

Te whakaterere i te hātepe whakaaetanga

Fast-track consenting process

New laws are being phased in that aim to help Aotearoa New Zealand protect and manage the environment and its resources. The Spatial Planning Act 2023 (SPA) and the Natural and Built Environment Act 2023 (NBA) were enacted on 23 August 2023.

The NBA provides for a fast-track consenting process for certain infrastructure and housing activities. The fast-track process is available for both resource consents and for notices of requirement to designate land, from 24 August 2023.

This factsheet covers:

- key stages in the fast-track consenting process
- activities eligible for fast-track consenting
- activities not eligible for fast-track consenting
- steps in the NBA fast-track consenting process
- cost recovery
- transitional matters.

Key stages in the fast-track consenting process

There are two key stages in the NBA fast-track consenting process:

1. Ministerial referral. The Minister for the Environment (the Minister¹), supported by the Environmental Protection Authority (EPA), determines whether an activity is eligible to be referred to an expert consenting panel (ECP).
2. The ECP, supported by the EPA, considers and decides on the full application, in a shorter timeframe than for the standard consents process, and with restricted appeal rights.

¹ If the referral application relates to an activity within a coastal marine area (CMA), the decision must be made jointly with the Minister of Conservation.

There are different levels of information required at each stage. The Minister will not require the same level of detail a panel would require in a resource consent application or notice of requirement (in Stage 2).²

The NBA fast-track consenting process broadly mirrors the process in the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA). However, there are several key differences, including:

- only certain activities are eligible³ for an application to the ECP (see table below)
- the EPA, rather than the Ministry for the Environment, advises the Minister whether to accept an application for referral to the ECP
- the Chief Environment Court Judge, rather than a separately appointed convenor, convenes the ECP
- there are longer timeframes for the ECP to make its decision, including for the submissions period.

Activities eligible for fast-track consenting

You can apply for fast-track consenting for these activities⁴ from 24 August 2023.

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| Communications <ul style="list-style-type: none"> • a broadcasting facility • a telecommunications network | Housing <ul style="list-style-type: none"> • a housing development, subject to criteria in clause 16(3) of Schedule 10 of the NBA |
| Other central or local government, or private facilities <ul style="list-style-type: none"> • correction facilities, including the provision of rehabilitation and reintegration services • defence facilities operated by the New Zealand Defence Force • educational facilities • fire and emergency service facilities • health facilities | Transport <ul style="list-style-type: none"> • an airport operated by an airport authority as defined in section 2(1) of the Airport Authorities Act 1996, including any airport-related navigation infrastructure • a port operated by a port company (as defined in section 2(1) of the Port Companies Act 1988) • the New Zealand rail network, including the interisland ferry facilities • the state highway network, local roads, or rapid transit services |
| Water <ul style="list-style-type: none"> • flood control and protection, including drainage • the distribution or treatment of water, wastewater, or stormwater | Energy <ul style="list-style-type: none"> • electricity or gas distribution or electricity transmission network • renewal of a consent for renewable energy generation, including hydro-electricity, a facility for wind or solar energy generation |

² Refer to Schedule 10 clause 17 and 22. Also refer to Schedule 1 clause 28 of the NBA for the transitional provisions.

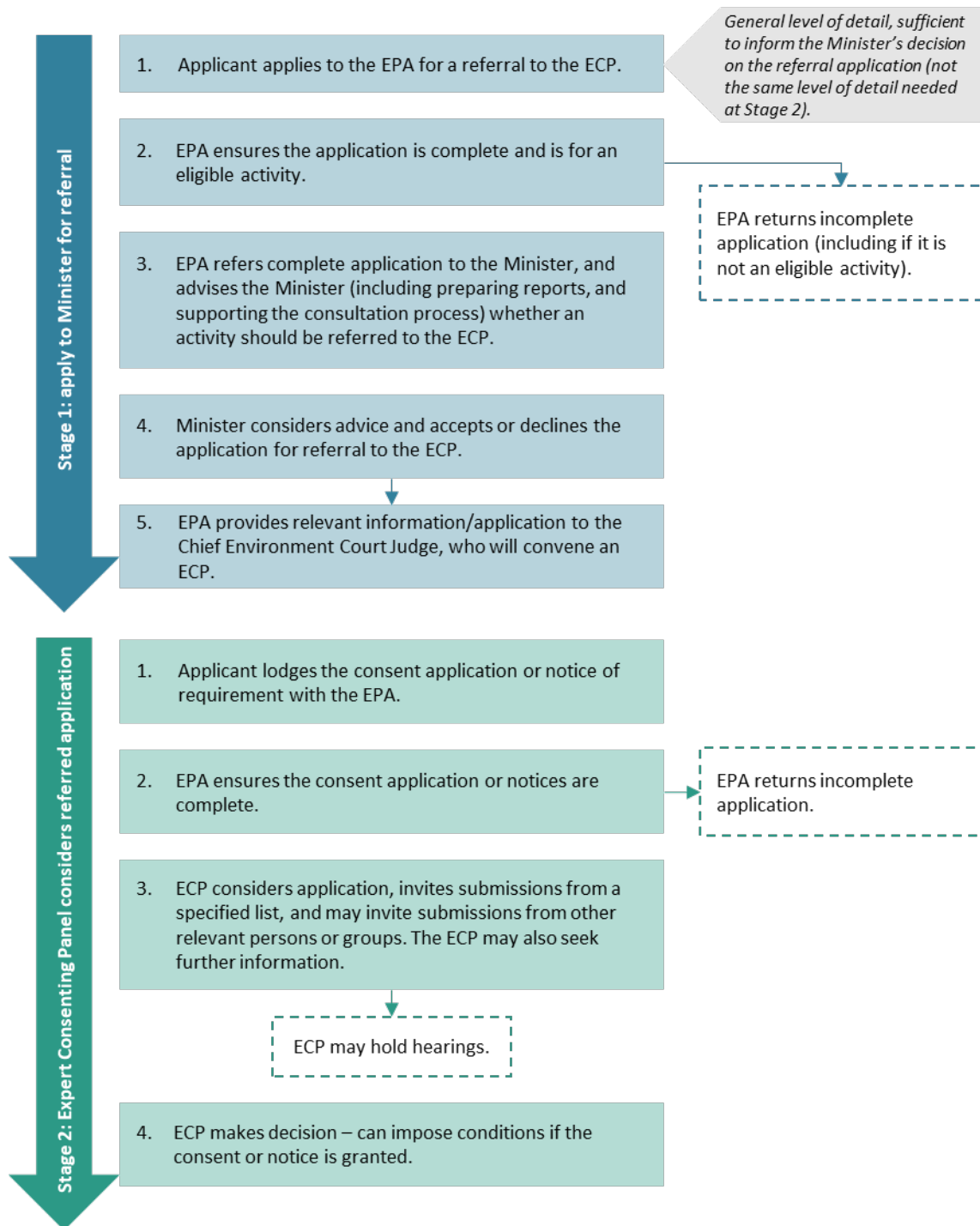
³ Schedule 10 clause 14 of the NBA.

⁴ Schedule 10 clause 14 of the NBA.

Activities not eligible for fast-track consenting

If the proposed activity would take place in a customary marine title or protected customary rights area, you must get agreement in writing from the customary marine title or protected customary rights group.⁵ An activity is not eligible for fast-track consenting if this condition is not met.

Steps in the NBA fast-track consenting process



⁵ Defined at section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (in reference to Ngā hapū o Ngāti Porou) – in Schedule 10 clause 15 of the NBA.

Stage 1: Application to the Minister for referral to the ECP

In considering the referral application, among other matters, the Minister (or Ministers, if the activity is in the CMA), must:

- copy the referral application to and invite written comments from certain groups, such as relevant local authorities and relevant Ministers of the Crown⁶
- receive and consider a report from the EPA⁷ that identifies a range of matters including relevant iwi authorities and Treaty settlement entities, Treaty settlements (or recognised negotiation mandates or current negotiations), any relevant customary marine title area or protected customary rights area, and relevant provisions of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (if any). The report will also include EPA's advice whether to accept or decline the application for referral.

The Minister may decline a referral application on various grounds, including whether the usual consenting process is more appropriate.⁸ The Minister has discretion to decline an application, even if it is eligible to be referred to an ECP.

If the Minister refers an application to an ECP, they can also prescribe additional requirements⁹ for the full application in Stage 2. These include more comprehensive information requirements, additional people the ECP must invite comments from, and a timeframe for lodging the Stage 2 application.

Stage 2: Application to the Expert Consenting Panel

When the Minister accepts an application for referral to the ECP, the EPA informs the Chief Environment Court Judge of the referral.

The Chief Environment Court Judge seeks nominations¹⁰ from local authorities, the regional planning committee (once established), and relevant iwi authorities.

The Chief Environment Court Judge receives nominations for and appoints the ECP that will hear and decide on the substantive application.

A 10 working day timeframe is provided for the nomination process.

Submissions

The fast-track consenting process has a different process of inviting submissions from standard consenting processes. The ECP will only invite submissions from relevant persons or groups, similar to the process used under the FTCA.¹¹

⁶ Schedule 10 clause 18(2) of the NBA.

⁷ Schedule 10 clause 18(7) of the NBA.

⁸ Schedule 10 clause 16 of the NBA.

⁹ Schedule 10 clause 20 of the NBA.

¹⁰ Schedule 10 clause 46 of the NBA.

¹¹ Schedule 10 clause 26 of the NBA.

The ECP has the discretion to invite other persons or parties to make a submission, including those representing a relevant public interest.

Hearings and appeals

Under the NBA, there is no requirement for the ECP to hold a hearing on an application. However, the ECP may hold a hearing if they consider it necessary.

The NBA places limits on appeal rights on the ECP's decision. An appeal may be made to the High Court on a question of law by certain parties, and leave may be sought to appeal to the Supreme Court in certain circumstances.¹²

Cost recovery

The EPA is required to recover costs from applicants for both stages of the fast-track consenting process.¹³

Transitional matters

The NBE fast-track consenting process begins earlier than other consenting pathways under the NBA, so different provisions apply during the transition period in each region.

The transition period finishes in each region at the region's 'NBEA date'. The NBEA date is 10 days after the region notifies the decisions version of its first Natural and Built Environment Plan (NBE plan).

The transitional provisions¹⁴ are:

- during Stage 1 of the application process, NBA provisions apply to the Minister's decision on whether to refer an application to the ECP.
- during Stage 2 of the application process, the ECP considers the full application under the RMA provisions, including Resource Management Act 1991 (RMA) planning instruments.

There are also specific requirements for applications lodged during the 'applicable interim period'.¹⁵

Contact the EPA directly on making an NBA fast-track consenting application to the Minister.

¹² Schedule 10 clause 42 of the NBA.

¹³ Schedule 10 clause 94 of the NBA.

¹⁴ Schedule 1 clauses 27–36 of the NBA.

¹⁵ Schedule 1 clause 34 of the NBA.

Disclaimer

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