



Fast-track consenting processes

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

FACT SHEET 1

Work on infrastructure under the COVID-19 Recovery (Fast-track Consenting) Act 2020

The COVID-19 Recovery (Fast-track Consenting) Act 2020 (the Act) allows specific works on infrastructure to occur as permitted activities by specific agencies (referred to as ‘work on infrastructure’).

This factsheet provides an overview of the work on infrastructure process.

Work on infrastructure – an overview

The work on infrastructure process enables agencies listed in section 30 and Schedule 4 of the Act to undertake specific works without the need for resource consents, provided they meet permitted activity standards that manage environmental effects. Works are limited to the operation, maintenance, replacement or minor upgrades of existing infrastructure by the agencies.

This process is currently available to the Waka Kotahi New Zealand Transport Agency (NZTA) and KiwiRail. The process they must follow is set out in section 33 (requirements before commencing work on infrastructure) and schedule 4. All criteria and permitted activity standards specified in Subpart 2 and Schedule 4 of the Act must be complied with, and the works are subject to monitoring and enforcement by the relevant local authority/s.

Local authorities, Kāinga Ora, and the Ministry of Housing and Urban Development can apply to the Minister for the Environment to be added as an agency that can undertake work on infrastructure. Section 34 specifies the application process.

You can read the [Act on the New Zealand legislation](#) website.

The role of local authorities

Local authorities have a role in the following aspects of the process. They:

- receive notices of intention to begin work on infrastructure (see [Serve a notice of intention on local authorities](#) below)
- attend a pre-start or induction meeting (see [Serve a notice of intention on local authorities](#) below)
- monitor agencies’ infrastructure works under this process (see [Monitoring and enforcement](#) below)
- request the Minister for the Environment to recommend an Order in Council is made allowing local authorities to access the work on infrastructure process (see [Requesting to become an agency to use the work on infrastructure process](#) below).

Criteria and permitted activity standards

Agencies must meet all criteria and permitted activity standards before beginning work on infrastructure as a permitted activity.

These criteria and standards override anything to the contrary in a relevant plan or proposed plan and in the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES Contaminants in Soil). However, for activities classified as permitted activities in the relevant plan/s or the NES Contaminants in Soil, the existing requirements in those plans or the NES Contaminants in Soil can continue to apply if they are more lenient than the permitted activity standards in the Act.

The criteria and standards do not override any other national environmental standard or any conditions that apply to an existing resource consent or designation.

The criteria and permitted activity standards are summarised below.

Criteria for work on infrastructure – section 30

The work can only be carried out:

- by agencies listed in section 30 and clause 1 of Schedule 4
- on existing infrastructure¹
- in a place that meets the location requirements that apply to the agency (as set out in Schedule 4).

Criteria for permitted activities – section 31

- the activity must be identified in Schedule 4 as permitted
- the activity must not be excluded from being a permitted activity by section 32 (see below)
- when carrying out the activity the agency must comply with the permitted activity standards in Schedule 4 for that agency (see below).

Activities excluded from being permitted activities – section 32

This process is not available for activities that:

- are categorised as discretionary, non-complying, or prohibited in the relevant plan or proposed plan, or the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health
- are on sites of wāhi tapu that are identified in a plan or proposed plan, or are identified during iwi engagement under clause 5 of Schedule 4
- are on sites of cultural or historical significance that are identified in a regional or district plan
- require a resource consent under the relevant regional plan for a non-temporary water take
- would be contrary to a water conservation order as defined in section 200 of the Resource Management Act 1991 (RMA)
- there is an existing resource consent for the activity.

¹ Existing infrastructure means infrastructure that is completed and operational before the commencement of the Act (section 30(5)).

Permitted activity standards for specific agencies – Part 2 of Schedule 4

Permitted activity standards are specified for each agency that has access to the work on infrastructure provisions (currently NZTA and KiwiRail). The agency must comply with these standards.

Permitted activity standards cover district and regional council consenting matters such as operational matters (eg noise, lighting), ground disturbance, works within beds of rivers, vegetation, stormwater management, and works within the coastal marine area.

General duty to avoid, remedy or mitigate effects – section 12(9)

In addition to the above criteria, the Act places a duty on agencies to avoid unreasonable noise under section 16 of the RMA and to avoid, remedy or mitigate adverse effects under section 17 of the RMA.

Before beginning work on infrastructure

Agencies must undertake the following tasks before beginning work on infrastructure:

- engage with iwi, hapū and Treaty settlement entities
- prepare a management plan for wāhi tapu, sites of other cultural or historical significance, or habitat of taonga species, that are affected by or adjacent to the works
- serve a notice of intention on iwi authorities, hapū and Treaty settlement entities
- serve a notice of intention on local authorities.

Engaging with iwi and hapū²

At least 30 working days before works begin, the agency must engage with relevant iwi authorities, groups and Treaty settlement entities.³ The purpose of engaging is to:

- determine interests and values held by iwi, hapū and Treaty settlement entities in relation to the works
- identify any wāhi tapu that would exclude an activity from being classified as a permitted activity
- identify sites that will require a management plan.⁴

The agency must record this engagement and its outcomes, including:

- the interest and values identified
- any wāhi tapu and other sites of cultural or historical significance, or habitats of taonga species
- protocols or management plans agreed to in relation to those interests, values and sites.

If an agency complies with the engagement requirements in the Act, but gets no response before the 30 working day period expires, it can proceed as if the engagement resulted in nothing being determined or identified.

² Section 33 and clauses 5 and 6 of Schedule 4.

³ Clause 5(1) of Schedule 4 specifies the iwi and hapū parties that agencies must engage with as: "... any of the following that have interests in the area within which the works are to be undertaken: (a) iwi authorities about which the relevant local authority keeps records under section 35A of the Resource Management Act 1991; and (b) any groups about which the relevant local authority keeps records under that section; and (c) Treaty settlement entities whose area of interest overlaps, or is adjacent to, the area where the works will occur."

⁴ Any wāhi tapu or other sites of cultural or historical significance, or habitats of taonga species that will be affected by or adjacent to where the works will occur.

Iwi authorities, hapū and Treaty settlement entities can recover their costs and expenses from the agency for identifying sites.

Develop management plans⁵

Agencies must work with iwi authorities, groups and entities to develop management plans, if the engagement determines that cultural or historic sites require them.

The purpose of a management plan is to avoid remedy, or mitigate the effects of the works on the identified cultural or historic sites. A management plan must include the following:

- processes for protecting the sites, which may include a process to provide for fish passage
- the appointment of a cultural monitor to oversee the works
- the approach to recording ongoing engagement
- management through use of buffer zones
- cultural protocols
- monitoring of these matters by the agency during the period of construction.

Serve a notice of intention on iwi authorities, hapū and Treaty settlement entities⁶

Agencies must serve a notice of intention on relevant iwi authorities, groups and Treaty settlement entities at least 10 working days before beginning works. The notice of intention must contain:

- a contact number and email address for the project lead
- a brief description of works
- a copy of any management plan
- details of works that include fish passage
- a statement of whether an authority is required to modify or destroy an archaeological site and, if so, whether the authority has been applied for or obtained
- a copy of any accidental discovery protocol to be applied during earthworks activities
- an invitation to attend a pre-start or induction meeting.

Serve a notice of intention on local authorities⁷

Agencies must serve a notice of intention on local authorities at least 10 working days before beginning works. The notice of intention must contain:

- a contact number and email address for the project lead
- a brief description of works
- a record of iwi engagement activities.⁸ If an agency receives no response to requests for engagement, the notice must include sufficient details to demonstrate the agency took reasonable measures to contact the relevant iwi authorities, groups and entities.

⁵ Clause 7 of Schedule 4.

⁶ Clause 8 of Schedule 4.

⁷ Clause 9 of Schedule 4.

⁸ In accordance with clause 5 of Schedule 4.

- a copy of any management plan developed as a result of iwi engagement⁹
- a copy of any other monitoring plan or management plan
- details of works that include fish passage
- an invitation to attend a pre-start or induction meeting.

Role of local authorities when receiving a notice of intention

The purpose of the notice of intention is to advise the local authority of works for compliance monitoring and enforcement.

Local authorities can recover costs and expenses incurred from reviewing the notice of intention material, attending the induction meeting and dealing with any administrative matters relating to the permitted activities. These charges must be paid by the relevant agency.

On completion of the works¹⁰

When an agency has completed its works, it must keep evidence of compliance with the relevant permitted activity standards in Schedule 4. The relevant local authority may request a copy of this evidence, and if so, the agency must provide it within 10 working days of receiving the request.

Monitoring and enforcement¹¹

Local authorities have discretion to monitor and enforce infrastructure works under this process. A local authority may:

- monitor activities carried out as permitted activities in its region or district eg, while works are being undertaken
- take appropriate action using the methods available to it under the RMA.

Local authorities may fix charges for these monitoring activities, and these charges must be paid by the relevant agency.

Requesting to become an agency to use the work on infrastructure process¹²

The Act allows local authorities, Kāinga Ora – Homes and Communities, and the Ministry of Housing and Urban Development to request to use the work on infrastructure process through an Order in Council.

A request must be made to the Minister for the Environment via the Ministry for the Environment by emailing them at fasttrackconsenting@mfe.govt.nz.

⁹ In accordance with clause 7.

¹⁰ Clause 36 of Schedule 4.

¹¹ Section 35.

¹² Section 34.

The Minister will consider the request¹³

In reaching a decision to approve the application, the Minister must be satisfied that the change made by an Order in Council will help to achieve the purpose of the Act and that the recommendation is consistent with section 6 (Treaty of Waitangi). Section 4 specifies the purpose of the Act:

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

If the Minister decides to approve the application, he/she will recommend to the Governor-General that an Order in Council be made.

Adding an agency through an Order in Council¹⁴

When the Governor-General receives a recommendation from the Minister to add an agency that can carry out work on infrastructure, the Governor-General may make an Order in Council to amend Schedule 4 to include:

- the name of the agency in clause 1
- the location requirements for the agency's work on infrastructure
- the permitted activities for the agency
- any activities that are excluded from being permitted activities for the agency (in addition to those listed in section 32)
- the permitted activity standards that apply to the agency.

Find out more

This is one of a series of guidance and factsheets providing an overview of the COVID-19 Recovery (Fast-track Consenting) Act 2020. These are available on the [Ministry for the Environment website](#).

Information on applying to be referred to an expert consenting panel is available on our [website](#).

For more information contact the Ministry for the Environment by emailing us at fasttrackconsenting@mfe.govt.nz, or visit our [website](#).

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*Making Aotearoa New Zealand
the most liveable place in the world*
Aotearoa – he whenua mana koura mō te tangata

New Zealand Government

¹³ Section 34(1).

¹⁴ Section 34(2) and (3).