



PROACTIVE RELEASE COVERSHEET

Minister	Chris Bishop	Portfolio	RMA Reform
Subject Matter	Fast Track Approvals Bill	Date to be published	02/04/2025

List of documents that have been proactively released

Date	Title	Author
10/12/24	CAB 24 MIN 0484	Cabinet Office
10/12/24	CAB 24 SUB 0484	Cabinet Office
10/12/24	CAB 493: Fast-track Approvals Bill: Approval for Amendment Paper	Ministry for the Environment
10/12/24	CAB-493: Appendix One: Matters addressed through decisions made under delegation	Ministry for the Environment

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:

- To protect free and frank advice tendered to Ministers under s9(2)(g)(i)
- To maintain professional legal privilege under s9(2)(h)



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Fast-track Approvals Bill: Approval for Amendment Paper

Portfolios **RMA Reform / Regional Development**

On 9 December 2024, Cabinet:

- 1 **noted** that Cabinet previously agreed to progress a permanent fast-track consenting pathway [CAB-24-MIN-0008];
- 2 **noted** that an independent external Assurance Panel have advised that the Fast Track Approvals Bill (the Bill), as currently drafted, gives effect to the Government's intention to establish a consenting and permitting process that:
 - 2.1 is a one-stop-shop for applicants seeking multiple approvals for their project;
 - 2.2 is an expedited process for applicants, that is faster and more streamlined than the status quo;
 - 2.3 makes it substantially easier for projects to be approved than the status quo, with a high bar needing to be reached for a panel to decline a project;
 - 2.4 has a clear development focused purpose clause which has a greater weighting over the purpose clauses of the parent legislation;
- 3 **noted** that the Amendment Paper, attached under CAB-24-SUB-0484, implements the improvements recommended by the Assurance Panel and by delegated decisions to ensure the Bill provides a clearer high bar for decline, that condition setting is no more onerous than necessary, delivers streamlined and efficient processes, and minimises litigation risks;
- 4 s 9(2)(g)(i)
- 5 **noted** that the Cabinet Economic Policy Committee (ECO) previously agreed to incorporate 149 listed projects into Schedule 2 of the Bill [ECO-24-MIN-0205.01];
- 6 **agreed** that the 149 listed projects be:
 - 6.1 either directly listed in Schedule 2 by Amendment Paper at the committee of the whole House;
 - 6.2 or declared as listed projects through a one-off Order in Council process after enactment, with future projects relying on the referral process;

- 7 **authorised** the Minister Responsible for RMA Reform to take decisions on which pathway in paragraph 6 above to use, including any necessary drafting;
- 8 **noted** that delegated Ministers made decisions on enabling specified electricity projects on high value conservation land with some exclusions (including marine reserves) to allow specific electricity activities to use the Fast-Track approval process on more than 90 per cent of public conservation land;
- 9 **noted** that delegated Ministers made decisions on clarifying how ineligible criteria apply to subsurface mining of Crown-owned minerals, eligible reserves for land exchanges and other decisions to improve workability (in Appendix One to the paper under CAB-24-SUB-0484);
- 10 **noted** that ECO previously agreed to amend the Bill to include selected Crown Minerals Act 1991 permitting as an approval and policy changes including priority and order of fast-track applications, and cost recovery through an Amendment Paper [ECO-24-MIN-0193, ECO-24-MIN-0200];
- 11 **noted** that costs carried out under the legislation will be able to be cost-recovered, and that the Environmental Protection Authority is the lead agency as a centralised collection agency;
- 12 **noted** that the fees and levies will be established in regulation, which will be provided to the Cabinet Legislation Committee in late December 2024;
- 13 **confirmed** the decisions made by delegated Ministers in accordance with CAB-24-MIN-0272, ECO-24-MIN-0205.01, ECO-24-MIN-0193 and ECO-24-MIN-0200, and as outlined in Appendix One to the paper under CAB-24-SUB-0484;
- 14 **agreed** that the Parliamentary Counsel Office can continue to make minor changes to the Amendment Paper to settle technical and workability matters;
- 15 **agreed** that the Amendment Paper includes the decisions made by Cabinet and delegated Ministers;
- 16 **approved** the Amendment Paper [PCO 25945-1/14.0] (subject to any minor changes) for release.

Rachel Hayward
Secretary of the Cabinet



Cabinet

Summary

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Fast-track Approvals Bill: Approval for Amendment Paper

Portfolios	RMA Reform / Regional Development
Purpose	This paper seeks agreement to amend the Fast-track Approvals Bill (the Bill) through an Amendment Paper and to confirm the decisions made by delegated Ministers.
Previous Decisions	<p>In September 2024, ECO agreed to further policy and workability changes to the Bill, to be progressed through an Amendment Paper [ECO-24-MIN-0200].</p> <p>In September 2024, ECO agreed to incorporate 149 listed projects into Schedule 2 of the Bill [ECO-24-MIN-0205.01].</p>
Proposal	<p>The attached Amendment Paper gives effect to the decisions above. It implements changes recommended by an independent external Assurance Panel to improve workability in a number of key areas (pages 3 to 4 of the paper):</p> <ul style="list-style-type: none"> • clarifying the test to ensure that it prioritises the facilitation of projects whilst creating a clearer 'high bar' for decline and not creating undue legal risk; • tightening up the setting of conditions on projects so that they are no more onerous than necessary, including under the Schedules; • delivering a more efficient and streamlined process; • minimising litigation risk, including by limiting judicial review.

The Minister Responsible for RMA Reform and Minister for Regional Development seek agreement to two routes to incorporating the 149 listed projects into Schedule 2 of the Bill, to provide flexibility: via an Amendment Paper at the Committee of the whole House; or through an Order in Council after enactment (with this route being limited to the 149 projects already announced). Decisions on which route to take will be delegated to the Minister Responsible for RMA Reform.

Further policy decisions have been made by delegated Ministers on the following matters (**pages 4 to 6** of the paper):

- enabling specified electricity projects on high value conservation land;
- clarifying how the ineligibility criteria apply to subsurface mining of Crown-owned minerals;
- eligible reserves for land exchanges;
- enabling a comprehensive and flexible cost recovery process.

A summary of matters addressed through decisions under delegation is included as **Appendix 1**.

Impact Analysis A Supplementary Analysis Report was provided when the Bill was considered for introduction.

An additional Supplementary Analysis Report on electricity infrastructure on high value conservation land is attached as **Appendix 2**. A Quality Assurance panel consider that it partially meets the quality assurance criteria.

Analysis has not been completed on the other proposed amendments due to limited timeframes.

Compliance A short form supplementary departmental disclosure statement is attached as **Appendix 3**.

Timing Matters The Ministers propose that the remaining parliamentary stages are progressed from 10 to 17 December 2024 so the Bill can be enacted by the end of 2024.

Communications None specified.

Consultation Paper prepared by MfE (RMA Reform) and MBIE (Regional Development). DOC, MCH, and MPI (Oceans and Fisheries) were consulted. LINZ, MFAT (Foreign Affairs), and MoJ were informed.

The Minister indicates that the Minister for Energy, Minister of Transport, Minister of Agriculture, Minister of Forestry, Minister for Hunting and Fishing, Minister for Trade, Minister of Conservation, Minister for Māori Crown Relations: Te Arawhiti, Minister for Māori Development, Minister of Climate Change, Minister for the Environment, Associate Minister of Agriculture (Hon Andrew Hoggard), Associate Minister for the Environment, Parliamentary Under-Secretary to the Minister for Infrastructure, and Parliamentary Under-Secretary to the Minister Responsible for RMA Reform were consulted.

The Minister also indicates that all Government parties were consulted.

The Minister Responsible for RMA Reform and Minister for Regional Development recommend that Cabinet:

- 1 note that Cabinet previously agreed to progress a permanent fast-track consenting pathway [CAB-24-MIN-0008];
- 2 note that an independent external Assurance Panel have advised that the Fast Track Approvals Bill (the Bill), as currently drafted, gives effect to the Government's intention to establish a consenting and permitting process that:
 - 2.1 is a one-stop-shop for applicants seeking multiple approvals for their project;
 - 2.2 is an expedited process for applicants, that is faster and more streamlined than the status quo;
 - 2.3 makes it substantially easier for projects to be approved than the status quo, with a high bar needing to be reached for a panel to decline a project;
 - 2.4 has a clear development focused purpose clause which has a greater weighting over the purpose clauses of the parent legislation;
- 3 note that the Amendment Paper, attached under CAB-24-SUB-0484, implements the improvements recommended by Assurance Panel and delegated decisions to ensure the Bill provides a clearer high bar for decline, condition setting to be no more onerous than necessary, deliver streamlined and efficient processes, and minimises litigation risks;
- 4 s 9(2)(g)(i)
[REDACTED]
[REDACTED]
[REDACTED]
- 5 note that the Cabinet Economic Policy Committee (ECO) previously agreed to incorporate 149 listed projects into Schedule 2 of the Bill [ECO-24-MIN-0205.01];
- 6 agree that the 149 listed projects be:
 - 6.1 either directly listed in Schedule 2 by Amendment Paper at the committee of the whole House;
 - 6.2 or declared as listed projects through a one-off Order in Council process after enactment, with future projects relying on the referral process;
- 7 authorise the Minister Responsible for RMA Reform to take decisions on which pathway in paragraph 6 above to use, including any necessary drafting;
- 8 note that delegated Ministers made decisions on enabling specified electricity projects on high value conservation land with some exclusions (including marine reserves) to allow specific electricity activities to use the Fast-Track approval process on more than 90 per cent of public conservation land;
- 9 note that delegated Ministers made decisions on clarifying how ineligible criteria apply to subsurface mining of Crown-owned minerals, eligible reserves for land exchanges and other decisions to improve workability (in Appendix One to the paper under CAB-24-SUB-0484);

- 10 note that ECO previously agreed to amend the Bill to include selected Crown Minerals Act 1991 permitting as an approval and policy changes including priority and order of fast-track applications, and cost recovery through an Amendment Paper [ECO-24-MIN-0193, ECO-24-MIN-0200];
- 11 note that costs carried out under the legislation will be able to be cost-recovered, and that the Environmental Protection Authority is the lead agency as a centralisation collection agency;
- 12 note that the fees and levies will be established in regulation, which will be provided to the Cabinet Legislation Committee in late December 2024;
- 13 confirm the decisions made by delegated Ministers in accordance with CAB-24-MIN-0272, ECO-24-MIN-0205.01, ECO-24-MIN-0193 and ECO-24-MIN-0200, and as outlined in Appendix One to the paper under CAB-24-SUB-0484;
- 14 agree that the Parliamentary Counsel Office can continue to make minor changes to the Amendment Paper to settle technical and workability matters;
- 15 agree that the Amendment Paper includes the decisions made by Cabinet and delegated Ministers;
- 16 approve the Amendment Paper [PCO 25945-1/14.0] (subject to any minor changes) for release.

Tom Kelly
for Secretary of the Cabinet

Hard-copy distribution:

The Cabinet

Minister for the Environment

Associate Minister of Agriculture (Hon Andrew Hoggard)

Parliamentary Under-Secretary to the Minister Responsible for RMA Reform

Office of the Minister Responsible for RMA Reform
Office of the Minister for Regional Development
Cabinet

Fast-track Approvals Bill: Approval for Amendment Paper

Proposal

1. To seek agreement to amend the Fast-track Approvals Bill (the Bill) through an Amendment Paper.
2. To confirm the decisions made by delegated Ministers.
3. To seek agreement for the Parliamentary Counsel Office to continue to make minor changes to the Amendment Paper to settle technical and workability matters.

Relation to government priorities

4. On 23 January 2024, Cabinet agreed [CAB-24-MIN-0008 refers] to introduce legislation for a permanent fast-track regime by 7 March 2024 (within 100 days of taking office) and agreed to the key elements of the legislation.
5. Introducing this Bill is part of the National/NZ First Coalition Agreement.
6. The new fast-track regime will improve decision-making timeframes and give greater investment certainty to facilitate the delivery of infrastructure and other development projects with significant regional or national benefits. The Bill consolidates and speeds up multiple consenting approval processes that are often required for large and/or complex projects in a 'one-stop-shop' arrangement.

Background

7. The Environment Committee reported back on the Bill on 18 October 2024, making a number of changes to reflect the submissions received and the substantial policy work which had been done by agencies to improve its workability.
8. The Government's Amendment Paper has been prepared to support additional changes to achieve the Government's fast-track objectives through Committee of the Whole House, with policy decisions confirmed [CAB-24-MIN-0362 refers].
9. Due to the Bill's complexity, an assurance panel was established to provide the Government with external, independent assurance that the Bill will achieve its original objectives. This panel consisted of Bronwyn Carruthers KC and Dave Brash.¹
10. The Assurance Panel was asked to advise on whether the Fast-track Approvals Bill, as currently drafted, gives effect to the Government's intention to establish a consenting and permitting process that:

¹ Bronwyn Carruthers KC has specialised in environmental, resource management and local government law for more than 20 years. She was named the New Zealand Environmental Lawyer of the Year by ACQ5 Global Awards 2018. Dave Brash has over 30 years' experience working in the public sector in senior leadership positions and led the government's recovery effort for the Kaikoura earthquake and Whakatane Floods.

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- 10.1. is a one-stop-shop for applicants seeking multiple approvals for their project
 - 10.2. is an expedited process for applicants, that is faster and more streamlined than the status quo
 - 10.3. makes it substantially easier for projects to be approved than the status quo, with a high bar needing to be reached for a panel to decline a project
 - 10.4. has a clear development focused purpose clause which has a greater weighting over the purpose clauses of the parent legislation
 - 10.5. minimises the litigation risks for applicants and the Crown.
11. s 9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
12. Dave Brash, whilst noting and recommending numerous areas for improvement, also agreed that the Government's intentions in relation to [10.1] – [10.4] have been met. He noted "the Bill as drafted is very complex to navigate and has a multilayered decision-making framework" and that for larger multi-faceted projects the process will be "quite complicated and the desired timelines will be hard to achieve."
13. Following these reports, Ministers instructed officials to work alongside the Assurance Panel to improve the Bill in a number of key areas:
- 13.1. clarify the test to ensure that it prioritises the facilitation of projects whilst creating a clearer 'high bar' for decline and not creating undue legal risk
 - 13.2. tighten up the setting of conditions on projects so that they are no more onerous than necessary, including under the Schedules
 - 13.3. deliver a more efficient and streamlined process
 - 13.4. minimise litigation risk, including by limiting judicial review.
14. Numerous changes were made to improve the Bill in line with the Assurance Panel's recommendations. These changes have been reflected in the Amendment Paper and outlined in Appendix One.
15. Ministers are confident that following this amendment paper, the Bill will deliver a one-stop-shop consenting and permitting process that facilitates the delivery of major infrastructure projects faster and easier than the status quo, in a way that minimises litigation risk as much as possible. s 9(2)(g)(i) [REDACTED]
[REDACTED]
16. Ministers and officials will closely monitor the implementation of the Fast-Track regime and will give Cabinet visibility of any risks. s 9(2)(g)(i) [REDACTED]
[REDACTED]
[REDACTED]

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Package of changes - decisions made under delegation

Clarifying the test to ensure that it prioritises the facilitation of projects whilst creating a clearer 'high bar' for decline and not creating undue legal risk

17. Ministers have decided to amend the threshold for decline in the Bill to ensure that it creates a high bar, whilst avoiding undue legal risk. Following the changes, a project can only be declined by an Expert Panel if it has adverse impacts that are sufficiently significant to be out of proportion to the project's regional or national benefits, even after taking into account any conditions that the panel may set in relation to those impacts; and any conditions that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those impacts.
18. The Bill has also been amended to clarify that an Expert Panel may not simply decline a project solely based on its inconsistency with provisions in a specified Act or other document that a panel must take into account under the Act.
19. A new clause relating to the staging of projects has also been introduced so that Expert Panels may have regard to likelihood of wider benefits emerging from later stages of a project.

Tightening up the setting of conditions on projects so that they are no more onerous than necessary, including under the Schedules

20. Improvements have been made to the Bill regarding the setting of conditions by Expert Panels. These improvements will mean that conditions must be no more onerous than necessary to address the reason for which the condition is set. The changes also ensure that the Expert Panel provides the applicant the opportunity to comment on draft conditions, as well as other parties' comments on the conditions.
21. There are also changes proposed to Schedule 6 in relation to Wildlife Act to provide the Expert Panel with discretion when setting conditions, as well as removal of the reference to best practice standards in condition setting.

Delivering a more efficient and streamlined process

22. Changes have been made to improve and streamline the processes in the Bill. Changes made include enabling consultation with the Minister, but not requiring this and strengthening the procedural principles in the Bill to make it clear that the requirement to use timely, efficient, cost-effective processes applies to departments as well as other persons performing functions and duties.
23. Ministers also agreed that the process should enable applicants to change their application, including proposing any remedies, to address issues raised during the process that may lead to a decline. Any change to the application must be in the scope of the approvals sought.

Minimising litigation risk, including by limiting judicial review

24. Delegated Ministers have decided to remove the ability for any person who has an interest in the decision greater than that of the general public to appeal a decision made under the Bill. This change makes it clear that national or special interest groups cannot appeal decisions under the Bill (although the Bill does not limit the right to judicial review).

IN CONFIDENCE

25. The Amendment Paper introduces consistency in timeframes in filing a notice of appeal and applications for judicial review. Delegated Ministers have decided that notices of appeal must be made no later than 20 working days to be in alignment with the timeframe for judicial review.
26. If a person wishes to appeal and apply for judicial review in relation to the same decision, we recommend they must lodge the two applications together.
27. Changes have also been made to ensure that the Bill is clear that an appeal on one approval, does not affect the commencement of any other approvals granted for the same substantive application.

Other policy changes

Incorporating 149 projects into Schedule 2 of the Bill

28. Cabinet agreed [CAB-24-MIN-0008 refers] that, in addition to the standard application process, the Bill will contain a schedule of individual projects ("listed projects"). An Independent Advisory Group assessed 384 applications for projects to be listed in the Bill and made recommendations to Ministers that informed Cabinet decisions.
29. Cabinet agreed to include a list of projects in Schedule 2 of the Bill. 149 projects would be included in Schedule 2 of the Bill [CAB-24-MIN-0381 refers].
30. The listed projects are set to deliver benefits across a range of sectors including aquaculture, housing (residential and retirement), land development (industrial and tourism), infrastructure (transport, marine, water, public and energy), mining and quarrying, and renewable electricity (solar, wind, hydro).
31. Substantive applications for projects listed in Schedule 2 will be able to be lodged for consideration by an Expert Panel with the Environmental Protection Authority (EPA), bypassing the referral process, but recognising the Independent Advisory Group process set out above.
32. To provide flexibility, we recommend that the 149 projects become listed projects in the Bill through two routes:
 - 32.1. direct listing in Schedule 2 by Amendment Paper at the Committee of the Whole; OR
 - 32.2. through Order in Council after enactment – this route would be limited to the 149 projects already announced by Ministers – with future projects relying on the referral process.
33. Cabinet approval is sought for both of these pathways. However, Speaker's rulings on the Bill may mean the Order in Council option is superfluous, in which case PCO will not be instructed to prepare a separate Amendment Paper to progress this option.

Enabling specified electricity projects on high value conservation land

34. On 29 July 2024 Cabinet agreed to allow applications for some electricity projects in high value conservation areas which have until now been ineligible for any fast-track approvals [CAB-24-MIN-0272 refers]. This will allow for fast-tracking of:
 - 34.1. existing electricity transmission infrastructure (such as upgrades and maintenance), provided the proposal would not materially change the scale or effects of the infrastructure

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- 34.2. new electricity transmission infrastructure where that cannot practically or reasonably occur elsewhere
- 34.3. continued operations of existing electricity generation, provided the proposal does not materially change the scale or effects of the infrastructure.
- 35. Cabinet delegated responsibility to the Minister Responsible for RMA Reform, Minister for Energy, and Minister of Conservation for any further policy decisions needed on this matter. The following decisions have been made by delegated Ministers:
 - 35.1. Widen the eligibility to include the majority of high value conservation land which was previously excluded from the Bill (scientific reserves, sanctuary areas, wildlife sanctuaries, national reserves, and most national park areas).

This means that fast-tracking of these specific electricity activities could occur on more than 90% of public conservation land.
 - 35.2. Exclude some of the very highest value conservation areas from new electricity transmission works through fast-track: nature reserves, wilderness areas, specially protected areas within national parks, and wetlands protected under the Ramsar Convention, from fast-track approvals

These areas collectively make up less than 3% of New Zealand's land area and many are very remote (for example, on offshore islands, or a day's walk from the closest road).
 - 35.3. Exclude fast-track electricity activities from marine reserves, because a new permissions framework would need to be designed which would have timeframe implications for the Bill. Marine reserves are small and relatively few, so routing infrastructure around them should be relatively easy.
- 36. To enable the decisions above to be implemented, there will be additional information requirements in the Bill. Referral applications would need to contain information explaining why the project is not expected to materially change the scale or effects of the infrastructure, or for new projects, why the infrastructure cannot practically or reasonably be located elsewhere. The Bill already requires a Department of Conservation(DOC) report at referral, which will also contain advice on these matters.

Clarifying how the ineligibility criteria apply to subsurface mining of Crown-owned minerals

- 37. The Bill includes a number of ineligibility criteria, including requiring permission from owners of identified Māori land, customary marine title holders, and reserve managers for reserves vested in or managed by someone other than DOC or a local authority for projects to be eligible.
- 38. We have subsequently found that these provisions create an undue barrier for subsurface mining activities of Crown-owned minerals that do not have an impact on the surface of the land, particularly petroleum mining projects. Such activities do not require an access arrangement under the Crown Minerals Act 1991. Therefore, such activities will be exempted from the ineligibility criteria listed above for all approvals.

Eligible reserves for land exchanges

- 39. On 29 July 2024, Cabinet agreed that the Departmental Report recommend that a land exchange can only be provided for in the Bill for Crown-owned land managed by

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DOC [CAB-24-MIN-0272 refers]. Provisions in the Bill also require that the agreement of the manager of a reserve is required for a project to be approved.

40. We have subsequently found that these provisions create an undue barrier for some projects. We propose that an exchange should be possible if it includes a Crown-owned reserve managed by a local authority or other non-Crown entity, without their agreement. The land is ultimately Crown-owned and impacts of the exchange on the management body can be considered by the referral Minister, who can seek comments from the management body.
41. The one exception to this should be where the management body is in place because of a Treaty settlement – in this instance the agreement of the managing body should be required at referral.
42. The requirement for the management body of a reserve to agree to a concession or access arrangement will remain – the management body in this instance would retain responsibility for risks and liabilities, unlike with a land exchange.

Other policy matters decided by Cabinet

43. The Amendment Paper also implemented Cabinet decisions which relate to the priority and order of competing fast-track applications for limited resources [CAB-24-MIN-0362 refers], widening the range of approvals by including Crown Minerals Act 1991 (CMA) permitting as part of the Bill, and cost-recovery [CAB-24-MIN-0363 refers].

Enabling a comprehensive and flexible cost recovery process

44. On 23 September 2024, Cabinet agreed to enable a comprehensive and flexible cost-recovery approach so that costs incurred in processing fast-track applications can be recovered from users [CAB-24-MIN-0362 refers]. All costs associated with the functions, powers, and duties carried out under the legislation, including those on behalf of the panel and panel convenor, will be able to be cost-recovered.
45. Fees will cover the actual and reasonable costs associated with processing each application, and levies will contribute toward system costs including for litigation and to cover bad debt. The legislation will specifically empower the levy fund to be able to retrospectively fund expenses incurred prior to commencement, to enable system set-up costs for the EPA to be recovered.
46. The EPA will be the 'Lead Agency', acting as a centralised collection agency responsible for all applicant-facing financial transactions.
47. While Cabinet agreed "to provide that other organisations that have a statutory role in the process (such as Post Settlement Governance Entities and other Māori groups responding to invitations from Ministers or agencies to comment on referral or substantive applications) can have their costs recovered", delegated Ministers have agreed that fixed contributions be paid to specific Māori groups. This is intended to support these groups' ability to respond to invitations to comment on applications.
48. The fees and levies will be established in regulation, which will be provided to Cabinet Committee in late December 2024.

Other delegated decisions

49. A summary of decisions taken is set out in Appendix One, as agreed by delegated ministers and previous Cabinet decisions.

50. The Amendment Paper also contains technical changes that were made to improve the workability of the Bill.

Impact analysis

51. A Supplementary Analysis Report (SAR) was provided when the Bill was considered for introduction by Cabinet in March 2024. In addition, two Annexes to the SAR were provided for the following:
- 51.1. *Annex to the Supplementary Analysis Report - Fast-track Approvals Bill Amendment Paper relating to policy and workability changes.* A Quality Assurance panel assessed the report and determined that the Annex partially met the Quality Assurance criteria. Dated 6 September 2024.
 - 51.2. *Annex to the Supplementary Analysis Report for the Fast-track Approvals Bill: Including Crown Minerals Act 1991 Permitting.* A Quality Assurance panel assessed the report and determined that the Annex partially met the Quality Assurance criteria. Dated 10 September 2024.
52. *Supplementary Analysis Report: Fast-track Approvals for electricity infrastructure on high value conservation land* is attached as Appendix Two. A Quality Assurance panel assessed the report and determined that the Annex partially met the Quality Assurance criteria. Dated 9 October 2024.
53. Given the limited timeframes for preparing the Amendment Paper, there has not been sufficient time to complete a SAR for proposed amendments post the SARs specified above.

Compliance

54. The Amendment Paper appears to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993, however, time constraints have not permitted a complete evaluation of any human rights implications of the Bill.
55. The Ministry of Justice vetted the Bill as introduced, against the New Zealand Bill of Rights Act 1990 and produced a compliance report at that time.
56. A disclosure statement has been prepared and is attached to the paper as Appendix Three.
57. The Ministry of Foreign Affairs and Trade (MFAT) were provided a copy of the Amendment Paper as at 2 December 2024 and a summary of their feedback is as follows:

To the extent that the Bill provides a means for decision-making it is, itself, unlikely to be inconsistent with New Zealand's international obligations. However, more significant legal risk, with potential for financial and reputational costs, arises because projects may be approved under the Fast-track regime that are inconsistent with our international obligations. The legal risk can be partially mitigated by providing guidance to decision-makers that will help them to identify the international obligations that may be relevant to an application. MFAT has provided draft supplementary guidance for this purpose.

Treaty of Waitangi and Treaty settlement implications

58. The Treaty of Waitangi and Treaty settlement implications of the decisions in this paper have been addressed in the relevant policy papers, however some decisions which have not yet been reviewed by Cabinet, and which may have implications for

compliance with the principles of the Treaty of Waitangi and Treaty settlements are discussed below.

59. The Amendment Paper removes reference to the Treaty clause of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) in the decision-making process for marine consents under Schedule 9 of the Bill. This approach aligns the schedule with the overall approach of the Bill which does not incorporate Treaty principles clauses from underlying primary legislation.
60. The inclusion of some further areas of high value conservation land in the Bill for specified electricity activities will mean decisions relating to development on this land will not be expressly subject to Section 4 of the Conservation Act. Some areas under the highest levels of conservation protection have those classifications partly because of Treaty settlements and some are co-managed by Treaty settlement entities.
61. The impacts of this amendment on Treaty-related issues will be ameliorated by the existing mechanisms within the fast-track process for identifying Treaty implications and the requirement at Clause 6 for those performing or exercising powers, functions, or duties under the Act to act consistently with obligations in settlements and other arrangements.
62. The exclusion of subsurface mining of Crown-owned minerals from the ineligibility criteria related to identified Māori land, customary marine title areas and reserves vested in or managed by someone other than DOC or a local authority (including post-settlement governance entities) may have impacts on the rights of Māori compared to the Bill as currently drafted.
63. Such land is governed by complex legislative frameworks designed to protect interests in the land due to its significance. However, we consider impacts on Māori rights can be addressed at later stages of the process, including by the Minister for Infrastructure at the referral stage and the panel during substantive decision-making. The overarching requirement in the Bill to act consistently with Treaty settlements and customary rights recognised under relevant legislation provides an important protection in this regard.

Consultation

64. The Ministry for the Environment and MBIE worked closely to develop the Amendment Paper in consultation with the Department of Conservation, the Ministry for Primary Industries and the Ministry for Culture and Heritage.
65. Ministry for the Environment, and the Parliamentary Counsel Office, note that given the process and timeframes for preparing this Bill and the Amendment Paper, there has not been time to fully resolve all issues and for comprehensive quality control checks. Accordingly, there is a higher than normal risk that amendments will be required post-enactment of the Bill.
66. The Ministry of Justice, Land Information New Zealand and MFAT were informed of the contents in this paper.

Binding on the Crown

67. The Bill will bind the Crown.

Creating new agencies or amending law relating to existing agencies.

68. The Bill will not create any new agencies.

Allocation of decision-making powers

69. As provided for in the Bill, the Expert Panels make the substantive decision on applications. The decision-making process for approvals under the Bill differs from the existing decision-making in the parent legislation captured in the one stop shop.

70. There are limited appeal rights under this legislation. The following groups may appeal an expert panels' decision in part, or in full:

- 70.1. the applicant
- 70.2. any relevant local authority
- 70.3. the Attorney General
- 70.4. any person or group that provided comments in response to an invitation given under the Bill

71. Appeal rights are available to the High Court on points of law only, and no appeal can be made to the Court of Appeal against a High Court determination. In limited circumstances a party could apply to the Supreme Court for leave to bring an appeal, in accordance with the Senior Courts Act 2016.

Associated regulations

72. The Bill includes a provision that allows the Governor-General, by Order in Council, to make regulations, on the recommendation of the Minister, that:

- 72.1. provide for procedural and administrative matters for the purpose of the fast-track approvals process
- 72.2. specify requirements for a referral application or a substantive application, including: the form or manner in which the application must be made and information that must be included in the application
- 72.3. provide for any other matters contemplated by the Bill, necessary for its administration, or necessary for giving it full effect.

73. The Bill includes the provision to enable the development of cost recovery regulations under the legislation, as specified above

74. The Bill contains provisions empowering the making of other legislative or disallowable instruments, by Order in Council and include:

- 74.1. ability to change the name of the authorised person for a listed project in schedule 2
- 74.2. ability to amend Schedule 3A (associate panel convener)
- 74.3. Subject to direction from the Speaker of the House, an Amendment Paper may be drafted to provide for the ability to add the 149 projects to Schedule 2.

Definition of Minister/Department

75. The Bill specifies that the Minister is defined as the Minister for Infrastructure and is responsible for decision-making on the referral application.

76. The responsible agency is defined in the Bill as the Ministry for the Environment. The EPA and, where appropriate, other relevant statutory agencies, also have a role in the Bill in providing advice and secretariat support to expert panels.

77. Chief Executive has the meaning given in section 2(1) of the Fisheries Act 1996.

78. This paper does not propose any amendments to these definitions.

Commencement of legislation

79. The Bill is proposed to commence the day after the date of Royal Assent with a transitional provision preventing the lodgement of applications before 7 February 2025. This will enable the pre-application engagement provisions, the cost-recovery regulation making provisions and the Panel Convener appointment provisions to be live but for there to be a delay in receiving applications.

Parliamentary stages

80. We propose the remaining parliamentary stages are progressed from 10 to 17 December 2024 so this Bill is enacted by the end of 2024.

Proactive Release

81. We intend to proactively release this paper as soon as practicable after Cabinet decisions and public announcements are made (subject to Official Information Act 1982).

Recommendations

We recommend that the Cabinet Legislation Committee:

1. **note** Cabinet previously agreed to progress a permanent fast-track consenting pathway [CAB-24-MIN-0008];
2. **note** that an independent external Assurance Panel have advised that the Fast Track Approvals Bill, as currently drafted, gives effect to the Government's intention to establish a consenting and permitting process that:
 - 2.1. is a one-stop-shop for applicants seeking multiple approvals for their project
 - 2.2. is an expedited process for applicants, that is faster and more streamlined than the status quo
 - 2.3. makes it substantially easier for projects to be approved than the status quo, with a high bar needing to be reached for a panel to decline a project
 - 2.4. has a clear development focused purpose clause which has a greater weighting over the purpose clauses of the parent legislation;
3. **note** the Amendment Paper implements the improvements recommended by Assurance Panel and delegated decisions to ensure the Bill provides a clearer high bar for decline, condition setting to be no more onerous than necessary, deliver streamlined and efficient processes, and minimises litigation risks;

4. s 9(2)(g)(i) [REDACTED]
5. **note** Cabinet previously agreed to incorporate 149 listed projects into Schedule 2 of the Bill[CAB-24-MIN-0381 refers];
6. **agree** that the 149 listed projects be:
- 6.1. either directly listed in Schedule 2 by Amendment Paper at the Committee of the Whole House
- 6.2. or declared as listed projects through a one-off Order in Council process after enactment, with future projects relying on the referral process;
7. **agree** to delegate decisions on which pathway in 6 above to use to the Minister Responsible for RMA Reform, including any necessary drafting;
8. **note** delegated Ministers made decisions on enabling specified electricity projects on high value conservation land with some exclusions (including marine reserves) to allow specific electricity activities to use the Fast-Track approval process on more than 90% of public conservation land;
9. **note** delegated Ministers made decisions on clarifying how ineligible criteria apply to subsurface mining of Crown-owned minerals, eligible reserves for land exchanges and other decisions to improve workability (in Appendix One);
10. **note** Cabinet previously agreed to amend the Bill to include selected Crown Minerals Act permitting as an approval and policy changes including priority and order of fast-track applications, and cost recovery through an Amendment Paper [CAB-24-MIN-0362 refers];
11. **note** costs carried out under the legislation will be able to be cost-recovered, and Environmental Protection Authority (EPA) is the lead agency as a centralisation collection agency;
12. **note** the fees and levies will be established in regulation, which will be provided to Cabinet Committee in late December 2024;
13. **confirm** the decisions made by delegated Ministers in accordance with CAB-24-MIN-0272, CAB-24-MIN-0381 and CAB-24-MIN-0362, and as outlined in Appendix One;
14. **agree** that the Parliamentary Counsel Office can continue to make minor changes to the Amendment Paper to settle technical and workability matters;
15. **agree** that the Amendment Paper includes the decisions made by Cabinet and delegated Ministers;
16. **approve** the Amendment Paper (subject to minor changes) for release.

Authorised for lodgement

Hon Chris Bishop
Minister Responsible for RMA Reform

Hon Shane Jones
Minister for Regional Development

Appendix one - Matters addressed through decisions made under delegation

Delegations from Cabinet

1. On 29 July 2024 Cabinet authorised [CAB-24-MIN-0272 refers] a number of decisions to be made under delegated authority:
 - 1.1. the Minister for Infrastructure, the Minister of Conservation, and the Minister for Resources to determine how land management decisions relating to concessions, Crown Minerals Act 1991 access arrangements, and land exchanges are implemented in practice
 - 1.2. the Minister for Infrastructure and the Minister for Regional Development to make final decisions on the criteria used to make decisions and how the Bill requires decision-makers to set conditions on approvals
 - 1.3. the Minister for Infrastructure and the Minister for Regional Development to make decisions on additional technical matters related to decisions already made on the decision-making process
 - 1.4. the Minister Responsible for RMA Reform, Minister for Energy and Minister of Conservation to take further decisions on the details of the amendments required to enable the incorporation of electricity transmission infrastructure into the Bill
 - 1.5. the Minister Responsible for RMA Reform and the Minister for Regional Development, in consultation with other relevant Ministers, to take decisions on further technical or workability changes to give effect to the policy decisions under CAB-24-MIN-0272.
2. On 23 September 2024, Cabinet also [CAB-24-MIN-0362 refers] authorised the Minister Responsible for RMA Reform and Minister for Regional Development to:
 - 2.1. take decisions on the approach to setting fees and levies, the use of a centralised collection agency, and on any other policy or technical matters relating to cost recovery for inclusion in the Amendment Paper and/or regulations
 - 2.2. make any further outstanding policy decisions or technical changes, including decisions under existing delegations by any Minister, required for drafting purposes.
3. On 30 September 2024, Cabinet also [CAB-24-MIN-0381 refers] authorised the Minister Responsible for RMA Reform and Minister for Regional Development to:
 - 3.1. make further policy decisions on consequential amendments to the Bill arising from the removal of Schedule 2, Part B
 - 3.2. make any further outstanding policy decisions or technical changes, including decisions under existing delegations by any Minister, as required for drafting purposes.

Clarifying the test to ensure that it prioritises the facilitation of projects whilst creating a clearer 'high bar' for decline and not creating undue legal risk

4. Amended the threshold for decline to “those adverse impacts are sufficiently significant to be out of proportion to the project’s regional or national benefits, even after taking into account any conditions that the panel may set in relation to those impacts; and any conditions that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those impacts.”

5. Introduced a new clause that provides 'to avoid doubt, a panel may not form the view that an adverse impact meets the threshold solely on the basis that the impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account' (subject to PCO drafting)
6. Changed Clause 24W so the panel decisions are subject to the overarching purpose of the Bill, improving clarity for expert panels and applicants.
7. Applicants are given the opportunity to change their application, including proposing any remedies, to address any issues raised during the process that may lead to a decline. However, any changes must be within scope of the original project. This remedy is limited to a one-time-only use.
8. Changed Clause 24W(3A) so that a panel 'must' instead of a 'may' take into account benefits of a project.
9. Added a new clause for staging of a project so "Panel may have regard to likelihood of wider benefits emerging from later stages of a project". (subject to PCO drafting)

Tightening up the setting of conditions on projects so that they are no more onerous than necessary, including under the Schedules

10. Changed the drafting of Clause 24WB (conditions setting), making it clearer that conditions must be no more onerous than necessary.
11. Provided the ability for the applicant to comment on other parties' comments on the panel's draft condition
12. Changed Schedule 6 (Wildlife Act)'s condition setting provisions so these are re-ordered, and replaced 'must' with 'may' in relation to setting conditions, removed the reference to 'best practice standards' in regards to setting conditions.

Delivering a more efficient and streamlined process

13. Amended Clause 9 – Procedural Principles to ensure more efficient, consistent and timely reporting and advice from Government departments/agencies.
14. Changed Schedule 3 – Expert Panel to reduce administrative burden for Panel Convenor and Panel by replacing "in consultation with Minister" with 'may consult the Minister (subject to PCO drafting), and by replacing 'must consult the EPA' with 'may consult the EPA'.
15. In order to better support implementation, Ministers have taken decisions to broaden the Panel convenor requirements to include 'senior lawyer with expertise in resource management'.
16. Clarified wording regarding skills and experience of members of panel, by replacing 'must include 1 member who is suitably qualified in te ao Māori and Māori development' to 'an understanding of te ao Māori and Māori development'.

Minimising litigation risk, including by limiting judicial review.

17. Adopted the RMA approach for direct referral and Board of Inquiry where the approval commences on the date specified in the decision and any appellant needs to also obtain a stay from the High Court (Clause 25D)
18. The following decisions were made relating to appeals and judicial review:

- 18.1. removing the ability for any person who has an interest in the decision greater than that of the general public to appeal a decision made under the Bill
- 18.2. notices of appeal must be made no later than 20 working days to be in alignment with the timeframe for judicial review
- 18.3. If a person wishes to appeal and apply for judicial review in relation to the same decision, we recommend they must lodge the two applications together.
19. Changes have also been made to ensure that the Bill is clear that an appeal on one approval, does not affect the commencement of any other approvals granted as a result of the same substantive application.

Listed projects

20. Removed Schedule 2, Part B from the Bill
21. Adding the word 'approximately' before estimated production outputs to ensure project descriptions are fit for purpose.

Excluding subsurface mining activities from ineligibility criteria

22. Excluded subsurface mining activities of Crown-owned minerals that do not have an impact on the surface of the land from ineligibility criteria requiring permission from landowners of identified Māori land, customary marine title holders, and owners or managers of reserves vested in or managed by someone other than the Department of Conservation or a local authority.

Eligible reserves for land exchanges

23. The following decisions were made relating to eligible reserves for land exchanges:
 - 23.1. exchanges of Crown-owned reserves managed by non-Crown entities are eligible for fast-track
 - 23.2. the agreement of the management body of a reserve is not required for fast-track land exchanges unless that management body is in place because of a Treaty settlement
 - 23.3. the referral Minister is required to consider the impact of a land exchange on a non-Crown management body as part of the referral decision.

Enabling specified electricity projects on high value conservation land

24. The following decisions were made relating to enabling specified electricity projects on high value conservation land:
 - 24.1. provide for limited electricity activities to be fast-tracked in scientific reserves, sanctuary areas, wildlife sanctuaries, national reserves, and most national park areas (which were all previously ineligible for fast-track)
 - 24.2. allow new electricity transmission to be fast-tracked on public conservation land, except nature reserves, wilderness areas, specially protected areas within national parks, and wetlands protected under the Ramsar convention
 - 24.3. allow for marine reserves to remain out of scope for all electricity activities through fast-track
 - 24.4. additional information requirements at the referral stage for electricity projects on the highest value conservation land which the Department of Conservation would provide advice on in the report they would already be providing.

Priority and order of applications in relation to resource allocation

25. On 23 September 2024 Cabinet agreed to the priority and order of competing applications for limited resources [CAB-24-MIN-0362 refers].
26. The EPA will make a determination on whether applications are competing for limited resources and seek the Ministers decision on whether they agree or disagree with the determination. The Minister for Infrastructure (the Minister) will have the ability to delegate the final decision to the EPA.
27. The Bill retains the existing process under the Resource Management Act 1991 (RMA) for competing applications for limited resources. Listed and referred projects will be assessed on a 'first in, first served' basis that is determined at the point a complete substantive application is lodged.
28. Applications being progressed under 'parent' legislation will retain their 'first in, first served' priority order for assessment ahead of any competing applications made at a later date, under either that 'parent' legislation or the fast-track process.
29. Where a listed or referred application is identified that should progress urgently, and there are no competing applications, the Minister is able to direct the panel convenor to expedite the administrative functions needed to establish a panel ahead of other applications under the Bill. Where there are competing applications for the same limited resources, the 'first in, first-served' process will be retained.

Incorporating Crown Minerals Act 1991 permitting in the Bill

30. Cabinet agreed to amend the Bill to include selected Crown Minerals Act 1991 (CMA) permitting [CAB-24-MIN-0363 refers]. This amendment widens the range of approvals available under the one-stop shop and will ensure the fast-track regime provides more value to the resources sector.
31. Mining permits could be applied for under the Bill where:
 - 31.1. converting a CMA exploration permit to a CMA mining permit following a successful discovery of a mineral deposit
 - 31.2. replacing an existing privilege (as defined in the CMA) with a CMA mining permit¹.
32. This amendment involves no change to the locations where mining may be permitted under the Bill because applications can only be received where an existing right or privilege to the minerals exists. The amendment has no impact on the ineligibility provisions in the Bill that prevent mining on high value public conservation land.
33. To ensure robust analysis of mining permit applications, expert panels would receive advice from the Ministry of Business, Innovation and Employment (MBIE) as the regulator.

Technical changes

34. The following technical decisions were made under delegated authority:

¹ An example of an existing privilege is a Coal Mining Licence issued prior to the enactment of the CMA.

- 34.1. Including an Order in Council process to change the name of the authorised person on a listed project in schedule 2 and requiring applications to the Minister for Infrastructure for an amendment to the authorised person in schedule 2 to include information such as the interest of the successor in the project, their legal interests (if any) in the project site, and any compliance or enforcement action against them (confirmed by the relevant authority)
- 34.2. including a general requirement to only allow people to apply who would ordinarily be able to apply under the parent legislation (subject to an exemption agreed for Crown Minerals Act permits/arrangements). Applicants must provide this information as part of their referral application
- 34.3. enabling applicants for referred projects to continue using an expiring approval, in alignment with Schedule 2 listed projects, and requiring lodgement of the substantive panel application (rather than referral application) at least three months before expiry of the approval
- 34.4. extending the timeframe for the Minister for Māori Crown Relations and Minister for Māori Development to comment on the Treaty settlements and other obligations report from 5 to 10 working days
- 34.5. extending the timeframe for the Minister for Māori Crown Relations and Minister for Māori Development to provide comment on the panel's report from 5 to 10 working days
- 34.6. extending the default timeframe for the panel's consideration from 25 working days to 30 working days to accommodate the above changes
- 34.7. removing the reference to Section 12 (Treaty clause) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, which is considered to be inconsistent with Ministers' agreed approach and the approach taken for other parent legislation in the Bill
- 34.8. that the Bill will commence the day after Royal Assent, but applications will not be able to be made until 7 February 2025
- 34.9. drafting fixes to ensure that the Bill works as intended – for example, providing drafting to ensure that wildlife refuges and wildlife management reserves are not inadvertently excluded from the scope of the Bill.