

# Fast Track Consenting within the 12 Nautical Mile Limit

## AGENDA AND NOTES

Monday 12th February 2024

9am

Online (Teams)

### Attendees

Present	Crown Organisation
Daran Ponter	MFE – Engagement Lead: Treaty Settlements, Aquaculture and RM Reform
Kate Mitchell	MfE – Principal Legal Advisor
Rebecca Perret	MfE – Principal Advisor - Resource Mgmt System
Julian Jackson	MfE – Senior Policy Analyst - Treaty Settlements
Eleanor Rainford	MfE – Senior Policy Analyst - NPS-FM
Bridget Giesen	MPI – Director of Aquaculture
Ben Moginie	MPI – Acting Manager Aquaculture Settlement Team

Present	Iwi Organisation
Maia Wikaira	Whaia Legal (Maniapoto)
Kiritapu Allen	Ngāti Ranginui and Ngāi Te Rangi (Tauranga Moana)
Eljon Fitzgerald	Te Rūnanga o Whaingaroa
Ripeka Hudson	Te Korowai o Ngāruahine
Hemi Cumming	Ngāti Koata
Stevie-Renee	Waitomo Papakainga
Deena Whaitiri	Ngāti Mutunga ki Wharekauri
Rikirangi Gage	Te Whānau a Apanui
Agnes Walker	Ngāti Porou
Chris Shenton	Ngā Wairiki Ngāti Apa
Leeane Hiroti	Ngā Wairiki Ngāti Apa
Philip Grimshaw	Te Kahu o Taonui
Danny Loughlin	Ngāti Tūwharetoa
Rueben Araroa	Te Rūnanga o Ngāti Awa
Calvin Russell	Te Rūnanga o Ngāti Ranginui
Eugene Whakahoe	Ngāti Kuia
Nancy Tuiane	Ngā Tangata Tiaki o Whanganui
Ihaperā Paniora	Ngāti Whātua
Tame Te Rangi	Ngāti Whātua
Tremaine Murray	Te Nehenehenui
Jen Skilton	Ngāti Apa ki te Rā Tō
Graham Young	Ngāti Ruanui



Dayveen Stephens	Ngāti Tama
Rowena Cudby	Ngāti Rārua
Hone Tibble	Ngāti Mutunga o Wharekauri
Tracey Williams	Ngāti Toa
Helmut Modlik	Ngāti Toa
Justin Carter	Te Ātiawa
Mark Ormsby	Te Ātiawa
Kristie Pakipaki	Te Ātiawa
Sheridan Waitai	Ngāti Kurī
Tipene Kapa-Kingi	Te Aupōuri (Muriwhenua)
Lindsay Poutama	Te Iwi o Ngāti Tukorehe
Sue Mavor	Ngāi Tahu
Tanya Stevens	Ngāi Tahu
Chrisse Hape	Ngāti Kahungunu
Marsha Wyllie	Rongowhakaata
Keriana Wilcox-Taylor	Rongowhakaata
Dion Luke	Ngāruahine
Te Aorangi Dillon	Ngāruahine
Naomi Puketapu-Waite	Ngāruahine
Dickie Farrar	Whakatōhea
Peter Vitasovich	Whakatōhea Mussels
Nyze Manuel	Te Rūnanga o Whaingaroa
Bree Davis	Te Rūnanga o Whaingaroa
Jackie Edwards Bruce	Te Rūnanga o Whaingaroa
Peter Rice	Te Arawa Fisheries
Laws Lawson	Te Ohu Kaimoana
Madison Davy	Te Ohu Kaimoana
Kylie Grigg	Te Ohu Kaimoana
Graeme Hastilow	Te Ohu Kaimoana
Brianna Boxall	Te Ohu Kaimoana
Pahia Turia	Te Ohu Kaimoana (Director)

## Items

1	Opening whakataukī
2	Discussion on fast-track consenting within the 12 nautical mile limit
3	Closing whakataukī



## Meeting notes

Discussion notes	D1	Opening whakataukī by Daran Ponter (MfE)
	D2	<p><b>Comments from Officials</b></p> <p>Rebecca Perrett (MfE), Daran Ponter (MfE), and Ben Moginie (MPI) provided a high-level overview of the FTC proposals.</p> <p>Officials apologised for the fast pace at which FTC is being progressed and acknowledged the challenges iwi face providing input due to compressed timeframes, lack of clarity on policy, and resourcing issues. The conversation today is not regarded by officials as being consultation or engagement. We are thankful for the feedback given so far – it is much appreciated.</p> <p>Minister Bishop is yet to make further policy decisions on specific aspects of FTC. A lot of analysis is being done on what FTC the system will look like. A number of agencies are working on the FTC proposal, which is sometimes not the easiest thing to do.</p> <p>The initial consideration of projects (due diligence of completeness and eligibility) needs to be robust as there is intended to be a high threshold for declining them. Further work is needed in respect of potential situations where consent conditions can't be devised that are appropriate.</p> <p>The Hon Todd McClay, Minister for Primary Industries, wants to get aquaculture into the FTC, however this won't apply to all types of aquaculture activities. We don't have all the details yet – criteria for inclusion into FTC are still to be determined.</p> <p>Officials are thinking about equitable access for aquaculture and impacts on recreational fishing. More work needs to be done on the relationship of FTC to customary fishing.</p> <p>If an iwi receives an aquaculture authorisation we are looking to protect that iwi's interests from other groups to develop settlement aquaculture areas.</p> <p>Minister Bishop has indicated that if iwi have any projects that might be potential candidates for FTC process, they should let him know.</p>
	D3	<p><b>Specific comments from iwi</b></p> <p><i>Emma (Ngāruahine)</i> – concerns regarding how approvals in other Acts will work, important protections and provisions for Māori in those Acts, how will that work? We have no information on that? Significant concerns.</p> <p><i>Kylie</i> – How are applicants, CMT title and rights holders under the Takutai Moana Act to be protected? Must ensure applications are protected - how will applicants views be considered? Response: This is being considered.</p> <p><i>Kiri Allan</i> – Is there to be a generic Treaty provision? Need to clarify whether Crown is committed to upholding the Treaty. Response: This has not been clarified yet.</p> <p><i>Māia Wikiaira</i> – We have no assurances that protections for the environment and for Māori will be upheld in this legislation. Treaty settlements fundamentally engage with existing statutory arrangements and will ultimately undermined by these new processes. What is proposed is an entirely different system. This will require assurances that bespoke arrangements (ie Treaty settlements, Mana Whakahono a Rohe, JMAs etc will be carried through in this new context). A</p>



'one stop shop' with a high bar for declining applications is concerning. Cautions officials against providing advice that this is a Treaty compliant process or process that upholds settlements. Don't agree that it will.

*Tipene Kapa Kingi (Te Aupōuri)* – Not good enough in terms of process to receive massive chain email and expect attendance at short notice from 150 plus iwi. This is not a Treaty compliant process. Transgression of Treaty itself – speeds up process for Pākehā to gain resource consent for our taonga/resources. Current protections are being left to the side in this process.

*Tipene Kapa Kingi (Te Aupōuri)* – The Government is saying activities will be fast-tracked and will benefit everyone, which raises a 'red flag' for Māori. There FTC process may potentially benefit Pākehā enjoying the use of taonga, with Māori being left behind.

*Ihapera Paniara* – This process has been entirely inadequate in terms of consultation. No opportunity to provide feedback in a better manner. Concerned about gateway test for listed projects – Minister Bishop mentioned to me at Waitangi we could put a project forward as a listed project – suggests there is no gateway test. If we are talking about extending outside 12 nautical mile limit into territorial sea that is hugely significant and changes matters further. Seems to be no provisions for iwi participation on panels, also lack of capacity for the same; lack of resourcing. Where do we as Māori have a say on what goes on the list? Also entirely unclear here where decision making lands.

*Dickie Fraser (Whakatohea)* – Aquaculture provisions in settlements, can that be fast tracked? Need to ensure it's included.

*Nancy Tuane (Te Awa Tupua)* – Our Iwi is always willing to work with anyone who wants to do something in our rohe, fast or slow. Their ability to do anything will be dependent on their effectiveness to engage directly with us from the outset. Fast Track provision or not.

*Emma, (Ngāruahine)* – We are seriously concerned. Deadline for consultation is today, and passing next month. Listening to the key points in this hui, fundamental analysis hasn't been completed. We have a draft letter we are finalising as Te Korowai o Ngāruahine.

*Hone Tibble* - under the IOCC proposal through DOC we are being asked to remove our rights to challenge the Crown which hopefully doesn't end up in this legislation.

*Chrissie Hape, (Ngāti Kahungunu)* – How are iwi management plans used in this process? Need to inform decision making.

*Kiri Allan* – The breadth and depth of what will be included and in FTC is concerning. Need to ensure that substantive advice reaches Minister Bishop on the total impact on Māori, otherwise gaps will develop.

*Kiri Allan* – Concerns around Ministers being override panel decisions – not a democratic process – overreach by Ministers.

*Kiri Allan* – how are unsettled iwi to be considered and to have input in into the process? How will unsettled iwi be afforded comment in their respective rohe?

*Tipene Kapa-Kingi (Te Aupōuri)* – Aupōuri wants a position on all decision making bodies for consents in our moana

*Eljon* – Concerns that repeal of NBA means granting of Coastal Permit sits with Councils and doesn't provide for iwi involvement in decision making in CMA. How is this provided for in new Fast Track legislation? needs to be.





	<p><i>Unknown user</i> – Tēnā anō koutou me tēnei o ngā kaupapa - in an Iwi context there have been challenges in trying to navigate the local government policy implementation variations across the eastern and western seaboard as well as the Kaipara Harbour plus the shared interest across the five within the rohe, over the past decades...the expectation is that due consideration must be taken at the central government end, of the function and role of the PSGE's alongside of the Iwi e.g. MIO at an Iwi level versus Treaty Settlement Provisions at a hapū / PSGE level...Iwi and hapū <b>should not</b> be forced to resolve such matters unassisted by government agencies...I am confident that Ngāti Whātua is more than willing for constructive engagement. That ability to do so will depend on the effectiveness of agencies to engage directly with us from the outset.</p> <p><i>Ihaperā Paniora</i> – We must have input before consents are even referred to the panel, it is not good enough either to rely on a Minister's judgment to refer (or not refer) to a list nor to rely on a panel to protect our interests.</p> <p><i>Kiri Allan</i> – Iwi need to be able to input into referral application decisions – what is weighting to be provided for this? Needs to be meaningful input that has to be considered by decision makers; not just a box to be ticked.</p> <p><i>Unknown</i> - we can see some potential benefits in the Aquaculture space, we can see how fast track projects such as new hydro dams, would be devastating without adequate protection for Hapū/Iwi values.</p> <p><i>Tipene Kapa-Kingi (Te Aupōuri)</i> – You also need to consider that more water space = more demand for spat. Talking about mussels specifically, granting more consents is going to have adverse upstream effects for us as it will bring more spat collectors to the Far North thrashing our beach.</p> <p><i>Kiri Allan and others</i> – Te Arawhiti involvement in the process is really important; they need to have input into advice for both referral and substantive decisions.</p> <p><i>Marsha (Rongowhakaata)</i> – Rongowhakaata concerns regard the Crown tentacles (Legislatively DOC - Te Whānau a Apanui CMS and MACA) that continue to undermine our hapū rangātiratanga. This process provides another avenue for the Crown to endorse flawed mechanisms and their implementation. Te Arawhiti has not progressed our MACA application- alongside the rest of Aotearoa substantively. The Eastern Seaboard (daresay at least 12 nautical miles) has been impacted by sediment and slash of Cyclone Gabrielle- concerted efforts should be focussed on a recovery response here.</p> <p><i>Tipene Kapa-Kingi (Te Aupōuri)</i> – Bottom line for Te Aupōuri is; fast track for us is good, fast track for non Māori is risky and we need to be directly involved in assessing and deciding all applications in our rohe moana.</p> <p><i>Helmut Modik (Ngāti Toa)</i> – Ngāti Toa is not opposed to development in principle but are not interested in activities that are detrimental. They expect to be engaged on the projects. Any process that doesn't provide opportunities for engagement with Ngāti Toa and their views to be canvassed will likely result in court proceedings. Ngāti Toa is very concerned about the unilateral approach the coalition is taking. 'Building the boat while rowing' (lack of detail and unsatisfactory engagement) is totally unacceptable.</p> <p><i>Emma (Ngāruahine)</i> – Efficiencies in consents admin, streamlining, systems improvement would go further than legislating around the protection mechanisms and consultation for 'significant projects'.</p> <p><i>Maia Wikaira</i> - It's not apparent that a role for Iwi or hapū on an Expert Panel will be of any utility if the decision-making criteria that they must apply don't actually cover issues of concern to them. Without clarity about the decision-making criteria, including the manner that taiao and Tiriti</p>
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		<p>safeguards in existing legislation will be incorporated, whether a role on the Expert Panel is of value to iwi and hapū is unclear. [general support for this]</p> <p><i>Stevie-Renee</i> – can Māori Kaupapa be fast tracked too?</p> <p><i>Tracey Williams</i> – Please think of us down her in Te Taihū. Moving farms outside the Coastal ribbon and saying it is not new space, more a spatial move although a new consent is involved and once granted previous consent is rescinded – but isn't new space for aquaculture settlement reasons even though it should be.</p> <p><i>Eljon</i> – concerns about need for a Treaty clause in the new legislation.</p> <p><i>Unknown user</i> – Priorities must be this (1) Environment; (2) People; (3) Economics</p> <p><i>Nyze Manuel</i> – The engagement on FTC is totally unsatisfactory and contradicts laws and rights. Need to raise iwi concerns with ministers about environmental and climate change issues.</p> <p><i>Generally</i> – wanting to ensure ASA and Aquaculture and Fisheries Settlements are protected, not undermined. Concerns about uncontrolled applications within CMA.</p> <p><i>Marsha (Rongowhakaata)</i> – Rongowhakaata – Significant sediment issues in our rohe; harvesting seabed and seafood having significant receiving impacts. Crown tentacles. How is this going to interact with MACA applications?</p> <p><i>Te Whānau-a-Apanui</i> – no cohesivity in how this works together.</p>
	D4	<p><b>General observations from iwi</b></p> <p>The lack of detail and certainty around the FTC proposals is concerning and frustrating. It hampers the ability of iwi to provide meaningful input.</p> <p>The lack of detail is disingenuous when lots of policy development has been undertaken.</p> <p>Consultation / engagement with iwi on the FTC policy proposals is very unsatisfactory.</p> <p>Iwi lack resources or have capacity issues that hamper their ability to participate and input into developing the FTC.</p> <p>FTC is politicised due to the level of ministers' involvement in the process, which is very concerning.</p> <p>Not happy with the FTC process if consideration and feedback on project applications happens without engagement with iwi and hapū. This is totally unacceptable.</p> <p>Concerns about the 'gateway' test and potentially approving projects that impact negatively on Māori interests.</p>
	D5	<p><b>Some questions and answers</b></p> <p><b>Q1</b> – The other pieces of legislation to be included in FTC contain a Treaty provision. How will these be carried through? What thinking is there regarding protections and clauses to be addressed?</p> <p><b>A</b> – <i>This is a live question - we don't know yet and require further decisions from Ministers. Cabinet have made a commitment to upholding historical settlements.</i></p> <p><b>Q2</b> – Does the regime provide a fast track for re consenting in the future?</p>



		<p><b>A</b> – It has not been excluded, there are no active exclusions around re-consenting.</p> <p><b>Q3</b> – What is the role of the NZCPS? How will it apply?  <b>A</b> – Work is being done to examine the relationship between the FTC, NZCPS and other legislation. Don't have the detail yet.</p> <p><b>Q4</b> – How will aquaculture provisions in settlements overlap with FTC, and MACA CMA rights?  <b>A</b> – Looking at transferring these across to the FTC regime and would like to hear your thoughts on this. Will need to put this up to Ministers.</p> <p><b>Q5</b> – Do Māori have a say in projects once they get on the list? Need to know more about consideration of applications (eligibility assessment), and information around the referral process and composition/establishment of expert panels (EP).  <b>A</b> – Criteria and the due diligence process are still being worked on. A similar approach as the Covid Fast-track composition is being considered, whereby Judge Newhook stands-up the EPs. The minister is looking into composition and establishment of EPs. It is envisaged that applicants will engage with iwi groups and work through their interests at the front end of a project before submitting an application. This could include preparation of CIAs.</p> <p><b>Q6</b> – Is there any intention to extend FTC out to the 200 nautical mile limit?  <b>A</b> – No intention at this stage from an MfE point of view, but not sure whether MPI has progressed any thinking on this.</p> <p><b>Q7</b> – What status would iwi management plans in relation to FTC?  <b>A</b> – Intended to have the same status they have now under the RMA.</p> <p><b>Q8</b> – What consideration has been given to the Fisheries Act and the Fisheries Settlement in relation to the FTC?  <b>A</b> – Don't have these details to hand but can find out.</p> <p><b>Q9</b> – Is Te Arawhiti involved in the development of FTC?  <b>A</b> – Yes, they are already providing advice across a range of work and agencies but have resourcing/funding limitations.</p> <p><b>Q10</b> – How are Te Arawhiti's capacity issues being addressed?  <b>A</b> – Agencies that hold oversights in this arena are assisting Te Arawhiti and feeding into the project. This is being done in relation to each legislative area included with FTC.</p> <p><b>Q11</b> – Does the FTC anticipate exclusion zones?  <b>A</b> – Don't have an answer to this but need to flag it to Minister Bishop.</p> <p><b>Q12</b> – The FTC could override 40 years of jurisprudence. Will ministers be adequately armed in the legal landscape?  <b>A</b> – Officials are endeavouring to provide advice to Ministers on this.</p> <p>Hui closes 10am</p>
	D6	Closing whakataukī by Daran Ponter
Actions	A1	Daran Ponter (MfE) to feedback draft hui notes to iwi for comment.
	A2	Points raised will be collated into advice to Minister