



## *Fast-track consenting processes*

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

FACT SHEET 3

# Information for iwi authorities: Overview of fast-track consenting processes

The COVID-19 Recovery (Fast-track Consenting) Act 2020 provides people with a way to fast track eligible infrastructure and development projects. Projects are eligible if they support economic recovery and investment certainty following the COVID-19 pandemic, while also promoting the sustainable management of natural and physical resources.

This document helps iwi authorities understand how the Act relates to them. The role of hapū is outlined further below.

As this legislation was developed, iwi feedback included concerns about the process, and its potential to impact on the rights and interests of Māori within the Resource Management Act 1991 (RMA). The Ministry for the Environment is conscious of these concerns and working to make sure rights and interests are not adversely impacted.

## How iwi authorities are involved

Iwi authorities have multiple opportunities to engage with the Act.

This includes:

- applying to the Minister for the Environment to have your own projects fast tracked. You can find out more about this on the [Ministry for the Environment's website](#)
- applicants engaging with you before applying to the Minister to consider fast tracking a project
- for applications in your rohe:
  - providing feedback when the Minister is considering fast tracking a project in your rohe
  - nominating a person to be a member of an expert consenting panel to make decisions on projects within your rohe that have been approved for fast tracking
  - providing comments to the expert consenting panel when they are making decisions on resource consent applications and notices of requirement that are proposed to occur in the area of interest of the iwi authority.

# Background to the Act

## Why the Act was passed

The COVID-19 pandemic has caused serious economic and social disruption and the consequences will be felt in Aotearoa for several years. The consenting and approval processes used for development projects in normal circumstances do not provide the speed and certainty needed to boost employment and recovery in these times of economic and social crisis.

Therefore, new fast-track processes for resource consents and notices of requirement for designations have been developed to accelerate nationwide infrastructure and development projects and activities, to get projects started and people into jobs faster, while still promoting the sustainable management of resources.

Recognising that processes and timing are shortened under the normal RMA, decision makers under the Act are to act consistently with the principles of the Treaty of Waitangi.

## How long the Act will last

The Act came into effect on 9 July 2020 and will self-repeal on 8 July 2022.

# Fast-track consenting processes at a glance

## Purpose of the Act

The purpose of the Act is to promote employment to support Aotearoa's recovery from the economic and social impacts of COVID-19 and support certainty of on-going investment while continuing to promote the sustainable management of natural and physical resources.

## The fast-track process

The Act establishes new fast-track resource consenting and notice of requirement (designation) processes for eligible infrastructure and development projects. These processes adapt and modify existing (RMA processes and will expedite certain eligible projects, while still applying appropriate environmental safeguards and meeting obligations to iwi under the Treaty of Waitangi and individual Treaty settlements.

[View the diagram](#) of how the fast-track process works under the COVID-19 Recovery (Fast-track consenting) Act 2020.

## Pathways to the fast-track consenting process

Anyone can apply for their project to be fast tracked

Both public and private groups and individuals, including iwi authorities and Treaty settlement entities can apply for their project to be fast-tracked under this legislation.

The Act establishes two pathways for a project to access the fast-track consenting and notice of requirement process and come before an expert consenting panel.

### 1. Listed projects

Projects listed in [Schedule 2](#) of the Act are automatically eligible to use the fast-track process.

For these 17 projects, applicants can directly lodge applications for resource consents or notices of requirement with the [Environmental Protection Agency](#) (EPA).

## 2. Referred projects

All other projects access the fast-track consenting process by obtaining 'referred project' status. To gain this status, an application must be made to the Minister for the Environment. If the Minister accepts the application, the project will be confirmed as a referred project through an Order in Council. If the application relates in total or in part to the coastal marine area, the decision to accept the application will be made jointly with the Minister of Conservation.

### **Application for a fast-tracked resource consent**

If a project is referred to the fast-track consenting process, either through the Minister for the Environment, or listed in the legislation, the applicants must then lodge an application for either a resource consent or notice of requirement with the EPA who act as the secretariat for the expert consenting panels.

The EPA vets the application for completeness before referring the application to an expert consenting panel to consider and determine the application. Expert consenting panels replace the role that local authorities, boards of inquiry and other first-instance decision-makers have under the RMA.

The Minister has appointed former Chief Environment Court Judge, Hon. Laurie Newhook, to be the expert panel convener. Mr Newhook is responsible for appointing an expert panel to determine applications for consents or designations associated with each listed or referred project.

The panels are required to consider and determine the applications. Different timeframes, notification process, and appeal rights apply compared to RMA processes. In particular, there is no public notification and no obligation for a hearing. Appeal rights are limited to a point of law appeal to the High Court and a further right of appeal to the Court of Appeal. There is no right of appeal to the Supreme Court. Judicial reviews must be applied for at the same time as the appeals on points of law.

## **Iwi authorities can apply to have their projects fast tracked**

Iwi authorities can apply to the Minister for the Environment to have their projects fast tracked under the second pathway. To do this they have to submit an application form and provide the information as outlined on the [Ministry for the Environment's website](#).

### **Applicants engaging with you before applying to the Minister to consider fast tracking a project**

All persons performing functions and exercising powers under the Act must act in a manner that is consistent with the principles of the Treaty of Waitangi, and with Treaty settlements. If appropriate, applicants may engage with iwi and hapū before the application process. This can be an important part of decisions being consistent with these requirements.

The information required of applicants includes is set out in the application guidance material available on the [Ministry for the Environment's website](#)

## **Iwi authorities may be asked to provide comments when the Minister is considering fast tracking a project**

As outlined above, if a person wants their project to be 'fast tracked' they must first apply to the Minister for the Environment to have their project referred to the expert consenting panel.

When the Minister for the Environment receives an application for a project to be fast tracked they must seek comments from other Ministers and the relevant local authorities. The Minister may also seek comments from other persons including iwi authorities who will then have 10 working days to provide this. The Minister will only consider comments received within the timeframe before making a decision on whether to fast track an application or not.

## **Iwi authorities can nominate a representative to be a member of a consenting panel**

The specific expert consenting panel must include one member representing the relevant iwi authorities. If the relevant iwi authorities nominate more than one person for appointment as a panel member, the panel convener decides which nominee is appointed.

The panel convener may choose to increase the number of people on the panel, including representatives from iwi authorities to account for circumstances unique to the project (location, nature and scale) and will provide for arrangements unique to a relevant Treaty settlement.

Individual Treaty settlements, iwi participation legislation, Mana Whakahono ā Rohe or joint management agreements should be identified to the panel convener so he can consider them when appointing decision-making bodies for hearings and other procedural matters. Information on these obligations will be identified in the report prepared for the Minister under [section 17](#) of the Act, and this information will also be provided to the EPA and the panel convener for any referred project.

## **How iwi authorities engage with the expert consenting panel**

Once the Minister agrees to fast track a project, the applicant can then lodge a more detailed application with the EPA for consideration by an expert consenting panel.

The panel must seek written comments from relevant iwi authorities and Treaty settlement entities and may hold a hearing on the application. The panel will make a decision on whether to grant the consent or confirm the requirement and the conditions that will apply to it.

## **Iwi authorities may provide comments on a project in front of a panel as well as the draft consent**

The panel *must* invite written comment from specified groups within five working days of a receiving an application. Comment can be sought from relevant iwi authorities, Treaty settlement entities, customary marine title groups, and protected customary rights groups. There is no public or limited notification process for applications.

An iwi authority invited to comment on an application can incorporate feedback from hapū.

Responses must be provided no later than 10 working days after the invitation to provide comments is received.

If an iwi authority, Treaty settlement entity, customary marine title group, or protected customary rights group have provided comment to a panel, then they are able to appear at any hearing the panel may hold. The panel can also request further information from them at any time before making a decision on an application. The panel must also provide them with a copy of the draft conditions and invite further comment, before making a final decision.

The panel will set a date by which comments must be received. All parties invited to comment on the application will receive a full set of the comments received by the panel from invited groups.

## Further information on the referral and expert consenting panel process

### Referral process

#### Initial eligibility test

The Minister will only consider applications to be referred to the fast-track consenting process that meet the purposes of the Act and the eligibility criteria set out in section 18. In particular, an application will not be referred if it is to occur on land returned under a Treaty settlement and the current owner of the land has not agreed in writing to the proposal.

If the project involves an activity that would occur in a customary marine title area under the Marine and Coastal Area (Takutai Moana) Act 2011 then the Minister will not proceed without the written agreement of the holder of the relevant customary marine title order.

Similarly, the written agreement of the holder of a protected customary rights recognition order is needed for any proposed activity that would occur in a protected customary rights area under the Marine and Coastal Area (Takutai Moana) Act 2011 and which would have a more than minor adverse effect on the exercise of those rights.

The Minister must also commission a report from the Ministry for the Environment, in conjunction with Te Arawhiti, on Treaty settlement obligations and other obligations under the Marine and Coastal Area (Takutai Moana) Act 2011. The Minister will consider this report and the commitments within it before deciding whether to accept an application for referral.

This initial screening provides some high-level safeguards for Māori rights and interests, and will limit calls on the time of other Ministers, local authorities, iwi authorities and other parties when there is an early indication that proposals are not appropriate for the fast-tracking process.

#### Providing written comments

The Minister *may* invite written comments from any people or groups, including iwi authorities and Treaty settlement entities, during the pre-referral screening of a project. These groups then have 10 working days to respond.

These comments help the Minister assess the project against eligibility criteria in [section 18](#) of the Act and to follow up on any matters raised in, or omitted from, the application.

The Minister may make a decision about all or part of the project that is the subject of an application for referral, and the Minister may accept some parts of an application and decline others. A decision can be made to refer initial stages of a project to the panel while deferring decisions about the project's remaining stages.

The Minister may also decide to impose consent conditions such as restrictions on a project's location. They may also request that additional information be supplied to the expert consenting panel, and give directions as to who the panel invites comment from. They may also detail obligations regarding hearing processes (which may be set out in a specific Treaty settlement for example).

All comments provided to the Minister in the referral process will be provided to the expert consenting panels should a project be successfully referred to them for fast-track consenting.

## Notice of the decision

A notice of decision will be prepared for all projects applied for under the fast-track consenting process. This will include the decisions, the reasons for them, and the report obtained under [section 17](#).

This decision will be provided to:

- the applicant
- the EPA
- the panel convener
- relevant iwi authorities and Treaty settlement entities (either directly affected or considered to have an interest in the matter)
- any group who is party to a joint management agreement or Mana Whakahono ā Rohe under the RMA that relates to the project area
- anyone who was invited to comment on the application.

The Minister will also publish the decision, reasons and the section 17 report on the Ministry for the Environment website.

## Further information on how the expert consenting panel will work

### Advice to an expert consenting panel

An expert consenting panel may appoint a special adviser to help the panel, and this could include someone with appropriate or specific cultural knowledge. Comments and advice to the panel from the section 17 Minister's report and from any feedback received directly from iwi authorities will help to inform such appointments if the panel decides they are needed.

### Attendance at a hearing (if required)

Although there is no obligation, a panel may consider, in its discretion, that it is appropriate to hold a hearing on an application. If so, the panel may hear from iwi authorities who have provided comments. Additionally, a panel will comply with any provisions in individual Treaty settlements, Mana Whakahono ā Rohe, iwi participation legislation, or joint management agreements for hearings procedures, unless the parties can agree to modify them, as noted above.

### Notice of the decision

Notice of the final decision of the panel will be served on the relevant iwi authorities, and will be published on the [EPA website](#).

## Work on infrastructure

The Act also enables some agencies to undertake specific works on existing infrastructure, such as operation, maintenance, and replacement or minor upgrade work, without the need for resource consents, designations or outline plans of work. This process is currently available to the New Zealand Transport Agency and KiwiRail provided that the activities meet specific requirements in [Subpart 2](#) and [Schedule 4](#) of the Act.

Local authorities, Kāinga Ora, and Ministry of Housing and Urban Development can request to be added through Order in Council as an agency that can undertake work on infrastructure.

Iwi and hapū engagement requirements are set out in [Schedule 4, section 5](#) of the Act.

## Find out more

A series of guidance and factsheets covering the above in more detail is available on the [Ministry for the Environment](#) and the [Environmental Protection Agency's](#) websites.

For more information contact the Ministry for the Environment by emailing us at: [fasttrackconsenting@mfe.govt.nz](mailto:fasttrackconsenting@mfe.govt.nz).

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the most liveable place in the world*  
Aotearoa - he whenua mana kura mō te tangata

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