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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*
14 Dec 2023	Email: Fast-track consenting briefing	Infrastructure Commission: Te Waihanga
14 Dec 2023	Briefing TW-2023-319: A permanent fast-track consenting regime for infrastructure projects	Infrastructure Commission: Te Waihanga
11 Dec 2023	External advice: Streamlined infrastructure consenting pathways	Infrastructure Commission: Te Waihanga
21 Dec 2023	Email: Fast track consenting	Infrastructure Commission: Te Waihanga
29 Jan 2024	Briefing: Infrastructure Weekly Update for the week starting 29 January 2024	Infrastructure Commission: Te Waihanga
7 Feb 2024	Email: Fast Track - Te Waihanga high level comments on MfE/MBIE led Fast Track Briefing 1 for Delegated Ministers meeting 8th February	Infrastructure Commission: Te Waihanga
19 Feb 2024	Briefing: Infrastructure Weekly Update for the week starting 19 February 2024	Infrastructure Commission: Te Waihanga
27 Feb 2024	Email chain: Papers and agenda for Fast-track joint Ministers meeting 5:30pm Tuesday 27 Feb	Infrastructure Commission: Te Waihanga
29 Feb 2024	Aide Memoire TW-2024-358: Infrastructure considerations for options to align Public Works Act and fast track consenting processes.	Infrastructure Commission: Te Waihanga

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

Paul Alexander

From: Brigit Stephenson
Sent: Thursday, 14 December 2023 1:36 pm
To: Jon Butler
Cc: Elizabeth.Innes@parliament.govt.nz;Ross Copland;Barbara Tebbs;Paul Alexander;Georgia Kahan
Subject: Fast track consenting briefing
Attachments: 20231214 TW-2023-319 - Fast track consenting for significant infrastructure projects FINAL.docx; 20231214 TW-2023-319 - Fast track consenting for significant infrastructure projects FINAL.pdf; 20231214 TW-2023-319 Memo streamlined consenting process APPENDIX 1.pdf; 20231214 TW-2023-319 APPENDIX 2.pdf

Hi Jon

The fast track briefing is attached. It has 2 appendices – which we've provided as pdfs but can also provide in word if required..

Cheers
Brigit

Key Points

- The NZ Infrastructure Commission | Te Waihanga (the Commission) considers that separate legislation with a clear, defined purpose that enables the public benefits of infrastructure provision is preferable to incorporating a 'fast-track' into the RMA. A separate purpose gives a clear line of sight for decision-makers, makes it easier to incorporate other approval processes into separate legislation, and will more readily survive the future repeal of the RMA. A focus on public infrastructure also provides a more durable solution. Putting in place a more fit-for-purpose track for infrastructure consenting can be done soon and can be implemented ahead of a wider reform process.

- The COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) provides a template, rather than incorporating fast track within the current RMA. A separate Act allows non-RMA approvals to be included more easily, consistent with the one-stop-shop approach Ministers have asked for. It won't be possible to include all approval processes in a constrained 100 day process, but some could, and others added later.

- We acknowledge that there are other strong objectives, such as addressing housing shortage and affordability. Considering a dual purpose for infrastructure and separately for other matters is one approach if a broader focus is adopted.

- [redacted] s9(2)(g)(i)

Next Steps

- For discussion with Infrastructure officials on Monday 18th December. The Minister will also be receiving advice from MfE that takes a broader perspective.
- A key next step is determining:
    - what the primary purpose of Fast Track should be (greater certainty for significant/major infrastructure and/or accelerated consenting processes for many activities)

    - the scope of activities (how strong the focus on infrastructure and/or housing and/or other activities)
    - legislative design (separate act or incorporated within the RMA)
    - if separate legislation, then what purpose
    - if a one-stop-shop, what approvals to prioritise to include, and how much to achieve within 100 days
- What role you would like the Infrastructure Commission to play on an ongoing basis

Recommendations:

1. **Discuss** with officials at the Infrastructure Commission weekly meeting on 18 December
2. **Note** the Commission's key design preference for separate legislation with an enabling purpose for infrastructure, and including the ability for a one-stop-shop for approvals that can be augmented over time
3. **Discuss** options to ensure input from infrastructure providers to assist with legislative design to ensure it is fit-for-purpose
4. **Forward** the report to the Parliamentary Under-Secretary to the Minister for Infrastructure and to the Minister Responsible for RMA Reform.

Brigit Stephenson | Principal Advisor Policy - Kaitohutohu Mātāmua
New Zealand Infrastructure Commission | Te Waihanga
M: [redacted] **| Email:** Brigit.Stephenson@tewaihanga.govt.nz
https://tewaihanga.govt.nz/ s9(2)(k)

Please note that I do not work on Thursdays.

A permanent fast-track consenting regime for infrastructure projects

Date: 14 December 2023

Report No: TW-2023-319

To	Action sought	Deadline
To Hon Chris Bishop, Minister for Infrastructure / Minister Responsible for RMA Reform	Read before your Infrastructure Commission officials' meeting on 18 December and provide any feedback during that meeting	18 December 2023
CC Simon Court MP, Parliamentary Under-Secretary to the Minister for Infrastructure / Minister Responsible for RMA Reform		

Contact details

Name	Role	Phone
Paul Alexander	Director Infrastructure Planning	[redacted] s9(2)(k)
Barbara Tebbs	GM Policy	[redacted]

Actions for the Minister's office staff

Forward the report to the Parliamentary Under-Secretary to the Minister for Infrastructure and to the Minister Responsible for RMA Reform

Return the report to The Infrastructure Commission | Te Waihanga with any written feedback

Minister's comments

IN-CONFIDENCE

Executive Summary

1. This report provides early advice on the first order question of whether to pursue separate fast-track legislation, and if so, what the core purpose may be, or whether to amalgamate fast-track consenting with a wider Resource Management Act (RMA) reform Bill.

2. The NZ Infrastructure Commission | Te Waihanga (the Commission) considers that separate legislation with a clear, defined purpose that enables the public benefits of infrastructure provision is preferable to incorporating a 'fast-track' into the RMA. A separate purpose gives a clear line of sight for decision-makers, makes it easier to incorporate other approval processes into separate legislation, and will more readily survive the future repeal of the RMA. A focus on public infrastructure also provides a more durable solution. Putting in place a more fit-for-purpose track for infrastructure consenting can be done soon and can be implemented ahead of a wider reform process.

3. The COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) provides a template and would allow the legislation to refer back to the RMA, though with some changes as this briefing sets out.

4. The Commission's advice takes the particular lens of what best supports public infrastructure provision. We acknowledge that there are other strong objectives, such as addressing housing shortage and affordability. However, the more activities that can use a fast-track process, the greater the risk of diluting the focus of decision makers on infrastructure. Considering a dual purpose for infrastructure and separately for other matters is one approach if a broader focus is adopted. Incorporating fast track within the RMA and relying on the current purpose of the RMA will not sufficiently support public infrastructure.

5. [redacted] s9(2)(g)(i)

6. We have discussed our suggested fast-track approach with other agencies. We will work closely with the Ministry for the Environment (MfE) and other agencies on detailed design once you have provided guidance on legislative and other parameters. We recommend public infrastructure providers are included in the process in order to test the workability of proposals. MfE's wider advice will include key aspects not covered in this briefing, such as public participation, Treaty issues and engagement with mana whenua, and the approach to appeals and judicial review.

Recommendations

We recommend that you:

1. **Discuss** with officials at the Infrastructure Commission weekly meeting on 18 December
2. **Note** the Commission's key design preference for separate legislation with an enabling purpose for infrastructure, and including the ability for a one-stop-shop for approvals that can be augmented over time — *Agree / disagree*
3. **Discuss** options to ensure input from infrastructure providers to assist with legislative design to ensure it is fit-for-purpose — *Agree / disagree*
4. **Forward** the report to the Parliamentary Under-Secretary to the Minister for Infrastructure and to the Minister Responsible for RMA Reform. — *Agree / disagree*

Barbara Tebbs
General Manager, Policy

Hon Chris Bishop
Minister for Infrastructure

____ / ____ / ____

IN-CONFIDENCE

A permanent fast-track consenting regime for infrastructure projects

Purpose of this Report

1. This briefing provides advice on a fast-track process for consenting infrastructure projects, and sets out the merit of separate legislation that focuses on the public benefits of infrastructure. It includes some design advice, but we can provide further detail at the appropriate time. It also includes a Memo from legal advisers contracted by the Commission for their infrastructure consenting expertise (**Appendix 1**); and [redacted]

[redacted] s9(2)(g)(i)

Background

New Zealand faces urgent infrastructure challenges and the current planning system needs improving to better recognise the public benefits of infrastructure

2. The challenges New Zealand faces are urgent. We have an **infrastructure deficit** estimated at $210 billion, and we are struggling to service the needs and wellbeing of communities. We require a resource management system that enables the efficient delivery of new infrastructure and ongoing maintenance and renewals of existing infrastructure.

3. A **faster, and more enabling, consenting system is needed**. The costs of consenting are disproportionate and at times prohibitive; current consenting processes cost infrastructure projects $1.3 billion every year, with costs escalating by 70% over the last seven years.[1] The time taken to get a resource consent for key projects has nearly doubled within a recent five-year period, also impacting small projects such as renewing a town's water pipes or undertaking an intersection safety upgrade.

4. This situation not only increases costs and delays, but also puts at risk major social and environmental goals such as improving housing affordability, providing social infrastructure, and climate goals.

Planning and consenting major infrastructure programmes of national and regional significance

A permanent fast-track consenting regime for infrastructure projects.

5. You have indicated you will introduce **a permanent fast-track consenting regime for infrastructure projects**. You have previously indicated this will be modelled on the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) process for quicker processing of resource consents. You propose to establish a class of projects known as Major Infrastructure Priorities which will require decisions within one year, if referred by the Minister for Infrastructure.

[1] The Cost of Consenting Infrastructure Projects in New Zealand. July 2021. Sapere report commissioned by Te Waihanga.

6. We support having a decision-making process that is separate and tailored to the delivery of large and significant infrastructure projects, including the re-consenting of significant projects. Similar jurisdictions overseas have created distinct legislative pathways for infrastructure, such as in the Victorian State of Australia and the United Kingdom.

7. The attached memo sets out in more detail the range of potential options for a fast-track regime. Previous and existing approaches include proposals of national significance and direct referral. Various emergency acts have allowed for the urgent recovery works to circumvent RMA processes (e.g. Kaikoura Act). None of these options in their entirety is preferable to a separate fast-track infrastructure statute that provides a long-term 'one-stop-shop' solution for infrastructure consenting and permitting.

8. The 2020 FTCA provides a useful basis from which to start, but the purpose during a pandemic is no longer appropriate and it has shortcomings such as short lapse periods for consents and unworkable application of conditions that need addressing. There are also capacity issues across the system, and the ability to stand up the expert consenting panel was becoming increasingly difficult.

9. A new Fast-Track Act should include a purpose which supports the positive economic and social benefits of infrastructure, while managing environmental effects. The new Act could also support related applications under the Wildlife Act, Reserves Act, and Heritage New Zealand Pouhere Taonga Act (as has recently been achieved under the Severe Weather Emergency Recovery Legislation Act). Land acquisition under the Public Works Act could also be addressed.

10. As indicated in the detailed advice provided in Appendix 1, the FTCA provides a basis with an appropriate Treaty clause respecting Treaty settlements, but improvements are needed, as identified by an independent review. We also think consents could have a longer duration than in the FTCA.

Fast-track matters, but other changes are also needed for end-to-end infrastructure delivery

11. A fast-track process is important, but it is just one part of delivering infrastructure effectively. We also seek:

    - improvements through strengthening business case processes
    - greater surety for significant infrastructure corridors and projects indicated with spatial planning processes through route protection mechanisms
    - improved plan-making and greater use of Planning Standards
    - national direction supportive of infrastructure and coherency across national direction instruments. This is important but will take time to achieve, and is complementary to, rather than instead of, having separate streamlined consenting legislation
    - rationalised and more standardised consent conditions.

12. These changes would not be implemented via a new fast-track act, but instead through changes to investment decision processes, the RMA, and national direction issued under the RMA (national policy statements, national environmental standards, and national planning standards).

It's not just speed, but predictability of process

13. Significant and complex projects don't just need a fast consenting process, they also require more certain outcomes and simplified consent conditions. As indicated by a review of Transmission Gully [TW-2023-308 refers], future projects with complex consenting environments face the challenge of contractors being unwilling to accept and price consenting risks, which is problematic for New Zealand's PPP model as currently framed.
14. Success will involve a shift to a lower and more proportionate information burden pre-, post- and during consenting processes. We want to avoid the potential perverse outcome of accelerating the consent process only for this to impose overly burdensome and complex consent conditions that delay eventual delivery of the project.
15. For complex projects, we would support applicants having the option of an additional round of consultation, and the ability to 'stop the clock' to address matters in circumstances where such measures would lead to a better outcome. As such, it would be more of an 'Infrastructure Consenting Act' than being all about speed.

Why separate legislation and a narrow enabling purpose matter

16. Some of your key choices include whether to have standalone legislation, and if so what the purpose of the Act should be, or whether to incorporate improved consenting processes within the RMA until such time as that is replaced with new legislation.
17. This briefing advocates for separate legislation with a specific purpose that recognises the importance of enabling infrastructure and the public benefits that derive from it[2] for the following reasons:
    - Our infrastructure challenges need a durable solution. **A separate Act will more readily survive the future repeal of the RMA** and likely require only minor amendments. Focusing on projects that provide a direct **public** benefit will ensure the legislation is fit-for-purpose into the future, even after broader RMA reforms.
    - **Having a purpose alongside, rather than within, the RMA, will carry more weight, and provide greater certainty in terms of outcome**. Decision-makers look first to the purpose in determining the outcome. A purpose that enables infrastructure is more important than speed of consenting process.
    - **Separate legislation makes it easier to incorporate other permits and approval processes.** Infrastructure providers have clearly signalled that a key benefit is the ability to obtain non-RMA approvals (Reserves Act, Wildlife Act etc) at the same time, which is best done through separate legislation. This would reduce time, duplication of effort and inefficiencies of the current system.
    - A separate Act provides the opportunity to include a clearer set of criteria for referred projects (which could be regionally and nationally significant). Referral decisions can be made by the Minister for Infrastructure.
    - The RMA includes multiple competing objectives and policies lower down in the hierarchy than the purpose, particularly in National and Regional Policy Statements,

[2] An indicative purpose could be "The purpose of this Act is to support regionally and nationally significant infrastructure to provide social, economic and environmental benefits, while continuing to promote the sustainable management of natural and physical resources."

including specific avoid policies (e.g. policy 13 of the NZCPS, which requires avoidance of significant adverse effects on natural character in the coastal environment). Caselaw under the RMA provides that these 'avoid' policies can sometimes operate as rules. A new Act can more easily reframe the application of this caselaw, so that policies are simply one matter to consider.

- It will support adaptation and increase resilience too if public infrastructure (wastewater treatment, sub-stations) needs to relocate to address hazard risks.

18. Similar to the FTCA, a new Infrastructure Consenting Act could sit alongside the RMA, also requiring decision-makers to promote the sustainable management of natural and physical resources, refer back to relevant provisions of the RMA (e.g. Part 2, section 104), but with the additional requirement to give effect to the purpose of the new Act.

19. We acknowledge a wide range of activities experience pain with RMA processes and you may wish to include a broader range of economic activities for a fast-track process. There are strong imperatives to accelerate housing development, for example. We are also aware of proposed legislative drafting for a 'National And Regionally Significant Projects And Other Matters Bill' which would provide for a wide range of activities.

20. The more activities that can use a fast-track process, the greater the risk of diluting the focus of decision makers on the public benefits of infrastructure. If you wish to accommodate other activities, our advice would be to consider a dual purpose – the first remaining narrow and applying to infrastructure, and the second applying to other matters.

21. This is our preferred approach regarding infrastructure provision. Alternatively:

- If you choose to include fast-track within a broader set of RMA amendments, there are alternatives such as an additional purpose relating to infrastructure within the RMA, or changes to sections 6 and 7, which we could advise on.
- If you decide to adopt a broad focus [redacted] s9(2)(g)(i) [redacted] then the purpose of enabling those activities needs to be very clear along with clear criteria for referring projects (to avoid legal challenge and/or a flood of activities trying to use the process). There are a number of detailed further points on the Bill's design we can provide further advice on (see Appendix 2). A broader approach on its own is unlikely to deliver your infrastructure provision objectives.

Design Aspects for Infrastructure Consenting Legislation

22. This briefing focuses on the first order question of the merit of separate infrastructure-specific legislation or not. The attached memo (Appendix 1) includes some more detailed design questions and advice. Key aspects to consider include:

- **Eligible activities and criteria.** We see this process supporting infrastructure projects of scale that provide a public benefit, rather than all projects. There will be design questions in relation to size, scale, national and/or regional significance.
- **Listed or referred projects**. There would be options to list pre-qualified projects, and an option to update with further pre-qualified projects in regulations that could, for example, link to the development of an Infrastructure Priority List. There could also be a referred project route for infrastructure projects which reach a 'regional significance' threshold (e.g. *offshore wind, solar energy, transport, electricity transmission and distribution, telecommunications, schools, healthcare facilities* etc).

- **Respective roles for Ministers, expert panel and/or independent decision-maker**. We would prefer decisions to be made by an expert panel, to reduce the risk of judicial review/appeal and ensure technical matters are well-tested. There were challenges finding panel members for the FTCA, so a single independent decision-maker may be a more pragmatic option. Ministers could refer projects into the process, but without deciding the outcome. This approach would enable a simple referral process to be used, and manage judicial review risk.
- **Ability to decline applications**. We are interested in exploring a presumption in favour of granting consent for a class of projects of national significance. These projects could be listed in the Act or regulations, so the process for listing is proportionate to the certainty provided and reflects a high public benefit threshold. Referred (non-listed) projects would not have a similar presumption, so the referral process can be streamlined.
- **Ability to consider other approval processes**. We also consider the decision-maker should be able to look beyond resource consenting and make approvals that also cover requirements under other pieces of legislation at the request of the applicant. For example, infrastructure projects might also require permissions under the Wildlife Act 1953 or Heritage New Zealand Pouhere Taonga Act 2014. MfE-led advice can provide more detail on the implications this would have for the timing of consenting if further process steps and expertise is required.

Consultation, Risk and Timing Considerations

23. In developing this advice, we have sought the views of some infrastructure providers in the transport, water, electricity and telecommunications sectors. They are in most cases in favour of separate legislation and see real benefits in including other related approval processes. We are also now contributing to advice led by MfE that covers a broader set of interests.

24. We understand your strong imperatives to support housing growth. MHUD want fast-track consenting process to continue to be used to enable housing and mixed use developments, and do not want the purpose to exclude housing. Your direction on scope will help determine the appropriate legislative design and purpose, and we will work closely with MHUD as the policy lead on housing to address this.

25. The Ministry of Health believe there is validity in having a separate piece of legislation for the fast track consenting process, want to ensure the definition of well-functioning urban environments remains clear and strong, and are interested in protections so that they can maximise the use of their land resource for hospitals and healthcare facilities in urban centres.

26. We have not had time to work through the detail of all the other potential approvals processes that could be added to standalone legislation, but acknowledge this will be an important step for MfE-led advice at a next stage of more detailed design (for example Department of Conservation approvals and resource implications.)

27. The Infrastructure Strategy emphasises the need for partnership with Māori in meeting the infrastructure deficit, and we acknowledge that any system that provides for increased certainty of outcome needs to still ensure that the intent, integrity and effect of Treaty settlements is upheld. MfE concur that, as indicated in Appendix 1, there is merit in retaining the Covid Act provisions relating to Treaty settlements/iwi involvement if you decide to pursue separate legislation. They also note that focusing on

infrastructure rather than a broader range of activities may allow for Māori participation more broadly, benefiting the public and Māori economically.

28. With the Public Works Act, the timing of land acquisition is a major risk to the start of construction. It is imperative this issue is addressed and there are opportunities to integrate this with RMA and other approvals. However, there are some difficult issues to traverse (see Appendix 1 Page 17). For this and some of the approval processes, it may take longer than the 100 days to get this detail right. An option to consider may be to progress the approach to multiple approvals in phases.

To: Te Waihanga New Zealand Infrastructure Commission
Paul Alexander and Georgia Kahan

From: Christina Sheard and Nicky McIndoe

Date: 11 December 2023

Matter number: AOG985/2002

Subject: Streamlined infrastructure consenting pathways

Introduction

1 The Natural and Built Environment Act 2023 ('**NBEA**') contains a fast track process for infrastructure and housing developments that meet certain requirements. When the NBEA is repealed, there will be no equivalent fast track process available under the Resource Management Act 1991 ('**RMA**').[1] The time for lodging applications under the COVID-19 Recovery (Fast-track Consenting) Act 2020 ('**FTCA**') has expired.

2 This memorandum considers the options for a streamlined consenting process for infrastructure. We address the following matters:

a The problems associated with consenting infrastructure under the RMA in the absence of a streamlined process;

b The advantages and disadvantages of the various fast track/streamlined consenting processes used to date in New Zealand;

c What other changes might be required to support a streamlined process; and

d The recommended key elements for a streamlined process.

3 The scope of this advice does not cover the following matters:

a Pre-application processes such as the business case process;

b Involvement of iwi in consent processes; and

c Treaty of Waitangi issues.

Summary of advice

4 New Zealand is suffering from a severe infrastructure deficit which is undermining its economic performance, the ability of communities to provide for their social well-being and transition to a low carbon emissions economy. The NBEA introduced a fast track consenting process aimed at speeding up consenting processes but that process will disappear when the NBEA is repealed.[2]

5 We have considered various options for a new streamlined consenting process to address the gap that will be created for infrastructure projects when the NBEA is repealed. While faster infrastructure consenting processes will help address the delays to project implementation, certainty of outcome is

[1] Although we understand that officials will recommend that the fast track process in the NBEA continues on an interim basis, until new fast track legislation is enacted.
[2] Except perhaps for a short interim period, as per footnote 1 above.

even more important. Any new streamlined process should not just be about speed, but providing a more certain pathway for regionally or nationally significant infrastructure projects that provide a public benefit. The focus should be on enabling significant infrastructure projects that provide those public benefits, not specific types of activities.

6 The options for a new streamlined process for infrastructure include amending the RMA, new separate legislation, processes based on either FTCA or the NBEA, and other options such as the processes used in respect of the Urban Development Act 2020, special housing areas, and for emergency legislation.

7 In order to effectively address the infrastructure deficit noted above, the key elements of a streamlined process need to include:

a A separate piece of legislation (as opposed to amendments to the RMA).

b A focus on infrastructure rather than a broader range of activities. Infrastructure is critical for New Zealand's economic and social wellbeing, has a 'public benefit' element and provides the 'backbone' for the New Zealand economy. Broadening the nature of the activities eligible to use a streamlined process would put less critical activities on the same footing as infrastructure. A process that focuses on enabling significant infrastructure projects that provide a public benefit is likely to be more enduring than a process that allows a much broader range of projects (which may contribute to New Zealand's economic wellbeing but are essentially commercial projects).

c A clear legislative purpose that recognises the importance of *enabling* infrastructure, not just increasing the *speed* of consenting and the quick commencement of construction. Longer lapse dates should be available for route protection projects and projects being consented ahead of need (e.g as lead infrastructure).

d Both the NBEA and FTCA provide reasonable templates for retaining a fast track consenting process for infrastructure but the FTCA template has the following advantages:

i It is already set up as a separate piece of legislation (rather than needing to be carved out from the primary resource management legislation).

ii It is designed to sit alongside the RMA.

iii Minimal (if any) amendments would be required to the RMA itself (avoiding potential criticism that the Government is wasting time amending the RMA).

iv The FTCA process relies on a clear purpose that, for a new infrastructure-specific statute, should be replaced with a clear purpose focussing on enabling infrastructure whilst still ensuring the sustainable management of natural and physical resources (the purpose could be more targeted than the RMA or NBEA).

v A new list of projects could be inserted into Schedule 2 to reflect a National Infrastructure Priorities List (although the streamlined legislation is likely to be enacted before the List is developed), or provided by regulations (to allow the list to be more easily updated).

vi Referred (non-listed) projects could cover infrastructure that provides a regional or national benefit or helps the transition to a low carbon emissions economy. There should be clear criteria for referral in order to reduce the risk of judicial review.

vii The EPA is well set up to deal with applications. Hearing panels would ideally be chaired by an Environment Court judge (or retired judge) although whether there is sufficient capacity in the Court will depend on the volume of projects that are able to use the process.

e Flexibility to be able to slow the process down or pause in appropriate circumstances to enable the effective consenting of large scale infrastructure projects.

f The ability to obtain other authorisations under the Conservation Act 1987, Reserves Act 1977, the Freshwater Fisheries Regulations 1983, the Wildlife Act 1953 and Heritage New Zealand Pouhere Taonga Act 2014 as a one stop shop (just as the Severe Weather Emergency Recovery Waka Kotahi New Zealand Transport Agency Order 2023 provided a one stop shop for some activities).

8 Land acquisition often significantly delays infrastructure projects. The Severe Weather Emergency Recovery Waka Kotahi New Zealand Transport Agency Order 2023 introduced a streamlined process for acquisition of less than freehold interests in land. We see an opportunity for a fast track hearing panel to also deal with the land acquisition at the same time as the consent package (essentially performing the current role of the Environment Court in relation to Public Works Act 1981 ('**PWA**') objections). This option would require further investigation (and amendments to the PWA), but could include a right for landowners to request a hearing on land acquisition issues, and a right of appeal to the High Court on points of law. Land valuation issues would continue to be heard by the Valuation Tribunal.

9 Other measures that could be introduced to support a streamlined infrastructure process include:

a Expansion of the criteria for requiring authorities along the lines set out in the NBEA (a relatively straightforward amendment to the RMA);

b Inclusion of a route protection process (more substantial amendments to the RMA would be required);

c A national environmental standard for infrastructure which includes permitted and controlled activity rules for smaller 'business as usual' infrastructure activities (while still allowing requiring authorities to choose to designate for these activities, if that was their preference);

d A new infrastructure NPS that focuses on enabling infrastructure activities, and ensuring that policy direction in other NPSs does not effectively prohibit infrastructure activities;

e Retention of a spatial planning process for infrastructure and urban development, preferably via a national infrastructure plan which is then given effect to through regional spatial plans or regional policy statements;

f New legislation (or possibly even a mechanism within the streamlined infrastructure consenting legislation) to support the management of emergencies (e.g. earthquakes and weather events), with a mechanism to enable orders in council to be used to respond to events as they arise; and

g A standard set of conditions for infrastructure providers to encourage the efficient implementation and administration of consents and designations.

Detailed analysis

Problems consenting infrastructure under the RMA

10 Infrastructure is often described as the backbone of New Zealand's economy. Approximately $104 billion dollars' worth of new and/or upgraded infrastructure is required to address the country's current infrastructure deficit.[3] Despite the urgent need for new and upgraded infrastructure, the consenting processes under the RMA have taken too long, are too uncertain, and often require 'gold-plated' approaches that address every single effect to minimise the consenting risks.

11 Issues with the standard consenting process under the RMA include:

a The assessment process for infrastructure projects is overly complex, containing few standardised methods for addressing effects;

b The conditions attached to designations and resource consents are lengthy, complicated and very prescriptive;

c Consenting has become more complex and time consuming over time, with recent studies finding that the time it takes to get consent has increased by 150% over a 5 year period;[4]

d Consenting infrastructure costs more in New Zealand than in other jurisdictions with consenting costs accounting for 5.5% of the total cost of infrastructure projects;[5]

e Consenting costs disproportionately affect smaller projects. For example, Infrastructure projects costing under $200,000 spend on average nearly 16% of their budgets just on consenting;[6]

f Consent durations are too short and re-consenting is difficult, costly and time consuming; and

g Too much time is wasted debating alternative locations even where the project already has an approved indicative or detailed business case in place.

Boards of Inquiry and direct referral

12 Infrastructure projects can already also use the board of inquiry or direct referral processes in the RMA, but both of these processes have been criticised. Boards of inquiry have been criticised as being resource intensive, costly and inflexible.[7] In our experience, they require the presentation of a full case with voluminous evidence.

13 In recent years direct referral has been more widely used than boards of inquiry. In our experience, direct referral provides a more flexible process than a board of inquiry process, particularly by enabling mediation and narrowing of the issues prior to hearing. The disadvantage of direct referral is that the formality of the process may deter some lay submitters from participating (even with the assistance of an appointed 'friend of submitters').

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[3] Sense Partners "New Zealand's infrastructure challenge, quantifying the gap and path to close it" (2021), page 1.
[4] Te Waihanga Strategy, Page 136.
[5] Sapere. "The Cost of Consenting Infrastructure Projects in NZ: A Report for The New Zealand Infrastructure Commission/Te Waihanga", (2021) page 9.
[6] Te Waihanga Strategy, page 136.
[7] "Cabinet Mandated Review of Efficiency and Effectiveness of the Environmental Protection Authority 2015" noted general support for the Boards of Inquiry but criticism of the lack of consistency of process, variable quality and expertise amongst BOI members, variable quality of internal reports, the need to minimise costs and challenges working within the 9 month timeframe (see page 29).

The COVID-19 Recovery (Fast-track Consenting) Act 2020

14 FTCA came into force in July 2020 and introduced a consenting process to fast-track projects in response to COVID-19. Its purpose was to urgently promote employment and support New Zealand's recovery from the economic and social impacts of the pandemic and to support the certainty of ongoing investment across New Zealand, while continuing to promote sustainable management.[8] FTCA was repealed in July 2023.[9]

15 Schedule 2 of FTCA listed 17 projects that were able to use the FTCA process. 12 of the listed projects successfully used the fast track process. 7 of the projects were infrastructure projects (5 were residential developments). None of the listed infrastructure projects were declined.[10]

16 In addition, an application could be made to the Minister for the Environment ('**MfE**') to use the FTCA process. During the three year period FTCA was in force, 168 projects were lodged for referral to progress to an Expert Consenting Panel ('**Expert Panel**'). 108 projects were approved by the Minister for the Environment for referral to an Expert Panel (44 were declined and 16 were withdrawn). 12 of these referred projects were classified as 'infrastructure' and a further 15 applications were for 'green energy infrastructure'. 51 were either consented or in progress and 50 are awaiting lodgement. According to MfE data,[11] applicants advised that using the fast-track process **saved 18 months per project** on average (for referred projects).

The Natural and Built Environment Act 2023

17 The NBEA contains a new fast track consenting process for infrastructure and housing which is currently in force. A two-step process is established:

a An application for approval to use the fast track process – the application is lodged with the Environmental Protection Agency ('**EPA**') which prepares a report setting out its advice on whether the request should be accepted. The Minister must also invite comments from certain groups. The Minister has a discretion to accept or decline the application including the discretion to decline for "any other relevant reason".[12]

b The 'substantive application' is lodged with the EPA and considered by an expert consenting panel. The panel must invite submissions from a specified list of groups and persons (and may invite submissions from other relevant persons). There is no requirement for the panel to hold a hearing on an application, but it can do so if it considers it necessary. Once the decision is made an appeal may be made to the High Court on a question of law by certain parties, and leave may be sought to appeal to the Supreme Court in certain circumstances.

18 As noted above, this process will disappear when the NBEA is repealed.[13] Options for reinstating a fast track process are set out below.

Options for a new infrastructure fast track

Part of the RMA or separate legislation?

[8] COVID-19 Recovery (Fast-track Consenting) Act 2020, section 4.
[9] COVID-19 Recovery (Fast-track Consenting) Act 2020, section 3.
[10] There were limited grounds for declining applications for listed projects under s34 of FTCA (inconsistency with an NPS or s6 (Treaty of Waitangi)).
[11] Ministry for the Environment "Fast-track Consenting: Programme Report 2020/2023", September 2023.
[12] Clause 19(4)(b)(ii) of the NBEA.
[13] Except to the extent that savings legislation is expected to retain the process on an interim basis until new fast track legislation is enacted.

19 We have considered whether a streamlined process should be incorporated into the RMA or whether it should be a separate piece of legislation. Incorporating the process into the RMA has the advantage of ensuring seamless integration into the existing legislative framework. However, we prefer a separate piece of legislation (like FTCA) for the following reasons:

a Separate legislation would avoid the need to amend legislation that the new Government ultimately intends to repeal.

b Only minor amendments are likely to be required to the separate legislation when the RMA is repealed further down the track.

c Adding a purpose which enables infrastructure development would be more straightforward if contained within separate legislation rather than within the RMA itself.

d Separate legislation would better accommodate the one stop shop approach to consenting and permitting under a number of statutes,

20 While the speed of consenting is important, the inclusion of an enabling purpose for infrastructure is even more critical. The streamlined infrastructure consenting process should enable the implementation of a national infrastructure plan (and regional spatial plans, if retained) with the focus squarely on managing environmental effects.

21 The streamlined infrastructure consenting legislation would, similar to FTCA, sit alongside the RMA. Section 4 of FTCA sets out the purpose of the Act, while also requiring decision makers to promote the sustainable management of natural and physical resources. Specific references back to relevant provisions in the RMA including Part 2, section 104 (essentially duplicated in FTCA), s104A to s104D and s108 mean that the decision making criteria are essentially the same as under the RMA, but with the additional requirement to give effect to the purpose of the streamlined consenting act (in the same way as was required under the FTCA process). The very strong direction to enable infrastructure in the purpose of streamlined consenting legislation would assist in reconciling competing objectives and policies lower down the hierarchy, particularly in relation to 'avoid' policies in NPSs and RPSs.[14]

Overview of options for alternative processes

22 The table below sets out options for a fast track consenting process and the advantages and disadvantages of each option.

OPTION	PROS	CONS
NBEA fast track process in a separate stand-alone piece of legislation (sitting alongside the RMA) with minimal changes (no infrastructure-enabling	Relatively broad range of infrastructure eligible. Ability to request a certificate of compliance at the same time. Submissions limited to persons identified by Minister, regulations and persons who the Panel considers represent a relevant	The NBEA process applies to housing as well as infrastructure. Query whether housing should be included as an eligible activity. In our view, the housing intensification provisions of the NPS-UD and MDRS already provide a strong

[14] This approach is consistent with that taken by the Supreme Court in *Port Otago Limited v Environment Defence Society* [2023] NZSC 112.

OPTION	PROS	CONS
purpose, and no listed projects)	aspect of the public interest that is relevant to the application. Faster timeframes and more truncated process than standard RMA consenting (slightly slower than FTCA and potentially not much faster than direct referral if used effectively). Option not to hold a hearing. No cross examination (unless leave sought) if a hearing is held. Appeals on points of law to the High Court only. Convener for expert consenting panel (must be a judge or former judge) appointed by the Chief Environment Court judge. Power to make regulations to suspend (on a limited basis) the processing of an application in specified circumstances. Unlike FTCA, standard lapse dates apply.	enabling framework for housing development. Two-step process which requires approval from the Minister to use the fast track. Ministerial discretion is broad including whether the standard pathway is appropriate and significant adverse effects. No listed activities. In deciding whether to refer an activity the Minister must consider whether the fast-track is likely to be faster. Because the Minster's discretion to refer is relatively broad, it is difficult to say exactly what projects would be referred. [redacted] s9(2)(g)(i) insufficient numbers of potential panel members, and capacity of EPA to process applications. Minister may specify restrictions that apply to the activity that is being referred (e.g. geographical, duration or aspects of the activity that may be carried out). Applications would be considered under the RMA provisions applying to every other application. There is no requirement to enable infrastructure. Still need to assess under s104 and for non-complying activities pass the s104D gateway test. An infrastructure NPS would assist but would need to be sufficiently enabling and focus on the effects management hierarchy rather than 'avoiding' significant adverse effects. The infrastructure NPS would also need to override restrictive objectives and policies in the NPS-FM, NPS-IB, NZCPS etc. The main disadvantage is that it will take time to

[redacted] s9(2)(g)(i)

OPTION	PROS	CONS
		finalise the infrastructure NPS and get it in place.
NBEA process (with some changes) in separate legislation to sit alongside the RMA Two key changes: • Add a **new purpose** into the NBEA process similar to the format used in FTCA (for example): *The purpose of this Act is to support regionally and nationally significant infrastructure (and ancillary works) to provide social, economic and environmental benefits, while continuing to promote the sustainable management of natural and physical resources.*[16] • Include a **list of projects** that may use the fast track process, or enable this list to be provided by regulations (so it can be more easily updated).	This option has the same advantages as outlined above as well as the following potential benefits. The new purpose to be included in the NBEA process would require the benefits of the infrastructure to be given additional weight in terms of the purpose of sustainable management in the RMA. Including a list of projects that may use the process removes an additional hurdle for significant projects. Alternatively, this list of pre-qualified projects could be provided in regulations (so it could be more easily updated although the ability to amend the list provides less long term certainty). Could also introduce requirement not to decline listed projects (except in limited circumstances). Listed projects could include major projects that have already had at least an indicative business case completed (where business case processes are relevant).	[redacted] s9(2)(g)(i) The same issues as above arise in relation to referred projects (two-step process and Minister's broad discretion). Even with a clear new purpose, the 'avoid' objectives and policies in the NZCPS, NPS-FM, and NPS-IB are still likely to be problematic. An infrastructure NPS focused on enabling nationally significant infrastructure and managing effects in accordance with the effects management hierarchy would likely assist. If housing is to be retained, a purpose would need to be added in relation to housing.

[16] Other alternatives for discussion include:

The purpose of the Act is to enable the construction, upgrade and extension of regionally and nationally significant infrastructure (and ancillary works) while managing the adverse effects of those activities.

The purpose of the Act is to promote the construction of infrastructure while ensuring the sustainable management of natural and physical resources.

OPTION	PROS	CONS
Separate legislation using FTCA as a template with a **purpose** more enabling of infrastructure (along the lines above), **amend s19** (whether a project helps to achieve the purpose of the Act) and include a **new list of projects**	Could include a list of projects from the national infrastructure priority list which would not require Ministerial approval to use the process. Alternatively, this list of pre-qualified projects could be provided in regulations (so it could be more easily updated although the ability to amend the list provides less long term certainty). Could retain the requirement not to decline listed projects except in limited specified circumstances. Could include a clearer set of criteria for referred projects (regionally and nationally significant projects and renewable energy) so as to make the process more transparent. Applicants needed to be able to show that projects were effectively 'shovel ready'. This requirement should not be included in the new legislation. The referred project route should be available for any type of infrastructure project which reaches the 'regional significance' threshold (e.g. offshore wind, solar energy, transport, electricity transmission and distribution, telecommunications, schools, healthcare facilities etc). Including a clear purpose for the legislation would allow the benefits of infrastructure to be considered alongside the purpose of the RMA. Our analysis of the role that the purpose of FTCA has played in decision making is set out in **Annexure 1**. The *Flint Park* decision noted that neither FTCA purpose nor the RMA purpose had primacy. The Panel looked at the extent to which the project contributed to the purpose of the FTCA and then concluded that those benefits did not outweigh the degree of alignment with the objectives and	Potential concerns relating to limited capacity of Minister to deal with referral applications.[18] Would still also need to consider applications under clauses 31 and 32 of Schedule 6 of FTCA (similar to s104 of RMA) and for non-complying activities clause 32 applies s104B s104D gateway test. As above, an infrastructure NPS focused on enabling nationally significant infrastructure and managing effects in accordance with the effects management hierarchy would likely assist. Judge Newhook has suggested that appeals could be streamlined to a great extent than in the FTCA, which appeals (even on points of law only) to the Environment Court and then only one further appeal to the Court of Appeal.[19] The lapse period is only two years[20] meaning that projects essentially need to be 'shovel ready'. No requirement to hold a hearing and quite limited opportunity for the public to comment on applications. [redacted] s9(2)(g)(i)

[18] Fast track consenting process – summary of stakeholder feedback, Martin Jenkins, June 202, page 5.
[19] A review of the potential role of fast-track consenting in the future resource management system, Judge Newhook, 4 May 2022, paragraph 7.
[20] See clause 37(7)-(9) of Schedule 6 FTCA).
[21] A review of the potential role of fast-track consenting in the future resource management system, Guy Salmon, May 2022.
[22] Fast track consenting process – summary of stakeholder feedback, Martin Jenkins, June 2023.

OPTION	PROS	CONS
	policies in the district plan and inadequate protection of an ONF. An appeal has been lodged. The FTCA process is tried and tested. Anecdotal feedback from applicants on the process has generally been positive. [redacted]	[redacted] s9(2)(g)(i)
Amalgam of NBEA and FTCA	Pick out the good bits from NBEA and FTCA: • New purpose based on the FTCA purpose but amended to refer to enabling infrastructure; • Listed projects (from infrastructure priority list); • Referred projects (nationally significant projects and renewable energy); • Decision by Minister in terms of referred projects. As above, it should be relatively easy to retain the new piece of legislation in place if the RMA is repealed down the track (with some minor amendments).	A new piece of legislation may feel like 'starting from scratch' compared to using the FTCA provisions (which have been tried and tested) or the NBEA provisions (which have been subject to scrutiny through the NBEA legislative process).
Urban Development Act 2020 ('**UDA**') type process –consultation on and approval of Specified Development Projects ('**SDPs**'), establishment as a SDP by Minister for Infrastructure (Order in Council), preparation of a	UDA focuses on coordinating decision making processes for challenging and complex projects through a development plan process (which has the objective of being more enabling than the standard plan provisions). Attempts to work as a 'one stop shop' for complex projects.	No SDPs completed to date which means it is difficult to gauge exactly how useful this process might be. Tauranga Western Corridor and the Northern Growth Area have been accepted for initial assessment as a potential SDP. Time consuming process and there are significant consultation requirements to

[redacted] s9(2)(g)(i)

OPTION	PROS	CONS
development plan, submission process and hearing by an Independent Hearing Panel. The process could also involve: • the power for a third party (e.g. a new infrastructure delivery agency) to act as a resource consent authority • could widen PWA powers • the ability to create, reconfigure and reclassify reserves • tools to fund infrastructure and development activities, including the ability to levy targeted rates	Likely to be most useful where urban development is required to support the infrastructure being proposed (e.g. light rail or other rapid transit). Unlikely to be particularly useful where the investment is not reliant on urban development. There is likely to be some advantage in bringing across some of the powers relating to PWA, reserves and funding to infrastructure consenting. Another possibility is giving a role to a new infrastructure delivery agency as the consent authority for infrastructure consenting (currently Kainga Ora under the UDA process).	establish a SDP followed by a hearing process in relation to the development plan. Consents may still be required. Focus is more broadly on urban development (but recognises the importance or enabling infrastructure to support urban development), enabling all aspects to be consented through a single, integrated process. Aimed at large areas with multiple landowners, funding constraints, or complex planning challenges. More difficult to see what advantages this type of process would have for infrastructure (unless the infrastructure was simply to support the urban development proposed, and therefore linked by the programme, land acquisition and funding). The benefit of the UDA process is to support the integrated delivery of urban development projects, including supporting infrastructure. If the project involves just infrastructure development (without urban development), then the designation process is likely to be faster than a UDA process, and is unlikely to provide any real advantage (except possibly in relation to funding arrangements).
A process similar to the **National Development Act 1979**	Consolidated the Planning Tribunal and High Court appeal process into one hearing (although could be subject to a JR). Governor General decided if criteria met and referred to Planning Tribunal. Commissioner for the Environment audited the environmental impact report and gave views on the environmental implications. Planning Tribunal conducted a public inquiry. Planning Tribunal made recommendation. Governor General	Ability for Governor General to substitute his/her own decision for the recommendation of the Planning Tribunal. Likely to be seen as a step backwards given the controversy around the Think Big projects. In particular, the National Development Act 1979: • Suspended the operation of 28 pieces of legislation;

OPTION	PROS	CONS
	decided whether to make the Order in Council. No presumption that the order would be made but once the applications were in the NDA process it would normally follow.	• Could be used for virtually any project for investment in New Zealand; • Contained minimal protection for the environment; and • Orders in Council could not be challenged in Court.
Special legislation for each project (e.g. Manapouri scheme, the National War Memorial Park legislation or something similar to recent emergency legislation)	Manapouri-Te Anau Development Act 1963: Provided authorisation to construct and operate the project. Overrode the provisions of the TCPA. Required consultation with Minister of Conservation to "minimise" effects on natural scenery and fisheries. Hurunui/Kaikōura Earthquakes Emergency Relief Act 2016: Certain rehabilitation work was deemed to be a controlled activity. Consent authority had to advise specified persons listed in the Act, invite written comments (10 working day timeframe to comment) and could have held a meeting to orally present comments (if appropriate). A person making a comment was not to be treated as making a 'submission' and a person invited to comment may not appeal under the RMA against the decision and may not object under Part 14 of the RMA. Severe Weather Emergency Legislation Act 2023: Amended the RMA in terms of consents to undertake emergency, remedial and preventative works to quickly address damage arising out of specified storm events. Key amendments include: • Extended the powers of network utility operators under the RMA to also empower rural landowners/occupiers, to carry out preventive or remedial measures to prevent loss of life, injury or damage to land or property, without resource consent, but with modifications.	Would result in a very ad hoc and reactive approach, and would likely only be used for the most significant projects. The Manapouri scheme was effectively granted consent under the legislation with very scant environmental controls. Very unlikely to be palatable today – would need to make much more of an effort to manage the effects. We do not favour separate legislation for individual infrastructure projects as the better approach is to design a system that allows for efficient consenting of infrastructure projects. We have included it for completeness.

OPTION	PROS	CONS
	• Deadlines for retrospective consent were extended. • Councils' ability to enter private property to carry out emergency works was amended to make the requirements less onerous Overall, we consider that specific legislation is better suited to emergency works that cannot be anticipated. However, there is still some scope to incorporate emergency provisions into a new streamlined consenting process. While we have not considered this option in detail, the new streamlined consenting legislation could establish a framework for orders in council to respond to individual emergency events.	
Housing Accords and Special Housing Areas Act 2013 ('HASHAA')	Could model a new consenting process on HASHAA where 'qualifying developments' are provided with a more streamlined consenting process involving shorter decision making timeframes, no public notification, altered decision making criteria and special activity statuses, limited appeal rights.	Two or possibly three step process involving a Housing Accord, qualifying developments and then streamlined consenting. The beneficial elements of the streamlined consenting are similar to the FTCA and NBEA fast track processes. HASHAA provided little protection for infrastructure affected by developments.

Other potential changes to support a fast track process

23 The table below outlines additional matters that could be addressed to support a fast track consenting process for infrastructure.

OPTION	PROS	CONS
Include approvals under the Conservation Act 1987, Reserves Act 1977, the Freshwater Fisheries Regulations 1983, the Wildlife Act 1953 and Heritage New Zealand Pouhere Taonga Act 2014 so that the process is a one stop shop	The timeframes under many of these processes are uncertain and/or unprescribed. Inconsistences often arise between permits and resource consent conditions. Each relevant authority could provide a report to the Hearing Panel with a recommendation as to whether the permit should be granted and on what terms. There may be opportunity for standardisation of processes and conditions (as occurred in the Severe Weather Emergency Recovery Waka Kotahi New Zealand Transport Agency Order 2023).	The relevant authorities may be concerned that they are losing control over statutory processes they are currently responsible for.
Amend the RMA to remove the BOI process in conjunction with one of the options above?	There have only been 19 BOI processes (over a 14 year period). The only recent BOI is the Watercare Waikato River take. Generally considered to be very expensive and cumbersome. Less favoured than direct referral (which has the advantage of the Environment Court hearing the application).	New fast track processes will only apply to infrastructure, not other "nationally significant" development, so there could be some benefit in leaving the BOI process for other activities to use. Are further amendments unnecessary? The process may not be used much anymore but there is little harm in leaving it in place.
Amend the RMA to expand the criteria for requiring authorities in line with the NBEA	Currently some gaps in the RMA in terms of which entities can be requiring authorities. NBEA seeks to fill this gap by expanding to Council Controlled Organisations and listing emergency service providers and land based port activities. In addition, "other applicants" can apply to become requiring authorities where they can show significant and identifiable public benefit (e.g. renewable energy generation).	Additional amendments to the RMA may not be favoured given National has also signalled its intention to review it.
Permitted activities regime modelled on Subpart 2 of FTCA	Consistent permitted activity pathway would apply across the country providing much greater certainty for infrastructure providers in relation to permitted activities.	Not often used. [redacted] Process still fairly onerous:

[redacted]

s9(2)(g)(i)

OPTION	PROS	CONS
		• Restricted to specified entities; • Can only be carried out on existing infrastructure; • Need to give notice to local authority and engage with iwi; • Schedule 4 requirements relatively restrictive; • Evidence of compliance with the permitted activity standards must be provided to the local authority; • Various reports may need to be prepared (e.g. contaminated sites construction noise and vibration); • Does not allow existing conditions on designations to be varied or alterations to the purpose of the designation. Would require refinement if to be useful on an ongoing basis. Could be incorporated into a National Environmental Standard for Infrastructure?
New infrastructure NPS	A new infrastructure NPS that enables infrastructure would assist in evaluation of objectives and policies for resource consent applications under the new system. The NPS would need to be sufficiently enabling and focus on the effects management hierarchy rather than 'avoiding' significant adverse effects. The NPS could explicitly address the relationship with other NPSs.	None.
Retain the route protection provisions from the NBEA	These provisions are extremely useful for infrastructure providers but given the changes to the outline plan process are likely to be too difficult to carry across to the RMA at this point in time. Similar benefits could be achieved by retaining the Spatial Planning Act,	

OPTION	PROS	CONS
	referencing the Spatial Planning Act in the RMA (as per the NBEA) and extending the default lapse period in the RMA.[25] Alternatively, the RMA could be amended to require regional policy statements to have a spatial dimension.	
Retain a **spatial planning process** for infrastructure and urban development, preferably via a national infrastructure plan which is then given effect to through regional spatial plans	A national infrastructure plan would provide infrastructure providers (and everyone else) with certainty around which projects are critical to our well-being and are therefore being progressed. There would be less scope for major changes to priorities following a change in Government. A more efficient approach to infrastructure planning and delivery could be achieved. A national infrastructure plan would provide linear network infrastructure providers in particular with the ability to manage their networks with a national focus.	There is currently no requirement for a national infrastructure plan or strategy. Similarly, there is currently no mandated regional spatial planning process in place under the RMA. The RPS process could be used for regional spatial plans but would need to be amended so that spatial plans have statutory weight and district councils have a seat at the decision making table.
New legislation (or possibly even a mechanism within the streamlined infrastructure consenting legislation) to support the **management of emergencies** (e.g. earthquakes and weather events), with a mechanism to enable orders in council to be used to respond to events as they arise.	Would enable a more efficient response to events such as earthquakes and severe weather events.	Would require further work to devise a framework that would enable efficient and effective responses to a wide variety of emergencies in different contexts.
Encourage **streamlined and consistent consent conditions** for infrastructure projects across the country	The length and complexity of conditions on designations is problematic. Efficiencies could be achieved if a standard framework was applied across the country with some flexibility to amend those conditions in appropriate circumstances and site specific conditions could still be applied.	A standard set of conditions does not sit well within the current RMA framework. It could potentially be included in a NES for infrastructure or in regulations made under a streamlined consenting process.

[25] The RMA default lapse period is 5 years, but the NBEA default lapse period is 10 years.

OPTION	PROS	CONS
		Input from infrastructure providers would be critical to ensure a robust and practical set of conditions.
Streamline the **PWA process** so that it does not delay the commencement of construction. Potential options include providing a streamlined process for the acquisition of less than a freehold interest in land, allowing PWA objections to be heard by the streamlined consenting panel or a more comprehensive review of PWA processes.	Streamlining the PWA process would help in managing the risk of delay from land acquisition. One option would be for the Hearing Panel to hear the PWA objection (effectively replacing the current role of the Environment Court).	Any amendments to the PWA affect private property rights and are likely to be controversial. A balance needs to be achieved between the right of property owners to be heard and the need for speed.

Suggested key elements for a fast track system

24 The analysis above shows a number of common elements between the various fast track and streamlined processes (e.g. shortened timeframes, limits on submissions and hearings, ability not to hold a hearing and limited appeal rights). In our view, FTCA provides a good template for an infrastructure fast track process (to sit alongside the RMA) with the following key amendments (other consequential amendments will be required):

a Delete the repeal date in section 3.

b Delete all references to enabling housing development and referral of housing projects so that the process only applies to infrastructure. In our view, the streamlined consenting process should focus on infrastructure as the key mechanism for enabling urban development. Other changes such as the NPS-UD and the Medium Density Residential Standards, along with the ability of housing developments to use the direct referral mechanism are sufficiently enabling of housing development.

c Amend the purpose in section 4 to contain a strongly worded infrastructure enabling purpose along the following lines:

> *The purpose of this Act is to support regionally and nationally significant infrastructure (and ancillary works) to provide social, economic, or environmental benefits, while continuing to promote the sustainable management of natural and physical resources;* OR

The purpose of the Act is to enable the construction, upgrade and extension of regionally and nationally significant infrastructure (and ancillary works) while managing the adverse effects of those activities; OR

The purpose of the Act is to promote the construction of infrastructure (and ancillary works) while ensuring the sustainable management of natural and physical resources.

The inclusion of a clear purpose that enables infrastructure is critical to ensuring an efficient and effective consenting process. If the purpose of the Act is not clear, then applications will essentially continue to be processed under the RMA (s104 and s104D). The process might be faster than a standard track process, but will not provide any greater certainty in terms of outcome.

While our recommendation is that the streamlined process should apply just to infrastructure, if a broader range of activities is accommodated, then the purpose of allowing those activities to use a streamlined process also needs to be clear. HUD, for example, consider enabling housing developments to proceed at scale and pace as critical. The legislation could have a dual purpose – the first applying to infrastructure and a second part applying to other activities. Whatever approach is adopted, a clear enabling purpose for infrastructure is absolutely critical to ensuring that a streamlined process is effective.

d Delete the provisions relating to permitted activities as these provisions would sit better in a National Environmental Standard (or the National Planning Framework if retained in some form).

e Amend Schedule 2 Listed Projects to include the projects on the National Infrastructure Priorities List (or some of them), or include provisions which allow these projects to be listed in regulations, so the list can be more easily updated.

f Amend the referral process so that the Minister for Infrastructure makes the referral decision. Ensure that the referral process provides clear parameters for referring matters. A broad ministerial discretion and/or vague criteria for referral opens the door to judicial review of the referral decision. Listing projects that can use the process also removes the risk of judicial review.

g Amend the referral criteria so that any infrastructure project (including climate change adaptation project) which contributes to the social and environmental well-being of New Zealanders at a regional or national scale and any project that helps the transition to a low carbon emissions economy are eligible for referral;

h Amend section 19 (whether the project helps to achieve the purpose of the Act) to focus on infrastructure activities which contribute to well-functioning urban environments, improving social and environmental outcomes (including health and safety), helping the transition to a low carbon emissions economy, and natural hazard resilience.

i Amend section 23 by deleting s23(5) which provides the Minister with an extremely broad discretion as to whether to decline the referral (these issues are more properly considered at the application stage).

j Delete Subpart 2 Work on Infrastructure (although as noted above there would be benefit in including similar provisions in a National Environmental Standard or the National Planning Framework if retained).

k Consider providing a one stop shop for all permits required for the project and whether there should be a streamlined PWA process as set out in the table above.

25 Amend clause 37(7)-(9) of schedule 6 to extend the default lapse date and enable longer lapse dates where the project involves route protection or the consenting of lead infrastructure. In our view, the Treaty of Waitangi provisions in sections 6 and 17 are well drafted and make it sufficiently clear that the decision maker must act in a manner that is consistent with Treaty obligations and Treaty settlements.

26 In our view, the inclusion of a strongly worded purpose in the new legislation that promotes infrastructure is critical to providing greater certainty to infrastructure providers. The objective of the process would be to enable infrastructure in a way that:

a Supports the social well-being of communities (including cultural matters);

b Manages environmental effects;

c Helps the transition to a low carbon emissions economy; and

d Increases resilience in terms of natural hazard risks.

27 This approach is appropriate given the critical need for infrastructure and the public benefits it provides. Many infrastructure providers are Crown entities and are required to exercise a level of social and environmental responsibility. Under s167 of the RMA, requiring authorities are also required to satisfy the Minister that they will carry out their responsibilities and give proper regard to the interests of those affected and to the interests of the environment. Requiring authorities are then able to use the designation (and outline plan process) and also make decisions on their own notices of requirement.

28 Applications or notices of requirement utilising the fast track process would still be required to be considered under the equivalent of clauses 31 and 32 of Schedule 6 of FTCA (similar to s104 of RMA) and clause 32 (reflects s104B s104D gateway test) . Our analysis of the FTCA decisions set out in Annexure 1 indicates that the purpose of FTCA has not been particularly influential in decision making. However, it was noted in the *Flint Park* decision[26] that neither the FTCA purpose nor the RMA purpose had primacy when considering the application. The Hearing Panel looked at the extent to which the project contributed to the purpose of the FTCA and then concluded that those benefits did not outweigh the degree of mis-alignment with the objectives and policies in the district plan and inadequate protection of an Outstanding Natural Landscape. The application was declined but illustrates the critical role that the purpose could play when consenting nationally and regionally significant infrastructure projects.

Christina Sheard / Nicky McIndoe
Dentons

[26] See Annexure 1.

Appendix 1

Appendix 2

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[redacted]

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Appendix 2

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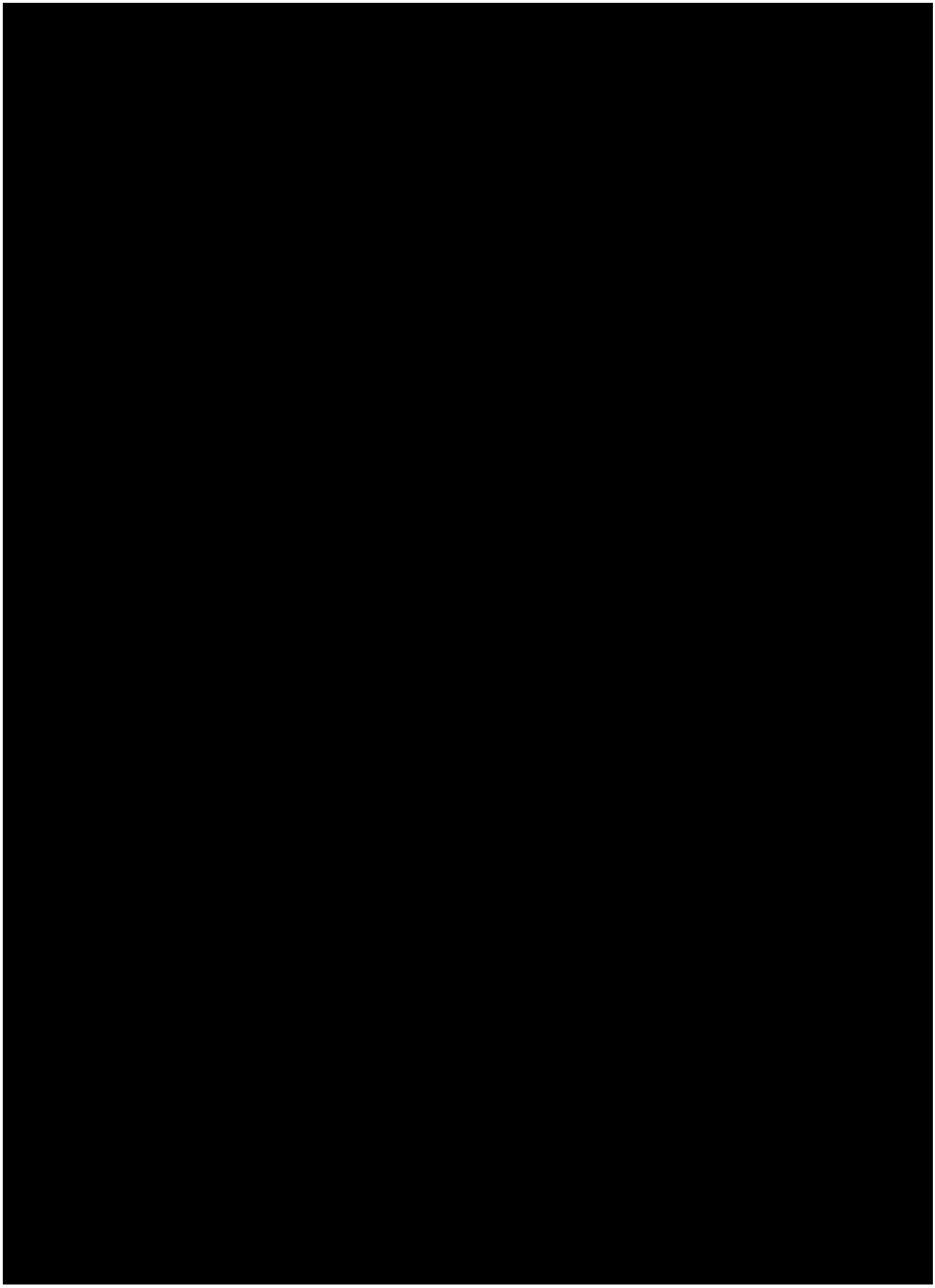
Appendix 2



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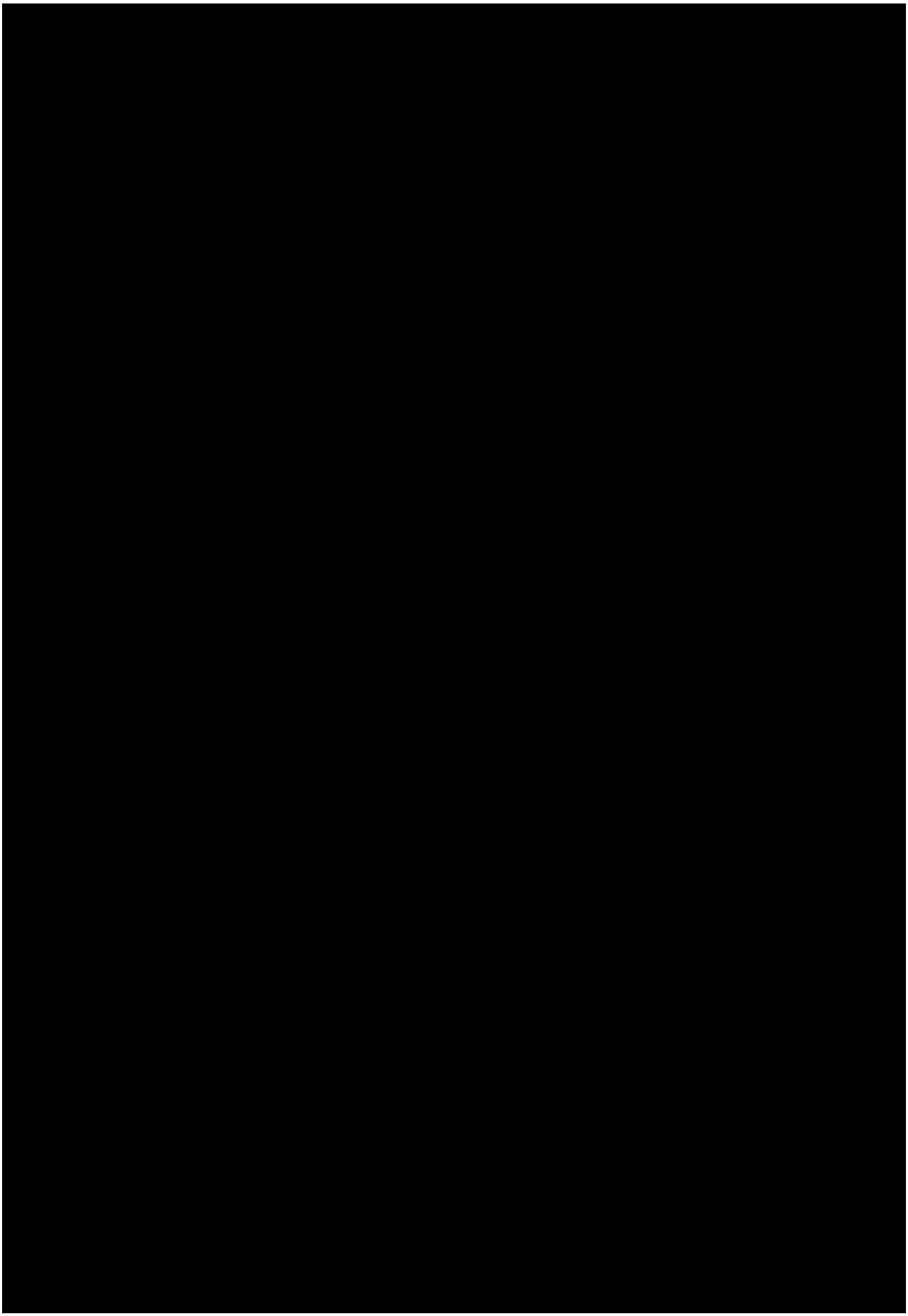
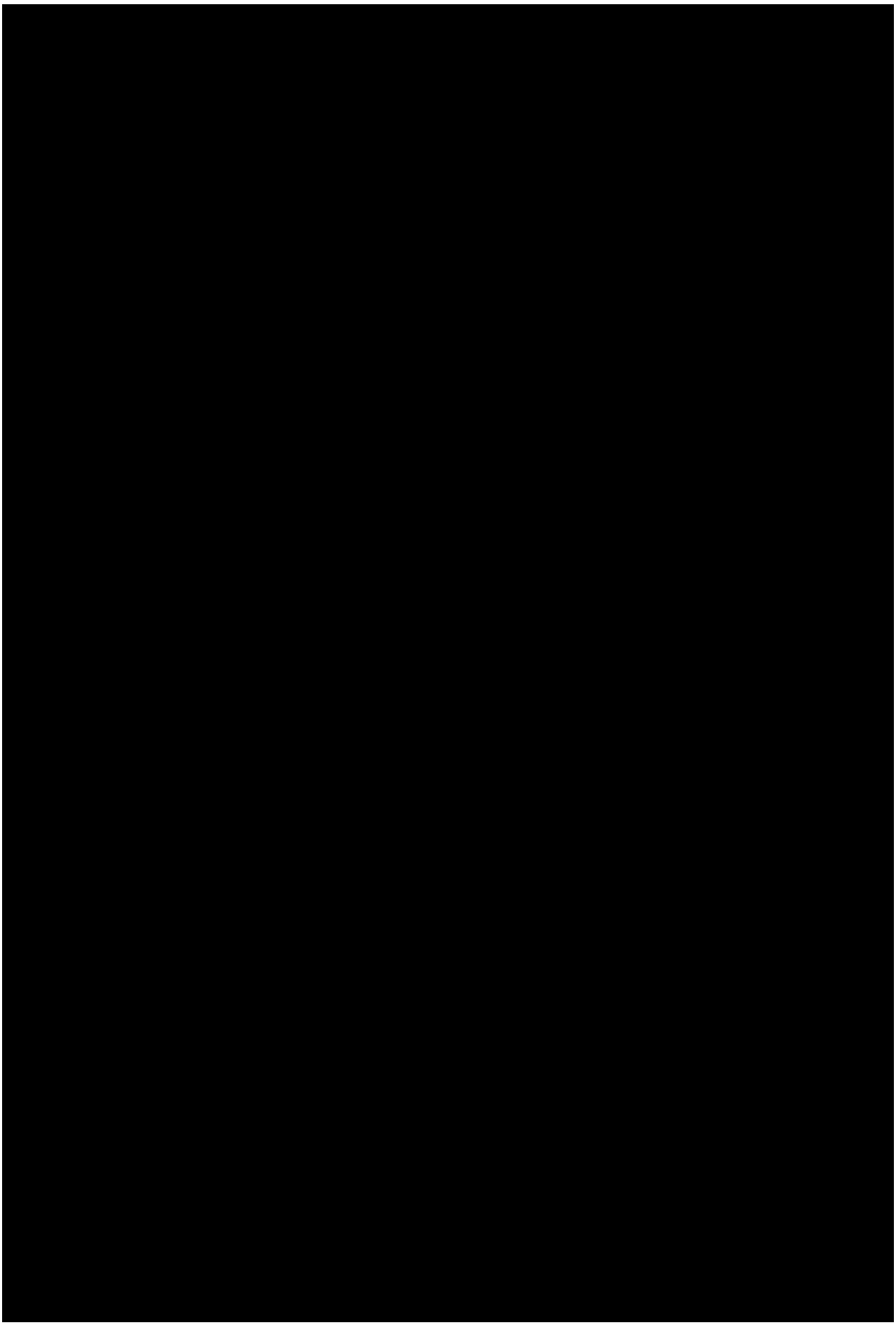
Appendix 2



Appendix 2



s9(2)(g)(i) **Appendix 2**

Paul Alexander

From: Paul Alexander
Sent: Thursday, 21 December 2023 4:10 pm
To: Elizabeth.Innes@parliament.govt.nz
Cc: jon.butler@parliament.govt.nz; Barbara Tebbs; Ross Copland
Subject: Fast Track consenting

out of scope

Hi Liz,

[redacted]

For further information, there are two *indicative* Purposes proposed. One is suggested by the Infrastructure Commission, also including wording housing and urban development, [redacted] s9(2)(g)(i) They would need further work and refinement, but which could form the basis for further discussion rather than starting from scratch.

The purpose of this Act is to:

"support regionally and nationally significant infrastructure, housing and urban development to provide social, economic and environmental benefits, while continuing to promote the sustainable management of natural and physical resources."

And in addition [redacted] s9(2)(g)(i)

[redacted]

*These purposes **could be combined to provide the dual purpose**, as follows:*

The purpose of this Act is to: s9(2)(g)(i)

[redacted]

while continuing to promote the sustainable management of natural and physical resources."

Ngā Mihi,
Paul

NEW ZEALAND INFRASTRUCTURE COMMISSION Te Waihanga

Paul Alexander (he/him) s9(2)(k)
Director, Infrastructure Planning | Kaitohutohu Mātāmua | **New Zealand Infrastructure Commission, Te Waihanga**
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NEW ZEALAND
INFRASTRUCTURE
COMMISSION
Te Waihanga

Infrastructure weekly update

For the week starting 29 January 2024

To Hon Chris Bishop, Minister for Infrastructure

Minister's comments:

Table of Contents withheld as out of scope except for item 2.2

2. Key issues and updates

out of scope

[redacted]

2.2. Fast track consenting

The Commission continues to be actively involved in Fast Track advice being prepared for Ministers. Our main focuses at the moment include:

- the *purpose and criteria* - we want to ensure that the significant housing and infrastructure projects you want to see progressed are prioritised and accelerated, but also that the system isn't flooded with too many applications and that judicial review risks are minimised;
- *other non-RMA approvals* – we want to ensure that approvals that matter most for infrastructure provision are assessed and prioritised for inclusion; and
- *future proofing the system* - so that quality-assured infrastructure projects (such as those on an Infrastructure Priority List) benefit from more efficient consenting processes.

Responsible GM: Barbara Tebbs

[redacted] out of scope

[redacted]

Paul Alexander

From: Paul Alexander
Sent: Wednesday, 7 February 2024 4:00 pm
To: Elizabeth.Innes@parliament.govt.nz; Georgia Kahan
Cc: Brigit Stephenson; Tanya Perrott; Barbara Tebbs
Subject: RE: Fast Track - Te Waihanga high level comments on Mfe/MBIE led Fast Track Briefing 1 for Delegated Ministers meeting 8th February

Liz, Georgia – please see a note to attach on top of the advice provided by Mfe/MBIE on Fast Track

Minister Bishop is meeting tomorrow (Thurs 8 Feb) with the group of Ministers delegated to make decisions on the details of the fast-track consenting Bill, being introduced as part of the 100-day action plan. He has received a detailed briefing pack from MfE. Mfe and other officials including Te Waihanga have a pre-meet where we can discuss key points.

The points below from Te Waihanga provide a succinct summary of our advice and suggested talking points on the decisions in the briefing pack, through the lens of the infrastructure portfolio only.

Overall, we generally support the recommendations as set out by MfE but there are areas for discussion and consideration by Ministers which, depending on their collective decisions, could potentially undermine the intent of the FTC Bill. Specifically we advise:

- It is important to clarify the purpose of the FTC Bill as being to enable significant infrastructure projects (not a large number of local projects), and use a similar approach to the covid Fast-track consenting Act (FTCA) in recognising the FTC Bill's relationship to the purpose of the RMA;
- Similarly, we advise keeping the scope relatively narrow – to reduce legal risk and increase chances of the Bill effectively enabling significant infrastructure, or if you choose to keep it broad, that significant projects are prioritised through the process
- Focusing the one-stop shop provisions initially on relatively easier quick wins for more streamlined approvals processes (avoiding, in the first instance, changes to primary legislation).

9(2)(h) [redacted]

More detailed points are set out below:

- We support much of the advice provided to you by Mfe and MBIE. However, we are concerned that some of the proposals would undermine Government's ability to deliver a Fast Track system that streamlines approvals and conditions for significant infrastructure projects. 9(2)(h) [redacted]

- We support the **criteria** that *must* be considered, but we are concerned the list of eligible activities beyond that is very broad, and risks crowding out infrastructure and housing projects that have the greatest benefits. If you choose not to narrow the list, then we recommend a means to prioritise significant projects (not first in first served) and the Commission could help with that.

- We support the Fast-track Bill providing a **one-stop-shop** for non-RMA statutory approvals and conditions, with the most frequently triggered approvals being added when the work is done (as set out in proposal II). We suggest starting with those other non-RMA approvals that are most frequently triggered (i.e. the approvals under the Wildlife Act, Conservation Act and Reserves Act and the archaeological approvals under the Heritage legislation listed in recommendation in Proposal II). We suggest focussing on process fixes,

rather than the recommendation to override the purposes of these other Acts. This would address the main problems applicants currently experience with these approvals and conditions, and would minimise the significant legal and Treaty issues associated with amending or departing from other legislation.

- Overall we support in the time available **keeping the legislative design as similar as possible to the Fast Track Covid Act (FTCA) and emergency/severe weather legislation** (which was designed for infrastructure projects). The more departures from this, the greater the complexity and legal risk.

- We recommend **one Minister** – the Minister for Resource Management Reform – be responsible for making referrals, in consultation with Ministers for Infrastructure, Transport, Regional Development etc. as is appropriate. This is different to what is recommended in proposal IV, that the responsible Ministers be the Ministers for Infrastructure, Transport and Regional Development. We consider having several referring Ministers would not provide for clear accountability, and would make it more difficult for the Government to prioritise projects for referral and to manage risks with referral decisions.

- Proposal VI notes that officials will provide further advice on the circumstances where an Expert Panel can decide not to grant approvals. The MfE briefing identifies legal risks with Parliament (when listing projects in the Bill) and the responsible Minister/s (when referring projects) making the decision that these projects will be approved. We recommend that the **Expert Panel makes the final consenting decision**. An enabling purpose and other drafting can make clear the weighting given to significant infrastructure and housing projects that bring forward wider public benefits, and provide a high bar to decline. This would reduce risk to the responsible Minister, and applicants.

- We recommend that similar arrangements are initially adopted to administer the system as happened under the Fast-Track Covid Act (FTCA) which involved key roles for MfE and the EPA. We understand from infrastructure providers that this worked well under the FTCA and we see no reason to deviate from it. As under that FTCA, the Infrastructure Commission and other ministries could provide advice into this process.

- If you do want to **list projects** for inclusion now, we suggest it should be a very high bar with auditable criteria, allowing only those (if any) that are fully ready. We agree with MfE that these should be referred to a panel for assessment, as referring to the panel reduces risk to you and the applicant. We fully support a work programme on improving conditions so they are workable, and can support that through this process, and through work on National Environmental Standards. We suggest that any listed projects should be provided at Select Committee stage, so that there is sufficient time to meet information and other requirements to develop such a list.

Ngā Mihi,
Paul

NEW ZEALAND INFRASTRUCTURE COMMISSION Te Waihanga

Paul Alexander (he/him) s9(2)(k)
Director, Infrastructure Planning | Kaitohutohu Mātāmua | **New Zealand Infrastructure Commission, Te Waihanga**
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Follow us on LinkedIn

NEW ZEALAND
INFRASTRUCTURE
COMMISSION
Te Waihanga

TW-2024-348

Infrastructure weekly update

For the week starting 19 February 2024

To: Hon Chris Bishop, Minister for Infrastructure,
Simon Court MP, Parliamentary Under-Secretary
to the Minister for Infrastructure

Minister's comments:

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all of report out of scope except for item 2.2

Type text here

2. Key issues and updates

[redacted]

2.2. Update on Fast Track Consenting

At the time of submitting this report, key decisions by delegated Ministers are still pending. [redacted])

Responsible GM: Barbara Tebbs

[redacted]

out of scope

Paul Alexander

From: Paul Alexander
Sent: Tuesday, 27 February 2024 2:33 pm
To: Elizabeth Innes; Georgia Kahan
Cc: Barbara Tebbs; Ross Copland; Ange Watson
Subject: RE: Papers and agenda for Fast-track joint Ministers meeting 5:30pm Tuesday 27 Feb

withheld under s9(2)(f)(iv)

[redacted]

[redacted]

s9(2)(f)(iv)

From: Elizabeth Innes <Elizabeth.Innes@parliament.govt.nz>
Sent: Tuesday, February 27, 2024 12:29 PM
To: Paul Alexander <Paul.Alexander@tewaihanga.govt.nz>; Ange Watson <Ange.Watson@tewaihanga.govt.nz>
Cc: Barbara Tebbs <barbara.tebbs@tewaihanga.govt.nz>
Subject: Re: Papers and agenda for Fast-track joint Ministers meeting 5:30pm Tuesday 27 Feb

Sounds good :/)

Get Outlook for iOS

From: Paul Alexander <Paul.Alexander@tewaihanga.govt.nz>
Sent: Tuesday, February 27, 2024 12:14:14 PM
To: Elizabeth Innes <Elizabeth.Innes@parliament.govt.nz>; Ange Watson <Ange.Watson@tewaihanga.govt.nz>
Cc: Barbara Tebbs <barbara.tebbs@tewaihanga.govt.nz>
Subject: RE: Papers and agenda for Fast-track joint Ministers meeting 5:30pm Tuesday 27 Feb

Liz – I'm sick so won't be there in person – so Barbara and I will dial in.
We have a few comments on the papers – can I call you about it and follow up with an email shortly?

From: Elizabeth Innes <Elizabeth.Innes@parliament.govt.nz>
Sent: Tuesday, February 27, 2024 12:07 PM
To: Ange Watson <Ange.Watson@tewaihanga.govt.nz>
Cc: Barbara Tebbs <barbara.tebbs@tewaihanga.govt.nz>; Paul Alexander <Paul.Alexander@tewaihanga.govt.nz>
Subject: RE: Papers and agenda for Fast-track joint Ministers meeting 5:30pm Tuesday 27 Feb

He is not required – but Paul and Barbara would be great if poss.

Apologies about the late notice I think that was an oversight by me.

Cheers,
L

From: Ange Watson <Ange.Watson@tewaihanga.govt.nz>
Sent: Tuesday, February 27, 2024 8:52 AM
To: Elizabeth Innes <Elizabeth.Innes@parliament.govt.nz>
Subject: RE: Papers and agenda for Fast-track joint Ministers meeting 5:30pm Tuesday 27 Feb

Hey Liz, just checking if Ross is expected at the meeting – wasn't in his diary so I wasn't aware of the meeting.

From: Elizabeth Innes <Elizabeth.Innes@parliament.govt.nz>
Sent: Monday, February 26, 2024 6:09 PM
To: Ross Copland <Ross.Copland@tewaihanga.govt.nz>; Barbara Tebbs <barbara.tebbs@tewaihanga.govt.nz>; Paul Alexander <Paul.Alexander@tewaihanga.govt.nz>

Cc: Georgia Kahan <Georgia.Kahan@parliament.govt.nz>
Subject: Fwd: Papers and agenda for Fast-track joint Ministers meeting 5:30pm Tuesday 27 Feb

Kia ora,

Please see attached papers for the Fast-track joint Minsters meeting tomorrow evening at 5:30. So sorry for sending them so late.

As per other meetings, please only advisors and Tier 1s and 2s in the room.

Thanks so much 😊

See teams link below:

Microsoft Teams Need help?

Join the meeting now

Meeting ID: 459 839 137 08
Passcode: Tout8W

Dial-in by phone

For organizers: Meeting options | Reset dial-in PIN

Ngā mihi,

Lisa Johnston (she/her)
Private Secretary – RMA Reform | Office of Hon Chris Bishop
Minister for Housing, Minister for Infrastructure, Minister Responsible for RMA Reform,
Minister for Sport & Recreation, Leader of the House, Associate Minister of Finance

M: [redacted] s9(2)(k)
Email: lisa.johnston@parliament.govt.nz Website: www.beehive.govt.nz
Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

From:	Brigit Stephenson
To:	Elizabeth Innes
Cc:	Georgia Kahan; Barbara Tebbs; Tanya Perrott; Paul Alexander; Ange Watson; Anna Moodie
Subject:	Aide memoire re options to align PWA and FTC
Date:	Thursday, 29 February 2024 12:53:00 pm
Attachments:	20240229 TW-2024-358 re Options to align PWA and FTC.docx 20240229 TW-2024-358 re Options to align PWA and FTC.pdf

Kia ora Liz

As requested following the fast track Ministers' meeting on 27 February, here is an aide memoire outlining our view of options put forward by LINZ to align Public Works Act and fast track consenting processes. This includes some references to approaches in other jurisdictions.

Ngā mihi
Brigit

Brigit Stephenson | *Principal Advisor Policy - Kaitohutohu Mātāmua*
New Zealand Infrastructure Commission | Te Waihanga
s9(2)(k) **M:** [redacted] **| Email:** Brigit.Stephenson@tewaihanga.govt.nz
https://tewaihanga.govt.nz/

Please note that I do not work on Thursdays.

NEW ZEALAND INFRASTRUCTURE COMMISSION Te Waihanga

Infrastructure considerations for options to align Public Works Act and fast track consenting processes

Date: 29-February-2024

Report No: TW-2024-358

To	Action sought	Deadline
Hon Chris Bishop, Minister for Infrastructure	**Note** this advice, to inform your decisions about progressing changes to PWA land acquisition processes alongside the proposed Fast Track Consenting (FTC) process	N/A

Attachments

None

Contact details

Name	Role	Phone
Tanya Perrott	Principal Advisor, Policy	[redacted]
Barbara Tebbs	General Manager, Policy	[redacted] s9(2)(k)

Purpose

1. This Aide Memoire responds to your request (made at the delegated Ministers' 27 February meeting about the Fast-Track regime) for the New Zealand Infrastructure Commission's advice, including reference to approaches in other jurisdictions, on options to align Public Works Act (PWA) and Fast-track consenting (FTC) processes. We understand that Ministers are making decisions about this quickly (and may already have made initial decisions). New information is provided here to assist ongoing decision-making through the FTC law-making process and on complementary work to improve the PWA.

2. The Aide Memoire outlines the collective view of Government's infrastructure agencies about the three options suggested by Land Information New Zealand (LINZ) in BRF 24-328 provided to you on 26 February. (Given the speed at which the FTC legislation has been proceeding it was not possible for LINZ to reflect the practical input of the infrastructure agencies in its advice.) It also references approaches in other jurisdictions to streamline land acquisition and environmental assessment processes for significant infrastructure projects.

Options to align Public Works Act and Fast-track processes

3. Land Information New Zealand (LINZ) has provided you and the Ministers for Land Information, Transport and Energy with advice on how to align land acquisition processes under the Public Works Act 1981 and consenting processes under the new FTC legislation (BRF 24-328 refers). This sets out three options:

    - Option 1A - a package of legislative and operational changes to the PWA in parallel to the Government's proposed FTC legislation [BRF 24-304 refers].
    - Option 1B – targeted amendment to the PWA (via the FTC Bill) to streamline Environment Court processes for projects that are part of the FTC regime.
    - Option 2 – bring part of the PWA land acquisition process into the FTC regime by allowing the Expert Consenting Panel (ECP) to hear objections to land acquisition, as part of the FTC Bill.

4. LINZ recommends option 1A and also notes that 1B could be progressed in tandem. LINZ has concerns about option 2.

Infrastructure Commission and infrastructure agency comments

5. The Infrastructure Commission has a different view, and this is shared by the Ministry of Transport, the New Zealand Transport Agency, Kiwirail and Transpower. We are united in supporting options 1A and 2 and consider both are necessary.

6. We support option 1A (a package of legislative and operational changes to the PWA) and agree with LINZ that this is needed to address a broad range of matters for all public works. These matters include compensation processes, Transpower's ability to efficiently access compulsory acquisition powers, the ability to acquire land for third party works needing to be relocated as part of the project, notice of requirement processes, and timeframes for obtaining approvals from LINZ. The Infrastructure Commission, Ministry of Transport, New Zealand Transport Agency, Kiwirail and Transpower can input their practical expertise to advice on this review (due by 27 March 2024) to ensure that it addresses the issues in a timely manner.

7. We do not support option 1B (a targeted amendment to the PWA to streamline the Environment Court process for hearing objections to land acquisition). This option would not address the duplication and time delays associated with having separate processes for land acquisition and RMA consents, which cover much the same ground.

8. It is not possible to control Environment Court timeframes, or effectively avoid duplication of matters also required to be considered by the Expert Consenting Panel (ECP). The time savings and efficiencies achieved through the FTC process would likely be undermined for significant infrastructure projects that also need to acquire land, if the land acquisitions objections process is conducted separately.

9. Rather, we support option 2 (bring the objections part of the land acquisition process into the FTC regime). The best way to achieve the efficiencies sought is if the ECP considers both RMA matters and PWA objections for referred projects, including holding joint hearings on these issues with landowners. Bringing these processes together would not limit landowners' rights or raise natural justice issues. The objections process would be retained with sufficient timeframes, and tests would remain the same as under the PWA. Given the similarity of the tests under the RMA and the PWA, infrastructure agencies do not think this would significantly add to the workload of the ECP. [redacted] s9(2)(h)

10. We note that various other jurisdictions have also been streamlining processes for land acquisition (alongside environmental assessment) for significant public projects. For example, in Ontario, Canada, the *Building Transit Faster Act 2020* is designed to "better enable the assembly of land required to construct transit projects while still treating property owners fairly." The Act includes provisions to allow the Minister of Transportation to establish an alternate streamlined process for receiving and considering comments from landowners about the proposed land assembly. In contrast with New Zealand, consenting risk is not transferred to delivery partners. There are various tools for accelerating projects including laws that compel privately owned infrastructure to relocate their assets, share data and the like.

11. It would be useful to explore approaches and learnings from examples such as these, as part of the work to deliver on Option 1A - the package of legislative and operational changes to the PWA in parallel to the Government's proposed FTC legislation.