



Fast Track Consenting – Te Matau-a-Maui iwi

AGENDA AND NOTES

Monday 12th February 2024

11am

Mana Ahuriri Trust Offices

Attendees

Name	Role	Organisation
Te Kaha Hawaikirangi	Chairperson	Mana Ahuriri Trust
Parris Greening	General Manager	Mana Ahuriri Trust
Nicky Kirikiri	Trustee	Ngāti Ruapani may Waikaremoana Negotiation Group
Pohatu Paku	Chairperson	Pokai Whenua (Heretaunga Tamatea Settlement Trust)
Janice Wall	Trustee	Hineuru Iwi Trust
Elizabeth Waiwiri	Deputy Chairperson	Hineuru Iwi Trust
Leon Symes	Chairperson	Tātau Tātau o te Wairoa Trust
Liz Munroe	Interim CEO	Maungaharuru Tangitū Trust
Tania Hopmans	Chairperson	Maungaharuru Tangitū Trust
Toro Waaka	Chairperson	Ngāti Pāhauwera Tiaki Trust
Robyn Hape	CEO	Ngāti Pāhauwera Tiaki Trust
Martin Workman	Deputy Secretary	Ministry for the Environment
Daran Ponter	Engagement Lead	Ministry for the Environment
Beverly Kemp-Harmer	Kaiwhakatere	Ministry for the Environment
Julian Jackson	Senior Policy Analyst – Treaty Settlements	Ministry for the Environment
Emily Allan	Senior Policy Analyst - FTC	Ministry for the Environment
Peter Nelson	Principal Analyst – NPS-FM	Ministry for the Environment
Eleanor Rainford	Senior Policy Analyst – NPS-FM	Ministry for the Environment



Kitty Sneyd-Utting	Business Support Coordinator	Ministry for the Environment
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Items

1	Karakia
2	Discussion on FTC and Out of scope
3	Karakia

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Meeting notes

	D1	Karakia
	D2	<p>Daran: I acknowledge that we've have number of short hui over the last 2 weeks with most groups here.</p> <p>Many of you have a sense of the kaupapa and that were working at a fast pace. Apologies from us on that but do understand that we are working to a set of instructions from the Government. Want to clarify that I don't think that anything we are doing today is being described as consultation – this is just an information session.</p> <p>Two kaupapa today: FTC – Fast Track Consenting Out of scope</p> <p>Martin:</p> <ul style="list-style-type: none"> • Government is set to introduce the new FTC legislation into the house on the 7th of March as part of their 100 day commitment. • This is not a surprise - FTC has been flagged in their manifestos and coalition agreement. • Whole point of FTC is to be making sure that regionally and nationally significant projects (especially infrastructure and housing) are easier to get done and that they get through the consenting process faster. This is building off the work that was done on fast tracking in the Covid-19 legislation – so it's not the first time work has been done on this process. • This government is wanting to go beyond the current RMA provisions in the Covid-19 fast track legislation and put in place a 'one stop shop' to put consenting into one process and have it considered in one go. • This new legislation is looking to include permissions around DOC, wildlife , resilience, historic/cultural and permitting systems. <p>Leon: That is more than what the government has put out in their manifesto. Those are some major implications for our treaty settlements. Especially when including other agencies like DOC – there is a bigger scope.</p> <p>But no surprise with the current government. It's good we are having the discussion now about it.</p> <p>Daran: These things aren't decided yet? Regarding other agencies?</p> <p>Martin: Ministers met last Thursday and made some high level decisions around this. Have agreed this is what they want to do and now officials are busy on how to do that. Government has made clear that his legislation must ensure the upholding of treaty settlements.</p> <p>There will be another briefing going to ministers on Wednesday for another round of decisions on Thursday.</p> <p>We will do best to feed in your feedback. It is going really fast.</p> <p>Tania: Regarding upholding settlements - it concerns me that there might be a section that treaty settlements are strictly about commercial and specific cultural redress. Ours refers to - specifically acknowledged from the Crown - breaching the principles of the Treaty, and an utmost commitment to staying to the principles of the Treaty. How do you see this fitting it with what you're suggesting?</p> <p>Martin: The advice we are giving to ministers sets out a lot of niches for this protection. E.g. a general treaty clause - making sure that anyone operating under this legislation cannot be acting in a way inconsistent with the treaty principles or settlements. Having an equivalence clause is something else we are looking at - would love feedback. Anything being carried out in this legislation is equivalent to how it would have been considered under the RMA. And so we are</p>



looking how we can provide ministers with the right measures to show that the government is committed to treaty settlements.

Leon: You should resource us to do it. We know what we are doing and are keen to support that process – we don't want to be outside of the process. We want to help you help the government.

Te Kaha: A lot of the heavy lifting is going to come from us - regarding environmental and cultural assessment. We would need resources in the space.

Tania: Could be helpful if you go over the scope again of what being proposed. Certainly wider than what we had anticipated.

Daran: That's fair. Things are developing on a daily basis. Martin – can you unpack the question on treaty settlements and principles and the two things being different?

In the new piece of legislation we are talking about, there is no section 8 yet. Needs to be constructed.

So when you're talking about advice going up - is that the kind of feedback you're looking for? How you construct a section 8 type provision? And the issues of how do you acknowledge treaty settlements?

Last time Martin was here there was a long discussion on every settlement in this rohe to make sure every one was upheld. We don't have that process this time.

Martin: We are really recognising that. Some of what is being looked at is how do we link this new fast track legislation back to the parent legislation. We are keeping parts of the RMA.

The parent legislations in the new legislation will be the Conservation, Wildlife, Reserves and Heritage acts.

Te Kaha: When you are looking at giving recommendations to ministers – and all those legislations you are looking at bypassing - are you looking at taking out the mana whenua sections and putting them into one package? That's our biggest concern. We're not sure which processes are being taken out and what the new processes look like. There is lack of confidence and clarity on this.

Martin: We are referring back to the relevant sections of those other acts so that it is considered in the decision making process. Decisions are still being made on this.

Short answer is that yes, this is being included in advice to ministers. Those settlement provisions in the parent legislations will not be lost.

Tania: We negotiated a talk with DOC - there will be specific provisions on consenting and concession making. What are you proposing? Is what you're proposing going to impact on this process?

Also, we did not agree to consultation. We agreed to engagement, which has its own provisions. How do you see this being an example impacted by the fast track process?

Martin: I envisage this process bringing together those different process - DOC, resource consent etc - into one big process. But considering all of those together.

Emily: There's a couple of different ways we are looking to include a one stop shop. This is a work in progress - decisions are still being made.

Majority of decisions are sitting in the second briefing going out this week.

There are two ways we could bring in the one stop shop:

1. Aligning timeframes for when you get a decision, to connect all of the separate processes. The decision maker would still be the current one.
2. Expert panels are resourced to make consenting decisions. Those processes are sitting in the fast track process. Panel will be experienced/appropriately resourced to make those decisions.



Still policy work underway on the way expert panels will be appointed, although it is likely that the relevant Minister will appoint a panel convenor and the convenor will appoint a panel based on the needs of the application.

Won't just be RMA planners, but will reflect all of the experts needed to make these decisions. In terms of ensuring we have the appropriate checks and balances - it's an ongoing process to ensure we have the connections in the right place.

We are aware of some settlements arrangements that have provisions around expert panels and decision-making. It's going to be a challenge and we'll have to see which option the Minister prefers.

Tania: I presume alignment of timeframes would go the longest timeframe?

Emily: It would align to timeframes we are expecting for FTC.

Government is looking to provide certainty for outcomes with this process. I'm not clear on the timeframes proposed but I think the idea is to conclude applications within 6 months. At the end of 6 months (from date of referral) you get your decision. But not 100% sure on this timeframe, it might be shorter.

Leon: I heard that the Minister makes the decision and just needs the rubber stamp from the panel?

Emily: The role of decisions is still under policy work. The options we are considering is whether the panel will make substantive decisions or just recommendations to the Minister.

Leon: I'm assuming that the expert panel will have a requirement to have someone of tikanga Māori on it.

Martin: It's our advice to Ministers, yes – that all requirements under treaty settlements regarding who is on decision making panels is carried through to this process.

Leon: Are you going to be putting policy advice out that there has to be that relevant expertise on a panel?

Martin: Yes, that is our policy advice.

Daran: Emily, can you step through key aspects of the FTC process?

Emily:

There are two ways an application can enter the process:

1. Listed projects - projects that are listed in the legislation itself
 - a. List A - applications that are ready to go. Engagement and assessment already done/underway and will probably meet the purpose and eligibility criteria
 - b. List B - projects that have a good basis but have less assessment done.
2. Referred projects – projects put forward through an application process. These go to the Minister, who makes a decision on which projects to refer to the expert panel.

There will be some eligibility and ineligibility criteria which sets out the types of projects that can and can't go through this process.

Panel will make recommendations (or decisions as identified above), apply any necessary consent conditions and if the panel would like to decline the proposal it would likely go back to the relevant Minister (we are still working through this policy process).

There are also a couple pieces of legislation that we are looking at (in addition to the four previously mentioned) but which haven't been included at this point.

1. EEZ (Exclusive Economic Zone) - unsure if it will apply to 12 nautical miles or 200.



2. Crown Minerals Act - complex piece of legislation that we are looking at how/could we include this in the one stop shop.
3. Public Works Act – might come up or it might not.

We wanted to make sure there are no surprises.

Tania: What you're saying is that there's going to be a lot squeezed into one. You're squeezing us for feedback.

Leon: Would we get any more funding to help?

Daran: This has been raised in many hui. It is a live subject with ministers but we don't have a response.

Te Kaha: Going back to the pathways. For pathway one - do they need to have already gone through CIAs etc? How do you get to the panel on pathway 2?

Emily: For List A of the listed projects it is anticipated that those assessments and engagement would have already been done.

We currently have a team set up working through the applications being received to ensure they have all that assessment work completed.

There is a really high bar for acceptance onto the List, as well as decline. Ministers want to make sure there is certainty for applications to get approved in this process.

Tania: My understanding is that if you get into the process, you are going to get a consent with conditions. As Māori we know that conditions do not avoid effects that we are often concerned about. E.g. wind turbines on Maungaharuru. There is no mitigation for turbines on Maungaharuru. The only thing is to avoid them if you want to avoid effects to Māori.

What's the transparency of the high bar for getting into the pathway two process?

Emily: We are anticipating that projects in List A are coming in with all of their approvals that they might need and have already received support from iwi and other relevant groups for the area. Things are moving quickly, so there is not likely to be an opportunity to get these approvals before the bill is introduced if they do not already have them.

Leon: Will we have an indication of what will be on that list - will there be any surprises?

Martin: Don't know yet. But they will be public when the bill is introduced. Ministers are talking about select committee process.

We are looking at advice for listing projects in this legislation and running a process to ensure settlements are being met and that these are included in this list.

Leon: There are some projects that iwi have opposed. It seems that whoever is sponsoring this project sees this as an opportunity to get these projects in through a back door? Sets off a lot of alarm bells.

Tania: Emily is saying necessary support from iwi would have already been obtained?

Emily: Yes for List A that is my understanding. I'm not part of that team that is assessing listed projects.

Tania: So, next to no projects will require iwi approval? Where does it say iwi approval is needed?

Leon: Why is the List A process required? What's stopping them from going ahead with the project?



Tania: Well they have all their paperwork lined up and this process avoids an appeal. If you get a consent through this process, it will proceed and can't be appealed against.

Martin: Only matters of law can be appealed.

Tania: Our concerns are argued on facts. An appeal on an environmental court hearing can be made on facts.

Some people will try to apply again for projects that have already been contested by iwi.

What's the transparency for Māori regarding projects on List A and B? Once they're in we have very limited ability to stop projects.

Martin: Argument is that the select committee process and ensuring that there is process to check the list A and B criteria should allow it to actually stack up. They should have already have necessary support and iwi/hapū should have had ability to contribute opinion to that project.

Tania: The whole consenting process does not require consultation. It is smart thing to do but it is not required.

If someone has not consulted iwi (or if iwi do not agree) for a List A project - will they still make it onto the list?

Martin: Ministers are focused on treaty settlements being met. Part of our advice to them is the importance of going out to iwi and hapu for feedback.

They're focused on making sure things have met with what is set out in treaty settlement advice.

If iwi have had a major application that has been turned down in the past - this provides an opportunity for the application to be reconsidered through this process.

Daran: On that example, what happens if iwi put the application back in and someone else says they don't want it? How far will these agreements go if parties don't agree?

Martin: If you're including this in List A - have you deemed a consent? If you're deeming a consent - it has to cover all that detail to make sure all agreements are covered.

Emily: There is still an ongoing policy question about how much impact the weighting of national direction under RMA and the weighting of regional and district planning provisions would have in decision making process for this under this legislation. Still a live question.

Daran: I'm conscious of being in the Hawkes Bay. There is a very different arrangement with the Hawkes Bay RPC - how is that likely to work now that we have legislation that forms that committee that puts iwi around the table particularly related to development of the Hawkes Bay regional plan?

Could this process diminish the role that iwi have played in developing the regional plans?

Emily: Still a live policy question.

There is some concern about where some of the national direction or regional and district planning documents are when those provisions are quite old and no longer fit for purpose.

Concern was wanting to not hold up infrastructure and development opportunities on planning documents that are out of date.

Reflects constraints in NZ planning environments. We have few people working in this space.

In regards to Napier region / severe weather affected areas - this is part of the considerations in how we give effect to some of those joint decision making arrangements. Relevant for other regions too. And considered in how expert panels operate, and how they consider information available to them.

Martin: As far as it goes regarding the outcome of the settlements in Hawkes Bay and the committee that is set up - does that have input to consents as well to plans?



Daran: No, not for consents.

Tania: Proposition raised by Emily concerning the weighting of those plans - this is a concern. There's a whole hierarchy that is worked out on a case by case basis. I would have thought that the weighting given to each region would depend on the plans in each region. Would think it's a challenging and potentially dangerous piece of work to be doing at pace.

Emily: Don't have an answer. Would hope that an expert panel would be enabled to consider that variation between regions, but this is still a policy decision that needs to be made.

Martin: An application comes to the Minister to decide whether it is fit for the fast track process and whether it gets referred. When the Minister looks at it, they need to make sure the application meets the requirements for treaty settlements of the relevant rohe. The provisions in your plan need to be considered when an application is being assessed. We need to ensure that ministers uphold settlements.

Tania: I'm confused about how we have proposals from the government to rework the treaty principles – but that every settlement will refer to the Crown's acknowledgement that they will uphold the principles. How does that impact on processes like this?
I think that when people refer to upholding treaty settlements – they are just thinking statutory acknowledgements - I say go to the front of those docs and look at the Crown's apology around upholding principles - how does this work for FTC?

Martin: At the beginning of the legislation we are saying that this cannot be inconsistent with the principles.

Tania: Let's hope this stays.

Martin: Not too overly confident.

Tania: Neither are we.

Te Kaha: The expert panel - potentially there will be someone in there that has tikanga?

Martin: To be clear that is our advice. Decisions still to be made.

Te Kaha: What advice are you providing for ongoing engagement on mana whenua at that stage with the expert panel?

Emily: The expert panels will be enabled to seek advice where they consider it important. Similar to the Covid-19 legislation. Up to the panel to determine what and who advice is coming from.

Tania: I haven't had a lot of faith in expert panels in the past.

Leon: Yea because they fix them.

Te Kaha: It's important that these conditions are appropriately put into the consents for an expert panel. Can you add something a little further for mana whenua? Any way to beef that up to add certainty?

Emily: A really good question. There's some policy work on the development of conditions that could apply to these applications. Again, drawing from previous work. We would like to ensure approvals are enabling - but the balance to this is that we also want to include conditions where appropriate to manage effects. Would be good to include something



related to iwi review of conditions. I will raise this with the policy team working on the policy around setting conditions.

Martin: The expert panel does provide the application and seek input from relevant iwi/PSGEs.

Tania: Tangata whenua groups were asked to recommend to the judge who they'd like the Minister to consider for the panel.

I think it's appropriate for affected tangata whenua to be able to put forward their relevant people. People they know understand the issues with their tikanga. Sometimes when you get appointed panels we question what they know.

Tikanga is different and not objective.

Would be helpful if you could say we can provide a list of names.

Daran: Before hui there was a question of if iwi could receive draft bill before March 7? Can this happen?

Martin: We have a request before the Minister. Still waiting for a response.

Emily: To be able to provide bill in advance, we need a waiver. Currently working through this with relevant ministers and attorney general. We can't decide this ourselves.

Tania: I have a fundamental problem with this bill. Because in our experience with our takiwā - we are often dealing with a situation where our taonga have been irreparably harmed. You can't fix it but you can keep harming it or depleting it. In some places there should just not be development. Our people (and te taiao) have already sacrificed and lost so much. I'm concerned about how this is going to work with areas where there should just not be development - even if good for business. Where's the safeguards for this?

Emily: Some of this will be in the eligibility and ineligibility criteria. Projects won't be considered for referral if they don't meet the eligibility criteria or if they trigger the ineligibility criteria. The ineligibility criteria will be a hard no.

Ensuring we get the criteria right is important - we are still working through the policy work for this.

Tania: What's an example of ineligibility criteria that could protect those sorts of circumstances? E.g. each iwi has an sacred maunga. You can't get another one, and you can't condition your way around it. Can you give me an example of what might help to protect it?

Emily: On the ineligibility list at the moment we have: land returned under Treaty settlement that does not contain approvals from that iwi. If it's on the land returned to you and you haven't given approval for it, then nothing can be consented there.

Tania: That is a small bit of land you are talking about there in proportion to the land we are worried about.

Martin: The advice we are putting out is to retain wording from section 5 from the RMA. What's trying to be achieved is to make development easier. Purpose statement will be crucial.

Leon: Only thing it stops is people protesting against things. This is just trying to get things done quickly.

Tania: Could you have ineligibility criteria that talks about wāhi tapu/wāhi taonga as identified in the district plan?

This prejudices iwi that have settled late and haven't had the resources to do that. But that might be something.



Daran: There is a difference between what might be considered locally and regionally significant. E.g. where marae have been affected by the cyclone to the point that they can't continue. Does this legislation provide an ability for hapū to step forward and use FTC for relocation? Is it regionally significant enough?

Emily: Regional and local significance varies between locations. E.g. 100 houses in Southland would have a different level of significance compared to 100 houses in Auckland. Ensuring we do enable these projects that are significant for these communities is important and offers challenges. Idea is that we want to enable regional variability to come into that regional significance test but this policy work is still being worked through.

Tania: In relation to cyclone recovery - Crown's intent is to move people out of harm's way where possible. Best thing would be if this bill would pick this up and see that through so we can have recovery and relocation expedited. Let's provide an avenue for Māori. I can't see what the policy issues are here. E.g. I don't think our takiwā would be classed as regionally significant - but it is significant to us. This is a tangible way you can help. We want efforts for relocation. So please include that in your advice to ministers.

Elizabeth: You talk about eligibility and ineligibility - but what about exceptions? There is always something that doesn't fit the box. You're going to come back to us with a list. But some things don't fit on a list.

Emily: Will come down to what the eligibility and ineligibility criteria are. Our preferred policy approach is to have a broad approach to setting these criteria, rather than prescriptive approach. We do acknowledge the fact that if you put hard and fast rules down it makes it tricky.

Tania: When something is accepted for fast tracking, are we are still going through all the considerations for the consent as if it was going through the full process?

Emily: Still working through the policy work for weighting of docs in RMA hierarchy. May not necessarily include everything currently included. Broadly yes through, there is likely to be similar considerations to what happens now for consent processes.

Tania: The wāhi taonga provisions are very restrictive. If a development was fast tracked for this area - do they still have to go through provisions of the district plan and apply them?

Emily: This is the advice we are giving. Decision has not been made.

Tania: It's fast track, not skipping the process.

Leon: It's not a shortcut process?

Emily: It will be a very enabling piece of legislation.

Tania: People spend years and years trying to put things into district plans to get a result. I'm going to be totally pissed if these provisions are going to be ignored by this process.

Emily: Our policy position is that regional and district planning provisions will need to be considered. This is still a live policy question, and we are still working through the options.

Tania: The bars are different levels because of the community expectations. Are you saying that these bars are going to be changed?



Emily: Currently working through the policy options on that. Initial indications on this policy work are that even prohibited activities may be eligible to enter this process.

Tania: This is not a fast-track process. This is a get-around-the-law process. That is a treaty breach right there.

Emily: Live policy question, decisions haven't been made.

Daran: When Emily says that this means that we are being pushed around, by the ministers too.

Out of scope



Out of scope



		Out of scope
	D3	Karakia
Actions	A1	MfE to seek approval for pre release of the draft bill to iwi.
	A2	
	A3	
	A4	
	A5	
	A6	