



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
	Cab Briefing: Repealing the NBA and SPA and Introducing a Fast-track Infrastructure Consenting Regime	Treasury
27 Feb 2024	Aide Memoire: T2024-435 Strengthening the Fast-track Consenting Bill	Treasury
	Cab Briefing: A permanent fast-track consenting regime for regional and national projects of significance	Treasury
	Cab Briefing: Fast-Track Approvals Bill: Approval for Introduction	Treasury

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

<p>Repealing the NBA and SPA and Introducing a Fast-Track Infrastructure Consenting Regime Hon Chris Bishop, Minister for RMA Reform</p> <p>Treasury contact: Caitlin Daugherty-Kelly, [REDACTED]</p> <p>Sign out contact: Geraldine Treacher, [REDACTED]</p>
<p>Description:</p> <p>We have not seen a final copy of this Paper. Based on an earlier draft, we understand that as part of the Government’s 100 Day Plan, it provides the legislation required to:</p> <ul style="list-style-type: none"> • repeal the National and Built Environment Act (NBA) and Spatial Planning Act (SPA), and • retain the NBA’s fast track consenting (FTC) pathway as an interim measure while a more enduring FTC regime is developed for the RMA.
<p>Comments:</p> <p>We support introduction of an FTC regime under the RMA. We can provide you with further advice on amendments to the RMA in the next phase of work, and in line with your broader economic, environmental and developmental goals. We recommend amendments include infrastructure standards, and new and amended National Direction especially relating to infrastructure and natural hazard risk management. We can also provide you with advice on creating an enduring legislative framework. To be effective, we recommend this framework is integrated, predictable, outcomes-focused, and efficient.</p> <p>Treasury Recommendation: Support</p>
<p>Fiscal Implications:</p> <p>This paper has no direct fiscal implications set out. Over Budgets 2019, 2021 and 2022, MfE received \$513.138m to support design, delivery, implementation and transition to the new RM system. Of this, \$3.669m for 2025/26 and \$5.041m per year in outyears remains in tagged contingency. Decisions on the use of unspent funding are being made separately through mini-budget processes.</p> <p>Treasury Recommendation: Support</p>

<p>Repealing the NBA and SPA and Introducing a Fast-Track Infrastructure Consenting Regime Hon Chris Bishop, Minister for RMA Reform</p> <p>Treasury contact: Caitlin Daugherty-Kelly, [REDACTED]</p> <p>Sign out contact: Geraldine Treacher, [REDACTED]</p>
<p>Description:</p> <p>We have not seen a final copy of this Paper. Based on an earlier draft, we understand that as part of the Government’s 100 Day Plan, it seeks agreement to:</p> <ul style="list-style-type: none"> • repeal the National and Built Environment Act (NBA) and Spatial Planning Act (SPA) in December, and <p>retain the NBA’s fast track consenting (FTC) pathway as an interim measure while a more enduring FTC regime is developed for the RMA during December.</p>
<p>Summary of Advice:</p>

- The Treasury supports the introduction of a Fast Track Consenting pathway into the Resource Management Act.
- Once the Resource Management Act has been reinstated, we will provide further advice on options for developing a replacement framework and how that framework will integrate into other 100 Day proposals and Government commitments. E.g. City Deals.

This paper has no direct fiscal implications.

Comments:

We support introduction of an FTC regime under the RMA. We can provide you with further advice on amendments to the RMA in the next phase of work, and in line with your broader economic, environmental and developmental goals. We recommend amendments include infrastructure standards, and new and amended National Direction especially relating to infrastructure and natural hazard risk management. We can also provide you with advice on creating an enduring legislative framework. To be effective, we recommend this framework is integrated, predictable, outcomes-focused, and efficient.

Treasury Recommendation: Support



Reference: T2024/435

Date: 27 February 2024

To: Minister of Finance (Hon Nicola Willis)

Deadline: None

Aide Memoire: Strengthening the Fast Track Consenting Bill

This aide memoire brings to your attention areas of the Fast Track Consenting (FTC) Bill that we think would benefit from closer scrutiny through the Select Committee process. The purpose would be to identify possible amendments that will help ensure the smooth and effective functioning of the FTC regime.

To table the Bill for its first reading on 7 March, the path for decision-making does not include Cabinet committee consideration. As such, you may wish to discuss or share these proposals with your Ministerial colleagues in advance of Cabinet deliberations.

Treasury officials have had targeted engagement in the inter-agency process supporting Delegated Ministers on development of the FTC legislation

The Treasury considers the Government's planned resource management reforms to be a critical enabler of sustainable economic growth. Due to the pace at which this work is progressing, and capacity constraints, our engagement with the inter-agency process supporting delegated Ministers has focused primarily on the fiscal and economic implications of the Bill and the coherency of the FTC system.

This advice is based on our targeted involvement in the process, and general insights. This includes a draft Cabinet paper circulated by the Ministry for the Environment (MfE) for agency consultation on 21 February, and access to a draft of the FTC legislation. Policy positions may change as Ministers continue to take delegated decisions on key elements of the FTC.

The FTC legislation was modelled largely on the COVID-19 Fast Track Consenting Pathway, with a few significant differences

The COVID-19 FTC pathway was designed to be a time limited response to the economic recovery challenges brought on by COVID. The pathway allowed for fast-track consents under the Resource Management Act for infrastructure and housing projects that met a public interest test.

The new legislation provides for projects of ‘regional and national significance.’ However, significance has not been defined. This means the legislation will be open for interpretation, and Ministers will have a high level of discretion in deciding project eligibility.

In addition to this difference, and to meet Ministers aspirations for the Bill, under the new FTC legislation:

- The Bill will act as a “one-stop shop” for nationally and regionally significant infrastructure and developments. This will allow applicants to seek expedited regulatory approvals which would normally progress through the resource management system and related regulatory regimes (e.g. Conservation Act, Crown Minerals Act, etc.), overriding the purpose of these Acts in the decision-making framework;
- Ministers will be the final decision makers on whether to grant access to the FTC pathway, with an Expert Panel able to recommend declining projects only in limited circumstances;
- Two-types of listed projects will be provided for. Category A projects, similar to the COVID FTC’s listed projects, will be close to delivery ready, while Category B projects will be on a longer delivery time-track. The list of Crown funded projects we are aware of that have been proposed for Category A inclusion in the Bill is attached for reference.

Decisions on how the Bill will reflect the Treaty of Waitangi / Te Tiriti o Waitangi are still to be taken, but engagement with Iwi is required throughout the process (i.e., development of applications, Ministerial consideration, submissions to the Expert Panel). However, the Expert Panel will not hold public hearings and consultation requirements are focused on parties that are directly affected by decisions (e.g., affected landowners and neighbours, local councils, customary rights holders).

Select Committee’s review of the legislation will strengthen the Bill

Decisions taken on the design of the FTC explicitly rebalance environmental and development objectives by giving a greater weight to infrastructure and development projects, and lesser weight to the matters set out in part 2 of the RMA. There is always a balance to be struck within different dimensions of resource management, including development and environmental objectives. We recognise that notwithstanding the need to prioritise critical projects, it will be important to ensure that this is not at undue cost to the environment given some declining environmental indicators in recent years.

Below are six areas we have identified to date that could impact on the effectiveness of the FTC regime, and which we think it would be useful for Select Committee to consider and can help mitigate risk:

Transaction volumes: to ensure the system is able to progress decisions within expected timeframes.
Consented projects that would require Crown funding: to ensure the Government will be able to manage expectations of Crown funding in order to meet its fiscal and economic sustainability objectives.
Natural capital: to ensure that consent conditions recommend by the Expert Panel appropriately protect vulnerable ecosystems.
Relationships with Treaty partners: to ensure their roles within the RM system (and other legislative frameworks subject to the FTC regime) fulfil the Crown's Treaty obligations.
Relationships with other legislative regimes: to ensure coherency and clarity, supporting investment certainty and system efficiency, and reducing legal risks.
Probity issues: to ensure that Ministers and Officials are protected from personal and legal risks associated with handling of applications and communication.

We recommend the Select Committee is directed to define 'significant' as used in the Bill's purpose statement

Drafting is advanced with the key parameters of the legislation agreed. Relitigating decisions at this stage will prevent Ministers from realising the Bill's timeframes.

To both meet these timeframes and support the system's enduring efficacy and support for sustainable economic development outcomes, we recommend that Select Committee is directed to define 'significant,' as used in the Bill's purpose statement.

This will help focus eligibility criteria, mitigating risks that:

- transaction volumes exceed the capability of the system to efficiently process applications,
- the quantum of projects seeking Crown funding creating fiscal and economic pressures,
- the impacts of decisions result in material reductions in natural capital with negative economic consequences, and
- Treaty partners being overwhelmed by engagement and consultation processes.

We also think there is value in the Select Committee focusing on the interaction with other legislative regimes

Due to the time pressures driving a constrained policy and drafting process, there have been limited opportunities to test the interplay of the FTC Bill with existing legislative

regimes particularly where the impacts may be indirect (e.g., fiscal risks arising from the expansion of aquaculture under the *Māori Commercial Aquaculture Claims Settlement Act 2004*).

To ensure the 'one-stop shop' for approvals meets the expectations of the Government while balancing the explicit safeguards in other legislative regimes (e.g., conservation values, heritage protection, Treaty settlements) the Select Committee could be directed to focus on legislative interactions.

This would also provide an opportunity for additional engagement with Iwi in relation to Treaty settlement legislation and the whether the role envisioned for Māori in the FTC decision-making is workable.

Probity risks will need particular attention as the FTC system is operationalised

Strong probity safeguards need to be built into decision-making and communications processes (e.g., managing conflicts of interest, trading restrictions, record keeping, public announcements), including the alignment of processes in Ministers' offices with Cabinet Office Circular CO (23) 5 *Guidelines for Dealing in Financial Products on Markets (Inside Information and Market Manipulation)*. This will help manage the risk of personal legal liability when officials, Ministers and their staff are working with "material information" in relation to project applications by listed companies.

Current management arrangements for commercially sensitive information also need to be strengthened as a priority. The Treasury has highlighted this risk to MfE officials for the handling of information on projects that may be listed in the Bill.

Upcoming advice

We will provide you with a further briefing on the final Cabinet paper and draft legislation prior to Cabinet consideration on 4 March.

Davin Hall, Principal Advisor, Natural Resources [REDACTED]
Caitlin Daugherty-Kelly, Senior Analyst, Housing and Urban Growth [REDACTED]
James Haughton, Manager - Natural Resources, Natural Resources [REDACTED]

Attachment: Appendix - Initial Assessment of Crown-Funded Category A Projects Submitted for Possible Inclusion in the FTC Legislation Bill

A permanent fast-track consenting regime for regional and national projects of significance

Hon Chris Bishop, Minister Responsible for RMA Reform

Treasury contact: Fiona Stokes [REDACTED]

Sign out contact: Geraldine Treacher [REDACTED]

Description:

Seeks agreement to key policy decisions to provide for a permanent fast-track consenting regime, and to issue drafting instructions to the Parliamentary Council Office to enable a bill to be introduced within the first 100 days in office.

Comments:

The Treasury has had limited time to consider the paper. These comments are based on the updated version we understand was provided to Minister Bishop's office.

We support the introduction of a fast-track consenting regime, although in the longer term the reformed RMA system should not require one as the system itself should provide an effective and efficient pathway.

Given timings, delegated Ministers are being asked to make the detailed policy decisions required to finalise the draft and issue drafting instructions.

Key areas are the purpose clause, definition of 'significant' benefits, eligibility of projects and criteria. We will continue to engage with MfE on these. We remain concerned about the risks and unintended consequences of undertaking this work in constrained timeframes. In particular, the risk of the legislation being unwieldy or not providing for appropriate iwi and stakeholder engagement. Ministers should seek advice on the lessons learned from the previous regimes as part of the next stage of the detailed policy development.

We are concerned about the recommendation that approvals for projects listed in legislation cannot be declined by the expert panel, with the panel only able to apply conditions. Given the criteria and project list is being developed in tandem, this risk projects being considered that do not meet the criteria and in turn introduces the risk of a perceived lack of consistency and transparency at the establishment of the FTC process.

We also note that while a project may be listed in the legislation there is no financial commitment made through this. All projects should go through business casing and investment planning and assurance processes and meet the same expectations as all other investments as outlined in CO (23) 9.

[REDACTED]

Treasury Recommendation: Support, with the following amendments:

Amend recommendation 37 to read:

[REDACTED]

If you would like greater oversight of the implementation and ongoing operating costs, you may also wish to insert the following recommendation after recommendation 38:

- **Direct** officials to report back to the Minister of Finance on the costs for the responsible agency or agencies to deliver the fast-track consenting regime before consultation on the final approval paper takes place.

To ensure clarity, you may wish to include the following noting recommendation:

- **Note** all projects should go through business casing and investment planning and assurance processes as required by CO (23) 9.

Fiscal Implications:

[Redacted text block containing fiscal implications]

IN-CONFIDENCE

Fast-Track Approvals Bill: Approval for Introduction

Hon Chris Bishop, Minister for RMA Reform

Treasury contact: Caitlin Daugherty-Kelly

Sign out contact: Glen Thomson

Description:

This paper seeks agreement to introduce the Fast-Track Consenting (FTC) Bill (the Bill) to the House on 7 March, with a full select committee process. It also seeks agreement to establish an independent panel to assess listed projects for inclusion in the Bill prior to enactment.

Comments:

We have not seen a final copy of the Paper nor the Bill. Based on engagement with earlier drafts of each, and in recognition that introduction of the FTC Pathway is a part of the Government's 100 Day Plan, we support this Paper. As per our advice to you on 27 February 2023 [T2024/435], we recommend that Select Committee:

- is directed to define 'significant' (used in the Bill's purpose statement), to support system efficiency and effectiveness,
- examines the FTC Bill's interaction with other legislative regimes, to ensure the 'one-stop shop' function meets the expectations of the Government while balancing safeguards in other legislative regimes, and
- ensures the consent conditions recommended by the Expert Panel appropriately protect vulnerable ecosystems.

We expect to provide advice to the independent panel on their assessment of listed projects with Crown-funding requirements or implications.

Treasury Recommendation: Support

Fiscal Implications:

This Paper does not have any direct fiscal implications. We are separately briefing you on the fiscal implications of the 'Work Programme for Reforming the Resource Management System' Paper, which has been lodged for ECO consideration next week.