

Fast Track Consenting – Tairawhiti iwi

AGENDA AND NOTES

Friday 9th February 2024

11am

Te Puni Kokiri Offices – 299 Gladstone Road, Gisborne

Attendees

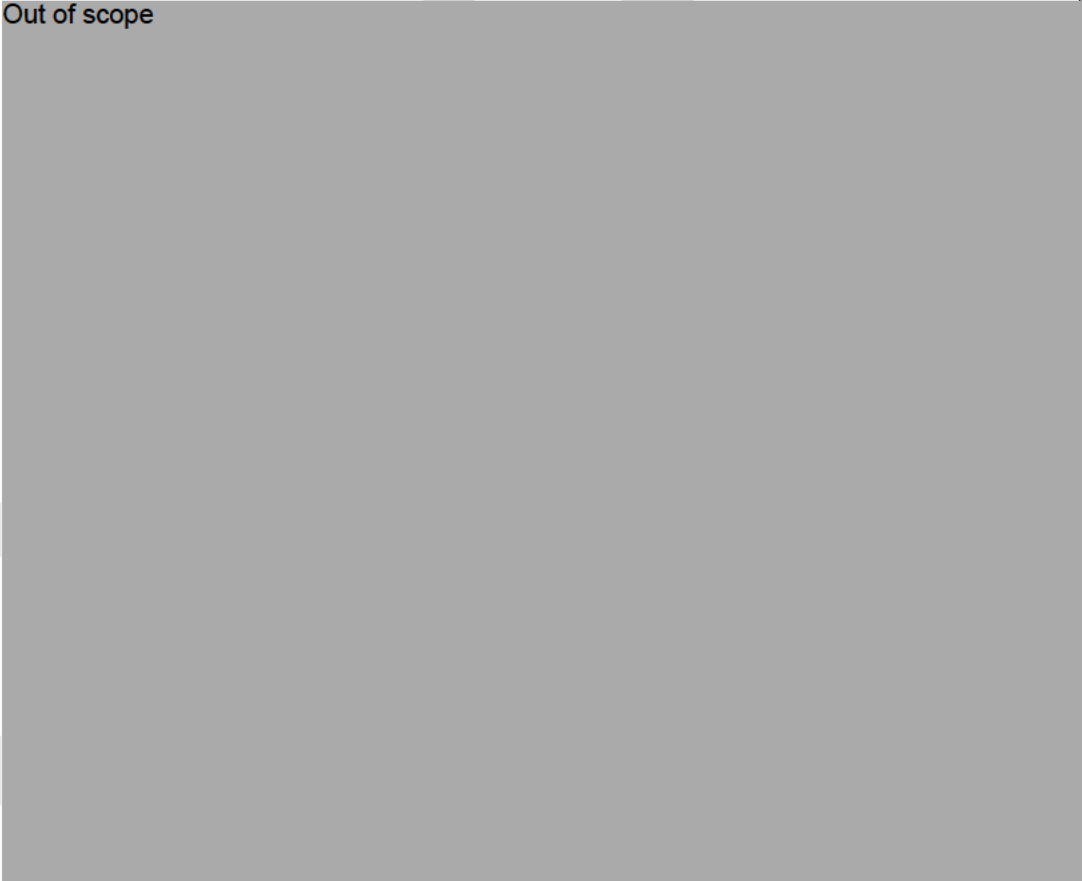
| Name | Role | Organisation |
|--------------------------|--|----------------------------------|
| Willie Te Aho | CEO | Te Aitanga a Māhaki |
| 9(2)(a) | | |
| Agnes Walker | Project Manager | Ngā Hapū o Ngāti Porou |
| Kate Walker | Taiao Consultant | Ngā Hapū o Ngāti Porou |
| Pio Pohatu | | Ngā Hapū o Ngāti Porou |
| Keriana Wilcox-Taylor | Taiao Consultant | Rongowhakaata Settlement Trust |
| Siaosi Loa | Senior Solicitor | Tamaki Legal for Te Whanau a Kai |
| Danica Loulie-Wijtenburg | Law Clerk | Tamaki Legal for Te Whanau a Kai |
| Daran Ponter | Engagement Lead | Ministry for the Environment |
| Sarah Pohatu | Kaiwhakatere | Ministry for the Environment |
| Arron Cox | Manager – Fast Track Consenting | Ministry for the Environment |
| Alice Jacobs | Team Leader – Freshwater Allocation | Ministry for the Environment |
| Julian Jackson | Senior Policy Analyst – Treaty Settlements | Ministry for the Environment |
| Kitty Sneyd-Utting | Business Support Coordinator | Ministry for the Environment |

Items

| | |
|---|---|
| 1 | Karakia, introductions |
| 2 | Discussion on FTC and <small>Out of scope</small> |
| 3 | Karakia |



Meeting notes

| | | |
|---------------------|----|--|
| Discussion notes | D1 | Karakia, introductions |
| | D2 | <p>Daran acknowledges that he has met with all of the attending groups individually within the last two weeks.</p> <p>Also acknowledges that the Minister's letter was delayed, but at this point everyone should have received it - he letter gives a broad understanding of the two pieces of work that the Government is committing to – Fast Track Consenting (FTC) and National Policy Statement for Freshwater Management (NPS-FM).</p> <p>Out of scope</p>  <p>Willie: In regards to the fast tracking legislation:</p> <p>There are two different views going around but they are not incompatible.</p> <ol style="list-style-type: none">1) Iwi that have settled want to make sure their settlement mechanisms are protected. Myself and those representing Te Whanau a Kai want to make sure that we're not prejudiced.2) Last year we went through orders in the council process for effective resolutions to deal with outcomes of severe weather. 9(2)(a) and myself were on the |



transportation ones and I was also on the temporary accommodation ones. If not for that I would not have gotten 100+ temporary houses in place for our people. Couldn't have been done without the fast-tracking mechanism which meant that this temporary housing could fall under permitted use – and no resource consent is required until February 2026.

We want housing included in fast tracking. Currently working on putting in 150 houses by the Gisborne hospital. Without a fast-tracking process this will take 3+ years to complete, but if this fast tracking process goes through, we'll get it done by the end of 2025.

Willie: Another example is water storage.

There are a lot of undeveloped flat lands in Tūranga - this is Māori land, but neighbours' highly fertile Pākehā-owned land have secured water rights to these lands – and if they don't have water access they cheaply lease Māori land to produce high value crops.

This prevents us from having water storage which we can then use to irrigate our lands.

MfE made it clear last week in hui that water is not specifically covered in FTC.

We want to make it clear to Ministers and the government that water must be covered.

We have struggled to get projects completed with just the support of the GDC.

We deserve access to high value cropping for our people.

Willie: Martin Workman has said that iwi are in favour with the safeguards in place. There are settlement mechanisms that need to be protected – this is not an opposing view but it goes hand in hand.

Arron: In terms of housing and water storage – the Minister is keen to ensure 80% of projects that are regionally or nationally significant to be able to access this fast-track process.

Still waiting to hear what the eligibility criteria are.

Essentially want to reflect that this legislation intends to focus on the need for a particular type of housing in a region rather than a number. This depends on the project's significance to a particular region – noting that projects will have different significance for different regions.

Daran: In respect to Willie's circumstances - does FTC include housing developed under particular circumstances e.g. emergency housing?



Arron: Yes, if it is regionally significant.

Daran: Does that include RMA consents and building consents?

Arron: No, this only covers resource management approvals.

9(2)(a) I am in support of Willie's korero on both issues. Will fast tracking consents supersede the future development strategy under the Tairāwhiti resource management plan that GDC are getting ready to review?

Interested in the statement that the Mayor stands with iwi chairs – it is our experience that GDC's position in support of iwi matters isn't necessarily the same as our aspirations. Te Runanganui o Ngāti Porou's position in terms of future development isn't accounted for right now.

Willie: 9(2)(a) and I were at the hui yesterday when the Mayor said she'd support those three issues.

I support what 9(2)(a) is saying.

Last year there was fast tracking and infrastructure funding. We supported the GDC to increase capacity to go put housing all the way out to the hospital.

But I know that the area that 9(2)(g)(i) was looking at for housing has no infrastructure. How we can fast track the developments that we want to do in the rohe of Ngāti Porou if there is no existing infrastructure? These are the kinds of projects we want to see called in – if these projects are blocked, then the housing program is stifled.

Arron: Under the legislation itself, fast tracking will apply to a broad range of infrastructure projects. So probably a yes to your projects.

This is also something ministers will have to consider when referring projects.

What we saw with Covid-19 fast tracking legislation is that panels would decline projects that did not have supporting infrastructure. Projects that went in with infrastructure, support and resources already lined up were more likely be considered.



9(2)(a) That's the crux of my question - will the orders in council supersede? The challenge for iwi is that our development is stifled by the lack of infrastructure provided by GDC – so then they say no to our development because they don't have the infrastructure provided for. While we are supportive, this is at the detriment for us as Ngāti Porou we are still beholden to the GDC plan. We need the Minister's support.

Arron: That's what we are looking at currently. We think that ministers should be able to provide direction to the panel to address situations like this.

9(2)(a) If you could put that in your paper that'd be brilliant.

Kate: For us it's about understanding the eligibility criteria and how to get onto the list. There are many pros for projects for the region and for hapū and iwi – we want to promote that, but also how do we have the appropriate protections for things that may be detrimental to iwi?

Daran: Having not seen the list, I'd say is unlikely that there are any listed projects for this region. Arron – how do projects and proposals get on the list?

Willie: I think it's twofold – it's not just about how they get on the list. How is this legislation going to be different to the fast-tracking under the Covid-19 legislation? If we didn't like the protection mechanisms there - how is more of the same going to meet our concerns?

Daran: Arron – on Friday last week Ministers Jones and Bishop came out with a statement saying that aquaculture was included – e.g. seabed mining. Is that more possible under the new regime as opposed to the previous regime?

Arron: Under the Covid-19 legislation, aquaculture was enabled. Will also be allowed under this process.

There's a potential that other approvals might be kept under this legislation too.



Daran: A decision is still to be made whether this fast-track regime goes to the 12 mile nautical limit, or to 200 nautical miles? Is that correct?

Arron: Yep.

Kate: So the scope is yet to be determined. But it still comes down to how do projects get on the list?

Daran: Arron – can you step us through that process.

Willie: The Rohe Moana effectively have a veto on new developments. If that's preserved - it doesn't matter who gets fast track consent, they still have to get consent of Rohe Moana.

Daran: Correct. Ministers collectively have said this process will uphold treaty settlements. Am aware they have little knowledge of the Rohe Moana agreement which is not a traditional treaty settlement.

Kate: It's also the intent of the agreement.

Daran: Conscious that it's a little more complicated than even ministers understand of this.

Kate: It's about removing ambiguity.

Daran: Sooner is better, but acknowledge the time frame we have. Ministers have said fast tracking is part of their 100 day commitment - so the legislation should be introduced by March 7. We will try to get a draft bill in front of iwi before it is introduced, the chances of being able to do that are a little dicey. We are not in a position to give any precise words or details on this, what the bill will look like and how it will acknowledge treaty settlements.



Agnes: When you look at aquaculture being enabled - we're still working through putting out our CMT recognition and this might not even get done. Crown hasn't been able to enable our recognitions, and so we might lose our right of saying no.

9(2)(a) And we absolutely want to keep that right.

Kate: Two main considerations are what is our involvement in determining what projects go on the list and how do we engage when they are on the list?

By introducing fast tracking - this is taking away from us and this does ultimately undermine our arrangement.

Daran: Arron - Ngā Hapū o Ngāti Porou have a very particular situation, which is why they are often explicitly referred to in the RM reform changes.

Internal MfE is very conscious of this difference. But NHNP can't see the evidence of this in front of them and it's making them nervous.

Kate: What's the involvement of part 2 with fast tracking?

Arron: From what I understand with your situation, joint decision making on consents...

Daran: It's a power of veto.

Kate: We have ownership interest of the seabed.

Arron: There's two ways a project can be fast tracked:

1 - listed in legislation. This means a project is specifically listed in the legislation, and then being fast tracked and sent to the expert panel. Ministers are currently talking about the scope to decline listed projects. There will be a need for panels to decline based on inconsistencies with settlements. Can't recall if there are any listed ones for Gisborne. This list is a work in progress.

2- referred to fast tracking by a minister. This is for when a project isn't listed. It will apply to the relevant minister (not sure who these will be yet). When the Minister receives an application, they determine whether it is ineligible or not. If eligible – next step is that



they consult with relevant PSGEs/groups with interests/local government. Once that feedback comes through, they assess it against the criteria and decide whether it will be fast tracked. Once it gets to panel - the panel will assess project again against the fast tracking legislation – which is broadly to enable development that have environmental, economic and social benefits - and against part 2 of the RMA.

The intent for this legislation is to promote economic development.

Agnes: Given our legislation as it stands, you're not supposed to be able to do anything in the coastal marine area without NHNP. Why can't that be specifically stated? That nothing can qualify to be fast tracked or be on that list?

Daran: Without your approval.

Agnes: It shouldn't be there. It is interfering with the assertion and the promise of the recognition of our mana from the Crown. The minute you create this legislation that takes it away – you've broken the Crown's promise to us.

Kate: The ministers *should* consult with iwi but *will* they consult?

Daran: Fair question or unique solution to the disagreement between NHNP and this new regime - NHNP are effectively excluded.

Agnes: It's very explicit. Anything that impacts us requires our approval. We need to preserve this permission right by not adding another layer of legislation. It's undermining.

Arron: When a project comes through, the Minister has to assess against the ineligibility criteria. If a project is proposed in a CMT area without permission of the holder it can't go ahead. So there could be merit on advising the ministers to carry out something similar with your arrangements.

9(2)(a) We don't want 'there could be merit'. There is merit. Suggest that this is something MfE considers and come back to Ngā Hapū on. The veto right exists in the



deed of agreement. If the FTC undermines Ngā Rohe Moana o Ngā Hapū o Ngāti Porou - then there is no agreement.

Kate: We're already deemed as affected parties outside of CMTs. Balancing part 2 of the RMA and regional development plans has purpose.

Daran: Would you ever envisage a situation where you might want the fast tracking provisions irrespective of the agreement? What you're saying is that everything would then go through the normal GDC process?

Agnea: The key thing for me is the respect of the legislation. The moment you put anything against that – you have not upheld the mana. The principle of that recognition of our right is far more important.

Kate: The deed has been developed based around our rights and the existing legislation. With each new legislation we have to go through the whole process around what the intent of our agreement looks like in the new legislation.

Daran: Arron - this might be a conversation to have with Kate Mitchell.

Kate: And ineligibility criteria, we hear a lot about that - who is setting that?

Agnes: What's the obligation of MfE to get your head around the NHNP legislation? It's the promises made from the Crown to us. When you're rewriting legislation that impacts on us – it's paramount you have an understanding of what's in our legislation. Otherwise we find we are at the back end all the time.

Daran : This is not new, Arron - need to have an offline conversation with someone like Kate Mitchell who has her head around these circumstances. We might have to come back very particularly.

Arron: Multiple teams at MfE are working on this. We are looking at what alterations need to happen.



Daran: I'll follow through on this.

Kate: This is a bespoke arrangement. We need confidence.

Daran: Point well made. Any other issues?

9(2)(a) We would want to see the transparency around the panel makeups. We would have issue if it's like the RPC panels. It is essential that there is iwi representation within the GDC. This is more important than the technical stuff so that mechanisms like NHNP are provided for in that panel. And water storage like Willie said.

We are supportive of efforts to rebuild our roads. Not supportive of unmonitored global consents for companies and business that determine what is done. We won't be giving approval for resource consents that apply for extraction of our resources for companies that do not live in our area.

Supportive - but not to the detriment of our resources.

9(2)(g)(i)

Kate: This should be covered in RMA part 2.

Daran: Arron can you respond to any of those issues?

Arron: Not really.

Kiriana: Last week Alice said that water taking and irrigation would not be included.

Out of scope

Arron: Ministers have not ruled water takes out. But have not specifically included.



Siaosi: We represent Te Whanau a Kai who are not yet settled and do not have access to development funding. They are not in that position and we are concerned that though this process Te Whanau a Kai will be lost.

Daran - you mentioned there are two ways of getting a project through. Projects can be declined because of a settlement. Te Whanau a Kai does not have a treaty settlement and so won't be able to be recognised by a Minister. Can we still be part of this process? They won't have ability to be a part of the list.

Arron: We will have to come back to you on this.

Kate: It comes down to the weighting of the treaty clauses.

Daran: Te Whanau is not unique, there are other groups in the same situation. How do we give equivalency across PSGEs and unsettled groups?

Overlapping interests are another problem – what happens when the panel needs to consider an application which falls in the rohe of several iwi? And how is this represented on the panel?

These are live issues at the moment.

Siaosi: Settled groups have access to funding. How will we engage when we don't have funding?

Daran: Not for lack of consideration - there is no pathway for funding at the moment. Things have happened too quickly.

At this stage the issue of engagement in the bill and panel processes has not yet been considered.

Funding issues are not included in legislation. Mfe is aware of this but has no answer yet.

Siaosi: These are the same answers we received at our initial hui.

Daran: Yes.



Siaosi: I hope that you are not thinking this hui is a consultation?

Daran: No. Best I can do to describe these hui is that they are information provisions, and an opportunity for you to provide feedback. MfE is not describing this as consultation.

Siaosi: There are infrastructure needs in the district, some of which are in Te Whanau a Kai's rohe. Will Te Whanau a Kai be consulted on the relevant projects?

Daran: Arron - who does the Minister need to get advice from when they are considering an application?

Arron: We're still working on this but when the Minister is considering an application, they need to consult relevant groups at the referral stage. And the panel will also need to consult groups before making a decision.

Kiriana: We're talking about fast track consenting by currently there is a global consent for the Poverty Bay flats to take 200+ million cubes of water each year. If they can't input in this process, I'm pretty sure they can't input into local processes.

Should a consent like this be on the list?

Daran: The same questions have arisen in different settings. Apologies we can't give more of a response.

Siaosi: I'm concerned that Te Whanau a Kai are not close to settlement and don't have access to funding. They aren't able to interact with these processes. If we continue this way then they will be left in the dark.

Daran: I will follow up with Arron and the team regarding these issues for unsettled iwi. They need the same certainty.

Agnes: I presume that all the unsettled iwi around the country are all filed and in negotiations with the Crown?



Daran: We know who they are. Not all are in discussions.

Agnes: From the point of fairness - why can't there also be a list of iwi that are in negotiations so that they can get to the table, the same as settled iwi.

Daran: In most regions the Crown is down to about two iwi still in negotiations.

Agnes: But in terms of protecting their rights. They will easily get forgotten about if there isn't recognition.

Daran: I will start a conversation with MfE lawyers.

Kate: Just confirming scope of fast track consents - is this only for RMA consents?

Daran: No, there are other types available.

Arron: Other approvals required under legislation will include the Wildlife act, Conservation act, Reserves act, Heritage act.

Kate: And we haven't even looked at the scope of what these acts might look at.

9(2)(a) There are mechanisms for Ngā Hapū and Ngāti Porou under our settlements – I haven't even seen the list but the answer is no.

Agnes: We have legal interests in the Conservation, Heritage and Wildlife acts. So what does that even look like for us?

Kate: RMA space is the known space and we don't even know everything about that.

Arron: Final decisions have not been made.



9(2)(a) It sounds like they're trying to bundle up all the Māori relevant acts in one kete. All of these acts impact settled iwi. Within the boundaries of the GDC - their plan does not account for our interests. We've got some bigger issues.

Kate: That's touching on other aspects of our relationship instrument that we have not scratched the surface of. We need to have a conversation with DOC.

Kiriana: is MACA included?

Arron: No, but still in discussions. Minister Jones is interested in pushing out to 200 nautical miles.

Agnes: With our relationship instrument for fish – we have ability to create a strategy out to the EEZ around resource management. Anything that impacts our CMT goes out to 200 miles.

9(2)(a) Is there any indication from Ministers on how/if the Overseas Investment act will be impacted?

Arron: Changes to this are being considered.

9(2)(a) Overseas Investments act dictates how foreign investment occurs. Particularly forestry. For us, we would be interested if forestry comes into a conversation outside of those listed acts.

It informs monoculture planting in the country.

In terms of FTC - how does everything talk to each other?

9(2)(g)(i)

I feel like the Overseas Investments act is often overlooked.

Siaosi: Again in terms of these acts, Te Whanau a Kai is not settled.

Kate: Next steps?



- Want to request a briefing paper regarding NHNP arrangements already in place and our recommendations
- Would also like a waiver to see a copy of the bill even if it comes at the last minute, before it is introduced

Daran: A lot of what is in the bill will be similar to existing legislation. Will follow up on two actions above and see if waiver is possible.

Kiriana: Shouldn't iwi chairs have already requested this?

Daran: We have received a number of requests.

9(2)(a) We'd be interested in a summary of the korero with questions and answers. If any other things might be considered between now and then - we want the right to respond.

Daran: You will get notes from this hui.
There are conversations happening across motu.

9(2)(a) For us in Tairāwhiti we come within a constricted timeline anyway.

Daran: Will attempt these conversations and come back to you. Will let you know if it is too difficult.

9(2)(a) in terms of infrastructure rebuild and acknowledging Te Whanau a Kai - we are very interested in the makeup of panel and criteria of the list. We have the right to review (at the very least) this list.

Challenge for infrastructure rebuild is that people were in a hurry. But they still need to meet the requirements of fast tracking.

Kate: But essentially once you get on the list you're guaranteed to get consented?



Daran: If you're going to be put on the list it's largely likely it will go through. High bar to get on the list.

9(2)(a) Does the Minister have final say?

Daran: Yes. Being on the list doesn't mean guaranteed but it is more likely to get a consent.

Kate: Does this include consent terms?

Daran: Yes.

Arron - term of consents, is this a panel decision?

Arron: Yes.

Agnes: Will we get a copy of what is on our list in our region before it goes?

Daran: No, you won't see it until you get the bill.

Agnes: I'm very interested in seeing those two things under Takutai Moana.

Kate: We have a direct relationship with the Crown. They don't want to see us opposing projects through a submission process.

Kiriana: Is there any funding for commissioner training?

Daran: Will have to be a consideration.

Kate: Treaty settlements have been acknowledged, but what about JMAs and MWaRs?

Daran: Yes, these will be included .



| | | |
|---------|----|---|
| | | <p>9(2)(a) We don't necessarily oppose development. We just want to uphold our mana of iwi - unsettled and settled.</p> <p>Daran: Everything is happening at pace so it's tricky. We are trying to fulfill ministers' commitments .</p> <p>Siaosi: Composition of expert panel: have you considered Waitangi tribunal findings around the NBEA?</p> <p>Daran: There will be people internally at MfE looking at that.</p> <p>Siaosi: It was found there should be 50/50 representation of iwi to the Crown. But it doesn't seem to be in this panel.</p> <p>Hui closes 12.16pm.</p> |
| | D3 | Karakia |
| Actions | A1 | MfE to commission a briefing paper regarding NHNP arrangements in Nga Hapu Agreement and how they are preserved in the face of the FTC provisions. |
| | A2 | Daran to investigate a waiver for the iwi to see a copy of the bill even if it comes at the last minute, before it is introduced |