

HE ARA HONOHONO PATHWAYS TO MANA WHAKAHONO

HE KETE MĀTAURANGA MANA WHAKAHONO AND FAST-TRACK APPROVALS ACT



HE KETE MĀTAURANGA MANA WHAKAHONO Ā ROHE AND THE FAST-TRACK APPROVALS ACT 2024

This info sheet outlines how Mana Whakahono ā Rohe are recognised in the Fast-Track Approvals Act. It also includes a detailed list of specific provisions relevant to Mana Whakahono agreements.
(Info sheet 3 of 3)

How does the Fast-track Approvals Act work?

The Fast-track Approvals Act aims to “facilitate the delivery of infrastructure and development projects with significant regional or national benefits”. The Act creates a single process for people to seek approvals under a range of legislation. There are three steps to the process:

- 🌀 A *referral application* to the Ministry for the Environment to have the application referred to the Environmental Protection Authority. This application can be approved for referral or declined by the Minister.
- 🌀 A *substantive application* to the Environmental Protection Authority. This application will be heard by a panel and approved with conditions or declined by the panel.
- 🌀 The right to *appeal* a decision to the High Court is limited to points of law.

How are iwi/hapū rights and interests recognised in the Act?

¹ Iwi participation legislation means legislation, including any Treaty settlement Act, that provides a role for iwi or hapū in processes relevant to this Act, including processes for an approval under a specified Act.

² Recognised customary rights comprise: taiāpure—local fishery, a mātaihai reserve, or an area that is subject to bylaws made under Part 9 of the Fisheries Act 1996; have an application for customary marine title under the Marine and Coastal Area (Takutai Moana Act) 2011.

The Fast-track Approvals Act includes some provisions to recognise all ‘relevant iwi authorities’. Other provisions to recognise iwi/hapū policies and procedures are only activated if iwi/hapū have:

- 🌀 reached a Treaty settlement,
- 🌀 have a joint management agreement (JMA);
- 🌀 have a Mana Whakahono ā Rohe agreement; or
- 🌀 other iwi participation legislation¹

For applications affecting the coast and sea, provisions to recognise iwi/hapū policies and procedures are also activated if iwi/hapū have recognised customary rights.² There is also specific recognition for ngā rohe moana o Ngāti Porou. There are exceptions to all these categories, and we recommend that councils ask for advice internally about how the Fast-track Approvals Act will recognise existing arrangements with iwi/hapū and other Māori entities. This advice should be shared with iwi/hapū.

When are iwi/hapū rights and interests recognised?

There is an overall provision that all persons performing and exercising powers, functions and duties under the Fast-track Approvals Act must act in a manner that is consistent with Treaty settlements and recognised customary rights (section 7).

There are a specific number of opportunities for rights and interests to be recognised. These opportunities include:

- 🌀 identification of rights and interests in a report presented to the Minister on Treaty settlements and other obligations;
- 🌀 requirements to consult, including inviting comments on applications and conditions;
- 🌀 requirements to consider procedures agreed by the iwi/hapū and other parties;
- 🌀 requirements to consider documents in decision-making; and
- 🌀 requirements to notify groups of decisions.

Opportunities for rights and interests to be recognised in Fast-track Approvals Act	Relevant provisions in Fast-track Approvals Act	Possible Mana Whakahono provisions relevant to Fast-track Approval processes
Identification of rights and interests in a report presented to the Minister on Treaty settlements and other obligations	Section 11 Sections 13(j) Section 13(l) Section 13(o) Schedule 5, clause 17(2)(c)	State clearly in the Strategic Introduction that this agreement is a Mana Whakahono ā Rohe as recognised within the Fast-track Approvals Act, and other legislation.
Requirements to consult, including inviting comments on applications and conditions;	Section 17 Section 18(j) Section 29 Section 49 Section 53 Section 53(2)(m)(i) Section 70(1) Schedule 5, clause 23(b)	- Clarify that this Mana Whakahono agreement also relates to referral and substantive applications under the Fast-track Approvals Act, and relevant provisions under other legislation. - Agree a timeframe for parties to this Mana Whakahono agreement to submit comments on resource consents/FTA applications that is longer than the timeframe in the FTA (10 working days) - Agree a timeframe for parties to this Mana Whakahono agreement to submit comments on conditions for resource consents/FTA applications that is longer than the timeframe in the FTA (10 working days)
Requirements to consider procedures agreed by the iwi/hapū and other parties;	Section 16 Section 57 Schedule 3, clause 5(1)	- Agree that a hearing should be held for Fast-track resource consents within the relevant rohe - Agree that if a hearing is to be held, then parties to this Mana Whakahono agreement should be given the opportunity to nominate a commissioner - Agree that the hearing or part of a hearing should be held on a marae, if parties to this Mana Whakahono agreement decide that is appropriate.
Requirements to consider documents in decision-making; and	Schedule 5, clause 5(2)(g)	- Agree that decisionmakers must record any iwi management plans or hapū environmental management plans and provide a written assessment of the relevant provisions of the iwi management plans and how they have been considered. - Agree that the iwi/hapū hold the mana over their IMP/HEMP and the interpretation of their IMP/HEMP, including identifying relevant provisions and appropriate consideration of these provisions.
Requirements to notify groups of decisions.	Section 28 Section 88	The Mana Whakahono agreement will need to include contact details and could include expectations for who receives notifications of consents, decisions etc. including for Fast-track Approvals Act applications.

OVERVIEW OF SPECIFIC PROVISIONS RELATING TO MANA WHAKAHONO Ā ROHE

Recognition with referral application stage

^{3.} These roopū Māori include: iwi authorities and groups that represent hapū that are parties to relevant Mana Whakahono ā Rohe or joint management agreements; other relevant iwi authorities; relevant Treaty settlement entities; the tangata whenua of any area within the project area that is a taiāpure-local fishery, a mātaihai reserve, or an area that is subject to bylaws or regulations made under Part 9 of the Fisheries Act 1996; relevant protected customary rights groups and customary marine title groups; ngā hapū o Ngāti Porou, if the project area is within or adjacent to, or the project would directly affect, ngā rohe moana o ngā hapū o Ngāti Porou.

- ☞ The applicant must consult a range of roopū Māori³ before the referral application is lodged (section 11).
- ☞ The application must include a list of people or groups affected, including a range of roopū Māori. The application must also include a list of Treaty settlements and Māori land, marae and identified wāhi tapu within the project area (sections 13(j), 13(l) and 13(o)).
- ☞ A report is prepared by the responsible agency which must include a list of roopū Māori, Treaty settlements that relate to the project area, any court orders or agreements that recognise protected customary rights or customary marine title in the project area, and any other Māori groups with relevant interests (section 18).
- ☞ If the application requires an approval under the RMA (eg. resource consent, designation etc.) then the report must include iwi authorities and groups that represent hapū that are parties to any relevant Mana Whakahono ā Rohe or JMAs and any relevant principles and provisions from those Mana Whakahono ā Rohe or JMAs (section 18(j)).
- ☞ The Minister will invite comments from the range of roopū Māori identified in the report (section 17).
- ☞ If a Treaty settlement, the Marine and Coastal Area (Takutai Moana) Act 2011, the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, a Mana Whakahono ā Rohe, or a JMA requires a document to be considered or a process to be followed, the Minister must follow that process when considering the referral application (section 16).
- ☞ The Minister may decline an application if they consider that the project is inconsistent with a Treaty settlement, the Marine and Coastal Area (Takutai Moana) Act 2011, the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, a Mana Whakahono ā Rohe or a JMA. The Minister may also decline an application for other reasons (section 21(5)).
- ☞ The responsible agency must provide notice of the decision to approve or decline the application to anyone invited to comment. If the Minister accepts the application, the responsible agency must also give written notice to the relevant iwi authorities or Treaty settlement entities (section 28).

Recognition within substantive application stage

- ☞ The applicant must again consult a range of roopū Māori before the substantive application is lodged (section 29).
- ☞ Resource consent applications must include the information set out in clauses 5-8 of Schedule 5 (section 43(3)). Most applications for approvals under the RMA must include an assessment against relevant provisions in “a planning document recognised by a relevant iwi authority and lodged with a local authority” (ie. an Iwi Management Plan) (Schedule 5, clause 5(2)(g)).
- ☞ A report is prepared by the responsible agency which must be prepared in accordance with section 18(2)(a)-(k) and 3(a), and include a list of roopū Māori, Treaty settlements that relate to the project area, any court orders or agreements that recognise protected customary rights or customary marine title in the project area, and any other Māori groups with relevant interests (section 49).
- ☞ If the application requires an approval under the RMA (eg. resource consent, designation etc.) then the report must include iwi authorities and groups that represent hapū that are parties to any relevant Mana Whakahono ā Rohe or JMAs and any relevant principles and provisions from those Mana Whakahono ā Rohe or JMAs (section 18(j) and section 49).

Recognition within substantive application stage (cont.)

- ☞ The Panel will invite comments from the range of roopū Māori identified in the report (section 53).
- ☞ If the application requires an approval under the RMA, then the Panel must also invite comments from any iwi authorities or hapū that are a party to a Mana Whakahono ā Rohe or a JMA (section 53(2)(m)(i)).
- ☞ When considering an application for approval under the RMA, the Panel must take into account section 104(1)(c) of the RMA,⁴ including any Mana Whakahono ā Rohe or JMA relevant to the approval (Schedule 5, clause 17(2)(c)).
- ☞ If the Panel decides to hold a hearing, roopū Māori who submitted comments will have the opportunity to speak (section 57).
- ☞ Before an application is approved, roopū Māori who submitted comments will be invited to comment on draft conditions (section 70(1)).
- ☞ The Panel must consider all information and documents provided (section 81).
- ☞ The Panel must comply with procedural arrangements within a Treaty settlement, iwi participation legislation, Mana Whakahono ā Rohe, or JMA (Schedule 3, clause 5(1)).
- ☞ When considering an application for the change or cancellation of a condition, the Panel must consider any Mana Whakahono ā Rohe or JMA that is relevant to the approval (Schedule 5, clause 23(b)).
- ☞ When considering a notice of requirement for a designation, the Panel must consider any Mana Whakahono ā Rohe or JMA that is relevant to the approval (Schedule 5, clause 24).
- ☞ The Panel must decline an application if they consider that the project is inconsistent with an obligation arising under a Treaty settlement, or recognised customary rights (section 85).
- ☞ Roopū Māori invited to comment will receive a copy of the decision document (section 88).

⁴ Section 104(1)(c) of the RMA states that: When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2 and section 77M, have regard to any other matter the consent authority considers relevant and reasonably necessary to determine the application.

Recognition within appeals stage

- ☞ Appeal rights are limited to roopū Māori who provided comments on the application (section 99).

He kupu whakakape / Disclaimer

Papa Pounamu is a collective of intentionally Māori planners and practitioners, including kaitiaki, who whakapapa to iwi and hapū across Aotearoa. We are also tangata Tiriti allies who respect Te Tiriti o Waitangi and uphold Tiriti-centric planning approaches. Our members are committed to supporting iwi and hapū aspirations and outcomes while also enhancing broader national planning processes.

Papa Pounamu does not represent iwi or hapū authorities, nor are we an iwi or hapū entity. Rather, we serve as a national professional forum that supports, advocates for, and practices Māori planning. While we offer technical support to iwi and hapū, we acknowledge that mana to speak for iwi and hapū rests solely with those entities.

This guidance, tools and information sheets are intended to support iwi, hapū and councils to envision, scope, and negotiate agreements that fulfil their aspirations for a better working relationship. These resources are not prescriptive and should not be used to limit the scope or content of Mana Whakahono agreements.

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