

COVID-19 Recovery (Fast-track Consenting) Bill

Government Bill

As reported from the Environment Committee

Commentary

Recommendation

The Environment Committee has examined the COVID-19 Recovery (Fast-track Consenting) Bill and recommends that it be passed with the amendments shown.

About the bill as introduced

The purpose of the bill is to urgently promote employment growth to support New Zealand's recovery from the economic and social effects of COVID-19. It also aims 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 its purpose by establishing fast-track resource consenting and designation processes for infrastructure and development projects. It would also enable some smaller scale work on existing infrastructure to be undertaken without the need for a resource consent.

The bill would establish expert consenting panels to determine applications for resource consent and notices of requirement (NORs) for designations, and to issue certificates of compliance. This would replace the role of local authorities as consenting authorities under the Resource Management Act 1991 (the RMA).

Two categories of projects could use the fast-track consenting process and be considered by a panel: listed projects and referred projects.

Schedule 2 contains a list of 11 Government-led projects that were assessed as suitable for listing in the bill.¹ Consent applications or NORs for these listed projects would be automatically referred to a panel to consider.

Any person or organisation could also apply to the Minister for the Environment to use the fast-track consenting process for their project. If the Minister approved the application, they would recommend making an Order in Council, which would refer the project to a panel to consider.²

Given that the bill is a short-term intervention to stimulate the economy, the legislation would self-repeal two years after enactment.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor, technical, or consequential amendments.

Purpose of the bill

Clause 4 sets out the purpose of the bill. As noted, the purpose 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”. When deciding whether to refer projects to a panel, clause 18(3) would require the Minister to be satisfied that the project would help achieve the purpose of the legislation.

We believe that focusing only on employment growth could limit the legislation’s contribution to economic and social recovery. Therefore, we recommend amending clause 4 by removing the word “growth”. We consider that this would provide more flexibility and encourage projects that had wider benefits.

We also recommend moving clause 18(3) to a more prominent position as new clause 18(1A). This would make it clearer that the Minister would need to be satisfied that the project would achieve the purpose of the legislation.

Amending certain defined terms

We recommend amendments to the definitions of “Treaty settlement Act” and “land returned under a Treaty settlement” in clause 7. Our proposed amendments would better reflect land law terminology and ensure that legislation relevant to iwi and RMA processes was included in the definitions.

¹ The schedule sets out 16 listed projects. The six Papakāinga projects (LP08 to LP13) are treated as one larger project.

² The decision would be made jointly with the Minister of Conservation if any part of the project related to the coastal marine area.

Serving documents electronically

Clause 11 provides that documents to be served on a person for the purposes of the legislation must be served electronically unless it is not practicable to do so. This clause does not apply to court documents. We recommend amending clause 11(1) to make it clear that a panel could also serve a notice of a decision, a report, or other relevant information electronically.

Relationship between the bill and the Resource Management Act

Clause 12 describes the relationship between the bill and the RMA.

We recommend amending this clause to further clarify how the bill interacts with the RMA. Our proposed amendments include:

- deleting clause 33 and moving it to clause 12(3F) to make it clearer that the duties in sections 16 and 17 of the RMA apply to anything done under the legislation
- making it clear that permitted activities that are already provided for in council plans could be used when they were more lenient than the provisions in this bill
- clarifying the relationship between subpart 2 (Work on infrastructure), the RMA, relevant or proposed plans, and national environmental standards.

Applying for judicial review

Clause 13(2) provides for situations when a person wanted to apply for a judicial review of a decision and an appeal to the High Court on a point of law under Schedule 6. They would need to lodge the applications for judicial review and appeal together.

A submitter was concerned that this clause, as introduced, would restrict a person from applying for a judicial review of a preliminary decision—that is, the Minister’s decision to refer a project—until an appeal could be filed about the final decision.

We recommend amending clause 13(2) to make it clear that the bill would not, in any way, remove any person’s right to apply for judicial review.

Functions of an authorised person

We recommend amending clause 15(2) to enable certain authorised persons for listed projects to nominate or authorise other persons or entities to apply for consents or lodge a NOR for a designation. Those who could authorise or nominate others would be KiwiRail, the NZ Transport Agency (NZTA), or a government department. The authorised persons could apply for the relevant resource consents, NORs, or alterations to existing designations.

Process for referring projects to a panel

Clauses 16 to 27 set out the process that the Minister for the Environment would need to follow when deciding whether to refer an application for a project to a panel. Deci-

sions would be made jointly with the Minister of Conservation if any part of the project would occur in the coastal marine area.

Satisfying obligations under the Treaty of Waitangi

Clause 6 provides that everyone performing functions and exercising powers under the legislation would need to act in a way that was consistent with the principles of the Treaty of Waitangi and Treaty settlements. We consider that this clause should replicate the Treaty of Waitangi provisions under section 8 of the RMA. That section requires everyone exercising functions and powers under the Act to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). We recommend amending clause 6 accordingly.

Consequently, we recommend deleting clauses 27(3)(b), 29(2)(b), and 31(6)(b) in Schedule 6. Those clauses would require the panel to apply section 6 of this legislation instead of section 8 of the RMA. Other consequential amendments would also be required to give effect to this change.

Clause 17 relates to how the Minister would have to satisfy their obligations under clause 6.

Clause 17(2) would require the Minister to obtain a report about an application from the Office for Māori Crown Relations—Te Arawhiti before referring any part of a project to a panel.

If the bill is enacted, the Ministry for the Environment will provide advice and recommendations to the Minister about whether projects should be referred to a panel. Given this role, we consider that it would be appropriate for the ministry to provide the report, in consultation with Te Arawhiti. We recommend amending clause 17 accordingly.

Considering whether the project helps achieve the purpose of the legislation

Clause 19 sets out the matters that the Minister could consider when determining whether a project would help achieve the purpose of the legislation. As introduced, the Minister could consider any or all of the matters.

To strengthen the Minister's consideration, we recommend amending clause 19 to specify that the Minister "may have regard to the matters listed". We also recommend deleting the reference to "any or all" to ensure that certain matters could not be ignored.

Under clause 19(e), the Minister could consider whether the project could have significant adverse environmental effects. We recommend amending this clause to include greenhouse gas emissions as an area that could be considered.

Inviting comments from relevant Ministers

Clause 21 provides that the Minister would have to invite written comments from the relevant local authorities and relevant Ministers unless the Minister decided to decline the application. Under clause 21(4), anyone other than a Minister who was asked to provide written comments would have 10 working days from receiving the applica-

tion to do so. We consider that the 10-day time frame should also apply to Ministers and we recommend amending clause 21(4) to this effect.

Further information requests from the Minister

Clause 22 would enable the Minister to require further information about an application from the applicant or relevant local authorities. The Minister would specify a time frame in the request.

We recommend inserting clause 22(1A) to make it clear that the Minister would not be required to consider any information provided after the time frame. However, they could choose to do so provided they had not already made a decision about the application.

Decision to decline an application for referral

Clause 23 sets out the mandatory and discretionary reasons for when the Minister could decline a referral application. Clause 23(4) provides that, if the Minister had obtained a report or comments, they would have to consider them before declining an application.

We recommend amending this clause to specify that the Minister would also need to consider any further information that had been sought and provided within the required time frame.

Additional matters to be included in an application for referral

Under clause 24(2)(b), the Minister could decide to refer the initial stages of a project to a panel while deferring decisions about the project's remaining stages. We recommend amending clause 20(3) to require an application for referral to indicate whether the project was planned to proceed in stages. If it was, the nature and timing of the staging would also need to be indicated.

Clause 20(3)(k) would require an application to include a description of other legal authorisations that an applicant considers could be required to begin the project. The clause cites the Public Works Act 1981 as an example. However, we were advised that it is unclear whether taking land under the Public Works Act is considered an authorisation and whether processes under that Act would always be needed.

We consider that it would be more appropriate to replace the reference to this Act with "authorities under the Heritage New Zealand Pouhere Taonga Act 2014". We recommend amending clause 20(3)(k) accordingly.

To address our proposed removal of the Public Works Act, we recommend inserting an additional requirement in clause 20(3). An application for referral would need to include a description of the applicant's legal interest (if any) in the land on which the project will occur, including a statement of how that affects the applicant's ability to undertake the work.

Decision to accept an application for referral

Clause 24(2)(a) would enable the Minister to refer all or part of a project to a panel if they were satisfied that the project met the referral criteria. We recommend inserting clause 24(3) to make it clear that the Minister could accept some parts of an application and decline others.

Notifying the panel convener of a referral to a panel

Clause 25(2) specifies the people that a Minister would have to inform if a project was referred to a panel. They would have to give notice of the decision and the reasons for it. We recommend amending this clause by adding the panel convener to the list of persons that would need to be notified. We consider that our proposed amendment would help the panel convener coordinate and undertake their functions efficiently.

Listed projects

Schedule 2 sets out the 16 listed projects, which have been assessed as delivering a public benefit. If the bill is enacted, these projects will be able to proceed directly to a panel to determine their resource consents and NORs.

We recommend amending Schedule 2 to include the Queenstown Arterials Project. We note that this project aligns with the purpose of the bill and the criteria that projects would need to be assessed against.

We recommend extending the scope of the Kopenui Water Storage Reservoir project in Kaikohe to include consents for taking and damming water. We also recommend replacing references to “Kopenui” with “Matawii”.

We heard that three of the listed projects could require some of Transpower New Zealand’s transmission assets to be relocated, which could require resource consents.³ We recommend that the enabling works for these three listed projects be added to Schedule 2. This would ensure that the consenting for these works did not delay the construction of the listed projects.

We also recommend additional amendments to more accurately describe the projects listed in Schedule 2. These proposed amendments would not change the scope, scale, or area of the projects listed in the bill.

Expert consenting panels

Purpose of panels

Clause 1 of Schedule 5 states that the purpose of expert consenting panels is to ensure that decisions are made about certain applications. These are consent applications for

³ The projects are the Northern Pathway (LP02), Papakura to Pukekohe rail electrification (LP04), and Papakura to Drury South State Highway 1 upgrades (LP15).

listed and referred projects, and NORs for designations or to alter a designation for listed and referred projects.

We recommend amending this clause to make it clear that the panel could determine more than one consent application and NOR related to a project.

Clause 25 of Schedule 6 would enable a panel to issue a certificate of compliance for any activities relating to a listed or referred project. The application would need to be lodged as part of a consent application or NOR for the project. We recommend amending clause 1 of Schedule 5 to recognise that a panel could also issue a certificate of compliance in relation to a listed or referred project.

Clause 2(5) of Schedule 5 provides that the function of the panel convener would be to appoint members to determine a consent application or NOR for a listed or referred project. We recommend a consequential amendment to this clause to reflect that panels could also issue certificates of compliance.

Membership of expert consenting panels

We propose several amendments to clause 3 of Schedule 5, which relates to membership of panels.

Clause 3 specifies that a panel would need to include:

- one member of the relevant local authorities or a person nominated by those local authorities (clause 3(2)(a)); and
- one person nominated as the representative of the relevant iwi authorities (clause 3(2)(b)).

We recommend inserting clause 3(2A) in Schedule 5 to make it clear that the nominee would not have to be an elected council member.

Under clause 3(4) and 3(5), a panel convener would have to appoint a member from a local authority or iwi authority if the authorities did not nominate a panel member. We believe it would be inappropriate for the panel member to attempt to compel a panel appointment from an iwi authority or local authority. Therefore, we recommend amending clause 3 of Schedule 5 to require the panel convener to appoint a member with the appropriate skills and experience set out in clause 8(1).

Clause 3(1) specifies that up to four people could be appointed as members of a panel. However, clause 3(6)(c) provides that this number could be exceeded at the discretion of the panel convener due to the nature of the application being considered. We recommend amending this clause to include the scale of the project. This would reflect that a single project could involve numerous applications or NORs.

Obligations in relation to Treaty settlements

Clause 5 of Schedule 5 sets out the obligations of the panel convener or panel in relation to Treaty settlements. Clause 5(2)(b) would require the panel or convener to obtain the agreement of the relevant Treaty settlement entity to adopt a modified arrangement. We recommend amending clause 5(2)(b) to include joint management agreements and Mana Whakahono ā Rohe as these are included in clause 5(1), and to

include iwi authorities as the agreement might be needed from an entity other than a Treaty settlement entity.

We also recommend several amendments to clause 5 to make it clearer that the clause relates to panel or hearing provisions.

Terms of reference for panels

We recommend deleting clause 6 of Schedule 5, which would require the panel convener to set the terms of reference for a panel. We consider that the role and function of the panel is clear and that terms of reference are not needed.

Remunerating panel convener and panel members

Clause 9 of Schedule 5 provides for the remuneration of the panel convener and panel members. We recommend amending this clause to specify that the legislation would apply as if the panel convener and members were members of a statutory board. This would be within the meaning of the Fees and Travelling Allowances Act 1951.

Procedures of a panel

Clause 11(1) of Schedule 5 would enable a panel to regulate its own procedures in a way that best promoted the fair and timely determinations of applications. Clause 11(2) states that subclause (1) applies “subject to any other provision in this Act or regulations made under this Act that regulate the procedures of a panel”.

The Regulations Review Committee queried the inclusion of the words “regulations made under this Act” because the bill does not provide for any regulation-making power. We understand that there is no intention to include any regulation-making powers. Therefore, we recommend deleting the words “regulations made under this Act”.

Clause 11(4) of Schedule 5 would enable a panel to obtain reports and appoint technical advisors as it considered appropriate. We recommend deleting the reference to “obtain reports” as it duplicates clause 24(1)(b) of Schedule 6 (further information requests). That clause would also let the panel commission reports.

Secretariat support

Clause 12(1) of Schedule 5 would require the Environmental Protection Authority (EPA) to provide advice and secretariat support for a panel. We understand that it is also intended that the EPA would support the panel convener to appoint panel members and chairpersons of panels. We recommend amending clause 12(1) to provide that the EPA would also support the panel convener in the functions outlined in clause 2(5) of Schedule 5.

Recovery of costs

Clause 14(2) would enable the EPA to recover from an applicant the actual and reasonable costs that the EPA or panel incurred in exercising its functions and powers under Schedules 5 and 6.

Under clause 12(2) of Schedule 5, a local authority would have to provide advice to a panel if the panel requested it. We consider that the local authority should be able to recover their costs for providing this advice. We recommend inserting clause 14A(3) in Schedule 5 to enable this.

We recommend amending clause 14 to enable the EPA to recover certain costs from the applicant on behalf of the local authority. These would be the costs incurred in gathering information from the local authority (clause 7 of Schedule 6) and advising the panel (clause 12 of Schedule 5).

We recommend inserting clause 14(3A) to specify the fees criteria that the EPA would have to consider when recovering costs. Our proposed insertion would be similar to section 149ZD(6) of the RMA, which relates to boards of inquiry.

Under clause 9 of Schedule 5, panel members would be entitled to receive remuneration from and at a rate determined by the Minister in accordance with the fees framework. The Minister would therefore be able to recover costs incurred by panels when they are exercising their functions and powers under this legislation. This would mirror the cost recovery provisions for boards of inquiry under the RMA. We recommend inserting clause 14A to enable the Minister to recover the actual and reasonable costs incurred. The Minister would need to provide an estimate of the likely costs to be recovered if requested by the applicant.

We recommend inserting clause 14B to enable the Minister to delegate this proposed ability to the EPA. We consider that this is appropriate given that the EPA will support panels in their duties and functions. This is also similar to what is currently provided for under the RMA.

Applications for resource consents and notices of requirement for designations

Forms for consent applications or notices of requirement

Clause 2(3) of Schedule 6 would require a consent application or a NOR to be lodged with the EPA and be made in the approved form and manner. However, given the bespoke information requirements that are set out in the bill, the RMA forms would not apply. Also, the bill does not provide for forms to be made.

To address this, we recommend inserting clause 2(4A) in Schedule 6 to empower the EPA to approve a form for consent applications and NORs.

Cost recovery

We recommend replacing the references to “fee” with “costs recoverable by the EPA” in clause 6(2) and 6(3) of Schedule 6. The bill would not enable the EPA to charge a fee but it could recover costs.

Information sharing between the EPA and relevant local authorities

Clause 7 of Schedule 6 would enable the EPA to request information about a proposed project site from the relevant local authority. It could also set a date when the

information must be made available. The EPA would need to consider that the information was necessary and relevant to a consent application or NOR.

We consider that information should be provided in a way that does not prevent or slow down the processing of an application. We recommend amending clause 7 to provide that if a local authority cannot provide the information by the date requested by the EPA, it would need to make the information available as soon as practicable.

Under clause 3 of Schedule 6, the EPA would have five working days to assess whether an application was complete. We note that this does not give it much time to obtain information from the local authority. We recommend amending clause 7 of Schedule 6 to enable the EPA to request information from a local authority about a listed or referred project before receiving a consent application, certificate of compliance, or NOR.

Authorising the EPA to make administrative decisions

Clause 8 of Schedule 6 would enable the EPA to make administrative decisions when directed by the chairperson of a panel. To prevent unnecessary delay, we believe that the EPA should be empowered to make administrative decisions without needing a direction from the chairperson. We recommend an amendment to clause 8(1) to this effect and a consequential amendment to clause 8(2).

Information required in a consent application

Clauses 9 to 13 of Schedule 6 set out the information required for consent applications and NORs for listed and referred projects.

Clauses 9(5) (consent applications) and 13(1)(j) (NORs) require the relevant iwi or hapū to prepare a cultural impact assessment. If they did not wish to do so, the application or notice should include a statement of the reasons given for the refusal.

We propose several amendments to both of these clauses. For consistency with the rest of the bill, we recommend replacing “relevant iwi or hapū” with the defined term “relevant iwi authority”.

We also recommend inserting a provision that would enable a cultural impact assessment on behalf the relevant iwi authority. This would make it clear that the iwi authority could delegate the assessment to a hapū or other group.

Identifying occupiers and owners of adjacent land

Clause 17 of Schedule 6 would prohibit a panel from giving public notice or limited notification of a consent application or NOR. However, subclauses (4) to (7) list the people and groups that the panel would have to invite comments from for listed and referred projects. They include owners and occupiers of the land on which the project would be undertaken and the adjacent land.

We note that it may not be possible for a panel to obtain the contact details of all relevant occupiers of land to which the project relates, and adjacent land. To address this, we recommend inserting clause 17(4)(fa). This would specify that a panel would only need to invite comments from persons who, after reasonable inquiry, were known to

be occupiers of land subject to, and adjacent to, the land to which the application or NOR related.

Under clause 9(1)(d), an applicant for resource consent would only have to provide the name and address of the owners and occupiers of the site to which the project relates. They would have to make reasonable inquiries to do so.

To help the panel with contacting the owners and occupiers of adjacent land, we recommend amending clause 9(1)(d) to require the applicant to identify them. We consider that applicants should have to identify owners of the site and adjacent land rather than merely making reasonable inquiries to identify them. This is because ratings databases include information about property owners.

As introduced, the bill does not contain an equivalent provision in clause 13 (Information required for notices of requirement). This means that a requiring authority would not have to include information about the owners and occupiers of land to which the designation relates.

We recommend inserting a requirement in clause 13(1), similar to the one in clause 9(1). The requiring authority would need to include the contact details of every person who it knows to own or occupy the land to which the designation relates. This would also apply to owners or occupiers of adjacent land. The reasonable inquiry provisions would only apply to occupiers of land or adjacent land.

Assessment of relevant planning documents

Clause 31 of Schedule 6 would require a panel considering a notice of requirement to have regard to any of the relevant provisions of the documents listed in clause 31(3). However, under clause 13, the requiring authority would not need to provide an assessment against these documents to support its NOR. We recommend inserting a requirement into clause 13 so that it must do so.

Inviting written comments on consent applications and notices of requirement

Timing of invitation

Clause 17(2) of Schedule 6 provides that a panel would have to invite written comments on a consent application or NOR from the persons or groups set out in subclauses (4) to (7). This would need to be no later than 10 working days after the EPA received the application or NOR.

We recommend amending clause 17(2) to require the panel to invite comments 5 working days after the EPA finished its completeness check and passed the application to the panel. Our proposed amendment would not change the time frames for the legislation. Under clause 3 of Schedule 6, the EPA would still have to complete its check within 5 working days of an application or NOR being lodged.

We note that the panel convener might have been unable to appoint a panel within 10 working days of a consent application or NOR being lodged. This could be caused by unanticipated delays in the appointment process or availability constraints.

We recommend inserting clause 17(8) to address this risk. If no panel were appointed by the date that invitations for comment were due under clause 17, a panel would have to be appointed. It must invite comments on the applications as soon as possible.

Groups invited to comment

Clause 17(6)(j) to (u) lists a number of organisations and advocacy groups that would need to be invited to comment on referred projects. We recommend deleting the Climate Change Commission from the list. We understand that it does not support being included in the list of organisations and is not resourced for the role.

As introduced, the bill would not require the listed groups to be invited to comment on listed projects. We consider that there is no strong policy rationale to justify any distinction between referred and listed projects. Therefore, we recommend amending clause 17(4) to require that the organisations listed in clause 17(6)(j), (k), and (m) to (u) be invited to comment on listed projects.⁴

We also propose adding several groups to the list of persons that expert panels would need to invite comments from for listed and referred projects. They are Heritage New Zealand Pouhere Taonga and any affected requiring authority. Heritage New Zealand has statutory functions that relate to protecting heritage in New Zealand. This role is similar to the Department of Conservation's for conservation. Requiring authorities would also be affected if the consent application or NOR related to land that was subject to a designation held by that requiring authority or was adjacent to that land. We recommend amending clause 17(4) and (6) accordingly.

Clause 24(2) would enable the Minister to specify persons or groups that the panel would have to invite comments from on a consent application or NOR. These would be in addition to groups specified in clause 17 of Schedule 6. We recommend inserting clause 17(6A) to reflect that a panel would also need to invite comments from any person listed in a referral order.

Provisions relating to invitations to comment

Clause 18 of Schedule 6 sets out some general requirements for invitations to comment issued by a panel under clause 17(2) and for the responses provided to the EPA.

We propose several amendments to simplify and clarify these processes. We recommend amending clause 18 to specify that any comments that the EPA receives about an application or NOR should be forwarded to the consent applicant or requiring authority.

We also recommend inserting clause 18A to enable the consent applicant or requiring authority to provide the panel with a written response to comments received about an application. The response would need to be within 5 working days of the comments being due to the panel. We believe that this would help the panel understand how any

⁴ Clause 17(6)(l) is the Climate Change Commission, which we have recommended deleting from the bill.

conditions or changes that a person has commented on would affect the project. It would also help the panel make its decision.

Clause 18(3)(a) would allow an iwi authority invited to provide comments to share the application with hapū whose rohe was in the project area proposed in the application. We recommend amending this clause to make it clear that this would apply to a consent application and a NOR.

Procedure if a hearing was held

Clause 20 of Schedule 6 describes the procedure to be adopted if a panel decided to hold a hearing. The panel could choose to hear from any of the following:

- the applicant
- any person who the panel commissioned to write a report about the application or NOR
- any person or group that provided comments in response to an invitation to comment.

We believe that if the panel decided to hear from any person or group that provided comments then the applicant should also be given the opportunity to be heard in response. To reflect this, we recommend inserting clause 20(1A).

Situations where applications could be suspended

Clause 21 of Schedule 6 would enable the Minister to direct a panel to suspend processing a consent application or NOR. The Minister would need to consider that further resource consents were necessary for the proposal. We note that there could be a timing issue if the Minister suspended processing and the applicant subsequently lodged the further consents necessary. It could then take some time for the new consents to reach the same stage in the process as the initial consents. We recommend amending clause 21 to provide a mechanism that would ensure that all applications were at the same stage of the process before a panel proceeded to a decision.

Requests to suspend a consent application or notice of requirement

Clause 22 of Schedule 6 would allow an applicant to request that the panel suspend processing an application. As introduced, the panel could accept or decline the request. We recommend amending clause 22 to specify a situation when a panel would have to accept such a request. This would be when an applicant requested a suspension to negotiate a pre-request aquaculture agreement under section 186ZM of the Fisheries Act 1996. Our proposed amendment would reflect the same obligation under section 88F of the RMA.

Under section 88F of the RMA, a consent can only be suspended to negotiate a pre-request aquaculture agreement for a maximum of 80 working days. Clause 23 of the bill provides that an application could only be suspended for 50 working days. Given that the aim of the bill is to fast-track consenting processes, we recommend that the 50 working day limit should also apply to these suspended applications. We recommend amending clause 23 accordingly.

Clause 23 provides that, if the processing of a consent application or NOR was suspended, the application or NOR could be returned to the applicant in certain circumstances. We recommend deleting clause 23(1)(b), which sets out that clause 23 would apply if a suspension was granted. We consider that this provision is unnecessary.

Deadline for request for further information

Clause 24 of Schedule 6 would enable the panel to direct the EPA to obtain further information before issuing its final decision. Under clause 24(2), the consent applicant or requiring authority would need to provide electronic copies of the information requested no later than 10 working days after the direction. If they declined to provide the information, they would need to advise the EPA of their reasons for doing so.

We note that it may be necessary for a panel to require information to be provided sooner given the deadline for the panel to make its decision. We recommend amending clause 24(2), which would enable the panel to set the due date for a response to a further request for information. To achieve the bill's aim of fast-tracking consenting, we recommend that the due date be no later than 10 working days after the request.

We recommend that the time frames in our proposed amendment to clause 24(2) should also apply to clause 24(1)(a). As introduced, clause 24(1)(a) contains no deadlines for a local authority or other person to provide further information requested by the panel.

We recommend inserting a provision as clause 24(5) to clarify the process if a person did not provide further information by the due date and did not give reasons for doing so. Under our proposed amendment, the panel would assume that the request had been declined.

Clause 24(1)(b) would enable the panel to direct the EPA to prepare or commission an expert report on an issue relevant to the consent application or NOR. To ensure that the panel would not be constrained, we recommend amending this clause to remove the reference to "expert". We also recommend an amendment to make it clear that a panel could commission a report from the relevant local authority.

Applying for certificates of compliance

Clause 25 of Schedule 6 would enable a consent applicant or requiring authority to apply for a certificate of compliance under section 139 of the RMA. This would be as part of its consent application or NOR.

We consider that the wording "as part of" in clause 25 is unclear. This is because an application for a certificate of compliance would not always form part of a consent application or NOR. We recommend amending clause 25 to make it clear that an application for a certificate of compliance would need to be made at the same time as a consent application or NOR.

Determining applications for resource consents for listed projects

Considering consent applications for listed projects

Clause 32 of Schedule 6 specifies the limited grounds under which a panel could decline a resource consent or cancel a NOR for a listed project. They are if the panel considered 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
- the terms of any relevant Treaty settlement.

Clauses 27 and 28 of Schedule 6 set out the matters relevant for a panel's consideration of a consent application for a listed project. Under clause 27(3), the panel would have to consider whether granting consent would promote Part 2 of the RMA and the purpose of this legislation.⁵

We agree with submitters that the requirement for the panel to consider Part 2 of the RMA should be strengthened. To achieve this, we recommend deleting the requirement in clause 27 for the panel to consider Part 2 and the purpose of the bill. Instead, we recommend inserting a provision to require that a panel's decision would be subject to Part 2 of the RMA and the purpose of the bill. A panel would need to consider both of these matters equally.

We recommend similar amendments to clauses 29 and 31. These clauses relate to consent applications for referred projects and NORs for listed and referred projects.

We note that the wording of clause 27(3)(a), as introduced, could imply that the consideration relates to whether the panel could grant consent. We recommend amending clause 27 to make it clear that the panel's decision relates to imposing conditions on a grant of consent and not whether to grant consent.

Further matters relevant to consent applications for listed projects

Clause 28(5) specifies the rules that would apply when a panel was considering a consent application for a controlled activity or a restricted discretionary activity for a listed project. A panel could impose conditions for controlled or discretionary activities that were more restrictive than an equivalent application under the RMA. We consider that the bill should replicate the approach in the RMA. This would reflect that matters of control or discretion will have been set by the local authority or a Minister through a participatory process. Therefore, we recommend amending clause 28(5)(b), which would restrict the conditions that a panel could impose to the matters over which control or discretion was reserved in a plan.

⁵ As introduced, the panel would also have to apply section 6 of this legislation (Treaty of Wai-tangi) instead of section 8 of the RMA. However, we have recommended that clause 6 of the bill be amended to replicate section 8 of the RMA. As a result, we have recommended deleting clauses 27(3)(b), 29(2)(b), and 31(6)(b).

As introduced, clause 28(5)(b) refers only to discretion or control being reserved in a plan. However, under the RMA, a national environmental standard, proposed plan, or other regulation could also set matters of control or discretion for controlled and restricted discretionary activities. We recommend amending clause 28(5)(b) to refer to these documents.

We recommend deleting clauses 28(5)(c), 28(6)(b), and 28(7)(b). They all provide that the “activity need not comply with the requirements, conditions, or permissions (if any) specified for that activity in a resource management document”. We received advice that these clauses are unnecessary and unworkable.

As a consequential amendment, we also recommend deleting the defined term “resource management document” in clause 28(8). This term would no longer be used in the bill.

Determining applications for resource consents for referred projects

Clauses 29 and 30 of Schedule 6 set out the matters relevant for a panel’s consideration of a consent application (and any comments received) for a referred project.

Under clause 29(7), a panel could grant a resource consent on the basis that the activity was a controlled, restricted discretionary, or non-complying activity. For consistency with the RMA, we recommend amending this clause to include reference to a discretionary activity.

Clause 30(1) specifies that a panel would need to apply sections 104A to 104D, 105 to 107, and 107F of the RMA when considering an application. We note that section 107F relates solely to procedural matters. We consider that it would be more appropriately placed as a new clause 24A of Schedule 6, alongside other clauses that deal with such matters. We recommend an amendment to this effect.

We also recommend amending the relocated clause 30(2) to clarify that references to “submissions” and “if the application is notified” in section 107F(3)(c) of the RMA would need to be read as references to comments provided in response to an invitation given under clause 17(2) of Schedule 6 of the bill.

Section 138A(1), (2), (5), and (6) of the RMA specify the matters that apply when a consent authority is considering a resource consent to contravene section 15A(1) of the Act. This section relates to dumping or incinerating waste in the coastal marine area. We recommend amending clause 30(1) to make it clear that section 138A(1), (2), (5), and (6) of the RMA would apply to the panel’s consideration of a resource consent.

Considering notices of requirement for listed and referred projects

Clause 31 of Schedule 6 sets out the matters relevant for a panel’s consideration of notices of requirement for designations on listed and referred projects. Clause 32 specifies the limited grounds on which a panel could cancel a NOR for a designation on a listed project. This would not apply to referred projects.

We recommend amending clause 31 to clarify the relationship between clauses 31 and 32. Our proposed amendment would provide that the matters in clause 31(1) to (4) would relate only to the panel's decision to modify or impose conditions on a notice of requirement.

Declining consent applications or cancelling notices of requirement for listed projects

As noted, clause 32 of Schedule 6 contains limited grounds under which a panel could decline a resource consent or cancel a NOR for a designation on a listed project.

We also recommend amending clause 32 to make it clear that the panel could only decline consent or cancel a NOR on the grounds listed in clause 32(1). If these grounds were not satisfied, the panel would have to grant the consent or confirm or modify the NOR.

Conditions applying to resource consents

Before a panel issued a decision granting a resource consent or designation, they would need to provide a copy of the draft conditions under clause 34 of Schedule 6. They would need to invite comments on the draft conditions from the consent applicant or requiring authority and every person or group that provided comments in response to an invitation.

We recommend amending clause 34 to require the panel to set a deadline for comments on the draft conditions. The panel would have the discretion to set the deadline and would not be required to consider any comments that were provided after the deadline. This would enable it to complete its decision within the time frame specified in clause 35.

Duration of consent

Sections 123 and 123A of the RMA set the maximum duration for the different types of consent. We recommend inserting clause 34(2A) to make it clear that sections 123 and 123A of the Act would also apply to the duration of any consents that a panel granted.

Final decisions about consent applications and notices of requirement

Clause 35(2) of Schedule 6 specifies when the panel would have to issue its final decision about consent applications and NORs. This would have to be no later than 25 working days after the date specified for receiving comments under clause 18. However, clause 35(3) would enable the panel to extend the reporting date by a maximum of 25 working days. The panel would have to be unable to make a decision within the specified time due to the scale of the project.

Clause 24(2)(f) would enable the Minister to set specific time frames in a referral order for the panel to process a resource consent or NOR. This clause would apply only to referred projects and the time frames could differ from those specified in clause 35 of Schedule 6.

We note that clause 35 of Schedule 6 contains a number of different time frames, making it unclear which ones a referral order could modify under clause 24(2)(f). We recommend amending clause 35 to make it clear that a referral order could only modify the references to “25 working days” in clause 35(2) and (3).

Clause 35(4) states that the time periods allowed under subclauses (2) or (3) do not include any time that a consent application or notice of requirement was suspended under clause 22.⁶ We recommend amending clause 35(4) to also exclude any time that processing of an application was suspended at the direction of the Minister under clause 21.

Clause 35(7) and (8) provide that a panel’s decision would need to specify the date on which a resource consent or NOR for a designation lapsed if not given effect to. Panels could not set a lapse date that was longer than 2 years. This would be measured from the date a resource consent commenced or the date the designation was included in a district plan. We recommend amending clause 35 to clarify that a resource consent granted by a panel would commence on the date that all appeals were determined.

Clause 36 of Schedule 6 specifies that notices of decisions would have to be served on certain persons and be published. We recommend amending this clause to provide that section 114(4) of the RMA would also apply to the panel.⁷ Our proposed amendment would require the panel to provide a copy of the decision to the Director-General of the Ministry for Primary Industries. This would enable the ministry to perform its functions under the Fisheries Act 1996.

Clause 38 of Schedule 6 would require the EPA to provide information to certain persons about the resource consents granted and the confirmed designations. This would apply after all appeal rights were exhausted or had expired. However, the people specified in clause 38 would already have been served a notice of a panel’s decision under clause 36. The notice would have to include advice about when an appeal could be lodged.

We consider that clause 38 would cause unnecessary duplication, particularly given that all appeal rights would have been exhausted or expired. Therefore, we recommend deleting clause 38.

Clause 37(2) of Schedule 6 would enable a panel to correct minor omissions, errors, or other defects in its decision. The corrections are intended to be to the conditions that the panel imposes on a resource consent or notice of requirement. We recommend moving clause 37(2) to a new clause 38 to make this clear. Our proposed amendment would be similar to the provisions in section 149RA(1), (2), and (4) of

⁶ That clause would enable a consent applicant or requiring authority to request that processing be suspended.

⁷ That section relates to decisions about applications to undertake aquaculture activities.

the RMA. That section relates to a board of inquiry being able to make minor corrections to board decisions.

Under clause 39(2) of Schedule 6, the relevant territorial authority would have to include a designation that has been confirmed in its district plan. This would need to be as soon as practicable after any right of appeal was exhausted or had expired. We recommend amending this clause to make it consistent with section 175(2) of the RMA.

Work on infrastructure

Subpart 2 of Part 2 would enable the NZ Transport Agency and KiwiRail to operate, maintain, replace, and undertake minor upgrades on their existing infrastructure as “permitted activities”—that is, activities for which a resource consent is not required under the RMA.

Clause 28 sets out the framework for work on infrastructure for permitted activities. Under clause 28(2), permitted activities could be undertaken despite anything to the contrary in a plan or proposed plan. However, many existing road and rail sites are contaminated so certain regulations would apply—the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

To enable the works to be undertaken, we recommend an amendment that would dis-apply the resource consent requirements for the controlled and discretionary activities of the regulations. We recommend inserting this provision in clause 12 (Relationship between this Act and Resource Management Act 1991). We were advised that the Performance Standards contained in Schedule 4 would ensure that the work was still undertaken appropriately.

Clause 31 sets out the activities that would be excluded from being permitted activities. We recommend inserting a provision to ensure that activities are excluded from being permitted activities if they could be contrary to a relevant Water Conservation Order. This would be consistent with the RMA.

Monitoring and enforcement

Clause 35 would require local authorities to monitor activities that were permitted activities under Part 2, subpart 2. We recommend amending this clause by replacing “must” with “may”. This would allow local authorities to use their discretion to monitor activities, as they can under the RMA.

Permitted activities and standards for work on infrastructure

Schedule 4 sets out the performance standards that the works on existing infrastructure would need to comply with, and what the performance standards would apply to.

Notices of intention

Clause 8 of Schedule 4 would require an agency to serve a notice of intention on certain groups before it undertakes any work. They are iwi, hapū, and Treaty settlement

entities. Under clause 8(3)(e), the notice would need to include a copy of any accidental discovery protocol to be applied during any earthworks activities. This protocol is required under clause 12(3)(b) of Schedule 4.

We recommend amending clause 8(3) of Schedule 4 to include reference to whether an archaeological authority is required or has been applied for in addition to the requirement for an accidental discovery protocol.

Location of permitted activities

Subclause 4 of clause 29 of the bill (Criteria for work on infrastructure) specifies the land where the works on infrastructure would need to be located. Because the location requirements would be different for agencies added later, we recommend moving this provision (and the related definitions in clause 7) to clause 10A of Schedule 4, which deals with permitted activities for the specific agencies.

Clause 11(1)(a) provides that the permitted activities for KiwiRail and the NZTA would need to be on infrastructure located in or on the national road corridor on the national rail corridor.

We recognise that agencies may not have a legal interest in the land where work could be undertaken. We therefore recommend extending where work could be undertaken so that it could be:

- on land owned by the agency or where they had a legal interest authorising access and use of the land for the works
- on land where there is a compensation certificate pursuant to section 19 of the Public Works Act recording the acquisition of the land for the works
- in the bed of river and within the coastal marine area, but only to the extent necessary for the work on infrastructure.

Permitted activity standards

Subpart 2 of Part 2 of Schedule 4 sets out performance standards that would be specific to NZTA and KiwiRail when undertaking permitted works on infrastructure.

Clauses 12 to 14 set out rules for ground disturbance. We recommend several amendments to these clauses to align with best practice for performance standards.

We also recommend deleting clause 12(6)(c), which sets a limit on the changes earthworks could make to a natural wetland's median annual water level. We heard that this would be difficult to determine without several years of water level information on a specific wetland, which is unlikely to exist.

Temporary bridges

Clause 15(3) of Schedule 4 would allow a temporary bridge to be constructed in a location for no longer than six months. We recommend amending this clause to state that the bridge could only be in place for the length of time required to undertake the works on the existing bridge.

Vegetation removal

Clause 19(1) specifies a limit for the amount of vegetation that could be removed from significant natural areas or ecological areas. We were advised that this is inconsistent with clause 18(4) and could have significant environmental effects. Therefore, we recommend deleting it and incorporating the rest of clause 19 into clause 18, so that the standards relating to vegetation are in the same clause.

Works within coastal marine areas

Under clause 33 of Schedule 4, any change to the area occupied by an existing structure or reclamation or drainage system in the coastal marine area would need to be as small as practicable. It could also have no additional effects on coastal processes. We recommend amending this clause to specify that the effects should be “no more than minor adverse effects”. This wording is consistent with the existing test in the RMA.

Monitoring

Clause 36 of Schedule 4 provides that the agency undertaking the works would have to provide evidence of compliance with the relevant standards on completion of the works. We recommend amending clause 36 to ensure that the plans outlined in the performance standards have to be kept by the agency, but need to be provided to the consent authority only if requested. Our proposed amendment would also help local authorities with their monitoring responsibilities required under the legislation.

Transitional provisions

Schedule 1 contains transitional, savings, and related provisions. The provisions would allow the repealed legislation and any revoked Order in Council made under the legislation to continue in force. This would only be for the purposes of completing any matter that had already been started.

We note that the legislation would self-repeal after two years and that a referral order could be made any time before the repeal.

We consider that two years is an appropriate time frame. It would enable the Minister to make referral decisions, meet the overall intent of the legislation, and ensure that enough eligible projects would be fast-tracked to support economic recovery. To better reflect this intent, we recommend the following amendments to clause 1 of Schedule 1:

- Certificates of compliance issued by panels would continue to have effect after the repeal of the legislation.
- Panels could be convened to consider referred or listed projects. The application for the resource consent or NOR would need to be lodged with the EPA within six months of the date that the legislation was repealed.
- Filing, hearing, determining, or withdrawing an appeal or a judicial review in relation to decisions made by the panel would also apply after the repeal of the legislation.

- The role of panel convener could continue after the repeal of the legislation. Panels would still be needed to determine any consent applications, NORs, and certificates of compliance after the repeal of the legislation.
- Cost recovery could continue after the repeal of the legislation.

Transitional arrangements for work on infrastructure

Clause 2 of Schedule 1 provides for permitted activities (work on infrastructure) to continue as permitted activities for 15 years after the legislation was repealed. For the legislation to continue to apply to works after its repeal, clause 1(5) of Schedule 1 specifies that a notice of intention would have to be submitted to a relevant local authority. The works would need to have started before the legislation was repealed.

We recommend moving the provisions in clause 1(5) of Schedule 1 to clause 2 of Schedule 2. This would provide a clearer link between the notice of intention referred to in clause 1(5) and the permitted activities in clause 2.

We recommend several other amendments, which would clarify that:

- the 15-year time limit would only apply to those permitted activities that could otherwise have a time-limited resource consent from a regional council
- once the 15-year limit was completed, the relevant regional plan requirements would apply
- permitted activities that could otherwise have an indefinite resource consent from a district council could continue indefinitely.

We also recommend clarifying that the activities would no longer be permitted if they changed in character, intensity, or scale after the legislation was repealed.

Enabling local authorities to undertake certain responsibilities

Clause 4 of Schedule 1 would authorise the EPA to continue to exercise or perform its powers, functions, and duties under the legislation. This would be for the purposes of recovering costs, providing secretariat services or advice, or completing any other matter under the legislation. We recommend inserting clause 4A to insert a similar provision for local authorities and iwi authorities.

Green Party of Aotearoa New Zealand minority view

COVID-19 has demonstrated our incredible power to utilise science, evidence, and expert advice to deal with challenges of unprecedented scale. We have the opportunity to take those lessons and apply them to the climate crises and inequality, to ensure that as we rebuild post the pandemic we do not repeat the same mistakes. The once-in-a-generation investment presented here is a critical opportunity to decarbonise and see communities thrive in tandem with their environment.

The Green Party supported this bill to select committee with the intention of hearing from New Zealanders about how this would impact them, their communities, and our country's future.

Across a majority of submissions from New Zealanders, the feedback received loud and clear was that without a high standard of clear environmental protections, we risk rebuilding—and arguably, exacerbating—our existing environmental and climate challenges.

The existing Resource Management Act is far from perfect on environmental protection, but the fact remains that with this fast-track legislation we have an opportunity to ensure new clean, green jobs that generate climate ready infrastructure. The Greens strongly believe that climate and environmental degradation should be a bottom line—nothing that increases carbon emissions should skip usual RMA procedure and due public scrutiny.

Throughout the development of this bill, the Green Party has sought and achieved changes to improve the bill, such as stronger decision making criteria for the Minister for the Environment and the information the Minister needs to consider in deciding what projects should be recommended through Order in Council to the fast-track process. These include considering whether a project helps shift our country to a low emissions economy and the effects of greenhouse gas emissions. The select committee's proposed deletion of provisions which would have enabled infrastructure agencies, such as Waka Kotahi/NZ Transport Agency, to clear indigenous vegetation in significant natural areas as a permitted activity is another improvement.

The reduced opportunities for public participation and lack of access to the Environment Court and the Supreme Court, compared to usual RMA processes, remain a concern. Public participation increases the information available to decision makers and enables communities to contribute to decisions affecting their neighbourhoods and places they care about.

The inadequate weight given to Part 2 RMA matters in decisions by the expert consenting panel remains an issue.

The Greens are disappointed that a majority of the committee voted to change the bill to move from drafting which required consistency with Te Tiriti and Treaty settlements to one which required only “consideration” of those. Partnership with mana whenua is critical where we as a country are considering such large and potential legacy projects.

New Zealand National Party minority view

Schedule 2 of the bill includes 11 listed projects which, in National's view, lack aspiration, vision, and scale. For the most part they offer relatively little economic benefit and sacrifice an important opportunity to create employment and generate economic growth.

The National Party is disappointed the Government did not include a far higher number of visionary, transformational legacy projects that would have delivered significantly greater public and economic value.

It is National's view that the Auckland Council's consent application to draw water from the Waikato River is critically important, due to Auckland's current drought cri-

sis as well as the region's longer-term water supply needs. We believe this project should have been included among those listed in Schedule 2 of the bill, particularly in light of the estimated 14,000 jobs that may be jeopardised in the immediate future by increasing limitations on water use. We are disappointed that Government parties did not support our motion to include the Waikato River water take in order for Watercare's consent application to be considered by an expert consenting panel.

Furthermore, in light of public statements made by New Zealand First suggesting it would support such an amendment since the motion was last put, we were disappointed that the committee declined leave to put the motion again and that the leave was not supported by the New Zealand First member of the committee.

Given the substantial economic and job loss impact COVID-19 has created, we feel a two year horizon is too limited.

While the National Party supports this bill, we are disappointed that it wastes a vital opportunity at a time that future-focused investment in strategic infrastructure is crucial to support our COVID-19 recovery.

Appendix

Committee process

The COVID-19 Recovery (Fast-track Consenting) Bill was referred to us on 16 June 2020. The closing date for submissions was 21 June 2020. We received and considered submissions from 946 interested groups and individuals. We heard oral evidence from 77 submitters at hearings in Wellington and via videoconference.

Committee membership

Dr Duncan Webb (Chairperson)

Dr Liz Craig

Hon Jacqui Dean

Hon Nathan Guy

Jenny Marcroft

Hon Scott Simpson

Erica Stanford

Chlöe Swarbrick

Angie Warren-Clark

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon David Parker

COVID-19 Recovery (Fast-track Consenting) Bill

Government Bill

Contents

		Page
1	Title	3
2	Commencement	3
Part 1		
Preliminary provisions		
3	Repeal of this Act	3
4	Purpose	3
5	Overview	3
6	Treaty of Waitangi	3
7	Interpretation	4
8	Transitional, savings, and related provisions	8
9	Act binds the Crown	8
10	Procedural principles	8
11	Electronic service of documents	8
12	Relationship between this Act and Resource Management Act 1991	9
<i>Judicial review</i>		
13	Appeals and judicial review	11
Part 2		
Fast-track consenting		
Subpart 1—Projects considered by expert consenting panel		
<i>Listed and referred projects</i>		
14	Expert consenting panel considers <u>listed projects</u> and referred projects	11
15	How expert consenting panel considers projects	11

COVID-19 Recovery (Fast-track Consenting) Bill

	<i>Referral of projects</i>	
16	Who makes referral decisions	12
17	How Minister satisfies obligations under section 6 (Treaty of Waitangi)	13
18	Criteria for projects that may be referred	13
19	Whether project helps to achieve purpose of Act	14
20	Application for referral	15
21	Process after Minister receives application	16
22	Minister may request information	17
23	Decision to decline application for referral	18
24	Decision to accept application for referral	19
25	Notice of decisions on application for referral	20
26	How project is referred	20
27	Order in Council to refer project to expert consenting panel	20
	<i>Functions of EPA</i>	
<u>27A</u>	<u>Functions of EPA</u>	<u>21</u>
	Subpart 2—Work on infrastructure	
28	Work on infrastructure: permitted activities	21
29	Criteria for work on infrastructure	22
30	Criteria for permitted activities	22
31	Activities excluded from being permitted activities	22
32	Requirements before commencing work on infrastructure	23
33	Requirement to comply with duties under Resource Management Act 1991	23
34	Order in Council to add agencies for work on infrastructure	24
35	Monitoring and enforcement	24
	Schedule 1	26
	Transitional, savings, and related provisions	
	Schedule 2	30
	Listed projects	
	Schedule 3	39
	Referred projects: requirements for referral order	
	Schedule 4	40
	Work on infrastructure: <u>location requirements, permitted activities, and permitted activity standards</u>	
	Schedule 5	58
	Expert consenting panel	
	Schedule 6	66
	Applications and decision making for <u>listed projects</u> 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~~ receives 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~~ 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 location requirements, permitted activities ~~and, and~~ permitted activity 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 projects 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:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, must take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

5

7 Interpretation

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

application for referral means an application under **section 20**
authorised person—

(a) in relation to a listed project, means a person identified as such in **Schedule 2**; and 10

(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 15

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

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

customary marine title, **customary marine title area**, **customary marine title group**, and **customary marine title order** have the meanings given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011 20

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

effect has the meaning given in section 3 of the Resource Management Act 1991 25

Environment Judge—

(a) means a judge appointed under section 250 of the Resource Management Act 1991; and

(b) includes a Māori Land Court judge who holds a warrant to sit in the Environment Court 30

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

existing means existing before this Act comes into force

expert consenting panel or **panel** means a panel appointed under **Schedule 5** to determine a consent application or notice of requirement for a listed project or a referred project 35

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

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

land returned under a Treaty settlement includes land vested in or transferred to a Treaty settlement entity under a Treaty settlement 5

listed project means a project that is listed in **Schedule 2**

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

mandated iwi organisation has the meaning given in section 5 of the Maori Fisheries Act 2004 10

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 15
- (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

~~**national direction** means—~~ 20

- ~~(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~~ 25

~~**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~~ 30

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** 35

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

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

post-settlement governance entity—

- (a) means a body corporate or the trustees of a trust established by a claimant group for the purposes of receiving redress or participating in arrangements established under a Treaty settlement Act; and 5
- (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 10

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 15

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 20
- (b) in relation to listed projects and referred projects and in the rest of this Act, means an iwi authority; whose area of interest includes the area in which a project will occur 25

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 30
- (b) in relation to listed projects and referred projects and in the rest of the Act, means the local authority whose district or region the project is in; and, if the project is in 2 or more districts or regions, each local authority whose region or district part of the project is in

requiring authority means a requiring authority within the meaning of section 166 of the Resource Management Act 1991 that has lodged a notice of requirement for a designation or to alter a designation under **clause 2 of Schedule 6** 35

~~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

5

Treaty settlement means—

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

Treaty settlement Act means—

- (a) an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975; or
- (b) for the purposes only of this Act, the following:
 - (iaaa) Maori Commercial Aquaculture Claims Settlement Act 2004:
 - (i) Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014;
 - (ii) Ngā Wai o Maniapoto (Waipa River) Act 2012:
 - (iii) Ngāti Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010

10

15

Treaty settlement deed means a deed or other agreement that—

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

20

Treaty settlement entity means any of the following:

25

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

30

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

35

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.
- (3) Terms used in this Act, that are not defined in this Act have the same ~~meaning~~ meanings as they have in the Marine and Coastal Area (Takutai Moana) Act ~~2010~~ 2011, if they are defined in that Act and not in ~~any other Act~~ the Resource Management Act 1991 (but modified as applicable if the Ngā Rohe Moana o Ngā Hapū o Ngāti Ngāti Porou Act 2019 applies). 5
- 8 Transitional, savings, and related provisions**
- The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms. 10
- 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. 15
- (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. 20
- (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— 25
- (a) ~~written notice of any matter;~~ and
 - (b) an application; and
 - (c) comments sought on any matter; and
 - (d) notice of a decision and any document related to the decision; and 30
 - (e) written notice of any other matter.
- (2) Unless it is impracticable to do so, the document must be sent electronically to the electronic address provided for that purpose.
- (3) Any time frame that applies under this Act, and that is expressed in relation to when notice is given, or an application made, or comments sought, must be calculated, if the document is sent electronically, from the date of electronic receipt. 35

- (4) However, **subsection (2)**—
- (a) does not apply to a document that is to be served on a person to commence, or in the course of, court proceedings if the court requires a different method of service (whether expressly or in its rules or practices); and 5
 - (b) does not override the provisions of the Electronic Courts and Tribunals Act 2016.
- (5) If electronic service of the document is impracticable, the document may be served in accordance with section 352(1)(b) and (2) to (5), and, if applicable, section 353, of the Resource Management Act 1991. 10

12 Relationship between this Act and Resource Management Act 1991

- (1) This section applies except as otherwise provided in, or required by the context of, this Act.
- Listed projects and referred projects*
- (2) If an application for resource consent for an activity is made under this Act,— 15
- (a) ~~the consenting process under this Act~~ process for obtaining a consent under **Schedule 6** applies instead of the ~~consenting process~~ process for obtaining a consent under the Resource Management Act 1991; and
 - (b) a resource consent granted under this Act has the same force and effect for its duration, and according to its terms and conditions, as if it were granted under the Resource Management Act 1991. 20
- (3) If a notice of requirement ~~for a designation~~ is lodged under this Act,—
- (a) ~~the designation process under this Act~~ process for confirming or modifying a designation under **Schedule 6** applies instead of the ~~designation process~~ process for confirming or modifying a designation under the Resource Management Act 1991; and 25
 - (b) a ~~designation approved~~ confirmed or modified under this Act has the same force and effect for its duration, and according to its terms and conditions, as if it were confirmed or modified under the Resource Management Act 1991. 30
- (3A) A certificate of compliance issued by a panel under **clause 25 of Schedule 6** has the same force and effect as if it were issued by a consent authority under section 139 of the Resource Management Act 1991.
- Work on infrastructure*
- (3B) If an activity is undertaken, in reliance on this Act, as a permitted activity in the course of work on infrastructure,— 35
- (a) **subpart 2 of Part 2** and **Schedule 4** apply to the activity despite anything to the contrary in—
 - (i) the relevant plan or proposed plan; or

- (ii) the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011; but
- (b) the permitted activities and associated permitted activity standards in **Schedule 4** do not override or replace— 5
- (i) any other national environmental standard; or
- (ii) any conditions that apply to an existing resource consent or designation.
- (3C) **Subsections (3D) and (3E)** apply where—
- (a) an activity is already classified as a permitted activity under the relevant plan or proposed plan, or under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (the **regulations**); and 10
- (b) a resource consent is not required for the activity if it complies with the requirements, conditions, and permissions, if any, specified in the plan or the regulations (the **existing requirements, conditions, and permissions**). 15
- (3D) If the existing requirements, conditions, and permissions are more stringent than the applicable permitted activity standards,—
- (a) the activity may be undertaken in the course of work on infrastructure as a permitted activity in reliance on this Act, subject to the conditions in **section 28(3)**; and 20
- (b) **subsection (3B)** applies in respect of the activity.
- (3E) However, if the existing requirements, conditions, and permissions are more lenient than the applicable permitted activity standards, the activity may be undertaken in the course of work on infrastructure in reliance on the plan or the regulations rather than in reliance on this Act. 25
- General*
- (3F) Every person who carries out an activity as part of a listed project or a referred project, or in the course of work on infrastructure, is subject to— 30
- (a) the duty to avoid unreasonable noise under section 16 of the Resource Management Act 1991; and
- (b) the duty to avoid, remedy, or mitigate adverse effects under section 17 of the Resource Management Act 1991.
- (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). 35
- (4) The provisions of the Resource Management Act 1991 otherwise apply, to the extent that they are relevant and with any necessary modifications, to a listed 40

project or a referred project and to any activity carried out as a permitted activity in the course of work on infrastructure.

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. 5
- (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.~~ 10
- (2) However, if a person wishes to apply for judicial review of a final decision of a panel under **clause 35 of Schedule 6** and also appeal to the High Court against the same decision, the person must lodge the applications for judicial review and appeal together, unless the High Court grants leave for the person to lodge the applications separately. 15
- (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 2010 No 37 s 159 20

Part 2

Fast-track consenting

Subpart 1—Projects considered by expert consenting panel

Listed and referred projects

- 14 Expert consenting panel considers listed projects and referred projects** 25
- 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** 30
- (1) An authorised person for a listed project or a referred project—
- (a) may apply under this Act, instead of under the Resource Management Act 1991, for a resource consent relating to the project; and

- (b) may, if the person is a requiring authority, lodge a notice of requirement under this Act, instead of under the Resource Management Act 1991, for a designation or to alter a designation relating to the project.
- (2) ~~The authorised persons for a project are identified~~ authorised person for a project is,— 5
- (a) for a listed project, ~~in **Schedule 2**; and—~~
- (i) any person or entity authorised to undertake the project, as identified in **Schedule 2**; and
- (ii) if that person or entity is KiwiRail Holdings Limited, the New Zealand Transport Agency, or a government department, any person they authorise to act on their behalf for the purposes of this Act; and 10
- (b) for a referred project, the person identified as the authorised person in the Order in Council made under **section 27** (the referral order).
- (3) **Schedule 6** sets out— 15
- (a) the requirements for consent applications to be made to, and notices of requirement to be lodged with, the EPA; and
- (b) how the EPA provides applications and notices of requirement to the panel appointed for a project; and
- (c) how the panel makes decisions. 20
- (4) To avoid doubt, a person—
- (a) cannot apply under this Act for a change or cancellation of an existing consent (*see* section 127 of the Resource Management Act 1991); but
- (b) may lodge a notice of requirement under this Act to alter an existing designation. 25

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 30
- (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. 35

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~~ **section 24** to refer a project to an expert consenting panel, are satisfied if the Minister does the things set out in this section before the decision is made, before making the decision, obtains and considers a report on the application for referral that is prepared in accordance with this section. 5
- (1A) The report must be prepared by the Ministry in consultation with the Office for Māori Crown Relations—Te Arawhiti.
- (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 report must identify the following: 10
- (a) the relevant iwi authorities and relevant Treaty settlement entities:
 - (b) the Treaty settlements that relate to the project area: 15
 - (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: 20
 - (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.
- (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**).~~ 25

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.
- (1A) The Minister must be satisfied that the project will help to achieve the purpose of this Act (see **section 19**). 30
- (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: 35
 - (b) an activity that—
 - (i) would occur on land returned under a Treaty settlement; and
 - (ii) has not been agreed to in writing by the relevant landowner:
 - (c) an activity that—

- (i) would occur in a customary marine title area under the Marine and Coastal Area (Takutai Moana) Act 2011; and
 - (ii) has not been agreed to in writing by the holder of the relevant customary marine title order issued under that Act:
- (d) an activity that— 5
 - (i) would occur in a protected customary rights area under the Marine and Coastal Area (Takutai Moana) Act 2011 and have a more than minor adverse effect on the exercise of the protected customary right; and
 - (ii) has not been agreed to in writing by the holder of a relevant protected customary rights recognition order issued under that Act. 10
- (3) ~~The Minister must be satisfied that the project will help to achieve the purpose of this Act.~~
- (4) To avoid doubt,—
 - (a) a project may be in the form of a single large project or any number of related projects, and the projects may cross local authority boundaries; and 15
 - (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*). 20
- 19 Whether project helps to achieve purpose of Act**

In considering, for the purpose of ~~section 18(3)~~ **section 18(1A)**, whether a project will help to achieve the purpose of this Act, the Minister may ~~consider, have regard to the following matters, assessed~~ at whatever level of detail the Minister considers appropriate, ~~any or all of the following matters:~~ 25

 - (a) the project's economic benefits and costs for people or industries affected by COVID-19:
 - (b) the project's effect on the social and cultural well-being of current and future generations:
 - (c) whether the project would be likely to progress faster by using the processes provided by this Act than would otherwise be the case: 30
 - (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: 35
 - (iv) providing infrastructure in order to improve economic, employment, and environmental outcomes, and increase productivity:
 - (v) improving environmental outcomes for coastal or freshwater quality, air quality, or indigenous biodiversity:

- (vi) minimising waste:
- (vii) contributing to New Zealand's efforts to mitigate climate change and transition more quickly to a low-emissions economy (in terms of reducing New Zealand's net emissions of greenhouse gases):
- (viii) promoting the protection of historic heritage: 5
- (ix) strengthening environmental, economic, and social resilience, in terms of managing the risks from natural hazards and the effects of climate change:
- (e) whether there is potential for the project to have significant adverse environmental effects, including greenhouse gas emissions: 10
- (f) any other matter that the Minister considers relevant.

20 Application for referral

- (1) Any person may apply to the Minister for a project to be referred to an expert consenting panel.
- (2) The application— 15
 - (a) must include the information specified in **subsection (3)**; but
 - (b) need only provide a general level of detail, sufficient to inform the Minister's decision on the application, as opposed to the level of detail that an expert consenting panel would require to be provided in applications for resource consents or in notices of requirement for designations. 20
- (3) The information to be included in the application is as follows:
 - Proposal and effects*
 - (a) a description of the proposed project and the activities it involves:
 - (b) the approximate geographical location of the project (which may be included in the form of a map): 25
 - (c) the anticipated commencement and completion dates for construction activities (where relevant):
 - (ca) a statement of whether the project is planned to proceed in stages and, if so, an outline of the nature and timing of the staging:
 - (d) a description of the anticipated and known adverse effects of the project on the environment: 30
 - (e) a general assessment of the project in relation to ~~national directions~~ national policy statements and national environmental standards (as those terms are defined in the Resource Management Act 1991): 35
 - 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:
- (h) a summary of any consultation already undertaken on the project with the persons referred to in **paragraph (g)**: 5
- (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:

What is needed to complete the project

10

- (ia) a description of the applicant's legal interest (if any) in the land on which the project will occur, including a statement of how that affects the applicant's ability to undertake the work:
- (j) an outline of the types of resource consents and any designations, or changes to designations, that the applicant considers are needed to authorise the project, including any that the applicant considers may be needed by someone other than the applicant: 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 authorities under the Heritage New Zealand Pouhere Taonga Act 2014 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. 35
 - (5) The application must be made in the approved form.

21 Process after Minister receives application

- (1) This section applies if the Minister receives an application under **section 20**.

- (2) Unless the Minister decides to decline the application before inviting comments (*see* **section 23**), the Minister must copy the application to, and invite written comments from,—
- (a) the relevant local authorities; and
 - (b) the relevant Ministers. 5
- (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. 10
- (5) The Minister is not required to consider any comments received after that time, but may do so, in the Minister's absolute discretion, as long as the Minister has not already made decisions on the application.
- (6) In this section, **relevant Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for any of the following Portfolios: 15
- (a) Arts, Culture, and Heritage:
 - (b) Conservation:
 - (c) Climate-change Change:
 - (d) Defence: 20
 - (e) Education:
 - (f) Housing:
 - (g) Infrastructure:
 - (h) Land Information:
 - (i) Local Government: 25
 - (j) Māori Crown Relations—Te Arawhiti:
 - (k) Transport:
 - (l) Treaty of Waitangi Negotiations:
 - (m) Urban Development:
 - (n) any other Portfolio to which the Minister considers the application is relevant. 30

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. 35

- (1A) The Minister is not required to consider any information provided after that time, but may do so, in the Minister's absolute discretion, as long as the Minister has not already made decisions on the application.
- (2) A request may be made at any time before a decision on the application is made under **section 23 or 24**. 5
- 23 Decision to decline application for referral**
- (1) The Minister must decline an application for referral if the Minister is satisfied that a project does not meet the referral criteria in **section 18**.
- (2) The Minister may decline an application for any other reason, whether or not the project meets the referral criteria. 10
- (3) A decision to decline an application may be made—
- (a) before or after a report on the application is obtained under **section 17**; and
 - (b) before or after comments on the application are invited under **section 21**; and 15
 - (c) whether or not further information on the application is requested and provided under **section 22**.
- (4) ~~However, if a report has been obtained, or comments invited, on an application or if comments or further information have been sought and provided within the required time frame,~~ the Minister must consider those things, along with the application, before deciding to decline the application. 20
- (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**: 25
 - (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: 30
 - (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: 35
 - (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.~~ 5
- (1) Before deciding to accept an application for referral, the Minister must consider—
- (a) the application; and 10
 - (b) the report obtained under **section 17**; and
 - (c) any comments received under **section 21** within the required time frame; and
 - (d) any further information requested and provided under **section 22** within the required time frame. 15
- (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~~ an expert consenting panel:
 - (b) to refer the initial stages of a project to the panel while deferring decisions about the project's remaining stages: 20
 - (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~~ the panel—
 - (i) with a consent application (in addition to the information required by **clause 9 of Schedule 6**); or
 - (ii) with a notice of requirement (in addition to the information required by **clause 13 of Schedule 6**):
 - (e) to specify persons or groups, in addition to those specified in **clause 17 of Schedule 6**, from whom the panel must invite comments on a consent application or notice of requirement relating to the project: 30
 - (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**.
- (3) A decision under this section may be made in respect of all or part of the project that is the subject of an application for referral, and the Minister may accept some parts of an application and decline others. 35

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**. 5
- (2) If the decisions include a decision to refer 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
 - (aa) the panel convener appointed under **clause 2 of Schedule 5**; and 10
 - (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— 15
 - (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 20 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 25 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 30 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 35

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

- (2) A referral order may only be made on the recommendation of the Minister and must give effect to the Minister's decisions under **section 24**.
- (3) A referral order must comply with the requirements set out in **Schedule 3**.
- (4) A referral order may be amended by Order in Council,—
 - (a) in the case of a substantive amendment, only if an application for referral is made and considered under this subpart for the project as amended; and 5
 - (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**. 10

Functions of EPA

27A Functions of EPA

- (1) The purpose of this section is to ensure that the functions of the EPA, as set out in section 13 of the Environmental Protection Authority Act 2011 (the EPA Act), include the function of exercising the powers, and carrying out the functions and duties, conferred on it by or under this Act. 15
- (2) For the purpose of section 13(b) of the EPA Act, the definition of **environmental Act** in section 5 of the EPA Act must be treated as if it included a reference to this Act. 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,—
 - (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** (which include not being excluded by **section 31**); and 30
 - (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.~~
- (4A) See **section 12(3B) to (3E)**, which clarifies the relationship between this subpart and the Resource Management Act 1991, relevant plans or proposed plans, and national environmental standards. 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. 5
- (2) The work may only be carried out by the following agencies:
- (a) KiwiRail Holdings Limited;
 - (b) the New Zealand Transport Agency;
 - (c) the following agencies, if they are added to **clause 1 of Schedule 4** by an Order in Council made under **section 34**: 10
 - (i) Kāinga Ora—Homes and Communities;
 - (ii) the Ministry of Housing and Urban Development;
 - (iii) any local authority.
- (3) The work may only be carried out on existing infrastructure.
- (4) ~~The infrastructure must be located in or on land—~~ 15
- ~~(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.~~
- (4) The work may only be carried out a place that meets the location requirements that apply to the agency, as set out in **Schedule 4**. 20
- (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— 25

- (a) the activity is—
 - (i) identified in **Schedule 4** as a permitted activity for ~~that the~~ the agency; and
 - (ii) not excluded from being a permitted activity by **section 31**; and
- (b) the agency, when carrying out the activity, complies with the permitted activity standards that apply to the agency, as set out in **Schedule 4**. 30

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.
- (2) An activity is excluded if it is a discretionary, non-complying, or prohibited activity under— 35

-
- (a) the relevant plan or proposed plan; or
- (b) the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.
- (3) An activity is excluded if it would occur in any of the following places: 5
- (a) a place identified or listed in the relevant plan or proposed plan as—
- (i) a wāhi tapu; or
- (ii) any other site of cultural or historical significance; or
- (iii) an outstanding water body:
- (b) a wāhi tapu identified for the purpose of this section during the engagement process required by **clause 5 of Schedule 4**. 10
- (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.
- (4A) An activity is excluded if it would be contrary to a water conservation order (as defined in section 200 of the Resource Management Act 1991). 15
- (5) An activity is excluded if it can be undertaken within the scope of an existing designation without requiring—
- (a) an outline plan of works to be lodged under section 176A of the Resource Management Act 1991; or
- (b) a consent under the relevant regional plan or proposed regional plan. 20
- (6) An activity is excluded to the extent that it is has an existing resource consent.
- 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 ~~hapū~~ hapū engagement process required by **clauses 5 to 7 of Schedule 4** at least 30 working days before the work commences; and 25
- (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. 30
- 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~~ 35

- (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— the change made by the order will help to achieve the purpose of this Act. 5
- (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)***): 10
- (a) Kāinga Ora—Homes and Communities:
- (b) the Ministry of Housing and Urban Development: 15
- (c) any local authority.
- (3) The order must also amend **Schedule 4** to—
- (aaa) set the location requirements for the agency's work on infrastructure; and
- (a) specify the permitted activities for the agency, ~~including—; and~~ 20
- (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~~ 25
- (aa) specify any activities, in addition to those listed in **section 31**, that are excluded from being permitted activities for the agency; and
- (b) specify the permitted activity standards that apply to the agency.

35 Monitoring and enforcement

- (1) A local authority ~~must~~ may— 30
- (a) monitor activities carried out as permitted activities in reliance on this subpart, if the activities are located in the authority's region or district; and
- (b) take appropriate action using the methods available to it under the Resource Management Act 1991. 35
- (2) A local authority may fix charges, payable by agencies carrying out work on infrastructure, for monitoring the activities.

-
- (3) Sections 36(1A) to (8), 36AAA, and 36AAB of the Resource Management Act 1991 apply to the fixing of charges under **subsection (2)**.
 - (4) A local authority may rely on charges fixed under section 36(1)(c) of the Resource Management Act 1991 (which relate to resource consent and resource management functions) to recover the costs of carrying out its functions under this subpart. 5

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:~~ 10
 - (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:~~ 15
 - (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.~~ 20
- (2) This Act, and any Order in Council made under this Act that is in force on the day before the Act is repealed, remains in force for the purpose of completing any matter commenced under the Act before its repeal or under the order before its revocation. 25
- (2A) The matters referred to in **subclause (2)** include, without limitation,—
 - (a) a panel's decision on a consent application or notice of requirement that is lodged with a panel, in accordance with **clause 2 of Schedule 6**, before the date that is 6 months after the repeal of this Act: 30
 - (b) the issue of a certificate of compliance by a panel, if the certificate is requested before the date that is 6 months after the repeal of this Act:
 - (c) the filing, hearing, determination, or withdrawal of an appeal or a judicial review in relation to a decision on a consent application or notice of requirement or, as the case requires, the remaking of the decision: 35

- (d) any other matter than is legally 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. 5
- (4) An expert consenting panel continues ~~to exist in office after the repeal of this Act~~ until it has completed the performance or exercise of its functions, duties, and powers and any matters related or ancillary to appeals, or applications for judicial review, or rehearings in relation to the performance or exercise of its functions, duties, or powers. 10
- (4A) The panel convener continues in office after the repeal of this Act and has the power to perform and exercise all the functions, duties, and powers of the panel convener, including appointing new panels for any consent applications or notices of requirement, until the convener has completed the performance or exercise of the convener's functions, duties, and powers, and any matters related or ancillary to appeals, applications for judicial review, or rehearings in relation to the performance or exercise of the convener's functions, duties, or powers. 15
- (4B) If, for any reason, the panel convener, a member of a panel, or other office holder ceases to hold office after the repeal of this Act but while the person still has functions, duties, or powers to perform or exercise under this Act, a person may be appointed to replace that person in accordance with this Act and despite its repeal. 20
- (4C) A certificate of compliance issued by a panel continues to have effect after the repeal of this Act. 25
- (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.~~ 30
- 2 How long permitted activities can be carried out**
- (1) This clause applies to an activity that, in reliance on this Act, is carried out as a permitted activity in the course of work on infrastructure, but only if— 35
- (a) a notice of intention covering the activity is given to the relevant local authority under **clause 9 of Schedule 4** before the work commences and before the repeal of this Act; and
- (b) the activity begins before the repeal of this Act. 40

- (2) Despite the repeal of this Act, the activity may continue as a permitted activity (that is, an activity that does not require a resource consent) as if the Act had not been repealed.
- (3) However, **subclause (2)** ceases to apply if—
- (a) the effects of the activity cease to be the same or similar in character, intensity, and scale as they were before this Act was repealed; or 5
 - (b) the limited duration period (if any) expires.
- (4) In **subclause (3)(b)**, limited duration period—
- (a) means 15 years, unless the duration of a consent granted for the same activity under the Resource Management Act 1991 could be unlimited under section 123 of that Act; and 10
 - (b) must be calculated from the date on which a notice of intention for the activity is given to the relevant local authority under **clause 9 of Schedule 4**.
- (5) For the avoidance of doubt, if the duration of a consent granted for the same activity under the Resource Management Act 1991 could be unlimited under section 123 of that Act, the activity is not subject to a limited duration period. 15
- 3 Costs incurred after repeal of Act**
- (1) If any costs can be recovered from an applicant or a requiring authority by the EPA or the Minister under this Act, those costs may continue to be recovered on or after the date on which this Act is repealed even if they relate to matters that occurred in relation to a referred project or a listed project on or after that date. 20
- (2) This clause does not limit **clause 1**.
- 4 Role of EPA continues after repeal of Act** 25
- 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 and~~ the completion of any other matter under this Act.
- 4A Role of local authorities and iwi authorities continues after repeal of Act** 30
- The powers, functions, and duties conferred by this Act on local authorities and iwi authorities may continue to be exercised or performed after the repeal of this Act for any purpose connected with—
- (a) the monitoring of activities authorised by or under this Act; and
 - (b) the fixing of charges; and 35
 - (c) the recovery of costs from the EPA; and
 - (d) the completion of any other matter under this Act.

5 Relationship with Interpretation Act 1999

Clauses 1 to ~~4~~ 4A 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 Tupua – Ngauranga to Petone Cycleway and Walkway shared path	Waka Kotahi NZ <u>New Zealand Transport Agency</u>	To upgrade and construct a new shared path between Ngauranga and Petone	On existing and reclaimed land bound by:— <u>Hutt Valley Railway Line and State Highway 2</u> (to the west) - Wellington Harbour (to the east) <u>SH2 State Highway 2</u> 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 shared path	Waka Kotahi NZ <u>New Zealand Transport Agency</u> <u>Transpower New Zealand Limited</u>	To construct a new shared path between Westhaven in central Auckland and Akoranga in the North Shore (including across the Auckland Harbour Bridge) <u>Works on assets owned and operated by Transpower New Zealand Limited necessary for the above works to be carried out</u>	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

Identifier	Name	Person or entity authorised to undertake project	Description	Approximate geographical area
LP03	Wellington Metro Upgrade Programme	KiwiRail Holdings Limited	This project will consist of— • 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 65-56 and 63 on the Wairarapa Line • Construction of a Maymorn Passing Loop	A subway will connect Onewa Road to the off-ramp approximately 1.2 km north of the northern end of the Harbour Bridge A shared path up to 5 kilometres in length connecting Westhaven with Akoranga in the vicinity of the AUT Northern Campus and the Akoranga Busway Station This project will consist of— Project will occur in the following geographical areas: • 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 37.6 km and 39.0 km WL (in the vicinity of Maymorn Station between tunnels a1 and 2 WL)

Identifier	Name	Person or entity authorised to undertake project	Description	Approximate geographical area
LP04	Papakura to Pukekōhe rail electrification	KiwiRail Holdings Limited <u>Transpower New Zealand Limited</u>	- Construction of a Carterton Passing Loop - Resignalling works Electrification of the railway between Papakura and Pukekōhe to extend Auckland Metro's <u>passenger Metro passenger train</u> services south Works on assets owned and operated by Transpower New Zealand Limited necessary for the above works to be carried out	- Between Brooklyn Road and Belvedere Road, Carterton - Wairarapa Line This project will involve a Project will occur in the following <u>geographical areas</u>: - Rail corridor between Pukekōhe and Papakura Stations - Overbridges at— - 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 <u>Works by Transpower New Zealand Limited can occur—</u> - at the location needed for a <u>Grid Exit Point</u>

Identifier	Name	Person or entity authorised to undertake project	Description	Approximate geographical area
LP05	Britomart East Station Eastern end Upgrade	KiwiRail Holdings Limited	Modifications to the Eastern end of the existing Britomart station to accommodate increased CRL capacity	- at the points on the Bombay to Otahuhu, Huntly to Otahuhu, and Glenbrook Deviation A transmission lines where they intersect with the rail corridor - at the points needed to move the above lines The Eastern end of the Britomart train station (including the tunnel) in the Auckland central business district
LP06	Te Pā Tāhuna Residential Development	Partnership between Ngāi Tahu Property Limited (through its subsidiary NTP Development Holdings Limited – NTPDH) 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 Construction of four multi-storey buildings containing residential units and ancillary retail on four lots, and corresponding unit title subdivisions	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	Any of the following entities: Ngā Mana Whenua of Tāmaki Makaurau; (Marutūāhu Rōpū; Ngāti Whātua Rōpū; Waiohua – Tāmaki Rōpū; and Ministry of Housing and Urban Development	First Residential 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 Ōrākei own contiguous blocks of land that make up the site
LP08	Papakāinga Development - Kaitaia	He Korowai Trust, Kaitaia (supported by Te Puni Kōkiri)	The addition of 24 new dwellings to an existing papakāinga	23 Kohuhu Street, Kaitaia
LP09	Papakāinga Development - Point Chevalier, Auckland	Te Māhurehure Cultural Marae Society (supported by Te Puni Kōkiri)	Construction of 14 affordable rental homes	73 Premier Avenue, Point Chevalier, Auckland
LP10	Papakāinga Development - Whaingaroa, Raglan	Rakaunui IB Ahuwhenua Trust (supported by Te Puni Kōkiri)	Integrated papakāinga development of 6 homes	113 Wainui Road, Whaingaroa, Raglan
LP11	Papakāinga Development - Waitara, Taranaki	Te Kotahitanga o Te Atiawa (supported by Te Puni Kōkiri)	A subdivision offering a mixed-tenure development, including up to 60 lots with 25 homes in the first stage of development	14 Bayly Street, Waitara, Taranaki
LP12	Papakāinga Development - Chatham Islands	Chatham Islands Housing Partnership Trust (supported by 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	<u>Te Mahi Korowai Trust (supported by Te Puni Kōkiri)</u>	Construction of 10 residential dwellings and a shared-use building	2 Rāpaki Drive, Rāpaki, Christchurch
LP14	<u>Waitohi Picton Ferry Terminal Precinct Redevelopment</u>	<u>KiwiRail Holdings Limited</u> ; Port Marlborough; Marlborough District Council; and <u>Waka Kotahi NZ New Zealand Transport Agency</u>	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 The area in the vicinity of the <u>existing ferry terminal as shown on the attached plan</u>
LP15	<u>Papakura to Drury SH1 South State Highway 1 improvements</u>	Waka Kotahi NZ New Zealand Transport Agency <u>Transpower New Zealand Limited</u>	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 <u>Works on assets owned and operated by Transpower New Zealand Limited necessary for the above works to be carried out</u>	This project will occur on SH1 and land adjacent to SH1 — - 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

Identifier	Name	Person or entity authorised to undertake project	Description	Approximate geographical area
				southernmost end of Harrison Road
				Works on the transmission assets can occur—
				• <u>along the Bombay to Otahuhu Transmission Line</u>
				• <u>along the Huntly to Otahuhu Transmission Line</u>
				• <u>at the Drury and Bombay substations</u>
				• <u>at the points needed to move the above transmission lines and substations</u>
LP16	Kopemii <u>Matawii</u> Water Storage Reservoir, Kaikohe	<u>Northland Regional Council</u>	Construction of water storage and distribution infrastructure in Kaikohe to support the development of Northland's agriculture and horticulture sector and to provide drinking water for Kaikohe, (limited to earthworks, and land use and water-related consents; and does not include including consents for the taking and damming of water)	<u>Kaikohe</u> Private land to the north east of Kaikohe, on the following properties by the following legal descriptions: • <u>Reiwhaita 1B</u> • <u>Lot 2 DP 176274</u> • <u>Orauruwharo 8</u> • <u>Taumataukuku 1</u> • <u>Lot 1 DP 196320</u>
LP17	<u>Queenstown Arterials Project</u>	<u>Queenstown Lakes District Council and New Zealand Transport Agency</u>	To construct, maintain and operate a new <u>Queenstown Town Centre urban arterial road</u> (including associated infrastructure, structures,	The project commences at the <u>Frankton Road (SH6A)/Melbourne Street intersection</u> , then circuits the town centre along <u>Melbourne Street</u> , <u>Henry Street</u> , <u>Gorge Road</u> , <u>Memorial Street</u> , <u>Man Street</u> , <u>Thompson Street</u>

Identifier	Name	Person or entity authorised to undertake project	Description	Approximate geographical area and down to a new One Mile roundabout at the Fernhill Road/Lake Esplanade/Glenorchy intersection
------------	------	--	-------------	--



Schedule 3

Referred projects: requirements for referral order

s 27

1 Application of schedule

This schedule sets out the requirements for a referral order made under **section 27** (referring a project to an expert consenting panel). 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 or to alter a designation relating to the project:
- (b) a description of the project and the activities it involves: 15
- (c) the approximate geographical location of the project.

3 Other matters decided by Minister

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

4 Statement of reasons

20

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

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

ss 28(5), 30

Contents

	Page
1 Application of schedule	41
2 Interpretation	42
3 Incorporation by reference	42
Part 1	
Permitted activity standards that apply generally	
4 Application of Part	42
<i>Iwi and hapū engagement</i>	
5 Iwi and hapū engagement	42
6 Effect of failure to engage	43
7 Management plan for affected or adjacent significant sites	44
<i>Notices of intention</i>	
8 Notice of intention to iwi authorities, hapū, and Treaty settlement entities	44
9 Notice of intention to local authorities	45
Part 2	
KiwiRail Holdings Limited and New Zealand Transport Agency	
10 Application of Part	45
Subpart 1— <u>Permitted Location requirements and permitted activities</u>	
<u>10A Location requirements</u>	<u>46</u>
11 Permitted activities	46
Subpart 2—Permitted activity standards	
<i>Ground disturbance</i>	
12 Earthworks (including diversion, damming, and discharge of sediment-laden water)	47
13 Geotechnical boreholes (including groundwater monitoring)	48
14 Groundwater discharge for dewatering and construction	49
<i>Works within beds of rivers</i>	
15 Temporary and permanent bridges and culverts	49
16 Fish passage	49

	<i>Vegetation</i>	
17	Biosecurity risks	50
18	Vegetation	50
19	Vegetation removal and habitat disturbance within significant natural area or significant ecological area	51
	<i>Operational requirements</i>	
20	General contaminant management	51
21	Transport, disposal, and tracking of soil and other materials removed	52
22	Discharge of dust to land and air	52
23	Construction noise and vibration	53
24	Construction signage	53
25	Lighting	53
26	Temporary activities (for example, office facilities, contractor laydown areas, and storage yards)	54
27	Use, storage, and handling of hazardous substances	54
28	Noise attenuation walls and structures	54
29	Operational noise for altered State highways	54
	<i>Stormwater management</i>	
30	Stormwater management	54
31	Diversions and discharge of stormwater run-off	55
	<i>Works within coastal marine area</i>	
32	Disturbance in coastal marine area	55
33	Existing structures, reclamation, or drainage system in coastal marine area	55
34	Dredging within coastal marine area	56
35	Mangrove removal	56
	<i>Monitoring</i>	
36	Monitoring	57

1 Application of schedule

- (1) This schedule sets out the location requirements, permitted activities, and permitted activity standards that apply to the following agencies:
 - (a) KiwiRail Holdings Limited:
 - (b) New Zealand Transport Agency.
- (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
- (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. 5
- 2 Interpretation**
- In this schedule,—
- enforcement officer** means any person authorised under section 38 of the Resource Management Act 1991 10
- works** means activities carried out in the course of work on infrastructure in reliance on this Act.
- 3 Incorporation by reference**
- Schedule 1AA of the Resource Management Act 1991 applies, and subpart 2 of Part 3 of the Legislation Act 2012 does not apply, to any material incorporated by reference into this schedule. 15
- (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.~~
- Part 1** 20
- 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*).
- Iwi and hapū engagement* 25
- 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 30
- (b) any groups about which the relevant local authority keeps records under that section; and
- (c) Treaty settlement entities whose area of interest overlaps, or is adjacent to, the area where the works will occur.

-
- (2) The engagement must begin at least 30 working days before the works commence.
- (3) The purpose of the engagement is to—
- (a) determine interests and values held by iwi, hapū, and Treaty settlement entities in relation to the proposed works; and 5
 - (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 10
 - (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 15
 - (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. 20
- (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 25
 - (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. 30
- 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)**. 35
- (2) The agency may proceed as if the process of engagement had resulted in nothing being determined or identified for the purpose of **clause 5(3)**.

7 Management plan for affected or adjacent significant sites

- (1) This clause applies if any sites that require a management plan are identified during engagement with iwi authorities, groups, and Treaty settlement entities under **clause 5**.
- (2) The agency must work with the authorities, groups, and entities to develop a management plan for the sites. 5
- (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 10
 - (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 15
 - (f) monitoring of these matters by the agency during the period of construction.

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

- (1) Before it undertakes works, an agency must serve a notice of intention on— 20
 - (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. 25
- (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: 30
 - (b) a brief description of the works:
 - (c) a copy of any management plan developed in accordance with **clause 7**:
 - (d) details of works that include fish passage:
 - (da) 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 35

or obtained (*see* sections 44, 56, and 62 of the Heritage New Zealand Pouhere Taonga Act 2014):

- (e) a copy of any accidental discovery protocol to be applied during any earthworks activities (*see* **clause 12**):
- (f) an invitation to attend a pre-start or induction meeting. 5

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. 10
- (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**: 15
 - (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 reasonable measures to contact those authorities, groups, and entities. 20

Part 2 25

KiwiRail Holdings Limited and New Zealand Transport Agency

10 Application of Part

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

- (aaa) location requirements for work on infrastructure; and 30
- (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.

Subpart 1—~~Permitted Location requirements and permitted activities~~

10A Location requirements

- (1) This clause sets out, for the purpose of **section 29** (criteria for work on infrastructure), the location requirements for work on infrastructure that apply to KiwiRail Holdings Limited and the New Zealand Transport Agency. 5
- (2) The infrastructure must be located in or on the national road corridor or the national rail corridor.
- (3) The work may only be carried out on land that meets at least 1 of the following criteria:
 - (a) the agency has a legal interest in the land that authorises access to and use of the land for the works: 10
 - (b) the land is in or on the national road corridor or the national rail corridor, and the agency is authorised to access and use the land for the works:
 - (c) a compensation certificate under section 19 of the Public Works Act 1981 records the acquisition of the land for the works. 15
- (4) Despite **subclause (3)**, the work may occur within the bed of a river or within the coastal marine area, but only to the extent necessary for the work on infrastructure.
- (5) In this clause,—

national rail corridor means the existing network of railway lines, railway premises, and railway infrastructure, as those terms are defined in section 4(1) of the Railways Act 2005 20

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

State highway has the meaning given in section 5(1) of the Land Transport Management Act 2003, except that it does not include a proposed State highway. 25

11 Permitted activities

- (1) Unless excluded by **section 31**, and subject to **clause 10A**, any activity for the operation, maintenance, replacement, or minor upgrade of existing infrastructure is a permitted activity if— the activity complies with the permitted activity standards in **subpart 2**. 30
 - (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**.~~ 35
- (2) In this clause, **minor upgrade** means any of the following activities:
 - (a) the provision of a safety barrier:
 - (b) fencing and obstacle clearance:

- (c) the safety upgrade of an intersection or a level crossing (including to add signals, a roundabout, a turning bay, or safety improvements for pedestrians or cyclists):
- (d) the strengthening or replacement of a bridge, including abutments:
- (e) a minor upgrade or replacement of a culvert: 5
- (f) road widening for safety works:
- (g) the upgrade or maintenance of a drainage network:
- (h) the upgrade or maintenance of a footpath or shared-use path:
- (i) the sealing of a road:
- (j) the provision of a noise wall or barrier: 10
- (k) the construction of a retaining structure in connection with any other minor upgrade.

Subpart 2—Permitted activity standards

Ground disturbance

- 12 Earthworks (including diversion, damming, and discharge of sediment-laden water)** 15
- (1) For any earthworks activity, an erosion and sediment control plan must be—
 - (a) prepared by a suitably qualified person with at least 5 years' experience in erosion and sediment control; and
 - (b) served with the notice of intention to local authorities that is required by **clause 9**; and 20
 - (c) implemented in accordance with industry best practice that reflects the scale of the activity and associated earthworks.
 - (2) Industry best practice includes the measures and procedures specified within the *Erosion and Sediment Control Guidelines for State Highway Infrastructure*. 25
 - (3) The agency carrying out the work must—
 - (a) determine whether an authority is required to modify or destroy an archaeological site ~~under section~~ (see sections 44, 56, ~~or 61~~ and 62 of the Heritage New Zealand Pouhere Taonga Act ~~2004~~ 2014); and
 - (b) if no authority is required, prepare an accidental discovery protocol in advance of earthworks activity and apply the protocol if archaeological material is uncovered; and 30
 - (c) if an authority is required, obtain it.
 - (4) Sediment originating from the earthworks activity must, to the extent possible, be managed on site to ensure that it does not, after reasonable mixing, give rise to any of the following effects in the receiving waters: 35

- (a) the production of conspicuous oil or grease films, scums, or foams, or floatable or suspended materials:
 - (b) a decrease of more than 20% in visual clarity:
 - (c) any emission of objectionable odour:
 - (d) making fresh water unsuitable for consumption by farm animals: 5
 - (e) more than minor adverse effects on aquatic life.
 - (5) All measures to minimise the generation and discharge of sediment from the earthworks activity must—
 - (a) be implemented, to the extent that is practicable, before the works commence; and 10
 - (b) include actions to ~~reduce~~ minimise the area of open ground at any time and avoid, where practicable, any earthworks during winter months (June, July, and August); and
 - (c) remain in place until the earthworks activity has been completed and the area of earthworks has stabilised in accordance with the *Erosion and Sediment Control Guidelines for State Highway Infrastructure*. 15
 - (6) Earthworks must not—
 - (a) occur within 25 metres of any part of a natural wetland; or
 - ~~(aa) cause an adverse effect on 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 20
 - ~~(e) 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. 25
 - (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. 30
 - (2) ~~Drilling must not—~~
 - ~~(a) occur above drinking water supply areas or confined aquifers; or~~
 - ~~(b) intercept aquifers that are used for water supply.~~
 - (2) Drilling must not occur at a location, or at a depth, or in a way that may affect any drinking water supply. 35
 - (3) A bore/well log form must be submitted to the relevant unitary authority or regional council within 1 month of the bore being constructed.

- (4) The bore must be decommissioned, in accordance with NZS 4411:2001 Environmental standard for drilling of soil and rock, as soon as practicable after the investigation and monitoring are completed.

14 Groundwater discharge for dewatering and construction

- (1) Groundwater discharge arising from dewatering and construction must not be from, into, or onto contaminated or potentially contaminated land that is identified under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011. 5
- (2) The discharge must not be from or into a natural wetland. 10
- (3) The discharge must not ~~result in flooding on adjacent properties~~ cause, or increase any adverse effects from, flooding.

Works within beds of rivers

15 Temporary and permanent bridges and culverts

- (1) Any structure in the coastal marine area must not cause a hazard to safe navigation. 15
- (2) If the works include a temporary or permanent bridge or culvert, the activity must not disturb a river or lake bed to a depth or an extent greater than that required to undertake the activity.
- (3) A temporary bridge ~~may be erected in a location for no longer than 6 months~~ must not remain in place for any longer than is necessary to undertake the work on the related existing bridge. 20
- (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. 25
- (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

- (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. 30
- (2) ~~Fish passage works~~ Proposals for works to ensure fish passage must be referred to all of the relevant bodies described in ~~clause 8(1)~~ **clause 5(1)** at least 10 working days before the works commence, to enable feedback to be sought (see clause 5(3)). 35

- (3) Fish passage and kōura passage must be provided at all times while works occur in watercourses, unless a temporary restriction of no more than 48 hours is required for construction or maintenance activities.
- (4) Salvage and relocation of indigenous fish, kākahi/freshwater mussels, and kōura/freshwater crayfish must be undertaken for any stream diversions or dewatering and must be placed in the same waterway. 5
- (5) In-stream structures must be designed and maintained to meet the minimum design standards for fish passage, as specified in the *New Zealand Fish Passage Guidelines* (NIWA Client Report No. 2018019HN, April 2018).

Vegetation

10

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.~~

- (a) prevent the spread of pest plants and unwanted organisms, including the organism that causes kauri dieback disease; and 15
- (b) avoid the spread of pests in areas covered by a pest management plan that is developed by a unitary authority or regional council.

18 Vegetation

- (1) Any new planting must be of non-invasive species. 20
- (2) Revegetation must be of species naturally occurring within the ecological district and eco-sourced, unless—
 - (a) it is not possible to comply with that obligation; or
 - (b) there are sound ecological reasons to plant exotics.
- (3) Plant species selected must take into account the habitat requirements of affected fauna. 25
- (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.
- (4A) 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
- (5) Vegetation clearance activities must be completed in accordance with good arboricultural practice.
- (6) Trees identified in a schedule to a relevant plan or proposed plan as having significant value must not be removed. 35

- (7) 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.
- (8) In this clause, **vegetation clearance** means the disturbance, cutting, burning, clearing, damaging, destruction, or removal of vegetation. 5
- 19 ~~Vegetation removal and habitat disturbance within significant natural area or significant ecological area~~**
- (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.~~ 10
- (2) ~~Trees identified in a relevant plan or proposed plan as having significant value must not be removed.~~
- (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.~~ 15
- (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.~~
- Operational requirements* 20
- 20 General contaminant management**
- (1) There must be an emergency spill prevention plan in place to prevent spills and to contain and manage any release of contaminants from equipment being used for the activity.
- (2) The plan must be served with the notice of intention to local authorities that is required by **clause 9**. 25
- (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. 30
- (5) All construction equipment and materials must be removed on the completion of works.
- (6) The following must not take place in, or within 10 metres of, any location where fuel can enter a water body:
- (a) cleaning or refuelling of machinery or equipment: 35
- (b) storage of fuel.

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

- (1) The site investigation for the piece of land must—
- (a) be undertaken in accordance with *Contaminated Land Management Guidelines No 5*; and
 - (b) be reported on in accordance with *Contaminated Land Management Guidelines No 1*. 5
- (2) A copy of the report of the site investigation must be provided to the relevant unitary authority or regional council within 2 months after the investigation is completed.
- (3) For sites where soils are identified as containing contaminants above background levels, a site management plan must be— 10
- (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 15
 - (c) either—
 - (i) served with the notice of intention to local authorities that is required by **clause 9**; or
 - (ii) made available to the relevant territorial authority and unitary authority or regional council within 10 working days before the works commence. 20
- (4) Soil taken away from the piece of land in the course of the activity must be disposed of at a facility authorised to receive soil of that kind.
- (5) Records of the volume of soil and other materials deposited, and where they were deposited, must be maintained and made available on request to the relevant territorial authority and unitary authority or regional council within 10 working days of the date of the request. 25
- (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) 30
- Contaminated Land Management Guidelines No 5*** means the *Contaminated Land Management Guidelines No. 5: Site Investigation and Analysis of Soils* (Ministry for the Environment, reference ME 1073).

22 Discharge of dust to land and air 35

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

- (2) In this clause, **sensitive activity** means any of the following activities as they are defined in chapter J of the Auckland Unitary Plan Operative:
- (a) an activity sensitive to aircraft noise:
 - (b) an activity sensitive to air discharges:
 - (c) an activity sensitive to hazardous facilities and infrastructure: 5
 - (d) an activity sensitive to noise:
 - (e) an activity sensitive to the National Grid.
- 23 Construction noise and vibration**
- (1) For works within 100 metres of a sensitive activity, a construction, noise, and vibration management plan must be prepared by a suitably qualified and experienced person and implemented before the start of the works. 10
- (2) The purpose of the plan is to provide a framework for the development and implementation of methods to avoid, remedy, or mitigate adverse construction noise and vibration effects.
- (3) The plan must be— 15
- (a) prepared in accordance with NZS 6803:1999 Acoustics—Construction noise; and
 - (b) served with the notice of intention to local authorities that is required by **clause 9**.
- (4) In this clause, **sensitive activity**— 20
- (a) means residential, educational, community, health care, or visitor accommodation; and
 - (b) includes (without limitation)—
 - (i) dwellings:
 - (ii) schools: 25
 - (iii) marae:
 - (iv) hotels and motels:
 - (v) residential care facilities.
- 24 Construction signage**
- Signage may only be used if— 30
- (a) it is required by any enactment; or
 - (b) it gives safety or security instructions or information; or
 - (c) it provides information or directions in relation to works.
- 25 Lighting**
- Any new permanent lighting must comply with AS/NZS 1158:2005 Lighting for roads and public spaces. 35

26	Temporary activities (for example, office facilities, contractor laydown areas, and storage yards)	
	Construction yards must be designed and located in a manner that will—	
	(a) minimise their visibility from occupied dwellings; and	
	(b) minimise risk of contaminant run-off to receiving water bodies.	5
27	Use, storage, and handling of hazardous substances	
(1)	An emergency response plan for the use, storage, and handling of hazardous substances must be prepared and implemented in accordance with the Health and Safety at Work (Hazardous Substances) Regulations 2017.	
(2)	The plan must be served with the notice of intention to local authorities that is required by clause 9 .	10
28	Noise attenuation walls and structures	
	The height of a noise attenuation wall or structure must not exceed 3 metres.	
29	Operational noise for altered State highways	
(1)	For altered State highways, the New Zealand Transport Agency must assess and mitigate road-traffic noise in accordance with the <i>Guide to assessing road-traffic noise using NZS 6806 for state highway asset improvement projects</i> (as published by the New Zealand Transport Agency in August 2016).	15
(2)	Within 12 months after completion of works, a post-construction review report must be—	20
	(a) prepared in accordance with the <i>Specification for Noise Mitigation</i> (New Zealand Transport Agency, NZTA P40: 2014); and	
	(b) provided to the relevant territorial authority for its information.	
	<i>Stormwater management</i>	
30	Stormwater management	25
(1)	Management of stormwater from roads must be in accordance with <i>NZTA P46 State Highway Stormwater Specification</i> (New Zealand Transport Agency, NZTA P46: April 2016).	
(2)	Subclause (3) applies to any new impermeable road surface that—	
	(a) is greater than 1,000 square metres; and	30
	(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.	35

31 Diversion and discharge of stormwater run-off

- (1) This clause applies to the diversion and discharge of stormwater run-off from new impermeable surfaces within the road corridor or rail corridor.
- (2) The diversion and discharge must not cause or increase scouring or erosion at the point of discharge or downstream. 5
- (3) The diversion and discharge must not result in or increase the following:
 - (a) flooding of other properties in rainfall events up to the 10% annual exceedance probability; or
 - (b) inundation of buildings on other properties in rainfall events up to the 1% annual exceedance probability. 10
- (4) The diversion and discharge must not cause or increase nuisance or damage to other properties or infrastructure.
- (5) The diversion and discharge of stormwater run-off must not give rise to any of the following in any surface water or coastal water, after reasonable mixing:
 - (a) the production of conspicuous oil or grease films, scums, or foams, or floatable or suspended materials: 15
 - (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. 20

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

- (1) Any adverse effects within the coastal marine area, including disturbance to of the substrate of the coastal marine area and any deposit of material not permitted under **clause 33**, must be remedied or restored as soon as possible, preferably within 7 working days, but no later than 28 working days, after the completion of the works. 25
- (2) Indigenous vegetation disturbance or clearance within the coastal marine area must not exceed a total of 100 square metres in area.

33 Existing structures, reclamation, or drainage system in coastal marine area 30

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~~ more than minor adverse effects on coastal processes.

34 Dredging within coastal marine area

- (1) The area and volume of material dredged within the coastal marine area must be the minimum amount immediately necessary and sufficient for the works, taking into account future sedimentation rates.
- (2) Dredging must not take place within 100 metres of a previously dredged site, unless at least 2 months has elapsed since the completion of previous dredging at that site. 5
- (3) Impounded water must be released in a way that minimises potential contamination of receiving waters.
- (4) Best-practice dredging methods must be used in order to minimise sediment re-mobilisation and dispersal. 10
- (5) There must be no deepening or widening of the channel beyond the limits of its design profile.
- (6) ~~Dredging must not occur within 200 metres of identified inanga spawning areas during inanga spawning periods, during inanga spawning periods, in any area described as an inanga spawning area in a schedule to a plan or proposed plan.~~ 15
- (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 20
 - (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. 25

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. 30
- (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. 35
- (5) The removal must—
 - (a) be immediately adjacent to existing lawful structures, infrastructure, or drainage systems; and

- (b) be solely to enable their operation, maintenance, replacement, or upgrade.
- (6) The removal must not damage or disturb areas of salt marsh, seagrass, or other non-mangrove indigenous estuarine and wetland vegetation.
- (7) The removal must not be in areas where mangroves are serving to mitigate coastal erosion from wave action. 5
- (8) Any removal in a significant wading bird area, as identified in a unitary plan or regional plan, must be timed to avoid bird nesting seasons and minimise adverse effects on birds using roosting areas.

Monitoring

10

36 Monitoring

- (1) The agency undertaking the works must ~~provide~~ keep evidence of compliance with the relevant standards applied by this schedule on the completion of the works.
- (2) The relevant consent authority may request a copy of all or part of the evidence. 15
- (3) The agency must comply with the request within 10 working days after the date on which they receive it.

Schedule 5

Expert consenting panel

s 14

Contents

		Page
	<i>Purpose and functions of panel</i>	
1	Purpose of expert consenting panels	58
2	Appointment of panel convener	59
3	Membership of panels	59
4	Chairperson of panel	60
5	Obligations in relation to <u>Conduct of hearings and other procedural matters in context of Treaty settlements</u>	60
6	Terms of reference for panel	61
7	Appointment of replacement panel member	61
8	Skills and experience of members of panel	61
9	Remuneration of panel convener and panel members	62
10	Removal and resignation of panel members	62
	<i>Procedural and administrative matters</i>	
11	Procedures of panel	63
12	Secretariat support <u>Support and advice available to panels</u>	63
13	Liability of members	63
14	Recovery of costs <u>by EPA</u>	63
14A	<u>Recovery of costs by Minister and local authorities</u>	64
14B	<u>Delegation of cost-recovery function by Minister</u>	65
15	Application of Local Government Official Information and Meetings Act 1987	65

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) | <u>1 or more</u> consent applications for <u>a listed project</u> and or a referred projects project ; and | |
| (b) | <u>1 or more</u> notices of requirement for designations or to alter a designation for <u>a listed project</u> and or a referred projects project . | 10 |
| (2) | A panel must determine consent applications and notices of requirement in accordance with the provisions of this Act. | |
| (3) | <u>A panel may issue certificates of compliance in relation to a listed project or a referred project.</u> | 15 |

2 Appointment of panel convener

- (1) The Minister must appoint a current or former (including retired) Environment Judge to be the panel convener for the purposes of this Act for a term determined by the Minister.
- (2) The Minister may at any time remove the panel convener for just cause (within the meaning of **clause 10(3)**), and **clause 10(2)** applies with any necessary modifications. 5
- (3) The panel convener may resign their office at any time by notice in writing to the Minister.
- (4) The panel convener, unless they earlier resign or are removed from office under **subclause (2)**, continues in office until their successor is appointed by the Minister. 10
- (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.~~ 15
 - (a) to determine consent applications or notices of requirement for a listed project or a referred project; and
 - (b) to issue certificates of compliance for a listed project or a referred project in accordance with **clause 25 of Schedule 6**.

3 Membership of panels 20

- (1) Up to 4 persons may be appointed to be members of a panel set up to determine—
 - (a) applications for resource consents for listed projects or referred projects; and
 - (b) requirements for designations or alterations of designations for listed projects or referred projects. 25
- (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
 - (b) 1 person nominated as the representative of the relevant iwi authorities. 30
- (2A) The person nominated by a local authority may, but need not, be an elected member of the local authority.
- (3) If either the relevant local authorities or the relevant iwi authorities nominate more than ~~one~~ 1 person for appointment as a panel member, the panel convener must decide which one of those nominees is to be appointed as a panel member. 35
- (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).~~
- (4) ~~If a local authority or an iwi authority does not make a nomination under **subclause (2)**, the panel convener must appoint a person with the appropriate skills and experience to be a member of the panel (see **clause 8(1)**).~~ 5
- (6) Despite the limit specified on the membership by **subclause (1)**, that number may be exceeded (including by the appointment of more than ~~one~~ 1 person nominated under **subclause (2)(a)** or **subclause (2)(b)**), at the discretion of the panel convener, if warranted by, or required to accommodate,— 10
- (a) the circumstances unique to a particular district or region; or
 - (b) the number of applications that have to be considered in that particular district or region; or
 - (c) the nature and scale of the application under consideration; or
 - (d) matters unique to any relevant Treaty settlement Act; or 15
 - (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).
- 4 Chairperson of panel** 20
- (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. 25
- (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. 30
- (5) A panel has a quorum of 3 members.
- 5 Obligations in relation to Conduct of hearings and other procedural matters in context of 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 procedural arrangements for relating to the appointment of a decision-making body for hearings and other procedural matters, such as the following: 35

-
- (a) a requirement for iwi or hapū to participate in the appointment of hearing commissioners to determine resource consent applications or notice of requirement lodged under the Resource Management Act 1991:
- (b) a requirement that notice that must be given to any person or specified class of person of any steps in a resource management process: 5
- (c) any consultation requirements with iwi or hapū:
- (d) any other matter of procedure for determining resource consent applications or notices of requirement lodged under the Resource Management Act 1991.
- (2) The panel convener or panel ~~(as the case may be)~~ must either— 10
- (a) comply with the arrangements in the ~~Act or Treaty settlement Act~~, iwi participation legislation, or agreements referred to in **subclause (1)** as if it ~~was~~ were a local authority; or
- (b) obtain the agreement of the relevant Treaty settlement entity or iwi authority to adopt a modified arrangement that is consistent with achieving the purpose of ~~the Act or this Act, the Treaty settlement Act~~, iwi participation legislation, and any agreements referred to in **subclause (1)** ~~and the purpose of this Act~~. 15
- (3) The relevant Treaty settlement entity or iwi authority may not unreasonably withhold their agreement to a modified arrangement (as described in **subclause (2)(b)**). 20
- (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. 25
- 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. 30
- 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
- (b) the technical expertise relevant to the project; and 35
- (c) expertise in tikanga Māori and mātauranga Māori.

- (2) Unless **subclause (3)** applies, a person must, in order to be eligible for appointment as a panel member, be accredited under section 39A of the Resource Management Act 1991.
- (3) Despite **subclause (2)**, the panel convener may at their discretion appoint as a panel member a person who is not accredited under section 39A of the Resource Management Act 1991 as a panel member if the person satisfies the requirements of **subclause (1)(a), (b) or (c)**. 5
- (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). 10

9 Remuneration of panel convener and panel members

- (1) The panel convener and members of the panel are entitled—
- (a) to receive remuneration not within **paragraph (b)** for services as the panel convener or a member at a rate and of a kind determined by the Minister in accordance with the fees framework; and 15
- (b) in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out their office as the panel convener or as a panel member as if the convener and members were members of a statutory board for the purposes of the Fees and Travelling Allowances Act 1951. 20
- (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 25

- (1) The panel convener may remove any person appointed to a panel under this schedule for just cause.
- (2) The person may be removed with as little formality and technicality, and as much expedition, as is permitted by—
- (a) the principles of natural justice; and 30
- (b) a proper consideration of the matter.
- (3) In this section, **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of duty (depending on the seriousness of the breach).
- (4) A member of the panel may resign at any time as a member by notice in writing to the panel convener. 35

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. 5
- (2) **Subclause (1)** applies subject to any other provision in this Act ~~or regulations made under this Act that regulate relevant to~~ the procedures of a panel.
- (3) A panel may appoint a special ~~advisor~~ adviser to assist the panel with an application in relation to any matters the panel may determine.
- (4) A panel may, at any time, ~~obtain reports and~~ appoint technical ~~advisors~~ advisers, including from a department of state, Crown entity, or relevant local authority, as it thinks appropriate. 10
- (5) A panel may use or allow any remote access facility that will assist in the determination of an application.
- (6) A panel must keep a full record of its proceedings. 15
Compare: RMA 269

12 ~~Secretariat support~~ Support and advice available to panels

- (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.~~
- (1) ~~The EPA must provide advice and secretariat support—~~ 20
- (a) to the panel convener to convene panels, appoint the chairperson and members of a panel, and carry out the other functions of the convener under this Act; and
- (b) to a panel in its role of determining any matters before it under this Act.
- (2) A relevant local authority must assist the panel by providing advice within the knowledge of the authority, if requested by the panel. 25

13 Liability of members

~~A member~~ The panel convener and members appointed to a panel ~~is~~ are not liable for anything that the panel convener or a member does or omits to do in good faith in performing or exercising the functions, duties, or powers of the panel. 30

14 Recovery of costs by EPA

- (1) The EPA may recover from a person the actual and reasonable costs incurred by the EPA in providing assistance to the person prior to a consent application or notice of requirement ~~consent application or notice of requirement or an application for a certificate of compliance~~ being lodged with the EPA (whether or not the requirement is subsequently lodged). 35

- (2) The EPA may recover from ~~an a consent applicant or requiring authority~~ the actual and reasonable costs incurred by the EPA or a panel in exercising its functions and powers under this schedule and **Schedule 6** ~~(including the costs in respect of secretarial and support services provided to a panel by the EPA), including—~~ 5
- (a) the costs in respect of support and advice provided to a panel by the EPA; and
 - (b) the costs incurred in gathering information from a local authority (see **clause 7 of Schedule 6**); and
 - (c) the costs charged by a local authority in giving advice (see **clause 12**). 10
- (3) The EPA must, on request by ~~an a consent applicant or requiring authority~~, provide an estimate of the costs likely to be ~~recovered~~ recoverable under this clause.
- (3A) The EPA must, when recovering costs under this clause, have regard to the following criteria: 15
- (a) the sole purpose is to recover the reasonable costs incurred in respect of the matter to which the costs relate;
 - (b) a consent applicant or requiring authority should be required to pay for costs only to the extent that the benefit of the actions of the EPA and the panel to which the costs relate is obtained by the applicant or requiring authority, as distinct from the community as a whole; 20
 - (c) the extent to which an activity undertaken by a consent applicant or requiring authority reduces the cost to the EPA of performing and exercising its functions, duties, and powers.
- (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. 25
- (5) Section 149ZF of the Resource Management Act 1991 also applies, with any necessary modifications, to the recovery of costs under this Act.
- 14A Recovery of costs by Minister and local authorities** 30
- (1) The Minister may recover from a consent applicant or requiring authority the actual and reasonable costs incurred in relation to a panel in performing or exercising its functions, powers, and duties under this Act.
 - (2) The Minister must, on request by a consent applicant or requiring authority, provide an estimate of the costs likely to be recoverable under this clause. 35
 - (3) A local authority that provides assistance on request under **clause 12(2)** may recover from the EPA the actual and reasonable costs incurred in providing that assistance.
 - (4) The criteria set out in **clause 14(3A)** apply to the Minister and to a local authority in recovering costs under this clause. 40

14B Delegation of cost-recovery function by Minister

(1) The Minister may, in writing, delegate to the EPA the Minister's functions, powers, and duties under **clause 14A**.

(2) A delegation under this clause—

(a) is revocable at will, but the revocation does not take effect until it is communicated in writing to the EPA; and

(b) does not prevent the Minister from performing or exercising the functions, duties, or powers concerned.

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.

Schedule 6

Applications and decision making for listed projects and referred projects

ss 13, 15, 24

Contents

		Page
1	Scope of this schedule	68
	Part 1	
	Applications for resource consents and notices of requirement for designations	
	<i>Consent applications and notices of requirement</i>	
2	Lodging consent applications and notices of requirement	68
	<i>Role of EPA in consenting process</i>	
3	EPA to refer consent applications and notices of requirement to panel	69
4	When EPA must return consent applications or notices of requirement	69
5	Withdrawal of consent application or notice of requirement	70
6	When processing of consent applications or notices of requirement may be suspended	70
7	Information sharing between EPA and relevant local authorities	71
8	EPA powers to make certain decisions	71
	<i>Information requirements for consent applications for listed <u>projects</u> and referred projects</i>	
9	Information required in consent applications	71
10	Information required to assess environmental effects	73
11	Matters to be covered in assessment of environmental effects	74
12	Information required in applications for subdivision or reclamation	75
	<i>Information requirements for <u>in</u> notices of requirement for listed <u>projects</u> and referred projects</i>	
13	Information required for <u>in</u> notices of requirement	76
	<i>General requirement</i>	
14	Scope of information required	77
	<i>Applications relating to activities in coastal marine area</i>	
15	Applications for coastal permits	77
16	Applications relating to land in coastal marine area	78
	<i>Processing of consent applications and notices of requirement</i>	
17	Public and limited notification not permitted	78

18	General provisions relating to invitations given under clause 17(2)	81
<u>18A</u>	<u>Response on comments provided under clause 18</u>	<u>81</u>
19	Hearing not required	82
20	Procedure if hearing is held	82
21	Minister may direct delay in processing consent application or notice of requirement	83
22	Consent applicant or requiring authority may request suspension, etc, of processing	84
23	Return of consent application or notice of requirement	86
24	Further information	86
<u>24A</u>	<u>Further requirements in relation to aquaculture</u>	<u>87</u>
	<i>Certificate of compliance</i>	
25	Application for certificate of compliance	87
	<i>Resource Management Act 1991 processes may be used for listed <u>projects</u> and referred projects</i>	
26	Use of Resource Management Act 1991 processes for listed <u>projects</u> and referred projects	88
	Part 2	
	Determination of consent applications and notices of requirement by panel	
	<i>Resource consents for listed projects</i>	
27	Consideration of consent applications for listed projects	88
28	Further matters relevant to consent applications for listed projects	89
	<i>Resource consents for referred projects</i>	
29	Consideration of consent applications for referred projects	91
30	Further matters relevant to considering consent applications for referred projects	93
	<i>Requirements for designations for listed <u>projects</u> and referred projects</i>	
31	Consideration of notices of requirement for listed <u>projects</u> and referred projects	93
	<i>Grounds on which resource consents and designations may be declined for listed projects</i>	
32	Power to decline consent applications or cancel notices of requirement for listed projects	95
	<i>Conditions</i>	
33	Conditions applying to resource consents	96
34	Panel to provide copies of draft conditions	96

	<i>Final decision of panel</i>	
35	Final decision on consent applications and notices of requirement	97
36	Service and publication of decision	98
37	Decisions may be issued in stages and minor errors corrected	98
38	Who must be informed about decisions issued under clause 35(2)	99
38	<u>Minor corrections</u>	99
39	Designations to be included in district plans	99
40	Role of local authorities in relation to resource consents <u>granted</u> or designations <u>granted, confirmed or modified</u> under this Act	100
41	Interim effect of designations	101
	<i>Appeals</i>	
42	Appeal rights	101
43	Procedural matters	101
1	Scope of this schedule	
	This schedule sets out—	
(a)	the requirements to be met when lodging the following for a listed <u>project</u> 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

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

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

4 When EPA must return consent applications or notices of requirement

- (1) If the EPA determines that a consent application or notice of requirement does not comply with the requirements of **clause 3(1)**, it must return the application or notice immediately to the person who lodged it, with written reasons for the EPA's determination.

- (2) If a consent application or notice of requirement is lodged again with the EPA after the EPA has returned the application or notice to the person who lodged it,—
- (a) that application or notice must be treated as a new application or notice; and 5
 - (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— 10
- (a) to the EPA; and
 - (b) ~~to any person or group~~ if the withdrawal occurs after persons or groups have been invited to provide written comments under **clause 17(2)**, to those persons or groups.
- (2) As soon as practicable after receiving a notice under **subclause (1)(a)**, the EPA must advise the panel that the relevant consent application or notice of requirement has been withdrawn. 15
- 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: 20
- (a) by the EPA under **subclause (2)** (for non-payment of costs recoverable by the EPA):
 - (b) by the panel—
 - (i) under **clause 21** (Minister may direct delay): 25
 - (ii) under **clause 22** (request for suspension of processing by consent applicant or requiring authority).
- (2) If ~~an~~ a consent applicant or requiring authority has not paid the ~~fee required costs recoverable~~ by the EPA, the EPA may suspend the processing of the consent application or notice of requirement and must give notice of the suspension— 30
- (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 or groups.
- (3) If the applicant or requiring authority subsequently pays the ~~due fee, costs recoverable by the EPA~~, the EPA must resume processing the consent application or notice of requirement and must give notice of the resumption to the persons notified of the suspension. 35

7 Information sharing between EPA and relevant local authorities

- (1) This clause applies if the EPA considers that information held by a local authority in respect of a ~~proposed project site~~ listed project or a referred project is necessary and relevant to a current or an anticipated consent application or notice of requirement. 5
- (2) The EPA ~~may, at any time before or after it receives a consent application or notice of requirement under~~ **clause 2**, may request the relevant local authority to provide the information and set a date by which the information must be made available.
- (3) The local authority concerned must,— 10
- (a) within the time specified by the EPA, provide the information requested; or
 - (b) advise the EPA that the information ~~is~~ will be available, but not within the time specified by the EPA; or
 - (c) advise the EPA that the local authority does not hold the information 15 and, if the local authority knows where the information is held, advise the EPA accordingly.
- (3A) If a local authority is unable to provide the information requested under **sub-clause (2)** within the time specified under **subclause (3)(a)**, the local authority must provide the information as soon as practicable. 20
- (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~~ The EPA may make administrative decisions that are incidental or ancillary to the conduct of the panel. 25
- (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. 30
- (3) ~~In exercising its powers and performing its duties~~ performing and exercising its functions, duties, and powers under this schedule, the EPA must, as far as is reasonably practicable, minimise costs and avoid delay.

Information requirements for consent applications for listed projects and referred projects 35

9 Information required in consent applications

- (1) Every consent application for a listed or a referred project made under **clause 2** must include the following information:

-
- (a) a description of the proposed activity; and
 - (b) a description and map of the site at which the activity is to occur; and
 - (c) confirmation that the consent application complies with **clause 3(1)**; and
 - (d) ~~the full name and address of every person who, after reasonable inquiry, is known by the consent applicant to be an owner or occupier of the site; and~~ 5
 - (d) the full name and address of—
 - (i) each owner of the site and of land adjacent to the site; and
 - (ii) each occupier of the site and of land adjacent to the site who, after reasonable inquiry, is able to be identified by the consent applicant; and 10
 - (e) a description of any other activities that are part of the proposal to which the consent application relates; and
 - (f) a description of any other resource consents, notices of requirement for designations, or alterations to designations required for the proposal to which the consent application relates; and 15
 - (g) an assessment of the activity ~~in light of~~ against—
 - (i) Part 2 of the Resource Management Act 1991; and
 - (ii) the purpose of this Act; and 20
 - (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— 25
 - (i) the identification of the relevant provisions in those Treaty settlements; and
 - (ii) a summary of any redress provided by those settlements that affects natural and physical resources relevant to the project or project area; and 30
 - (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: 35
 - (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— 5
 - (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. 10
- (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— 15
 - (a) a cultural impact assessment prepared by or on behalf of the relevant iwi ~~or hapū~~ authority; 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.~~
 - (b) if a cultural impact assessment is not provided, a statement of any reasons given by the relevant iwi authority for not providing that assessment. 20
- (6) A consent application must also include the following information:
 - (a) if a permitted activity is part of the proposal to which the consent application relates, a description that demonstrates that the activity complies with the requirements, conditions, and permissions for the permitted activity (so that a resource consent is not required for that activity under section 87A(1) of the Resource Management Act 1991); and 25
 - (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 30
 - (c) in the case of a referred project, all the additional information required by the relevant referral order. 35

10 Information required to assess environmental effects

- (1) An assessment of an activity's effects on the environment under **clause 9(4)** must include the following information:
 - (a) an assessment of the actual or potential effects on the environment:

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

11 Matters to be covered in assessment of environmental effects

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

- (a) any effect on the people in the neighbourhood and, if relevant, the wider community, including any social, economic, or cultural effects:
- (b) any physical effect on the locality, including landscape and visual effects:
- (c) any effect on ecosystems, including effects on plants or animals and physical disturbance of habitats in the vicinity:

-
- (d) any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural value, or other special value, for present or future generations:
- (e) any discharge of contaminants into the environment and options for the treatment and disposal of contaminants: 5
- (f) the unreasonable emission of noise:
- (g) any risk to the neighbourhood, the wider community, or the environment through natural hazards or hazardous installations.
- 12 Information required in applications for subdivision or reclamation**
- Information required for subdivision consents* 10
- (1) In addition to the information required ~~for~~in a consent application under **clause 9**, a consent application for a subdivision in a project area must include information that adequately defines the following:
- (a) the position of all new boundaries; and
- (b) the areas of all new allotments, unless the subdivision involves a cross lease, company lease, or unit plan; and 15
- (c) the locations and areas of new reserves to be created, including any esplanade reserves and esplanade strips; and
- (d) the locations and areas of existing esplanade reserves, esplanade strips, and access strips; and 20
- (e) the locations and areas of any part of the bed of a river or lake to be vested in a territorial authority under section 237A of the Resource Management Act 1991; and
- (f) the locations and areas of any land within the coastal marine area that is to become part of the common marine and coastal area under section 237A of the Resource Management Act 1991; and 25
- (g) the locations and areas of land to be set aside as new roads.
- Information required for reclamation consents*
- (2) ~~Consent applications for reclamations~~ A consent application for a reclamation must include, in addition to the information required for a consent application by **clause 9**, information to show the area to be reclaimed, including the following: 30
- (a) the location of the area to be reclaimed:
- (b) if practicable, the position of all new boundaries:
- (c) any part of the reclaimed area to be set aside as an esplanade reserve or esplanade strip. 35

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

13 Information required ~~for~~ in notices of requirement

- (1) A notice of requirement for a listed project or in a referred project must include the following information: 5
- (a) a description of the site to which the notice of requirement applies; and
 - (b) information on the effects of the proposed project or work on the environment, together with a description of how any adverse effects will be mitigated; and
 - (c) confirmation that the notice of requirement complies with **clause 3(1)**; and 10
 - (d) ~~an assessment of the project or work against Part 2 of the Resource Management Act 1991 and the purpose of this Act; and~~
 - (d) an assessment of the project or work against—
 - (i) Part 2 of the Resource Management Act 1991 and the purpose of this Act; and 15
 - (ii) any relevant provisions in any of the documents listed in **sub-clause (4)**; and
 - (e) information about any Treaty settlements that apply in the project area, including— 20
 - (i) the identification of the relevant provisions in those Treaty settlements; and
 - (ii) a summary of any redress provided by those settlements that affects natural and physical resources relevant to the project or project area; and 25
 - (ea) the full name and address of —
 - (i) each owner of the land to which the notice of requirement relates and of the land adjacent to that land; and
 - (ii) each person who, after reasonable inquiry, is known by the requiring authority to be an occupier of the land to which the notice relates and of the land adjacent to that land; and 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 or on behalf of the relevant iwi authority ~~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
- (ja) if a cultural assessment is not provided, a statement of the reasons (if any) given by the relevant iwi authority as to why an assessment is not being provided; and
- (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. 10
- (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. 15
- (4) The documents referred to in **subclause (1)(d)(ii)** are the following:
 - (a) a national policy statement:
 - (b) a New Zealand coastal policy statement:
 - (c) a regional policy statement or proposed regional policy statement: 20
 - (d) a plan or proposed plan:
 - (e) a planning document recognised by a relevant iwi authority and lodged with a local authority.

General requirement

- 14 Scope of information required** 25
- (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~~ a consent applicant or requiring authority to manage the adverse effects of an activity through conditions, including conditions requiring the preparation of a management plan. 30

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 35

application must be included for the Director-General of the Ministry for Primary Industries.

16 Applications relating to land in coastal marine area

- (1) If a consent application is made to subdivide land that, in whole or in part, is in the coastal marine area, ~~the~~a panel must decide the application as if the whole of the land to be subdivided were part of the abutting district. 5
- (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. 10
- (3) ~~A~~The panel may decide the application as if—
 - (a) the application related to an activity within the abutting district; and
 - (b) the district plan applying in the abutting district applied to the proposed location of the activity.

Processing of consent applications and notices of requirement 15

17 Public and limited notification not permitted

- (1) A panel must not give public or limited notification of a consent application or notice of requirement.
- (2) ~~However, not later than 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)**.~~ 20
- (2) However, not later than 5 working days after the EPA has determined that the application meets the requirements of **clause 3** and has referred the consent application or notice of requirement to a panel under that clause, the panel must invite written comments on the application or notice of requirement before it from the persons or groups listed in **subclauses (4) to (7)**. 25
- (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: 30
 - (a) the relevant local authorities; and
 - (b) the relevant iwi authorities; and
 - (c) a Treaty settlement entity relevant to the listed project, including an entity that has an interest under a Treaty settlement in an area where a listed project is to occur; and 35
 - (d) if a consent application relates to an activity in a customary marine title area, the relevant customary marine title group; and

-
- (e) if a consent application relates to an activity in a protected customary rights area, the relevant protected customary rights group; and
- (f) the owners ~~and occupiers~~ of the land on which the project is to be undertaken and the land adjacent to that land; and
- (fa) the occupiers of the land on which the project is to be undertaken and the land adjacent to that land unless, after reasonable inquiry, an occupier cannot be identified; and 5
- (g) Ministers of the Crown responsible for the following portfolios:
- (i) Arts, Culture, and Heritage; and
 - (ii) Climate Change; and 10
 - (iii) Conservation; and
 - (iv) Defence; and
 - (v) Education; and
 - (vi) Housing; and
 - (vii) Infrastructure; and 15
 - (viii) Land Information; and
 - (ix) Local Government; and
 - (x) Māori Crown Relations: Te Arawhiti; and
 - (xi) Transport; and
 - (xii) Treaty of Waitangi negotiations; and 20
 - (xiii) Urban Development; and
- (h) the Director-General of Conservation; and
- (i) each of the organisations listed in **subclause (6)(k) to (u)**; and
- (j) any requiring authority that has a designation on land on which the project is to be undertaken, or on land that is adjacent to the land on which the project is to be undertaken. 25
- (5) A panel may invite written comments from any other person the panel considers appropriate.
- Persons who must or may be invited to comment on referred project*
- (6) For a referred project, a panel must invite comments on a consent application or notice of requirement before it from the following: 30
- (a) the relevant local authorities; and
 - (b) the relevant iwi authorities; and
 - (c) the relevant iwi authorities, including those identified in the report obtained under **section 17(2) 17(1)**; and 35
 - (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
- (ii) an entity identified in the report obtained under **section 17(2)** ~~**section 17(2) 17(1)**~~; 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) 17(1)**); and 5
- (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) 17(1)**); and 10
- (g) any applicant group under the Marine and Coastal Area (Takutai Moana) Act 2011 identified in the report obtained under **section 17(2) 17(1)**; and 15
- (h) the owners ~~and occupiers~~ of the land on which the project is to be undertaken and the land adjacent to that land; and
- (ha) the occupiers of the land on which the project is to be undertaken and the land adjacent to that land unless, after reasonable inquiry, an occupier cannot be identified; and 20
- (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~~ 25
- (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 30
- (pa) Heritage New Zealand Pouhere Taonga; and
- (q) Infrastructure New Zealand Incorporated; and
- (r) the New Zealand Fish and Game Council; and
- (s) the New Zealand Infrastructure Commission/Te Waihanga; and
- (t) Property Council of New Zealand Incorporated; and 35
- (u) Royal Forest & Bird Protection Society of New Zealand Incorporated; and

- (v) any requiring authority that has a designation on land on which the project is to be undertaken, or on land that is adjacent to that land.
- (6A) A panel must also invite comments on a referred project from any person listed in a referral order (see **section 24(2)(e)**).
- (7) A panel may invite comments from any other person the panel considers appropriate. 5
- (8) If a panel has not been appointed by the date provided for under **subclause (2)**, the panel convener must, without undue delay, appoint a panel which must, without undue delay, comply with the requirements of that clause.
- 18 General provisions relating to invitations given under clause 17(2)** 10
- (1) ~~The~~ A panel must specify in its invitation that written comments on a consent application or notice of requirement must be received by the EPA on behalf of the panel on a specified date (which must be 10 working days after the date on which the invitation was is given under **clause 17(2)**).
- (2) The invitation must include notice of the consent application or notice of requirement, with details as to how to access the consent application or notice of requirement. 15
- (3) An iwi authority invited to provide comments under **clause 17(2)** may—
- (a) share the consent application or notice of requirement with hapū whose rohe is in the project area proposed in the application or notice; and 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.
- (4A) The EPA must forward copies of any comments received under this clause to the consent applicant or requiring authority. 25
- (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.
- (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. 30
- 18A Response on comments provided under clause 18**
- The consent applicant or requiring authority, if it makes a response to comments provided under **clause 18** on a consent application or notice of requirement, must provide that response to the EPA not later than 5 working days after the date by which those comments provided under **clause 18** had to be received by the EPA in accordance with that clause. 35

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 a panel.

20 Procedure if hearing is held

5

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—

- (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 10
- (c) any person or group that provided comments in response to an invitation given under **clause 17(2)**.

- (1A) If a person or group that provided comments is heard, a panel must give the consent applicant or requiring authority the opportunity to be heard. 15

Notices and timing requirements

- (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~~ referred to in subclause (1), fixing the date, time, and place of the hearing.
- (3) The notice must give ~~not~~ no less than 5 working days' notice of the hearing, and must advise the persons notified— 20
 - (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. 25
- (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.
- (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

30

- (6) If a hearing is held, a panel must—
 - (a) avoid unnecessary formality; and
 - (b) recognise tikanga Māori where appropriate; and
 - (c) receive evidence, written or spoken, in Māori (and Te Ture mō Te Reo Māori 2016/the Māori Language Act 2016 applies accordingly); and 35
 - (d) not permit any person other than the chairperson or members of a panel to question a party or witness; but
 - (e) if the chairperson of a panel gives leave, permit cross-examination.

- (7) ~~The~~ A panel may, if it considers that there is likely to be excessive repetition, limit the circumstances in which persons with the same interests may speak or call evidence.
- Remote access hearing*
- (8) A panel may direct that a hearing or part of a hearing be held using 1 or more remote access facilities— 5
- (a) on the initiative of the panel; or
 - (b) at the request of the applicant or requiring authority; or
 - (c) at the request of a person or a representative of a group of persons referred to in **subclause (1)**. 10
- (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,— 15
 - (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). 20
- 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. 25
- (2) ~~If a direction is received the EPA receives a direction from the Minister under~~ **subclause (1)**, the EPA must, within 5 working days of receiving the direction, give written notice of it, and the Minister's reasons ~~of the Minister~~, to— 30
- (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— 35

- (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. 5
- (4) ~~the~~The Minister may, at any time, by notice in writing with reasons, withdraw the direction given to the EPA under **subclause (1)**.
- (4A) A copy of the Minister's direction given under **subclause (1)** must be given to the persons and groups listed in **subclause (2)**. 10
- (5) ~~A direction given under **subclause (1)** ceases to have effect from the earlier of the following dates:~~
- (a) ~~the date on which consent applications are lodged with the EPA for the further resource consents identified by the Minister under **subclause (3)**;~~ 15
- (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)**.~~ 20
- (5) **Subclause (6)** applies if the Minister's direction given under **subclause (1)** is withdrawn under **subclause (4)** before any consent applications for further resource consents are lodged.
- (6) If this subclause applies, the panel must resume processing the original consent application or notice of requirement from the date on which the Minister's direction is withdrawn. 25
- (7) **Subclause (8)** applies if consent applications for further resource consents are lodged with the EPA before the Minister's direction given under **subclause (1)** is withdrawn.
- (8) If this subclause applies, the panel must — 30
- (a) resume processing the original consent application or notice of requirement; and
- (b) observe the time frames set out in this schedule that apply to the further consent applications, instead of the time frames that would have applied to the original consent application or notice of requirement. 35
- 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. 40

- (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~~ a panel issues its final decision on an application or notice under **clause 35**. 5
- (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~~ A panel, at its discretion, — 10
- (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. 15
- (4A) Despite **subclause (4)**, a panel must grant a request to suspend the processing of a consent application that relates to an aquaculture activity, if the consent applicant advises that the suspension is necessary for the purpose of negotiating a pre-request aquaculture agreement under section 186ZM of the Fisheries Act 1996. 20
- (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~~ If a panel receives a request under **subclause (5)**, a panel it must, as soon as is reasonably practicable, resume processing the consent application or notice of requirement. 25
- (7) If a panel does not receive a request under **subclause (5)**, ~~the panel it~~ 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 or continued under **subclause (6) or (7)**, the EPA must give written notice of that, specifying the date on which processing was resumed or continued, — 30
- (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)**. 35

23 Return of consent application or notice of requirement

- (1) This clause applies if 50 working days have elapsed since the processing of a consent application or notice of requirement was suspended under **clause 22(4)(a) or (4A)**.—
- (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 on a consent application or notice of requirement 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~~ a report (including a report from a relevant local authority) 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 the person or body requesting the information must—~~
- (a) provide electronic copies of the information or report requested; or
 - (b) advise the EPA, with reasons, that it declines to provide the information or report requested. 5
- (2A) **Subclause (2)** ~~must be complied with by the date directed by the panel, which must not be later than 10 working days after the direction is given.~~
- (3) As soon as is reasonably practicable after the date on which any information or report is received by the EPA from any person or body requested or commissioned under **subclause (1)(a) or (b)**, the EPA must provide electronic copies of the information or report— 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)**. 15
- (4) The persons and groups that receive the information or report under **subclause (3)(c)** may not make further comments unless requested by the panel.
- (5) If information requested under **subclause (1)** is not received by the panel in accordance with **subclause (2) and (2A)**, the panel must proceed as if the request for further information had been declined. 20

24A Further requirements in relation to aquaculture

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

- (a) the reference to a consent authority must be read as a reference to a panel; 25
- (b) the references to submissions must be read as references to comments provided under **clause 18**;
- (c) the reference to section 88(3A) of the Resource Management Act 1991 must be read as a reference to **clause 4(1)** of this schedule;
- (d) the references to sections 41C, 42A, 92, and 149 of the Resource Management Act 1991 must be read as references to **clause 24** of this schedule. 30

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 at the same time as, and as part of, a consent application or a notice of requirement. 35

- (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. 5

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

- 26 Use of Resource Management Act 1991 processes for listed projects and referred projects** 10
- (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. 15
- (2) This Act does not prevent that person from lodging, in relation to a listed project or a referred project,—
- (a) an application for a resource consent under the Resource Management Act 1991; or
- (b) a notice of requirement under the Resource Management Act 1991. 20
- (3) However, a person who has lodged an application for a resource consent or a notice of requirement under the Resource Management Act 1991 in relation to a listed project or a referred project must withdraw that application or notice of requirement before lodging a consent application or notice of requirement under this Act for the same, or substantially the same, activity. 25

Part 2

Determination of consent applications and notices of requirement by panel

Resource consents for listed projects

- 27 Consideration of consent applications for listed projects** 30
- (1) When considering a consent application in relation to the conditions to be imposed on a listed project, and any comments received in response to an invitation given under **clause 17(2)**, a panel must, subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act, have regard to—
- (a) any actual and potential effects on the environment of allowing the activity; and 35

-
- (b) any measure proposed, or agreed to, by the consent applicant to ensure positive effects on the environment to offset or compensate for any adverse effects that will or may result from allowing the activity; and
- (c) any relevant provisions of any of the documents listed in **subclause (2)**; and 5
- (d) any other matter the panel considers relevant and reasonably necessary to determine the application.
- (2) The documents referred to in **subclause (1)(c)** are the following:
- (a) a national environmental standard:
- (b) other regulations made under the Resource Management Act 1991: 10
- (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. 15
- (3) ~~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~~ 20
- (b) ~~must apply **section 6** of this Act (Treaty of Waitangi) instead of section 8 of the Resource Management Act 1991 (Treaty of Waitangi).~~
- (4) If a Treaty settlement imposes an obligation on a local authority or other decision maker when determining an application for a resource consent, a panel must comply with that obligation as if it were the local authority or other decision maker (*see example*). 25
-
- Compliance with obligations imposed by Treaty settlement*
- Under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, the consent authority must, when making decisions relating to the river, have particular regard to the vision and strategy set out in that Act. 30
- 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)~~).
-
- (5) **Subclause (4)** is subject to **clause 5 of Schedule 5** (~~obligations in relation to conduct of hearings and other procedural matters in context of Treaty settlements~~). 35
- 28 Further matters relevant to consent applications for listed projects**
- (1) This clause applies only to consent applications for listed projects.

- (2) When forming an opinion for the purposes of **clause 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 applies, ~~the a~~ 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. 5
- (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). 10
- (5) When considering a consent application for a controlled activity or a restricted discretionary activity, the following rules apply: 15
- (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 or proposed plan, national environmental standard, or other regulations made under the Resource Management Act 1991; ~~and~~ 20
 - (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 panel must grant consent unless any of the grounds described in **clause 32** for declining an application apply.— 25
- (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.~~ 30
- (7) When considering a consent application for a non-complying activity,—
- (a) a panel must grant consent unless any of the grounds described in **clause 32** for declining an application apply; and 35
 - (b) ~~the activity need not comply with the requirements, conditions, or permissions (if any) specified for that activity in a resource management document; and~~
 - (c) to avoid doubt, the test under section 104D of the Resource Management Act 1991 must not be applied. 40

- (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;~~
 - (b) ~~other regulations;~~
 - (c) ~~a plan;~~ 5
 - (d) ~~a proposed plan;~~
- (8) To avoid doubt,—
- (a) the matters included in this clause are, in relation to a listed project, relevant to a panel's decisions on imposing conditions for the listed project, but are not relevant to whether a resource consent is to be granted (see clause 32); and 10
 - (b) section 104E of the Resource Management Act 1991 does not apply to a panel's consideration of a resource consent for a listed project.

Resource consents for referred projects

29 Consideration of consent applications for referred projects 15

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, subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act, have regard to— 20
- (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 25
 - (c) any relevant provisions of any of the documents listed in **clause 27(2)**; and
 - (d) any other matter the panel considers relevant and reasonably necessary to determine the consent application.
- (2) ~~In respect of the matters listed under **subclause (1)**, a panel—~~ 30
- (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).~~ 35
- (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~~ a panel must have

regard to any resource management matters in that document until all obligations under section 93 of that Act have been met by the relevant local authority.

Matters which panel may or must disregard

- (4) When forming an opinion for the purposes of **subsection (1)(a)**, a panel may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect. 5
- (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: 10
 - (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 15
 - (iii) an Order in Council in force under section 152 of that Act (relating to authorisations for coastal tendering); or
 - (iv) any regulations made under that Act; or
 - (v) wāhi tapu conditions included in a customary marine title order or agreement; or 20
 - (vi) section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011 (effect of protected customary rights on resource consent applications).
- (6) A panel considering a consent application must disregard **subclause (5)(a)(ii)** if the person withdraws the approval in a written notice received by the panel before the date of the hearing (if any) or, if there is no hearing, before the application is determined. 25

Other matters relevant to decisions

- (7) A panel may grant a resource consent on the basis that the activity concerned is a controlled, restricted discretionary, discretionary, or non-complying activity, regardless of what type of activity the application was expressed to be for. 30
- (8) A panel may decline a consent application on the ground that the information provided by the consent applicant is inadequate to determine the application.
- (9) In making an assessment on the adequacy of the information, a panel must have regard to whether any request made to the consent applicant for further information or reports resulted in further information or any report being made available. 35
- (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 conduct of hearings and other procedural matters in context of Treaty settlements~~). 5

- (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

- (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.~~ 10

- (1) Sections 104A to 104D, 105 to 107, and 138A(1), (2), (5), and (6) of the Resource Management Act 1991 apply to a panel's consideration of a consent application for a referred project. 15

- (2) The provisions referred to in **subclause (1)** apply with all necessary modifications, including that a reference to a consent authority must be read as a reference to a panel, the following:

- (a) ~~a reference to a consent authority must be read as a reference to a panel; and~~ 20

- (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~~

- (ii) ~~the references to sections 41C, 42A, 92, and 149 of that Act must be read as references to **clause 24** of this schedule.~~ 25

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

Requirements for designations for listed projects and referred projects

31 Consideration of notices of requirement for listed projects and referred projects 30

- (1) When considering a notice of requirement for a listed project or a referred project and any comments received in response to an invitation given under **clause 17(2)**, a panel must not have regard to trade competition or the effects of trade competition (within the meaning of Part 11A of the Resource Management Act 1991). 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, subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act, con-

- sider the effects on the environment of allowing the requirement, having particular regard to—
- (a) any relevant provisions of the documents listed in **subclause (3)**; and
 - (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—
 - (i) the requiring authority does not have an interest in the land sufficient to undertake the work; or
 - (ii) it is likely that the work will have a significant adverse effect on the environment; and
 - (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority seeking the designation; and
 - (d) any other matter the panel considers reasonably necessary in order to make a decision on the requirement.
- (3) The documents referred to in **subclause (2)(a)** are the following:
- (a) a national policy statement:
 - (b) a New Zealand coastal policy statement:
 - (c) a regional policy statement or proposed regional policy statement:
 - (d) a plan or proposed plan:
 - (e) a planning document recognised by a relevant iwi authority and lodged with a local authority.
- (4) The effects that are to be considered under **subclause (2)** may include positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the designation, but only if those effects result from measures proposed or agreed by the requiring authority.
- (5) A panel may—
- (a) cancel a requirement; or
 - (b) confirm a requirement; or
 - (c) confirm a requirement, but modify it or impose conditions on it as the panel thinks fit.
- (6) ~~In making its decision under **subclause (5)**, a panel—~~
- ~~(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~~
 - ~~(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 the example relating to **clause 27(4)***). 10
- (9) **Subclause (8)** is subject to **clause 5 of Schedule 5** (~~obligations in relation to conduct of hearings and other procedural matters in context of Treaty settlements~~). 15
- (10) The matters referred to in **subclauses (1) to (5)** are, in relation to a listed project, relevant to a panel's decisions on imposing conditions for the listed project, but are not relevant to whether a resource consent is to be granted (*see **clause 32***). 15

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

- 32 Power to decline consent applications or cancel notices of requirement for listed projects** 20
- (1) A panel may decline a consent application or cancel a notice of requirement for a listed project, but only on the following grounds:
 - (a) ~~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:~~ 25
 - (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.~~ 30
 - (a) that the panel considers that granting a resource consent or confirming or modifying a notice of requirement, with or without conditions, would be inconsistent with any national policy statement, including a New Zealand coastal policy statement:
 - (b) that the panel considers that granting a resource consent or confirming or modifying a notice of requirement, with or without conditions, would be inconsistent with any Treaty settlement. 35
- (2) A panel must grant a resource consent or confirm a requirement for a listed project if neither of the grounds described in **subclause (1)** applies.

*Conditions***33 Conditions applying to resource consents**

- (1) This clause applies to consent applications in respect of both listed projects and referred projects.
- (2) A panel may grant a resource consent subject to the conditions it considers appropriate. 5
- (3) Sections 108, 108A to 112, and 220 of the Resource Management Act 1991 apply to conditions imposed under **subclause (2)**, subject to all necessary modifications, including the following:
 - (a) a reference to a consent authority must be read as a reference to a panel; and 10
 - (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 grants~~ a resource consent or confirms or modifies a designation, the panel must provide a copy of its draft conditions to the following, inviting comments on the draft conditions: 15
 - (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)**. 20
- (1A) A panel must set a date by which any comments on the draft conditions must be received by the EPA.
- (2) The EPA must, as soon as practicable after receiving comments under **subclause (1)**, provide electronic copies of those comments to—
 - (a) the members of the panel; and 25
 - (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)**.
- (2A) Sections 123 and 123A of the Resource Management Act 1991 apply to the duration of any resource consents granted by a panel. 30
- (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***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~~the panel must— 5
- (a) make its final decision; and
 - (b) produce a written report of that decision (the **decision**).
- (2) ~~The panel must issue its final decision not later than 25 working days after the date specified for receiving comments under **clause 18**.~~
- (2) The panel must issue its final decision— 10
- (a) in the case of a listed project, no later than 25 working days after the date specified for receiving comments under **clause 18**; or
 - (b) in the case of a referred project, no later than—
 - (i) 25 working days after the date specified for receiving comments under **clause 18**, if the referral order is silent on the matter; or 15
 - (ii) any other number of working days after the date specified for receiving comments under **clause 18**, as may be provided for in the referral order.
- (3) However, if the scale 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.—~~ 20
- (a) in the case of a listed project, by up to a further 25 working days; or
 - (b) in the case of a referred project,—
 - (i) by up to a further 25 working days, if the referral order is silent on the matter; or 25
 - (ii) any other number of working days, as may be provided for in the referral order.
- (4) The period allowed under **subclause (2) or (3)** does not include any time that a consent application or notice of requirement was suspended ~~by notice of the applicant or requiring authority under **clause 22**.—~~ 30
- (a) at the direction of the Minister under **clause 21**; or
 - (b) by a decision of a panel 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
 - (b) state the panel's reasons for its decision; and
 - (c) include a statement of the principal issues that were in contention; and 5
 - (d) include the main findings of the panel on those issues.
- (7) The decision must also specify the date on which a resource consent or designation lapses unless it is given effect to by the specified date.
- (8) The date specified under **subclause (7)** must not be later than 2 years—
- (a) ~~after from~~ the date of commencement, in the case of a resource consent; 10
or
 - (b) ~~after from the date on which~~ a designation is included in a district plan.
- (9) A resource consent granted under this Act commences on the day after the date on which—
- (a) all appeal rights under this Act have been exhausted or have expired; or 15
 - (b) all appeals under this Act are determined.

36 Service and publication of decision

- (1) Notice of a decision must be served—
- (a) on the applicant or requiring authority, as the case requires; and
 - (b) on any person or group invited to provide comments under **clause 17(2)**; and 20
 - (c) on the relevant local authority; and
 - (d) on other persons and authorities that the panel considers appropriate.
- (2) The notice served under **subclause (1)** must include advice as to the time within which an appeal may be lodged. 25
- (3) A decision must be published on an Internet site maintained by the EPA and be free of charge to the public.
- (4) Section 114(4) of the Resource Management Act 1991 applies to a panel, with the necessary modifications.

37 Decisions may be issued in stages and minor errors corrected 30

- (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.~~ 35

- 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.~~ 5
- (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 47(2)**, in the case of referred projects.~~ 10
- 38** Minor corrections
- (1) At any time during its term of appointment, a panel may issue an amendment to a decision of the panel or an amended direction, correcting minor omissions, errors, or other defects in a decision of the panel.
- (2) A panel may, within 20 working days of granting a resource consent, correct a resource consent as if it were a consent authority acting under section 133A of the Resource Management Act 1991. 15
- (3) A panel may correct a requirement for a designation before the earlier of the following:
- (a) the day on which the territorial authority includes the designation in its district plan and any proposed district plan under **clause 39**; and 20
- (b) the day that is 40 working days after the day on which any appeals relating to the requirement have been determined or all rights of appeal under this Act have been exhausted or have expired.
- 39** Designations to be included in district plans 25
- (1) This clause applies as soon as is reasonably practicable—
- (a) after a panel determining a notice of requirement confirms or modifies a designation (with or without modification); and
- (b) any right of appeal under **clause 42** is exhausted or has expired.
- (2) As soon as practicable after any right of appeal is exhausted or has expired, the territorial authority must, without using Schedule 1 of the Resource Management Act 1991,— 30
- (a) include the designation in its district plan and any proposed district plan, as if it were a rule in the plan or proposed plan; and
- (b) state in the plan and any proposed plan the name of the requiring authority that has the benefit of the designation. 35

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

- (1) This clause applies to—
 - (a) a resource consent that is granted by a panel; and
 - (b) a designation that is confirmed or modified by a panel and included in a district plan. 5
- (2) The ~~territorial~~ local authority that, but for this Act, would have had responsibility—
 - (a) for granting a resource consent under the Resource Management Act 1991, ~~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 10
 - (b) for recommending, under the Resource Management Act 1991, that a designation be confirmed or modified, has all the functions, powers, and duties in relation to the designation as if it had dealt with the matter itself. 15
- (3) Unless otherwise specified in this Act,—
 - (a) a resource consent granted, or a designation confirmed or modified and included in a district plan under this Act has full force and effect for its duration, and according to its terms and conditions, as if it were granted under the Resource Management Act 1991; and 20
 - (b) any provision of an enactment that refers to a resource consent granted, or a designation confirmed or modified and included in a district plan, under the Resource Management Act 1991 (including any such provision in that Act) must be read, with any necessary modifications, as including a resource consent granted, or a designation confirmed and included in a district plan, under this Act. 25
- (4) ~~To avoid doubt, section~~ 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. 30
- (5) To avoid doubt, the functions, powers, and duties referred to in **subclause (2)** include— 35
 - (a) the determination of any application to extend a lapse period under section 125(1A) or 184 of the Resource Management Act 1991; and
 - (b) the determination of any application for a change or cancellation of a condition of a resource consent under section 127 of the Resource Management Act 1991. 40

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**.

Appeals

5

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:
 - (a) the consent applicant or requiring authority, as the case requires: 10
 - (b) any relevant local authority:
 - (c) the Attorney-General:
 - (d) any person or group that provided comments in response to an invitation given under **clause 17(2)**:
 - (e) any person who has an interest in the decision appealed against that is greater than that of the general public. 15
- (2) An appeal under this clause may be made only on a question of law.
- (3) An appeal against a decision of the High Court may be made to the Court of Appeal, but that appeal is a final appeal.

43 Procedural matters

20

Notice of appeal

- (1) A person entitled, and intending, to appeal against a decision of a panel (~~the~~ **appellant**) must file a notice of appeal ~~not~~ no later than 15 working days after the date on which the person was notified of the decision of the panel under **clause 36(1)**. 25
- (2) The notice of appeal must specify—
 - (a) the decision or the part of the decision appealed against; and
 - (b) the error of law alleged by the appellant; and
 - (c) the grounds of appeal with sufficient particularity for the court and other parties to understand them; and 30
 - (d) the relief sought.

Service of notice of appeal

- (3) ~~Not~~ No later than the time specified for filing a notice of appeal under **sub-clause (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. 35
- (4) ~~Not~~ No later than 5 working days after the notice of appeal is filed in the High Court, the appellant must serve a copy of the notice of appeal on—

- (a) the consent applicant or requiring authority, as the case requires (if the appellant is not the consent applicant or requiring authority); and
- (b) every person or group invited to provide comments under **clause 17(2)**.

Copy of decision appealed against

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

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 the~~ person must serve a notice of intention to appear on— 10
 - (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 no~~ later than 10 working days after the day on which the ~~that~~ person was served with the notice of appeal under **subclause (4)**. 15

Parties to appeal

- (8) The parties to an appeal under this clause are— 20
 - (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.

Legislative history

16 June 2020

Introduction (Bill 277–1), first reading and referral to Environment Committee