders in Council

- (1) An Order in Council made under this Act is revoked on the day this Act is repealed.
- (2) This Act, and any Order in Council made under this Act that is in force on the day before the Act is repealed, remains in force for the purpose of completing any matter commenced under the Act before its repeal or under the order before its revocation.
- (3) The matters referred to in subclause (2) include, without limitation,—
 - (a) a panel’s decision on a consent application or notice of requirement that is lodged with a panel, in accordance with clause 2 of Schedule 6, before the date that is 6 months after the repeal of this Act:
 - (b) the issue of a certificate of compliance by a panel, if the certificate is requested before the date that is 6 months after the repeal of this Act:
 - (c) the filing, hearing, determination, or withdrawal of an appeal or a judicial review in relation to a decision on a consent application or notice of requirement or, as the case requires, the remaking of the decision:
 - (d) any other matter that is legally needed in order to complete anything commenced under this Act or any Order in Council made under this Act.
- (4) For the purpose of giving effect to subclause (2), an Order in Council made under this Act may, despite its revocation, be amended after the date of its revocation as if it were still in force.
- (5) An expert consenting panel continues in office after the repeal of this Act until it has completed the performance or exercise of its functions, duties, and powers and any matters related or ancillary to appeals, applications for judicial review, or rehearings in relation to the performance or exercise of its functions, duties, or powers.
- (6) The panel convener continues in office after the repeal of this Act and has the power to perform and exercise all the functions, duties, and powers of the panel convener, including appointing new panels for any consent applications or notices of requirement, until the convener has completed the performance or exercise of the convener’s functions, duties, and powers, and any matters related or ancillary to appeals, applications for judicial review, or rehearings in

relation to the performance or exercise of the convener's functions, duties, or powers.

- (7) If, for any reason, the panel convener, a member of a panel, or other office holder ceases to hold office after the repeal of this Act but while the person still has functions, duties, or powers to perform or exercise under this Act, a person may be appointed to replace that person in accordance with this Act and despite its repeal.
- (8) A certificate of compliance issued by a panel continues to have effect after the repeal of this Act.

2 How long permitted activities can be carried out

- (1) This clause applies to an activity that, in reliance on this Act, is carried out as a permitted activity in the course of work on infrastructure, but only if—
 - (a) a notice of intention covering the activity is given to the relevant local authority under clause 9 of Schedule 4 before the work commences and before the repeal of this Act; and
 - (b) the activity begins before the repeal of this Act.
- (2) Despite the repeal of this Act, the activity may continue as a permitted activity (that is, an activity that does not require a resource consent) as if the Act had not been repealed.
- (3) However, subclause (2) ceases to apply if—
 - (a) the effects of the activity cease to be the same or similar in character, intensity, and scale as they were before this Act was repealed; or
 - (b) the limited duration period (if any) expires.
- (4) In subclause (3)(b), **limited duration period**—
 - (a) means 15 years, unless the duration of a consent granted for the same activity under the Resource Management Act 1991 could be unlimited under section 123 of that Act; and
 - (b) must be calculated from the date on which a notice of intention for the activity is given to the relevant local authority under clause 9 of Schedule 4.
- (5) For the avoidance of doubt, if the duration of a consent granted for the same activity under the Resource Management Act 1991 could be unlimited under section 123 of that Act, the activity is not subject to a limited duration period.

3 Costs incurred after repeal of Act

- (1) If any costs can be recovered from an applicant or a requiring authority by the EPA or the Minister under this Act, those costs may continue to be recovered on or after the date on which this Act is repealed even if they relate to matters that occurred in relation to a referred project or a listed project on or after that date.

- (2) This clause does not limit clause 1.

4 Role of EPA continues after repeal of Act

The powers, functions, and duties conferred by this Act on the EPA may continue to be exercised or performed after the repeal of this Act, for any purpose connected with the recovery of costs, the provision of secretariat services or advice, and the completion of any other matter under this Act.

5 Role of local authorities and iwi authorities continues after repeal of Act

The powers, functions, and duties conferred by this Act on local authorities and iwi authorities may continue to be exercised or performed after the repeal of this Act for any purpose connected with—

- (a) the monitoring of activities authorised by or under this Act; and
- (b) the fixing of charges; and
- (c) the recovery of costs from the EPA; and
- (d) the completion of any other matter under this Act.

6 Relationship with Legislation Act 2019

Clauses 1 to 5 do not limit the application of sections 32 to 36 of the Legislation Act 2019.

Schedule 1 clause 6: replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Schedule 2 Listed projects

s 14

Identifier	Name	Person or entity authorised to undertake project	Description	Approximate geographical area
LP01	Te Ara Tupua – Ngauranga to Petone shared path	New Zealand Transport Agency	To construct a new shared path between Ngauranga and Petone	On existing and reclaimed land bound by— <ul style="list-style-type: none"> Hutt Valley Railway Line and State Highway 2 (to the west) Wellington Harbour (to the east) State Highway 2 intersection with Hutt Road (to the south) the west of the Esplanade and Hutt Road (to the north)
LP02	Northern Pathway – Westhaven to Akoranga shared path	New Zealand Transport Agency Transpower New Zealand Limited	To construct a new shared path between Westhaven in central Auckland and Akoranga in the North Shore Works on assets owned and operated by Transpower New Zealand Limited necessary for the above works to be carried out	A shared path up to 5 kilometres in length connecting Westhaven with Akoranga in the vicinity of the AUT Northern Campus and the Akoranga Busway Station
LP03	Wellington Metro Upgrade Programme	KiwiRail Holdings Limited	This project will consist of— <ul style="list-style-type: none"> Upgrade of Featherston Station Level crossing upgrades 	Project will occur in the following geographical areas: <ul style="list-style-type: none"> Featherston Station All 29 crossings between Featherston and Masterton

Identifier	Name	Person or entity authorised to undertake project	Description	Approximate geographical area
LP04	Papakura to Pukekōhe rail electrification	KiwiRail Holdings Limited Transpower New Zealand Limited	<ul style="list-style-type: none"> Upgrade and construction of rail storage yards at Wellington, Masterton, and Levin train stations Establishment and operation of a gravel/ballast excavations site Replacement of Bridges 56 and 63 on the Wairarapa Line Construction of a Maymom Passing Loop Construction of a Carterton Passing Loop Resignalling works 	<ul style="list-style-type: none"> Wellington, Masterton and Levin train stations Algies Road, Tauherenikau Wairarapa Line Between approx 37.6 km and 39.0 km WL (in the vicinity of Maymom Station between tunnels a1 and 2 WL) Between Brooklyn Road and Belvedere Road, Carterton Wairarapa Line
			<p>Electrification of the railway between Papakura and Pukekōhe to extend Auckland Metro passenger train services south</p> <p>Works on assets owned and operated by Transpower New Zealand Limited necessary for the above works to be carried out</p>	<p>Project will occur in the following geographical areas:</p> <ul style="list-style-type: none"> Rail corridor between Pukekōhe and Papakura Stations Overbridges at— <ul style="list-style-type: none"> Subway Road, Cape Hill Road, McPherson Road, Stadium Drive, Great South Road, SH1 Motorway Intersection of the corridor and

Identifier	Name	Person or entity authorised to undertake project	Description	Approximate geographical area
				<p>following streams: Ngakoroa Stream, Hingana Stream Road, Stream Road, Hays Stream Road, Slippery Creek</p> <ul style="list-style-type: none"> • Pedestrian crossings where required <p>Works by Transpower New Zealand Limited can occur—</p> <ul style="list-style-type: none"> • at the location needed for a Grid Exit Point • at the points on the Bombay to Ōtāhuhu, Huntly to Ōtāhuhu, and Glenbrook Deviation A transmission lines where they intersect with the rail corridor • at the points needed to move the above lines
LP05	Britomart Station eastern end upgrade	KiwiRail Holdings Limited	Modifications to the eastern end of the existing Britomart station to accommodate increased CRL capacity	The eastern end of the Britomart train station (including the tunnel) in the Auckland central business district
LP06	Te Pā Tāhuna Residential Development	Partnership between Ngāi Tahu Property Limited (through its subsidiary NTP Development Holdings Limited) and the Ministry of	Construction of four multi-storey buildings containing residential units and ancillary retail on four lots, and corresponding unit title subdivisions	12 Sawmill Road, Queenstown. Legal description: Lot 13 DP 8700, 34 and 38 Sawmill Road, Queenstown. Legal description: Lot 6-7 DP 8700, 68 Fryer Street. Legal description: Lot 47 DP 8591

Identifier	Name	Person or entity authorised to undertake project	Description	Approximate geographical area
LP07	Unitec Residential Development	Any of the following entities: Ngā Mana Whenua o Tāmaki Makaurau; Marutūāhu Rōpū; Ngāti Whātua Rōpū; Wāiohua – Tāmaki Rōpū; and Ministry of Housing and Urban Development	Residential development stages within Wairaka Precinct of a multi-stage comprehensive mixed-use urban development in Point Chevalier, Auckland	The Wairaka Precinct extends from the north-western motorway at Point Chevalier in the north, through to Woodward Road in the south, and from Oakley Creek in the west to Carrington Road in the east, where the Crown, Waitemata District Health Board, Unitec Institute of Technology, one private landowner, and Ngāti Whātua Ōrākei own contiguous blocks of land that make up the site
LP08	Papakāinga Development - Kaitaia	He Korowai Trust, Kaitaia (supported by Te Puni Kōkiri)	The addition of 24 new dwellings to an existing papakāinga	23 Kohuhu Street, Kaitaia
LP09	Papakāinga Development - Point Chevalier, Auckland	Te Māhurehure Cultural Marae Society (supported by Te Puni Kōkiri)	Construction of 14 affordable rental homes	73 Premier Avenue, Point Chevalier, Auckland
LP10	Papakāinga Development - Whaingaroa, Raglan	Rakaunui 1B Ahuwhenua Trust (supported by Te Puni Kōkiri)	Integrated papakāinga development of 6 homes	113 Wainui Road, Whaingaroa, Raglan
LP11	Papakāinga Development - Waitara, Taranaki	Te Kotahitanga o Te Atiawa (supported by Te Puni Kōkiri)	A subdivision offering a mixed-tenure development, including up to 60 lots with 25 homes in the first stage of development	14 Bayly Street, Waitara, Taranaki

Identifier	Name	Person or entity authorised to undertake project	Description	Approximate geographical area
LP12	Papakāinga Development - Chatham Islands	Chatham Islands Housing Partnership Trust (supported by Te Puni Kōkiri)	Construction of 5 homes	Chatham Islands
LP13	Papakāinga Development - Rāpaki, Christchurch	Te Mahi Korowai Trust (supported by Te Puni Kōkiri)	Construction of 10 residential dwellings and a shared-use building	2 Rāpaki Drive, Rāpaki, Christchurch
LP14	Waitohi Picton Ferry Precinct Redevelopment	KiwiRail Holdings Limited; Port Marlborough; Marlborough District Council; and New Zealand Transport Agency	Upgrades to the Picton Ferry Terminal Precinct and surrounding infrastructure, including works on land and in the coastal marine area	The area in the vicinity of the existing ferry terminal as shown on the attached plan
LP15	Papakura to Drury South State Highway 1 improvements	New Zealand Transport Agency; Transpower New Zealand Limited	Upgrade of SH1 between Papakura and Drury South to improve travel reliability, access, and safety, including providing new walking and cycling facilities and allowing for planned rail improvements at Drury Works on assets owned and operated by Transpower New Zealand Limited necessary for the above works to be carried out	<p>This project will occur on SH1 and land adjacent to SH1—</p> <ul style="list-style-type: none"> To the north, to connect with the improvements recently completed on SH1 between Manukau and Papakura Interchanges (the Southern Corridor improvements) To the south, to a new Drury South interchange which will connect SH1 to a new Mill Road corridor. The southern boundary is approximately in a line drawn perpendicular across SH1 in line with the southernmost end of Harrison Road

Identifier	Name	Person or entity authorised to undertake project	Description	Approximate geographical area
LP16	Matawii Water Storage Reservoir, Kaikohe	Te Tai Tokerau Water Trust	Construction of water storage and distribution infrastructure in Kaikohe to support the development of Northland's agriculture and horticulture sector and to provide drinking water for Kaikohe involving earthworks, land use, and water-related consents, including consents for the taking and damming of water	Works on the transmission assets can occur— <ul style="list-style-type: none"> along the Bombay to Otahuhu Transmission Line along the Huntly to Otahuhu Transmission Line at the Drury and Bombay substations at the points needed to move the above transmission lines and substations Private land to the north east of Kaikohe, on the following properties by the following legal descriptions: <ul style="list-style-type: none"> Reiwhaita 1B Lot 2 DP 176274 Orauruwharo 8 Taumataukuku 1 Lot 1 DP 196320
LP17	Queenstown Arterials Project	Queenstown Lakes District Council and New Zealand Transport Agency	To construct, maintain and operate a new Queenstown Town Centre urban arterial road (including associated infrastructure, structures, walkways, shared path, and landscaping)	The project commences at the Frankton Road (SH6A)/Melbourne Street intersection, then circuits the town centre along Melbourne Street, Henry Street, Gorge Road, Memorial Street, Man Street, Thompson Street and down to a new One Mile roundabout at the Fernhill Road/Lake Esplanade/Glenorchy intersection



Schedule 3

Referred projects: requirements for referral order

s 27

1 Application of schedule

This schedule sets out the requirements for a referral order made under section 27 (referring a project to an expert consenting panel).

2 Identification of project

The referral order must include the following:

- (a) the name of each person that is—
 - (i) authorised to apply under this Act for a resource consent relating to the project; or
 - (ii) authorised, if the person is a requiring authority, to lodge a notice of requirement for a designation or to alter a designation relating to the project:
- (b) a description of the project and the activities it involves;
- (c) the approximate geographical location of the project.

3 Other matters decided by Minister

The referral order must make any provision that is necessary to give effect to the Minister's decisions under section 24.

4 Statement of reasons

The referral order must include a statement of the Minister's reasons for the decisions made under section 24.

Schedule 4
**Work on infrastructure: location requirements, permitted activities,
and permitted activity standards**

ss 12, 30, 31, 32, 33, 34

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1 Application of schedule

- (1) This schedule sets out the location requirements, permitted activities, and permitted activity standards that apply to the following agencies:
 - (a) KiwiRail Holdings Limited;
 - (b) the New Zealand Transport Agency.
- (2) See section 29, which provides that,—
 - (a) if activities are carried out in the course of work on infrastructure that meets the criteria set out in section 30, and if the activities meet the criteria set out in section 31 and comply with the applicable permitted activity standards, the activities are permitted activities despite anything to the contrary in a plan or proposed plan; and

- (b) the permitted activity standards do not override or replace any conditions that apply to an existing resource consent or designation.
- (3) *See* section 34, which provides for an Order in Council to add other agencies to subclause (1) and make other changes to this schedule.

2 Interpretation

In this schedule,—

enforcement officer means any person authorised under section 38 of the Resource Management Act 1991

works means activities carried out in the course of work on infrastructure in reliance on this Act.

3 Incorporation by reference

Schedule 1AA of the Resource Management Act 1991 applies, and sections 63 to 66 and Schedule 2 of the Legislation Act 2019 do not apply, to any material incorporated by reference into this schedule.

Schedule 4 clause 3: amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Part 1

Permitted activity standards that apply generally

4 Application of Part

This Part contains the permitted activity standards that apply to any agency carrying out work on infrastructure in reliance on this Act (*see* section 29).

Iwi and hapū engagement

5 Iwi and hapū engagement

- (1) When planning works, an agency must engage with any of the following that have interests in the area within which the works are to be undertaken:
 - (a) iwi authorities about which the relevant local authority keeps records under section 35A of the Resource Management Act 1991; and
 - (b) any groups about which the relevant local authority keeps records under that section; and
 - (c) Treaty settlement entities whose area of interest overlaps, or is adjacent to, the area where the works will occur.
- (2) The engagement must begin at least 30 working days before the works commence.
- (3) The purpose of the engagement is to—
 - (a) determine interests and values held by iwi, hapū, and Treaty settlement entities in relation to the proposed works; and

- (b) identify, for the purpose of section 32(3)(b), any wāhi tapu that would exclude an activity in that place from being a permitted activity; and
- (c) identify, as a site that requires a management plan, any other site—
 - (i) that is affected by or adjacent to the place where the works will occur; and
 - (ii) that is a wāhi tapu, any other site of cultural or historical significance, or a habitat of taonga species.
- (4) A wāhi tapu or other site of cultural significance need not be identified as such in the relevant plan or proposed plan and may, for example, be—
 - (a) recorded in the New Zealand Archaeological Association’s site recording scheme; or
 - (b) recorded in a list maintained under section 65 or 81 of the Heritage New Zealand Pouhere Taonga Act 2014; or
 - (c) shown in the records of the Māori Land Court as a site set apart as a Maori reservation under Part 17 of Te Ture Whenua Maori Act 1993.
- (5) The agency must record the engagement undertaken and its outcomes, including—
 - (a) the interests and values identified; and
 - (b) the wāhi tapu and other sites identified under subclause (3)(b) and (c); and
 - (c) the protocols or management plans agreed to in relation to those interests, values, and sites.
- (6) An iwi authority, a hapū, or a Treaty settlement entity may recover from the agency the costs and expenses reasonably incurred in the course of identifying sites for the purpose of this clause.

6 Effect of failure to engage

- (1) This clause applies if an agency complies with clause 5(1) and (2) in good faith, but gets no response from the authorities, groups, and entities it is required to engage with before the expiry of the period of 30 working days required under clause 5(2).
- (2) The agency may proceed as if the process of engagement had resulted in nothing being determined or identified for the purpose of clause 5(3).

7 Management plan for affected or adjacent significant sites

- (1) This clause applies if any sites that require a management plan are identified during engagement with iwi authorities, groups, and Treaty settlement entities under clause 5.
- (2) The agency must work with the authorities, groups, and entities to develop a management plan for the sites.

- (3) The purpose of the management plan is to avoid, remedy, or mitigate the effects of the works on the sites.
- (4) The management plan must include—
 - (a) processes for protecting the sites, which may include a process to provide for fish passage; and
 - (b) the appointment of a cultural monitor to oversee the works; and
 - (c) the approach to recording ongoing engagement; and
 - (d) management through use of buffer zones; and
 - (e) cultural protocols; and
 - (f) monitoring of these matters by the agency during the period of construction.

Notices of intention

8 Notice of intention to iwi authorities, hapū, and Treaty settlement entities

- (1) Before it undertakes works, an agency must serve a notice of intention on—
 - (a) iwi authorities about which the relevant local authority keeps records under section 35A of the Resource Management Act 1991; and
 - (b) any groups about which the relevant local authority keeps records under that section; and
 - (c) Treaty settlement entities whose area of interest overlaps, or is adjacent to, the area where the works will occur.
- (2) The notice must be served at least 10 working days before the works commence.
- (3) The notice must include the following:
 - (a) a contact number and email address for the project lead;
 - (b) a brief description of the works;
 - (c) a copy of any management plan developed in accordance with clause 7;
 - (d) details of works that include fish passage;
 - (e) a statement of whether an authority is required to modify or destroy an archaeological site and, if so, whether the authority has been applied for or obtained (*see* sections 44, 56, and 62 of the Heritage New Zealand Pouhere Taonga Act 2014);
 - (f) a copy of any accidental discovery protocol to be applied during any earthworks activities (*see* clause 13);
 - (g) an invitation to attend a pre-start or induction meeting.

9 Notice of intention to local authorities

- (1) Before it undertakes works, an agency must serve a notice of intention on the relevant local authority.
- (2) The notice must be served at least 10 working days before the works commence.
- (3) The notice must include the following:
 - (a) a contact number and email address for the project lead:
 - (b) a brief description of the works:
 - (c) a record of engagement undertaken in accordance with clause 5:
 - (d) a copy of any management plan developed in accordance with clause 7:
 - (e) a copy of any other monitoring plan or management plan that this schedule states must be prepared before the works commence:
 - (f) an invitation to attend a pre-start or induction meeting.
- (4) If the agency tries to engage with iwi authorities, groups, and Treaty settlement entities in accordance with clause 5 but receives no response from them, the notice must also include sufficient details to demonstrate that the agency took reasonable measures to contact those authorities, groups, and entities.

Part 2

KiwiRail Holdings Limited and New Zealand Transport Agency

10 Application of Part

This Part sets out, for KiwiRail Holdings Limited and the New Zealand Transport Agency,—

- (a) location requirements for work on infrastructure; and
- (b) the permitted activities; and
- (c) the permitted activity standards, which apply in addition to the standards set out in Part 1 of this schedule.

Subpart 1—Location requirements and permitted activities

11 Location requirements

- (1) This clause sets out, for the purpose of section 30 (criteria for work on infrastructure), the location requirements for work on infrastructure that apply to KiwiRail Holdings Limited and the New Zealand Transport Agency.
- (2) The infrastructure must be located in or on the national road corridor or the national rail corridor.
- (3) The work may only be carried out on land that meets at least 1 of the following criteria:

- (a) the agency has a legal interest in the land that authorises access to and use of the land for the works:
 - (b) the land is in or on the national road corridor or the national rail corridor, and the agency is authorised to access and use the land for the works:
 - (c) a compensation certificate under section 19 of the Public Works Act 1981 records the acquisition of the land for the works.
- (4) Despite subclause (3), the work may occur within the bed of a river or within the coastal marine area, but only to the extent necessary for the work on infrastructure.
- (5) In this clause,—

national rail corridor means the existing network of railway lines, railway premises, and railway infrastructure, as those terms are defined in section 4(1) of the Railways Act 2005

national road corridor means the existing network of State highways, including the area under a bridge

State highway has the meaning given in section 5(1) of the Land Transport Management Act 2003, except that it does not include a proposed State highway.

12 Permitted activities

- (1) Unless excluded by section 32, and subject to clause 11, any activity for the operation, maintenance, replacement, or minor upgrade of existing infrastructure is a permitted activity if the activity complies with the permitted activity standards in subpart 2.
- (2) In this clause, **minor upgrade** means any of the following activities:
- (a) the provision of a safety barrier:
 - (b) fencing and obstacle clearance:
 - (c) the safety upgrade of an intersection or a level crossing (including to add signals, a roundabout, a turning bay, or safety improvements for pedestrians or cyclists):
 - (d) the strengthening or replacement of a bridge, including abutments:
 - (e) a minor upgrade or replacement of a culvert:
 - (f) road widening for safety works:
 - (g) the upgrade or maintenance of a drainage network:
 - (h) the upgrade or maintenance of a footpath or shared-use path:
 - (i) the sealing of a road:
 - (j) the provision of a noise wall or barrier:
 - (k) the construction of a retaining structure in connection with any other minor upgrade.

Subpart 2—Permitted activity standards

Ground disturbance

13 Earthworks (including diversion, damming, and discharge of sediment-laden water)

- (1) For any earthworks activity, an erosion and sediment control plan must be—
 - (a) prepared by a suitably qualified person with at least 5 years' experience in erosion and sediment control; and
 - (b) served with the notice of intention to local authorities that is required by clause 9; and
 - (c) implemented in accordance with industry best practice that reflects the scale of the activity and associated earthworks.
- (2) Industry best practice includes the measures and procedures specified within the *Erosion and Sediment Control Guidelines for State Highway Infrastructure*.
- (3) The agency carrying out the work must—
 - (a) determine whether an authority is required to modify or destroy an archaeological site (*see* sections 44, 56, and 62 of the Heritage New Zealand Pouhere Taonga Act 2014); and
 - (b) if no authority is required, prepare an accidental discovery protocol in advance of earthworks activity and apply the protocol if archaeological material is uncovered; and
 - (c) if an authority is required, obtain it.
- (4) Sediment originating from the earthworks activity must, to the extent possible, be managed on site to ensure that it does not, after reasonable mixing, give rise to any of the following effects in the receiving waters:
 - (a) the production of conspicuous oil or grease films, scums, or foams, or floatable or suspended materials;
 - (b) a decrease of more than 20% in visual clarity;
 - (c) any emission of objectionable odour;
 - (d) making fresh water unsuitable for consumption by farm animals;
 - (e) more than minor adverse effects on aquatic life.
- (5) All measures to minimise the generation and discharge of sediment from the earthworks activity must—
 - (a) be implemented, to the extent that is practicable, before the works commence; and
 - (b) include actions to minimise the area of open ground at any time and avoid, where practicable, any earthworks during winter months (June, July, and August); and

- (c) remain in place until the earthworks activity has been completed and the area of earthworks has stabilised in accordance with the *Erosion and Sediment Control Guidelines for State Highway Infrastructure*.
- (6) Earthworks must not—
 - (a) occur within 25 metres of any part of a natural wetland; or
 - (b) cause an adverse effect on any part of a natural wetland; or
 - (c) occur within 50 metres of a river in a statutory acknowledgement area without the consent of the relevant iwi authorities; or
 - (d) occur within 50 metres of identified *īnanga* spawning areas during *īnanga* spawning periods.
- (7) In this clause, *Erosion and Sediment Control Guidelines for State Highway Infrastructure* means the document of that name as published by the New Zealand Transport Agency.

14 Geotechnical boreholes (including groundwater monitoring)

- (1) The drilling of boreholes must comply with NZS 4411:2001 Environmental standard for drilling of soil and rock.
- (2) Drilling must not occur at a location, or at a depth, or in a way that may affect any drinking-water supply.
- (3) A bore/well log form must be submitted to the relevant unitary authority or regional council within 1 month of the bore being constructed.
- (4) The bore must be decommissioned, in accordance with NZS 4411:2001 Environmental standard for drilling of soil and rock, as soon as practicable after the investigation and monitoring are completed.

15 Groundwater discharge for dewatering and construction

- (1) Groundwater discharge arising from dewatering and construction must not be from, into, or onto contaminated or potentially contaminated land that is identified under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.
- (2) The discharge must not be from or into a natural wetland.
- (3) The discharge must not cause, or increase any adverse effects from, flooding.

Works within beds of rivers

16 Temporary and permanent bridges and culverts

- (1) Any structure in the coastal marine area must not cause a hazard to safe navigation.

- (2) If the works include a temporary or permanent bridge or culvert, the activity must not disturb a river or lake bed to a depth or an extent greater than that required to undertake the activity.
- (3) A temporary bridge must not remain in place for any longer than is necessary to undertake the works.
- (4) All permanent structures must be designed, installed, and maintained to ensure there are no increased flooding effects.
- (5) Subclause (6) applies if a construction activity results in any change, in size or extent, to the structure of any permanent bridge, abutment, or culvert.
- (6) Records of the change and the associated flow calculations must be provided to the relevant unitary authority or regional council within 10 working days after the construction activity ends.

17 Fish passage

- (1) All works that involve the temporary disturbance of a watercourse must be undertaken outside of relevant fish spawning periods, unless that precaution is deemed unnecessary or impracticable by a person with a post-graduate degree in freshwater ecology or a similar qualification.
- (2) Proposals for works to ensure fish passage must be referred to all of the relevant bodies described in clause 5(1) at least 10 working days before the works commence, to enable feedback to be sought (*see* clause 5(3)).
- (3) Fish passage and kōura passage must be provided at all times while works occur in watercourses, unless a temporary restriction of no more than 48 hours is required for construction or maintenance activities.
- (4) Salvage and relocation of indigenous fish, kākahi/freshwater mussels, and kōura/freshwater crayfish must be undertaken for any stream diversions or dewatering and must be placed in the same waterway.
- (5) In-stream structures must be designed and maintained to meet the minimum design standards for fish passage, as specified in the *New Zealand Fish Passage Guidelines* (NIWA Client Report No. 2018019HN, April 2018).

Vegetation

18 Biosecurity risks

The agency undertaking the works must take all appropriate measures to—

- (a) prevent the spread of pest plants and unwanted organisms, including the organism that causes kauri dieback disease; and
- (b) avoid the spread of pests in areas covered by a pest management plan that is developed by a unitary authority or regional council.

19 Vegetation

- (1) Any new planting must be of non-invasive species.

- (2) Revegetation must be of species naturally occurring within the ecological district and eco-sourced, unless—
 - (a) it is not possible to comply with that obligation; or
 - (b) there are sound ecological reasons to plant exotics.
- (3) Plant species selected must take into account the habitat requirements of affected fauna.
- (4) Vegetation must not be removed if it is identified in the relevant plan as significant indigenous vegetation, or as a significant habitat of indigenous fauna or a natural wetland.
- (5) The maximum volume of earthworks within a significant natural area or significant ecological area, as identified in the relevant plan, must not exceed 40 cubic metres.
- (6) Vegetation clearance activities must be completed in accordance with good arboricultural practice.
- (7) Trees identified in a schedule to a relevant plan or proposed plan as having significant value must not be removed.
- (8) Trimming and maintenance of a scheduled tree that is identified in the relevant plan may be undertaken only to enable the ongoing provision of existing infrastructure.
- (9) In this clause, **vegetation clearance** means the disturbance, cutting, burning, clearing, damaging, destruction, or removal of vegetation.

Operational requirements

20 General contaminant management

- (1) There must be an emergency spill prevention plan in place to prevent spills and to contain and manage any release of contaminants from equipment being used for the activity.
- (2) The plan must be served with the notice of intention to local authorities that is required by clause 9.
- (3) The provisions of the plan must be complied with at all times for the duration of the project.
- (4) A copy of the plan must be held on site at all times and be made immediately available in response to any request from an enforcement officer.
- (5) All construction equipment and materials must be removed on the completion of works.
- (6) The following must not take place in, or within 10 metres of, any location where fuel can enter a water body:
 - (a) cleaning or refuelling of machinery or equipment:
 - (b) storage of fuel.

21 Transport, disposal, and tracking of soil and other materials removed

- (1) The site investigation for the piece of land must—
 - (a) be undertaken in accordance with *Contaminated Land Management Guidelines No 5*; and
 - (b) be reported on in accordance with *Contaminated Land Management Guidelines No 1*.
- (2) A copy of the report of the site investigation must be provided to the relevant unitary authority or regional council within 2 months after the investigation is completed.
- (3) For sites where soils are identified as containing contaminants above background levels, a site management plan must be—
 - (a) prepared and implemented by a suitably qualified practitioner with experience in the management of contaminated sites; and
 - (b) prepared in accordance with *Contaminated Land Management Guidelines No 1*; and
 - (c) either—
 - (i) served with the notice of intention to local authorities that is required by clause 9; or
 - (ii) made available to the relevant territorial authority and unitary authority or regional council within 10 working days before the works commence.
- (4) Soil taken away from the piece of land in the course of the activity must be disposed of at a facility authorised to receive soil of that kind.
- (5) Records of the volume of soil and other materials deposited, and where they were deposited, must be maintained and made available on request to the relevant territorial authority and unitary authority or regional council within 10 working days of the date of the request.
- (6) In this clause,—

Contaminated Land Management Guidelines No 1 means the *Contaminated Land Management Guidelines No. 1: Reporting on Contaminated Sites in New Zealand* (Ministry for the Environment, reference ME 1071)

Contaminated Land Management Guidelines No 5 means the *Contaminated Land Management Guidelines No. 5: Site Investigation and Analysis of Soils* (Ministry for the Environment, reference ME 1073).

22 Discharge of dust to land and air

- (1) The discharge of dust must be managed in accordance with the *Good Practice Guide for Assessing and Managing Dust* (Ministry for the Environment, reference ME 1277), including minimising the discharge of dust to any site containing a sensitive activity.

- (2) In this clause, **sensitive activity** means any of the following activities as they are defined in chapter J of the Auckland Unitary Plan Operative:
- (a) an activity sensitive to aircraft noise:
 - (b) an activity sensitive to air discharges:
 - (c) an activity sensitive to hazardous facilities and infrastructure:
 - (d) an activity sensitive to noise:
 - (e) an activity sensitive to the National Grid.

23 Construction noise and vibration

- (1) For works within 100 metres of a sensitive activity, a construction, noise, and vibration management plan must be prepared by a suitably qualified and experienced person and implemented before the start of the works.
- (2) The purpose of the plan is to provide a framework for the development and implementation of methods to avoid, remedy, or mitigate adverse construction noise and vibration effects.
- (3) The plan must be—
- (a) prepared in accordance with NZS 6803:1999 Acoustics—Construction noise; and
 - (b) served with the notice of intention to local authorities that is required by clause 9.
- (4) In this clause, **sensitive activity**—
- (a) means residential, educational, community, health care, or visitor accommodation; and
 - (b) includes (without limitation)—
 - (i) dwellings:
 - (ii) schools:
 - (iii) marae:
 - (iv) hotels and motels:
 - (v) residential care facilities.

24 Construction signage

Signage may only be used if—

- (a) it is required by any enactment; or
- (b) it gives safety or security instructions or information; or
- (c) it provides information or directions in relation to works.

25 Lighting

Any new permanent lighting must comply with AS/NZS 1158:2005 Lighting for roads and public spaces.

26 Temporary activities (for example, office facilities, contractor laydown areas, and storage yards)

Construction yards must be designed and located in a manner that will—

- (a) minimise their visibility from occupied dwellings; and
- (b) minimise risk of contaminant run-off to receiving water bodies.

27 Use, storage, and handling of hazardous substances

- (1) An emergency response plan for the use, storage, and handling of hazardous substances must be prepared and implemented in accordance with the Health and Safety at Work (Hazardous Substances) Regulations 2017.
- (2) The plan must be served with the notice of intention to local authorities that is required by clause 9.

28 Noise attenuation walls and structures

The height of a noise attenuation wall or structure must not exceed 3 metres.

29 Operational noise for altered State highways

- (1) For altered State highways, the New Zealand Transport Agency must assess and mitigate road-traffic noise in accordance with the *Guide to assessing road-traffic noise using NZS 6806 for state highway asset improvement projects* (as published by the New Zealand Transport Agency in August 2016).
- (2) Within 12 months after completion of works, a post-construction review report must be—
 - (a) prepared in accordance with the *Specification for Noise Mitigation* (New Zealand Transport Agency, NZTA P40: 2014); and
 - (b) provided to the relevant territorial authority for its information.

Stormwater management

30 Stormwater management

- (1) Management of stormwater from roads must be in accordance with *NZTA P46 State Highway Stormwater Specification* (New Zealand Transport Agency, NZTA P46: April 2016).
- (2) Subclause (3) applies to any new impermeable road surface that—
 - (a) is greater than 1,000 square metres; and
 - (b) is, or originates from, a road with more than 5,000 vehicles per day at the date of construction.
- (3) Stormwater quality treatment must be designed and maintained to remove from the surface at least 75% of the loads of total suspended solids on an average annual basis.

31 Diversion and discharge of stormwater run-off

- (1) This clause applies to the diversion and discharge of stormwater run-off from new impermeable surfaces within the road corridor or rail corridor.
- (2) The diversion and discharge must not cause or increase scouring or erosion at the point of discharge or downstream.
- (3) The diversion and discharge must not result in or increase the following:
 - (a) flooding of other properties in rainfall events up to the 10% annual exceedance probability; or
 - (b) inundation of buildings on other properties in rainfall events up to the 1% annual exceedance probability.
- (4) The diversion and discharge must not cause or increase nuisance or damage to other properties or infrastructure.
- (5) The diversion and discharge of stormwater run-off must not give rise to any of the following in any surface water or coastal water, after reasonable mixing:
 - (a) the production of conspicuous oil or grease films, scums, or foams, or floatable or suspended materials;
 - (b) a decrease of more than 20% in visual clarity;
 - (c) any emission of objectionable odour;
 - (d) making fresh water unsuitable for consumption by farm animals;
 - (e) more than minor adverse effects on aquatic life.

*Works within coastal marine area***32 Disturbance in coastal marine area**

- (1) Any adverse effects within the coastal marine area, including disturbance of the substrate and any deposit of material not permitted under clause 33, must be remedied or restored as soon as possible, preferably within 7 working days, but no later than 28 working days, after the completion of the works.
- (2) Indigenous vegetation disturbance or clearance within the coastal marine area must not exceed a total of 100 square metres in area.

33 Existing structures, reclamation, or drainage system in coastal marine area

Any change to the area occupied by an existing structure or reclamation or drainage system in the coastal marine area must be as small as practicable and must have no more than minor adverse effects on coastal processes.

34 Dredging within coastal marine area

- (1) The area and volume of material dredged within the coastal marine area must be the minimum amount immediately necessary and sufficient for the works, taking into account future sedimentation rates.

- (2) Dredging must not take place within 100 metres of a previously dredged site, unless at least 2 months has elapsed since the completion of previous dredging at that site.
- (3) Impounded water must be released in a way that minimises potential contamination of receiving waters.
- (4) Best-practice dredging methods must be used in order to minimise sediment remobilisation and dispersal.
- (5) There must be no deepening or widening of the channel beyond the limits of its design profile.
- (6) Dredging must not occur, during īnanga spawning periods, in any area described as an īnanga spawning area in a schedule to a plan or proposed plan.
- (7) In significant wading bird areas identified in a unitary plan or regional plan, dredging—
 - (a) must be timed to avoid bird nesting seasons and minimise adverse effects on birds using roosting areas; and
 - (b) must not damage or disturb areas of salt marsh or seagrass, or nesting or roosting birds.
- (8) Dredged material must not be deposited in the coastal marine area or on land where it could re-enter a water body, unless the deposit of that material is a permitted activity under a unitary plan or regional plan or has a resource consent.

35 Mangrove removal

- (1) Removed mangrove vegetation must be disposed of outside the coastal marine area.
- (2) The removal must be by hand and must not involve the use of vehicles on the foreshore.
- (3) The removal may involve cutting a tree but must not involve removal of the entire tree.
- (4) The removal must not involve any discharge of chemical herbicides in the coastal marine area, other than as provided for in an approved pest management plan prepared in accordance with the Biosecurity Act 1993.
- (5) The removal must—
 - (a) be immediately adjacent to existing lawful structures, infrastructure, or drainage systems; and
 - (b) be solely to enable their operation, maintenance, replacement, or upgrade.
- (6) The removal must not damage or disturb areas of salt marsh, seagrass, or other non-mangrove indigenous estuarine and wetland vegetation.
- (7) The removal must not be in areas where mangroves are serving to mitigate coastal erosion from wave action.

- (8) Any removal in a significant wading bird area, as identified in a unitary plan or regional plan, must be timed to avoid bird nesting seasons and minimise adverse effects on birds using roosting areas.

Monitoring

36 Monitoring

- (1) The agency undertaking the works must keep evidence of compliance with the relevant standards applied by this schedule on the completion of the works.
- (2) The relevant consent authority may request a copy of all or part of the evidence.
- (3) The agency must comply with the request within 10 working days after the date on which they receive it.

Schedule 5 Expert consenting panel

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Purpose and functions of panel

1 Purpose of expert consenting panels

- (1) The purpose of an expert consenting panel appointed under this schedule is to ensure that decisions are made on—
 - (a) 1 or more consent applications for a listed project or a referred project; and
 - (b) 1 or more notices of requirement for designations or to alter a designation for a listed project or a referred project.
- (2) A panel must determine consent applications and notices of requirement in accordance with the provisions of this Act.
- (3) A panel may issue certificates of compliance in relation to a listed project or a referred project.

2 Appointment of panel convener

- (1) The Minister must appoint a current or former (including retired) Environment Judge to be the panel convener for the purposes of this Act for a term determined by the Minister.
- (2) The Minister may at any time remove the panel convener for just cause (within the meaning of clause 9(3)), and clause 9(2) applies with any necessary modifications.
- (3) The panel convener may resign their office at any time by notice in writing to the Minister.
- (4) The panel convener, unless they earlier resign or are removed from office under subclause (2), continues in office until their successor is appointed by the Minister.
- (5) The function of the panel convener is to appoint the members of panels (for a term of office set by the panel convener)—
 - (a) to determine consent applications or notices of requirement for a listed project or a referred project; and
 - (b) to issue certificates of compliance for a listed project or a referred project in accordance with clause 27 of Schedule 6.

3 Membership of panels

- (1) Up to 4 persons may be appointed to be members of a panel set up to determine—
 - (a) applications for resource consents for listed projects or referred projects; and
 - (b) requirements for designations or alterations of designations for listed projects or referred projects.
- (2) The membership of a panel must include—
 - (a) 1 person nominated by the relevant local authorities; and
 - (b) 1 person nominated by the relevant iwi authorities.
- (3) The person nominated by a local authority may, but need not, be an elected member of the local authority.
- (4) If either the relevant local authorities or the relevant iwi authorities nominate more than 1 person for appointment as a panel member, the panel convener must decide which one of those nominees is to be appointed as a panel member.
- (5) If a local authority or an iwi authority does not make a nomination under subclause (2), the panel convener must appoint a person with the appropriate skills and experience to be a member of the panel (*see* clause 7(1)).
- (6) Despite the limit specified on the membership by subclause (1), that number may be exceeded (including by the appointment of more than 1 person nomin-

ated under subclause (2)(a) or subclause (2)(b)), at the discretion of the panel convener, if warranted by, or required to accommodate,—

- (a) the circumstances unique to a particular district or region; or
 - (b) the number of applications that have to be considered in that particular district or region; or
 - (c) the nature and scale of the application under consideration; or
 - (d) matters unique to any relevant Treaty settlement Act; or
 - (e) the collective knowledge and experience needed under clause 7(1).
- (7) This clause is subject to clause 7 (which imposes requirements regarding the qualifications of individual panel members and the collective knowledge and experience of the panel).

4 Chairperson of panel

- (1) The panel convener must appoint a Judge or retired Judge, as one of the members appointed under clause 3, to be the chairperson of a panel.
- (2) However, if the panel convener is a Judge or retired Judge, the panel convener may act as the chairperson of a panel, instead of appointing another person as chairperson of the panel.
- (3) Despite subclauses (1) and (2), the panel convener may, if the circumstances require it, appoint a suitably qualified lawyer with experience in resource management law to be the chairperson of a panel.
- (4) In the event of an equality of votes, the chairperson of the panel has a casting vote.
- (5) A panel has a quorum of 3 members.

5 Conduct of hearings and other procedural matters in context of Treaty settlements

- (1) This section applies if any Treaty settlement Act, iwi participation legislation (within the meaning of section 2(1) of the Resource Management Act 1991), Mana Whakahono a Rohe, or joint management agreement includes procedural arrangements relating to the appointment of a decision-making body for hearings and other procedural matters, such as the following:
 - (a) a requirement for iwi or hapū to participate in the appointment of hearing commissioners to determine resource consent applications or notice of requirement lodged under the Resource Management Act 1991:
 - (b) a requirement that notice be given to any person or specified class of person of any steps in a resource management process:
 - (c) any consultation requirements with iwi or hapū:

- (d) any other matter of procedure for determining resource consent applications or notices of requirement lodged under the Resource Management Act 1991.
- (2) The panel convener or panel must either—
 - (a) comply with the arrangements in the Treaty settlement Act, iwi participation legislation, or agreements referred to in subclause (1) as if they were a local authority; or
 - (b) obtain the agreement of the relevant Treaty settlement entity or iwi authority to adopt a modified arrangement that is consistent with achieving the purpose of this Act, the Treaty settlement Act, iwi participation legislation, and any agreements referred to in subclause (1).
- (3) The relevant Treaty settlement entity or iwi authority may not unreasonably withhold their agreement to a modified arrangement (as described in subclause (2)(b)).
- (4) If the panel convener or panel are unable to obtain agreement under subclause (2)(b) (in circumstances where that agreement is not unreasonably withheld) they must stop processing the application and must return the application to the applicant immediately.

6 Appointment of replacement panel member

The panel convener may, at any time, appoint a new member to replace a member removed under clause 9 or who resigns or dies.

7 Skills and experience of members of panel

- (1) The members of a panel must, collectively, have—
 - (a) the knowledge, skills, and expertise relevant to resource management issues; and
 - (b) the technical expertise relevant to the project; and
 - (c) expertise in tikanga Māori and mātauranga Māori.
- (2) Unless subclause (3) applies, a person must, in order to be eligible for appointment as a panel member, be accredited under section 39A of the Resource Management Act 1991.
- (3) Despite subclause (2), the panel convener may at their discretion appoint as a panel member a person who is not accredited under section 39A of the Resource Management Act 1991 as a panel member if the person satisfies the requirements of subclause (1)(a), (b), or (c).
- (4) A person is not ineligible for appointment as a panel member by reason only that the person is a member of a particular iwi or hapū (including an iwi or hapū that is represented by an iwi authority that must be invited by the panel to comment on the application).

8 Remuneration of panel convener and panel members

- (1) The panel convener and members of the panel are entitled—
 - (a) to receive remuneration not within paragraph (b) for services as the panel convener or a member at a rate and of a kind determined by the Minister in accordance with the fees framework; and
 - (b) in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out their office as the panel convener or as a panel member as if the convener and members were members of a statutory board for the purposes of the Fees and Travelling Allowances Act 1951.
- (2) For the purposes of subclause (1), **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

9 Removal and resignation of panel members

- (1) The panel convener may remove any person appointed to a panel under this schedule for just cause.
- (2) The person may be removed with as little formality and technicality, and as much expedition, as is permitted by—
 - (a) the principles of natural justice; and
 - (b) a proper consideration of the matter.
- (3) In this section, **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of duty (depending on the seriousness of the breach).
- (4) A member of the panel may resign at any time as a member by notice in writing to the panel convener.

Compare: 2004 No 115 ss 40, 41

Procedural and administrative matters

10 Procedures of panel

- (1) A panel must regulate its own procedure as it thinks appropriate, without procedural formality, and in a manner that best promotes the just and timely determination of an application.
- (2) Subclause (1) applies subject to any other provision in this Act relevant to the procedures of a panel.
- (3) A panel may appoint a special adviser to assist the panel with an application in relation to any matters the panel may determine.
- (4) A panel may, at any time, appoint technical advisers, including from a department of State, Crown entity, or relevant local authority, as it thinks appropriate.

- (5) A panel may use or allow any remote access facility that will assist in the determination of an application.
- (6) A panel must keep a full record of its proceedings.

11 Support and advice available to panels

- (1) The EPA must provide advice and secretariat support—
 - (a) to the panel convener to convene panels, appoint the chairperson and members of a panel, and carry out the other functions of the convener under this Act; and
 - (b) to a panel in its role of determining any matters before it under this Act.
- (2) A relevant local authority must assist the panel by providing advice within the knowledge of the authority, if requested by the panel.

12 Liability of members

The panel convener and members appointed to a panel are not liable for anything that the panel convener or a member does or omits to do in good faith in performing or exercising the functions, duties, or powers of the panel.

13 Recovery of costs by EPA

- (1) The EPA may recover from a person the actual and reasonable costs incurred by the EPA in providing assistance to the person prior to a consent application or notice of requirement or an application for a certificate of compliance being lodged with the EPA (whether or not the requirement is subsequently lodged).
- (2) The EPA may recover from a consent applicant or requiring authority the actual and reasonable costs incurred by the EPA or a panel in exercising its functions and powers under this schedule and Schedule 6, including—
 - (a) the costs in respect of support and advice provided to a panel by the EPA; and
 - (b) the costs incurred in gathering information from a local authority (*see* clause 7 of Schedule 6); and
 - (c) the costs charged by a local authority in giving advice (*see* clause 11(2)).
- (3) The EPA must, on request by a consent applicant or requiring authority, provide an estimate of the costs likely to be recoverable under this clause.
- (4) The EPA must, when recovering costs under this clause, have regard to the following criteria:
 - (a) the sole purpose is to recover the reasonable costs incurred in respect of the matter to which the costs relate;
 - (b) a consent applicant or requiring authority should be required to pay for costs only to the extent that the benefit of the actions of the EPA and the panel to which the costs relate is obtained by the applicant or requiring authority, as distinct from the community as a whole;

- (c) the extent to which an activity undertaken by a consent applicant or requiring authority reduces the cost to the EPA of performing and exercising its functions, duties, and powers.
- (5) A person may object under section 357B of the Resource Management Act 1991 to a requirement to pay costs under any of subclauses (1) to (3), and that Act applies accordingly and with any necessary modifications.
- (6) Section 149ZF of the Resource Management Act 1991 also applies, with any necessary modifications, to the recovery of costs under this Act.

14 Recovery of costs by Minister and local authorities

- (1) The Minister may recover from a consent applicant or requiring authority the actual and reasonable costs incurred in relation to a panel in performing or exercising its functions, powers, and duties under this Act.
- (2) The Minister must, on request by a consent applicant or requiring authority, provide an estimate of the costs likely to be recoverable under this clause.
- (3) A local authority that provides assistance on request under clause 11(2) may recover from the EPA the actual and reasonable costs incurred in providing that assistance.
- (4) The criteria set out in clause 13(4) apply to the Minister and to a local authority in recovering costs under this clause.

15 Delegation of cost-recovery function by Minister

- (1) The Minister may, in writing, delegate to the EPA the Minister's functions, powers, and duties under clause 14.
- (2) A delegation under this clause—
 - (a) is revocable at will, but the revocation does not take effect until it is communicated in writing to the EPA; and
 - (b) does not prevent the Minister from performing or exercising the functions, duties, or powers concerned.

16 Application of Local Government Official Information and Meetings Act 1987

Part 1 and sections 48 and 53 of the Local Government Official Information and Meetings Act 1987 apply, with any necessary modifications, as if a panel were a board of inquiry given authority to conduct a hearing under section 149J of the Resource Management Act 1991.

Schedule 6

Applications and decision making for listed projects and referred projects

ss 12, 13, 15, 24

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1 Scope of this schedule

This schedule sets out—

- (a) the requirements to be met when lodging the following for a listed project or a referred project:
 - (i) a consent application;
 - (ii) a notice of requirement for a designation or to alter a designation; and
- (b) the requirements a panel must comply with when determining a consent application or notice of requirement; and
- (c) the appeal rights relating to a panel's decisions on consent applications and notices of requirement.

Part 1

Applications for resource consents and notices of requirement for designations

Consent applications and notices of requirement

2 Lodging consent applications and notices of requirement

- (1) A person authorised in accordance with section 15 may, in respect of a listed project or a referred project, apply for a resource consent that would otherwise be applied for under section 88 of the Resource Management Act 1991.
- (2) A requiring authority authorised in accordance with section 15 may, in respect of a listed project or a referred project, lodge—
 - (a) a notice of requirement for a designation;
 - (b) a notice of requirement to alter a designation.
- (3) A consent application or a notice of requirement must—
 - (a) be lodged with the EPA; and

- (b) be made in the approved form and manner; and
- (c) comply with any restrictions or obligations, such as any information requirements included in—
 - (i) Schedule 2, in the case of a listed project;
 - (ii) Schedule 3 and the referral order, in the case of a referred project.
- (4) Consent applications must not be lodged with the EPA nor determined by a panel if they relate to an activity that—
 - (a) is classified as a prohibited activity—
 - (i) in a relevant plan or proposed plan; or
 - (ii) in regulations made under the Resource Management Act 1991 (including any national environmental standard); and
 - (b) is to occur within a customary marine title area, unless agreed in writing with the appropriate customary marine title group.
- (5) The EPA must approve an application form for the purposes of this clause and ensure that it is made available on an Internet site maintained by the EPA.
- (6) The provisions of this schedule apply to a notice of requirement to alter a designation as if it were a notice of requirement for a new designation.

Role of EPA in consenting process

3 EPA to refer consent applications and notices of requirement to panel

- (1) Within 5 working days of receiving a consent application or notice of requirement, the EPA must determine whether the application or notice—
 - (a) relates solely to 1 or more of the listed projects or referred projects; and
 - (b) does not breach clause 2(3)(c) or (4); and
 - (c) contains all the information required under clauses 9 to 13.
- (2) If the EPA is satisfied that a consent application or notice of requirement complies with the matters listed in subclause (1), the EPA must provide the application or notice to the panel appointed to determine that application or notice.

4 When EPA must return consent applications or notices of requirement

- (1) If the EPA determines that a consent application or notice of requirement does not comply with the requirements of clause 3(1), it must return the application or notice immediately to the person who lodged it, with written reasons for the EPA's determination.
- (2) If a consent application or notice of requirement is lodged again with the EPA after the EPA has returned the application or notice to the person who lodged it,—
 - (a) that application or notice must be treated as a new application or notice; and

- (b) the time period specified in clause 3(1) begins again for the EPA.

5 Withdrawal of consent application or notice of requirement

- (1) At any time before a determination is given on a consent application or notice of requirement lodged under clause 2, the consent applicant or requiring authority may withdraw that application or notice by giving written notice—
 - (a) to the EPA; and
 - (b) in relation to a consent application for a coastal permit to undertake an aquaculture activity, to the Director-General of the Ministry for Primary Industries; and
 - (c) if the withdrawal occurs after persons or groups have been invited to provide written comments under clause 17(2), to those persons or groups.
- (2) As soon as practicable after receiving a notice under subclause (1)(a), the EPA must advise the panel that the relevant consent application or notice of requirement has been withdrawn.

6 When processing of consent applications or notices of requirement may be suspended

- (1) Processing of a consent application or notice of requirement lodged with the EPA may be suspended in the following circumstances:
 - (a) by the EPA under subclause (2) (for non-payment of costs recoverable by the EPA):
 - (b) by the panel—
 - (i) under clause 22 (Minister may direct delay):
 - (ii) under clause 23 (request for suspension of processing by consent applicant or requiring authority).
- (2) If a consent applicant or requiring authority has not paid the costs recoverable by the EPA, the EPA may suspend the processing of the consent application or notice of requirement and must give notice of the suspension—
 - (a) to the applicant or requiring authority; and
 - (b) if the suspension occurs after persons or groups have been invited to provide comments under clause 17(2), to those persons or groups.
- (3) If the applicant or requiring authority subsequently pays the costs recoverable by the EPA, the EPA must resume processing the consent application or notice of requirement and must give notice of the resumption to the persons notified of the suspension.

7 Information sharing between EPA and relevant local authorities

- (1) This clause applies if the EPA considers that information held by a local authority in respect of a listed project or a referred project is necessary and

- relevant to a current or an anticipated consent application or notice of requirement.
- (2) The EPA, at any time before or after it receives a consent application or notice of requirement under clause 2, may request the relevant local authority to provide the information and set a date by which the information must be made available.
 - (3) The local authority concerned must,—
 - (a) within the time specified by the EPA, provide the information requested; or
 - (b) advise the EPA that the information will be available, but not within the time specified by the EPA; or
 - (c) advise the EPA that the local authority does not hold the information and, if the local authority knows where the information is held, advise the EPA accordingly.
 - (4) If a local authority is unable to provide the information requested under subclause (2) within the time specified under subclause (3)(a), the local authority must provide the information as soon as practicable.
 - (5) The local authority is entitled to set, and recover from the EPA, a reasonable charge for the supply of information requested by the EPA under this clause.

8 EPA powers to make certain decisions

- (1) The EPA may make administrative decisions that are incidental or ancillary to the conduct of the panel.
- (2) The EPA must publish, free of charge to the public on an Internet site it maintains, every written notice or other document that this Act requires to be—
 - (a) received by the EPA or a panel from any person; or
 - (b) sent by the EPA or a panel to any person.
- (3) In performing and exercising its functions, duties, and powers under this schedule, the EPA must, as far as is reasonably practicable, minimise costs and avoid delay.

Information requirements for consent applications for listed projects and referred projects

9 Information required in consent applications

- (1) Every consent application for a listed or a referred project made under clause 2 must include the following information:
 - (a) a description of the proposed activity; and
 - (b) a description and map of the site at which the activity is to occur; and
 - (c) confirmation that the consent application complies with clause 3(1); and

- (d) the full name and address of—
 - (i) each owner of the site and of land adjacent to the site; and
 - (ii) each occupier of the site and of land adjacent to the site who, after reasonable inquiry, is able to be identified by the consent applicant; and
 - (e) a description of any other activities that are part of the proposal to which the consent application relates; and
 - (f) a description of any other resource consents, notices of requirement for designations, or alterations to designations required for the proposal to which the consent application relates; and
 - (g) an assessment of the activity against—
 - (i) Part 2 of the Resource Management Act 1991; and
 - (ii) the purpose of this Act; and
 - (iii) the matters set out in section 19 (whether project helps to achieve purpose of Act); and
 - (h) an assessment of the activity against any relevant provisions in any of the documents listed in subclause (2); and
 - (i) information about any Treaty settlements that apply in the project area, including—
 - (i) the identification of the relevant provisions in those Treaty settlements; and
 - (ii) a summary of any redress provided by those settlements that affects natural and physical resources relevant to the project or project area; and
 - (j) the conditions that the applicant proposes for the resource consent.
- (2) The documents referred to in subclause (1)(h) are the following:
- (a) a national environmental standard:
 - (b) other regulations made under the Resource Management Act 1991:
 - (c) a national policy statement:
 - (d) a New Zealand coastal policy statement:
 - (e) a regional policy statement or proposed regional policy statement:
 - (f) a plan or proposed plan:
 - (g) a planning document recognised by a relevant iwi authority and lodged with a local authority.
- (3) An assessment under subclause (1)(h) must include an assessment of the activity against—
- (a) any relevant objectives, policies, or rules in a document listed in subclause (2); and

- (b) any requirement, condition, or permission in any rules in any of those documents; and
 - (c) any other requirements in any of those documents.
- (4) A consent application must include an assessment of the activity's effects on the environment that—
 - (a) includes the information required by clause 10; and
 - (b) covers the matters specified in clause 11.
- (5) A consent application must also include—
 - (a) a cultural impact assessment prepared by or on behalf of the relevant iwi authority; or
 - (b) if a cultural impact assessment is not provided, a statement of any reasons given by the relevant iwi authority for not providing that assessment.
- (6) A consent application must also include the following information:
 - (a) if a permitted activity is part of the proposal to which the consent application relates, a description that demonstrates that the activity complies with the requirements, conditions, and permissions for the permitted activity (so that a resource consent is not required for that activity under section 87A(1) of the Resource Management Act 1991); and
 - (b) if the activity is to occur in an area that is within the scope of a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, an assessment of the activity against any resource management matters set out in that planning document (for the purposes of clause 30(3)); and
 - (c) in the case of a referred project, all the additional information required by the relevant referral order.

10 Information required to assess environmental effects

- (1) An assessment of an activity's effects on the environment under clause 9(4) must include the following information:
 - (a) an assessment of the actual or potential effects on the environment:
 - (b) if the activity includes the use of hazardous installations, an assessment of any risks to the environment that are likely to arise from such use:
 - (c) if the activity includes the discharge of any contaminant, a description of—
 - (i) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
 - (ii) any possible alternative methods of discharge, including discharge into any other receiving environment:

- (d) a description of the mitigation measures (including safeguards and contingency plans where relevant) to be undertaken to help prevent or reduce the actual or potential effect of the activity:
 - (e) identification of persons who may be affected by the activity and any response to the views of any persons consulted, including the views of iwi or hapū that have been consulted in relation to the proposal:
 - (f) if iwi or hapū elect not to respond when consulted on the proposal, any reasons that they have specified for that decision:
 - (g) if the scale and significance of the activity's effects are such that monitoring is required, a description of how the effects will be monitored and by whom, if the activity is approved:
 - (h) an assessment of any effects of the activity on the exercise of a protected customary right.
- (2) Subclause (1)(e) does not oblige a consent applicant to consult any person, although a failure by the applicant to consult, or to consult adequately, may be taken into account by a panel in determining a consent application.
- (3) A consent application need not include any additional information specified in a relevant policy statement or plan that would be required in an assessment of environmental effects under clause 6(2) or 7(2) of Schedule 4 of the Resource Management Act 1991.

11 Matters to be covered in assessment of environmental effects

The assessment of an activity's effects on the environment under clause 9(4) must cover the following matters:

- (a) any effect on the people in the neighbourhood and, if relevant, the wider community, including any social, economic, or cultural effects:
- (b) any physical effect on the locality, including landscape and visual effects:
- (c) any effect on ecosystems, including effects on plants or animals and physical disturbance of habitats in the vicinity:
- (d) any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural value, or other special value, for present or future generations:
- (e) any discharge of contaminants into the environment and options for the treatment and disposal of contaminants:
- (f) the unreasonable emission of noise:
- (g) any risk to the neighbourhood, the wider community, or the environment through natural hazards or hazardous installations.

12 Information required in applications for subdivision or reclamation

Information required for subdivision consents

- (1) In addition to the information required in a consent application under clause 9, a consent application for a subdivision in a project area must include information that adequately defines the following:
 - (a) the position of all new boundaries; and
 - (b) the areas of all new allotments, unless the subdivision involves a cross lease, company lease, or unit plan; and
 - (c) the locations and areas of new reserves to be created, including any esplanade reserves and esplanade strips; and
 - (d) the locations and areas of existing esplanade reserves, esplanade strips, and access strips; and
 - (e) the locations and areas of any part of the bed of a river or lake to be vested in a territorial authority under section 237A of the Resource Management Act 1991; and
 - (f) the locations and areas of any land within the coastal marine area that is to become part of the common marine and coastal area under section 237A of the Resource Management Act 1991; and
 - (g) the locations and areas of land to be set aside as new roads.

Information required for reclamation consents

- (2) A consent application for a reclamation must include, in addition to the information required for a consent application by clause 9, information to show the area to be reclaimed, including the following:
 - (a) the location of the area to be reclaimed;
 - (b) if practicable, the position of all new boundaries;
 - (c) any part of the reclaimed area to be set aside as an esplanade reserve or esplanade strip.

Information requirements in notices of requirement for listed projects and referred projects

13 Information required in notices of requirement

- (1) A notice of requirement for a listed project or in a referred project must include the following information:
 - (a) a description of the site to which the notice of requirement applies; and
 - (b) information on the effects of the proposed project or work on the environment, together with a description of how any adverse effects will be mitigated; and
 - (c) confirmation that the notice of requirement complies with clause 3(1); and

- (d) an assessment of the project or work against—
 - (i) Part 2 of the Resource Management Act 1991 and the purpose of this Act; and
 - (ii) any relevant provisions in any of the documents listed in sub-clause (4); and
 - (e) information about any Treaty settlements that apply in the project area, including—
 - (i) the identification of the relevant provisions in those Treaty settlements; and
 - (ii) a summary of any redress provided by those settlements that affects natural and physical resources relevant to the project or project area; and
 - (f) the full name and address of —
 - (i) each owner of the land to which the notice of requirement relates and of the land adjacent to that land; and
 - (ii) each person who, after reasonable inquiry, is known by the requiring authority to be an occupier of the land to which the notice relates and of the land adjacent to that land; and
 - (g) an assessment of whether the project or work and the designation sought are reasonably necessary for achieving the objectives of the requiring authority; and
 - (h) any consideration of alternative sites, routes, or methods of undertaking the project or work; and
 - (i) a list of the resource consents needed for the project or work and whether these have been applied for; and
 - (j) a description of any consultation undertaken with parties likely to be affected by the project or work and the designation; and
 - (k) a cultural impact assessment prepared by or on behalf of the relevant iwi authority; and
 - (l) if a cultural assessment is not provided, a statement of the reasons (if any) given by the relevant iwi authority as to why an assessment is not being provided; and
 - (m) any conditions that the requiring authority proposes for the designation.
- (2) In the case of a referred project, a notice of requirement must also include all the additional information required by the relevant referral order.
- (3) The information required by this clause must be provided in sufficient detail to correspond to the scale and significance of the effects that the activity may have on the environment, taking into account any proposal by the requiring authority to manage the adverse effects of the activity through conditions, including conditions requiring the preparation of a management plan.

- (4) The documents referred to in subclause (1)(d)(ii) are the following:
- (a) a national policy statement:
 - (b) a New Zealand coastal policy statement:
 - (c) a regional policy statement or proposed regional policy statement:
 - (d) a plan or proposed plan:
 - (e) a planning document recognised by a relevant iwi authority and lodged with a local authority.

General requirement

14 Scope of information required

- (1) The information required by clauses 9 to 13 must be provided in sufficient detail to correspond to the scale and significance of the effects that the activity is anticipated to have on the environment.
- (2) Subclause (1) applies, taking into account any proposal by a consent applicant or requiring authority to manage the adverse effects of an activity through conditions, including conditions requiring the preparation of a management plan.

Applications relating to activities in coastal marine area

15 Applications for coastal permits

If a consent application is made under this schedule for a coastal permit to undertake an aquaculture activity, or includes such an application, a copy of the application must be included for the Director-General of the Ministry for Primary Industries.

16 Applications relating to land in coastal marine area

- (1) If a consent application is made to subdivide land that, in whole or in part, is in the coastal marine area, a panel must decide the application as if the whole of the land to be subdivided were part of the abutting district.
- (2) Subclause (3) applies if a consent application is made for an activity that the applicant intends to undertake once the proposed location of the activity has been reclaimed, but on the date on which the application is lodged, the proposed location of the new activity is still within the coastal marine area.
- (3) The panel may decide the application as if—
- (a) the application related to an activity within the abutting district; and
 - (b) the district plan applying in the abutting district applied to the proposed location of the activity.

*Processing of consent applications and notices of requirement***17 Public and limited notification not permitted**

- (1) A panel must not give public or limited notification of a consent application or notice of requirement.
- (2) However, not later than 5 working days after the EPA has determined that the application meets the requirements of clause 3 and has referred the consent application or notice of requirement to a panel under that clause, the panel must invite written comments on the application or notice of requirement before it from the persons or groups listed in subclauses (4) to (8).
- (3) The requirements for a notice given under this clause are in clause 18.

Persons that must or may be invited to comment on listed project

- (4) For a listed project, a panel must invite comments on a consent application or notice of requirement before it from the following:
 - (a) the relevant local authorities; and
 - (b) the relevant iwi authorities; and
 - (c) a Treaty settlement entity relevant to the listed project, including an entity that has an interest under a Treaty settlement in an area where a listed project is to occur; and
 - (d) if a consent application relates to an activity in a customary marine title area, the relevant customary marine title group; and
 - (e) if a consent application relates to an activity in a protected customary rights area, the relevant protected customary rights group; and
 - (f) the owners of the land on which the project is to be undertaken and the land adjacent to that land; and
 - (g) the occupiers of the land on which the project is to be undertaken and the land adjacent to that land unless, after reasonable inquiry, an occupier cannot be identified; and
 - (h) Ministers of the Crown responsible for the following portfolios:
 - (i) Arts, Culture, and Heritage; and
 - (ii) Climate Change; and
 - (iii) Conservation; and
 - (iv) Defence; and
 - (v) Education; and
 - (vi) Housing; and
 - (vii) Infrastructure; and
 - (viii) Land Information; and
 - (ix) Local Government; and

- (x) Māori Crown Relations: Te Arawhiti; and
 - (xi) Transport; and
 - (xii) Treaty of Waitangi negotiations; and
 - (xiii) Urban Development; and
 - (i) the Director-General of Conservation; and
 - (j) each of the organisations listed in subclause (6)(k) to (u); and
 - (k) any requiring authority that has a designation on land on which the project is to be undertaken, or on land that is adjacent to the land on which the project is to be undertaken.
- (5) A panel may invite written comments from any other person the panel considers appropriate.

Persons who must or may be invited to comment on referred project

- (6) For a referred project, a panel must invite comments on a consent application or notice of requirement before it from the following:
- (a) the relevant local authorities; and
 - (b) the relevant iwi authorities, including those identified in the report obtained under section 17(1); and
 - (c) a Treaty settlement entity relevant to the referred project, including—
 - (i) an entity that has an interest under a Treaty settlement in an area where a referred project is to occur; and
 - (ii) an entity identified in the report obtained under section 17(1); and
 - (d) if a consent application relates to an activity in a customary marine title area, the relevant customary marine title group (including any relevant customary marine title group identified in the report obtained under section 17(1)); and
 - (e) if a consent application relates to an activity in a protected customary rights area, the relevant protected customary rights group (including any relevant protected customary rights group identified in the report obtained under section 17(1)); and
 - (f) any applicant group under the Marine and Coastal Area (Takutai Moana) Act 2011 identified in the report obtained under section 17(1); and
 - (g) the owners of the land on which the project is to be undertaken and the land adjacent to that land; and
 - (h) the occupiers of the land on which the project is to be undertaken and the land adjacent to that land unless, after reasonable inquiry, an occupier cannot be identified; and
 - (i) Ministers of the Crown responsible for the portfolios listed in subclause (4)(h); and

- (j) the Director-General of Conservation; and
 - (k) Business New Zealand Incorporated; and
 - (l) Employers' and Manufacturers' Association (Northern) Incorporated; and
 - (m) Environmental Defence Society Incorporated; and
 - (n) Generation Zero Incorporated; and
 - (o) Greenpeace of New Zealand Incorporated; and
 - (p) Heritage New Zealand Pouhere Taonga; and
 - (q) Infrastructure New Zealand Incorporated; and
 - (r) the New Zealand Fish and Game Council; and
 - (s) the New Zealand Infrastructure Commission/Te Waihanga; and
 - (t) Property Council of New Zealand Incorporated; and
 - (u) Royal Forest & Bird Protection Society of New Zealand Incorporated; and
 - (v) any requiring authority that has a designation on land on which the project is to be undertaken, or on land that is adjacent to that land.
- (7) A panel must also invite comments on a referred project from any person listed in a referral order (*see* section 24(2)(e)).
- (8) A panel may invite comments from any other person the panel considers appropriate.
- (9) If a panel has not been appointed by the date provided for under subclause (2), the panel convener must, without undue delay, appoint a panel which must, without undue delay, comply with the requirements of that clause.

18 General provisions relating to invitations given under clause 17(2)

- (1) A panel must specify in its invitation that written comments on a consent application or notice of requirement must be received by the EPA on behalf of the panel on a specified date (which must be 10 working days after the date on which the invitation is given under clause 17(2)).
- (2) The invitation must include notice of the consent application or notice of requirement, with details as to how to access the consent application or notice of requirement.
- (3) An iwi authority invited to provide comments under clause 17(2) may—
- (a) share the consent application or notice of requirement with hapū whose rohe is in the project area proposed in the application or notice; and
 - (b) choose to include comments from that hapū with the comments provided to the panel by the iwi authority.
- (4) Written comments may be returned to the EPA by electronic means.

- (5) The EPA must forward copies of any comments received under this clause to the consent applicant or requiring authority.
- (6) The panel is not required to consider any comments received after the time specified in the invitation, but may do so, in its discretion, as long as the panel has not issued its decision.
- (7) There is no right for any person to seek a waiver of the time limit for written comments to be received by the EPA.

19 Response on comments provided under clause 18

The consent applicant or requiring authority, if it makes a response to comments provided under clause 18 on a consent application or notice of requirement, must provide that response to the EPA not later than 5 working days after the date by which those comments provided under clause 18 had to be received by the EPA in accordance with that clause.

20 Hearing not required

There is no requirement for a panel to hold a hearing in respect of a consent application or notice of requirement and no person has a right to be heard by a panel.

21 Procedure if hearing is held

Who may appear and be heard

- (1) If, in its discretion, a panel considers it is appropriate to hold a hearing, it may hear from—
 - (a) the applicant; and
 - (b) any person commissioned by the panel to write a report on the relevant consent application or notice of requirement; and
 - (c) any person or group that provided comments in response to an invitation given under clause 17(2).
- (2) If a person or group that provided comments is heard, a panel must give the consent applicant or requiring authority the opportunity to be heard.

Notices and timing requirements

- (3) If a panel decides to hold a hearing, the EPA, at the direction of the panel, must issue a notice of hearing to persons or groups referred to in subclause (1), fixing the date, time, and place of the hearing.
- (4) The notice must give no less than 5 working days' notice of the hearing, and must advise the persons notified—
 - (a) that they may appear and be heard, be represented, and call evidence in relation to the consent application or notice of requirement; and
 - (b) that they must, within 3 working days after the notice of hearing is given, advise the EPA whether they will attend the hearing.

- (5) If a person or group advises a panel under subclause (4)(b) that they will attend a hearing but fails to appear, the panel may proceed with the hearing.
- (6) A panel must complete any hearing within the time frame allowed under clause 37(2) for the panel to issue its final decision.

Other provisions as to conduct of hearing

- (7) If a hearing is held, a panel must—
 - (a) avoid unnecessary formality; and
 - (b) recognise tikanga Māori where appropriate; and
 - (c) receive evidence, written or spoken, in Māori (and Te Ture mō Te Reo Māori 2016/the Māori Language Act 2016 applies accordingly); and
 - (d) not permit any person other than the chairperson or members of a panel to question a party or witness; but
 - (e) if the chairperson of a panel gives leave, permit cross-examination.
- (8) Section 4 of the Commissions of Inquiry Act 1908 (which gives powers to maintain order) applies to any hearing conducted by a panel under this Act.
- (9) A panel may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with a consent application or notice of requirement, whether or not it would be admissible in a court of law.
- (10) A panel may, in its discretion, make an order that prohibits or restricts the publication or other means of communication of information supplied to the panel or obtained by it in the course of a hearing.
- (11) Subclause (10) applies whether or not the information is material to determining a consent application or notice of requirement if there would be good reason to withhold the information under section 6 or 7 of the Local Government Official Information and Meetings Act 1987.
- (12) A panel may, if it considers that there is likely to be excessive repetition, limit the circumstances in which persons with the same interests may speak or call evidence.

Remote access hearing

- (13) A panel may direct that a hearing or part of a hearing be held using 1 or more remote access facilities—
 - (a) on the initiative of the panel; or
 - (b) at the request of the applicant or requiring authority; or
 - (c) at the request of a person or a representative of a group of persons referred to in subclause (1).
- (14) If a hearing is held using a remote access facility, a panel must,—

- (a) if it is reasonably practicable to do so, enable access to the hearing by making it available live and free of charge to the public, for example, on an Internet site; or
 - (b) as soon as practicable after the hearing closes, make available, free of charge on an Internet site,—
 - (i) an audio or a video recording of the hearing; or
 - (ii) a written transcript of the hearing.
- (15) Subclause (14) is subject to section 48 of the Local Government Official Information and Meetings Act 1987 (right of local authorities to exclude public).

22 Minister may direct delay in processing consent application or notice of requirement

- (1) The Minister may, at any time after a consent application or notice of requirement has been provided to a panel, give a written direction, with reasons, to the EPA that the panel must suspend processing, or further processing, of the application or notice.
- (2) If the EPA receives a direction from the Minister under subclause (1), the EPA must, within 5 working days of receiving the direction, give written notice of it, and the Minister's reasons, to—
 - (a) the members of the panel; and
 - (b) the relevant local authorities; and
 - (c) the applicant or requiring authority; and
 - (d) any person or group invited to provide comments under clause 17(2).
- (3) The Minister may exercise the discretion under subclause (1) if the Minister considers that—
 - (a) resource consents, or further resource consents, are required in respect of the proposal to which the consent application or notice of requirement relates; and
 - (b) the nature of the proposal will be better understood if a consent application is made for those resource consents before the panel proceeds further.
- (4) The Minister may, at any time, by notice in writing with reasons, withdraw the direction given to the EPA under subclause (1).
- (5) A copy of the Minister's direction given under subclause (1) must be given to the persons and groups listed in subclause (2).
- (6) Subclause (7) applies if the Minister's direction given under subclause (1) is withdrawn under subclause (4) before any consent applications for further resource consents are lodged.

- (7) If this subclause applies, the panel must resume processing the original consent application or notice of requirement from the date on which the Minister's direction is withdrawn.
- (8) Subclause (9) applies if consent applications for further resource consents are lodged with the EPA before the Minister's direction given under subclause (1) is withdrawn.
- (9) If this subclause applies, the panel must —
 - (a) resume processing the original consent application or notice of requirement; and
 - (b) observe the time frames set out in this schedule that apply to the further consent applications, instead of the time frames that would have applied to the original consent application or notice of requirement.

23 Consent applicant or requiring authority may request suspension, etc, of processing

- (1) A consent applicant or a requiring authority may make a written request to the EPA that a panel suspend processing a consent application or notice of requirement.
- (2) A request may be made only in the period between—
 - (a) the time when the EPA provides the consent application or notice of requirement to a panel under clause 3; and
 - (b) the time when a panel issues its final decision on an application or notice under clause 37.
- (3) The EPA must provide a copy of the request received under subclause (1)—
 - (a) to the relevant local authority; and
 - (b) to any person or group invited to provide comments under clause 17(2).
- (4) A panel, at its discretion,—
 - (a) may suspend the processing of a consent application or notice of requirement when a request is made under subclause (1); but
 - (b) if it does grant a suspension, must give the consent applicant or requiring authority written advice of the date on and after which the panel ceased to process the application or notice.
- (5) Despite subclause (4), a panel must grant a request to suspend the processing of a consent application that relates to an aquaculture activity, if the consent applicant advises that the suspension is necessary for the purpose of negotiating a pre-request aquaculture agreement under section 186ZM of the Fisheries Act 1996.
- (6) A consent applicant or requiring authority granted a suspension under subclause (4) or (5) may request in writing that the processing of the application or notice be resumed.

- (7) If a panel receives a request under subclause (6), it must, as soon as is reasonably practicable, resume processing the consent application or notice of requirement.
- (8) If a panel does not receive a request under subclause (6), it may decide under clause 24(2)(b) to continue to process the consent application or notice of requirement.
- (9) If processing of a consent application or notice of requirement is resumed or continued under subclause (7) or (8), the EPA must give written notice of that, specifying the date on which processing was resumed or continued,—
 - (a) to the consent applicant or requiring authority; and
 - (b) to the relevant local authority; and
 - (c) to any person or group invited to provide comments under clause 17(2).

24 Return of consent application or notice of requirement

- (1) This clause applies if 50 working days have elapsed since the processing of a consent application or notice of requirement was suspended under clause 23(4)(a) or (5).
- (2) A panel must decide whether—
 - (a) to return the consent application or notice of requirement to the applicant or requiring authority; or
 - (b) to continue to process the application or notice.
- (3) The decision of a panel under this clause must be notified in writing to—
 - (a) the applicant or requiring authority; and
 - (b) the relevant local authority; and
 - (c) in relation to a consent application for a coastal permit to undertake an aquaculture activity, the Director-General of the Ministry for Primary Industries; and
 - (d) any person or group invited to provide comments under clause 17(2).
- (4) If a panel decides to return the consent application or notice of requirement, it must be returned together with written reasons for its return.
- (5) If a consent application or notice of requirement that has been returned is lodged again with the EPA, the application or notice must be treated as a new application or notice.
- (6) If a consent application or notice of requirement is suspended more than once, the total number of days over which processing may be suspended must not be more than 50 working days.

25 Further information

- (1) At any time before a panel issues its final decision on a consent application or notice of requirement under clause 37, the panel may direct the EPA—

- (a) to request further information on a proposal from any of the following:
 - (i) a consent applicant or requiring authority;
 - (ii) a relevant local authority;
 - (iii) any person or group invited to provide comments under clause 17(2):
 - (b) to prepare or commission a report (including a report from a relevant local authority) on an issue relevant to the consent application or notice of requirement.
- (2) If further information is requested under subclause (1)(a), the person or body requested to provide the information must—
- (a) provide electronic copies of the information or report requested; or
 - (b) advise the EPA, with reasons, that it declines to provide the information or report requested.
- (3) Subclause (2) must be complied with by the date directed by the panel, which must not be later than 10 working days after the direction is given.
- (4) As soon as is reasonably practicable after the date on which any information or report is received by the EPA from any person or body requested or commissioned under subclause (1)(a) or (b), the EPA must provide electronic copies of the information or report—
- (a) to the members of the panel; and
 - (b) to the consent applicant or requiring authority; and
 - (c) to every person or group that provided comments under clause 17(2).
- (5) The persons and groups that receive the information or report under subclause (4)(c) may not make further comments unless requested by the panel.
- (6) If information requested under subclause (1) is not received by the panel in accordance with subclauses (2) and (3), the panel must proceed as if the request for further information had been declined.

Schedule 6 clause 25(2): amended, on 30 November 2022, by section 24 of the Statutes Amendment Act 2022 (2022 No 75).

26 Further requirements in relation to aquaculture

Section 107F of the Resource Management Act 1991 applies to a panel with the necessary modifications, including the following:

- (a) the reference to a consent authority must be read as a reference to a panel;
- (b) the references to submissions must be read as references to comments provided under clause 18;
- (c) the reference to section 88(3A) of the Resource Management Act 1991 must be read as a reference to clause 4(1) of this schedule:

- (d) the references to sections 41C, 42A, 92, and 149 of the Resource Management Act 1991 must be read as references to clause 25 of this schedule.

Certificate of compliance

27 Application for certificate of compliance

- (1) A consent applicant or requiring authority may lodge an application for a certificate of compliance with the EPA, but only if the application is lodged at the same time as, and as part of, a consent application or notice of requirement.
- (2) A panel must consider the application and may issue a certificate of compliance by applying section 139 of the Resource Management Act 1991 with the necessary modifications.
- (3) Nothing in this schedule prevents a consent applicant or requiring authority from applying to a local authority under the Resource Management Act 1991 for a certificate of compliance in relation to any activity to which this Act applies.

Resource Management Act 1991 processes may be used for listed projects and referred projects

28 Use of Resource Management Act 1991 processes for listed projects and referred projects

- (1) This clause applies to a person who is authorised under this Act to apply to a panel for a resource consent or designation for—
- (a) a listed project; or
- (b) a referred project.
- (2) This Act does not prevent that person from lodging, in relation to a listed project or a referred project,—
- (a) an application for a resource consent under the Resource Management Act 1991; or
- (b) a notice of requirement under the Resource Management Act 1991.
- (3) However, a person who has lodged an application for a resource consent or a notice of requirement under the Resource Management Act 1991 in relation to a listed project or a referred project must withdraw that application or notice of requirement before lodging a consent application or notice of requirement under this Act for the same, or substantially the same, activity.

Part 2

Determination of consent applications and notices of requirement by panel

Resource consents for listed projects

29 Consideration of consent applications for listed projects

- (1) When considering a consent application in relation to the conditions to be imposed on a listed project, and any comments received in response to an invitation given under clause 17(2), a panel must, subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act, have regard to—
 - (a) any actual and potential effects on the environment of allowing the activity; and
 - (b) any measure proposed, or agreed to, by the consent applicant to ensure positive effects on the environment to offset or compensate for any adverse effects that will or may result from allowing the activity; and
 - (c) any relevant provisions of any of the documents listed in subclause (2); and
 - (d) any other matter the panel considers relevant and reasonably necessary to determine the application.
- (2) The documents referred to in subclause (1)(c) are the following:
 - (a) a national environmental standard;
 - (b) other regulations made under the Resource Management Act 1991;
 - (c) a national policy statement;
 - (d) a New Zealand coastal policy statement;
 - (e) a regional policy statement or proposed regional policy statement;
 - (f) a plan or proposed plan;
 - (g) a planning document recognised by a relevant iwi authority and lodged with a local authority.
- (3) In respect of the matters listed under subclause (1), a panel must apply section 6 of this Act (Treaty of Waitangi) instead of section 8 of the Resource Management Act 1991 (Treaty of Waitangi).
- (4) If a Treaty settlement imposes an obligation on a local authority or other decision maker when determining an application for a resource consent, a panel must comply with that obligation as if it were the local authority or other decision maker (*see example*).

Compliance with obligations imposed by Treaty settlement

Under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, the consent authority must, when making decisions relating to the river, have particular regard to the vision and strategy set out in that Act.

A panel determining a relevant consent application or notice of requirement under this Act must comply with that obligation in addition to the obligations imposed by this Act.

- (5) Subclause (4) is subject to clause 5 of Schedule 5 (conduct of hearings and other procedural matters in context of Treaty settlements).

30 Further matters relevant to consent applications for listed projects

- (1) This clause applies only to consent applications for listed projects.
- (2) When forming an opinion for the purposes of clause 29(1)(a), a panel may disregard an adverse effect of the activity on the environment if a national environmental standard or relevant plan permits an activity with that effect.
- (3) If a consent application relates to an activity in an area where a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011 applies, a panel must have regard to any resource management matters in that document until all obligations under section 93 of that Act have been met by the relevant local authority.
- (4) When considering a consent application or comments received under clause 17(2), a panel must not have regard to trade competition or the effect of trade competition (within the meaning of Part 11A of the Resource Management Act 1991).
- (5) When considering a consent application for a controlled activity or a restricted discretionary activity, the following rules apply:
- (a) a panel must grant consent unless any of the grounds described in clause 34 for declining an application apply; and
- (b) the power of the panel to impose conditions is restricted by the matters over which control or discretion is reserved in a plan or proposed plan, national environmental standard, or other regulations made under the Resource Management Act 1991.
- (6) When considering a consent application for a discretionary activity, a panel must grant consent unless any of the grounds described in clause 34 for declining an application apply.
- (7) When considering a consent application for a non-complying activity,—
- (a) a panel must grant consent unless any of the grounds described in clause 34 for declining an application apply; and
- (b) to avoid doubt, the test under section 104D of the Resource Management Act 1991 must not be applied.
- (8) To avoid doubt,—
- (a) the matters included in this clause are, in relation to a listed project, relevant to a panel's decisions on imposing conditions for the listed project, but are not relevant to whether a resource consent is to be granted (*see* clause 34); and

- (b) section 104E of the Resource Management Act 1991 does not apply to a panel's consideration of a resource consent for a listed project.

Resource consents for referred projects

31 Consideration of consent applications for referred projects

Matters to which panel must have regard

- (1) When considering a consent application in relation to a referred project and any comments received in response to an invitation given under section 17(3), a panel must, subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act, have regard to—
- (a) any actual and potential effects on the environment of allowing the activity; and
- (b) any measure proposed or agreed to by the consent applicant to ensure positive effects on the environment to offset or compensate for any adverse effects that will or may result from allowing the activity; and
- (c) any relevant provisions of any of the documents listed in clause 29(2); and
- (d) any other matter the panel considers relevant and reasonably necessary to determine the consent application.
- (2) In respect of the matters listed under subclause (1), a panel must apply section 6 of this Act (Treaty of Waitangi) instead of section 8 of the Resource Management Act 1991 (Treaty of Waitangi).
- (3) If a consent application relates to an activity in an area where a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011 applies, a panel must have regard to any resource management matters in that document until all obligations under section 93 of that Act have been met by the relevant local authority.

Matters which panel may or must disregard

- (4) When forming an opinion for the purposes of subsection (1)(a), a panel may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.
- (5) A panel must not,—
- (a) when considering a consent application, have regard to—
- (i) trade competition or the effects of trade competition; or
- (ii) any effect on a person who has given written approval to the application:
- (b) grant a resource consent that is contrary to—
- (i) section 107 of the Resource Management Act 1991 (restriction on grant of certain discharge permits); or

- (ii) section 217 of that Act (effect of water conservation order); or
 - (iii) an Order in Council in force under section 152 of that Act (relating to authorisations for coastal tendering); or
 - (iv) any regulations made under that Act; or
 - (v) wāhi tapu conditions included in a customary marine title order or agreement; or
 - (vi) section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011 (effect of protected customary rights on resource consent applications).
- (6) A panel considering a consent application must disregard subclause (5)(a)(ii) if the person withdraws the approval in a written notice received by the panel before the date of the hearing (if any) or, if there is no hearing, before the application is determined.

Other matters relevant to decisions

- (7) A panel may grant a resource consent on the basis that the activity concerned is a controlled, restricted discretionary, discretionary, or non-complying activity, regardless of what type of activity the application was expressed to be for.
- (8) A panel may decline a consent application on the ground that the information provided by the consent applicant is inadequate to determine the application.
- (9) In making an assessment on the adequacy of the information, a panel must have regard to whether any request made to the consent applicant for further information or reports resulted in further information or any report being made available.
- (10) If a Treaty settlement imposes an obligation on a local authority or other decision maker when determining an application for a resource consent, a panel must comply with that obligation as if it were the local authority or other decision maker (*see* example relating to clause 29(4)).
- (11) Subclause (10) is subject to clause 5 of Schedule 5 (conduct of hearings and other procedural matters in context of Treaty settlements).
- (12) A panel must decline a consent application for a referred project if that is necessary to comply with section 6 (Treaty of Waitangi).

32 Further matters relevant to considering consent applications for referred projects

- (1) Sections 104A to 104D, 105 to 107, and 138A(1), (2), (5), and (6) of the Resource Management Act 1991 apply to a panel's consideration of a consent application for a referred project.
- (2) The provisions referred to in subclause (1) apply with all necessary modifications, including that a reference to a consent authority must be read as a reference to a panel.

- (3) To avoid doubt, section 104E of the Resource Management Act 1991 does not apply to a panel's consideration of a resource consent for a referred project.

Requirements for designations for listed projects and referred projects

33 Consideration of notices of requirement for listed projects and referred projects

- (1) When considering a notice of requirement for a listed project or a referred project and any comments received in response to an invitation given under clause 17(2), a panel must not have regard to trade competition or the effects of trade competition (within the meaning of Part 11A of the Resource Management Act 1991).
- (2) When considering a notice of requirement and any comments received in response to an invitation given under clause 17(2), a panel must, subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act, consider the effects on the environment of allowing the requirement, having particular regard to—
- (a) any relevant provisions of the documents listed in subclause (3); and
 - (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—
 - (i) the requiring authority does not have an interest in the land sufficient to undertake the work; or
 - (ii) it is likely that the work will have a significant adverse effect on the environment; and
 - (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority seeking the designation; and
 - (d) any other matter the panel considers reasonably necessary in order to make a decision on the requirement.
- (3) The documents referred to in subclause (2)(a) are the following:
- (a) a national policy statement;
 - (b) a New Zealand coastal policy statement;
 - (c) a regional policy statement or proposed regional policy statement;
 - (d) a plan or proposed plan;
 - (e) a planning document recognised by a relevant iwi authority and lodged with a local authority.
- (4) The effects that are to be considered under subclause (2) may include positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the designation, but only if those effects result from measures proposed or agreed by the requiring authority.

- (5) A panel may—
 - (a) cancel a requirement; or
 - (b) confirm a requirement; or
 - (c) confirm a requirement, but modify it or impose conditions on it as the panel thinks fit.
- (6) In making its decision under subclause (5), a panel must apply section 6 of this Act (Treaty of Waitangi) instead of section 8 of the Resource Management Act 1991 (Treaty of Waitangi).
- (7) If a panel confirms a requirement,—
 - (a) it may waive the requirement for an outline plan as required by section 176A of the Resource Management Act 1991; but
 - (b) if it does not waive the requirement under that section, the outline plan must be submitted to the territorial authority in accordance with that section.
- (8) If a Treaty settlement imposes an obligation on a territorial authority or other decision maker when determining or making a recommendation on a notice of requirement, a panel must comply with that obligation as if it were the territorial authority or other decision maker (*see* the example relating to clause 29(4)).
- (9) Subclause (8) is subject to clause 5 of Schedule 5 (conduct of hearings and other procedural matters in context of Treaty settlements).
- (10) The matters referred to in subclauses (1) to (5) are, in relation to a listed project, relevant to a panel's decisions on imposing conditions for the listed project, but are not relevant to whether a resource consent is to be granted (*see* clause 34).

Grounds on which resource consents and designations may be declined for listed projects

34 Power to decline consent applications or cancel notices of requirement for listed projects

- (1) A panel may decline a consent application or cancel a notice of requirement for a listed project, but only on the following grounds:
 - (a) that the panel considers that granting a resource consent or confirming or modifying a notice of requirement, with or without conditions, would be inconsistent with any national policy statement, including a New Zealand coastal policy statement:
 - (b) that the panel considers that granting a resource consent or confirming or modifying a notice of requirement, with or without conditions, would be inconsistent with section 6 (Treaty of Waitangi).
- (2) A panel must grant a resource consent or confirm a requirement for a listed project if neither of the grounds described in subclause (1) applies.

*Conditions***35 Conditions applying to resource consents**

- (1) This clause applies to consent applications in respect of both listed projects and referred projects.
- (2) A panel may grant a resource consent subject to the conditions it considers appropriate.
- (3) Sections 108, 108A to 112, and 220 of the Resource Management Act 1991 apply to conditions imposed under subclause (2), subject to all necessary modifications, including the following:
 - (a) a reference to a consent authority must be read as a reference to a panel; and
 - (b) a reference to services or works must be read as a reference to any activities related to the project that is the subject of the consent application.

36 Panel to provide copies of draft conditions

- (1) Before a panel grants a resource consent or confirms or modifies a designation, the panel must provide a copy of its draft conditions to the following, inviting comments on the draft conditions:
 - (a) the consent applicant or requiring authority; and
 - (b) every person or group that provided comments in response to an invitation given under clause 17(2).
- (2) A panel must set a date by which any comments on the draft conditions must be received by the EPA.
- (3) The EPA must, as soon as practicable after receiving comments under subclause (1), provide electronic copies of those comments to—
 - (a) the members of the panel; and
 - (b) the consent applicant or requiring authority; and
 - (c) every person or group that provided comments in response to an invitation given under clause 17(2).
- (4) Sections 123 and 123A of the Resource Management Act 1991 apply to the duration of any resource consents granted by a panel.
- (5) Before making its final decision on a consent application or notice of requirement, a panel must have regard to all comments received under subclause (1).

Final decision of panel

37 Final decision on consent applications and notices of requirement

Report on final decision

- (1) As soon as practicable after a panel has completed its consideration of a consent application or notice of requirement, the panel must—
 - (a) make its final decision; and
 - (b) produce a written report of that decision (the **decision**).
- (2) The panel must issue its final decision,—
 - (a) in the case of a listed project, no later than 25 working days after the date specified for receiving comments under clause 18; or
 - (b) in the case of a referred project, no later than—
 - (i) 25 working days after the date specified for receiving comments under clause 18, if the referral order is silent on the matter; or
 - (ii) any other number of working days after the date specified for receiving comments under clause 18, as may be provided for in the referral order.
- (3) However, if the scale or nature of the proposal that is the subject of a consent application or notice of requirement is such that the panel is unable to complete its decision within the time specified in subclause (2), the panel may extend the period for issuing its final decision,—
 - (a) in the case of a listed project, by up to a further 25 working days; or
 - (b) in the case of a referred project,—
 - (i) by up to a further 25 working days, if the referral order is silent on the matter; or
 - (ii) any other number of working days, as may be provided for in the referral order.
- (4) The period allowed under subclause (2) or (3) does not include any time that a consent application or notice of requirement was suspended—
 - (a) at the direction of the Minister under clause 22; or
 - (b) by a decision of a panel under clause 23.
- (5) If the panel extends the time under subclause (3), the EPA must give written notice of the extended time to—
 - (a) the consent applicant or requiring authority, as the case requires; and
 - (b) any person or group invited to provide comments under clause 17(2).

Contents of written report of decision

- (6) The written report of the decision must—
 - (a) state the decision made by the panel; and

- (b) state the panel's reasons for its decision; and
 - (c) include a statement of the principal issues that were in contention; and
 - (d) include the main findings of the panel on those issues.
- (7) The decision must also specify the date on which a resource consent or designation lapses unless it is given effect to by the specified date.
- (8) The date specified under subclause (7) must not be later than 2 years—
- (a) from the date of commencement, in the case of a resource consent; or
 - (b) from the date on which a designation is included in a district plan.
- (9) A resource consent granted under this Act commences on the day after the date on which—
- (a) all appeal rights under this Act have been exhausted or have expired; or
 - (b) all appeals under this Act are determined.

38 Service and publication of decision

- (1) Notice of a decision must be served—
- (a) on the applicant or requiring authority, as the case requires; and
 - (b) on any person or group invited to provide comments under clause 17(2); and
 - (c) on the relevant local authority; and
 - (d) on other persons and authorities that the panel considers appropriate.
- (2) The notice served under subclause (1) must include advice as to the time within which an appeal may be lodged.
- (3) A decision must be published on an Internet site maintained by the EPA and be free of charge to the public.
- (4) Section 114(4) of the Resource Management Act 1991 applies to a panel, with the necessary modifications.

39 Decisions may be issued in stages

- (1) A panel considering a consent application or notice of requirement that includes multiple activities may issue a series of decisions in stages to enable activities to be started while the panel considers and determines later stages of the project that is the subject of the same application or notice.
- (2) Subclause (1) does not provide an exception to the time frames that apply under clause 37.

40 Minor corrections

- (1) At any time during its term of appointment, a panel may issue an amendment to a decision of the panel or an amended direction, correcting minor omissions, errors, or other defects in a decision of the panel.

- (2) A panel may, within 20 working days of granting a resource consent, correct a resource consent as if it were a consent authority acting under section 133A of the Resource Management Act 1991.
- (3) A panel may correct a requirement for a designation before the earlier of the following:
 - (a) the day on which the territorial authority includes the designation in its district plan and any proposed district plan under clause 41; and
 - (b) the day that is 40 working days after the day on which any appeals relating to the requirement have been determined or all rights of appeal under this Act have been exhausted or have expired.

41 Designations to be included in district plans

- (1) This clause applies as soon as is reasonably practicable—
 - (a) after a panel determining a notice of requirement confirms or modifies a designation (with or without modification); and
 - (b) any right of appeal under clause 44 is exhausted or has expired.
- (2) As soon as practicable after any right of appeal is exhausted or has expired, the territorial authority must, without using Schedule 1 of the Resource Management Act 1991,—
 - (a) include the designation in its district plan and any proposed district plan, as if it were a rule in the plan or proposed plan; and
 - (b) state in the plan and any proposed plan the name of the requiring authority that has the benefit of the designation.

42 Role of local authorities in relation to resource consents granted or designations confirmed or modified under this Act

- (1) This clause applies to—
 - (a) a resource consent that is granted by a panel; and
 - (b) a designation that is confirmed or modified by a panel and included in a district plan.
- (2) The local authority that, but for this Act, would have had responsibility—
 - (a) for granting a resource consent under the Resource Management Act 1991 has all the functions, powers, and duties in relation to a resource consent granted under this Act, as if it had granted the resource consent itself; and
 - (b) for recommending, under the Resource Management Act 1991, that a designation be confirmed or modified, has all the functions, powers, and duties in relation to the designation as if it had dealt with the matter itself.
- (3) Unless otherwise specified in this Act,—

- (a) a resource consent granted, or a designation confirmed or modified and included in a district plan under this Act has full force and effect for its duration, and according to its terms and conditions, as if it were granted under the Resource Management Act 1991; and
 - (b) any provision of an enactment that refers to a resource consent granted, or a designation confirmed or modified and included in a district plan, under the Resource Management Act 1991 (including any such provision in that Act) must be read, with any necessary modifications, as including a resource consent granted, or a designation confirmed and included in a district plan, under this Act.
- (4) Section 116A of the Resource Management Act 1991 (when coastal permit for aquaculture may commence) applies to the commencement of any coastal permit to undertake aquaculture activities in the coastal marine area, subject to a reference to a consent authority being read as a reference to the regional council that, but for this Act, would have had responsibility for the coastal permit.
- (5) To avoid doubt, the functions, powers, and duties referred to in subclause (2) include—
- (a) the determination of any application to extend a lapse period under section 125(1A) or 184 of the Resource Management Act 1991; and
 - (b) the determination of any application for a change or cancellation of a condition of a resource consent under section 127 of the Resource Management Act 1991.

43 Interim effect of designations

Section 178(2) to (6) of the Resource Management Act 1991 applies, with the necessary modifications, to a notice of requirement lodged with the EPA under clause 2.

Appeals

44 Appeal rights

- (1) Any of the following persons may appeal to the High Court against the whole or part of a panel's final decision made under clause 37 on a consent application or notice of requirement:
- (a) the consent applicant or requiring authority, as the case requires;
 - (b) any relevant local authority;
 - (c) the Attorney-General;
 - (d) any person or group that provided comments in response to an invitation given under clause 17(2);
 - (e) any person who has an interest in the decision appealed against that is greater than that of the general public.

- (2) An appeal under this clause may be made only on a question of law.
- (3) An appeal against a decision of the High Court may be made to the Court of Appeal, but that appeal is a final appeal.

45 Procedural matters

Notice of appeal

- (1) A person entitled, and intending, to appeal against a decision of a panel (the **appellant**) must file a notice of appeal no later than 15 working days after the date on which the person was notified of the decision of the panel under clause 38(1).
- (2) The notice of appeal must specify—
 - (a) the decision or the part of the decision appealed against; and
 - (b) the error of law alleged by the appellant; and
 - (c) the grounds of appeal with sufficient particularity for the court and other parties to understand them; and
 - (d) the relief sought.

Service of notice of appeal

- (3) No later than the time specified for filing a notice of appeal under subclause (1), the appellant must serve a copy of the notice of appeal on the EPA on behalf of the panel whose decision is subject to the appeal.
- (4) No later than 5 working days after the notice of appeal is filed in the High Court, the appellant must serve a copy of the notice of appeal on—
 - (a) the consent applicant or requiring authority, as the case requires (if the appellant is not the consent applicant or requiring authority); and
 - (b) every person or group invited to provide comments under clause 17(2).

Copy of decision appealed against

- (5) The panel must provide a copy of the whole decision appealed against to the Registrar of the High Court as soon as is reasonably practicable after receiving the notice of appeal under subclause (3).

Notice of intention to appear

- (6) If a person served with a notice of appeal under subclause (4) wishes to appear at the appeal, the person must serve a notice of intention to appear on—
 - (a) the appellant; and
 - (b) the Registrar of the High Court; and
 - (c) the EPA on behalf of the panel.
- (7) A notice of intention to appear must be served no later than 10 working days after the day on which the person was served with the notice of appeal under subclause (4).

Parties to appeal

- (8) The parties to an appeal under this clause are—
- (a) the appellant; and
 - (b) any person who gives a notice of intention to appear.
- (9) The High Court Rules 2016 apply if a procedural matter is not provided for by this clause.

Notes

1 *General*

This is a consolidation of the COVID-19 Recovery (Fast-track Consenting) Act 2020 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Statutes Amendment Act 2022 (2022 No 75): Part 9

COVID-19 Response (Management Measures) Legislation Act 2021 (2021 No 42): Schedule 3 Part 2

Secondary Legislation Act 2021 (2021 No 7): section 3

COVID-19 Recovery (Fast-track Consenting) Act 2020 (2020 No 35): section 3(1)