--

Ministry for the Environment
Manatū Mō Te Taiao

PROACTIVE RELEASE COVERSHEET

Minister	Bishop	**Portfolio**	RMA Reform
Subject Matter	Fast Track Approvals Bill	**Date to be published**	24 May 2024

List of documents that have been proactively released

Date	*Title*	*Author*
15 Jan 2024	Briefing note: Resource Management Act Reform – CAB-397 fast-track consenting	Ministry of Transport
27 Feb 2024	Fast Track Consenting Ministers Meeting Talking Points – 5.30pm, Tuesday 27 February 2024	Ministry of Transport
8 Feb 2024	Fast-Track Consenting Bill – Talking points for Joint Ministers meeting 8 February	Ministry of Transport
15 February 2024	Discussion points: Joint Ministers Meeting – Fast Track Consenting, 15 February 2024 at 3.30pm.	Ministry of Transport

Information redacted **YES**

Any information redacted in this document is redacted in accordance with the Ministry for the Environment's policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Summary of reasons for redaction

Some information has been withheld for the reasons of a) maintaining legal privilege, b) to protect the privacy of natural persons and c) maintain the constitutional convention protecting the confidentiality of advice rendered by Ministers and officials

Resource Management Act Reform – CAB-397 fast-track consenting

Purpose

This note provides advice on the briefing and Cabinet paper on the Fast-track Consenting (FTC) Bill that you have received from the Minister for Resource Management Reform. You are a Minister proposed to be delegated to make policy decisions for that Bill.

Summary

- This Cabinet paper seeks:
    - Agreement on policy decisions to inform key design aspects of the Fast-Track Consenting (FTC) Bill
    - To delegate further policy decisions on the Bill to ministers, including to you as the Minister of Transport (as well as Minister of Energy and Local Government).
- The timeframes for further policy decisions are condensed, with Minister Bishop seeking to introduce the FTC Bill by 7 March 2024.
- The transport system will be a key user of a fast-track consenting regime. Improving certainty and clarity of consenting decision-making is a key outcome for transport infrastructure providers. Doing so will help to reduce compliance costs and help improve construction and delivery timeframes.
- The Ministry of Transport (MoT) has worked with the Ministry for the Environment (MfE) and a cross-agency working group in the preparation of this paper. MoT has also coordinated New Zealand Transport Agency (NZTA) and KiwiRail input into this paper.
- The FTC Bill will go through select committee and there is likely to be strong public and iwi interest, including in how it applies to the transport portfolio. Interested parties could include:
    - Infrastructure providers and operators, such as airport, port, or other freight companies.
    - Large scale private sector commercial, industrial, or residential developers.
    - Some iwi, who have significant transport infrastructure investments (like the Ruakura Superhub) and may be users of the pathway.
    - Others (particularly iwi and advocacy groups opposed to port, airport, or road building and expansion) may view the regime more negatively.
- MoT will continue to work with transport sector agencies and MfE to ensure that the fast-track consenting pathway functions well for transport infrastructure. We will continue to provide you with advice to support your delegated decision function as the FTC Bill development progresses.

From

The MoT RM Reform team

15 January 2024

Appendix 1: CAB-397 – commentary on the draft Cabinet paper and possible talking points

CAB-397 A permanent fast-track consenting regime for regional and national projects of significance
• This paper sets out the process for developing a permanent fast-track consenting regime as a stand-alone Bill (i.e., not as part of the RMA and with its own Purpose). Initially this pathway would be open to consents issued under the RMA but with scope to expand to other consenting legislation, such as the Wildlife Act 1953, the Reserves Act 1977 and the Heritage New Zealand Pouhere Taonga Act 2014. Inclusion of the Public Works Act 1981 is likely to require careful consideration however would further increase the usability of the process. • It is proposed that a set of criteria be developed for eligibility for the pathway, after which a designated Minister determines if the project should be referred to an expert consenting panel (ECP). The intention is that the ECP then determines conditions of the consent, with very limited options to recommend the Minister decline the consent. • NZTA and KiwiRail are broadly supportive of the intent of the fast-track consenting regime as it would help them deliver major infrastructure projects more quickly and potentially at a lower cost. Transport organisations have taken several projects through previous fast-track consenting processes, and have provided technical feedback on what worked well, and what would need to be improved in a new regime. • Criteria for referral are still being determined but will include a test of regional or national significance. The FTC Bill will also list individual projects to be automatically provided to the delegated Minister for referral consideration. We will work closely with MfE to ensure that transport infrastructure projects are eligible to use the pathway and any referral criteria are appropriate.
Key messages and potential talking points • MoT's view is that for the FTC Bill to be effective it must provide applicants with as much certainty as possible, including in the criteria to use the pathway, evidence and documentation expectations, timeframes and decision-points, and outcomes. We will continue to seek this is carefully considered, to ensure the FTC Bill will meaningfully support transport infrastructure provision. Implementation support for the Environmental Protection Authority (EPA) and MfE, is crucial for the FTC Bill's success. We continue to work with MfE to support these matters and will provide you with further advice as appropriate. • MoT will work with NZTA and KiwiRail to provide a list of projects which may be appropriate for listing in the FTC Bill as suitable for Ministerial referral. Decisions about which projects to list is scheduled for early March. • The paper refers to drawing on expertise in the development of the Bill, including environmental development and commercial interests. We will work to ensure transport perspectives inform the drafting of the FTC Bill. • There is a need to provide certainty for infrastructure providers and ensure that the criteria to use the pathway is explicitly open to significant transport projects.

Fast Track Consenting Ministers Meeting Talking Points – 5:30pm, Tuesday 27 February 2024

Land transport-related comments

s 9(2)(b)(ii)

- Including projects on Schedules A and B will not bind the Government to committing funding for delivery (i.e. detailed design and construction). However, it could build expectations from delivery agencies and the community that funding could be expected for this.
- Funding constraints in the transport portfolio could see some of the projects reprioritised later.
- If there is any need to prioritise transport projects for the bill, we suggest progressing those with the clearest funding pathways for delivery in Schedule A.

s 9(2)(b)(ii)

9(2)(f)(iv)

s 9(2)(b)(ii)


s 9(2)(b)(ii)


s 9(2)(b)(ii)


s 9(2)(b)(ii)

Fast-Track Consenting Bill – Talking points for Joint Ministers meeting 8 February

- one-stop shop approval process – support

  Great concept to align multiple approval processes into one framework. A combined process can remove duplication in both application detail as well as condition requirements for compliance.

- include some Acts now, add others later – support

  Acknowledge that some Acts are more complex than others, the Public Works Act for instance, and therefore taking time to include these later and in a more managed way will reduce any unintended consequences when compared to rushing it now.

- future-proofing decision-making process – seek more integrated approach now

  Some recommendations in the briefing relate to the decision-making processes to be adopted in the fast-track bill. The phrasing of the recommendations means the decision-making process proposed relates only to RMA decisions. If there are others Acts to be included in the Bill, the decision-making process should be consistent across all Acts, rather than duplicative and/or separate. An efficient use of resource would be to create a more integrated decision-making process that is applied across all potential Acts rather than an RMA focused process that would need to be changed once other Acts are added to the fast-track process.

  In addition, the scope of decisions within the realm of the expert panel needs to be carefully considered. If the panel is the decision-maker of first instance, then any changes to that decision should also fall to that same decision-maker rather than being transferred back to primary decision-makers under the relevant Acts (e.g. the Council or Department of Conservation for instance).

- timeframes – encourage officials to keep an eye on overall timeframes

  To date much of the detail provides timeframes on separate steps in the process. The overall intention of a 12-month process for these decisions, including whether this timeframe accommodates the referral process as well as the expert panel decision-making process, needs to remain front of mind otherwise this overall intent will not be achieved (namely, officials need to remember the whole when focusing on the steps along the way).

- criteria / definitions – manage expectations

  There is a risk if too much is identified in a criteria / eligibility process that the focus becomes too narrow, and there are projects that would inherently be worthy for referral but are unable to apply. Focus on what should get in, rather than what should be kept out.

One instance is narrowing the types of infrastructure able to use the process – while this isn't proposed now to a degree that impacts on transport (noting off-shore wind is proposed to be excluded), such an approach might limit ports or airports from using the process.

Another area is the restrictions in relation to Māori land, including land currently held under general title however historically returned via treaty settlement. The intention is supported – however the expectations of the ability to determine such aspects, the level of detail that a Minister might want to see for referral, and whether this is an exclusion that could undermine the practical ability to use the system, need managing. There is a tension to be balanced between managing risk and providing a process, however this needs to be managed to ensure we don't create a process so risk averse that it is unusable.

Joint Ministers Meeting – Fast Track Consenting, 15 February 2024 at 3.30pm.

General - MOT and NZTA provide the discussion points below for discussion for the Joint Ministers Meeting. Attached is the Recommendations Table with MOT and NZTA commentary included to assist decision-making.

Timeframes – these should be consistent across all approvals sought within the fast-track process. The decision detail for timeframes sits within the expert panel process recommendations, rather than the recommendations currently being considered by Ministers in this briefing. MOT and NZTA support ensuring any timeframes applied in the process should be consistent across all approvals and note this may require a specific recommendation from Ministers to ensure this is not overlooked..

Public Works Act – while MOT and NZTA acknowledge it is not specifically part of this briefing (subject to a briefing due to Ministers on 23rd February) – including it in the FTC Bill is an integral part of achieving the intention of the fast-track process as officials understand it.

Conditions – Ministers have raised whether the process to set conditions under the fast-track legislation should be refined to stop costly conditions being set. NZTA and MOT agree the following on this.

- As the FTC process is not just for transport/infrastructure identifying a schedule of set conditions may not be practical or appropriate.
- However, officials have proposed some ways to approach conditions including the following:
    - Requiring applicants to supply conditions with the application (make it mandatory as opposed to the best practice it is now)
    - Require conditions to be agreed /reviewed by the applicant before being imposed / finalised
    - Have set ratios for mitigation works
    - Management plans should be provided to Councils / relevant enforcement agency rather than approved by Councils / relevant enforcement agency.
    - Having standard information requirements for management plans so it is not relitigated in each application.
    - Having a standardised approach to conditions so that there is consistency and an understanding of expectations (duration, extent etc) regarding matters such as monitoring, pest control, offsetting etc.

If standard conditions are included, then the Expert Panel must have discretion to amend these if warranted by the circumstances of the application.

Appendix 1: Table A

Proposal	Options and Recommendations	Decisions	Advice and Analysis
Decision-making **MOT – support Option 1 and Recommendations 2 and 3.** **Note: Recommendation 2 – grounds for Expert Panel to decline applications should be limited.**	**Option 1 – Panel makes substantive decision, if Panel cannot approve, joint Ministers may invite applicant to re-scope project and re-apply** 1. **Note** that a Panel's assessment would give primacy to the purpose of the fast-track legislation, therefore creating a high threshold for decline for projects that would deliver significant regional and national benefits 2. **Agree** that a Panel's decision is the substantive decision for the purpose of proceeding with the project or lodging an appeal 3. **Agree** that joint Ministers may decide if they wish to discuss	**Noted** **Yes | No** **Yes | No** **Noted** **Noted** **Yes | No** **Yes | No** **Noted**	Following your direction and advice on this matter, officials considered two options for how substantive decisions are made on applications. **Option 1** avoids the legal risks associated with joint Ministers making the substantive decision and provides greater certainty for applicants and a more efficient decision-making process. Under this option: • The substantive decision remains with the Panel which would make its decision and give notice to the applicant, joint Ministers, and other relevant parties. This notice would include the decision, reasons, and information about the applicant's appeal rights (refer BRF-4115 delegated decisions table B). The applicant has the right of appeal on the expert panel's decision on points of law only. • On receiving notice of the Panel's decision, joint Ministers may choose to discuss the application with the applicant, and invite the applicant to re-scope and resubmit for referral their project to address issues identified in the Panel's decision. The applicant can also modify the project and re-apply without an invitation. The invitation does not give any guarantee the consent will be granted but gives the applicant an indication of whether the Minister thinks it is worthwhile re-applying. • If the applicant re-applied, the application would progress quicker than the first time, as the information and issues associated with the project would already be well understood by the responsible agency advising on the referral decision, and the Panel considering the substantive decision. This approach provides greater certainty for applicants about the status of their projects, as they can rely on the Panel's decision for the purposes of proceeding with the project or lodging an appeal. Under Option 2, joint Ministers make the substantive decision based on a

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	the application with the applicant and/or invite the applicant to re-scope and resubmit their project to address the issues identified in the Panel's decision 4. **Note** that the legislation would not need to specify the step above, as it would be enabled in practice once joint Ministers receive notice of the Panel's decision 5. **Note** that the process would also enable applicants to modify their project and re-apply **Option 2 – joint Ministers make substantive decision based on report and recommendations from Expert Panel** 6. **Agree** that the Panel would provide a report and recommendations to		report and recommendations prepared by the Panel. This approach creates significant legal risk for joint Ministers as their decisions are likely to be challenged. If you choose Option 2, we will provide further advice on specific considerations for ministerial decision-making, including how joint Ministers take the Panel's report and recommendations into account. 9(2)(h) [redacted] Development implications Under recommendation 1 above, the purpose of the FTC bill has a higher weighting, which directs a development focus in the decision-making under either Option 1or Option 2. Option 2 is likely to provide less certainty and a less efficient process for applicants, given the additional step in the process (EP preparing a report and recommendations, then joint Ministers making a substantive decision). **System efficiency** Option 1 provides greater certainty and avoids the risks associated with joint Ministers making the substantive decision. It also reduces the administrative step (time and cost) of agencies re-advising ministers on projects, as would be required if the Minister was making the statutory decision whether to accept or refuse the Panel's recommendations. **Treaty Impact Assessment** The decisions sought below regarding Treaty settlements / arrangements and Māori rights and interests will determine the extent to which those matters are provided for in substantive decision making. Some existing Treaty settlements / other arrangements include procedural matters relating to the appointment of a decision-making body for hearings and decisions on resource consent applications. These include, for example, requirements for iwi or hapū to participate in the appointment of hearing commissioners; or to be on panels hearing resource consent applications. 9(2)(f)(iv) [redacted]

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	joint Ministers, who would make the substantive decision on an application 7. **Agree** that joint Ministers' decision is the substantive decision for the purpose of proceeding with the project or lodging an appeal 8. **Note** that, if you choose this option, we will provide further advice on specific considerations for ministerial decision-making, including how joint Ministers take the Panel's report and recommendations into account in their final decision		[redacted]
Purpose **MOT – support Option 1 and Recommendation 9**	**Option 1 – purpose focused on facilitating project delivery** 9. **Agree** the purpose of the legislation should be focused on providing a fast-track	**Yes | No**	**General Advice** The purpose noted by Cabinet was: enabling infrastructure and other projects that have significant local, regional and national benefits, while continuing to promote the sustainable management of natural and physical resources for current and future generations.

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	decision-making process to facilitate the delivery of infrastructure and development projects with significant regional and national benefits **Option 2 – purpose focused on project delivery as a primary consideration, while still providing for sustainable management as a secondary consideration** 10. **Agree** the purpose of the legislation should be focused on providing a fast-track decision-making process to facilitate the delivery of infrastructure and development projects with significant regional and national benefits, and, to a lesser extent, taking into account the sustainable management of	**Yes | No**	You have directed that the term "local" be removed. You have also asked officials to consider an alternative to the purpose noted by Cabinet that places greater weighting on enabling projects with significant regional and national benefits to proceed, and that this weighting should be stronger than the weighting for sustainable management or other environmental protections. Officials have identified two options for achieving this in the purpose statement. **Option 1** would focus only on facilitating project delivery with consideration of sustainable management/environmental protection matters at the expert panel stage. **Option 2** would retain provision for sustainable management in line with the purpose noted by Cabinet, while creating a stronger weighting toward enabling development. **Development implications** Both purpose options outlined above would achieve a greater focus on development than the purpose noted by Cabinet. Option 1 provides a clearer and more direct development focus than Option 2. **System efficiency** Option 1 would best support system efficiency, as it would reduce complexity for decision-makers by: • not requiring consideration of sustainable management at the referral stage (environmental and other factors would be considered as part of condition setting by the expert panel) • not applying sustainable management to other legislative approvals, where its application is untested. Treaty Impact Assessment Enabling infrastructure and other projects could support Māori development

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	natural and physical resources for current and future generations		interests, but it is critical that Treaty and Māori interests are protected at the same time. The inclusion of the promotion of "sustainable management of natural and physical resources for current and future generations" would provide some protection of Māori interests in relation to cultural and environmental matters, but other protections for Treaty settlements / Māori interests are also recommended below.
Expert Panel– Assessment **MOT – support Recommendation 12**	11. **Note** that the assessment of other legislative approvals to be included in the one-stop shop would be considered under their respective Acts (see advice below). The RMA would not be applied to those Acts. 12. **Agree** that when the expert panel considers an application, they must take into account the	**Noted** **Yes | No**	**General Advice** You have requested advice on having a higher weighting to the purpose of the FTC bill in the decision-making (as per feedback on BRF-4115 Table A). The recommended solution is – The purpose of the bill has primacy in decision-making. Normal considerations under existing legislation inform decision making but have lesser weight. Legislative direction is required on how an application (listed or referred) is prepared, assessed and decisions made in order to mitigate risks of legal challenge and provide certainty for applicants. The underlying RMA decision-making framework provides a practical mechanism for this, but in accordance with ministerial direction, needs to be read as subservient to the purpose of the fast-track legislation itself. This approach is similar to section 34 of Housing Accords and Special Housing Areas Act 2013 (HASHAA)[1], where there is a clear hierarchy providing direction to decision makers. The Expert Panel would take into account the purpose of this FTC bill as a

[1] This refers to HASHAA section 34 which states that an authorised agency, when considering an application for a resource consent under this Act and any submissions received on that application, must have regard to the following matters, giving weight to them (greater to lesser) in the order listed:
(a) the purpose of this Act:
(b) the matters in Part 2 of the Resource Management Act 1991:
(c) any relevant proposed plan:
(d) the other matters that would arise for consideration under—
(i) sections 104 to 104F of the Resource Management Act 1991, were the application being assessed under that Act:
(ii) any other relevant enactment (such as the Waitakere Ranges Heritage Area Act 2008):
(e) the key urban design qualities expressed in the Ministry for the Environment's New Zealand Urban Design Protocol (2005) and any subsequent editions of that document.

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	following matters, giving weight to them (greater to lesser) in the order listed: a. the purpose of the FTC bill b. considerations under relevant existing legislation, for example for resource consents, giving weight to them (greater to lesser) in the order listed: i. the matters in Part 2 of the RMA; and ii. any relevant national direction, operative and proposed plans/policy statements under the RMA; and iii. relevant		primary consideration, and then give lesser weight to other matters (for example for decisions on resource consent RMA Part 2, National Direction, Section 104 etc, have lesser weight). **Development implications** This approach supports certainty for applicants/developers wanting to use the system. It sets out clearly the role of the RMA framework for both the applicant's preparation of a consent application and framing decision making, within the context of the higher weighting to the purpose of the FTC bill which directs a development focus in the decision-making. In practise this means that **despite any inconsistency of the project in relation to RMA documents, the panel nevertheless could be satisfied a project should go ahead.** **System efficiency** Efficiency is served by clearly defined processes with uncertainty minimized. Applicants and decision makers need certainty about what is taken into account, and roles and functions across the regime. The FTC bill needs to clearly identify what is considered, and when a decision will be made on a project (ie, consent granted with conditions so the applicant can legally undertake their project, or consent declined), and who is making the decision. **Treaty Impact Assessment** Part 2 of the RMA requires the principles of the Treaty be taken into account and contains other provisions (eg, ss 6(e) and 7(a)) that assist the Crown in meeting its obligations to provide for and protect Māori rights and interests under the RMA. If the weighting of these provisions is reduced by making them subject to the purpose of the FTC bill, this could impact on the ability to provide for and protect Māori rights and interests under the FTC bill. The same applies to section 4 of the Conservation Act (Treaty principles) and the Treaty/Māori provisions in other one stop shop statutes. Equivalent provisions to those in Part 2 could be included in the FTC bill to mitigate this risk.

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	assessment clauses of the RMA (and legislation that directs RMA decision-making), where the application is being assessed under that Act.		Further advice on Treaty protections is provided below. **Treaty settlements and other arrangements** Similarly, how Treaty settlements and other arrangements are protected is affected by whether Part 2 of the RMA / section 4 of the Conservation Act continues to apply as they were agreed pursuant to those provisions. Further advice is provided below on appropriate mechanisms to uphold settlements and other arrangements subject to Ministers' decisions.
Ineligible activities and prohibited activities **MOT – support Option 1 and Recommendations 13 and 14**	You have requested further advice around prohibited activities' eligibility for fast-tracking. **Option 1** prohibited activities are not ineligible, but joint Ministers' may consider prohibited activity status as part of their referral decision. **Option 2** retains prohibited activities as ineligible (the FTCA approach).	**Yes | No**	**General advice:** There are a range of six activity classes under the RMA: permitted, controlled, restricted discretionary, discretionary, non-complying and prohibited. Prohibited activities are the most restrictive activity status and rarely used. They are specified in rules (within District and Regional plans and Environmental Standards) not in National Policy Statements. Under the RMA prohibited activities may not be carried out, and no resource consent can be sought or granted. If you wish to proceed with **Option 1**, we recommend including prohibited activities as a discretionary ground for joint Ministers to be able (but not required to) decline to refer a project. This would ensure joint Ministers are: • able to decline projects including activities that are prohibited for very good reasons (eg, building height restrictions needed to keep approaches into airports clear)

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	Option 1: **13. Agree** that a project is not ineligible for fast-tracking if it includes an activity that is a prohibited activity under the RMA **14. Agree** that joint Ministers when making their referral decision, may (but are not required to) decline to refer a project on the basis that it includes a prohibited activity under the RMA (in addition to the other discretionary grounds to decline as recommended below) OR **Option 2:** **15. Agree** that a project will not be eligible for fast-tracking if it includes an activity that is a prohibited activity under the RMA	**Yes | No** **Yes | No**	• not required to decline prohibited activities for matters such as aquaculture projects where an outdated District plan identifies this as a prohibited activity. **Development implications:** Prohibited activities often have significant environmental or human health effects (eg, discharge of raw wastewater to rivers, the burning of hazardous substances and associated discharge of contaminants to air). Many prohibited activities are also there to protect existing significant infrastructure (eg Auckland Airport's to protect the operation of the airport). To ensure sensible protections are retained, we do not recommend a blanket removal of prohibited activities. **System efficiency:** Allowing contents to be granted for all prohibited activities would be novel in the current consenting framework and may be subject to challenge. It would also create uncertainty for system users (eg, airports) about their operating context, and uncertainty for significant national infrastructure (eg, the Maui and Kapuni gas pipelines where prohibited activities are used to protect these). These risks can be somewhat mitigated by providing joint Ministers the discretion to decline to refer an application on the basis that it includes a prohibited activity. **Treaty Impact Assessment:** If prohibited activities under the RMA were able to proceed through the new FTC system, this would override RMA plans, potentially conflicting with some Treaty settlements (particularly those that provide for a specific function in plan making). Certain Treaty settlements provide mechanisms for Treaty settlement entities and perspectives to have a strong influence on policy statements and plan (eg on the Waikato River). This input could include advice that certain activities be prohibited. Therefore, allowing prohibited activities in the fast-track regime could undermine those settlements and limit the intent and effect of the settlement.

Proposal	Options and Recommendations	Decisions	Advice and Analysis
			This risk can be somewhat mitigated by: • the inclusion of protections for Treaty settlements • providing joint Ministers the discretion to decline to refer an application on the basis that it includes a prohibited activity.
Ministerial referral assessment and decision-making – grounds for Ministers to decline **MOT – support this Option and Recommendations 17, 18 and 19**	**Discretionary grounds for joint Ministers to decline to refer projects to an Expert Panel** This option: a. involves carrying over the intent of the FTCA approach, which would provide broad discretion for joint Ministers to be able to decline to refer a project (including where a project might meet the eligibility criteria, but is undesirable for another reason that wasn't foreseen by the legislation).		Discretionary grounds for joint Ministers to decline to refer projects to an Expert Panel These decisions build on decisions sought in BRF-4115 in relation to the decision to approve a referral application, and requirement to give notice of the referral decision. We recommend carrying over the intent of the FTCA approach to decision-making on referral applications. This approach would allow joint Ministers to make a referral decision, informed by advice from agencies and those who provided written comments, and assess the project on its merits. Joint Ministers would: • have broad discretion to decline, similar to the grounds under the FTCA and Natural and Built Environment Act 2023 (NBA). There would be no expectation that an application is approved because it is an eligible activity, and joint Ministers would be able to decline an application for any other relevant reason • be required to decline a referral application that is inconsistent with the purpose of the Act, includes an ineligible activity, or where directing the project to a panel would be inconsistent with a Treaty settlement, the NHNP Act, Takutai Moana Act, Mana Whakahono ā Rohe or Joint Management Agreement. We recommend some changes to the FTCA approach on the discretionary grounds for joint Ministers to decline to refer a project: • removing "the project is inconsistent with a relevant national policy statement" – we understand your intention is that the consideration of

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	b. includes some changes to the FTCA approach in relation to the discretionary grounds for joint Ministers to decline to refer projects: a. removing "the project is inconsistent with a relevant national policy statement" b. (if prohibited activities are not ineligible), adding "the activity is a prohibited activity	**Noted** **Yes** | No **Yes** | No	national direction, and weighting to be applied to it, is addressed at the Expert Panel stage (see recommendations x-z below) • (if prohibited activities are not ineligible), adding "the activity is a prohibited activity under the RMA" – see above. **Development implications** This approach supports certainty for developers wanting to use the system by providing clarity where a project will or may be declined. The ability to decline an application "for any other relevant reason" may detract from this – however, this ground has only been used as a reason for decline three times under the FTCA, and always in conjunction with another reason for decline (eg, that the project would be more appropriate for the standard RMA consenting process). We therefore do not consider this will be an issue in practice. **System efficiency** 9(2)(h) **Treaty Impact Assessment** It will be important that the Minister is required to decline and application for referral if that would be inconsistent with Treaty settlements / arrangements or the other matter. That will provide a clear signal to Treaty settlement / related entities that the

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	under the RMA" 16. **Note** Cabinet agreed that the responsible Minister may decline a referral application after seeking input from relevant parties, if satisfied that the project does not meet the eligibility criteria. 17. **Agree** that joint Ministers must decline a referral application if: a. it is not consistent with the purpose of the Act; b. directing the project to a panel would be inconsistent with a Treaty settlement, the NHNP Act, Takutai Moana Act, Mana Whakahono ā	**Yes | No**	protection of these matters is a key factor in the fast-track process.

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	Rohe or Joint Management Agreement; or c. it includes an ineligible activity. **18. Agree** the Minister may, but is not required to, decline a referral application (even for an eligible activity) if: d. another legislative mechanism is more appropriate for the application e. the activity may have significant adverse effects on the environment f. the applicant has poor compliance history under the relevant		

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	legislation g. the activity would occur on land returned under a Treaty settlement, and has not been agreed to in writing by the relevant landowner h. the activity would occur on land that the Minister for Treaty of Waitangi Negotiations considers is required for the settlement of any historical Treaty claim **19. Agree** the joint Ministers should be able to decline an application for any other relevant reason		

Proposal	Options and Recommendations	Decisions	Advice and Analysis
Listed projects **MOT and NZTA – Support category A.** **Note: value of Category B is limited and greater value could be achieved with the enduring ability to add to projects in Category A through the lifetime of the legislation (rather than going through the formal referral process)**	Delegated Ministers have directed that there will be two categories of listed projects: • **Category A** which are automatically referred to an expert panel, and • **Category B** which will include projects that do not meet all required information for an immediate referral decision, but whose significance is recognised in the Act for future referral and Expert Panel decisions and processes 2. **Agree** that the Act will include two categories of listed projects, being: a. **Category A** are projects which: i. meet all information requirements for a referral process and ii. meet the purpose of	**Yes | No**	Cabinet agreed that "in addition to the standard application process, the bill will contain a schedule of individual consented projects ("listed projects") to be automatically referred to an Expert Panel"; and that these projects would be subject to the same criteria as referred projects. That means that any applicant who wished to have a project listed would be required to provide all the information specified in the legislation and be ready to be consented and have conditions applied. Early indication from agencies suggest that there will be a limited number of projects of regional or national significance that meet these criteria that can be identified and assessed in time for introduction, but the legislation can be drafted to enable the proposed approach and the projects added through later parliamentary stages. Given the direction provided, the Act could make the distinction between: • projects of significance to New Zealand which are well progressed and will have a consent application and other required permits ready to lodge within the next 6 months (Category A) • projects of significance to New Zealand that will not have a consent application or other required permits ready to lodge in the immediate future. (Category B). Such a distinction enables Parliament to signal what projects of significance would benefit from the fast-track process, while setting appropriate approval processes in view of the level and quality of the information available at the time of enactment. Category A projects would be automatically referred to the Expert Panel after enactment. Category B projects would be subject to the Ministerial referral assessment as they become ready. Due to the limited information likely to be available for Category B projects, it will not be possible to adequately assess their eligibility in advance and they may not succeed in their application to be referred. However, their acknowledgement in Category B would indicate their

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	the Act, and all relevant ineligibility and eligibility criteria applying to the Ministerial referral process iii. will be automatically referred to an expert panel for decision, without having to apply for a ministerial referral iv. [Note] can only be declined by the expert panel on the following grounds: ▪ *As per ministerial direction above* b. **Category B** are projects which:		importance when Ministers and Expert Panels come to make decisions on them. **System efficiency** Parliament's signals on Categories and B will provide greater certainty to the system. **Treaty Impact Assessment** Treaty settlements / arrangements and Māori interests in respect of Category B will be provided in the same way they are provided for non-listed projects. Officials will provide further advice on how these matters can be provided for Category A projects.

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	i. are likely to meet the purpose of the Act, but for which there is not enough information to determine whether the project meets all relevant ineligibility and eligibility criteria. ii. will have to apply for ministerial referral to an expert panel using the process as set out in the Act. iii. however, the relevant Minister and expert panel must have in		

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	addition, particular regard to the significance of the benefits of the project in their decision-making. iv. can be declined by the expert panel on the same grounds as referred projects.		

Treaty

Proposal	Options and Recommendations	Decisions	Advice and Analysis
Upholding Treaty settlements / specified arrangements **MOT and NZTA – support Option C and Recommendation 22**	**Option A** **20. Agree** an overarching clause which states: a) All persons exercising functions and powers under the FTC Bill must act in a manner consistent with Treaty settlements and specified arrangements; and b) Treaty settlements and specified arrangements must be given the same or equivalent effect under the FTC Bill as they would have under the equivalent processes in the original legislation (eg, RMA, Conservation Act); and c) the same Treaty and related provisions under the original legislation (such as the Treaty/Māori protections in Part 2 of the RMA and s4 of the Conservation Act) apply to processes and relevant decisions under the FTC Bill. **Option B** **21. Agree** a general clause, similar to the COVID-19 Recovery (Fast-track Consenting) Act 2020 section 6(a), which would require those undertaking functions and powers under the FTC Bill to act in a manner consistent with the principles of the Treaty and Treaty settlements and specified arrangements. **Option C** **22. Agree** Option B, plus a clause stating, similar to section 17 of the COVID-19 Recovery (Fast-track Consenting) Act 2020, that Ministers' obligations under in-scope legislation are satisfied by	**Yes | No** **Yes | No** **Yes | No**	The coalition agreements confirm that the government will honour the undertakings made by the Crown t Treaty of Waitangi settlements. Cabinet has agreed to the FTC Bill including protections for Treaty of Waitangi settlements and other leg arrangements including under the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management agreements under the RMA (CA at 35) (**Treaty settlements and specified arrangements**). There are numerous commitments in Treaty settlements and specified arrangements that relate expressl consent processes and approval processes under the conservation legislation. The FTC Bill will need to protections for those commitments. Officials recommend Option A because it provides the clearest assurance to iwi that while the governmer a faster, one-stop shop approach to approving significant projects it will also recognise Treaty settlement arrangements and Māori rights and interests along the way. The legislation will provide for faster decisio timeframes and will include other legislative schemes additional to the RMA. But Treaty settlements/spec arrangements and Māori rights to participate in and influence consenting processes for these significant respected. Option A provides the most straightforward illustration of that commitment by stating explicitly that the sa rights and standards as currently apply through Treaty settlements and in-scope legislation will apply in t regime. This reflects that existing Treaty settlements were negotiated in the context of those provisions – expect that the *same* rights are recognised. This approach would also assure yet-to-settle iwi that the op a say on projects that may impact on land or other interests of theirs that might yet be the subject of redr future Treaty settlement, is also preserved. Officials consider that, while other options identified have some merit, they are less desirable because: Option B is a standalone Treaty principles and settlements clause within the fast-track legislation and wo confirmation of the intention to uphold those matters. However, by requiring actions "consistent with the p Treaty", that standard may fall short of what is widely acknowledged as a high standard in the Conservat

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	compliance with a list a specific provisions identifying what Ministers are required to do to satisfy that obligation. **Option D** **23. Agree** A clause stating that, in recognition of the Crown's obligations under the Treaty of Waitangi, the FTC Bill includes a list of specific provisions designed to protect Treaty settlements and specified arrangements, and Māori interests. **24. Note** that, irrespective of the decision made above, and to provide clarity and certainty for decision-makers on what is required through the process, it is recommended that specific protections sought in Table B are included in the FTC Bill)	**Yes | No** **Noted**	administer that regime in a manner that "gives effect to the principles of the Treaty of Waitangi". Standard less than those confirmed to Māori through Treaty settlements will risk legal challenge by Māori. Option C is a descriptive Treaty clause and has the merit of having Parliament state positively both that M obligations are satisfied, and how they are satisfied (with reference to other specific provisions in the bill) may change unilaterally the obligations of the Crown compared to those negotiated through Treaty Settle not preserve and re-state them in the way Option A does. Option D is also a descriptive Treaty clause that has the benefit of listing the various ways in which the C obligations are met in the legislation. However, this too amounts to Parliament changing and stating wha obligations are without re-negotiating them with iwi. If Ministers choose not to follow our recommendation and instead prefer Options B, C or D, officials reco paragraphs a) and b) of Option A are also included in the legislation to ensure Treaty settlements / speci arrangements are adequately protected.

One stop shop – Conservation approvals

Proposal	Options	Decisions	Advice and Analysis
Conservation authorisations to include in OSS **MOT – support**	**25. Agree to include the following Conservation Authorisations in the OSS** a. Wildlife Act, b. Conservation Act, c. Freshwater Fisheries Regulations, d. Reserves Act		
(I) Scope of land classifications covered **MOT and NZTA – support all Recommendations**	**26. Agree** that applications for fast-track permits under the Wildlife Act, **Conservation** Act, Freshwater Fisheries Regulations, and Reserves Act, must not relate to land listed under Schedule 4 of the Crown Minerals Act 1991 **27. Agree** that a **project** will be ineligible for the Fast-Track process if it requires permissions on Schedule 4 land *Additions/exclusions in terms of land covered for the purposes of the Fast-Track process* **28. Agree** to exclude the Coromandel Peninsula-specific elements of Schedule 4 **for** the purposes of the Fast-Track Bill. **29. Agree** to add to the areas excluded from the Fast-Track Bill as if they were listed in Schedule 4:	**Yes | No** **Yes | No** **Yes | No** **Yes | No**	**General Advice** You have a choice about which conservation land classifications are within scope of the fast-track regime. Public conservation land (PCL) is variable in terms of the magnitude of the conservation values and the purposes for which it is held, and who it is held/administered by. Schedule 4 of the Crown Minerals Act includes categories of PCL that warrant the highest levels of protection (eg, national parks, nature reserves). In these areas, there is an expectation of very minimal human intervention and/or they are considered to be special areas where activities should be related to the use and management of those areas (eg, national parks). Officials recommend that these areas are excluded from the fast-track regime. **Schedule 4 land covers approximately 1/3 of PCL leaving a further 2/3 subject to the fast-track regime.**

Proposal	Options	Decisions	Advice and Analysis
	e. ecological areas held under the Conservation Act 1987 f. national reserves held under the Reserves Act 1977 **30. Agree** that if permissions are requested in relation to World Heritage Areas for Fast-Track projects, the Minister of Conservation must be consulted. **31. Agree** that applications for fast-track permits under the Wildlife Act, Conservation Act, Freshwater Fisheries Regulations, and Reserves Act, must not relate to a reserve under the Reserves Act that is owned, managed or administered by an entity other than DOC or local authorities, unless the owner and administering body agree. **32. Agree** to retain the requirement that the decision maker shall not grant an application for a concession if the proposed activity could reasonably be undertaken in another location that is either off PCL or is in another conservation area where the potential adverse effects would be significantly less.	**Yes | No** **Yes | No** **Yes | No**	However, you may choose to allow the fast-track regime to apply to the Coromandel-specific aspects of Schedule 4; all PCL on the Coromandel Peninsula (and the internal waters) is included in Schedule 4 regardless of its status. This is because of strong public opposition to mining in that region. Officials recommend adding the following to the list of lands excluded for Fast-Track purposes: • Ecological areas that are of similar value to scientific reserves which are listed in Schedule 4. There are 44 ecological areas collectively covering approximately 130,000 hectares. • National reserves protect values of national or international importance. Their classification then cannot be changed except by Act of Parliament (similar to national parks). Currently, there are only 5 in NZ, 4 of which are overlays over historic or scenic reserves. World Heritage Areas will also need to be carefully considered in fast-track processes to meet international obligations and protect New Zealand's reputation. Reserves under the Reserves Act have varying ownership and management arrangements – they may be owned, managed, or vested in councils, iwi or community groups. There have been no discussions with other reserve managers in the development of this policy. Similar landowner risks and liabilities arise for this decision as for the decisions on concessions below. Therefore, officials recommend excluding non-Crown or local government owned and administered

9(2)(f)(iv)

Proposal	Options	Decisions	Advice and Analysis
			reserves unless prior agreement of the owner and administering body has been provided. For concessions, the requirement that the activity could not reasonably take place in a location off public conservation land should be retained. This requirement is an important backstop to avoid unnecessary effects on conservation land and adverse incentives (eg, where it may be cheaper to lease PCL instead of purchasing land). In practice, this test has rarely limited developments. Examples of projects that have proceeded after meeting this test include the Huntly Bypass, Griffin Creek hydroelectric scheme, numerous powerlines and telecommunications towers, and mines. **Development implications** Preventing projects from accessing the fast-track pathway, or preventing certain approvals from being sought through it, reduces the potential for this legislation to enable development. However, other pathways exist for projects to be consented/acquire approvals which may be more appropriate for those projects than the fast-track regime. That will also free up space in the fast-track system for more easily resolved development projects. **System efficiency** 9(2)(h) [redacted]

Proposal	Options	Decisions	Advice and Analysis
			Treaty Impact Assessment The proposal that projects would be ineligible on land returned under a Treaty settlement or identified Māori land – unless permitted by the owners – provides an important protection, whilst also enabling Māori landowners to support or undertake development (eg, papakāinga).
(II) Other general matters for conservation-related approvals **MOT and NZTA – Support Option 1.** **Note: Alter Recommendation 33a to 'may be determined' rather than 'will be determined'** **Note: This should apply to all approvals within the fast-track process not just conservation related approvals**	**33. Agree** that authorisations under the Fast-Track Bill relating to Conservation authorisations must be able to be declined if any conservation-related Fast-Track mandatory requirements agreed to below are not able to be met. **EITHER**: **Option 1 – Subsequent approvals under Fast-Track** a. **Agree** that where subsequent variations and conservation-related authorisations are required in relation to approved Fast-Track projects, these **will** be determined through the Fast-Track process. **OR** **Option 2 – Subsequent approvals through standard decisionmakers under Fast-Track provisions** b. **Agree** that where subsequent variations and conservation-related authorisations are required in relation to approved Fast-Track projects, these will be determined through normal decision-makers but subject to the provisions of the Fast-Track Bill.	**Yes | No** **Yes | No** **Yes | No**	**General Advice** The amount of information required to assess conservation and Treaty-related considerations for conservation legislation would be onerous for Ministers to work through at the referral decision, so it is important for a panel to be able to decline a consent if it does not meet the mandatory requirements set out for conservation legislation. Variations to conservation authorisations are common following initial decisions as projects evolve. Variations and subsequent approvals should be assessed through the same provisions as they were originally granted (i.e. the fast-track process). The decision-maker could either be the Panel or the standard decision-makers under conservation legislation. In order to maintain the integrity of the PCL network, it is important to ensure that any offsetting or compensation related to adverse impacts on PCL are applied on other areas of PCL rather than non-conservation land. Under previous fast-track regimes, expert panels have required only RMA expertise. Where the panel needs to consider approvals under conservation legislation a different type of expertise may be required (eg, land management,

Proposal	Options	Decisions	Advice and Analysis
	34. Agree that if offsetting or compensation is provided for in relation to projects with adverse effects on PCL, the offsetting or compensation will be for use on PCL.	**Yes | No**	species knowledge) to ensure that conditions are appropriately applied and reduce legal risk stemming from a lack of familiarity with conservation legislation. **Development implications** Ensuring variations and subsequent approvals are assessed consistently with the original decision provides greater certainty for developers. **System efficiency** Option 2 for subsequent approvals is less likely to take up Panel time that may otherwise be assigned to other projects. **Treaty Impact Assessment** Ensuring appropriate expertise on Panels will support ensuring that conservation related Treaty obligations are not undermined. The ability for the Panel to decline authorisations also supports upholding Treaty settlements.
	35. Note that conditions will often be required to be applied to approvals for the purposes of follow up operational agreements (eg, translocation arrangements) and monitoring/enforcement.	**Noted**	
	36. Agree to add conservation expertise to the Panels where appropriate.	**Yes | No**	
(III) Treaty matters **MOT – support Recommendation 45**	**37. Note** that delegated Ministers have confirmed that the Fast-Track Bill will uphold Treaty settlements.	**Noted**	**General advice** All Treaty settlements include significant conservation redress, and the Treaty has been described as a core feature of the relationship between the Crown generally, DOC and Māori in relation to conservation.
	38. Note that conservation redress within Treaty settlements is a complex landscape to navigate: spanning freehold land transfer, land vesting, creation of legal personalities with specific	**Noted**	There is a wide range of conservation redress. The range and number of redress commitments reflect Cabinet guidance that redress is commensurate with the strength of association

Proposal	Options	Decisions	Advice and Analysis
	statutory connections to wider conservation laws, and involvement in governance and DOC/MOC decision-making including on permissions or plans.		of an iwi with a place or landscape. The types of activity that would be progressed through an Fast-Track process would be of interest to iwi and hapū. The more straightforward types of redress (deeds of recognition, statutory acknowledgements and overlay classifications) are intended to provide for iwi involvement and recognition of their cultural and historic interests in the process leading up to DOC decision-making.
	39. Note that DOC currently notifies iwi of permission applications in their area and consults relevant iwi and hapū on permissions decisions and takes their views and interests into account – and that in some cases this is built into settlements or relationship agreements.	**Noted**	9(2)(h) [redacted]
	40. Note that what upholding Treaty settlements means in this context is not straightforward and is likely to be subject to dispute and litigation, and this is further complicated by reference to section 4 of the Conservation Act in some settlements (Acts, Deeds, or further instruments).	**Noted**	Some redress involves iwi in activities directly (for example preparing strategies and plans) or in some form of decision-making role (joint management, involvement in Conservation Management Strategies (CMS) and Conservation Management Plans (CMP), approval of management plans). These types of redress are intended to provide iwi with a hands-on involvement in mechanisms for managing and protecting whole landscapes. They could be frustrated by a process that was not required to consider their ambitions or expectations for those landscapes or didn't allow them to influence decision-making.
	41. Note that your decisions to date, including detailed decisions approved by Minister Bishop, would apply to conservation related settlement redress by, eg,: c. ruling out projects that occur on land returned under a Treaty settlement, or identified Māori land, that has not been agreed to by the landowner(s). d. including in identified Māori land legal personality areas (such as Te Urewera), and land under a Treaty settlement managed under the Conservation Act or Reserves Act. e. requiring a report on Treaty settlement and other obligations before accepting an	**Noted**	There are forms of redress that involve the transfer of land (in fee-simple or with encumbrances) to iwi, or to vest in the entity itself (Te Urewera, Whanganui River, Taranaki Maunga). This includes land administered under the Reserves Act. DOC recommends these legal entities should be excluded as equivalent to Schedule 4 Crown Minerals Act land.

Proposal	Options	Decisions	Advice and Analysis
	application for referral and that an application may be declined on that basis. f. requiring that the Panel must comply with the procedural arrangements in relevant Treaty documents unless agreement from the relevant entity is obtained, but that the entity must not unreasonably withhold their agreement. g. enabling consideration of iwi interests in Panel appointments. **42. Note** that DOC is the responsible agency that will provide the report on Treaty settlement and other obligations in respect of conservation-related approvals. **43. Note** that it is highly likely that some current process-related agreements with iwi that are not stipulated in settlements will be aggrieved by standard timeframes imposed in the Fast-Track projects, but most such agreements are noted to be subject to change and none remove the ability to change laws or undertake functions or powers. **44. Note** that around 60-70% of settlements include provision for decision-making frameworks as part of conservation redress and this includes procedural requirements and, in limited cases, content /substantive matters – which should be protected. **45. Agree** that the Panel: h. must consider CMS/CMPs in making decisions on conservation-related approvals	**Noted** **Noted** **Noted** **Yes | No**	There are relationship agreements which commit DOC to working with the iwi to explore both process and decision-making roles, and potentially subsequent transfer of sites. 57 (of 65) have specific section relating to concessions/statutory authorisations. 9(2)(h)). There is public conservation land that will or is very likely to be subject to a future settlement: for example, all of the public conservation land north of Auckland up to and including the Mangamuka Range, and land that makes up North Island east coast harbours. Areas that may already have been subject to settlement for one iwi may also be subject to additional settlements by other iwi. The framework for the Fast-Track regime agreed to date builds in protections for Treaty settlement arrangements. It is possible that these protections do not cover all of the several thousands of conservation-related settlement commitments that exist (noting there is some ambiguity in the scope of these protections), and so there is a residual risk that a settlement could be undermined by the fast-track regime. We have sought to identify key areas that require a potential carve out for ongoing protection. This framework will likely constrain the further decisions you will wish to make to streamline these approvals or create a more enabling regime – for example, to enable the Panel to override or disregard the current requirement to comply with statutory documents such as conservation management strategies and plans. **Treaty clause – s 4 of the Conservation Act** Public conservation land not subject to Treaty settlements is still subject to s 4 of the Conservation Act for conservation decision-making. Section 4 requires that the Act (and Acts listed in Schedule 1 of that Act) be 'interpreted and

Proposal	Options	Decisions	Advice and Analysis
	where these have been co-authored, authored, or jointly approved by iwi and seek the views of the relevant iwi before granting approvals. i. must not disapply the relevant CMS/CMP if this would undermine a Treaty settlement. **46. Note** that the Supreme Court has confirmed that section 4 is a powerful Treaty clause which can require a decision maker to take 'more than procedural steps' to give effect to Treaty principles. **EITHER** **Option 1: Section 4 of the Conservation Act continues to apply** j. **Agree** that the requirement in section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi *will continue to apply* for Fast-Track referrals and projects. **OR** **Option 2: Section 4 of the Conservation Act does not apply** k. **Agree** that the requirement in section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi *will not apply* for Fast-Track referrals and projects	**Noted** **Yes | No** **Yes | No**	administered as to give effect to the principles of the Treaty of Waitangi'. This section has been described as the strongest form of Treaty clause on the statute books. While there are different verbal formulations of Treaty clauses, some stronger than others ("give effect to", or weaker such as "consistent with" (COVID Fast-Track) or an even weaker injunction such as "have regard to"), the particular verbal formulation is not always necessarily of decisive importance for any given set of facts, and what ultimately matters is the legislative indication that the principles of the Treaty need to be addressed. In many cases, the practical effect of different Treaty clauses will be the same. 9(2)(h) [redacted]

Proposal	Options	Decisions	Advice and Analysis
	and the provisions of the Fast-Track Bill, if any, will apply instead.		
(IV) Wildlife Act approvals **MOT and NZTA – support option 2 and recommendations 49 l to r.** **Note: offset and compensation are not currently part of the Wildlife Act framework, and including these in the fast-track process is not supported. This is in a discussion point rather than a specific recommendation. Recommendation 49p does not align with advice commentary – Rec wording supported as is.** **Note: Timeframes for matters within the conservation suite should apply consistently with other Acts included**	**47. Note** that both section 4 and Treaty settlements may impact the timeframes for Wildlife Act permissions processes. **48. Note** that some Treaty settlements include requirements relating to Wildlife Act permissions that you intend to uphold, which will need to be identified and provided for. *Decision-making on protected wildlife permits/matters* **49.** EITHER **<u>Option 1 – Existing decisionmakers</u>** **a. Agree** that an applicant may apply under the Fast-Track for Wildlife Act authority to catch alive and kill wildlife, including to incidentally kill wildlife; **AND** **b. Agree** that for projects that meet the criteria for the Fast-Track regime, s 53 Wildlife Act authorities will be determined by the Director-General, and subject to any considerations and limits agreed below; **AND** **c. Agree** that for projects that meet the criteria for the Fast-Track regime, s 71 of the Wildlife Act is disapplied; **AND** **d. Agree** that in making any s 53 decision in accordance with the Wildlife Act, the Director-General may impose conditions in	**Noted** **Noted** **Yes | No** **Yes | No** **Yes | No** **Yes | No**	**General advice** The Wildlife Act involves permissions to hold, catch alive, handle or release, and in some cases to kill, absolutely protected wildlife. Applicants will often need lawful authority under s 53 of the Act to kill wildlife, where it will be incidentally killed as part of their operations. For certain activities, joint Ministerial consent is instead needed under s 71 (rather than s 53), where activities authorised by enactments listed in Sch 9 of the Wildlife Act (eg, the Government Roading Powers Act 1989, and others) affect wildlife. Sections 53 and 71 of the Wildlife Act are currently subject to legal challenge, and the Act itself is widely acknowledged to be nearly unworkable and needing replacement. Officials recommend that amendments to the Act outside those specifically for the fast-track regime (including any proposals to repeal s 71) are not progressed through this bill and instead are addressed in a wider review and replacement of the Wildlife Act. 9(2)(h) [redacted]

Proposal	Options	Decisions	Advice and Analysis
in the fast-track process.	accordance with s 53(5) of the Wildlife Act, and such conditions can include offsetting and compensation; **AND** **e. Agree** that when considering a s 53 application, the Director-General's decision is subject to the process requirements of the fast-track regime, including timeline requirements; **OR**	**Yes | No**	9(2)(h) The decision-maker for conservation approvals under the fast-track regime could remain the DG Conservation (subjective to timeframes and process improvements through the wider fast-track framework) or could become the Panel. The advantage of retaining the existing decision-maker is that conservation approvals are core business so there is access to relevant expertise and there is more likely to consistency in decision-making in contrast to Panels who are convened for a limited period. *Considerations and limits for Fast-Track projects* The Wildlife Act confers no specific priority to threatened species above other wildlife, but DOC takes threat status into account when managing and considering applications for authorisations. Applications for Wildlife Act authorities are rarely declined, but grounds to decline would include if the proposal posed a significant risk to a major population of a threatened species that could not be offset or mitigated, and so is not able to be protected. There is currently no specific ability to offset risks to wildlife under the Wildlife Act, and so this would need to be
	Option 2 – Panel as decisionmaker l. **Agree** that for projects that meet the criteria for the Fast-Track regime, the Panel will determine whether approval is granted for the purposes of providing lawful authority to undertake actions otherwise prohibited by the Wildlife Act; **AND** m. **Agree** that for any fast-track consent that authorises an action that is otherwise prohibited by the Wildlife Act (such as killing wildlife), DOC is empowered to enforce any relevant conditions of the consent as if the consent is an authorisation under the Wildlife Act; **AND** n. **Agree** that a consent granted under the fast-track regime is lawful authority to do anything in respect of wildlife that is otherwise prohibited under the Wildlife Act, where the consent specifically provides for this; **AND**	**Yes | No** **Yes | No** **Yes | No**	

Proposal	Options	Decisions	Advice and Analysis
	o. **Agree** that the Panel will take into account the purpose of the Wildlife Act (wildlife protection) in assessing wildlife effects, subject to any further considerations and limits decided below; **AND** p. **Agree** that the Panel have particular regard to a report by the Department of Conservation on the risks to wildlife; **AND** q. **Agree** that for any project that is within the fast-track regime, s 71 of the Wildlife Act is disapplied; **AND** r. **Agree** that any consent that authorises any activity in respect of wildlife can be enforced by the Department of Conservation. *Considerations and limits for Fast-Track projects under either above option* **50.** EITHER **<u>Option 1 – Irreversible loss ineligibility criteria</u>** s. **Agree** that the ineligibility criteria for the fast-track regime includes any project that is likely to cause an irreversible loss to a wildlife species that is threatened or at-risk as defined in the NZ Threat Classification System. **OR** **<u>Option 2 – Consider irreversible loss</u>** t. **Agree** that for wildlife-related permits or approvals on Fast-Track projects, the	**Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No**	provided for, unless a consent was able to provide lawful authority for the purposes of the Wildlife Act. Officials understand you would like the purpose of the Fast-Track Bill to prevail over the purposes of other included legislation. It will remain important to ensure clarity on how wildlife is adequately protected through the fast-track regime. If there is a gap or ambiguity regarding how wildlife is to be protected, the courts will fill any such gap by looking to the statutory context, including existing provisions of the Wildlife Act. This increases legal uncertainty. DOC therefore recommends any decisions of the Panel are to take into account the Wildlife Act purpose, and subject to other statutory criteria related to irreversible loss of species and impacts on threatened and at-risk species as defined in the NZ Threat Classification System. The exact interpretation of these tests will need further work but could include considerations such as the risks of reducing genetic diversity, localised extinctions, and resilience against other adverse impacts. Under Option 2, where the Panel is the decision maker, DOC would provide a report on the effects on species and the decision-maker in setting conditions, would have regard to minimising any impacts on all protected wildlife (not just threatened species), through avoidance, mitigation or offsetting, or that any impacts which cannot be mitigated are compensated for. Conditions set by the Panel or by DOC subsequent to the Panel decisions would have effect in law as if they had been made under the Wildlife Act and the RMA to allow DOC's enforcement powers to be used, and DOC to easily amend conditions (eg, on where captive animals are to be held) in conjunction with the permit holder. **Development implications**

Proposal	Options	Decisions	Advice and Analysis
	decision-maker must consider whether there is likely to be an irreversible loss to a wildlife species that is threatened or at-risk as defined in the NZ Threat Classification System. **OR** **<u>Option 3 – Take into account impacts on threatened species</u>** u. **Agree** that the decision-maker must take into account impacts on threatened, data deficient, and at-risk wildlife species as defined in the NZ Threat Classification System. **51. Agree** that assessments of impacts on wildlife must be based on a report from DOC which will also set out conditions needed more generally for protected wildlife. **52. Agree** that activities relating to handling etc of protected wildlife must be required to meet relevant best practice standards, which can be established as part of conditions **53. Agree** that in setting conditions, the decision-maker must have regard to whether the condition would minimise any impacts on protected wildlife, through avoidance, mitigation or offsetting, or that any impacts which cannot be mitigated are compensated for.	**Yes | No** **Yes | No** **Yes | No** **Yes | No**	Having a single application for all approvals that is subject to the timeframes and other process improvements of the fast-track regime will reduce costs and uncertainty for developers. **System efficiency** The proposed process improvements would likely shorten timeframes and improve efficiency, for the reasons set out above. **Treaty Impact Assessment** Wildlife species are frequently considered taonga (and some Treaty settlements list taonga species for that iwi) with DOC often managing wildlife in accordance with settlement requirements, requiring considerable specific engagement with relevant PGSE or tangata whenua. **Note**: It Is not recommended that the Fast-Track process be available for other Wildlife Act matters, such as approvals to undertake fast-track activities in wildlife sanctuaries or to allow hunting or killing of wildlife, which would rarely be required.

Proposal	Options	Decisions	Advice and Analysis
	54. **Agree** that the decision of the Panel will be deemed to have been made as if under the Wildlife Act and further decisions/variations will be done under the Wildlife Act.	**Yes | No**	
(V) Conservation Act approvals **NZTA and MOT – support option 2, Recommendation 55 w subject to change below.** **However note: 'critical' infrastructure adds another definitional layer – this should be 'nationally or regionally significant infrastructure' to align with eligibility criteria in the event Option 2.**	*Scope for inclusion in the Fast-Track Bill* **55.** EITHER **Option 1: Concessions for all activities are incorporated into the One Stop Shop** v. **Agree** that concessions can be consider for projects that qualify for Fast-Track under the Fast-Track Bill (i.e. as per the Fast-Track qualifying criteria); **OR** **Option 2: Only concessions for critical infrastructure are incorporated into the One Stop Shop** w. **Agree** that concessions can only be considered the most critical infrastructure projects that qualify for Fast-Track under the Fast-Track Bill. *Determining which requirements to include* **56.** **Agree** to retain the requirement that the decision maker must consider the purpose for which the land is held.	**Yes | No** **Yes | No** **Yes | No**	**General Advice** The Conservation Act includes processes for granting of permissions relating to activities over Crown conservation land. These approvals are referred to as a concession and take the form of a lease, licence, permit, or easement. *Scope of concessions included in the Fast-Track regime* • Concessions provide approval to a range of activities including tourism operations and infrastructure, research and monitoring stations, power generation structures, telecommunications infrastructure, and access easements. • Ministers should consider the scope of projects that are eligible for the Fast-Track process on public conservation land. The concessions regime is specifically designed to consider proposed activities and their potential effects on the protection of conservation and cultural values. • Officials have prepared two general options for the scope of inclusion in the Fast-Track. Either all concessions are in scope, or fast-tracked concessions are limited to critical infrastructure. • Critical infrastructure can include linear infrastructure (eg, roads, pipes and wires) and projects such as renewable energy projects. In some cases, critical infrastructure may be required on PCL to support a neighbouring Fast-Track

Proposal	Options	Decisions	Advice and Analysis
	57. Agree to retain the requirement that the decision maker must consider the effects of the activity, structure, or facility.	**Yes | No**	project off PCL (eg, an easement for an access road is required), rather than being the focus of the Fast-Track itself (eg, a major highway referred for Fast-Track). Officials suggest aligning critical infrastructure terminology with the Public Works Act 1981, rather than the more narrow civil defence terminology. • If limited to critical infrastructure projects, the excluded projects are likely to mainly relate to significant tourism projects on conservation land, such as ski fields. These would continue to be managed through the standard concessions processes.
	58. Agree to retain the requirement that the decision maker must consider any relevant environmental impact assessment.	**Yes | No**	
	59. Agree to remove the requirement for the decision-maker to decline an application if an application obviously does not comply with any relevant conservation general policy, conservation management strategy, conservation management plan or reserve management plan, except where removing the requirement would undermine Treaty Settlements.	**Yes | No**	9(2)(h)
	60. Agree to remove the requirement for public notification of concession applications when aligning with the Fast-Track regime.	**Yes | No**	
	Determining the decision-maker		
	61. Note that a concession can confer a property right, in addition to approving access to undertake an activity on PCL, and that these two functions cannot easily be disaggregated.	**Noted**	
	62. 9(2)(h)	**Noted**	

Proposal	Options	Decisions	Advice and Analysis
	9(2)(h)		9(2)(h)
	63. Note that, in making decisions on concessions, the decision maker in a Fast-Track process (Ministers or Panel) would therefore be making decisions on managing Crown risks (i.e. on behalf of the Crown as land manager). This includes undertaking contract negotiations, including setting rental fees.	**Noted**	
	64. Note that DOC/MOC will continue to be responsible for all further monitoring/enforcement/variations and implementation required.	**Noted**	
	65. EITHER **<u>Option 1: Minister of Conservation retains decision making for concessions within the Fast-Track framework</u>** x. **Agree** that The Minister of Conservation, on behalf of the Crown, remains the decision-maker for fast-track concessions, and that concessions are excluded from the Fast-Track Bill where required for use of public conservation land; **AND** y. **Agree** to amend the Conservation Act to align processes with the Fast-Track regime and apply any alternative requirements agreed above to the consideration of Fast-Track projects.	**Yes | No** **Yes | No**	**Development implications** • If the scope is limited to critical infrastructure, excluded projects are likely to include regional tourism projects on conservation land, which would continue to be managed through the standard concessions processes. The main benefit to developers of including those wider projects would be the timeframes of the Fast-Track compared with the standard concession process, assuming Ministers agree that most the current requirements for the decision maker to consider would apply to any Fast-Track concessions. • Regardless of the scope, the requirement that the activity could not reasonably take place in a location off public conservation land should be retained. This requirement avoids unnecessary effects on conservation land and mitigates adverse incentives (eg, where it may be cheaper to lease PCL instead of purchasing land).

Proposal	Options	Decisions	Advice and Analysis
	OR **<u>Option 2A: Expert panel assumes decision making in concurrence with the Minister of Conservation</u>** a. **Agree** that applicable concessions required for use of public conservation land will be determined by the Panel under the Fast-Track Bill, in concurrence with the Minister of Conservation **OR** **<u>Option 2B: Expert panel assumes decision making in consultation with the Minister of Conservation</u>** a. **Agree** that applicable concessions required for use of public conservation land will be determined by the Panel under the Fast-Track Bill, in consultation with the Minister of Conservation	**Yes | No** **Yes | No**	• The requirement for the decision maker to have regard to conservation management plans (incl. reserve management plans), conservation management strategies, and the Conservation General Policy could be made discretionary when making a decision on the concession. This would align with the discretion to consider NPS, NES, regional plans, and district plans that will be applied through the Fast-Track framework. The effect of removing this requirement would be potentially allowing projects that could not be granted if the planning direction must be considered. However, the extent to which this supports additional development is unknown as those projects would still be subject to the relevant effects purpose tests, and Treaty settlements. • Fast-Track projects will likely involve significant capital investment. Therefore, term lengths should be sufficient to ensure return on investment from the endeavour. The Conservation Act allows terms of 30 years, or 60 years in 'exceptional circumstances' – which is not defined by the Act. Drafting of the Fast-Track Bill could clearly state that Fast-Track projects are exceptional. The Act does provide discretion for easements beyond 60 years for where there is no other practical access or the easement is for public works. Upon expiry of a concession, any renewal would be sort through the usual concession regime, or could be referred back to the Fast-Track regime. **System efficiency** • The existing concessions regime has been designed to manage this infrastructure, and so any decisions will require significant input from DOC. Therefore, there is a risk that the Fast-Track regime includes all concession activities, it will become bloated with projects where the

Proposal	Options	Decisions	Advice and Analysis
			key complexities relate to issues that the concessions regime is best equipped to address. • Officials consider system efficiency can be achieved by applying the decision-making criteria amended for the Fast-Track regime, providing for alignment of information requirements, processes, timeframes, and removing duplicative processes between the concessions process and the Fast-Track process. Alignment of the process is also an opportunity to ensure that information relating specifically to the concession is gathered at the same time and that any duplications in required information or wider public input is avoided. Providing for these improvements to processes would be a low risk. • Public notification is required for all concessions applications for a lease, or a licence for a term of more than 10 years. Removing the public notification requirement would avoid creating delays and inconsistencies of process. Officials recommend aligning consultation requirements with those of the overall Fast-Track process if concessions decisions continue to sit with the Minister of Conservation. **Treaty Impact Assessment** • Removing the requirement to consider CMS and CMPs creates risk, as some treaty settlements create obligations around CMS/CMPs which could be breached by excluding them from the process. Disapplying a planning document, which can direction decision-making on concessions, would have the effect of undermining those settlements that include redress relevant to the content of those planning documents. This could be mitigated by specifying that CMS/CMPs/GP are disregarded, except where required by treaty settlement obligations.

Proposal	Options	Decisions	Advice and Analysis
			• DOC is subject to more than 100 settlement tools and agreements that set out specific process or substantive obligations for the Crown in relation to their management of PCL. The significant number and variety of obligations creates a significant risk that the Crown could be challenged for not appropriately giving effect to these obligations through the Fast-Track process. In order to mitigate this risk, it would be important for these obligations to be accounted for in the design of the Fast-Track regime. • Concession terms longer than 50 years will, in some areas, trigger Rights of First Refusals provided in Treaty settlement (eg, concessions in the Ngāi Tahu takiwā). Terms that exceed those triggers should not be granted to Fast-Track projects.
(VI) Reserves Act approvals **MOT – support recommendations**	**66. Agree** that the Fast-Track process may be applied to: z. Crown-owned reserves administered by the Department of Conservation or local authorities aa. Reserves owned and administered by local authorities bb. Any other reserves, by agreement of the reserve owner and administering body. **67. Agree** that the concessions regime will be used to provide all permissions that would otherwise be required by the Reserves Act for projects accepted into the Fast-Track process. **68. Agree** that Ministers must consider the ownership and management arrangements of any reserves (or land with conservation covenants registered	**Yes | No** **Yes | No** **Yes | No**	**General Advice** The Reserves Act encompasses a wide range of reserves, held for many different purposes. These include reserves with high conservation values, such as nature and scientific reserves, but also local purpose and recreation reserves set aside for boat ramps, community buildings, sports fields, racecourses, etc. It also includes government purpose reserves managed by DOC or other agencies for purposes such as courts, defence facilities, lighthouses, railways, etc. The concession provisions in the Conservation Act also apply to DOC managed reserves, effectively replacing the many provisions in the Reserves Act under which activities could be approved. The remaining permissions under the Reserves Act apply only to reserves not managed by DOC, including local authorities, government departments, iwi and other public bodies. We recommend that reserves owned and administered by local authorities are included in the Fast-Track process. We

Proposal	Options	Decisions	Advice and Analysis
	against the title) affected by the projects and any existing arrangements (formal or informal) over that land when considering whether to accept the project into the Fast-Track process. **69. Agree** that Ministers' consideration of reserve matters as part of the Fast-Track application decision be informed by a report by DOC in consultation with the reserve owner/administering body as required.	**Yes | No**	consider that the inclusion of these reserves would be in line with the inclusion of those reserves managed by DOC that are captured by the Fast-Track process (i.e. not excluded by Schedule 4). We consider that they are likely to have similar levels of conservation value, however acknowledge they may also provide further local values – including contributing to the network of public green spaces in urban areas and stormwater retention. It is important to note that the same risk and liability issues that arise for DOC on conservation land will also apply to local government on their reserve land if the decision-maker on these permissions is no longer the landowner. No consultation has been undertaken with local authorities or LGNZ on this proposal. We recommend that the Fast-Track process is only applied to other types of reserve (i.e. those not owned by the Crown and managed by DOC or local authorities, or owned and managed by local authorities), by express agreement of the landowners and administering body (including government departments, iwi, reserve boards and other public bodies). We consider that the range of reserves and ownership and management models that could apply to them is too varied to effectively work through the policy implications in the time available to provide a more universally permissive inclusion of these reserves in the Fast-Track.
(VII) Freshwater Fisheries regulations approvals **MOT and NZTA – support recommendations**	**70. Note** that the Conservation Act, Fisheries Act, Biosecurity Act and associated regulations control a wide range of matters relating to freshwater fisheries, including for indigenous fish and sports fish (eg, trout). **71. Agree** that Fast-Track will be limited to four matters that are commonly involved in large	**Noted** **Yes | No**	**General Advice** The legislative regime relating to freshwater fisheries is complex and spread across the Conservation Act, Fisheries Act, Biosecurity Act and two sets of regulations. The regime covers a wide range of matters and involves three decision-makers (Minister of Conservation, Minister of Fisheries, and Fish and Game Councils). Activities that are most likely to be relevant to Fast-Track projects include installation of culverts,

Proposal	Options	Decisions	Advice and Analysis
	development applications, and that do not require complex technical assessments – cc. the approval of culverts and other structures to which the NIWA guidelines apply, and dd. the approval of fish rescue activities where the fish are moved to an alternative location in the same waterbody, and ee. the approval of temporary works for infrastructure projects that would affect fish passage or local habitat. ff. the killing of noxious fish that are encountered during fish rescue or other operations. **72. Agree** that the approvals for these activities would be provided through the RM Act process (subject to specific requirements in the Fast-Track legislation), and an applicant that was acting in accordance with conditions in the Fast-Track consent in relation to those specific matters would be exempt from any equivalent freshwater fisheries legislative requirements. **73. Note** that Fast-Track projects may still require fisheries legislation consent for other activities such as harvest of fish for consumption or disturbance of spawning activities.	**Yes | No** **Noted**	temporary diversion of streams to allow bridge abutments to be constructed, rescue of fish from areas that are being dewatered or heavily impacted, and removal of gravel and minor re-shaping of river bends. We have identified four areas where we believe there would be benefits from inclusion in the fast-track process: • the approval of barriers to fish passage (culverts and other structures) to which the NIWA guidelines apply, and • the approval of fish rescue activities where the fish are moved to an alternative location in the same waterbody, and • the killing of noxious fish that are encountered during fish rescue or other operations. • the approval of temporary works that would affect fish passage or local habitat. In most cases, we consider that these matters can be handled by requiring that there be appropriate conditions on consents, including the inclusion of standard conditions as appropriate. If that was done, the freshwater fisheries regime would not apply to those specific activities. Some Fast-Track projects may involve highly complex fish passage barriers (eg, where fish ladders might be required) or freshwater aquaculture. These technically complex matters are not covered by the NIWA guidelines and must be managed on a case-by-case basis by DOC and MPI and are therefore not appropriate for inclusion in the Fast-Track process.
(VIII) Crown Minerals Act approvals **MOT and NZTA – support**	*Scope for inclusion in the Fast-Track Bill* **74. Agree** that s61 access arrangements are in scope for approval through the Fast-Track Process.	**Yes | No**	**General Advice** The Crown Minerals Act provides a regime for managing mining activities, which includes a permit process to allocate Crown minerals, and access arrangements to allow landowners to agree (or decline) access to their land. For

Proposal	Options	Decisions	Advice and Analysis
recommendations and Option 2B under Recommendation 80	**75. Agree** that applicants will not be able to apply for a s61 access arrangement in an area excluded through the Minerals Programme at the request of iwi and hapū. *Determining which requirements to include* **76. Agree** to RETAIN the requirements that the decision-maker must consider the following under s61(2) and s61B(2): gg. (a) the objectives of any Act under which the land is administered hh. b) any purpose for which the land is held by the Crown ii. (d) any safeguards against any potential adverse effects of carrying out the proposed programme of work jj. (da) the direct net economic and other benefits of the proposed activity in relation to which the access arrangement is sought kk. (e) any other matters that the Minister(s) consider relevant. **77. Agree** to MODIFY the requirement under s61(2)(c) and s61B(c) on how "any policy statement or management plan of the Crown in relation to the land" are considered, so that the decision-maker "may consider", rather than "must consider", except where modifying the requirement would undermine Treaty Settlements.	**Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No**	conservation land, the decision on access is made by the Minister of Conservation, or jointly with the Minister responsible for the Crown Minerals Act (currently the Minister for Resources) where an application involves certain minerals with a high market value. The Minister for Land Information is the Appropriate Minister for access decisions for non-conservation Crown land. Impacts of activities, particularly at the early exploration stage, can often be avoided through appropriate location (eg, with one operation a drilling proposal was moved from a fossil reserve to a nearby area) and ensuring that best practice is used (eg, using a helicopter to place drill rigs on platforms instead of doing earthworks, using relocatable buildings that can be easily removed). Other impacts, however, cannot be avoided. In general, if they are impacts to an irreplaceable value, decline is appropriate (eg, an ilmenite mine was declined at Barrytown because the proposal would destroy a rare type of wetland, and the miner moved to Cape Foulwind), while for less important values, compensation will be used. 9(2)(h)

Proposal	Options	Decisions	Advice and Analysis
	78. Agree that public notification of s61 applications will not be required for Fast-Track projects. *Determining the decision-maker* **79. Note** that the Minister of Conservation usually makes decisions on s61 approvals, though in some cases the Minister of Land Information is the Appropriate Minister. The Appropriate Minister makes decisions jointly with the Minister responsible for the Crown Minerals Act where an application involves certain minerals with a high market value. **80.** EITHER **<u>Option 1: Ministers retain decision making under the CMA within the Fast-Track framework</u>** ll. **Agree** that the Appropriate Minister (and the Minister responsible for the Crown Minerals Act where relevant), on behalf of the Crown, remain the decision-maker(s) for s61 CMA approvals; **AND** mm. **Agree** to amend the Crown Minerals Act so that, for Fast-Track projects, any alternative requirements agreed above apply and processes are aligned with the Fast-Track regime. **OR** **<u>Option 2A: Expert panel assumes decision making in concurrence with Ministers</u>**	**Yes | No** **Noted** **Yes | No** **Yes | No**	9(2)(h) **Development implications** • Access applications are usually approved as the legislation was designed to allow impacts from mining on PCL that would not be allowed for other activities (eg, tourism operations). Also, unlike concessions decisions, there is no requirement to demonstrate that the activity cannot take place off PCL. The regime is also more permissive than the concessions regime as it provides conditions to prevent ongoing liabilities (eg, bonds) and allows compensation payments to be taken into account in determining whether impacts on conservation values will be allowed. • The Department considers that there is no need to change the criteria for decision-making, other than how "any policy statement or management plan of the Crown in relation to the land" are considered, given the current ability to consider compensation and the low rate of decline for access arrangements. • Officials note that there has been some discussion about the need for the "any other matters" criterion

Proposal	Options	Decisions	Advice and Analysis
	nn. **Agree** that s 61 approvals will be determined by the Expert Panel as part of the One Stop Shop, in concurrence with the Appropriate Minister (and the Minister responsible for the Crown Minerals Act where relevant). **OR** **Option 2B: Expert panel assumes decision making in consultation with Ministers** oo. **Agree** that s 61 approvals will be determined by the Expert Panel as part of the One Stop Shop, in consultation with the Appropriate Minister (and the Minister responsible for the Crown Minerals Act where relevant).	**Yes | No** **Yes | No**	but recommend retaining it as it strengthens the decision makers ability to consider compensation. • Past discussions with the mining industry suggest that they would benefit most from procedural alignment with the timeframes and information requirements of the resource management process. • There are no obvious development implications between the options for the decision-maker as the considerations and powers applied will be the same. **System efficiency** • Under all options for the Fast-Track Bill, there is potential to align the timeframes, information requirements, and considerations of resource management approvals and access arrangement approvals. For example, DOC will not need to provide advice on effects on vegetation or hydrology if these are considered under the resource management approval. DOC can then focus advice on matters not considered by the RM process, such as bonds and removal of structures. • Section 14(2)(c) of the CMA allows areas to be excluded from consideration for access arrangements at the request of iwi and hapū through the Minerals Programme. These areas are in addition to those excluded through Schedule 4. Areas. Officials recommend carrying over these exclusions into the Fast-Track regime. • DOC recommends retaining the need for the decision-maker to consider any policy statement or management plan of the Crown in relation to the land where those relate are provided for in Treaty Settlement. For example, the decision maker must consider any Conservation Management Strategy co-authored with iwi.

Proposal	Options	Decisions	Advice and Analysis

One stop shop – Heritage Authorisations

Proposal	Options	Decisions	Advice and Analysis
(IX) Include approvals under the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPT) in the FTC Bill. **NZTA and MOT support the discretion to include as per Option 2.** **Note: if this is to be consistently applied a similar approach could apply to conservation approvals.**	**Option 2** **81. Agree** to include HNZPT approvals in the one-stop-shop by amending the HNZPT to enable applications to be made with FTC applications. Otherwise, applications/approvals will be processed separately by HNZPT under the HNZPT. **Note** that decision timeframes, consultation and information would be coordinated into a unified process by the Expert Panel. Decisions would be made separately by HNZPT under the HNZPT, working closely with the Expert Panel. If Ministers select Option 2: **82. Agree** that the Minister or the Expert Panel can decide whether it is appropriate for	**Yes | No** **Yes | No**	**General advice** For the vast majority of development and infrastructure projects, there is no need for approvals under the HNZPT. Most have low archaeological potential and so can apply a generic Accidental Discovery Protocol. Only about 600 archaeological authorities are required each year. There is little evidence of Heritage Act (HNZPT) approvals causing delays, costs, or duplication of work for applicants. Some infrastructure providers have identified inconsistencies between conditions for archaeological authorities and resource consents as an issue. If Ministers decide to include HNZPTA approvals in scope of the FTC, enabling approval applications to be made via the FTC process, but otherwise processing them separately under the HNZPT, would be the most efficient approach. **Development implications** There could be a benefit for applicants if amendments were made to the HNZPT to enable the Environmental Protection Authority (EPA) to manage the process overall. Potential drawbacks of this approach are that processing timeframes and costs for applicants could increase. If the purpose of the FTC bill were to prevail over the purpose of the HNZPT, cultural heritage values could be unnecessarily lost, projects delayed, and extra costs incurred. This could be mitigated through drafting of the purpose and principles of the FTC bill.

Proposal	Options	Decisions	Advice and Analysis
Note: the purpose of the FTC bill should prevail over all legislation being considered, otherwise decision-making becomes more complex than status quo.	HNZPT approvals to be included in the one-stop-shop on a case-by-case basis **83.** Agree **a.** EITHER the Minister makes this decision (when referring) **b.** OR the Expert Panel makes this decision (when consenting). **84.** Agree **a.** EITHER the purpose of the FTC bill should prevail over HNZPT provisions **b.** OR HNZPT provisions are not prevailed over by the FTC bill purpose (preferred) **85. Note** that as **previously** directed by Ministers (BRF #1) officials will undertake further work such that all relevant aspects of HNZPTA approvals can be incorporated through the select committee process and introduced through Amendment Papers.	**Yes | No** **Yes | No** **Yes | No** **Yes | No**	Another way to mitigate some risks could be to enable the Minister (when referring) or the expert panel (when consenting) to decide whether it is appropriate for the HNZPTA approvals to be included in the one-stop-shop on a case-by-case basis. **Treaty Impact Assessment** 9(2)(h) Most archaeological sites subject to HNZPTA approvals are of interest to Māori. The HNZPT has its own specific provisions for Māori interests and a bespoke Treaty clause. If the FTC bill treaty clause is to prevail, this should be taken into account. There are decision-making and advisory roles in the authority process that are assigned to the Māori Heritage Council, an expert entity appointed by Ministers under the HNZPT. Additional Treaty impact analysis and engagement with Māori is required on the approvals to identify and propose options to address issues. **Treaty settlements and other arrangements** The HNZPT approvals regime has been modified by Treaty settlements in different ways. HNZPT has obligations in over 130 settlement acts. Most of these require HNZPT to have regard to statutory acknowledgement areas when making archaeological authority decisions. The Crown also has obligations under many settlements to engage when policy changes are being considered. Additional analysis and engagement with iwi will be required to determine how including the HNZPTA approvals in the FTC bill will affect Treaty settlements.

One stop shop – Exclusive Economic Zone (EEZ) Act

Proposal	Options	Decisions	Advice and Analysis
Include EEZ consents in the fast-track consenting regime	**86. Agree** to allow EEZ consents to be decided on via the fast-track consenting regime either as an individual application for a marine consent, or as part of multiple approvals required, for the same activity. **87. Note** details on how this will work (information requirements, reports, decision making arrangements and consultation) will be provided in a future briefing.	**Yes | No**	Projects in the EEZ tend to be of significant scale and face the same types of challenges as those which consenting regime is aiming to address. Inclusion of EEZ consenting in the fast-track consenting regime consistency across all marine zones. EEZ projects often require multiple approvals for different aspects of the development. The processes an criteria matters under the RMA and EEZ are similar in many ways and there are efficiencies from conside RMA applications together.
Include eligibility criteria for activities that may utilise the fast-track consenting regime if the EEZ Act is included	**88. Agree** in principle to include eligibility criteria to clarify the circumstances when activities in the EEZ can access the fast-track consenting regime.	**Yes | No**	Relative to land-based activity there are small numbers of activities that may require marine consents an the fast-track regime. The circumstances when activities in the EEZ should be eligible to utilise the fast-tr regime will be outlined in subsequent advice.