

COVID-19 RECOVERY (FAST-TRACK CONSENTING) ACT 2020

Permitted activity process guide

30 JULY 2020

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1.0 INTRODUCTION

The intent of the COVID-19 Recovery (Fast-Track Consenting) Act 2020 (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.

This information sheet aims to assist planners and project managers working on Waka Kotahi and KiwiRail projects that may be eligible to utilise the permitted activity provisions of the Act. In summary, this document provides:

- an overview of the Act's permitted activity provisions
- guidance on how to determine whether a project is eligible to be considered a permitted activity
- a step-by-step guide to implementing the Act's process and timeframe requirements for projects that are eligible to be considered permitted activities.

2.0 KEY PRINCIPLES

Waka Kotahi and KiwiRail have developed a set of principles to guide how they will implement and operate under the Act:

- Transparent, open and accessible
- Collaborative, with continued high-quality engagement with stakeholders, iwi and communities
- Trusted
- High quality
- Consistent

3.0 OVERVIEW

Provided that various criteria are met, certain Waka Kotahi and KiwiRail projects relating to the operation, replacement, maintenance and minor upgrade of existing infrastructure can be considered a permitted activity under the Act, thereby avoiding the requirement for resource consent.

High-level overview of the permitted activity process

A more detailed flow chart of the process is attached as Appendix 1.

<p>1</p>	<p>Assess the works against the permitted activity criteria using the Permitted activity assessment sheets</p>
<p>2</p>	<p>If all the criteria are met, touch base with the Waka Kotahi/KiwiRail planner. They will review the completed assessment sheet and, if it is considered appropriate to utilise the permitted activity route, provide sign-off for this.</p>
<p>3</p>	<p>Contact the relevant local authority to request the names and contact details of relevant tangata whenua groups.</p>
<p>4</p>	<p>At least 30 working days before the works are undertaken, commence engagement with the relevant tangata whenua.</p>
<p>5</p>	<p>Prepare a record of engagement, setting out the matters discussed, parties involved, feedback received, and outcomes agreed.</p>
<p>6</p>	<p>Prepare:</p> <ol style="list-style-type: none"> 1. A notice of intention to the relevant iwi authorities, hapū, and Treaty settlement entities using the following template: Template: Notice of intention tangata whenua 2. A notice of intention to the relevant local authority using the following template: Template: Notice of intention local authority 3. Send these notices to the Waka Kotahi/KiwiRail planner for review and approval. At least 10 working days before the works are undertaken, submit the notices of intention to the relevant tangata groups and local authority.
<p>7</p>	<p>Arrange for all relevant documents and conditions to be loaded into CSVue and InfoHub.</p>

Permitted activity assessment sheets

The eligibility criteria are set out in Part 1 of Permitted Activity Assessment Sheet. In addition to these eligibility criteria, the Act sets out various conditions that must be adhered to, which are set out in Part 2 of the Permitted Activity Assessment Sheet. The process described in Section 4.0 of this guide must be adhered to in order for the works to be considered a permitted activity.

[Permitted activity assessment sheets](#)

4.0 PROCESS / SEQUENCE OF EVENTS

4.1 Assessment against permitted activity standards and relevant plan(s)

Relevant sections of the Act:

- Sections 29 - 32
- Schedule 4, Subpart 1

All potentially eligible works must be assessed for use of this process.

We must keep a central record of all decisions on whether to use or not use the process, no matter what the reason. You must complete Part 1 of the checklist assessment and send this to [Rodney Albertyn](#) for Waka Kotahi projects, and the [RMA Team](#) for KiwiRail. If you are unsure, please contact either Rodney or the RMA Team to discuss.

The first step in the permitted activity process is to assess the project against Act's eligibility criteria using the Part 1 of the [Permitted activity assessment sheets](#). All of the criteria must be met for the works to be eligible. This process includes an assessment of the works against the provisions of the relevant district/regional plan(s), as activity status is one of the eligibility criteria.

If all of the permitted activity criteria are met, assess the works against Part 2 of the Permitted Activity Assessment Sheet. This identifies which conditions must be adhered to and loaded into CSVue.

If all of the permitted activity criteria are met, the consultant planner, in consultation with the Waka Kotahi or KiwiRail planner and project manager, will need to make a decision as to whether it will be quicker and/or more cost effective to utilise the permitted activity provisions, or proceed down the resource consent route. As described below, there is a process involved with the permitted activity route, and for very simple projects it will not necessarily be advantageous to utilise the permitted activity provisions.

Before progressing to the next step, be sure to liaise with [Rodney Albertyn](#) (Waka Kotahi) or [RMA Team](#) (KiwiRail) to obtain confirmation that it is appropriate to utilise the permitted activity route.

Note that there will not be 100% certainty as to whether the works can be considered a permitted activity until the tangata whenua engagement is complete. This is because the engagement process may identify that the works will occur in a wāhi tapu, which would make the works ineligible.

4.2 Iwi/Hapū engagement and notice of intention

4.2.1 Who and how to engage

<p>Who:</p> <ul style="list-style-type: none">• Iwi, hapū and Treaty settlement entities that have interests in the area of works. The relevant local authority keeps records of these groups in accordance with section 35A of the Resource Management Act. <p>When:</p> <ul style="list-style-type: none">• At least 30 working days before the works commence - Tangata whenua engagement to identify any affected cultural interests or sites.• At least 10 working days before the works commence - Notice of Intention served to tangata whenua. <p>Relevant sections of the Act:</p> <ul style="list-style-type: none">• Schedule 4, Clauses 5-8• Section 33(1)(a)
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The Act requires engagement with the following tangata whenua groups for all works that are to be considered a permitted activity at least 30 working days before the works start:

- Iwi authorities about which the relevant local authority keeps records under section 35A of the Resource Management Act 1991.
- Any groups about which the relevant local authority keeps records under that section.
- Treaty settlement entities whose area of interest overlaps, or is adjacent to, the area where the works will occur.

The purpose of the engagement is to identify any wāhi tapu, culturally sensitive site or other cultural values that may be affected.

The relevant local authority will need to be contacted to confirm these parties and their contact details. It may be worthwhile to cross-reference the information provided by the local authority with [Te Puni Kōkiri's Directory of Iwi and Māori Organisations](#).

It is essential we are transparent and open with iwi about proposed and upcoming works under this pathway. We strongly recommend proactive engagement before you formally commence this process so they are aware of what is coming up.

Engagement can be led by the project team. An iwi engagement specialist can be brought on board to assist if consultation is likely to be complex. Waka Kotahi's Māori Partnerships Team and KiwiRail's Iwi Liaison Team are also available for high-level guidance:

[Hononga ki te iwi / our Māori engagement framework](#)

It has been developed to guide your thinking when planning your Māori engagement.

At least 10 working days before the works commence, a notice of intention must be served to the relevant iwi authorities, hapū, and Treaty settlement entities.

Template: [Notice of intention tangata whenua](#)

Send the draft Notice of Intention to [Rodney Albertyn](#) (Waka Kotahi) or [RMA Team](#) (KiwiRail) for review before submitting it to the tangata whenua groups.

If it is identified through the engagement process that the works will occur in a wāhi tapu, the project will not be eligible as a permitted activity. In such a scenario, the permitted activity process can be stopped, and a resource consent sought.

If a wāhi tapu (adjacent to the works area), any other site of cultural or historical significance or a habitat of taonga species on or adjacent to the area of the proposed works is identified, these will require a management plan.

If the Agency receives no response from the relevant iwi, hapū, and Treaty settlement within the 30 working day period, the Agency may proceed as if the process of engagement had resulted in no relevant sites, interests or values being identified.

4.2.2 Record of engagement

Thorough records of engagement must be kept, including dates, parties involved, matters discussed, and key action/outcomes agreed. It is particularly important that the matters listed below are discussed and documented.

- Any interests and values held by iwi, hapū, and Treaty settlement entities in relation to the proposed works.
- The protocols or management plans agreed to in relation to those interests, values, and sites.
- Any wāhi tapu that would exclude an activity in that place from being a permitted activity.
- Any of the following sites that require a management plan:
 - any site that is affected by or adjacent to the place where the works will occur; and
 - any site that is a wāhi tapu, any other site of cultural or historical significance, or a habitat of taonga species.

4.2.3 Cost recovery

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 described above.

Waka Kotahi has a policy on compensation for cultural services:

[Koha and payments for advice and cultural services policy](#) (this document is viewable only for Waka Kotahi employees)

4.2.4 Fish passage

Any fish passage works must be referred to all of the iwi authorities, a hapū and Treaty settlement entities at least 10 working days before the works commence.

4.2.5 Management plan

If any sites that require a management plan are identified through engagement, the Agency must work with the relevant tangata whenua parties to develop said plan. The purpose of the management plan is to avoid, remedy, or mitigate the effects of the works on the sites.

The management plan must include:

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

4.3 Notice of intention to local authority

Relevant section of the Act:

- Schedule 4, Clause 9

At least 10 working days before the works commence, the Agency must serve a Notice of Intention to the relevant local authority for any works that are to be considered as a permitted activity

Template: [Notice of intention local authority](#)

Send the draft Notice of Intention to [Rodney Albertyn](#) for review before submitting it to the tangata whenua groups.

This step will need be completed after tangata whenua engagement has been undertaken, as the Act requires the notice to include the record of engagement and the management plan (if one was required). Moreover, it will not be possible to confirm if the works meet the permitted activity criteria until tangata whenua engagement has occurred because consultation may identify a wāhi tapu that excludes the works from consideration as a permitted activity.

5.0 SCHEDULE 4 CONDITIONS

Relevant section of the Act:

- Schedule 4, Subpart 2

Schedule 4 of the Act includes various conditions that must be adhered to for permitted activities. Not all of these conditions are relevant to every project. All relevant conditions must be adhered to in the same way that resource consent conditions would. Part 2 of the Permitted Activity Assessment Sheet can be used to confirm which conditions are relevant and must be adhered to.

It is important that all relevant conditions, as well as any documentation associated with the permitted activity process, are loaded into CSVue. Please direct any CSVue upload requests to consents@nzta.govt.nz cc: Kathleen (Kathleen.Lisignoli@nzta.govt.nz). In addition to the relevant documentation and conditions, please identify the project reference, the project manager and the condition manager.

Management of these conditions must be included in the delivery contract where relevant.

6.0 COUNCIL MONITORING

Relevant sections of the Act:

- Schedule 4, Clause 9(f)
- Schedule 4, Clause 36
- Section 35

- The notice of intention to the relevant local authority must include an invitation to attend a pre-start or induction meeting.
- The relevant local authority may monitor the permitted activity works.
- A local authority may fix monitoring charges, payable the Agency.
- The Agency must keep evidence of compliance with the relevant standards/conditions set out in the Act. The consent authority may request a copy of all or part of the evidence.

7.0 KEY TIMEFRAMES

Action	Timeframe	Reference Section
Consultation with the relevant iwi authorities, hapū, and Treaty settlement entities.	At least 30 working days before the work commences	33(1)(a)
A notice of intention must be served to the relevant iwi authorities, hapū, and Treaty settlement entities.	At least 10 working days before the work commences	33(1)(b)
If works in the bed of a river result in any change, in size or extent, to the structure of any permanent bridge, abutment, or culvert, records of the change and the associated flow calculations must be provided to the relevant unitary authority or regional council.	No more than 10 working days after the construction activity ends	Schedule 4, Clause 16
Any fish passage works must be referred to all relevant iwi authorities, hapū and Treaty settlement entities.	At least 10 working days before the works commence, to enable feedback to be sought	Schedule 4, Clause 17
For sites where soils are identified as containing contaminants above background levels, a site management plan must be prepared and, if not served with the notice of intention to local authorities, be made available to the relevant local authority.	At least 10 working days before the works commence	Schedule 4, Clause 21
For sites where soils are identified as containing contaminants above background levels, 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 local authority.	Within 10 working days of the date of the request	Schedule 4, Clause 21

8.0 REPORTING REQUIREMENTS

The Act requires the following reports to be prepared under certain circumstances:

- Emergency spill prevention plan (Schedule 4, Clause 20)
- Contaminated land site investigation report (Schedule 4, Clause 21)
- Contaminated land site management plan (Schedule 4, Clause 21)
- Construction noise, and vibration management plan (Schedule 4, Clause 23)
- Hazardous substance emergency response plan (Schedule 4, Clause 27)
- Operational noise post-construction review report (Schedule 4, Clause 29)

- The Agency must provide evidence of compliance with the relevant standards applied by this schedule on the completion of the works if requested by the local authority (Schedule 4, Clause 36)

9.0 ARCHAEOLOGICAL AUTHORITY AND WILDLIFE PERMIT

The Act does not circumvent the requirement to obtain an Archaeological Authority or Wildlife Permit.

Appendix 1: Permitted Activity Process – Flow Chart

