

COVID-19 Recovery (Fast-track Consenting) Bill

Government Bill

Explanatory note

General policy statement

The intent of the COVID-19 Recovery (Fast-Track Consenting) Bill is to urgently promote employment growth 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.

The Bill seeks to achieve this by establishing new fast-track resource consenting and designation processes for infrastructure and development projects. This Bill also enables specific work on existing infrastructure to occur without the need for a resource consent.

The Bill, with the aim of supporting employment and boosting local economies, will accelerate nationwide projects and activities already planned by central and local government, as well as the private sector. The Bill also seeks to address New Zealand's infrastructure deficit, improve long-term productivity, and encourage projects that will promote New Zealanders' future wellbeing and resilience. This includes supporting the transition to a low-emissions economy and improving resilience to climate change and natural hazards while supporting sustainable management. Persons exercising functions and powers under this Bill must act in a manner that is consistent with the principles of the Treaty of Waitangi and with Treaty settlements.

The Bill will enable 2 categories of projects to have access to the fast-track consenting and designation processes, as follows:

- **listed projects:** *Schedule 2* of the Bill lists specific Government-led projects for which applications for resource consents (**consent applications**) or notices of requirement for designations (**notices of requirement**) can be submitted to the EPA to be assessed for completeness before being referred to a panel for consideration:

- **referred projects:** any persons with a project can apply to the Minister for the Environment (the **Minister**) to fast-track their consent or designation. If approved, the Minister will recommend an Order in Council to the Governor-General to confirm that the eligible project may be referred to a panel. The Minister of Conservation will jointly make the referral decision with the Minister if any part of the project would occur in the coastal marine area.

Projects may be in the form of a single large project or comprise smaller and related projects, and they may cross local authority boundaries. A panel will consider and determine resource consents and designations for listed and referred projects and replace the role of local authorities as consenting authorities under the Resource Management Act 1991 (**RMA**). A panel will also make the decision on notices of requirement for designations. Appropriate environmental safeguards, as provided for under the RMA, will apply to this process. A panel must apply the purpose of the Bill alongside Part 2 of the RMA.

In addition, the Bill enables certain agencies to carry out specific works on existing infrastructure without the need for a resource consent. The works are limited to the operation, replacement, and maintenance of, and minor upgrades to, certain existing infrastructure located within the road and rail corridor and on land owned by the agencies. The specific works detailed in the Bill can be undertaken by the New Zealand Transport Agency and KiwiRail Holdings Limited. The Bill also enables local authorities, Kāinga Ora—Homes and Communities, and the Ministry of Housing and Urban Development (**MHUD**) to be added for specific activities and works after the Bill is enacted, through an Order in Council recommended to the Governor-General by the Minister.

The Bill is a short-term intervention to stimulate the economy and therefore the new Act will self-repeal 2 years from enactment. The Minister will still be able to recommend an Order in Council to the Governor-General to confirm eligible projects up until the 2-year deadline. Orders in Council made under this legislation (before the self-repeal date) will continue to have effect, as required, to ensure that consents and designations for these projects can be determined (and cost-recovered) beyond the self-repeal date.

Projects listed in the Bill

Schedule 2 of the Bill lists projects (**listed projects**) for which consent applications or notices of requirement can be submitted to the EPA to be assessed for completeness before being referred to a panel for consideration. All of these projects are led by government agencies and Crown entities and have been assessed as delivering public benefit.

When considering these projects, a panel's function is largely limited to imposing conditions on the consent and designations. For applications for resource consents and designations required for listed projects, the panel may only decline a listed project if the resource consent or designation would not be consistent with a national pol-

icy statement, including the New Zealand coastal policy statement, or would not be consistent with the terms of a relevant Treaty settlement.

Referred projects confirmed through Orders in Council

Any person or organisation will be able to apply to the Minister to use the fast-track consenting process. When considering whether the project would help to achieve the purpose of the Bill, the Minister may consider any or all of the following matters:

- economic benefits for communities or industries affected by COVID-19:
- the social and cultural wellbeing of current and future generations:
- whether the project would likely progress faster by using this process:
- whether there is potential for the project to have significant adverse environmental effects:
- whether the project may result in a public benefit by, for example,—
 - generating employment:
 - increasing housing supply:
 - contributing to well-functioning urban environments:
 - providing infrastructure in order to improve economic, employment, and environmental outcomes, and increase productivity:
 - improving environmental outcomes for coastal or freshwater quality, air quality, or indigenous biodiversity:
 - minimising waste:
 - 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):
 - promoting the protection of historic heritage:
 - strengthening environmental, economic, and social resilience, in terms of managing the risks from natural hazards and the effects of climate change.

A project is not eligible to be referred to a panel—

- if it involves an activity that is described as a prohibited activity in relevant plan or national environmental standard;
- if it would occur on land returned under a Treaty settlement or within a customary marine title area; or
- if it would have more than a minor adverse effect on the exercise of a protected customary right, without the prior written approval of the relevant landowners (with respect to Treaty settlements) or holders of relevant customary marine title orders or protected customary rights recognition orders recognised under the Marine and Coastal Area (Takutai Moana) Act 2011.

If the Minister is satisfied that the application is eligible and will help to achieve the purpose of the Bill, and the Minister decides to not decline the application, the Minister will undertake targeted consultation with relevant local authorities and appropriate ministerial colleagues. The Minister may also choose to invite written comments from others.

Before the Minister decides to refer a project to an expert consenting panel, the Minister must also obtain and consider a report by the Office for Māori Crown Relations—Te Arawhiti on Treaty settlement obligations and interests under the Marine and Coastal Area (Takutai Moana) Act 2011. This report will contain the following information:

- the relevant iwi authorities and Treaty settlement entities in the project area:
- the Treaty settlements (Acts and deeds) that relate to the project area:
- 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 RMA:
- any recognised negotiation mandates for, or current negotiations for, Treaty settlements that relate to the project area:
- any court orders that recognise protected customary rights or customary marine title in relation to the project area.

The Minister will have discretion to reject an application for any reason at any point prior to the Order in Council being made.

The Ministry for the Environment will provide advice to support the Minister's decision on whether to accept an application and refer a project to a panel through an Order in Council. The decision-making criteria that apply to resource consents and designations in the RMA will also apply to referred projects, except that panels must apply the purpose of the Bill alongside Part 2 of the RMA.

Expert consenting panel processes

The panels will be responsible for considering applications and determining resource consents and designations for listed and referred projects.

A panel convener who is a sitting or retired Environment Judge will convene the panels and appoint panel members and chairpersons of panels. The convener can choose to be a chairperson.

The panels will be chaired by a current or retired Environment Court Judge (or other judge, or a suitably qualified lawyer with resource management expertise) and must include a member of (or person nominated by) the relevant local authorities and include a member nominated by the relevant iwi authorities. Each panel must collectively have—

- knowledge, skill, and expertise relating to resource management:
- technical expertise relevant to the project:

- expertise in tikanga Māori and mātauranga Māori.

The Environmental Protection Authority will assess consent applications and notices of requirement for completeness and provide secretariat support and other services to the panels.

The panels will determine the consent applications and notices of requirement and follow a fast-track resource consent (or notice of requirement) process, as follows:

- information requirements are tailored for consent applications and notices of requirement:
- instead of giving public notice or limited notice of consent applications or notices of requirement, a panel will invite comments on the application from persons specified in the legislation and the Orders in Council (if applicable) not later than 10 working days after the application is first lodged:
- persons who have been invited to comment have 10 working days after the date on which the invitation was given to provide comments:
- there is no requirement to hold a hearing:
- in making its decision, a panel will be required to—
 - apply Part 2 of the RMA alongside the purpose of the new Act:
 - act consistently with the principles of the Treaty of Waitangi:
 - act consistently with any relevant Treaty settlements:
 - have regard to relevant plans, regional and national policy statements, and other documents, similarly to the way that a decision-maker would under the RMA:
- a panel must issue its decision on the application within 25 working days of the date it specifies for receiving comments on the application:
- a panel can double this 25-working-day time frame if the scale of the project that is the subject of the application means it cannot be determined within that time frame.

The overall processing time frame will be reduced, because a panel will have no additional ability to extend time frames (other than the additional 25 working days above), limited ability to suspend applications (*see clause 6 of Schedule 6*), and there are restricted appeal rights.

For projects including multiple activities, of any size, panels may issue decisions in stages to enable initial works to be started while further details or later stages of the project are worked through in subsequent approval processes.

Panels will also make decisions for notices of requirement lodged by requiring authorities to confirm designations. Under standard RMA processes, requiring authorities are the decision makers and the relevant local authority only make recommendations. It is not appropriate for a requiring authority to make the decision on a designation and conditions when the fast-track process is being used, given the lack of a merits appeal. Therefore, the panels will make the decision on a designation, which is

similar to the decision-making framework for Boards of Inquiry considering proposals of national significance under the RMA.

The applicant or requiring authority for the listed and referred projects is responsible for the costs incurred by the expert consenting panel and the EPA in performing their duties and functions under this legislation.

Work on infrastructure

The Bill enables specific works for certain existing public infrastructure to be undertaken by certain agencies as of right, subject to performance standards that follow best-practice guidelines. This process is limited to the operation, replacement, and maintenance of, and minor upgrades to, existing public infrastructure located solely within the road and rail corridor and on land owned by certain agencies. This is to ensure that this provision relates to the maintenance and minor upgrading of existing infrastructure and not to new projects where infrastructure currently does not exist.

Currently the specific works and performance standards have been developed for the New Zealand Transport Agency and Kiwirail Holdings Limited. Kāinga Ora—Homes and Communities, MHUD, and local authorities will be able to access this Bill when their specific works and performance standards are added through an Order in Council.

As a safeguard, this process is not available where the proposed activity is categorised as a discretionary, non-complying, or prohibited activity in the relevant council plan. The works will not be able to be undertaken in sites of cultural or historical significance, within outstanding water bodies or wāhi tapu sites, or if the work requires a permanent water take that would require a resource consent under the relevant plan or proposed plan. The works must also comply with performance standards that follow best-practice guidance and site management.

The agencies must partner with iwi and hapū groups and Treaty settlement entities that have interests in the area of the proposed work, to identify sites of cultural significance and how to manage them adequately. They must also provide a notice of intention to the relevant local authorities and iwi, hapū, and Treaty settlement entities before work is undertaken, detailing the extent of works, any protocols or management plans needed, and how monitoring will occur.

Local authorities will be responsible for compliance, monitoring, and enforcement to ensure that agencies meet the performance standards and will take appropriate action if necessary. The Bill will provide for local authorities to recover costs and for iwi and hapū to recover costs incurred in relation to identifying wāhi tapu and other sites of cultural significance. This Bill will authorise regional council activities for a duration of 15 years, to avoid the need to immediately re-consent ongoing activities that would otherwise require a resource consent (such as discharges) once the Act is repealed.

Treaty of Waitangi

The Bill includes an overarching Treaty of Waitangi clause, stating that the Minister and all persons exercising functions and powers under the Bill must act in a manner that is consistent with the principles of the Treaty of Waitangi and with Treaty settlements.

As outlined earlier, the Office for Māori Crown Relations—Te Arawhiti will be required to provide a report to the Minister that includes information on the relevant iwi authority, any Treaty settlement entities in the project area, any Treaty settlements in the project area, and interests under the Marine and Coastal Area (Takutai Moana) Act 2011.

This report will assist the Minister to comply with *clause 6* of the Bill, which requires the Minister to act in a manner consistent with the principles of the Treaty of Waitangi and Treaty settlement legislation when making a determination as to whether a project should be referred to a panel. This report will also be provided to a panel if the project is referred for consideration. It will be the responsibility of a panel to ensure any consents granted and any designations confirmed, including any conditions, are consistent with the principles of the Treaty and any Treaty settlements.

Public participation and appeal rights

To support the intent of the fast-track process to accelerate consenting and recovery from the economic and social impacts of COVID-19, the Bill provides the Government with a range of powers to by-pass usual consenting process steps, including public consultation, hearing processes, and appeals to the Environment Court.

As described in the section on the panel process, the Bill does not require public or limited notification of an application. Instead the panel will be required to invite comments on the application from persons specified in the Order in Council and the persons expressly listed in *Schedule 6*. The Bill provides reduced time frames compared to standard RMA processes for the nominated persons to provide their comments. The consent process does not include a requirement to hold a hearing. If a panel does hold a hearing, it may grant leave to allow cross-examination.

Appeals against a panel decision on a consent application (or notice of requirement to confirm a designation) are limited to a point of law appeal to the High Court and a further right of appeal to the Court of Appeal. There will be no further right of appeal beyond the Court of Appeal. Any application for judicial review will need to be filed at the same time as a point of law appeal to the High Court.

The following persons will be able to lodge an appeal:

- the consent applicant or requiring authority, as the case requires:
- any relevant local authority:
- the Attorney-General:
- any person who provided comments in response to an invitation by the panel:

- any person who has an interest in the decision appealed against that is greater than that of the general public.

Departmental disclosure statement

The Ministry for the Environment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2020&no=277>

Clause by clause analysis

Clause 1 provides that the title of this Act is the COVID-19 Recovery (Fast-track Consenting) Act 2020.

Clause 2 provides that the Bill (once enacted) comes into force on the day after the date it receives the Royal assent.

Clause 3 provides that the Act is repealed on the second anniversary of the date on which it received the Royal assent.

Part 1

Preliminary provisions

Clause 4 sets out the purpose of the Bill. It is to urgently promote employment growth 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.

Clause 5 sets out an overview of the Bill.

Clause 6 sets out the relationship between the Treaty of Waitangi and Treaty settlements and the Bill. It provides that all persons performing functions and exercising powers under the Bill to act in a manner that is consistent with—

- the principles of the Treaty of Waitangi; and
- Treaty settlements.

Clause 7 is an interpretation clause. Some of the key and distinctive terms include the following:

- application for referral which is an application under *clause 20* to have a project referred to an expert consenting panel;
- consent application which means an application for a resource consent for a listed or referred project;

- expert consenting panel or panel which means a panel appointed under *Schedule 5* to determine a consent application or notice of requirement for a listed or referred project:
- listed project, which means a project listed in *Schedule 2*:
- national rail corridor, which means the existing network of railway lines, railway premises, and railway infrastructure:
- national road corridor, which means the existing network of state highways, including the areas under a bridge:
- referral order, which means an Order in Council under *clause 27* to refer a project to an expert consenting panel:
- referred project, which means a project that is referred (by a referral order) to an expert consulting panel:
- work on infrastructure, which means work that meets the criteria set out in *clause 29*.

Clause 8 provides that the transitional, savings, and related provisions of the Bill are set out in *Schedule 1*.

Clause 9 provides that the Act binds the Crown.

Clause 10 sets out procedural principles to be applied. Every person performing functions and exercising powers under the Bill must take all practicable steps to use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed or exercised.

However, a failure to comply with this section does not itself invalidate the exercise of a power or the performance of a function or duty under the Bill.

Clause 11 provides that documents to be served under the Bill (other than court documents) must be served electronically unless it is not practicable to do so.

Clause 12 describes the relationship between the Bill and the Resource Management Act 1991 (**RMA**).

Clause 13 provides that nothing in the Bill limits or affects any right of judicial review a person may have in respect of any matter to which the Bill applies. *Subclauses (2) and (3)* provide for situations where a person wishes to apply for judicial review and also appeal to the High Court under *Schedule 6*.

Part 2

Fast track consenting

Subpart 1—Projects considered by expert consenting panel

Listed and referred projects

Clause 14 requires an expert consenting panel to be appointed under *Schedule 5* for—

- listed projects, which are the projects described in *Schedule 2* that can immediately utilise the fast-track consenting process; and
- referred projects, which are projects that may utilise an expert consenting panel only if the Minister refers them to a panel by Order in Council.

Clause 15 allows the authorised persons for a project to make consent applications and lodge notices of requirement in accordance with *Schedule 6* instead of under the RMA. Authorised persons are identified for a listed project in *Schedule 2* and for a referred project in the Order in Council made under *clause 27*. *Schedule 6* sets out how the applications and notices will be considered by an expert consenting panel, and how the panel makes decisions. The *Schedule 6* process cannot be used to change or cancel an existing consent, but may be used to alter an existing designation.

Referral of projects

Clause 16 specifies who decides whether to refer a project to a panel. *Subclause (1)* requires decisions about a project that would occur in the coastal marine area to be made jointly by the Minister for the Environment and the Minister of Conservation. Decisions about other projects will be made by the Minister for the Environment alone. *Subclause (2)* provides for references in *subpart 1* to the Minister to be read as a reference to both Ministers, in relation to anything that *subclause (1)* requires both Ministers to decide.

Clause 17 provides that the obligations under *clause 6* (Treaty of Waitangi) are satisfied, in relation to a decision to refer a project to a panel, if the Minister first obtains and considers a report from the Office for Māori Crown Relations—Te Arawhiti that identifies relevant interests. Once a decision is made on the application, the report obtained under this clause is made public: *see clause 25(3)*.

Clause 18 sets the criteria for referred projects. Nothing can be referred to a panel unless it meets these criteria. The criteria include a requirement that the Minister be satisfied that the project will help to achieve the purpose of the Act, and *clause 19* lists matters the Minister may consider when making that assessment.

Clause 20 is about how to apply to have a project referred to a panel. Applications must be made on the form approved by the chief executive of the Ministry for the Environment and published on the Ministry's website. The application must include the information listed in *subclause (3)*, but at a general level of detail rather than the level of detail that would be needed to support a consent application or notice of requirement. The intention is to provide sufficient information to inform the Minister's decision on whether to refer the project to a panel.

Clause 21 sets out what happens once an application for referral is made. The Minister may decline the application, for any reason, without taking any further steps (*see clause 23*). Otherwise, the Minister must send a copy of the application to interested local authorities and Ministers and invite them to provide written comments. The time frame for providing comments, which applies to everyone except Ministers, is 10 working days from the receipt of the copy of the application. The Minister has a discretion to consider late comments.

Clause 22 provides for the Minister to request further information about an application from the applicant or relevant local authorities.

Clauses 23 and 24 are about decisions on an application for referral:

- *clause 23* is about how and when an application may be declined. A decision to decline may be made in respect of all or part of the project that is the subject of the application, and the Minister may decline some parts of an application and accept others:
- *clause 24* is about how and when all or part of an application may be accepted; it provides for a range of related decisions to be made.

Clause 25 requires the Minister to give notice of the decisions made on an application for referral, and the reasons for them, to the applicant and the various persons and groups who have an interest in the matter. The Minister's decisions and reasons must be published on the Ministry's website, along with the report obtained on the application under *clause 17* (if applicable).

Clause 26 sets out how a project is referred to a panel, which requires the Minister to—

- recommend that an Order in Council (a **referral order**) be made under *clause 27*; and
- forward all relevant information about a referred project to the EPA, and to the panel convenor when one is appointed.

Clause 27 provides for an Order in Council to be made to refer a project to the panel and give effect to other decisions made by the Minister under *clause 24*. The order can only be made on the Minister's recommendation.

Subpart 2—Work on infrastructure

Clause 28 provides for certain activities to be undertaken, in the course of work on infrastructure, as permitted activities. Permitted activities do not require resource consent under the RMA. *Clauses 29 to 32* set the preconditions for undertaking any activity as a permitted activity in reliance on *subpart 2*.

Clause 29 sets the criteria for work on infrastructure. In the Bill as introduced, the only agencies authorised to carry out work on infrastructure in reliance on *subpart 2* are KiwiRail Holdings Limited and the New Zealand Transport Agency. The agencies that may be added later by Order in Council (*see clause 34*) are Kāinga Ora—Homes and Communities, the Ministry of Housing and Urban Development, and local authorities. The work must be on existing infrastructure, the infrastructure must be on land in which the agency has an ownership or other legal interest, and the landowner (if not the agency) must have given written permission for the work.

Clause 30 sets the criteria for permitted activities. They must be identified in *Schedule 4* as a permitted activity and not excluded by *clause 31*, and they must comply with the permitted activity standards set out in *Schedule 4*. The Bill as introduced sets permitted activities and permitted activity standards for KiwiRail Holdings Limited

and the New Zealand Transport Agency. Permitted activities and permitted activity standards for other agencies may be added later by Order in Council (*see clause 34*). However, the permitted activity standards relating to iwi and hapū engagement and notices of intention will always apply (*see Part 1 of Schedule 4*).

Clause 31 describes various activities that are excluded from being carried out as permitted activities in reliance on *subpart 2*.

Clause 32 requires an agency seeking to carry out work on infrastructure in reliance on *subpart 2* to comply with any permitted activity standard that requires something to be done before the work commences. These include the requirement to begin an iwi and hapū engagement process and serve notices of intention (*see Part 1 of Schedule 4*).

Clause 33 requires an agency, when carrying out work on infrastructure in reliance on *subpart 2*, to comply with the duties under the RMA to avoid unreasonable noise and avoid, remedy, or mitigate adverse effects.

Clause 34 provides for an Order in Council to be made to name other agencies that may carry out work on infrastructure in reliance on *subpart 2*. This is done by amending *Schedule 4* to—

- add the agency's name to *clause 1* of that schedule; and
- specify the activities that the agency can carry out as permitted activities, including setting any restriction on where the infrastructure must be located and specifying any activities that are excluded (in addition to those set out in *clause 31*); and
- specify the permitted activity standards that the agency must comply with (in addition to the permitted activity standards in *Part 1 of Schedule 4*, which apply generally).

Clause 35 requires local authorities to monitor activities carried out as permitted activities in reliance on *subpart 2* and take enforcement action under the RMA as appropriate. It also allows local authorities to fix charges, payable by agencies carrying out work on infrastructure, for monitoring the activities. Instead of fixing charges, a local authority may rely on charges already fixed under the RMA.

Schedule 1

Schedule 1 contains transitional, savings, and related provisions. Those provisions are generally fairly conventional in that they provide for the repealed Act and any revoked Order in Council made under the Act to continue in force for the purposes of completing any matter commenced under the Act or Order in Council before their repeal or revocation.

However, the provisions have 2 features that require special mention.

Clause 3 enables an Order in Council to be amended after its revocation. This is in recognition that the transitional provisions may have effect for a long time (possibly a decade) and that changes to the transitional regulatory regime may be required in that period. An application for a referral order must be lodged no later than 6 months

before the repeal of the Act to enable sufficient time to make a decision and a referral order (if appropriate) before the Act is repealed.

Schedule 2

Schedule 2 sets out 16 listed projects with the name of the project, the person or entity authorised to undertake the project, a description of each project, and the approximate geographical area in which each project is to be carried out described in separate columns.

The projects are as follows:

- LP01 Te Ara Tūpua—Ngauranga to Pētone Cycleway and Walkway:
- LP02 Northern Pathway—Westhaven to Akoranga cycleway and walkway:
- LP03 Wellington Metro Upgrade Programme:
- LP04 Papakura to Pukekōhe Rail Electrification:
- LP05 Britomart East Upgrade:
- LP06 Te Pā Tāhuna Residential Development:
- LP07 Unitec Residential Development:
- LP08 Papakāinga Development—Kaitaia:
- LP09 Papakāinga Development—Point Chevalier, Auckland:
- LP10 Papkāinga Development—Whaingaroa, Raglan:
- LP11 Papakāinga Development—Waitara, Taranaki:
- LP12 Papakāinga Development—Chatham Islands:
- LP13 Papakāinga Development—Rāpaki, Christchurch:
- LP14 Picton Ferry Terminal Redevelopment:
- LP15 Papakura to Drury State Highway 1 Improvements:
- LP16 Kopenui Water Storage Reservoir, Kaikohe.

Schedule 3

Schedule 3 sets out the requirements for a referral order made under *clause 27* (referring a project to an expert consenting panel) as follows:

- *clause 2* sets out the information that must be contained in the order identifying the project:
- *clause 3* requires the order to make any provision that is necessary to give effect to the Minister's decisions under *clause 24*:
- *clause 4* requires the order to include a statement of the Minister's reasons for the decisions made under *clause 24*.

Schedule 4

Clause 1 is an application provision. It—

- lists the agencies that may carry out work on infrastructure in reliance on *subpart 2 of Part 2*; and
- states that the schedule sets out the activities that the agencies can carry out as permitted activities in reliance on *subpart 2 of Part 2* and the permitted activity standards that the agencies must comply with.

In the Bill as introduced, only KiwiRail Holdings Limited and the New Zealand Transport Agency are listed in *clause 1*. However, this clause may be amended by an Order in Council made under *clause 34* to add—

- Kāinga Ora—Homes and Communities;
- Ministry of Housing and Urban Development;
- any local authority.

Clause 2 is an interpretation provision.

Clause 3 applies the rules about incorporation by reference set out in Schedule 1AA of the RMA, rather than the rules set out in subpart 2 of Part 3 of the Legislation Act 2012.

Part 1

Part 1 of the schedule (*clauses 4 to 9*) contains the permitted activity standards that apply generally, which relate to iwi and hapū engagement and notice of intention.

Iwi and hapū engagement

Clause 5 sets out a process requiring an agency to engage with iwi, hapū, and Treaty settlement entities before undertaking works.

Clause 6 sets out what happens if an agency tries to engage as required by *clause 5* but gets no response.

Clause 7 sets out rules that apply if any sites that require a management plan are identified during the engagement referred to in *clause 5*.

Notices of intention

Clause 8 requires an agency to serve a notice of intention on relevant iwi authorities, hapū, and Treaty settlement entities before it undertakes works.

Clause 9 requires an agency to serve a notice of intention on certain local authorities before it undertakes works.

Part 2

Part 2 of the schedule (*clauses 10 to 36*) sets out,—

- in *subpart 1 (clause 11)*, the permitted activities for KiwiRail Holdings Limited and the New Zealand Transport Agency; and
- in *subpart 2 (clauses 12 to 36)*, the permitted activity standards with which those activities must comply.

Under *clause 11*, the permitted activities for KiwiRail Holdings Limited and the New Zealand Transport Agency are any activity for the operation, maintenance, replacement, or minor upgrade of existing infrastructure that is located in or on the national road corridor or the national rail corridor. A minor upgrade is defined in *clause 11(2)*. These activities are permitted only if they are not excluded by *clause 31* of the Bill and if they are carried out in compliance with the permitted activity standards in *Part 2* of this schedule.

If more agencies are added to *clause 1* of this schedule, additional Parts will be added to this schedule to set out the permitted activities and permitted activity standards for those agencies.

The permitted activity standards that apply to KiwiRail Holdings Limited and the New Zealand Transport Agency are described below.

Ground disturbance

Clause 12 sets out rules for carrying out earthworks (including diversion, damming, and discharge of sediment-laden water).

Clause 13 sets out rules applying to the drilling of geotechnical boreholes (including groundwater monitoring).

Clause 14 sets out rules governing groundwater discharge in connection with dewatering and construction.

Works within beds of rivers

Clause 15 sets out rules about the construction of temporary and permanent bridges and culverts.

Clause 16 sets out safeguards to enable fish to pass through watercourses while works are being undertaken on those watercourses.

Vegetation

Clause 17 sets out measures that must be taken by an agency undertaking works to prevent biosecurity risks.

Clause 18 sets out rules about the removal and replanting of vegetation in areas affected by works.

Clause 19 regulates the removal of vegetation and the disturbance of habitat within a significant natural area or a significant ecological area.

Operational requirements

Clause 20 sets out the safeguards that must be applied to avoid contamination of a site by contaminants from equipment used for an activity.

Clause 21 sets out rules for the transport, disposal, and tracking of soil and other materials that are removed from sites.

Clause 22 regulates the way in which the discharge of dust is to be managed.

Clause 23 sets out rules designed to avoid, remedy, or mitigate adverse construction noise and vibration effects.

Clause 24 limits the information that may be included in construction signage.

Clause 25 requires new permanent lighting to comply with a specified Australian New Zealand standard that deals with lighting for roads and public spaces.

Clause 26 sets out rules about the design and location of construction yards.

Clause 27 requires an emergency response plan to be prepared dealing with the use, storage, and handling of hazardous substances.

Clause 28 limits the height of a noise attenuation wall or structure to 3 metres.

Clause 29 requires the New Zealand Transport Agency to assess and mitigate road traffic noise in accordance with the provisions of that clause.

Stormwater management

Clause 30 sets out rules that must be followed in managing stormwater from roads.

Clause 31 regulates the diversion and discharge of stormwater run-off from new impermeable surfaces within the road corridor or rail corridor.

Works within coastal marine area

Clause 32 contains rules—

- requiring any disturbance to the substrate of a coastal marine area to be remedied or restored;
- limiting the clearance or disturbance of vegetation within the coastal marine area to a maximum area of 100 square metres.

Clause 33 limits the extent of any change to an area occupied by an existing structure or reclamation or drainage system in the marine coastal area.

Clause 34 regulates dredging within the marine coastal area.

Clause 35 regulates the removal of mangroves.

Monitoring

Clause 36 requires an agency to undertake monitoring to ensure that it complies with the permitted activity standards in this schedule and to pay reasonable costs incurred by a local authority in monitoring compliance by the agency with these standards.

Schedule 5

Clause 1 sets out the purpose of the expert consenting panels. The purpose of an expert consenting panel is to ensure that decisions are made on—

- consent applications for listed and referred projects;
- notices of requirement for designations or to alter a designation for listed and referred projects.

Clause 2 provides for the appointment by the Minister of a panel convener whose main function is to appoint the members of panels. A panel convener may be removed by the Minister at any time for just cause and may resign by notice in writing to the Minister. The panel convener, unless they earlier resign or are removed from office, continues in office until their successor is appointed.

Under *clause 3*, up to 4 persons may be appointed as a member of an expert consenting panel. The members of the panel must include—

- 1 person from the relevant local authorities or a person nominated by those authorities; and
- 1 person nominated as the representative of the relevant iwi authorities.

In certain circumstances (described in *clause 3(5)*), the membership of a panel may exceed 4 members. The decision that a panel may exceed 4 members is a matter for the discretion of the panel convener.

Clause 4 provides that the chairperson of a panel may be—

- a Judge or retired Judge appointed by the panel convener; or
- the panel convener (if the panel convener is a Judge or retired Judge); or
- in certain circumstances, a suitably qualified lawyer with experience in resource management law.

In the event of an equality of votes, the chairperson of the panel has a casting vote. A panel has a quorum of 3 members.

Clause 5 sets out the obligations of the panel convener or panel in relation to Treaty settlements.

Clause 6 requires a panel convener to set the terms of reference for a panel.

Clause 7 empowers a panel convener to appoint a replacement panel member.

Clause 8 sets out the knowledge and experience that the panel members are, collectively, required to have.

Clause 9 provides for the remuneration of the panel convener and panel members.

Clause 10 provides for the resignation and removal of panel members. A member of a panel may resign at any time by notice in writing to the panel convener. The panel convener may remove any member for just cause.

Procedural and administrative matters

Clause 11 gives a panel a broad discretion to regulate its own procedures in the manner it thinks appropriate, without procedural formality and in a manner that best promotes the just and timely determination of an application. This broad discretion is subject to any other provisions of the Act or regulations made under the Act. *Clause 11* also enables the appointment of special advisors and technical advisors and allows the panel to use remote access facilities for meetings. A panel is required to keep a full record of its proceedings.

Clause 12 requires the EPA to provide secretariat support to a panel.

Clause 13 provides that a panel member is not liable for anything that the member does in good faith in performing or exercising the functions, duties, or powers of the panel.

Clause 14 provides for the recovery of costs by the EPA.

Clause 15 applies certain provisions of the Local Government Official Information and Meetings Act 1987 to a panel.

Schedule 6

Clause 1 sets out the scope of *Schedule 6*, namely—

- the requirements to be met when lodging a consent application or a notice of requirement for a designation or to alter a designation:
- the requirements a panel must comply with when determining a consent application or notice of requirement:
- the appeal rights relating to a panel’s decision on any of those matters.

Part 1—Applications for resource consents and notices of requirement for designations

Consent applications and notices of requirement

Clause 2 sets out some general requirements in relation to lodging consent applications and notices of requirement.

Clause 3 requires the EPA, within 5 working days, to determine whether a consent application or notice of requirement satisfies certain prescribed criteria, and if it does, the EPA must refer the application or notice to a panel for determination.

Clause 4 provides that if an application or notice of requirement does not satisfy certain specified criteria the application or notice must be returned to the applicant.

Clause 5 enables a consent application or notice of requirement to be withdrawn at any time before a panel makes a determination on it.

Clause 6 describes when the processing of consent applications or notices of requirement may be suspended and sets out rules about the notification of decisions to suspend processing and the resumption of processing.

Clause 7 provides for the sharing of information by local authorities with the EPA, on request by the EPA. A local authority is entitled to set, and recover from the EPA, a reasonable charge for the supply of information to the EPA.

Clause 8 enables the EPA to make administrative decisions that are incidental or ancillary to the conduct of the panel.

Information requirements for consent applications for listed and referred projects

Clause 9 lists the information that a consent application for a listed or referred project must provide, including certain assessments of the proposed activity against—

- Part 2 of the RMA and the purpose of this Bill; and
- any relevant provisions in certain national, regional, and district planning documents; and
- any Treaty settlements that apply in the project area.

A cultural impact assessment prepared by the relevant iwi or hapū is also required.

Clauses 9 to 13 reflect, as far as relevant, the information requirements of Schedule 4 of the RMA.

Clause 10 sets out the information that must be included in an assessment of an activity's effect on the environment (which is one of the items of information required by *clause 9*).

Clause 11 describes the matters that must be included in an assessment of the environmental effects of an activity.

Clause 12 sets out additional information that must be included in a consent application for a subdivision in a project area or for a reclamation.

Information requirements for notices of requirement for listed and referred projects

Clause 13 lists the information that must be included in a notice of requirement for a listed or referred project.

General requirement

Clause 14 requires the information that is to be provided under *clauses 9 to 13* to 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.

Applications relating to activities in coastal marine area

Clause 15 requires applications for coastal permits to undertake an aquaculture activity to be copied to the Director-General of Primary Industries.

Clause 16 sets out rules to apply where there is an application to subdivide land which, in whole or in part, is in the coastal marine area.

Processing of consent applications and notices of requirement

Clause 17 prohibits a panel from giving public notice or limited notification of a consent application or notice of requirement. However, for both listed and referred projects, a panel must invite comments from certain people or groups of people (*subclauses (4) to (7)*).

Clause 18 sets out some general requirements for invitations issued by a panel under *clause 17(2)* and for the responses provided to the EPA.

Clause 19 provides that a panel is not required to conduct a hearing in respect of a consent application or notice of requirement, and *clause 20* describes the procedure to be adopted by a panel if it decides in its discretion to hold a hearing.

Clause 21 empowers the Minister to direct a panel to which a consent application or notice of requirement has been provided to cease processing, or further processing, the application or notice.

Clause 22 enables a consent applicant or a requiring authority to make a request to the EPA asking that a panel suspend processing a consent application or notice of requirement or cease the suspension.

Clause 23 provides that if processing of a consent application or notice of requirement is suspended under *clause 22*, the application or notice may in certain circumstances be returned to the applicant.

Clause 24 enables a panel to direct the EPA to obtain further information before the panel issues its final decision.

Certificate of compliance

Clause 25 enables a consent applicant or requiring authority to apply, as part of its consent application or notice of requirement, for a certificate of compliance under section 139 of the RMA. The panel determining the application may issue a certificate.

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

Clause 26 provides that a person authorised to make a consent application or lodge a notice of requirement under the Bill may, in relation to a listed or referred project, apply under the Resource Management Act 1991 for a resource consent or designation. A person who makes such an application must withdraw it before making a consent application or lodging a notice of requirement under this Bill.

Part 2—Determination of consent applications and notices of requirement by panels

Resource consents for listed projects

Clauses 27 and 28 set out the matters relevant for a panel's consideration of a consent application and comments received on it in relation to a listed project. These matters reflect, as far as they are relevant, certain matters that must be considered under section 104 of the RMA in relation to applications under that Act. However, there are limitations on the extent to which consent applications under this Bill may be declined (*see clause 32*).

Resource consents for referred projects

Clauses 29 and 30 set out the matters relevant for a panel's consideration of a consent application and comments received on it in relation to a referred project. The test prescribed is, as far as is relevant, the same as that in the RMA (*see sections 104 to 104D, 105 to 107, and 107F of that Act*).

Requirements for designations for listed and referred projects

Clause 31 sets out the matters relevant for a panel's consideration of notices of requirement for both listed and referred projects.

Clause 32 sets out the limited grounds on which resource consents and designations may be declined for listed projects.

Conditions

Clause 33 provides for the application of sections 108, 108A to 112, and 220 of the RMA to the granting of resource consents under the Bill.

Clause 34 requires a panel to provide a copy of its draft conditions to the specified persons before it issues its final decision, giving those persons an opportunity to provide comments on the proposed conditions.

Final decision

Clause 35 provides that a panel's final decision must be reported not later than 25 working days after the date that comments were to be received on the consent application or notice of requirement under *clause 18*. There is a power to extend that reporting date by up to a further 25 working days if, because of the scale of the project, the panel could not complete its decision within the time specified. The clause prescribes the contents of the report and the date on which the consent or designation lapses if not given effect to (which must not be later than 2 years after the date specified for the consent to commence or after a designation is included in a district plan).

Clauses 36 to 38 provide for notice of a decision to be served on certain persons and published; they enable a decision to be issued in stages; and they specify who must be provided with information on the consent or designation.

Clause 39 requires the relevant territorial authority to include in its district plan a designation that has been confirmed as soon as practicable after any right of appeal has been exhausted or has expired.

Clause 40 provides that the territorial authority that would, but for the Bill, have been responsible for granting a resource consent or recommending a requirement for a designation has the powers, functions, and duties in relation to the resource consent or designation, as if the territorial authority had dealt with those matters itself.

Clause 41 provides that section 178(2) of the RMA applies to protect a notice of requirement from activities that would prevent or hinder the activity to which the notice of requirement relates.

Appeals

Clause 42 provides for a limited right of appeal on a question of law to specified persons against a decision of a panel on a resource consent application or notice of requirement for a designation. There is a second and final right of appeal to the Court of Appeal.

Clause 43 sets out the procedural requirements for appeals under the Bill.

Hon David Parker

COVID-19 Recovery (Fast-track Consenting) Bill

Government Bill

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COVID-19 Recovery (Fast-track Consenting) Bill

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Applications and decision making for listed and referred projects

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. 5

Part 1

Preliminary provisions

3 Repeal of this Act

- (1) This Act is repealed on the second anniversary of the date on which it received the Royal assent. 10
- (2) *See* **section 8** and **Schedule 1**, which make provision for transitional, savings, and related matters.

4 Purpose

The purpose of this Act is to urgently promote employment growth 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. 15

5 Overview

- (1) This Part contains preliminary provisions. 20
- (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. 25
- (6) **Schedule 4** provides for permitted activities and standards for permitted activities 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 and referred projects. 30

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— 5

(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 10

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 or referred project 15

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 20

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 25

(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 30

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

infrastructure has the meaning given in section 2(1) of the Resource Management Act 1991 35

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

- land returned under a Treaty settlement** includes land 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 5
- 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 10
 - (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 15
- national direction** means—
- (a) a national policy statement issued under section 52 of the Resource Management Act 1991, including a New Zealand coastal policy statement issued under section 57 of that Act; or
 - (b) a national environmental standard prescribed by regulations made under section 43 of the Resource Management Act 1991 20
- national road corridor** means the existing network of State highways, including the area under a bridge
- 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 25
- 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 30** 30
- 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 35

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 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 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**

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

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 5

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) Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014: 10
 - (ii) Ngā Wai o Maniapoto (Waipa River) Act 2012:
 - (iii) 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 15
- (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 20

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: 25
- (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

working day has the meaning given in section 2(1) of the Resource Management Act 1991 30

work on infrastructure means work that meets the criteria set out in **section 29**.

- (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. 35
- (3) Terms used in this Act, that are not defined in this Act have the same meaning as they have in the Marine and Coastal Area Act 2010, if they are defined in

that Act and not in any other Act (but modified as applicable if the Ngā Rohe Moana o Ngā Hapū o Ngati 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. 5

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. 10
- (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. 15
- (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— 20
 - (a) written notice of any matter; and
 - (b) an application; and
 - (c) comments sought on any matter.
- (2) Unless it is impracticable to do so, the document must be sent electronically to the electronic address provided for that purpose. 25
- (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)**— 30
 - (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. 35

- (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 this Act. 5
- (2) If an application for resource consent for an activity is made under this Act,—
- (a) the consenting process under this Act applies instead of the consenting process 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. 10
- (3) If a notice of requirement for a designation is lodged under this Act,—
- (a) the designation process under this Act applies instead of the designation process under the Resource Management Act 1991; and
- (b) a designation approved under this Act has the same force and effect for its duration, and according to its terms and conditions, as if it were confirmed under the Resource Management Act 1991. 15
- (4) Unless replaced, modified, or excluded by this Act, all other provisions of the Resource Management Act 1991 (including sections 16 and 17) apply to a listed or referred project or a permitted activity specified in or referred to in this Act (as the case requires). 20

Judicial review

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. 25
- (2) However, a person may not apply both for judicial review of a decision made under this Act and an appeal to the High Court under **clause 42 of Schedule 6** in respect of a final decision of a panel under **clause 35** of that schedule, unless the person lodges the applications for judicial review and appeal together. 30
- (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: Local Government (Auckland Transitional Provisions) Act 2010 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 and referred projects | 5 |
| | 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 | 10 |
| | (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 relating to the project. 15 | |
| | (2) The authorised persons for a project are identified,— | |
| | (a) for a listed project, in Schedule 2 ; and | |
| | (b) for a referred project, in the Order in Council made under section 27 (the referral order). 20 | |
| | (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 25 | |
| | (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 (<i>see</i> section 127 of the Resource Management Act 1991); but | |
| | (b) may lodge a notice of requirement under this Act to alter an existing designation. 30 | |

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 5
 - (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. 10

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 this subpart to refer a project to an expert consenting panel, are satisfied if Minister does the things set out in this section before the decision is made. 15
- (2) Before the Minister refers any part of a project to the expert consenting panel, the Minister must obtain a report on the application from the Office for Māori Crown Relations—Te Arawhiti that identifies the following:
- (a) the relevant iwi authorities and relevant Treaty settlement entities: 20
 - (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: 25
 - (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. 30
- (3) When deciding whether to refer any part of the project to a panel, the Minister must consider the report (*see sections 23 and 24*).

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. 35
- (2) 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 5
 - (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: 10
- (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 15
 - (ii) has not been agreed to in writing by the holder of a relevant protected customary rights recognition order issued under that Act.
- (3) The Minister must be satisfied that the project will help to achieve the purpose of this Act. 20
- (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*). 25

19 Whether project helps to achieve purpose of Act

In considering, for the purpose of **section 18(3)**, whether a project will help to achieve the purpose of this Act, the Minister may consider, at whatever level of detail the Minister considers appropriate, any or all of the following matters: 30

- (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 wellbeing of current and future generations: 35
- (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: 5
- (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): 10
- (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: 15
- (e) whether there is potential for the project to have significant adverse environmental effects:
- (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. 20
- (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 notices of requirement for designations. 25
- (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: 30
 - (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 description of the anticipated and known adverse effects of the project on the environment: 35
 - (e) a general assessment of the project in relation to national directions:

Alignment with criteria

- (f) an explanation of how the project meets the criteria in **section 18**:

Persons affected

- (g) 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: 5

- (h) a summary of any consultation already undertaken on the project with the persons referred to in **paragraph (g)**:

- (i) 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: 10

What is needed to complete the project

- (j) an outline of the types of resource consents and any 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: 15

- (k) a description of other legal authorisations (other than contractual) that the applicant considers may be required to commence the project (for example, authorisations under the Public Works Act 1981 or concessions under the Conservation Act 1987): 20

Other matters

- (l) 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: 25

- (m) a description of whether and how the project would be affected by climate change and natural hazards:

- (n) a summary of compliance or enforcement actions (if any) taken against the applicant by a local authority under the Resource Management Act 1991, and the outcome of those actions. 30

- (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 35

- (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 other than a Minister 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
- (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. 10
- (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: 15
- (c) Climate change:
- (d) Defence:
- (e) Education:
- (f) Housing:
- (g) Infrastructure: 20
- (h) Land Information:
- (i) Local Government:
- (j) Māori Crown Relations—Te Arawhiti:
- (k) Transport:
- (l) Treaty of Waitangi Negotiations: 25
- (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. 30
- (2) 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** 35
- (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**.
- (4) However, if a report has been obtained, or comments invited, on an application, the Minister must consider those 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) The Minister must consider the report obtained under **section 17**, and any comments received under **section 21**, before deciding to accept an application for referral.
- (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 the 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 an expert consenting 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 35 of Schedule 6**.
- 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 all or part of the project is referred to an expert consenting panel, the Minister must also give notice of the decisions and reasons to—
- (a) the EPA; and
- (b) the relevant iwi authorities and Treaty settlement entities identified in the report obtained under **section 17**; and
- (c) any other iwi authorities or Treaty settlement entities that the Minister considers to have an interest in the matter; and
- (d) 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. 10
- (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,— 15
 - (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**. 20

Subpart 2—Work on infrastructure

28 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). 25
- (2) **Subsection (1)** applies despite anything in the contrary in a plan or proposed plan.
- (3) However,— 30
 - (a) the work must meet the criteria set out in **section 29**; and
 - (b) the activities must meet the criteria set out in **section 30**; and
 - (c) the agency must comply with **section 32** before commencing the work.
- (4) The permitted activity standards do not override or replace any conditions that apply to an existing resource consent or designation. 35
- (5) *See* **section 34**, which provides for **Schedule 4** to be amended by Order in Council.

29 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: 5
 - (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) Ministry of Housing and Urban Development: 10
 - (iii) any local authority.
- (3) The work may only be carried out on existing infrastructure.
- (4) The infrastructure must be located in or on land—
- (a) that is owned by the agency; or
 - (b) in which the agency has a legal interest, and the landowner has given written permission for the agency to undertake the work. 15
- (5) In this section, **existing infrastructure** means infrastructure that is completed and operational before the commencement of this Act.

30 Criteria for permitted activities

For an agency that undertakes work on infrastructure in reliance on this subpart, an activity is a **permitted activity** if— 20

- (a) the activity is—
 - (i) identified in **Schedule 4** as a permitted activity for that agency; and
 - (ii) not excluded from being a permitted activity by **section 31**; and 25
- (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**.

31 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. 30
- (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. 35

- (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) wāhi tapu; or
 - (ii) any other site of cultural or historical significance; or
 - (iii) an outstanding water body: 5
 - (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 can be undertaken within the scope of an existing designation without requiring— 10
- (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 plan.
- (6) An activity is excluded to the extent that it has an existing resource consent. 15
- 32 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 hāpu engagement process required by **clauses 5 to 7 of Schedule 4** at least 30 working days before the work commences; and 20
 - (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. 25
- 33 Requirement to comply with duties under Resource Management Act 1991**
- An agency that carries out work on infrastructure in reliance on this Act is subject to—
- (a) the duty to avoid unreasonable noise under section 16 of the Resource Management Act 1991; and 30
 - (b) the duty to avoid, remedy, or mitigate adverse effects under section 17 of the Resource Management Act 1991.
- 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— 35
- (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 29(2)*): 5
- (a) Kāinga Ora—Homes and Communities:
- (b) Ministry of Housing and Urban Development:
- (c) any local authority.
- (3) The order must also amend **Schedule 4** to— 10
- (a) specify the permitted activities for the agency, including—
- (i) to set any restriction on where the infrastructure must be located; and
- (ii) to specify any activities, in addition to those listed in **section 31**, that are excluded from being permitted activities for that agency; and 15
- (b) specify the permitted activity standards that apply to the agency.

35 Monitoring and enforcement

- (1) A local authority must—
- (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 20
- (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. 25
- (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. 30

Schedule 1

Transitional, savings, and related provisions

s 8

Part 1

Provisions relating to this Act as enacted

5

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 this Act or the Order in Council before the repeal of this Act or the revocation of the Order in Council, including (without limitation)—
 - (a) the completion of any decisions on a consent application, notice of requirement for a designation or to alter a designation, in relation to a referred or listed project that is lodged with the relevant panel within the date that is six months before the repeal of this Act: 15
 - (b) the filing, hearing, determination or withdrawal of an appeal or a judicial review in relation to a determination made on an application or a notice of requirement made or given before the repeal of this Act, or as the case requires the rehearing of the determination of that application or notice: 20
 - (c) for any other legal purpose needed in order to complete anything commenced under this Act or any Order in Council made under this Act.
- (3) 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. 25
- (4) An expert consenting panel continues to exist until it has completed the performance or exercise of its functions, duties, and powers and any matters related to appeals or applications for judicial review or rehearings in relation to the performance or exercise of its functions, duties or powers. 30
- (5) A notice of intention must be submitted to a relevant local authority under **Part 1 of Schedule 4** and works must be started before this Act is repealed if this Act is to continue to apply to those works after its repeal.

2 How long permitted activities can be carried out

Anything that is a permitted activity under this Act may continue to be carried out (as a permitted activity) in connection with a project to which this Act applies for a maximum period of 15 years after the date on which this Act is repealed. 35

3 Costs incurred after repeal of Act

- (1) If any costs can be recovered from an applicant or a requiring authority 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 or listed project on or after that date. 5
- (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, or the completion of any other matter under this Act. 10

5 Relationship with Interpretation Act 1999

Clauses 1 to 4 do not limit the application of sections 17 to 21 of the Interpretation Act 1999.

Schedule 2 Listed projects

s 14

Identifier	Name	Person or entity authorised to undertake project	Description	Approximate geographical area
LP01	Te Ara Tūpua – Ngauranga to Pētone Cycleway and Walkway	Waka Kotahi NZ Transport Agency	to upgrade and construct a new shared path between Ngauranga and Pētone	<p>On existing and reclaimed land bound by:</p> <ul style="list-style-type: none"> • State Highway 2 (to the west) • Wellington Harbour (to the east) • SH2 intersection with Hutt Road (to the south) • 300 m to the west of the Esplanade and Hutt Road (to the north)
LP02	Northern Pathway – Westhaven to Akoranga Cycleway and Walkway	Waka Kotahi NZ Transport Agency	To construct a new shared path between Westhaven in central Auckland and Akoranga in the North Shore (including across the Auckland Harbour Bridge)	<p>The Southern end of the cycleway will commence close to the southern end of the Auckland Harbour Bridge and follow SH1's eastern edge. Approximately 600 to 800 m from the northern end of the Harbour Bridge the cycleway will cross SH1 and continue north on SH1 western edge until the Akoranga Drive off-ramp. The cycleway will then follow the off-ramp till the Akoranga Drive where it will terminate</p> <p>A subway will connect Onewa Road to the off-ramp approximately 1.2 km north of the northern end of the Harbour Bridge</p>

Identifier	Name	Person or entity authorised to undertake project	Description	Approximate geographical area
LP03	Wellington Metro Upgrade Programme	KiwiRail	<p>This project will consist of—</p> <ul style="list-style-type: none"> • Upgrade of Featherston Station • Level crossing upgrades • 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 63 and 65 on the Wairarapa Line • Construction of a Maymorn Passing Loop 	<p>This project will consist of—</p> <ul style="list-style-type: none"> • Featherston Station • All 29 crossings between Featherston and Masterton • Wellington, Masterton and Levin train stations • Algies Road, Tauherenikau • Wairarapa Line • Between approx 37,600 km and 39,000 km WL (in the vicinity of Maymorn Station between tunnels a1 and 2 WL) • Between Brooklyn Road and Belvedere Road, Carterton • Wairarapa Line
LP04	Papakura to Pukekōhe rail electrification	KiwiRail	<p>Electrification of the railway between Papakura and Pukekōhe to extend Auckland Metro's passenger services South</p> <ul style="list-style-type: none"> • Resignalling works 	<p>This project will involve—</p> <ul style="list-style-type: none"> • Rail corridor between Pukekōhe and Papakura Stations • Overbridges at—

Identifier	Name	Person or entity authorised to undertake project	Description	Approximate geographical area
LP05	Britomart East Upgrade	KiwiRail	Modifications to the Eastern end of the existing Britomart station to accommodate increased CRL capacity	<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 following streams Ngakoroa Stream, Hingana Stream Road, Stream Road, Hays Stream Road, Slippery Creek Pedestrian crossings where required <p>The Eastern end of the Britomart train station (including the tunnel) in the Auckland central business district</p>
LP06	Te Pā Tāhuna Residential Development	Partnership between Ngāi Tahu Property Limited (through its subsidiary NTP Development Holdings Limited) and the Ministry of Housing and Urban Development	Partnership between Ngāi Tahu Property (through its subsidiary NTP Development Holdings Limited - NTPDH) and the Ministry of Housing and Urban Development (MHUD) Construction of four buildings containing multiple residential units on four large lots (one building per lot), and a unit title subdivision	12 Sawmill Road. Legal description Lot 13 DP 8700, 34 and 38 Sawmill Road. 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	Ngā Mana Whenua of Tāmaki Makaurau (Marutūāhu Ropū, Ngati Whātua Ropū Waiohū – Tāmaki Rōpū) and Ministry of Housing and Urban Development	First development stages within Wairaka Precinct of a multi-stage comprehensive mixed-use urban development in Pt 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 Orakei own contiguous blocks of land that make up the site
LP08	Papakāinga Development - Kaitaia	Te Puni Kōkiri	The addition of 24 new dwellings to an existing papakāinga	23 Kohuhu Street, Kaitaia
LP09	Papakāinga Development - Point Chevalier, Auckland	Te Puni Kōkiri	Construction of 14 affordable rental homes	73 Premier Avenue, Point Chevalier, Auckland
LP10	Papakāinga Development - Whaingaroa, Raglan	Te Puni Kōkiri	Integrated papakāinga development of 6 homes	113 Wainui Road, Whaingaroa, Raglan
LP11	Papakāinga Development - Waitara, Taranaki	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
LP12	Papakāinga Development - Chatham Islands	Te Puni Kōkiri	Construction of 5 homes	Chatham Islands

Identifier	Name	Person or entity authorised to undertake project	Description	Approximate geographical area
LP13	Papakāinga Development - Rāpaki, Christchurch	Te Puni Kōkiri	Construction of 10 residential dwellings and a shared-use building	2 Rāpaki Drive, Rāpaki, Christchurch
LP14	Picton Ferry Terminal Redevelopment	KiwiRail, Port Marlborough, Marlborough District Council, and Waka Kotahi NZ Transport Agency	Upgrades to the Picton Ferry Terminal Precinct and surrounding infrastructure, including works on land and in the coastal marine area	Part of the operative Marlborough Environment Plan port zone in Picton. The part relevant to this project is any part of the zone to the East of a line drawn from north to south that touches the eastern edge of a land parcel with the legal description Lot 2 DP 355 745
LP15	Papakura to Drury SH1 improvements	Waka Kotahi NZ Transport Agency	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	<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
LP16	Kopenui Water Storage Reservoir, Kaikohe		Construction of water storage and distribution infrastructure in	Kaikohe

Identifier	Name	Person or entity authorised to undertake project	Description	Approximate geographical area
			<p>Kaikohe to support the development of Northland's agriculture and horticulture sector and to provide drinking water for Kaikohe (limited to earthworks and land use consents and does not include consents for the taking and damming of water)</p>	

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). 5

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 10
 - (ii) authorised, if the person is a requiring authority, to lodge a notice of requirement for 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. 15

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**. 20

Schedule 4

Work on infrastructure: permitted activities and standards

ss 28(5), 30

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1 Application of schedule

- (1) This schedule sets out the permitted activities and permitted activity standards that apply to the following agencies:
- (a) KiwiRail Holdings Limited:
 - (b) New Zealand Transport Agency. 5
- (2) See **section 28**, which provides that,—
- (a) if activities are carried out in the course of work on infrastructure that meets the criteria set out in **section 29**, and if the activities meet the criteria set out in **section 30** 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 10
 - (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 5
works means activities carried out in the course of work on infrastructure in reliance on this Act.
- 3 Incorporation by reference**
- (1) Schedule 1AA of the Resource Management Act 1991 applies, and subpart 2 of Part 3 of the Legislation Act 2012 does not apply, to any material incorporated by reference into this schedule. 10
- (2) In this schedule, **vegetation clearance** means the disturbance, cutting, burning, clearing, damaging, destruction, or removal of vegetation that is not a tree identified in the relevant plan. 15

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 28*). 20
- 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 25
- (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. 30
- (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 35

- (b) identify, for the purpose of **section 31(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 5
 - (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 10
 - (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. 15
- (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 20
 - (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. 25
- 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)**. 30
- (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**. 35
- (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 5
 - (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. 10

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 15
 - (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. 20
- (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: 25
 - (c) a copy of any management plan developed in accordance with **clause 7**;
 - (d) details of works that include fish passage;
 - (e) a copy of any accidental discovery protocol to be applied during any earthworks activities (*see clause 12*): 30
 - (f) 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. 35

- (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**: 5
 - (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 appropriate measures to contact those authorities, groups, and entities. 10

Part 2

KiwiRail Holdings Limited and New Zealand Transport Agency 15

10 Application of Part

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

- (a) the permitted activities; and
- (b) the permitted activity standards, which apply in addition to the standards set out in **Part 1** of this schedule. 20

Subpart 1—Permitted activities

11 Permitted activities

- (1) Unless excluded by **section 31**, any activity for the operation, maintenance, replacement, or minor upgrade of existing infrastructure is a permitted activity if— 25
- (a) the infrastructure is located in or on the national road corridor or the national rail corridor; and
 - (b) the activity complies with the permitted activity standards in **subpart 2**.
- (2) In this clause, **minor upgrade** means any of the following activities: 30
- (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): 35

- (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: 5
- (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 10

Ground disturbance

12 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 experience in erosion and sediment control; and 15
 - (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. 20
- (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 under section 44, 56, or 61 of the Heritage New Zealand Pouhere Taonga Act 2004; and 25
 - (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. 30
- (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: 35
 - (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— 5
- (a) be implemented before the works commence; and
- (b) include actions to reduce 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*. 10
- (6) Earthworks must not—
- (a) occur within 25 metres of any part of a natural wetland; or
- (b) occur within 50 metres of a river in a statutory acknowledgement area without the consent of the relevant iwi authorities; or 15
- (c) change a natural wetland’s annual median water level by more than 0.1 metres; or
- (d) occur within 50 metres of identified īnanga spawning areas during īnanga spawning periods. 20
- (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.
- 13 Geotechnical boreholes (including groundwater monitoring)**
- (1) The drilling of boreholes must comply with NZS 4411:2001 Environmental standard for drilling of soil and rock. 25
- (2) Drilling must not—
- (a) occur above drinking water supply areas or confined aquifers; or
- (b) intercept aquifers that are used for 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. 30
- (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.
- 14 Groundwater discharge for dewatering and construction** 35
- (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 result in flooding on adjacent properties.

Works within beds of rivers 5

15 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. 10
- (3) A temporary bridge may be erected in a location for no longer than 6 months.
- (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. 15
- (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.

16 Fish passage 20

- (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) Fish passage works must be referred to all of the relevant bodies described in **clause 8(1)** at least 10 working days before the works commence, to enable feedback to be sought. 25
- (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. 30
- (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). 35

Vegetation

17 Biosecurity risks

The agency undertaking the works must take all appropriate measures to prevent the spread of pest plants and unwanted organisms, including the organism that causes kauri dieback disease. 5

18 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 10
 - (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. 15
- (5) Vegetation clearance activities must be completed in accordance with good arboricultural practice.

19 Vegetation removal and habitat disturbance within significant natural area or significant ecological area 20

- (1) The amount of vegetation to be removed from significant natural areas or significant ecological areas, as identified in the relevant plan, must be no greater than required to undertake the activity, and no more than 1,000 square metres of vegetation may be removed from a significant natural area.
- (2) Trees identified in a relevant plan or proposed plan as having significant value must not be removed. 25
- (3) 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.
- (4) 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. 30

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. 35

- (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
- (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: 10
- (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— 15
- (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. 20
- (3) For sites where soils are identified as containing contaminants above background levels, a site management plan must be— 25
- (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— 30
- (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. 35
- (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). 5
- 22 Discharge of dust to land and air** 10
- (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. 10
- (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: 15
 - (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** 20
- (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. 25
- (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**. 30
- (4) In this clause, **sensitive activity**—
- (a) means residential, educational, community, health care, or visitor accommodation; and
 - (b) includes (without limitation)— 35
 - (i) dwellings:
 - (ii) schools:

- (iii) marae;
 - (iv) hotels and motels;
 - (v) residential care facilities.
- 24 Construction signage** 5
- 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** 10
- 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 15
 - (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. 20
 - (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** 25
- (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— 30
 - (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). 5
- (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. 10

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. 15
- (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 20
 - (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.
- (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: 25
- (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: 30
 - (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 disturbance to the substrate of the coastal marine area 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. 5
- (2) Indigenous vegetation disturbance or clearance within the coastal marine area must not exceed 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 additional effects on coastal processes. 10

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. 15
- (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. 20
- (4) Best-practice dredging methods must be used in order to minimise sediment re-mobilisation and dispersal.
- (5) There must be no deepening or widening of the channel beyond the limits of its design profile. 25
- (6) Dredging must not occur within 200 metres of identified īnanga spawning areas during īnanga spawning periods.
- (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 30
- (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

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. 5
- (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. 10
- (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. 15
- (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. 20

*Monitoring***36 Monitoring**

The agency undertaking the works must provide evidence of compliance with the relevant standards applied by this schedule on the completion of the works. 25

Schedule 5

Expert consenting panel

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Purpose and functions of panel

- | | | |
|----------|--|----------|
| 1 | Purpose of expert consenting panels | 5 |
| (1) | The purpose of an expert consenting panel appointed under this schedule is to ensure that decisions are made on— | |
| | (a) consent applications for listed and referred projects; and | |
| | (b) notices of requirement for designations or to alter a designation for listed and referred projects. | 10 |
| (2) | A panel must determine consent applications and notices of requirement in accordance with the provisions of this Act. | |
| 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. | 15 |

- (2) The Minister may at any time remove the panel convener for just cause (within the meaning of **clause 10(3)**), and **clause 10(2)** applies with any necessary modifications.
- (3) The panel convener may resign their office at any time by notice in writing to the Minister. 5
- (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) to determine a consent application or notice of requirement for a listed or a referred project. 10
- 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 or referred projects; and 15
- (b) requirements for designations or alterations of designations for listed or referred projects.
- (2) The membership of a panel must include—
- (a) 1 member of the relevant local authorities or a person nominated by those local authorities; and 20
- (b) 1 person nominated as the representative of the relevant iwi authorities.
- (3) If either the relevant local authorities or the relevant iwi authorities nominate more than one 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. 25
- (4) If the relevant local authorities fail to make a nomination under **subclause (2)(a)**, the panel convener must appoint a member of one of those authorities as a member of the panel (as the representative of those authorities).
- (5) If the relevant iwi authorities fail to make a nomination under **subclause (2)(b)**, the convener, must appoint a member of one of those authorities to the panel (as the representative of those authorities). 30
- (6) Despite the limit specified on the membership by **subclause (1)**, that number may be exceeded (including by the appointment of more than one person nominated under **subclause (2)(a)** or **subclause (2)(b)**), at the discretion of the panel convener, if warranted by, or required to accommodate— 35
- (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 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 8(1)**.
 - (7) This clause is subject to **clause 8** (which imposes requirements regarding the qualifications of individual panel members and the collective knowledge and experience of the panel). 5
- 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. 10
 - (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. 15
 - (5) A panel has a quorum of 3 members.
- 5 Obligations in relation to Treaty settlements**
- (1) This section applies if any Treaty settlement Act or iwi participation legislation (within the meaning of section 2(1) of the Resource Management Act 1991) or Mana Whakahono a Rohe or joint management agreement includes arrangements for— 20
 - (a) 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: 25
 - (b) notice that must 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. 30
 - (2) The panel convener or panel (as the case may be) must either—
 - (a) comply with the arrangements in the Act or iwi participation legislation or agreements referred to in **subclause (1)** as if it was a local authority; or 35
 - (b) obtain the agreement of the relevant Treaty settlement entity to adopt a modified arrangement that is consistent with achieving the purpose of the Act or iwi participation legislation referred to in **subclause (1)** and the purpose of this Act.

- (3) The relevant Treaty settlement entity 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. 5
- 6 Terms of reference for panel**
- The panel convener must set the terms of reference for a panel.
- 7 Appointment of replacement panel member**
- The panel convener may, at any time, appoint a new member to replace a member removed under **clause 11** or who resigns or dies. 10
- 8 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 15
- (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. 20
- (3) Despite **subclause (2)**, the panel convener may at their discretion appoint 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). 25
- 9 Remuneration of panel convener and panel members**
- (1) The panel convener and members of the panel are entitled— 30
- (a) to receive remuneration not within **paragraph (b)** for services as 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 panel convener or as a panel member. 35

- (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.

10 Removal and resignation of panel members

- (1) The panel convener may remove any person appointed to a panel under this schedule for just cause. 5
- (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. 10
- (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. 15

Compare: 2004 No 115 ss 40, 41

Procedural and administrative matters

11 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. 20
- (2) **Subclause (1)** applies subject to any other provision in this Act or regulations made under this Act that regulate the procedures of a panel.
- (3) A panel may appoint a special advisor to assist the panel with an application in relation to any matters the panel may determine. 25
- (4) A panel may, at any time, obtain reports and appoint technical advisors, 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. 30
- (6) A panel must keep a full record of its proceedings.

Compare: RMA 269

12 Secretariat support

- (1) The EPA must provide advice and secretariat support for a panel in its role of determining any matter before the panel under this schedule. 35
- (2) A relevant local authority must assist the panel by providing advice within the knowledge of the authority, if requested by the panel.

13 Liability of members

A member appointed to a panel is not liable for anything that the member does or omits to do in good faith in performing or exercising the functions, duties, or powers of the panel.

14 Recovery of costs

5

- (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 consent application or notice of requirement consent application or notice of requirement being lodged with the EPA (whether or not the requirement is subsequently lodged).
- (2) The EPA may recover from an applicant 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 the costs in respect of secretarial and support services provided to a panel by the EPA). 10
- (3) The EPA must, on request by an applicant, provide an estimate of the costs likely to be recovered under this clause. 15
- (4) 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.
- (5) Section 149ZF of the Resource Management Act 1991 also applies, with any necessary modifications, to the recovery of costs under this Act. 20

15 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. 25

Schedule 6

Applications and decision making for listed and referred projects

ss 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 or a referred project:
 - (i) a consent application: 5
 - (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. 10

Part 1

Applications for resource consents and notices of requirement for designations

Consent applications and notices of requirement 15

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 referred project, lodge— 20
 - (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— 25
 - (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. 5
- (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 10
 - (b) is to occur within a customary marine title area, unless agreed in writing with the appropriate customary marine title group.
- (5) 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. 15

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 consent application or notice of requirement— 20
- (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. 25

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. 30
- (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 35
 - (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 5
 - (b) to any person or group invited to provide written comments under **clause 17(2)**. 10
- (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. 10
- 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): 15
 - (b) by the panel—
 - (i) under **clause 21** (Minister may direct delay):
 - (ii) under **clause 22** (request for suspension of processing by consent applicant or requiring authority). 20
- (2) If an applicant or requiring authority has not paid the fee required 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, as the case requires; and
 - (b) if the suspension occurs after persons or groups have been invited to provide comments under **clause 17(2)**, to those persons. 25
- (3) If the applicant or requiring authority subsequently pays the due fee, 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** 30
- (1) This clause applies if the EPA considers that information held by a local authority in respect of a proposed project site is necessary and relevant to a consent application or notice of requirement.
- (2) The EPA may request the relevant local authority to provide the information and set a date by which the information must be made available. 35
- (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 is 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. 5
- (4) 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) At the direction of the chairperson of a panel, the EPA may make administrative decisions that are incidental or ancillary to the conduct of the panel. 10
- (2) The EPA must, without direction from the panel, 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. 15
- (3) In exercising its powers and performing its duties under this schedule, the EPA must, as far as is reasonably practicable, minimise costs and avoid delay.

Information requirements for consent applications for listed and referred projects

9 Information required in consent applications 20

- (1) Every consent application for a listed or a referred project made under **clause 2** must include the following:
 - (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 25
 - (d) the full name and address of every person who, after reasonable inquiry, is known by the consent applicant to be an owner or occupier of the site; and
 - (e) a description of any other activities that are part of the proposal to which the consent application relates; and 30
 - (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 in light of— 35
 - (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; 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 also 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 the relevant iwi or hapū; or
 - (b) if the iwi or hapū is unwilling to do so, a statement of the reasons (if any) given for that refusal by the iwi or hapū.
- (6) A consent application must 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 5
- (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 28(3)**); and 10
- (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: 15
 - (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 an activity includes the discharge of any contaminant, a description of— 20
 - (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: 25
 - (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: 30
 - (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: 35
 - (h) an assessment of any effects of the activity on the exercise of a protected customary right.
- (2) **Subclause (1)(e)** does not oblige an 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. 40

- (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** 5
- 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: 10
 - (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: 15
 - (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. 20
- 12 Information required in applications for subdivision or reclamation**
- Information required for subdivision consents*
- (1) In addition to the information required for a consent application under **clause 9**, a consent application for a subdivision in a project area must include information that adequately defines the following: 25
- (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 30
 - (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 35

- (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* 5
- (2) Consent applications for reclamations must include, in addition to the information required 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: 10
- (c) any part of the reclaimed area to be set aside as an esplanade reserve or esplanade strip.
- Information requirements for notices of requirement for listed and referred projects*
- 13 Information required for notices of requirement** 15
- (1) A notice of requirement for a listed or referred project must include the following information:
- (a) a description of the site to which the notice of requirement applies; and
- (b) the effects of the proposed project or work on the environment, together with a description of how any adverse effects will be mitigated; and 20
- (c) confirmation that the notice of requirement complies with **clause 3(1)**; and
- (d) an assessment of the project or work against Part 2 of the Resource Management Act 1991 and the purpose of this Act; and
- (e) information about any Treaty settlements that apply in the project area, including— 25
- (i) the identification of the relevant provisions; 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 30
- (f) an assessment of whether the project or work and the designation sought are reasonably necessary for achieving the objectives of the requiring authority; and
- (g) any consideration of alternative sites, routes, or methods of undertaking the project or work; and 35
- (h) a list of the resource consents needed for the project or work and whether these have been applied for; and

- (i) a description of any consultation undertaken with parties likely to be affected by the project or work and the designation; and
 - (j) a cultural impact assessment prepared by the relevant iwi or hapū or, if the iwi or hapū is unwilling to do so, a statement of the reasons (if any) given for that refusal by the iwi or hapū; and 5
 - (k) 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. 10

General requirement

- 14 Scope of information required** 15
- (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 an applicant or requiring authority to manage the adverse effects of an activity through conditions, including conditions requiring the preparation of a management plan. 20

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. 25
- 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, the panel must decide the application as if the whole of the land to be subdivided were part of the abutting district. 30
- (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. 35
- (3) A 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. 5
- (2) However, not later than 10 working days after the EPA receives a consent application or notice of requirement under **clause 2**, a panel must invite written comments on a consent application or notice of requirement before it from the persons or groups set out in **subclauses (4) to (7)**. 10
- (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 15
- (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 20
- (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 and occupiers of the land on which the project is to be undertaken and the land adjacent to that land; and 25
- (g) 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 30
- (v) Education; and
- (vi) Housing; and
- (vii) Infrastructure; and
- (viii) Land Information; and
- (ix) Local Government; and 35
- (x) Māori Crown Relations: Te Arawhiti; and

- (xi) Transport; and
- (xii) Treaty of Waitangi negotiations; and
- (xiii) Urban Development; and
- (h) the Director-General of Conservation.
- (5) A panel may invite written comments from any other person the panel considers appropriate. 5
- 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 10
- (b) the relevant iwi authorities; and
- (c) the relevant iwi authorities, including those identified in the report obtained under **section 17(2)**; and
- (d) 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 15
- (ii) an entity identified in the report obtained under **section 17(2)**; and
- (e) 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(2)**); and 20
- (f) 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(2)**); and 25
- (g) any applicant group under the Marine and Coastal Area (Takutai Moana) Act 2011 identified in the report obtained under **section 17(2)**; and
- (h) the owners and occupiers of the land on which the project is to be undertaken and the land adjacent to that land; and 30
- (i) Ministers of the Crown responsible for the portfolios listed in **sub-clause (4)(g)**; and
- (j) the Director-General of Conservation; and
- (k) Business New Zealand Incorporated; and
- (l) the Climate Change Commission; and 35
- (m) Employers' and Manufacturers' Association (Northern) Incorporated; and
- (n) Environmental Defence Society Incorporated; and

- (o) Generation Zero Incorporated; and
- (p) Greenpeace of New Zealand Incorporated; 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 5
- (t) Property Council of New Zealand Incorporated; and
- (u) Royal Forest & Bird Protection Society of New Zealand Incorporated.
- (7) A panel may invite comments from any other person the panel considers appropriate.
- 18 General provisions relating to invitations given under clause 17(2)** 10
- (1) The 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 was given).
- (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. 15
- (3) An iwi authority invited to provide comments under **clause 17(2)** may—
- (a) share the application with hapū whose rohe is in the project area proposed in the application; and 20
- (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 panel is not required to consider any comments received after the time specified in the invitation, but may do so, in its absolute discretion, as long as the panel has not issued its decision. 25
- (6) 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 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 the panel. 30
- 20 Procedure if hearing is held**
- Who may appear and be heard*
- (1) If, in its absolute discretion, a panel considers it is appropriate to hold a hearing, it may hear from— 35
- (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)**.
- Notices and timing requirements* 5
- (2) 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 identified under **subclause (1)**, fixing the date, time, and place of the hearing.
- (3) The notice must give not less than 5 working days' notice of the hearing, and advise the persons notified— 10
- (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.
- (4) If a person or group advises a panel under **subclause (3)(b)** that they will attend a hearing but fails to appear, the panel may proceed with the hearing. 15
- (5) A panel must complete any hearing within the time frame allowed under **clause 35(2)** for the panel to issue its final decision frame.
- Other provisions as to conduct of hearing*
- (6) If a hearing is held, a panel must— 20
- (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 25
- (e) if the chairperson of a panel gives leave, permit cross-examination.
- (7) The 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. 30
- Remote access hearing*
- (8) 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 35
- (c) at the request of a person or a representative of a group of persons referred to in **subclause (1)**.
- (9) 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,— 5
- (i) an audio or a video recording of the hearing; or
- (ii) a written transcript of the hearing.
- (10) **Subclause (9)** is subject to section 48 of the Local Government Official Information and Meetings Act 1987 (right of local authorities to exclude public). 10
- 21 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. 15
- (2) If a direction is received from the Minister under **subclause (1)**, the EPA must, within 5 working days of receiving the direction, give written notice of it, and the reasons of the Minister, to— 20
- (a) the members of the panel; and
- (b) the relevant local authorities; and
- (c) the applicant or requiring authority, as the case requires; 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— 25
- (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. 30
- (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 direction given under **subclause (1)** ceases to have effect from the earlier of the following dates: 35
- (a) the date on which consent applications are lodged with the EPA for the further resource consents identified by the Minister under **subclause (3)**:

- (b) the date on which the Minister, by notice given under **subclause (4)**, withdraws the direction to the EPA to suspend processing the consent application or notice of requirement.
- (6) A copy of the direction given under **subclause (4)** must be given to the persons and groups listed in **subclause (2)**. 5
- 22 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. 10
- (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 the panel issues its final decision on an application or notice under **clause 35**. 15
- (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) The panel, at its discretion,— 20
 - (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. 25
- (5) A consent applicant or requiring authority granted a suspension under **subclause (4)** may request in writing that the processing of the application or notice be resumed.
- (6) If a request is received under **subclause (5)**, a panel must, as soon as is reasonably practicable, resume processing the consent application or notice of requirement. 30
- (7) If a panel does not receive a request under **subclause (5)**, the panel may decide under **clause 23(2)(b)** to continue to process the consent application or notice of requirement.
- (8) If processing of a consent application or notice of requirement is resumed under **subclause (6) or (7)**, the EPA must give written notice of that, specifying the date on which processing was resumed,— 35
 - (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)**.

23 Return of consent application or notice of requirement

- (1) This clause applies if—
- (a) 50 working days have elapsed since the processing of a consent application or notice of requirement was suspended under **clause 22(4)(a)**; and 5
- (b) a suspension was granted to the consent applicant or requiring authority under **clause 22(4)(b)**.
- (2) A panel must decide whether— 10
- (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, as the case requires; and 15
- (b) the relevant local authority; and
- (c) 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. 20
- (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

24 Further information

- (1) At any time before a panel issues its final decision under **clause 35**, 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, as the case may be: 30
- (ii) a relevant local authority;
- (iii) any person or group invited to provide comments under **clause 17(2)**;
- (b) to prepare or commission an expert report on an issue relevant to the consent application or notice of requirement. 35

- (2) If further information is requested under **subclause (1)(a)(i)**, not later than 10 working days after the direction is given, the consent applicant or requiring authority 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. 5
- (3) As soon as is reasonably practicable after the date 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— 10
 - (a) to the members of the panel; and
 - (b) to the consent applicant or requiring authority, as the case requires; and
 - (c) to every person or group that provided comments under **clause 17(2)**.
- (4) The persons and groups that receive the information or report under **sub-clause (3)(c)** may not make further comments unless requested by the panel. 15

Certificate of compliance

25 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 as part of a consent application or a notice of requirement. 20
- (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. 25

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

26 Use of Resource Management Act 1991 processes for listed and referred projects 30

- (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. 35
- (2) This Act does not prevent that person from lodging, in relation to a listed or 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 or 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. 5

Part 2

Determination of consent applications and notices of requirement by panel 10

Resource consents for listed projects

27 Consideration of consent applications for listed projects

- (1) When considering a consent application in relation to a listed project, and any comments received in response to an invitation given under **clause 17(2)**, a panel must have regard to— 15
 - (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 20
 - (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. 25
- (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: 30
 - (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— 35

- (a) must consider whether granting consent, subject to any conditions, would promote Part 2 of the Resource Management Act 1991 and the purpose of this Act; but
- (b) must apply **section 6** of this Act (Treaty of Waitangi) instead of section 8 of the Resource Management Act 1991 (Treaty of Waitangi). 5
- (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** 10
- 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 (*see subclause (4)*). 15
-
- (5) **Subclause (4)** is subject to **clause 5 of Schedule 5** (obligations in relation to Treaty settlements).
- 28 Further matters relevant to consent applications for listed projects**
- (1) This clause applies only to consent applications for listed projects. 20
- (2) When forming an opinion for the purposes of **clause 27(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 there is a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, the panel must have regard to any resource management matters in that planning document until all obligations under section 93 of that Act have been met by the relevant local authority. 25
- (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). 30
- (5) When considering a consent application for a controlled activity or a restricted discretionary activity, the following rules apply: 35
- (a) a panel must grant consent unless any of the grounds described in **clause 32** for declining an application apply; and
- (b) the power of the panel to impose conditions is not restricted by the matters over which control or discretion is reserved in a plan; and

- (c) the activity need not comply with the requirements, conditions, or permissions (if any) specified for that activity in a resource management document.
- (6) When considering a consent application for a discretionary activity,—
- (a) a panel must grant consent unless any of the grounds described in **clause 32** for declining an application apply; and 5
- (b) the activity need not comply with the requirements, conditions, or permissions (if any) specified for that activity in a resource management document.
- (7) When considering a consent application for a non-complying activity,— 10
- (a) a panel must grant consent unless any of the grounds described in **clause 32** for declining an application apply; and
- (b) the activity need not comply with the requirements, conditions, or permissions (if any) specified for that activity in a resource management document; and 15
- (c) the test under section 104D of the Resource Management Act 1991 must not be applied.
- (8) In this clause, **resource management document** means any of the following documents made under the Resource Management Act 1991:
- (a) a national environmental standard: 20
- (b) other regulations:
- (c) a plan:
- (d) a proposed plan.

Resource consents for referred projects

- 29 Consideration of consent applications for referred projects** 25
- 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(2)**, a panel must have regard to—
- (a) any actual and potential effects on the environment of allowing the activity; and 30
- (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 27(2)**; and 35
- (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—
- (a) must consider whether granting consent, subject to any conditions, would promote Part 2 of the Resource Management Act 1991 and the purpose of this Act; but
 - (b) must apply **section 6** of this Act (Treaty of Waitangi) instead of section 8 of the Resource Management Act 1991 (Treaty of Waitangi). 5
- (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, the 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. 10
- 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. 15
- (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: 20
 - (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 25
 - (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). 30
- (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. 35

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, 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. 5
- (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
- (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 27(4)**).
- (11) **Subclause (10)** is subject to **clause 5 of Schedule 5** (obligations in relation to Treaty settlements). 15
- (12) A panel must decline a consent application for a referred project if that is necessary to comply with **section 6** (Treaty of Waitangi).

30 Further matters relevant to considering consent applications for referred projects 20

- (1) Sections 104A to 104D, 105 to 107, and 107F 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 the following: 25
- (a) a reference to a consent authority must be read as a reference to a panel; and
- (b) in section 107F(3) of the Resource Management Act 1991,—
- (i) the reference to section 88(3A) of that Act must be read as a reference to **clause 4(1)** of this schedule; and 30
- (ii) the references to sections 41C, 42A, 92, and 149 of that Act must be read as references to **clause 24** of this schedule.

*Requirements for designations for listed and referred projects***31 Consideration of notices of requirement for listed and referred projects**

- (1) When considering a notice of requirement for a listed or 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). 35

- (2) When considering a notice of requirement and any comments received in response to an invitation given under **clause 17(2)**, a panel must 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 5
 - (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 10
 - (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. 15
- (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: 20
 - (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. 25
- (5) A panel may—
- (a) cancel a requirement; or
 - (b) confirm a requirement; or 30
 - (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—
- (a) must consider whether a decision to confirm or modify a designation, subject to any conditions, would promote Part 2 of the Resource Management Act 1991 and the purpose of this Act; but 35
 - (b) 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. 5
- (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 for a designation, a panel must comply with that obligation as if it were the territorial authority or other decision maker (*see* example relating to **clause 27(4)**). 10
- (9) **Subclause (8)** is subject to **clause 5 of Schedule 5** (obligations in relation to Treaty settlements).

Grounds on which resource consents and designations may be declined for listed projects 15

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

A panel may decline a consent application or cancel a notice of requirement for a listed project, but only on the following grounds:

- (a) the panel considers that a resource consent or a designation could not be granted, with or without conditions, that would be consistent with any national policy statement, including a New Zealand coastal policy statement: 20
- (b) the panel considers that a resource consent or designation could not be granted, with or without conditions, that would be consistent with the terms of any relevant Treaty settlement. 25

Conditions

33 Conditions applying to resource consents

- (1) This clause applies to consent applications in respect of both listed projects and referred projects. 30
- (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: 35
 - (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.

34 Panel to provide copies of draft conditions

- (1) Before a panel issues a decision granting a resource consent or designation, the panel must provide a copy of its draft conditions to the following, inviting comments on the draft conditions: 5
 - (a) the consent applicant or requiring authority, as the case requires; and
 - (b) every person or group that provided comments in response to an invitation given under **clause 17(2)**.
- (2) The EPA must, as soon as practicable after receiving comments under **subclause (1)**, provide electronic copies of those comments to— 10
 - (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)**. 15
- (3) 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

35 Final decision on consent applications and notices of requirement 20

Report on final decision

- (1) As soon as practicable after a panel has completed its consideration of a consent application or a notice of requirement, a panel must—
 - (a) make its final decision; and
 - (b) produce a written report of that decision (the **decision**). 25
- (2) The panel must issue its final decision not later than 25 working days after the date specified for receiving comments under **clause 18**.
- (3) However, if the scale 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 report by up to a further 25 working days. 30
- (4) The period allowed under **subclause (2) or (3)** does not include any time that a consent application or notice of requirement was suspended by notice of the applicant or requiring authority under **clause 22**.
- (5) If the panel extends the time under **subclause (3)**, the EPA must give written notice of the extended time to— 35
 - (a) the consent applicant or requiring authority, as the case requires; and

- (b) to 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 5
 - (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. 10
- (8) The date specified under **subclause (7)** must not be later than 2 years—
- (a) after the date of commencement, in the case of a resource consent; or
 - (b) after a designation is included in a district plan.
- 36 Service and publication of decision**
- (1) Notice of a decision must be served— 15
- (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. 20
- (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.
- 37 Decisions may be issued in stages and minor errors corrected** 25
- (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) Not later than 20 working days after the panel issues its final decision under **clause 35(2)**, a panel may amend a decision to correct a minor omission, error, or other defect in the panel’s decision. 30
- 38 Who must be informed about decisions issued under clause 35(2)**
- (1) As soon as practicable after a panel’s final decision on a consent application or notice of requirement has been made and all appeal rights are exhausted or have expired, the EPA must provide information on the resource consents granted, and the designations confirmed, under this schedule. 35

- (2) The information must be provided—
 - (a) to the relevant local authorities, in the case of both listed and referred projects; and
 - (b) to all persons or groups invited to provide comments under **clause 17(2)**, in the case of referred projects. 5

39 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 a designation (with or without modification); and
 - (b) any right of appeal under **clause 42** is exhausted or has expired. 10
- (2) As soon as practicable after any right of appeal is exhausted or has expired, the territorial authority must—
 - (a) include the designation in its district plan and any proposed district plan, as if it were a rule in the plan; and
 - (b) state in the plan the name of the requiring authority that has the benefit of the designation. 15

40 Role of local authorities in relation to resource consents or designations granted under this Act

- (1) This clause applies to—
 - (a) a resource consent that is granted by a panel; and 20
 - (b) a designation that is confirmed by a panel and included in a district plan.
- (2) The territorial authority that, but for this Act, would have had responsibility—
 - (a) for granting a resource consent 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 25
 - (b) for recommending that a designation be confirmed 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 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 30
 - (b) any provision of an enactment that refers to a resource consent granted, or a designation confirmed 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 35

resource consent granted, or a designation confirmed and included in a district plan, under this Act.

- (4) To avoid doubt, 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

41 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**. 10

Appeals

42 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 35** on a consent application or notice of requirement: 15
- (a) the consent applicant or requiring authority, as the case requires:
 - (b) any relevant local authority:
 - (c) the Attorney-General: 20
 - (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. 25
- (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.

43 Procedural matters

Notice of appeal

- (1) A person entitled, and intending, to appeal against a decision of a panel (**appellant**) must file a notice of appeal not later than 15 working days after the date on which the person was notified of the decision of the panel under **clause 36(1)**. 30
- (2) The notice of appeal must specify—
- (a) the decision or the part of the decision appealed against; and 35
 - (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) Not 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. 5
- (4) Not 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 10
 - (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)**. 15

Notice of intention to appear

- (6) If a person served with a notice of appeal under **subclause (4)** wishes to appear at the appeal, that person must serve a notice of intention to appear on— 20
 - (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 not later than 10 working days after that person was served with the notice of appeal under **subclause (4)**. 25

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. 30