Ministry for the Environment
Manatū Mō Te Taiao

PROACTIVE RELEASE COVERSHEET

Minister	Hon Chris Bishop	**Portfolio**	RMA Reform
Name of package	Fast-track Approvals Bill	**Date to be published**	15 March 2025

List of documents that have been proactively released		
Date	***Title***	***Author***
15 August 2024	BRF-5101: Aide memoire: Meeting advice on cost-recovery for processing Fast-track Approval applications	Ministry for the Environment Ministry of Business, Innovation & Employment
24 September 2024	BRF-5334: Cost recovery framework for fast-track approvals	Ministry for the Environment
26 September 2024	BRF-5401: EEZ Act related provisions in the FTA Bill	Ministry for the Environment
27 September 2024	BRF-5402: Resourcing the EPA for Fast-track Approvals implementation	Ministry for the Environment
4 October 2024	BRF-5429: Briefing: Further advice on cost recovery and workability matters in the FTA Bill	Ministry for the Environment
4 October 2024	BRF-5443: Briefing: Admissibility of FTA Bill Schedule 2 under Standing Orders	Ministry for the Environment
7 October 2024	BRF-5460: Aide memoire: Additional advice on cost recovery in the FTA Bill	Ministry for the Environment
24 October 2024	BRF-5487: Briefing: Draft Cabinet paper for consultation: Fast-track Approvals Bill Approval for Amendment Paper	Ministry for the Environment
24 October 2024	BRF-5522: Briefing: Fast-track Approvals implementation: In principle agreement to repayable capital injection	Ministry for the Environment
31 October 2024	BRF-5544: Briefing: Fast-track Approvals Bill – Legislative Statement and Second Reading Speech	Ministry for the Environment
7 November 2024	BRF-5579: Briefing: Fast-track Approvals – Financing EPA implementation costs Cabinet paper	Ministry for the Environment
20 November 2024	BRF-5642: Talking points: Fast-track approvals: Financing the EPA's implementation costs cabinet paper	Ministry for the Environment
20 November 2024	BRF-5450: Briefing: Fast-track cost regulations: Proposed initial fee (deposit), levy, and financial contribution values	Ministry for the Environment
28 November	BRF-5657 Draft Cabinet Legislation Committee	Ministry for the

2024	paper for Fast-track cost regulations	Environment
29 November 2024	BRF-5653: Briefing: Fast-track Approvals Bill final policy decisions wrap-up	Ministry for the Environment
6 December 2024	BRF-5699 Briefing: Cover note for Fast-track Approvals Bill House Pack for the Committee of the Whole House debate	Ministry for the Environment
13 December 2024	BRF-5729: Aide memoire: Fast-track Approvals Bill Third Reading materials	Ministry for the Environment
24 January 2025	BRF-5753: Aide Memoire: Agency fees for cost recovery under Fast-track Approvals Act 2024	Ministry for the Environment
2 December 2024	Cabinet minutes	Cabinet Office
25 November 2024	Cabinet business committee minutes	Cabinet Office
21 November 2024	CAB-508: Fast-track Approvals: Financing the EPA implementation costs	Ministry for the Environment
28 January 2025	Cabinet minutes	Cabinet Office
18 December 2024	Economic policy committee minutes	Cabinet Office
12 December 2024	CAB-507: Fast-track (cost recovery) Regulations 2024	Ministry for the Environment
12 December 2024	CAB-507: talking points	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 the 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) To protect the privacy of natural persons

b) To maintain the confidentiality of advice tendered by Ministers and officials

c) To maintain professional legal privilege

Ministry for the Environment
Manatū Mō Te Taiao

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Aide memoire: Meeting advice on cost-recovery for processing Fast-track Approval applications

Date submitted: 15 August 2024
Tracking number: MfE BRF-5101
Sub Security level: In-Confidence

Actions sought from Ministers	
Name and position	***Action***
To Hon Chris BISHOP **Minister Responsible for RMA Reform**	For noting ahead of joint Ministers meeting 19 August 2024
To Hon Shane JONES **Minister for Regional Development**	For noting ahead of joint Ministers meeting 19 August 2024

Appendices and attachments
Elements of cost recovery

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Responsible Manager	Stephanie Frame	s 9(2)(a)	
Programme Director	Ilana Miller	s 9(2)(a)	✓

Key contacts at Ministry for Business, Innovation & Employment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Francis Van Der Krogt		
Policy Director	Susan Hall	s 9(2)(a)	✓

Minister's comments

Meeting advice on cost-recovery for processing Fast-track Approval applications

Purpose

1. You are attending a joint Ministers meeting on 19 August 2024 to discuss some changes to the Fast-track Approvals Bill (the Bill) to be included via an amendment paper.

2. One set of proposed changes relates to the cost-recovery provisions. To bring in an effective cost-recovery system, it is recommended that regulations be used. This would require changes to the Bill to include the necessary enabling provisions, as well as the development of regulations to coincide with the commencement of the legislation.

3. This aide memoire provides you detail to inform this discussion.

Background

4. The Ministry is planning for implementation of the Fast-track Approvals (FTA) Bill. A key aspect of this legislation is the ability for agencies to recover from applicants the costs of processing applications for fast-track projects.

5. We understand the overarching intent of the Government regarding cost recovery is that the full actual and reasonable costs for advising on, processing and making decisions on FTA applications should be recoverable from applicants. This approach is consistent with other regimes such as resource consenting under the Resource Management Act 1991.

6. While the Bill provides for cost-recovery, it lacks detailed provisions to enable it to be operationalised. The Bill as it stands includes powers to make regulations (secondary legislation) in relation to certain administrative matters, but not for the purpose of cost-recovery.

7. A cost-recovery regulation-making power is recommended for inclusion in the Bill, via one of the Amendment Papers. For a cost-recovery regime to be in place for Day 1, the process to develop the cost-recovery regulations also needs to begin now.

Options to create cost-recovery regulations

A cost-recovery regime is needed to align with commencement of fast-track consenting

8. Currently all provisions of the Bill are proposed to commence immediately – the day after Royal Assent of the Bill.

9. A working cost-recovery regime needs to be in place on Day 1 to ensure agencies, local authorities, panels, and panel convenors can confidently begin processing applications, and to avoid:

a. subsidisation in processing applications (i.e. a direct Crown subsidy)

b. a two-tier process where later applications have their costs recovered.

10. We consider a cost-recovery regime is best managed through regulations, which would ideally be made in advance of the FTA Act coming into force. This is to ensure costs can be recovered by agencies for all projects from Day 1. Setting fees and charges via secondary legislation is consistent with the Legislation Design and Advisory Committee's Legislation Guidelines. The regulations would need to be reviewed regularly to ensure they remain fit-for-purpose.

Provisions will need to be added to the Bill to enable cost recovery

11. If you agree that regulations should be made, a regulation-making power would need to be introduced to the Bill to enable this.

12. A few other changes are recommended to be made to the Bill, via one of the Amendment Papers, to ensure the cost-recovery provisions are workable and can be in place from Day 1. Cabinet's agreement to including these matters in the Amendment Paper will be sought via the upcoming Cabinet paper. These relate to:

    a. adding details relating to the recoverability of costs, including for instance on whose costs are recoverable, how those costs will be recovered, debt liability, and whether costs can be objected to

    b. changing the commencement date for when applications can be made to allow time for the cost recovery regime to be in place at the time of commencement.

13. Depending on when the Bill's third reading occurs, it may be necessary to delay the commencement by several weeks to ensure the regulations can be made and commenced coinciding with the primary legislation. If the 28-day rule is not waived, we estimate the regulations could be made by mid-to-late December and commenced 28 days later (approximately around or just after the first 'working day' of 2025).

For regulations to be in place for Day 1, their development needs to start now

14. Regulations will need to be under development while the Bill is progressing through the final stages in the House, to ensure they are ready to be made as quickly as possible after Royal assent.

15. To ensure this timing can be achieved, we recommend that the forthcoming Cabinet paper on Amendment Papers also seeks Cabinet's approval to:

    a. undertake a short consultation process on the proposed cost-recovery regulations

    b. authorise delegated Ministers to make decisions on the contents of the regulations following the consultation process and issue drafting instructions to Parliamentary Counsel Office.

16. While there is no statutory requirement to consult on proposed regulations, it is generally good practice to do so. In establishing cost recovery charges, Treasury's Guidelines promote engagement throughout the fee setting process (ass Appendix 1).

17. Consultation can provide useful insights into the needs of users, which in turn can improve the design. Also, setting the fee at a fair and reasonable amount relies on potential applicants, Māori groups, stakeholders and the wider public having sufficient time to provide feedback on the proposal. Consultation can also protect against external challenge in future (for example, reviews by the Regulations Review Committee, the Auditor-General or the courts).

s 9(2)(h) [redacted]

19. We would propose a three-week consultation period on cost recovery options commencing immediately after Cabinet approval in late September 2024. While this is a reduced period of public consultation compared to the standard six weeks generally recommended by the Ministry of Regulation for fee-setting processes, we consider it to be sufficient to gather appropriate feedback on the proposed fees and charges.

20. We would consult with industry, Māori groups including post-settlement governance entities (PSGEs), and (potentially) the wider public to test the proposed approach and enable completion of a cost recovery impact statement.

21. While consultation on the proposed regulations would add to the overall regulation-making timing, it is not expected to impact on the select committee or Amendment Paper content or process or the timing of the final stages of the Bill's passage through the House. These would be independent processes, although as noted above, the timing of the commencement of both the Act and regulations would need to coincide to ensure the regulations are in place on Day 1. Concurrent development of a Bill and regulations is not uncommon.

22. Following consultation, we would report back to you with a summary of feedback, and any recommendations for changes, for final decisions to immediately issue drafting instructions to Parliamentary Counsel Office to draft through November 2024. We intend to have regulations ready to take to Cabinet Legislation Committee for approval to go to Executive Council as soon as the Bill has received Royal assent, though this will be dependent on the timing of the Bill's passage through the House.

We are developing options for approaches to charging

23. The Cabinet paper will set out the proposed charges to be consulted on, including options for a fixed charge or hourly rate approach.

24. We are preparing options for what these charges could be (based on existing fee regimes). The charges are a mixture of fixed fees (where costs are relatively static and predictable) and hourly rates (where projects require different levels of analysis). The indicative charges include recovering costs to administering agencies from:

    a. advising Ministers on referral

    b. any pre-application meetings with applicants

c. checking applications for completeness before referring to the expert panel for assessment

d. the expert panel's assessment of applications and advice to Ministers

e. engaging other agencies throughout the process and obtaining their expert advice on applications where necessary.

25. While we have had some initial conversations with agencies that have involvement in the Fast-track Approvals process, we are yet to land on the figures we recommend to use as a basis for consultation.

We are seeking direction via your joint Ministers meeting on specific issues

26. There are two additional issues which we are seeking your direction on for inclusion in the Cabinet paper. These are:

a. Whether to provide that other organisations that have a statutory role in the process (such as PSGEs and other groups responding to invitations from Ministers to comment on referral applications), can have their costs recovered

The Bill includes a number of provisions which require consultation with Māori groups, variously by the applicant, Ministers, and/or the panel. These provisions support compliance with the overarching obligation on persons exercising functions, powers and duties to act consistently with settlements and customary rights. Costs for Māori groups may, in some cases, inhibit their ability to participate, particularly for smaller groups or groups who have only received recently settlement redress.

In other circumstances, the Crown has taken the view that it is not appropriate to expect PSGEs to draw on settlement redress to fund their participation in processes the Crown has established to ensure it is upholding Treaty settlements (eg, by providing contributions to costs incurred by PSGEs when the Crown has proposed amendments to settlements). Further, there has been a more specific precedent in the COVID-19 Recovery (Fast-track Consenting) Act 2020, which provided for Māori groups to recover costs reasonably incurred through engagement with agencies in relation to certain work on infrastructure. We are also aware of some examples where iwi costs are recovered, such Waikato District Council which has an iwi consultation charge with a set fee for RMA processes; but there is no standardised approach to recovering such costs.

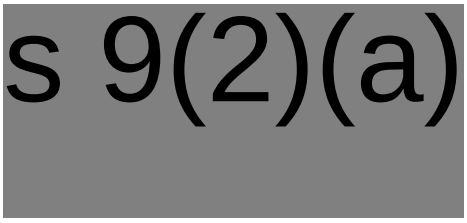
b. Whether cost-recovery should be administered centrally via a single agency, or whether individual agencies should each be empowered to directly recover their own costs from applicants

While most of the agencies involved in applications are already equipped to recover their costs under their existing approval processes, currently there is no facility or baseline funding to administer a centralised cost-recovery approach (on behalf of other agencies). A centralised billing approach would

be simpler from an applicant perspective, but further work on its feasibility is needed if you wish to pursue such an approach.

The Environmental Protection Authority (EPA) has advised that a centralised billing approach would need to be carefully considered as the EPA is not currently positioned or funded to deliver such a function and this is not something that could be absorbed form current funding or baseline. Other matters to be worked through include how costs would be apportioned between agencies if a fixed fee model is used, and how unpaid debts would be dealt with. At the moment we are not confident that centralised billing would be feasible for Day 1.

27. Your decisions on the above matters will be included in the Cabinet paper.



Ilana Miller

Programme Director, Partnerships, Enablement and Investments

Ministry for the Environment

14 August 2024

Susan Hall

Policy Director, Building Resources and Markets

Ministry of Business, Innovation and Employment

15 August 2024

Appendix 1: Elements of cost recovery

1. The Treasury's *Guidelines for Setting Charges in the Public Sector* (the Treasury's Guidelines) provide detailed guidance for designing a cost recovery regime and should be followed throughout the establishment, implementation, monitoring and review process.

2. A central theme in the Treasury's Guidelines is ensuring that an '**open book**' approach is applied to cost recovery charges imposed by the public sector, that charges are efficient and effective, and that stakeholders have visibility over the costs that underpin the charges they pay.

3. There is no single standard to follow for setting and administering cost recovery fees. A principles-based approach is considered best practice by the Treasury and the Office of the Auditor General.

4. Officials are using the following principles to guide the development of a cost recovery regime for FTA.

    a. **Fairness** – Public organisations should administer and manage fees in a way that is administratively fair and ensure that they do not seek to recover costs from one group that might benefit a previous or future group.

    b. **Effectiveness** – The level of funding should be fit for purpose and enable the cost recovered activity to be delivered to a level of quality that is appropriate for the circumstances.

    c. **Efficiency** – The approach should ensure services provide value for money. There should be appropriate constraints on charging practices (in particular where charges are on an hourly or variable basis).

    d. **Transparency/Predictability** – There must be transparent processes in place for setting and managing fees and levies, and a clear line of sight between the service provided and the costs to be recovered. It must be clear what service the fees are being collected for, from whom, and why.

5. Alongside the Treasury Guidelines, there are public bodies who have a role in ensuring that public organisations are setting fees and levies lawfully:

    a. the Regulations Review Committee

    b. the courts

    c. the Auditor-General.

Ministry for the Environment
Manatū Mō Te Taiao

Briefing: Cost recovery framework for fast-track approvals

Date submitted: 24 September 2024
Tracking number: BRF-5334
Sub Security level: In-Confidence
MfE priority: Urgent

Actions sought from Ministers		
Name and position	***Action sought***	***Response by***
To Hon Chris BISHOP **Minister Responsible for RMA Reform** **Minister for Infrastructure**	Agree to the recommendations in this briefing	30 September 2024
Cc Hon Shane JONES **Minister for Regional Development**	Agree to the recommendations in this briefing	30 September 2024

Actions for Minister's office staff
Return the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).

Appendices and attachments
Appendix 1: Overview of proposed fee and levy structure Appendix 2: Illustrative example of proposed fee structure

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Jane Tier		
Manager	Stephanie Frame	s 9(2)(a)	✓
Deputy Secretary	Nadeine Dommisse	s 9(2)(a)	

Minister's comments

Cost recovery framework for fast-track approvals

Key messages

1. This briefing seeks your decisions on the framework for cost recovery under the Fast-track Approvals legislation, which will inform both Amendment Paper content for the primary legislation and development of regulations.

2. To provide a centralised cost recovery process under fast-track, we recommend the Environmental Protection Authority (EPA) be given the 'Lead Agency' function of acting as a centralised collection agency responsible for all applicant-facing financial transactions.

3. We recommend establishing mixture of fees and levies (see overview diagram Appendix 1). Fees will cover the actual and reasonable costs associated with processing each application, while levies will contribute toward system costs including for litigation and to cover bad debt. We recommend that the legislation 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 able to be recovered.

4. We recommend six fees and levies be established in regulation, which must be paid upfront when an application of the relevant type is made. The prescribed application fees will serve as a deposit towards the total costs. Extra fees will be charged when these values are exceeded, or partial refunds would be provided case-by-case if total costs end up less than the application fee.

5. We will provide further advice in the coming weeks on the recommended rates for the levy and the prescribed fee charges. We are recommending that actual and reasonable costs are not prescribed, meaning that government agencies and third parties are able to establish their own rates, outside of regulation.

6. In practice, we expect each party incurring costs recoverable will record their time and expenses with the EPA. The EPA will add these charges to the tally of charges for each application, recover the costs from the applicant (partly upfront via the deposit and later through additional charges), and then reimburse each party

7. Your Cabinet paper sought agreement that Māori groups with statutory roles in the fast-track process may recover their costs. We have identified some complexity in relation to this, but due to time constraints we have been unable to provide a response in this briefing. We will undertake some further policy work to identify if there are options for your direction.

8. There are risks to the EPA in taking on the new centralised cost recovery function, particularly if the costs incurred by the EPA are not fully recovered – for example if the levy is set too low, there are fewer applications than expected (impacting on levy revenue), or the scope of what can be levy-funded is insufficient.

9. We are working with the EPA to understand the funding requirements to establish the new centralised cost recovery function and will advise Ministers separately on this and any mitigations needed to minimise the EPA's financial exposure risks.

Recommendations

We recommend that you:

a. **note** that, subject to Cabinet confirmation on 23 September 2024, the Cabinet Economic Policy Committee has agreed [ECO-24-MIN-0200]:

i to enable a comprehensive cost-recovery approach to recover from users the costs incurred by the Crown associated with all functions, powers, and duties carried out under the legislation, including those on behalf of the panel and panel convenor

ii to provide that other organisations that have a statutory role in the process (such as PSGEs and other Māori groups responding to invitations from Ministers or agencies to comment on referral or substantive applications) can have their costs recovered

iii in relation to land exchanges, that any reasonable costs incurred by DOC are recoverable from the applicant including:

i. in the negotiation process with existing rights holders; and

ii. using external experts to undertake activities required to facilitate an exchange

iv in relation to land exchanges, that any reasonable costs incurred in the negotiation process with existing property rights holders be recoverable by the rights holder from the applicant

v to provide that cost-recovery regulations can be made under the legislation which may relate to the setting of charges (both fees and levies) and provide for other matters relating to administering cost-recovery

vi to provide – either in the primary legislation or through regulations and an associated empowering provision (as appropriate) – the ability for costs to be recovered on behalf of other parties, for example to set up a centralised collection agency

vii to delay the commencement date of the Bill by up to 1 month after Royal Assent to allow time for the cost-recovery regime to be in place prior to project applications being received

viii to include provisions in the Bill that enable the recovery of unpaid fees as debt, and the ability for the applicant to object to invoiced costs, to ensure they apply to all approvals [not just approvals under the Resource Management Act 1991 (RMA)]

ix to authorise the Minister Responsible for RMA Reform and Minister for Regional Development to 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

b. **note** that your decisions on the recommendations below will be subject to Cabinet authorising you to take decisions as outlined in recommendation a (ix)

c. **note** the Minister for Infrastructure will be the Minister responsible for recommending regulations under the Bill, so these decisions and subsequent decisions will also be sought under the Infrastructure portfolio

Centralised collection agency

d. **agree** that the Environmental Protection Authority (EPA) be given the function of recovering costs from applicants at the referral application, land exchange application, and substantive application stages (meaning it charges applicants on behalf of all other government agencies, the panel, panel convenor, and third parties whose costs are recoverable, and reimburses those parties once in receipt of payment)

Yes | No

e. **agree** that cost-recovery be enabled for pre-application costs of government agencies and local authorities but recovery of these costs not be centralised

Yes | No

f. **note** that the centralised collection agency function risks financially exposing the EPA, and further work is underway to mitigate the risk to the EPA and advice will be provided to the appropriate Ministers in the coming weeks

Prescribed fees provisions

g. **agree** that regulations will set out three upfront fee values that must be paid for: referral applications; land exchange applications; and substantive applications

Yes | No

h. **agree** that an Amendment Paper to the Fast-track Approvals Bill include the requirement that upfront deposit fees prescribed in regulations must be paid to the EPA upfront as part of each application process (in addition to the levies referred to in recommendation p below)

Yes | No

i. **agree** that each of the upfront fees would serve as a deposit towards the total fees that must be paid by an applicant for each type of application, and the total fees would be determined based on actual and reasonable costs charged by each party (in accordance with recommendation d above), which would not be prescribed in regulation

Yes | No

j. **agree** that provision be made for partial refunds to be given by the EPA to the applicant case by case if the total cost of processing an application is less than the upfront fee paid as a deposit

Yes | No

k. **agree** that government agencies and local authorities be empowered to set their own rates for their actual and reasonable costs, without these being prescribed in the initial regulations

Yes | No

Third party cost recovery

l. **note** officials have identified potential workability and complexity issues related to cost recovery for other organisations that have a statutory role in the process (such as PSGEs and other Māori groups responding to invitations from Ministers or agencies to comment on referral or substantive applications), but due to time constraints, this briefing does not provide a solution and officials will undertake some further policy work on the matter

Levy provisions

m. **agree** that the ability to set a levy in regulations be included in an Amendment paper with the purpose of funding:

   i contributions toward the panel, panel convenor, and Crown's involvement in any litigation relating fast-track approvals

   ii costs associated with the EPA in performing its functions and exercising its powers and duties under the legislation, where those costs are not directly recovered from applicants through the fees regime

   iii covering bad debt from unpaid fees for fast-track approvals

Yes | No

n. **agree** that the EPA will collect and administer the levy fund and may pay out the levy at its discretion for the identified purposes

Yes | No

o. **agree** that levies may be charged to applicants at each application stage, and that these levy amounts may be at different rates

Yes | No

p. **agree** that if levy charges are in place, they are required to be paid at the time of lodging an application (in addition to the application fees referred to in recommendation h above)

Yes | No

q. **agree** that the Amendment Paper provide that the levy fund may be used to cover past deficits (as long as the expenditure is within the scope of what the levy can fund), to enable smoothing of costs over time

Yes | No

r. **agree** that the levy fund can be used to cover fast-track approvals system setup costs (but not policy work including on Listed Projects) that were incurred by the EPA or Ministry for the Environment before commencement of the legislation, noting that retrospectivity needs to be specifically empowered in the legislation

Yes | No

s. **note** that the inclusion of a levy component in the primary legislation would be new, and has not been tested with the public or select committee

t. **agree** to:

   iv **either** officials undertaking public consultation on the proposed levy amount, which may delay when cost recovery regulations can be made (and the Act can

commence) until early in the New Year (note that this consultation would also need to cover the fee values, for completeness)

Yes | No

v **or** (consistent with your earlier direction on consultation on cost recovery more generally) to officials carrying out targeted policy testing with a limited number of prospective levy payers (which would mean regulations will be on track to be provided to Cabinet in late December, subject to the timing of Royal assent)

Yes | No

u. **agree** that the Amendment Paper will include a requirement that any changes to the levy must be consulted on with prospective levy payers and when recommending levy regulations in the future, the Minister for Infrastructure should be required to have regard to the anticipated value of the spending that would be levy funded over the next five years; the anticipated number of levy payers (applicants) over the next five years; and the appropriate contribution level for each type of levy payer

Yes | No

v. **agree** that the requirements set out in recommendation u above will not apply to the initial levy regulations

Yes | No

Removal of objections process

w. **agree** that the ability to object to charges be removed from the Bill

Yes | No

Next steps

x. **agree** that drafting instructions will be issued to Parliamentary Counsel Office to give effect to the decisions taken, both via an Amendment Paper to the Bill and regulations made under it, as appropriate

Yes | No

y. **authorise** officials to make any necessary change to the Bill, via an Amendment Paper that are necessary to ensure existing cost recovery provisions in the Bill are consistent with the decisions in this paper

Yes | No

z. **agree** that further advice will be provided to the Minister for Infrastructure seeking agreement to specific fee and levy values to be included in regulations prior to the Minister taking these regulations to Cabinet Legislation Committee

Yes | No

Signatures

Stephanie Frame
Manager, Delivery and Operations
Partnerships, Investments and Enablement
24 September 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Minister for Infrastructure
Date

Hon Shane JONES
Minister for Regional Development
Date

Cost recovery framework for fast-track approvals

Purpose

1. This briefing seeks your decisions on the framework for cost recovery under the Fast-track Approvals legislation. Your decisions will be incorporated into the Fast-track Approvals Bill via an Amendment Paper, as well as regulations to be made under the primary legislation.

Background

2. In your Cabinet paper *Fast-track Approvals Bill Amendment Paper relating to policy and workability changes*, you are seeking Cabinet agreement to some specific cost recovery settings for the primary legislation, however these are incomplete, and Cabinet is being asked to authorise you to take further decisions.

3. Subject to Cabinet confirmation on 23 September 2024, the Cabinet Economic Policy Committee (ECO) has agreed [ECO-24-MIN-0200] to enable a comprehensive cost recovery approach to recover from users the costs incurred by the Crown associated with all functions, powers, and duties carried out under the legislation[1] including those on behalf of the panel and panel convenor.

4. The policy intent is that central government, local authorities, and other groups are not left out of pocket from their involvement in the fast-track approvals system (except where they are the applicant), and the system is funded by users. It is also intended that from a user's perspective, the cost recovery system is as simple and streamlined as possible, for example a centralised collection agency as a single point of contact for applicant billing purposes.

5. Cabinet was asked to authorise the Minister Responsible for RMA Reform and the Minister for Regional Development to 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 to include in the Amendment Paper and/or regulations.

6. The recommendations in this paper are subject to Cabinet agreeing to enable a comprehensive approach to cost recovery, that regulations may be made to set charges through both fees and levies, and authorising you to take decisions as outlined above.

Analysis and advice

7. The Fast-track Approvals Bill is a new, complex, permanent addition to existing approval systems. It builds on the previous COVID-19 Recovery (Fast-track Consenting) Act 2020

[1] This would include the preparation of reports and comments to assist the panel.

(FTCA) but expands as a 'one-stop-shop' approach including approvals across other pieces of legislation beyond the Resource Management Act 1991 (RMA).

8. The primary agencies that will be involved in implementing the Fast-track Approvals Act are the 'responsible agency' (the Ministry for the Environment (MfE)) and the Environmental Protection Authority (EPA). Various other agencies[2] will have specific roles and functions set out in the new legislation. Broadly, these include assessing and providing advice on referral applications, receiving assessing substantive applications, consulting third parties, and providing advice to expert panels. Some agencies incur specific other costs depending on the types of applications, for example assessing land exchanges.

9. Expert panels and panel convenor(s) will need to be paid for their time (which will comprise a significant share of the overall cost of a substantive application processed to decision). Expert panels can also commission expert advice from third parties where reasonable.

10. Some of the roles and functions are fixed for each application, but others will be dependent on the content and progress of the application. All of this will incur cost, and the overall processing cost for applications is likely to be significant.

We recommend the EPA act as the centralised collection agency

11. When Fast-track Ministers met on 19 August 2024, you expressed a strong preference for a centralised cost recovery approach. We recommend that the EPA be given the 'Lead Agency' function of acting as a centralised collection agency responsible for all applicant-facing financial transactions. This would involve the EPA coordinating behind the scenes with other government agencies involved in each application; to on-charge their costs to applicants and pay the relevant agency once the costs are recovered from the applicant.

12. This would streamline the communication of costs to the applicant, though it is likely to increase the overall costs to the applicant due to the duplication of handling between the collection agency and individual government agencies. The level of cost is dependent on the volume of transactions and engagement needed with applicants.

13. We considered alternatives, such as the Ministry for the Environment being the collection agency, but consider that the EPA is best placed to carry out this function as it will be administering the substantive application process, which will include the greatest and most complex costs. There are efficiency benefits in the EPA being the centralised collection agency rather than passing all its information onto another agency for this purpose. The EPA has an experience of cost recovery functions through the for FTCA, and the Natural and Built Environment Act 2023 fast-track process. This experience will provide a foundation for establishing the new function.

14. It is intended that all cost recovery be centralised through the EPA at referral, land exchange, and substantive application stages, including passing on local authorities' charges. In practice at these stages, we expect that central government (the Minister at

[2] These agencies include the Department of Conservation, Ministry for Primary Industries, Ministry of Business, Innovation and Employment, Heritage New Zealand Pouhere Taonga, Land Information New Zealand, Te Arawhiti, Te Puni Kōkiri and others, and other parties (in particular, local authorities)

the referral application stage) and the panel at the substantive application stage will invite comments or seek advice from local authorities, who will invoice central government (via the EPA). The applicant will not be directly involved in seeking these comments, so we consider that the party to be charged should be government rather than the applicant, with these costs then passed onto the applicant by the EPA.

15. The Bill enables costs incurred by agencies in providing any pre-application assistance to prospective applicants to be recovered, whether or not they ultimately submit an application. We do not recommend that these costs must be recovered centrally by the EPA. At the pre-application stage, prospective applicants are free to approach any relevant agencies directly for assistance without a centralised process, and therefore the EPA may not have any visibility of what is occurring. We consider it simpler and less administratively complex to simply leave the legislative provisions as they are and empower each agency to recover these costs without mandating that this be carried out centrally by the EPA.[3]

16. The EPA has signalled that it could take on the centralised cost recovery function but that there will need to be an investment into the EPA to meet the costs associated with setting up the systems and processes as well as managing risks associated with non-recoverable costs such as (i) significant delays in receiving payment from applicants and (ii) the risk of not being fully reimbursed by applicants for actual and reasonable costs. The EPA's current systems are unlikely to be able to deliver the new function and work is underway to scope the scale and associated costs.

17. We understand the EPA's financial position and consider it unreasonable for it to be financially exposed. The design of regulations to enable partial upfront payment by applicants will reduce some of the risk, however discussions on this between the Ministry for the Environment and the EPA are continuing, and advice will be provided to Ministers.

We propose a mixture of fees and levies

The total cost of each application would be based on its actual and reasonable costs

18. A 'one-stop-shop' approach for fast-track approvals is new, and there are a number of unknowns (such as process needs and volume of transactions) that make it difficult to estimate the total cost of processing applications. To ensure a full user-pays system where costs are not over- or under-recovered, we recommend that charging be based primarily on the actual and reasonable costs of processing, handling, considering, and deciding on a given application. This would entail time sheeting and recording of all expenses, and charging each applicant for the costs associated with their specific application.

19. We have considered the alternative of establishing set fees for each type of application (with cross-subsidisation within the system) but have ruled this out for a number of

[3] For example, a prospective applicant may approach DOC for advice about a specific issue to inform its application. The legislation will empower DOC to recover from the prospective applicant, DOC's actual and reasonable costs incurred in providing that assistance. So, in practice, we expect that DOC would be able to bill the prospective applicant directly, without involving the EPA. This approach would only apply to pre-application assistance; once an application is lodged all cost recovery would be centralised.

reasons. This approach risks over- or under-recovering costs – especially when the system is new and estimates are not reliable. It would be difficult to justify a reasonable fee given the potential diversity in types of applications and the number and complexity of approvals they are seeking.

20. We have also considered, and advise against, prescribing hourly rates in regulations. Current practice is a mixture of regulations prescribing rates, for example the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013 made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012). Some primary legislation also broadly empowers the recovery of costs without setting rates in secondary legislation, such as the FTCA.

21. Given the number of different agencies that will be involved in fast-track approvals and able to recover their costs, we consider setting rates in regulation to be unduly prescriptive and it would create a sizable administrative burden. With prescribed rates there is a risk that, over time, they fall behind actual costs and agencies end up under-recovering their costs. Updating prescribed rates requires a Cabinet approved regulation change which takes time and can be administratively burdensome. We recommend each agency and local authority should be able to set its own actual and reasonable rates, outside of regulation, in the same manner as the FTCA cost recovery approach.

A large upfront fee would serve as a deposit towards the total fees

22. While we recommend that each applicant's total fees are charged based on the specific costs for that application, we propose to set an upfront application fee – at both the referral and substantive application stages (including a substantive land exchange application) – that applicants must pay when lodging their applications. The scale of these fees is to be determined but is likely to be substantial. Applicants may include government agencies, state-owned enterprises, Crown entities, or other organisations in which the Crown has an interest. In those instances, those applicants would pay to use the fast-track approvals process, the same as all other applicant types.

23. We propose these three upfront fees are set in regulations: a referral application fee, a land exchange application fee[4], and a substantive application fee. Future updates to the fees structure could provide for a wider range of upfront fees if it is deemed necessary (for example, different fees based on the different types of approvals sought).

24. These upfront fees would serve as a deposit or downpayment towards the total costs, and the EPA would be empowered to charge applicants additional fees based on actual and reasonable costs if and when these deposit amounts have been exceeded. We also recommend that there be an ability to partially refund fees if the full amount is not used.

25. It is our intention to set the application fees at levels sufficiently high that the processing of most applications would be almost entirely covered by the upfront fees, while the largest applications would have greater differences to pay in additional fees. We intend to ensure that the fees recover as much as possible upfront, minimising risks of unpaid debts or cash flow issues for the EPA. Further work is required to determine the appropriate amounts for these fees, and we propose to report back to the Minister for

[4] The land exchange application fee reflects that the substantive land exchange application is to be made after referral but before the rest of the approvals so that the appropriate due diligence can be completed.

Infrastructure by early November with recommended rates for inclusion in the regulations.

We also propose to establish a levy component

26. In addition to the actual and reasonable costs associated with processing a given application, we propose to establish a levy, collected and administered by the EPA, to cover those costs that cannot be directly attributed to a project. A levy is different to a fee and requires specific empowering provisions in the primary legislation. A levy does not relate to specific goods or services but is charged to a particular group to help fund a particular government objective or function, and can be used where the levy payer may not directly benefit from the function or expenditure. We recommend that a levy may be used to cover the following costs:

    i Contributions toward the panel, panel convenor, and Crown's involvement in any litigation (judicial reviews and/or appeals) including for the panel and panel convenor(s) and central government agencies (not just the EPA).

    ii Costs incurred by the EPA in performing its functions and exercising its powers and duties under the Fast-track Approvals Act, where those costs are not recovered directly from applicants through the fees regime. In practice we expect the levy to fund system costs that are specifically attributable to fast-track, such as building IT systems specifically for fast-track.

    iii Covering bad debt from unpaid fees for fast-track approvals (to ensure the EPA can pay the panel, other agencies and entities with recoverable costs, and any recoverable expenses incurred as part of an application process without this having to come from the EPA's baseline if the applicant does not pay the fees and they are unable to be recovered).

27. We consider there to be a high likelihood of additional costs to the Crown associated with implementing the Fast-track Approvals regime, for example the costs of establishing the systems and processes to deliver the function. There will also be ongoing costs associated with appeals or judicial reviews, particularly as this is a new regime which parties may wish to test in the courts. While courts may award costs, it is not a given that costs would be awarded to government, awards are unlikely to represent the full cost to government of its involvement, and they may be awarded only after a significant delay from the time the expenditure occurred. We note the Electricity Authority has a litigation fund which is funded by an industry levy.

28. The alternatives to a levy to fund implementation costs including litigation costs or other contingencies are to either seek Crown funding or to directly charge the applicants or parties involved in appeals. We consider directly charging applicants in these instances to be inappropriate[5]. Crown funding would not be consistent with your previously stated preference of a user-pays system.

29. Should you agree that a fund be established and funded by levies charged to applicants, we will include the necessary empowering provisions in the forthcoming Amendment Paper and report back to the Minister for Infrastructure with further advice on the

[5] For example, early applications that are approved may be more likely to be tested in the Courts than later applications, but the challenge may relate more to the application of the legislation generally rather than anything specific to that application for approval.

recommended size of the fund and charges levied on each type of applicant, to be included in regulations. We expect there to be different levy amounts charged at each application stage, which would be changed to applicants along with their application fees.

30. We recommend that the legislation specifically enable costs to be recovered via the levy to cover past deficits, as long as the expenditure is within the scope of fast-track system costs. This would enable levy funds collected in later years to fund activities that occurred earlier in the implementation, enabling a degree of smoothing of cost over time, which will be important given the likely lumpy nature of these costs (eg, system setup costs or litigation). The Overseas Investment Act 2005 provides a precedent for this approach.

31. We recommend this be able to be used to cover fast-track approvals system setup costs that were incurred by the EPA or Ministry for the Environment before commencement of the legislation – s 9(2)(h) [redacted]. This would not extend to policy work associated with the Fast-track Approvals Bill process, including Listed Projects.

32. s 9(2)(h) [redacted]

33. In any case, we recommend that the primary legislation include a general requirement to consult on levy changes going forward, but the initial levy values be exempt from this requirement. We also recommend that going forward, when recommending regulations to set levy amounts In setting the levy value (in regulation), the Minister for Infrastructure should be required to have regard to the anticipated value of the spending that would be levy funded over the next five years; the anticipated number of levy payers (applicants) over the next five years; and the appropriate contribution level for each type of levy payer (referral and substantive applications).

34. Appendix 2 provides an illustrative example of the total fees and levies that each applicant would be expected to pay under this proposed framework. This is not to scale and is provided purely to illustrate the proposed structure of the charges at each stage.

[6] Certain days over the Christmas/New Year period are excluded from statutory processing timeframes under the FTA Bill

We recommend removing the objections process

35. ECO has agreed to "include provisions in the Bill that enable the recovery of unpaid fees as debt, and the ability for the applicant to object to invoiced costs, to ensure they apply to all approvals" (not just approvals under the RMA).

36. The intention of the above recommendation was to ensure consistency of cost recovery provisions for all types of fast-track approvals. The existing objection and debt recovery provisions in the Bill are limited to RMA approvals because they were modelled on existing legislation and there was limited time to refine them before the Bill was introduced.

37. Subsequent to the Cabinet paper being lodged, we have done further work on the workability of an objections process and recommend that it be removed entirely rather than extended to apply to all approvals. This will still achieve the intent of consistency while mitigating a number of risks and concerns of the EPA, and removing serious workability challenges. We have also identified that while the ability to object to additional charges (over and above upfront fees) is a feature of the RMA, it is not standard across other charging regimes that provide similar abilities to charge additional amounts when the initial charges were inadequate to cover the actual and reasonable costs.

38. We intend to note this policy change to Cabinet in the relevant LEG paper.

Te Tiriti analysis

39. Officials have not identified any Te Tiriti impacts in relation to the proposals in this paper. In the event officials provide you with further advice regarding third parties (including Māori groups), Te Tiriti analysis will be included in relation to that.

Other considerations

Consultation and engagement

40. The Ministry for the Environment prepared this advice and consulted with the following agencies on various aspects of the proposals: the EPA, the Treasury, the Ministry of Business, Innovation and Employment, the Department of Conservation, the Ministry for Primary Industries, Te Arawhiti, Land Information New Zealand, the Ministry for Culture and Heritage, Heritage New Zealand, and the Ministry of Regulation. Parliamentary Counsel Office has also provided advice that has informed our proposals for the necessary empowering provisions in the primary legislation, for fees and levies.

41. There was general support for a centralised collection agency from the agencies whose costs will be recoverable, and the ability for each agency to set its own hourly rates rather than prescribing these in regulation. Some agencies noted that they do not currently charge for their work, so having an agency such as the EPA carry out this function on their behalf would be more efficient than setting up new systems, however they will still need to do the work to establish their own rates and may need to set up time sheeting and invoicing systems and processes.

42. The EPA noted a number of risks associated with it taking on new functions, outlined in the next section. We are continuing to work with the EPA and will advise Ministers separately on mitigations for the EPA's financial exposure risks.

43. Once you have taken decisions on the cost recovery framework, we intend to undertake targeted policy testing with key stakeholders, particularly to test and developed the proposed fee and levy values. We will report back to the Minister for Infrastructure and seek decisions on these values by early November.

Risks and mitigations

44. The new function proposed for the EPA – as centralised collection agency – will involve work to establish systems and processes. The scope of these systems needs to be defined and rely in part in decisions you will make in this paper. It is likely that some systems will take longer to put in place which means not everything will be in place when the first applications are received.

45. If the number of applications received is lower than expected, or if a levy is not created, then costs incurred by the EPA will not be fully recovered. The EPA, as the Lead Collection Agency, is not in financial position to be able to be manage these costs without further assistance. Incurring additional costs not met via one of the mechanisms in this paper will impact on the EPA's ability to deliver its core functions, in particular assessments under the Hazardous Substances and New Organisms Act 1996. This would not be in line with the Minister for the Environment's expectation that the EPA improves the performance of its hazardous substances functions.

46. The EPA has also raised concerns about:

    i The Minister for the Environment expects the EPA to return to delivery of a break-even budget after several years of operating with a deficit. There are a range of factors associated with the cost recovery framework that put delivery of a break-even budget at risk.

    ii The need to invest in systems and processes to be able to deliver its functions, before the legislation is passed. The associated costs have not yet been determined, and the work needed to complete the setup is uncertain. As a result, the commitment to remain in a cost neutral position can no longer be guaranteed, and the EPA considers that it cannot fulfil this function without an increase to its baseline funding.

    iii The high likelihood of bad debt from applicants, as experienced under previous fast track consenting acts. This is costly and negatively impacts on the EPA's financial position.

    iv EPA has a new Board in place who will need to be informed and make a decision on accepting the level of risk proposed.

Financial implications

47. We are continuing to work with the EPA to understand the funding requirements to establish the new centralised cost recovery function and will advise Ministers separately on this and any mitigations needed to minimise the EPA's financial exposure risks.

48. Some agencies may need to make changes to their relevant appropriation scopes to ensure they are able to receive revenue by way of reimbursement from the EPA, and to ensure their work on fast-track is within the scope of those appropriations. This is for each agency to work through individually with the Treasury and their respective portfolio Ministers if required.

s 9(2)(h)

Regulatory and legislative implications

55. The proposals in this paper will require changes to the Fast-track Approvals Bill and will inform the development of regulations under it. We will make the necessary changes to the Bill through Amendment Papers at the Committee of the Whole House stage.

56. We intend that decisions you take on the fee and levy structure will inform the start of drafting of regulations, but further decisions will be required on the specific rates. Once these decisions are in place and the drafting of the regulations is completed, the regulations would be made through Order in Council, after consideration by the Cabinet Legislation Committee (LEG).

57. While drafting can happen in parallel to the Bill's progression through the House, the regulations will not be able to be made by Executive Council until after Royal assent of the Act. It is our intention to progress the regulations as quickly as possible after Royal assent. The precise timing is uncertain at this stage as it is dependent on the timing of the Bill's third reading, however we are working towards having regulations ready to take to LEG in late December.

Next steps

58. A LEG paper will be provided by 18 October 2024 seeking approval to the Amendment Papers.

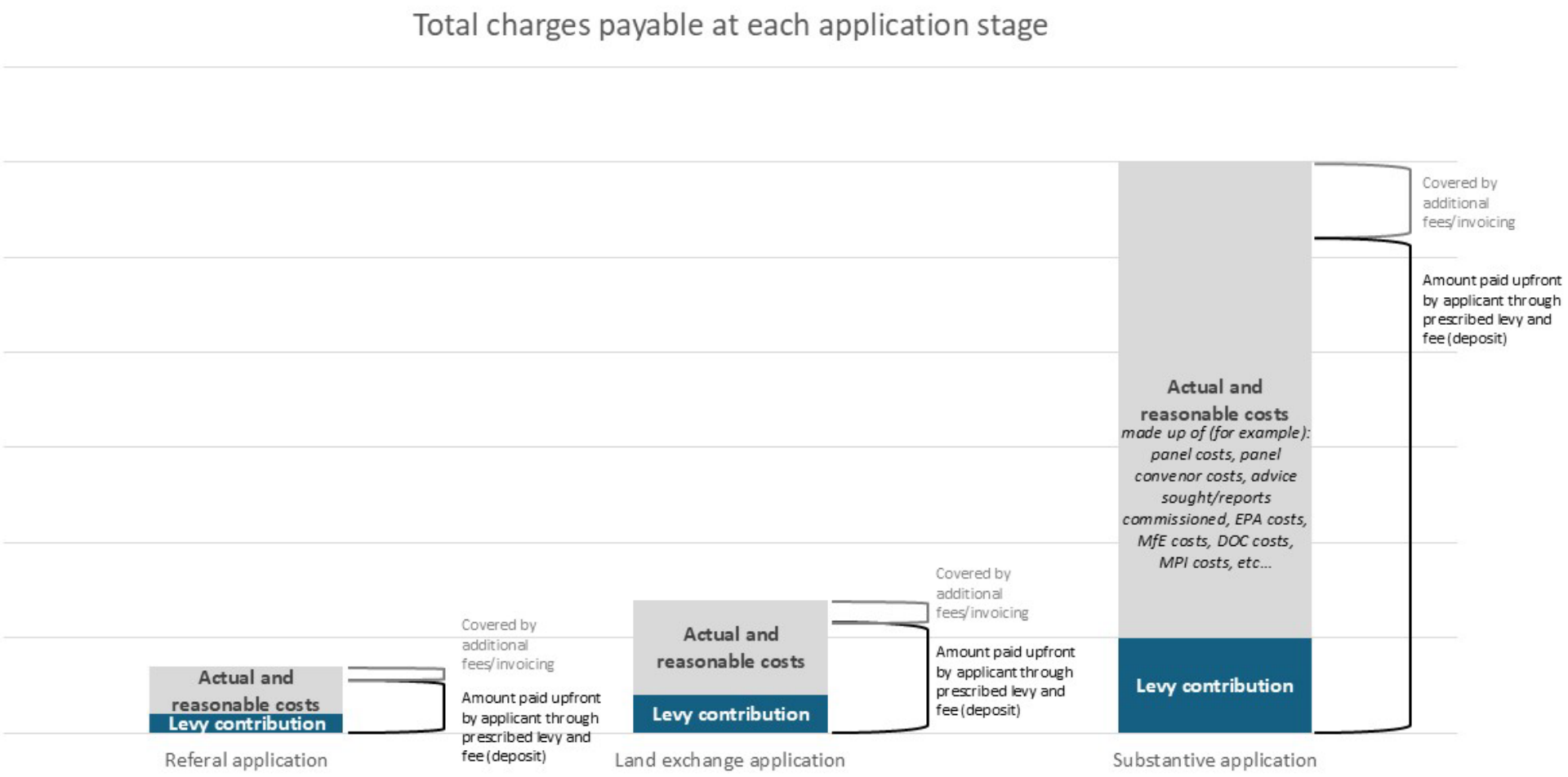
59. We intend to report back to the Minister for Infrastructure by early November 2024 seeking agreement to the proposed rates for application fees and levy values, following targeted policy testing with key stakeholders and partners. This advice will be accompanied by a cost recovery impact statement.

60. We will then provide the Minister for Infrastructure a LEG paper in late November 2024 seeking approval to the fee and levy regulations.

Appendix 1: Overview of proposed fee and levy structure

	Levy	Prescribed fee	Additional fee (not prescribed)
Referral application	Prescribed levy amount charged	Prescribed fee charged as deposit towards total cost of considering referral application	Actual and reasonable costs charged if they exceed the deposit amount
Land exchange application	Prescribed levy amount charged	Prescribed fee charged as deposit towards total cost of considering land exchange application	Actual and reasonable costs charged if they exceed the deposit amount
Substantive application	Prescribed levy amount charged	Prescribed fee charged as deposit towards total cost of considering substantive application	Actual and reasonable costs charged if they exceed the deposit amount

Appendix 2: Illustrative example of proposed fee and levy structure



Document 3

Ministry for the Environment
Manatū Mō Te Taiao

Briefing: EEZ Act related provisions in the FTA Bill

Date submitted: 26 September 2024
Tracking number: BRF-5401
Sub Security level: In-Confidence
MfE priority: Urgent

Actions sought from Ministers		
Name and position	***Action sought***	***Response by***
To Hon Chris BISHOP **Minister Responsible for RMA Reform**	**Agree** to the recommendations in this briefing	30 September 2024

Actions for Minister's office staff
Forward this briefing to: Hon Shane Jones, Minister for Resources for signing Hon Penny Simmonds, Minister for the Environment **Return** the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).

Appendices and attachments
1. Appendix A: Assessment of the requirement to 'take into account' the EEZA Treaty clause (section 12) compared to FTA processes 2. Appendix B: Fast-track Approvals Bill – Treaty clauses in parent legislation

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Gabby Storey		
Responsible Manager	Fiona Newlove		
General Manager	Jo Gascoigne	s 9(2)(a)	✓

Minister's comments

EEZ Act related provisions in the FTA Bill

Key messages

1. The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZA) is the only legislation where the Treaty clause (Section 12 of the EEZA) is applied in the Fast-track Approvals Bill (FTAB). The purpose of this briefing is to seek your decision on whether to retain reference to the Treaty clause (section 12) of the EEZA in the FTAB.

2. We consider there is not a significant reason to retain reference to the Treaty clause (section 12) of the EEZA in the FTAB. Retaining it would be out of step with how other similar provisions in other parent Acts are treated and removing it would aid consistency and clarity for decision-makers.

3. Section 12 of the EEZA is a relevant consideration for the panel when assessing a marine consent[1], although the panel must also consider, and give greatest weight to, the purpose of the FTAB.

4. Section 12 of the EEZA is a descriptive clause which relies on specific provisions in the Act[2] to give it operative effect, in order to 'recognise and respect'[3] the Crown's responsibility to give effect to the principles of the Treaty of Waitangi. This may make its inclusion confusing for panels (in terms of whether these other specific provisions also apply and with what weighting).

5. Some provisions referenced in section 12 of the EEZA[4] are not relevant to the FTAB because they do not relate to consenting, and some provisions are applied by the FTAB[5]. We consider the remaining provisions referenced in section 12[6] could be addressed as follows:

    i Broadly speaking, the FTAB requires that the same groups that would be notified of a consent application under s46 of the EEZA have the opportunity to provide comments in the FTA process (although there is no reference to 'other persons that the Minister/Panel considers have existing interests that may be affected by the application'[7]).

    ii The provision that enables the marine consent authority to seek advice from the Environmental Protection Authority's Māori Advisory Committee[8] has not been incorporated elsewhere in the FTAB. The ability for panels to seek advice from the Māori Advisory Committee could be enabled (see recommendation a. ii. below). This

[1] As it is part of the purpose and principles of the EEZA set out in Part 1 subpart 2 of the Act.
[2] Sections 18, 32, 33, 59, and 46 of the EEZA, set out at para 8 of this briefing.
[3] Section 12 of the EEZA.
[4] Sections 32 and 33 of the EEZA.
[5] Section 59 of the EEZA is incorporated at schedule 9, clause 9(1)(d) of the FTAB.
[6] Sections 46 and 18 of the EEZA.
[7] Section 46(1)(b) of the FTAB.
[8] Section 18 of the EEZA; The Māori Advisory Committee is an existing committee established under section 18 of the Environmental Protection Authority Act 2011.

would allow the panel to access the Committee's expertise in the marine environment, consenting and te ao Māori perspectives (without representing individual iwi/hapū).

6. Overall, we consider that EEZA provisions that are carried through to the FTAB[9], together with other FTAB provisions[10],will enable consideration of Māori interests[11].

7. Further, there is a risk that applying the EEZA Treaty clause (section 12) in the FTAB is inconsistent with Ministers' agreed approach and the approach taken for other parent legislation in the FTAB (see Appendix B).

[9] Sections 39, 59 and 60 of the EEZA.

[10] Clauses 6, 19(1)(ba), 19A, 24M of the FTAB.

[11] Those interests at parts d) to f) of the definition of 'existing interests' at section 4 of the EEZA.

Recommendations

We recommend that you:

a. **agree to:**

   i. **either** remove reference to the EEZA Treaty clause (section 12) from schedule 9, clause 9(1)(b) of the FTAB

   Yes | No

   ii. **or** remove reference to the EEZA Treaty clause (section 12) from schedule 9, clause 9(1)(b), but enable the Panel to invite comments (eg, under cl 24M) from the Māori Advisory Committee (per section 18 of the EEZA)

   Yes | No

   iii. **or** maintain reference to the EEZA Treaty clause (section 12) at schedule 9, clause 9(1)(b) of the FTAB

   Yes | No

b. **agree** to progress the above changes through introducing an Amendment Paper at the Committee of the Whole House stage of the Fast-track Approvals Bill

   Yes | No

c. **forward** this briefing to Hon Shane Jones for his decision

   Yes | No

d. **forward** this briefing to Hon Penny Simmonds for her information

   Yes | No

Signatures

s 9(2)(a)

Jo Gascoigne
General Manager – Resource Management System
Environmental Management and Adaptation
26 September 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

Hon Shane JONES
Minister for Resources
Date

EEZ Act related provisions in the FTA Bill

Purpose

1. The purpose of this briefing is to seek your decision on whether to retain reference to the Treaty clause (section 12) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZA) in the Fast-track Approvals Bill (FTAB).

2. Ministers previously agreed (BRF-4307 refers) that:

    a. when the panel considers an EEZ marine consent application, they must take into account the following matters, giving weight to them (greater to lesser) in the order listed[12]:

        i. the purpose of the bill

        ii. the purpose and principles of the EEZ Act set out in Part 1 subpart 2 of the Act

        iii. any relevant EEZ policy statements under the EEZ Act.

        iv. relevant assessment, information and decision-making clauses of the EEZ Act.

3. Point ii. above means that, when considering an EEZA approval, the panel must 'take into account' the Treaty clause at section 12 of the EEZA (noting the panel must also consider, and give greatest weight to, the purpose of the FTAB per point i. above):

    In order to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty of Waitangi for the purposes of this Act,—

    (a) section 18 (which relates to the function of the Māori Advisory Committee[13]) provides for the Māori Advisory Committee to advise marine consent authorities so that decisions made under this Act may be informed by a Māori perspective; and

    (b) section 32 requires the Minister to establish and use a process that gives iwi adequate time and opportunity to comment on the subject matter of proposed regulations; and

    (c) sections 33 and 59, respectively, require the Minister and a marine consent authority to take into account the effects of activities on existing interests; and

[12] It was also agreed that Ministers must take into account the same when deciding to refer an EEZ marine consent application (in addition to the referral process considerations previously decided).
[13] The Māori Advisory Committee (MAC) is an existing committee established under section 18 of the Environmental Protection Authority Act 2011. Under section 56 of the EEZ Act, a marine consent authority can seek advice from the MAC on any matter related to an application.

(d) section 46 requires the Environmental Protection Authority to notify iwi authorities, customary marine title groups, and protected customary rights groups directly of consent applications that may affect them.

4. This approach is not consistent with Ministers' decisions that the Treaty clauses in the parent legislation for other approvals should not apply.

Background

Context on the EEZA

5. The EEZA is one of the Acts covered under the one-stop-shop approach of the FTAB. The EEZA promotes the sustainable management of natural resources in New Zealand's exclusive economic zone and continental shelf by regulating the environmental effects of activities (eg, discharges, dumping and other previously unregulated activities associated with petroleum exploration and extraction, energy generation, seabed mining etc).

6. The EEZA also provides a process for identifying and assessing effects of an activity on 'existing interests' (eg, s39, 59 and 60), defined in the EEZA as:

> "***existing interests*** *means, in relation to New Zealand, the exclusive economic zone, or the continental shelf (as applicable), the interest a person has in—*
>
> *(a) any lawfully established existing activity, whether or not authorised by or under any legislation, including rights of access, navigation, and fishing:*
>
> *(b) any activity that may be undertaken under the authority of an existing marine consent granted under section 62:*
>
> *(c) any activity that may be undertaken under the authority of an existing resource consent granted under the Resource Management Act 1991:*
>
> *(d) the settlement of a historical claim under the Treaty of Waitangi Act 1975:*
>
> *(e) the settlement of a contemporary claim under the Treaty of Waitangi as provided for in an Act, including the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992:*
>
> *(f) a protected customary right or customary marine title recognised under the Marine and Coastal Area (Takutai Moana) Act 2011".*

EEZ Consents in the FTAB

7. Clause 6 of the FTAB imposes an obligation on persons exercising functions, powers and duties under the legislation to:

> *"…act in a manner that is consistent with –*
>
> *(a) The obligations arising under existing Treaty settlements; and*
>
> *(b) Customary rights recognised under –*
>
> *i. The Marine and Coastal Area (Takutai Moana) Act 2011:*

ii. The Ngā Rohe Moana o Ngā Hapū o Mgāti Porou Act 2019."[14]

8. This provision does not require decision-makers to consider or give weight to the principles of the Treaty. It differs from other legislation included in the FTAB and previous fast-track consenting regimes that include explicit provisions requiring decision-makers to consider the Treaty and/or its principles to some degree.

9. Clause 6 does however place requirements on Ministers and panels to provide for matters required by Treaty settlements to support the Government's commitments to protecting Treaty settlements and other legislative arrangements.

10. The definition of Treaty Settlement Act in clause 4(1) of the FTAB includes the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and secondary legislation that gives effect to section 10 of that Act (these are captured by clause 6(1)(a)).

11. Schedule 9, clause 9 applies the Treaty of Waitangi section of the EEZA (section 12) as a relevant consideration for the panel when assessing a marine consent (noting the panel must also consider, and give greatest weight to, the purpose of the FTAB).

Analysis and advice

Issues

12. The FTAB[15] requires the panel to 'take into account' the purposes and principles of the EEZA set out in subpart 2 of Part 1. This part of the EEZA includes the following provisions: Purpose (section 10), International obligations (section 11), and **Treaty of Waitangi** (Section 12[16]). The provision[17] that the panel should 'take into account' this section of the EEZA is inconsistent with how Treaty clauses have been treated for other parent legislation in the FTAB (Appendix A).

13. The Treaty clauses for other legislation (including the RMA) have not been carried over into the FTAB in this way (for example, references in the FTAB to Part 2 of the RMA omit the Treaty of Waitangi clause[18]). The FTAB provides Clause 6, 'Obligation relating to Treaty settlements and recognised customary rights', which requires:

(1) All persons performing and exercising functions, powers, and duties under this Act must act in a manner that is consistent with—

(a) the obligations arising under existing Treaty settlements; and

(b) customary rights recognised under—

(i) the Marine and Coastal Area (Takutai Moana) Act 2011:

[14] Clause 6 – Obligation relating to Treaty settlements and recognised customary rights, FTAB.
[15] The RT version of the FTAB at Schedule 9, clause 9(1)(b).
[16] Refers to sections 18, 32, 33, 59 and 46 of the EEZA.
[17] At schedule 9, clause 9(1)(b) of the FTAB.
[18] Only sections 5-7 (Purpose, Matters of national importance, Other matters) of the RMA are captured and not section 8 which is the Treaty of Waitangi provision.

(ii) the NHNP Act Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

(2) To avoid doubt, subsection (1) does not apply to a court or a person exercising a judicial power or performing a judicial function or duty.

(3) In this section, existing Treaty settlements means Treaty settlements that exist at the time the relevant function, power, or duty is performed or exercised (rather than only those that exist at the commencement of this Act).

14. The approach to clause 6 of the FTAB is different than the Treaty clause (section 12) of the EEZA in that it omits reference to the Treaty of Waitangi or its principles and instead requires the panel acts in a manner consistent with Treaty settlements and certain customary rights.

Analysis

15. We consider there is no significant reason to retain reference to the Treaty clause (section 12) of the EEZA in the FTAB, given the policy decisions already taken in relation to other Acts covered by the FTAB, and removing it would aid consistency and clarity for decision-makers.

16. This section sets out the provisions that will still apply to EEZA applications in FTA processes for referred marine consent applications. An assessment of the requirement to 'take into account' the EEZA Treaty clause (section 12) compared to FTA processes is provided in Appendix A.

17. [Legally privileged] s 9(2)(h) [redacted]

18. If the Treaty clause (section 12) of the EEZA is removed[19], section 59 of the EEZA will still apply to referred applications (per schedule 9, clause 9(1)(d) of the FTAB), maintaining consideration of effects on 'existing interests' by panels.

19. Section 60 of the EEZA applies (per schedule 9, clause 9(1)(d)) and sets out the matters to be considered in deciding the extent of adverse effects on 'existing interests', requiring the panel 'must have regard to':

    (a) "the area that the activity would have in common with the existing interest; and

    (b) the degree to which both the activity and the existing interest must be carried out to the exclusion of other activities; and

    (c) whether the existing interest can be exercised only in the area to which the application relates; and

    (d) any other relevant matter."

20. Additionally, section 39 of the EEZA applies (per schedule 9, clause 8) and requires an impact assessment that includes assessment of impacts on those whose existing interests are likely to be affected.

[19] From schedule 9, clause 9(1)(b) of the FTAB.

21. The provisions at clause 6(1) of the FTAB mean the panel 'must act in a manner that is consistent with' obligations under Treaty settlements and customary rights under the MACA Act and NHNP Act.

22. This FTAB provision accounts for most of the Māori interests/ groups that would be 'existing interests' as defined under the EEZA. It also captures the fisheries settlements and obligations relating fisheries, and the Deed of Settlement and the fisheries aspects of individual settlements. Note Treaty settlements generally do not provide redress in the exclusive economic zone or continental shelf[20] aside from the Fisheries Settlement[21],

23. Further, clause 19(1)(ba) of the FTAB requires the Minister to invite written comments on referral applications from the Māori groups identified in the list provided to the Minister under subsection (2A)[22], this includes identified Māori fisheries interests.

24. The FTAB also requires a report[23] that must include any other Māori groups with relevant interests (per clause 19A(2)(i)). This could serve as an opportunity to obtain information from groups that could be considered 'existing interests' under the EEZA legislation. This report will be utilised by panels to identify who to seek written comments from under clause 24M.

25. Clause 24M of the FTAB requires the panel to invite comments on a substantive application from any relevant iwi authorities, any relevant Treaty settlements, any protected customary rights groups and customary marine title groups, any applicant group under the MACA Act, and ngā hapū o Ngāti Porou (if relevant), amongst other groups.

26. The ability for panels to seek advice from the existing EPA Māori Advisory Committee could be added. This would enable the panel to access the Committee's expertise in the marine environment, consenting and te ao Māori perspectives (without representing individual iwi/hapū).

Next steps

27. Subject to your decisions on this briefing, the change would be contained in an Amendment Paper (AP) to the FTAB.

28. APs to the Bill would:

    i be presented to the Cabinet Legislation Committee for approval in early November

    ii be tabled at the Committee of the Whole House stage of the Bill by the end of 2024.

[20] Section 125 of the Maniapoto Claims Settlement Act 2022 describes Maniapoto's interest in part of the exclusive economic zone and section 126 provides that the Crown acknowledges this interest.
[21] Under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
[22] Clause 19(1)(ba) of the FTAB.
[23] The Minister must obtain and consider a report on Treaty settlements and other obligations for referral applications.

Ministry for the Environment
Manatū Mō Te Taiao

Appendix A: Assessment of the requirement to 'take into account' the EEZA Treaty clause (section 12) compared to FTA processes

Provisions referenced in Treaty clause (Section 12) of the EEZA	***FTAB provision***	***Comments***	***Consequence of applying the EEZA Treaty clause***
Section 18: Function of Māori Advisory Committee. A Māori Advisory Committee can provide advice on marine consent applications.	No equivalent provision	The purpose of this section is to inform decision-makers by seeking advice from a Māori perspective. The Māori Advisory Committee is an existing committee[24]	No equivalent process exists in the FTAB, however the panel may invite comments from any other person it considers appropriate (cl 24M(3)).
Section 32: Process for developing or amending regulations.	N/A	This clause does not apply to individual applications for marine consents.	Not relevant – does not apply to marine consent applications.
Section 33: Matters to be considered for regulations under section 27.	N/A	This clause does not apply to individual applications for marine consents.	Not relevant– does not apply to marine consent applications.
Section 59: Marine consent authority's consideration of application. 59(2) means a marine consent authority must 'take into account' any effects on existing interests of allowing an activity and of other activities in the area covered by the application.	Section 59 of the EEZA is applied at schedule 9, clause 9(1)(d) of the FTAB. 'Existing interests' is not defined or otherwise used in FTAB (outside application of EEZA provisions).	Section 59 of the EEZA is a separate consideration under Schedule 9, clause 9(1)(d) of the FTAB. It will be a consideration for the panel regardless of whether the Treaty of Waitangi section of the EEZA (section 12) remains a consideration. Where the Bill recognises PCR and CMT groups and applicants, it often	Section 59 of the EEZA is provided for by Schedule 9, clause 9(1)(d) of the FTAB. Additionally, sections 39 and 60 of the EEZA are imported via schedule 9, clause 8 of the FTAB. These include processes for identifying and assessing effects on existing interests

[24] **Māori Advisory Committee** means the committee established under section 18 of the Environmental Protection Authority Act 2011.

Provisions referenced in Treaty clause (Section 12) of the EEZA	***FTAB provision***	***Comments***	***Consequence of applying the EEZA Treaty clause***
Section 4: 'Existing interests' definition includes historical Treaty settlements, fisheries settlement and protected customary right (PCR) or customary marine title (CMT) groups.		limits their interest to their application area.	which will import the definition of 'existing interests' from the EEZA.
Section 46: Copy of application for publicly notified activity. The Environmental Protection Authority must notify iwi authorities, PCR and CMT groups it considers may be affected by an application.	No equivalent provision	A marine consent authority will consider submissions on publicly notified applications (s59(1) EEZA). The FTAB does not provide for separate non-notified and notified processes like the EEZA does. However, the panel may seek written comment from specified groups (cl 24M(3)) and must invite comments from any relevant iwi authorities and any relevant Treaty settlement entities (cl 24M(2)). The consideration of existing interests under s59 of the EEZA (which remains applied by the FTAB) and the processes provided for by cl 19A (report), 24M (inviting comments) and 6 (obligations relating to Treaty settlements and recognised customary rights).	Notified consent application processes under the EEZA are not provided for by the FTAB. Maintaining reference at schedule 9, clause 9(1)(b) of the FTAB to the Treaty of Waitangi provision (section 12) of the EEZA may risk creating workability issues if it is not clear how the requirements apply to panels.

Appendix B: Fast-track Approvals Bill – Treaty clauses in parent legislation

	Legislation	Treaty clause reference	Carried over?	Other non-settlement related protections for Māori rights and interests?
1.	Resource Management Act	Section 8	No – not listed in provisions in schedule 4	Yes – RMA sections 6(e)[25] and 7(a)[26] apply to panel decision-making but are subservient to purpose
2.	Conservation Act	Section 4 of Conservation Act	No – not listed in considerations in Schedule 5 for concessions, exchanges, or conservation covenants	Yes – Definition of "conservation" in Conservation Act includes 'historic resources' which includes the definition of 'historic place' in the Heritage New Zealand Pouhere Taonga Act 2014 which includes cultural heritage. Purpose of the Bill is given greater weight than these considerations though.
3.	Reserves Act		No – as above for Conservation Act	
4.	Wildlife Act		No – not listed in considerations in Schedule 6	
5.	Heritage New Zealand Pouhere Taonga Act	Section 7	No – not listed in the provisions of schedule 7	Yes – panel must refer archaeological authority applications to the Māori Heritage Council (sch7 cl4(1)(b)(i) and consider their recommendations. Panel must also comply with s89(a) of the Takutai Moana Act and consider s59(1)(a) of the HNZPTA when making a decision (but is subservient to the FTAB purpose)

[25] 6(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
[26] 7(a) kaitiakitanga:

6.	EEZ Act	Section 12	Yes	Yes – clause 9(1)(d) requires the panel must take into account sections 39, 59 and 60 of the EEZ Act which requires consideration of effects on 'existing interests'.
7.	Crown Minerals Act	Section 4	No – Section 4 is not listed in the considerations for access arrangements and is not otherwise explicitly applied. Section 4 also not proposed to apply for mining permits (to be added through Amendment Paper)	In respect of access arrangements: Considerations for both ss 61 and 61B access arrangements include "any other matters that the panel considers relevant", brought across from usual considerations in the Crown Minerals Act. This could include Māori rights and interests and section 4 of the CMA as it hasn't been disapplied. Purpose of the Bill is given greater weight than these considerations though. In respect of mining permits: Awaiting Ministers' decisions on whether section 29C of the CMA (which relates to iwi consultation) is carried over
8.	Public Works Act	NA	NA	NA

Ministry for the Environment
Manatū Mō Te Taiao

Resourcing the EPA for Fast-track Approvals implementation

Date submitted: 27 September 2024
Tracking number: BRF-5402
Security level: In-Confidence
MfE priority: Urgent

Actions sought from ministers		
Name and position	***Action sought***	***Response by***
Hon Christopher Bishop **Minister Responsible for RMA Reform** **Minister for Infrastructure**	Agree to the recommendations in this briefing	2 October 2024
CC Hon Nicola Willis **Minister of Finance**	For noting only	
CC Hon Penny Simmonds **Minister for the Environment**	For noting only	

Actions for Minister's office staff
Return the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).

Appendices and attachments
Nil

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Oliver Sangster		
Responsible Manager	Stephanie Frame	s 9(2)(a)	✓
Deputy Secretary	Nadeine Dommisse	s 9(2)(a)	

Minister's comments

Resourcing the EPA for Fast-track Approvals implementation

Key messages

1. This briefing provides options to fund upfront operational costs for the Environmental Protection Authority to stand up and implement the Fast-track Approvals regime, including a new centralised cost recovery function.

2. In your meeting with Ministry for the Environment officials on 23 September 2024, we raised with you (Hon Bishop) the EPA needing to incur costs to set up its necessary systems to implement the Fast-track Approvals regime before it commences in the new year. We discussed a clear imperative for the EPA to have its system ready to receive and process applications in time for commencement.

3. The immediate issue is the EPA needs adequate funding to establish its necessary systems and processes in advance of commencement (i.e. before application fees and levy contributions are received). The EPA has estimated its costs in the vicinity of $4.5-$10 million, including around $2 million prior to commencement. Given the imperative for the system to be operational for mid January, the Ministry will underwrite immediate costs (up to $2 million) necessary whilst funding options are being finalised.

4. The Ministry has been exploring resourcing options with the EPA and Treasury, and consider the realistic options are additional Crown funding, or a repayable capital injection. These options, and EPA and Treasury views on them, are outlined in paragraph 15.

5. We recommend you:

    a. note, the Ministry will underwrite the EPA's immediate costs to setup implementation of the Fast-track Approvals system (up to $2 million)

    b. discuss with the Minister of Finance about a preferred solution

    c. request the EPA to start work now implementing the necessary systems

    d. provide support to the EPA, recognising it will have to accrue costs that will need to be recovered in some way.

6. We suggest you discuss with the Minister for the Environment updating the letter of expectations to the EPA, in relation to items (b) and (c) above.

7. A longer term issue is how to ensure EPA is not left out of pocket for running the regime through implementation, which is tied to wider cost-recovery work underway.

Recommendations

We recommend that you:

a. discuss with the Minister of Finance about a preferred solution for resourcing the EPA to develop necessary systems to implement the Fast-track Approvals regime in advance of commencement

Yes | No

b. note the Ministry for the Environment will underwrite the EPA's immediate costs up to $2 million to setup the Fast-track Approvals system for implementation, while options are being finalised

c. request the EPA to start work now implementing the necessary systems

Yes | No

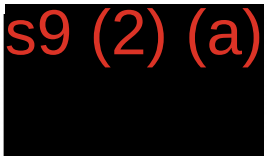
d. support the EPA by recognising it will have to accrue costs that need to be recovered in some way through one of the options

Yes | No

e. discuss with the Minister for the Environment regarding updating the Ministerial letter of expectations to the EPA in respect to (c) and (d) above

Yes | No

Signatures



Stephanie Frame
Manager, Delivery and Operations
Partnerships, Investments and Enablement
27 September 2024

Hon Christopher Bishop
Minister Responsible for RMA Reform
Minister for Infrastructure
Date

Resourcing the EPA for Fast-track Approvals implementation

Purpose

1. This briefing presents options to fund the Environmental Protection Authority (EPA) to set up necessary systems and processes for the Fast-track Approvals regime, including a centralised cost recovery function, for you to discuss with the Minister of Finance.

2. The immediate issue is to provide funding for the EPA to establish systems and processes to implement the system, so that it is ready for when the legislation comes into effect (i.e. before application fees and levy contributions become available). While options are being confirmed, the Ministry for the Environment will underwrite the EPA's immediate costs up to $2 million to provide assurance to progress work immediately.

3. A longer term issue is how to ensure EPA is not left out of pocket for running the regime through implementation, which is tied to wider cost-recovery work underway.

Background

4. In your (Minister Bishop's) regular meeting with Ministry for the Environment (MfE) officials on 23 September 2024, we discussed challenges regarding relying on full cost-recovery to setup and implement the Fast-track Approvals system, particularly with the EPA as lead agency. Officials noted they would provide you with follow-up advice on this.

5. On 24 September 2024, we sought your delegated policy direction to issue drafting instructions on cost recovery for the Fast-track Approvals regime, including for the EPA to take on a new centralised billing function (BRF-5334). That briefing included EPA advice regarding financial risks associated with this new function, which will be additional to its existing secretariat function for the substantive FTA process.

6. Due to the commencement timeframes, the EPA needs to move quickly to establish a workable system in advance of commencement, both for its new lead billing agency function, and to scale its existing enterprise architecture from the previous Fast-track Consenting regime to the new more complex FTA system. The new centralised billing function would require systems that join up across agencies, in a way that allows for single invoicing (which is a unique feature of the system). The EPA does not have the necessary capital for this, which needs to be resolved quickly.

7. BRF-5334 sought your agreement that the Bill enable a levy fund for system costs (to be collected from applicants post commencement) to include pre-commencement setup costs by the EPA (recommendation r). This levy would provide an enabling mechanism to recoup these costs from applicants over time. However, relying solely on cost-recovery from applicants (through fees and/or levy) to build and administer this system is risky, due to uncertain application volumes (and levy revenue).

8. Further, levy funds would also be used for contingency (for example, bad debt write-off)[1] and potential litigation (for example, judicial reviews). To provide sufficient resourcing for all of this, levy contributions would need to be high, but there is a need to balance levy setting considering the potential for a barrier to entry for otherwise suitable applicants.

9. Additional forms of financing may be needed to manage this risk. This particularly in light of the EPA's current balance sheet.

10. The EPA is still determining the level of implementation costs necessary to ensure a fit-for-purpose system. This includes understanding the scope and scale of the systems and resourcing needed. Early indications show implementation may cost up to $10m.

11. Robust modelling will be critical to provide some objectivity to the overall FTA system costs, and to inform setting a levy. MfE has commissioned MartinJenkins Ltd to undertake financial modelling to provide a tangible estimate of the cost of implementation to inform setting the levy amount. The EPA, Treasury and MfE will jointly work up solutions for ongoing funding based on this modelling.

12. In the meantime, we recommend the EPA be requested to start work to setup and the system for implementation, noting the uncertainties associated with this, and the that the EPA's costs will need to be recovered in some way. The Ministry for the Environment will underwrite the EPA's immediate costs (up to $2 million) to provide it with assurance to get work underway to develop the necessary systems, tools and resources needed to implement the new system.

Initial implementation costs

13. The EPA needs to invest to effectively deliver its functions before the legislation commences, in particular to create the systems and processes for a single billing agency which has the potential to be complex.

14. Although the exact costs are still being determined, the EPA has estimated these to be between $4.5 m and $10 m in total. In light of tight timelines, the EPA estimates that up to $2m of this will be incurred prior to the legislation commencing. This would allow the EPA to focus on the immediate operational requirements to be ready to accommodate application flows with additional functionality relating to the single billing agency coming online after the first applications have been received. Securing this funding now is crucial to ensure successful implementation by 14 January 2025.

Bridging finance options

15. We have been exploring options with the Treasury and EPA, to fund these initial costs. We consider the only viable options are:

[1] The EPA's experience, including with the previous Fast-track regime, is that bad debts are reasonably high, even after using various means to pursue debt. Bad debt risk can be somewhat reduced by implementing higher upfront application fees, as we have proposed, which the previous regime did not include.

a. **Seek new Crown funding**: Request an urgent, out-of-cycle budget contribution from the Between-Budget Contingency to initiate work, given its urgency and importance. The Treasury has indicated it would not support that option.

b. **Debt financing (Repayable capital injection):** Propose a repayable capital injection to cover initial setup costs. For this option to be viable, levies could include the repayment of establishment costs incurred before the legislation is enacted. This approach is likely to involve a capital charge which would need to be recovered through fees or levies.

   The Treasury has indicated this is its preferred approach, provided recovery of costs incurred pre-commencement is enabled and implemented through the levy. This could also include an indemnity/guarantee as part of a package.

   The EPA has raised significant concerns due to the risk of carrying a loan on its balance sheet without a guaranteed revenue stream to ensure repayment, noting its current financial position, and does not believe this is a viable option for them. There is a moderate risk that the loan may not be repaid if projected applicant volumes do not materialise. The EPA has asked that if debt financing is your preferred approach, any capital charge be waived, reflecting this uncertain time of establishment and the high risk that the cost of establishment will outweigh the level of funds able to be recovered. It also seeks certainty on how any long-term debt will be treated if cost recovery proves to be insufficient over time (for example, written off after a period of time).

Longer term operating costs

16. In addition to the bridging finance issues, there are a number of additional concerns the EPA has about its financial exposure risk of taking on this function. However these do not relate to the immediate cost pressure of the necessary establishment work. We have set out these concerns and options for resolutions below.

Cover against bad debts and litigation

17. There is a high likelihood that Fast-track decisions will face litigation. Litigation may also be taken against applicants who fail to pay fees. This could result in significant legal costs that may not be able to be recovered through the proposed levy. Additionally, there is a substantial risk of bad debt from applicants, as experienced under previous fast-track consenting acts. This situation is costly and adversely affects the EPA's financial position.

18. We have proposed in BRF-5334 to establish a fund via levy revenue to cover litigation costs, similar to the litigation fund held by the Electricity Authority within the Vote Business, Science, and Innovation. We propose that this fund also be used to cover bad debt from unpaid fees for fast-track approvals.

Additional options

19. If the levy fund is expected to be insufficient, it may be necessary for the **Crown to underwrite the debt**. This option involves establishing a non-Departmental appropriation within Vote Environment to cover the write-off or impairment of the EPA's debt. This approach is similar to the arrangements in place for other Votes, such as Vote Education and Vote Business, Science, and Innovation, which also include appropriation for the write-off and impairment of debts. The magnitude of this would need to be regularly reviewed as it depends on the volume of applicants, the

average cost of an application, and the bad debt rate. All of these variables are undetermined at this time.

20. The Crown has also used letters of comfort in the past to assure Boards they will not go insolvent.

Operating cashflow sustainability

21. The EPA's operating cash flow could be affected by a range various factors, including insufficient levy settings due to the assumptions used, significant differences between actual and assumed application volumes, and non-recoverable costs such as establishment, litigation and debt write-offs.

22. BRF-5334 proposes that fees and levies must be paid upfront as part of an application process, and that these need to be established at sufficiently high levels to cover recoverable operating costs. Our goal is to ensure that these fees recover as much as possible upfront, thereby minimising the risks of unpaid debts or cash flow issues for the EPA. Further work is underway to determine appropriate amounts for these fees. We propose to report back to the Minister for Infrastructure by early November with recommended rates for inclusion in the regulations.

Additional option

23. The EPA may require upfront funding for setup costs and ongoing working capital to sustain operations until revenue streams stabilize and are able to fully support the cash flow requirements. **An option is for the Crown to fund the cash flow requirements**. The EPA estimates that it will need between $4.5 m to $10 m to cover these needs, though it is currently working to confirm and fine-tune this figure.

24. Crown funding could help to bridge this initial gap, ensuring the successful implementation of the Fast-track approvals regime without compromising service delivery or financial stability. If the Crown were to invest in this early-stage, it would enable the EPA to focus on long-term revenue generation and self-sustainability, aligning with broader public sector goals and creating financial resilience in the future.

Next steps

25. We suggest you discuss the content of this note with the Minister of Finance, particularly options to resolve the immediate funding issue for the EPA outlined in paragraph 15.

26. In the meantime, we recommend you support the EPA begin work now to set up a workable system, noting the Ministry for the Environment will underwrite it to provide it with assurance for this purpose up to $2 million, in order to meet the likely 'go live' date in the new year.

27. Treasury and MfE will work with the EPA on possible solutions for ongoing funding based on the modelling work underway.

Document 5

Ministry for the Environment
Manatū Mō Te Taiao

Briefing: Further advice on cost recovery and workability matters in the FTA Bill

Date submitted: 4 October 2024
Tracking number: BRF-5429
Sub Security level: In-Confidence
MfE priority: Urgent

Actions sought from Ministers		
Name and position	***Action sought***	***Response by***
To Hon Chris BISHOP **Minister Responsible for RMA Reform** **Minister for Infrastructure**	Agree to the recommendations in this briefing	8 October 2024
Cc Hon Shane JONES **Minister for Regional Development**	Agree to the recommendations in this briefing	8 October 2024

Actions for Minister's office staff
Return the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).

Appendices and attachments
Nil

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Jane Tier		
General Manager	Jo Gascoigne	s 9(2)(a)	✓

Minister's comments

Further advice on cost recovery and workability matters in the FTA Bill

Key messages

1. This briefing provides advice on workability matters where we are seeking decisions for changes to be made through Amendment Papers. This includes further advice on cost recovery mechanisms for third parties.

2. In relation to cost recovery under the Fast-track Approvals legislation, Cabinet agreed [CAB-24-MIN-0362] to provide that other organisations that have a statutory role in the process (such as Post Settlement Governance Entities (PSGEs) and other Māori groups responding to invitations from Ministers or agencies to comment on referral or substantive applications) can have their costs recovered.

3. In BRF-5334 on 24 September 2024 we provided advice on the proposed cost recovery framework overall, but were not able to advise on a workable approach to cost recovery for third parties due to the complexity involved and time constraints in preparing that advice.

4. Rather than empowering full *cost recovery* for third parties, and to best uphold the policy intent in a workable way, we recommend that the Bill empowers contribution fees to be made for certain costs of being involved in the Fast-Track process.

5. We recommend initial regulations are made setting out contribution fee amounts payable to certain types of Māori groups and owners of Māori land, which will be paid by the Environmental Protection Authority and recovered from the relevant applicant. The contribution fee amounts will be determined over the coming weeks and recommended to the Minister for Infrastructure for inclusion in the regulations.

Recommendations

We recommend that you:

Further workability matters for the Amendment Papers

a. **agree** to add general land owned by Māori that was previously Māori freehold land (as described in paragraph (d) of the identified Māori land definition) to the information requirements for the applicant at referral stage, and to the list of persons invited to comment at the ministerial referral stage to align with how this class of land is treated elsewhere in the Bill.

Yes | No

b. **note** that Amendment Paper(s) will be developed between now and 14 October 2024 on policy and workability matters covered in Cabinet minute CAB-24-MIN-0362 (including the matters covered in this paper)

Noted

c. **note** that in relation to cost recovery, Cabinet agreed to provide that other organisations that have a statutory role in the process (such as PSGEs and other Māori groups responding to invitations from Ministers or agencies to comment on referral or substantive applications) can have their costs recovered [CAB-24-MIN-0362]

Noted

d. **note** on 24 September 2024, we provided you advice on the proposed cost recovery framework overall, and committed to providing further advice on workability for cost recovery for third parties [BRF-5334]

Noted

e. **agree** to add to the Fast-track Approvals Bill via an Amendment Paper, a regulation-making power to enable regulations to be made providing for contribution fees to be paid to third parties who respond to an invitation to comment on applications (referral, land exchange, and substantive applications), appear at hearings, or provide further information to the panel in response to a request to do so

Yes | No

f. **agree** the EPA would pay out the contributions and recover the amounts from the applicant as part of their total fees payable to the EPA

Yes | No

g. **agree** that the Amendment paper will provide that the Minister for Infrastructure may recommend the making of regulations under the above enabling provision, and before doing so must consult with those persons the Minister considers to be appropriate

Yes | No

h. **agree** that the requirements set out in recommendation g above will not apply to the initial contribution fee regulations made to coincide with commencement of the legislation

Yes | No

Regulations to provide financial contributions to Māori groups

i. **agree** that initial contribution fee regulations be prepared providing for fixed amounts to be paid to the following Māori groups who respond to an invitation to comment on an application:

   i. iwi authorities

   ii. hapū

   iii. iwi authorities and groups that represent hapū that are parties to relevant Mana Whakahono ā Rohe or joint management agreements

   iv. Treaty settlement entities

   v. groups with recognised negotiation mandates for, or current negotiations for, Treaty settlements

   vi. protected customary rights groups and customary marine title groups

vii. relevant applicant groups with applications for customary marine title under the Marine and Coastal Area (Takutai Moana Act) 2011

viii. the tāngata whenua of any area within the project area that is a taiāpure-local fishery, a mātaitai reserve, or an area that is subject to bylaws made under Part 9 of the Fisheries Act 1996

ix. ngā hapū o Ngāti Porou

x. the owners of Māori land in the project area

xi. any other Māori groups with relevant interests

Yes | No

j. **note** that further advice will be provided to the Minister for Infrastructure seeking agreement to the specific financial contribution values and the relevant stages at which contributions will be paid, to be included in the regulations, prior to the Minister taking these regulations to Cabinet Legislation Committee

Yes | No

Next steps

k. **agree** that drafting instructions will be issued to Parliamentary Council Office to give effect to the decisions taken in this briefing, via an Amendment Paper to the Bill or regulations made under it, as appropriate

Yes | No

Signatures

s 9(2)(a)

Jo Gascoigne
General Manager
Resource Management System
4 October 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Minister for Infrastructure
Date

Hon Shane JONES
Minister for Regional Development
Date

Further advice on cost recovery and workability matters in the FTA Bill

Purpose

1. This briefing provides advice on final additional workability matters for the Fast-track Approvals Bill (FTA Bill) where we are seeking final decisions for changes to be made through the Amendment Paper process.

2. It specifically seeks decisions on how to enable Māori groups to recover their costs of involvement in fast-track approvals processes. It recommends providing for contributions towards costs rather than enabling cost recovery.

Further workability matters for the Amendment Papers

Inclusion of owners of general land owned by Māori that used to be Māori freehold land in parties invited to comment on applications

3. General land owned by Māori that used to be Māori freehold land and ceased to have that status in certain circumstances is defined at clause 4 as a type of identified Māori land. As all other types of identified Māori land, it is ineligible for fast-track without landowner consent (except in limited circumstances related to linear infrastructure, along with Māori freehold land). It is a class of land which is treated the same as Māori freehold land at most stages of the Bill as they share many of the same characteristics, including being recognised as taonga tuku iho under the Te Ture Whenua Māori Act 1993, however it has been left out of the applicant referral application information requirements, and from the parties invited to comment by the Minister at referral stage. We recommend this is amended to align with how this class of land is treated in the rest of the Bill and are seeking a decision to make this change.

Timeframe for expert panel decision

4. Cabinet has already agreed that the Panel Convenor, without recommending to ministers, can make the decision on an appropriate timeframe for the Panel to provide its decisions. We have considered the workability of this and recommend some changes. Specifically, that the Panel Convenor can set an appropriate timeframe based on complexity of the project and matters relevant to approvals sought. Where the convenor decides not to set a timeframe the default (of 30 days after written comments and any requested advice/reports are received by the Panel) would apply. The effect of the change we recommend is to shift the default from a default of 30 days to the Panel Convenor's decision. We consider these changes fall within existing policy decisions but provide this information for noting.

Financial contributions rather than cost recovery for third parties

5. In September 2024, in relation to cost recovery under the Fast-track Approvals legislation, Cabinet agreed [CAB-24-MIN-0362] to provide that other organisations that have a statutory role in the process (such as Post Settlement Governance Entities

(PSGEs) and other Māori groups responding to invitations from Ministers or agencies to comment on referral or substantive applications) can have their costs recovered.

6. In BRF-5334 on 24 September 2024 we provided advice on the proposed cost recovery framework overall, and noted we had identified potential workability and complexity issues related to cost recovery for the other organisations referred to above. We undertook to do further policy work on this matter. We had identified a lack of certainty for applicants about how fees will be charged; what would be meant by 'actual and reasonable'; the lack of an upper limit; and potential inconsistency in approach between different parties.

7. Rather than empowering full *cost recovery* we recommend that provision be made for *contribution fees* to be paid. This approach would be empowered by the primary legislation with a regulation-making power, and regulations could set out rates and any other administrative matters relating to the payment of these contributions. The EPA would pay out the contributions and recover the amounts from the applicant as part of their total fees payable to the EPA. We consider this best upholds the policy intent, and is the most pragmatic approach able to be developed within the time constraints. This would not apply to any costs of involvement prior to an application being made, which we do not recommend regulating for.

8. We recommend that the regulations may be recommended by the Minister for Infrastructure (as is the case for all other regulations under the Bill), and that the Minister must first consult with those persons the Minister considers to be appropriate. Similar to the general application fee and levy regulations we recommended be made in BRF-5334, we recommend that this consultation requirement not apply to the first set of regulations which we intend to be made concurrently with commencement of the Act.

Regulations to provide financial contributions to Māori groups

9. This section makes recommendations on a first set of regulations to provide for financial contributions to be paid to third parties, and focuses on Māori groups where there is a statutory requirement to seek their comment on applications.

10. The Bill provides for third party involvement as follows:

    i before lodging a referral application, the applicant must consult various parties

    ii when the Minister receives a referral application, the Minister must copy the application to, and invite written comments from various parties

    iii for a proposed land exchange, the Department of Conservation must invite written comments on the proposed land exchange from various parties

    iv when the panel considers a substantive application, it must invite comments from various parties

    v the panel may hold a hearing and hear from any of those parties who provided comments in response to an invitation to comment on a proposed land exchange or a substantive application

vi at any time before a panel makes its decisions on a substantive application, it may direct the EPA to request further information from any of those parties who provides comments in response to an invitation to comment on a proposed land exchange or a substantive application

vii before a panel decides to grant an approval, it must direct the EPA to provide a copy of the draft conditions to every person who provided comments on the application, and invite comments on the draft conditions

viii at other stages for specific approval types such as on aquaculture decisions required for certain coastal permits.

11. The various Māori groups included in each of these stages variously include (to the extent relevant to the location of each project):

    i iwi authorities

    ii hapū

    iii iwi authorities and groups that represent hapū that are parties to relevant Mana Whakahono ā Rohe or joint management agreements

    iv Treaty settlement entities

    v Groups with recognised negotiation mandates for, or current negotiations for, Treaty settlements

    vi protected customary rights groups and customary marine title groups

    vii relevant applicant groups with applications for customary marine title under the Marine and Coastal Area (Takutai Moana Act) 2011

    viii the tāngata whenua of any area within the project area that is a taiāpure-local fishery, a mātaitai reserve, or an area that is subject to bylaws made under Part 9 of the Fisheries Act 1996

    ix ngā hapū o Ngāti Porou

    x the owners of Māori land in the project area

    xi any other Māori groups with relevant interests

12. In addition to the Māori groups listed above, at some of these stages and depending the type of approval sought, there are requirements to seek comments from local authorities and agencies; landowners and occupiers of the land and adjacent land; requiring authorities with designations covering the relevant land; and other parties including, for instance, the New Zealand Fish and Game Council and the New Zealand Game Animal Council. There is also a power for the minister and the panel to seek comments from any other parties.

13. Local authorities and agencies are already able to recover costs for providing comments. We recommend all Māori groups who respond to an invitation to comment on an application are provided with a contribution to their costs, and therefore recommend that the initial regulations provide for financial contributions to be paid to the types of groups

set out in paragraph 11 above, when they provide comment on an application in response to an invitation to do so.

14. This briefing focuses on costs for Māori groups to support compliance with the obligation in the FTA Bill to uphold Treaty settlements and recognised customary rights, and to support the Crown in meeting its obligations under the Treaty of Waitangi to actively protect Māori interests. In light of this, we do not recommend any other parties that must be invited to comment should be included in the initial regulations.

15. We don't have a compelling policy position at this stage for other parties to be compensated for their involvement and given the potential number of individuals this could encompass it would reduce certainty of costs for applicants.

16. Owners of Māori land can be distinguished from general landowners and occupiers in that Māori land is generally not regarded by Māori as a freely marketable resource but rather a source of identity with cultural and social significance. Its status is recognised by inclusion in the ineligibility criteria (with limited exceptions) and by landowners being invited to comment at the referral stage.

Further work is needed to determine what level the contribution fees will be set at

17. To produce regulations setting out contribution fee amounts for Māori groups in time for the legislation's commencement will be challenging. Within the time available, we will not be able to robustly and comprehensively develop a range of rates relating to the different stages as set out in paragraph 10, which take into account the varying levels of complexity expected across fast-track applications. As such it is our intention to produce only basic contribution fee amounts for commencement. These contribution fee amounts would be payable to each party or group responding to a request for comment, meaning the total amount paid out and recoverable from applicants would vary depending on the number of parties.

18. We expect that these fees may initially be nominal amounts which do not reflect the true costs to Māori groups of their involvement, given the limited time available to develop more nuanced fees. s 9(2)(h) [redacted] we recommend proceeding with the intent of having a minimum viable product in place for day 1 rather than not providing financial contributions at all.

19. We intend to report back to the Minister for Infrastructure in November with further advice on the proposed contribution fee amounts.

Te Tiriti analysis

20. A key theme that came through submissions from Māori groups and from local government on the FTA Bill was the need for cost recovery or support to enable engagement with relevant iwi, hapū and Treaty settlement entities (PSGEs), and local authorities.

21. Providing a costs provision for Māori groups will recognise these concerns and support meaningful engagement in the fast-track process.

22. The costs provision will support Treaty settlement entities, Takutai Moana groups, and ngā hapū o Ngāti Porou to provide the meaningful involvement required to ensure their rights are upheld, which will in turn support the policy intent of the FTA Bill by assisting compliance with clause 6 which is the obligation relating to Treaty settlements and recognised customary rights.

Other considerations

Consultation and engagement

23. The Ministry for the Environment has consulted with the Environmental Protection Authority (EPA), the Ministry of Business, Innovation and Employment, and Parliamentary Counsel Office in developing this advice. We have also sought specific advice from Te Arawhiti s 9(2)(h) on particular aspects.

s 9(2)(h)

s 9(2)(h)

[redacted]

Financial, regulatory and legislative implications

33. The proposals in this paper will require changes to the Fast-track Approvals Bill and will inform the development of regulations under it. Subject to your agreement, and Cabinet approval, we will make the necessary changes to the Bill through Amendment Papers at the Committee of the Whole House stage.

34. Providing contributions to Māori groups for their involvement, which are then cost-recovered from fast-track applicants, should be cost-neutral to the Crown. However, there is a small risk of bad debt sitting with the EPA. We have provided advice to you both in BRF-5334 and the Ministers for RMA Reform, Finance, and the Environment in BRF-5402 on the EPA's resourcing and financial position.

Next steps

35. A Cabinet Legislation Committee (LEG) paper will be provided in late October 2024 seeking approval to the Amendment Papers.

36. We intend to report back to the Minister for Infrastructure in November 2024 seeking agreement to the proposed rates for application fees and levies to be set out in cost

recovery regulations, and intend to provide recommended values for financial contributions to Māori groups in this advice. Following drafting of the regulations, we will then provide the Minister for Infrastructure with a LEG paper in late November 2024 seeking approval to the cost recovery regulations, for Ministerial consultation, lodgement on 5 December 2024, for LEG Committee on 12 December 2024 and Cabinet/Executive Council on 16 December 2024.

Document 6

Ministry for the Environment
Manatū Mō Te Taiao

Aide memoire: Admissibility of FTA Bill Schedule 2 under Standing Orders

Date submitted: 4 October 2024
Tracking number: BRF-5443
Security level: In-Confidence

Actions sought from ministers	
Name and position	***Action sought***
To Hon Chris BISHOP **Minister Responsible for RMA Reform**	For noting only

Appendices and attachments
None

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Responsible Manager	Kevin Guerin		
Deputy Secretary	Nadeine Dommisse		✓

Admissibility of FTA Bill Schedule 2 under Standing Orders

Purpose

1. This aide memoire gives you detail on why the proposed Schedule 2 of the Fast-track Approvals Bill (FTA Bill) could meet the tests of standing orders under the considerations laid out in the letter from the Clerk of the House on 3 October 2024. Overall we note that:

    i. the projects proposed offer significant national or regional benefit

    ii. the steps taken to improve the FTA Bill address the issue of equivalence of process and legislative effect for projects listed in Schedule 2 including timing and cost.

Background

2. The key points from the Clerk's letter are the ones below, particularly the final one:

    i. The listing of a project where the only authorised person for that project is a public authority (including a local authority) would be admissible.

    ii. An amendment to list a project where the authorised person is a private entity, where the legislative effect of that listing would primarily be to the particular benefit of that private entity, would probably be inadmissible.

    iii. An amendment to list a project where the authorised person is a private entity might be admissible if the legislative effect of the inclusion of a project in Schedule 2 would not create a difference *in the process available under the bill to that applying to a project referred as a result of an application process that would be available, after the bill is passed, to any person or organisation in the same category. The legislative effect of being listed would not be the same if it resulted in the hastening or bypassing of processes or criteria that would apply to unlisted applicants.*

Responses

3. We have been working through the Select Committee process to address and mitigate any such risks, alongside PCO who have not to date expressed any drafting concerns on the matter above. This work has included resolving the concerns expressed by the PCE about the FTA Bill conferring private benefit through guaranteeing approval of projects – this risk was addressed by providing an explicit power for decline and clear criteria that demonstrate how decline could occur.

4. The remainder of this aide memoire addresses the specific questions of wider public benefit and any process advantage under points 1 and ii above.

Do projects have wider public benefits?

5. An expert advisory group assessed all applications (392 of which eight were withdrawn) on a similar basis to that laid out in the FTA Bill, ensuring that only projects that clearly provided significant national and regional benefits were recommended to ministers. Ministers and Cabinet reviewing the projects recommended by the Panel and identified 149 for inclusion in Schedule 2

6. **BRF-5178 Briefing: Fast-track Approvals (Listed Projects) – Draft Cabinet Paper and officials' analysis on the Advisory Group report** describes how all the types of projects proposed have significant regional or national benefits:

   - *Infrastructure:* The majority of infrastructure sector projects are deemed to be critical to efficient connectivity, by enabling growth across the value chain – such as large ports or Roads of National Significance. The projects have a mix of applicants, from private companies to local councils. Officials have noted these applicants have faced challenges with the traditional consenting process and highlight New Zealand's infrastructure deficit. Many of the projects are expected to deliver significant social and connectivity benefits. Projects that deliver the highest public benefits, and are ready to be progressed, should be dealt with as efficiently as possible.

   - *Renewable Electricity:* The projects recommended for listing in the renewable electricity sector include solar, wind and hydro projects and deliver value by contributing to a more resilient energy market. Increasing New Zealand's renewable energy generation and storage (and associated infrastructure, eg, transmission) is a key economic and environmental priority. Energy supply is very tight, due to a combination of low hydro storage and gas supply. Projects with battery storage and higher contribution of new electricity supply have been deemed by officials to be more valuable to the grid. Renewable energy usage is expected to make a substantial impact in New Zealand's emission reduction targets.

   - *Aquaculture:* Aquaculture initiatives play a critical role in improving regional development where there may otherwise be limited options. The Government has prioritised aquaculture growth with a target of $3 billion in revenue by 2035. This requires the development of open ocean salmon aquaculture and ensuring security of mussel spat supply. Open ocean salmon farming is expected to become New Zealand's most valuable aquaculture sector and supports the Government's goal to double export value by 2034.

   - *Housing and Land Development:* Additional housing capacity will likely improve housing affordability, especially in areas with poor housing outcomes. It would enable approximately 400 hectares of additional industrial activities, with tourism projects bringing economic benefits through the development of new or existing visitor destinations. The urban development projects should create more competitiveness within land markets and increase the supply of affordable housing.

   - *Mining and Quarrying:* The projects align with Government objectives for the minerals sector which includes increasing the scale and pace of minerals development to support economic growth and enhance prosperity for New Zealanders. Additionally, with New Zealand's existing minerals exports being mostly gold and coal, projects proposing new development, or expanding development would support the Government's goal in doubling the minerals sector export value to $2 billion by 2035.

Do projects face a different process?

7. Significant measures have been taken to ensure equivalence of process.

8. In terms of alignment with the timelines and expectations of the referral process:

i. an expert advisory group assessing all applications (392 of which eight were withdrawn) on a similar basis to that laid out in the Bill, ensuring only projects that clearly provided significant national and regional benefits were recommended

ii. Ministers and Cabinet reviewing the projects recommended by the Panel and identified 149 for inclusion in Schedule 2.

9. The Bill itself now:

i. requires listed projects to provide information that would otherwise have been provided for referral (references to RT v.15) including:

a) a report on Treaty settlements and other obligations – 19A

b) information to be included in referral applications – 24D(2) referencing 14(3)

ii. makes listed projects subject to the same requirements at the substantive stage as referred projects including (references to RT v.15):

a) other advice and reports and information from relevant administering agencies

b) comments from:

- relevant Ministers, administering agencies, local authorities
- relevant iwi authorities, treaty settlement entities, protected customary rights and customary marine title groups, Takutai Moana applicants
- owners of land and adjacent land
- various other groups and anyone specified in the Minister's notice or the panel considers appropriate (including anyone who would otherwise have been consulted on referral)

c) The same process and criteria for approval, decline, condition setting.

10. The steps in (b) (c) and (d) in particular address the issue of equivalence of process and legislative effect for projects listed in Schedule 2 including timing and cost.

Signatures

s 9(2)(a)

Kevin Guerin
Chief Advisor
Environmental Management and Adaptation
Date 4 October 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

Document 7

Ministry for the Environment
Manatū Mō Te Taiao

Aide memoire: Additional advice on cost recovery in the FTA Bill

Date submitted: 7 October 2024
Tracking number: BRF-5460
Security level: In-Confidence

Actions sought from ministers	
Name and position	***Action sought***
To Hon Chris BISHOP **Minister Responsible for RMA Reform**	For noting only

Appendices and attachments
Nil

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Jane Tier		
Responsible Manager	Stephanie Frame		
General Manager	Jo Gascoigne	s 9(2)(a)	✓

Additional advice on cost recovery in the FTA Bill

Purpose

1. This aide memoire provides further advice on the status quo for cost recovery for Māori groups involved in consenting processes including fast-track approvals under existing regimes.

Background

2. In relation to cost recovery for third parties' involvement in fast-track approvals, particularly Māori groups who have been invited to comment, you have asked for information on the status quo for cost recovery for groups that are legally obliged to comment under the Resource Management Act 1991 (RMA), Covid fast-track, and the Natural and Built Environment fast-track process, and what that means for applicants being charged.

3. To clarify, under the Fast-track Approvals Bill (FTA Bill), there is a statutory requirement (on the Minister, the panel, etc.) to invite certain Māori groups to comment on an application, but there is no obligation on those groups to respond to the request. Under similar legislation, the legal requirement is on the decision maker to seek comment but there is not usually an obligation for the relevant Māori groups to respond.

4. The policy proposal in BRF-5429 is to provide financial contributions to Māori groups who respond to an invitation to comment on an application.

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

5. The COVID-19 Recovery (Fast-track Consenting) Act 2020, provided for Māori groups to recover costs reasonably incurred through engagement with agencies in relation to certain work on infrastructure.

6. In particular, Schedule 4 specifically set out location requirements, permitted activities, and permitted activity standards that applied to KiwiRail and the New Zealand Transport Agency. Clause 5 of Schedule 4 required those agencies to engage with iwi authorities, any groups the local authority keeps records of, and Treaty settlement entities with interests in the area the works were to be undertaken to identify the values and interests those Māori groups have in the area and identify any wāhi tapu sites, and any sites requiring a management plan. It also enabled the iwi authorities, hapū, and Treaty settlement entities "to recover from the agency the costs and expenses reasonably incurred in the course of identifying sites for the purpose of this clause".

7. The Act included other touch points for Māori groups including the requirement for the panel to invite comments from iwi authorities and Treaty settlement entities on consent applications or notices of requirement, and then to again invite comments on draft conditions. However, the Act did not provide for Māori groups' costs of involvement in these processes to be recovered.

8. A significant distinction between the COVID fast-track legislation and the current FTA Bill is that the COVID Act required an applicant to include a cultural impact assessment prepared by or on behalf of the relevant iwi authority. As this was a pre-application requirement, the costs of the cultural impact assessment were left as a privately negotiated arrangement, and in practice the costs would be covered by the applicant. The cultural impact assessment was prepared by either hapū or iwi, or by a consultancy, and would be more in-depth than the information included by seeking comments.

9. Iwi authorities were also invited to nominate expert panel members, who would be remunerated in the same way as other expert panel members.

Natural and Built Environment Act 2023

10. The Natural and Built Environment Act 2023 included a provision for cost recovery for Māori groups and other third parties, but it was never tested before the Act was repealed.

11. It provided that “a person who applies for or holds a resource consent is liable to pay consent engagement costs if they are subject to an engagement requirement in relation to which costs have been fixed”, and set out an ability to fix those costs, or require those costs to be fixed by regulation. Consent engagement costs included any reasonable administration costs incurred by an iwi authority or group representing hapū and a consent authority.

Resource Management Act 1991

12. The RMA does not explicitly include an ability for Māori groups to recover the costs of their involvement, and in practice this would generally be carried out through specific relationship agreements with the relevant consenting authority, either as an instrument under a Treaty settlement, or in another type of agreement.

13. As an example, Waikato District Council has an iwi consultation charge with a set fee for RMA processes. Bay of Plenty Regional Council has guidance for applicants which sets out that where an application requires an assessment of effects on Māori cultural interests and values there will be costs involved with that like with any other technical advice, and those costs should be discussed and agreed directly with the relevant iwi or hapū.

14. There is no standardised approach to recovering such costs, and the arrangements councils have in place for this will not apply to the fast-track process.

Next steps

15. Your decisions on BRF-5429 will be used to inform provisions in Amendment Papers to the FTA Bill and the development of regulations under the FTA Bill. We are seeking your decisions by Tuesday 8 October 2024 to inform the drafting instructions for these instruments.

Signatures

s 9(2)(a)

Jo Gascoigne
General Manager
Resource Management System
7 October 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

Ministry for the Environment
Manatū Mō Te Taiao

Briefing: Draft Cabinet paper for consultation: Fast-track Approvals Bill Approval for Amendment Paper

Date submitted: 24 October 2024
Tracking number: BRF-5487
Sub Security level: In-Confidence

Actions sought from Ministers		
Name and position	***Action sought***	***Response by***
To Hon Chris BISHOP **Minister Responsible for RMA Reform** Hon Shane JONES **Minister for Regional Development**	**agree** to the recommendations	4 November 2024

Actions for Minister's office staff
Return the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).

Appendices and attachments
1. Draft Cabinet paper: *Fast-track Approvals Bill: Approval for Amendment Paper*

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Gabby Storey		
Responsible Manager	Robyn Washbourne		
General Manager	Jo Gascoigne	s 9(2)(a)	✓

Minister's comments

Draft Cabinet paper for consultation: Fast-track Approvals Bill Approval for Amendment Paper

Purpose

1. This briefing provides a draft Cabinet Legislation paper *Fast-track Approvals Bill: Approval for Amendment Paper* (the Cabinet paper) for ministerial consultation ahead of consideration by LEG Committee on 14 November and Cabinet on 18 November 2024.

2. This paper also seeks your agreement to delay commencement of the Fast-track Approvals Act once passed until 7 February 2025. This will provide certainty of the go-live date for all agencies and prospective applicants and ensure there is sufficient time to make cost recovery regulations and panel appointments between Royal assent and applications being lodged. This is set out in the draft Cabinet paper at para 36 and rec 6.

Cabinet Legislation paper

3. The Cabinet paper seeks:

    i. to seek agreement to amendments to the Fast-track Approvals Bill (the Bill) through an Amendment Paper

    ii. to seek Cabinet endorsement of decisions made by delegated Ministers

    iii. to seek agreement that the listed projects be *either* directly listed in Schedule 2 by Amendment Paper, *or* through a one-off Order in Council process after enactment

    iv. to seek agreement that applications will not be able to be made until 7 February 2025.

4. The Cabinet LEG paper is scheduled to be considered by LEG Committee on 14 November 2024 and by Cabinet on 18 November 2024. We are anticipating that the final Cabinet LEG paper will be lodged with the Cabinet Office by 7 November 2024.

5. As directed, we have worked with PCO to include two pathways for listed projects to be added to the Bill. To provide flexibility, we recommend that the 149 projects announced in October can become listed projects through two routes:

    i. direct listing in Schedule 2 by Amendment Paper at the Committee of the Whole; or

    ii. through Order in Council after enactment – this route would be limited to the 149 projects announced in October 2024.

6. Having considered the large number of projects to be listed in this Bill, the capacity of the system, and after weighing the lesser benefits of being listed on 2B, we do not consider that Schedule 2B should be retained. The draft LEG paper seeks agreement to this change being made via the Amendment paper.

Information required for different approvals under FTA process

7. The Bill enables expert panels to grant approvals under eight parent Acts, each with their own assessment regimes and information requirements. These information requirements are included in Schedules to the Bill. Officials are aware that this creates the risk of a complicated process for applicants and the potential for duplication in reports and application material to meet the requirements of each parent Act.

8. Officials consider that this can be resolved operationally. In order to achieve a cohesive, one-stop-shop process for applicants, officials are working collaboratively with a cross-agency implementation team to identify potential duplication in information requirements and build an application form and web portal which captures the overall requirements for an approval in an integrated manner. This links to clause 24D of the Bill, under which the EPA is required to provide an application form for the substantive application. This will enable an applicant to supply a single piece of information, for example a description of the project site/location, which is sufficient to satisfy the requirement of whichever parent Act the approvals will be sought under.

9. Where applicants are supplying supporting documents (such as effects assessments) the application process will also enable these to be flagged as satisfying requirements across Schedules. This will prevent applicants needing to provide individual but similar reports for each Act under which approval is required.

10. This will be supported by robust guidance for applicants to clearly signal how they can satisfy the information requirements in the Act for their particular project. Applicants will also have the opportunity for pre-application engagement with officials to test their assumptions and discuss the extent of information they will need to provide.

11. We believe the potentially repetitive nature of the drafting, which is required for legal clarity, will be fully mitigated by steps outlined above. A briefing to provide Ministers more information on implementation planning will be provided in November.

Next steps

12. Officials are available to meet and discuss any matters prior to LEG Committee if you wish. We have also provided you with a fast-track process diagram, Supplementary Analysis Report for the electricity infrastructure provisions, list of decisions made under delegation, and the Departmental Disclosure Statement.

13. Ministerial consultation on the attached draft Cabinet paper will be from 29 October until 4 November 2024. The final paper will be lodged on 7 November, ahead of LEG Committee on 14 November 2024.

14. This will be followed by:

    i. the second reading of the Bill on 12 November 2024

ii. Cabinet on 18 November 2024

iii. the Committee of the Whole House stage during the week of 18 November, and

iv. enactment before the end of 2024.

Recommendations

We recommend that you:

a. **agree** to seek Cabinet agreement that the Bill will commence the day after Royal assent, but applications will not be able to be made until 7 February 2025 (note this is included in the attached LEG paper and Amendment Papers)

Yes | No

b. **agree** to ministerial consultation on the attached draft Cabinet paper in preparation for consideration by Cabinet on Monday 18 November 2024

Yes | No

Signatures

s9(2)(a)

Jo Gascoigne
General Manager – Resource Management System
24 October 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

Hon Shane JONES
Minister for Regional Development
Date

Ministry for the Environment
Manatū Mō Te Taiao

Briefing: Fast-track Approvals implementation: In principle agreement to repayable capital injection

Date submitted: 24 October 2024
Tracking number: BRF-5522
Sub Security level: In-Confidence
MfE priority: Urgent

Actions sought from Ministers		
Name and position	***Action sought***	***Response by***
To: Hon Chris BISHOP **Minister Responsible for RMA Reform**	**Agree in principle** to provide the EPA a $10 million repayable capital injection.	30 October 2024
To: Hon Nicola WILLIS **Minister of Finance**	**Agree in principle** to provide the EPA a $10 million repayable capital injection.	30 October 2024
CC: Hon Penny SIMMONDS **Minister for the Environment**	For noting	N/A

Actions for Minister's office staff
Return the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).

Appendices and attachments
N/A

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Oliver Sangster		
Responsible Manager	Stephanie Frame	s 9(2)(a)	
General Manager	Ilana Miller	s 9(2)(a)	✓

Ministers' comments

Fast-track Approvals implementation: In principle agreement to repayable capital injection

Key messages

1. The Environmental Protection Authority (EPA) needs to incur costs (estimated to be up to $10 million) to set up the necessary systems and processes to implement its functions under the Fast-track Approvals (FTA) regime before applications are lodged in early 2025. Due to its financial situation and limited working capital, the EPA cannot set up its functions without additional support.

2. Following BRF-5402, the Minister of Finance indicated a preference for the EPA's implementation costs to be financed through a repayable capital injection as an alternative to new funding.

3. The Ministry for the Environment is seeking in principle agreement from joint Ministers to a $10 million repayable capital injection to cover the EPA's implementation costs in advance of revenue being generated from the proposed levy. The intention is to repay this over five years.

4. In principle agreement should give the EPA Board the level of comfort it needs to sign off on the immediate costs the EPA will incur related to its implementation work. Securing this funding for the EPA as soon as possible is crucial to enable successful implementation of the FTA regime in early 2025.

5. Subject to your agreement, we recommend you seek Cabinet approval to establish the repayable capital injection by December 2024.

Recommendations

We recommend that you:

a. **note** the EPA urgently requires additional funding to implement its functions under the FTA regime so that delivery of its core regulatory functions and its ongoing financial sustainability is not compromised.

b. **agree** in principle to provide the EPA a $10 million repayable capital injection repayable over five years.

Yes | No

c. **agree** in principle to provide the repayable capital injection to the EPA on the following terms:

    a. up to $10 million is made available to the EPA immediately

    b. it is interest free (ie concessionary)

    c. the EPA is exempt from paying capital charge should it be incurred

    d. if cost recovery is insufficient over time and the capital cannot be repaid within five years, then the residual is written off

Yes | No

d. **agree** to seek Cabinet approval for the proposed EPA repayable capital injection by December 2024.

Yes | No

Signatures

s 9(2)(a)

Ilana Miller
General Manager, Delivery and Operations
Partnerships, Investments and Enablement
24 October 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date:

Hon Nicola WILLIS
Minister of Finance
Date:

Fast-track Approvals implementation: In principle agreement to repayable capital injection

Purpose

1. The Ministry for the Environment is seeking in principle agreement to a $10 million repayable capital injection to support the Environmental Protection Authority (EPA) to implement its functions proposed under the Fast-track Approvals (FTA) regime.

Background

2. In BRF-5334 Minister Bishop agreed to the EPA providing a new centralised FTA cost recovery function (meaning it invoices applicants on behalf of all other government agencies, the panel, panel convenor, and third parties whose costs are recoverable, and reimburses those parties once in receipt of payment), in addition to its existing secretariat function for the substantive FTA process.

3. As previously advised in BRF-5402, the EPA requires additional funding (estimated to be up to $10 million) to meet the costs of setting up appropriate systems and processes to support the above functions, as well as managing risks associated with any costs incurred before application fees and levy contributions become available.

4. The final quantum required by the EPA will be determined following independent testing and quality assurance (being undertaken by MartinJenkins) of the EPA's cost estimates for administering and running the FTA regime, and identifying the levy rates that would be required to repay these costs.

5. The EPA needs to work at pace to establish a workable system before applications are lodged under the FTA legislation, therefore, its funding needs to be resolved as soon as possible. The EPA anticipates that up to $2 million of costs could be incurred prior to the legislation commencing. The Ministry will underwrite the EPA's immediate costs (up to $2 million) to provide it with assurance to get its implementation work underway from within its existing funding.

6. After receiving BRF-5402, the Minister of Finance indicated a preference for the EPA's implementation costs to be financed through a repayable capital injection.

Analysis and advice

7. The EPA's Board is responsible for ensuring the EPA operates in a financially responsible manner by prudently managing its assets and liabilities and endeavouring to ensure long-term financial viability. In principle agreement to a repayable capital injection would provide a level of comfort to the EPA Board that EPA's FTA-related financial risks can be appropriately managed allowing it to approve implementation work being progressed.

8. The Board is meeting on 31 October 2024. Should you agree in principle, the Board will be advised prior to its meeting.

Repayable capital injection

9. A $10 million repayable capital injection over five years would provide the EPA with the necessary working capital to set up its new FTA centralised cost recovery function and scale up its existing secretariat function in advance of levy payments being received.

10. The EPA's set up costs will include:

    - setting up and delivering a centralised (interagency) invoicing function to facilitate cost recovery across the fast-track regime
    - setting up ICT solutions including an online application portal and case management system
    - leading engagement with prospective and current applicants, and
    - developing effective cross-agency working relationships and protocols for efficient application assessment.

11. The EPA has outlined its preferred terms for the repayable capital injection as follows:

    - up to $10 million total capital expenditure is made available to the EPA immediately
    - it is interest free (ie concessionary)
    - the EPA is exempt from paying capital charge should it be incurred (for now or in the future)[1], and
    - if cost recovery is insufficient over time and the capital cannot be repaid within five years, then the residual is written off.

12. There will be a small operating cost associated with repayable capital injection. This is to cover the costs of the interest write off upon draw down.

13. If financing cannot be agreed in principle, then the EPA may need to delay efforts to implement its functions under the FTA regime to manage its cashflow, or divert resources from its core activities.

Proposed FTA levies will be used to recover EPA implementation costs

14. The costing model is built so that levy amounts only recover FTA system costs (not direct activity attributable to specific applications). The proposed levy would cover both setup (pre-commencement) and ongoing costs necessary to implement the FTA regime, which cannot be directly attributed to an individual application. Individual application costs will be recovered through application fees separate to the levy. The levy will also build a litigation fund to cover the costs of any FTA-related litigation and help cover bad debts (if applicants do not pay, after all debt recovery avenues are exhausted) so that the EPA does not have to cover these costs.

15. As outlined above, MartinJenkins is undertaking independent testing and quality assurance of the EPA's cost estimates for administering and running the FTA system and identifying the levy rates that would be required to repay these costs.

16. The ability for the EPA to repay will rely on a sufficient volume of applications being made and associated levies paid by applicants. The current modelling is based on high-

[1] The capital charge threshold for a Crown entity is $15 million.

medium-low scenarios, with an estimate (medium) scenario of 360 substantive applications spread across five years. Levy payments would cover both repayment to the Crown and other indirect costs of running the system. This modelling has informed draft levy amounts that are currently being consulted on via targeted policy testing (stakeholder feedback is due 28 October).

17. The Ministry is aiming to seek decisions on levy (and initial application fee) amounts from Minister Bishop with delegated authority in the week of 4 November 2024, to enable regulations to be drafted, and subsequently approved by the Cabinet Legislation Committee and Cabinet.

Next steps

18. Subject to your agreement, we recommend you seek Cabinet approval to establish the repayable capital injection by December 2024. We will provide you with a draft Cabinet paper to support this. Officials will seek an exemption for an out-of-cycle funding request from the Minister of Finance alongside the Cabinet paper.

Ministry for the Environment
Manatū Mō Te Taiao

Briefing: Fast-track Approvals Bill - Legislative Statement and Second Reading Speech

Date submitted: 31 October 2024
Tracking number: BRF-5544
Security level: In-Confidence
MfE priority: Urgent

Actions sought from Ministers	
Name and position	***Action sought***
To Hon Chris BISHOP **Minister Responsible for RMA Reform**	For feedback by 6 November 2024

Actions for Minister's office staff

Forward this briefing to:

Hon Simeon Brown, Minister for Energy, Local Government and Transport;

Hon Paul Goldsmith, Minister of Justice, Minister for Arts, Culture and Heritage;

Hon Tama Potaka, Minister for Māori Crown Relations: Te Arawhiti;

Hon Penny Simmonds, Minister for the Environment;

Hon Chris Penk, Minister for Land Information;

Hon Shane Jones, Minister for Oceans and Fisheries, Minister for Regional Development, Minister for Resources;

Return the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).

Appendices and attachments

Appendix One: Second Reading Speech for Fast-track Approvals Bill

Appendix Two: Legislative Statement for second reading of the Fast-track Approvals Bill

Key contacts at Ministry for the Environment

Position	***Name***	***Cell phone***	***First contact***
Principal Author	Emily Allan		
Responsible Manager	Robyn Washbourne	s 9(2)(a)	
General Manager	Jo Gascoigne	s 9(2)(a)	X

Fast-track Approvals Bill - Legislative Statement and Second Reading Speech

Key messages

1. On the 18 October 2024, the Environment Select Committee reported back on the Fast-track Approvals Bill. This concluded the select committee stage, which included significant public scrutiny of the Bill and resulted in a number of changes to the Bill.

2. The Bill can be read a second time no sooner than the third sitting day after the Select Committee reported the Bill back to the House on 18 October 2024. The third sitting day after the 18 October is the 7 November 2024, and the Bill has been tentatively scheduled for second reading on the week of the 11 November 2024, subject to movements in the House schedule.

3. To support the second reading, attached are the draft second reading speech (**Appendix One**) and the Legislative statement[1] (**Appendix Two**). We seek your feedback on these documents.

Next steps

4. To support Ministers for Legislation Committee and Cabinet, talking points be provided to you next week by 7 November 2024.

5. The second reading is scheduled for the week of 11 November 2024. Subject to your feedback, we will provide you the final second reading speech and Legislative Statement on 6 November 2024.

6. Committee of the Whole House is scheduled for 19 November and 20 November 2024, following Cabinet on 18 November 2024 where approval of the amendment paper will be sought.

7. To support Ministers during the Committee of the Whole House, a comprehensive debate guide, with Q&As and back pocket messages will be provided to you by 14 November 2024.

Signatures

s 9(2)(a)

Jo Gascoigne
General Manager
Resource Management System

30 October 2024

[1] A legislative statement is a paper, presented by a Minister in charge of a bill, which includes information that the Minister considers important to inform the House about that bill. This reflects the Bill as reported back from Environment Committee.

Legislative Statement for the Second Reading of the Fast-Track Approvals Bill

Presented to the House of Representatives in accordance with Standing Order 272

Introduction

1. The Fast-track Approvals Bill ("the Bill") delivers on the coalition government's 100-day plan commitment to introduce a fast-track one-stop-shop consenting regime. The Bill aims to enable faster approval of infrastructure and other projects that have significant regional or national benefits.

2. Consenting major infrastructure and other projects in New Zealand takes too long, costs too much and places insufficient value on the economic and social benefits of development relative to other considerations. The Bill contains measures that address these challenges.

3. The version of the Bill reported back from the Environment Select Committee contains a number of changes. The most notable of these include:

    a. the Minister for Infrastructure will decide whether to refer projects an expert panel, after consulting the Minister for the Environment and other relevant portfolio Ministers

    b. final decisions on projects are now made by the expert panel

    c. expert panels will include expertise in environmental matters; will include an iwi authority representative when required by Treaty settlements; and will include expertise in te ao Māori and Māori development in place of mātuaranga and tikanga

    d. applicants will be required to include information on previous decisions by approving authorities, including previous court decisions, in their applications for the referring Minister to consider

    e. timeframes for comment at the referral and panel stages will be extended in order to give parties, including those impacted by a proposed project, more time to provide comments.

4. A range of changes have also been made to align different approvals and streamline the Bill's schedules.

Key Provisions of the Fast-track Approvals Bill

3. The Bill is standalone legislation with a statutory purpose focused on facilitating the delivery of infrastructure and development projects with significant regional or national benefits. A broad range of projects will be able to access the fast-track process including infrastructure, housing, resource extraction, aquaculture and other developments, provided they meet the eligibility criteria in the Bill.

4. The fast-track process consolidates and speeds up multiple consenting and permissions processes under a range of legislation that are typically required for large and/or complex projects. The consents and permissions included are:

a. resource consents, notices of requirement, alterations to designations and certificates of compliance under the Resource Management Act 1991 (including freshwater fish provisions related to the Freshwater Fisheries Regulations 1983 and the Conservation Act 1987)

b. concessions under the Conservation Act 1987 and Reserves Act approvals under the Reserves Act 1977, exchanges of some types of conservation land held under the Conservation Act 1987 and Reserves Act, and covenants in force under section 27 of the Conservation Act 1987 or section 77 of the Reserves Act 1977

c. approvals under the Wildlife Act 1953

d. applications for archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014

e. marine consents under the Exclusive Economic Zone and Continental Shelf (Environment Effects) Act 2012 (EEZ Act)

f. section 61 land access arrangements under the Crown Minerals Act 1991

g. more than minor adverse effects test under the Fisheries Act 1996

h. streamlined Environment Court process under the Public Works Act 1981 processes.

5. Projects can access the fast-track process through two pathways:

- Track 1: By being listed in the Bill. The projects that will be in Schedule 2 of the Bill can go straight to the expert panel. The version of the Bill reported from the Environment Committee does not contain any projects in Schedule 2. The projects which are intended to be listed in Part A of this Schedule have been announced by the Government.

- Track 2: By applying to access the fast-track process. The Minister for Infrastructure[1] will determine whether a project should be fast tracked and referred to the expert panel.

6. Some activities are unable to be fast-tracked. These include:

a. most activities occurring on identified Māori land, without written agreement from the landowner or a determination made under this Bill

b. activities occurring on Māori customary land, or land set apart as Māori reservation under Part 17 of Te Ture Whenua Māori Act 1993

c. activities occurring in a customary marine title area, or protected customary rights area without written agreement from the rights holder/group

[1] The Minister for Infrastructure is responsible for referral decisions alone, in consultation with the Minister for the Environment and other relevant portfolio Ministers.

d. activities on reserves held under the Reserves Act 1977 that are vested in, or managed by, someone other than the Department of Conservation without the written agreement of the persons responsible for it

e. activities occurring within an aquaculture settlement area without the required authorisation

f. activities that would be prevented under section 165J, 165M, 165Q, 165ZC, or 165ZDB of the Resource Management Act 1991 (which deal with occupation of space in the common marine and coastal area).

g. for project in the open ocean, activities prohibited under international law, decommissioning activities, and until permitting legislation is put in place – offshore wind

h. activities that require permissions on national reserves held under the Reserves Act 1977

i. non-mining activities on land listed in Schedule 3A of the Bill

j. an activity that cannot be granted an access arrangement under section 61 or 61B of the Crown Minerals Act 1991.

k. activities in an area that is taiāpure-local fishery, a mātaitai reserve, or an area that is subject to bylaws made under Part 9 of the Fisheries Act 1996 that would have a more than minor adverse effect on the use or management of the area without written agreement from the tāngata whenua of the area

Fast-track referral process

7. The Minister for Infrastructure will decide whether to refer a fast-track application to an expert panel.

8. To Minister may accept a project if it meets the stated criteria, which is that the project is an infrastructure or development project that would have significant regional or national benefits. To aid the assessment of whether a project will provide significant regional or national benefits there are a number of considerations the Minister may consider. When assessing projects, the Minister must consult with the Minister for the Environment and relevant portfolio ministers, local authorities, agencies or statutory bodies, Treaty settlement or related entities and other identified Māori groups with interests.

9. The Minister for Infrastructure will have broad discretion to approve or decline the referral of projects and there is no requirement to refer an application because it is an eligible activity.

The expert panel

10. The role of the expert panel is to consider the project in detail and determine whether the regulatory approvals sought should be granted or declined, with any conditions the panel considers appropriate.

11. The purpose of the Bill will take primacy in the panel's assessment of an application, with normal considerations under existing legislation informing the assessment but having lesser weight.

12. The Bill sets out time frames for the panel's decision.

13. A panel convenor will be appointed by the Minister for Infrastructure to appoint members of expert panels. The panel convenor will be a former (including retired) Environment or High Court Judge. Panels will be chaired by either the panel convenor or a suitably qualified person, determined by the panel convenor in consultation with the Minister.

14. Panels are required to obtain written comments from specified parties, including:

    a. relevant local authorities

    b. relevant iwi authorities and Treaty settlement entities, protected customary rights groups and customary marine title groups, and other specified Māori groups

    c. landowners and occupiers on and adjacent to the site

    d. the Minister for the Environment and other relevant portfolio ministers

    e. relevant administering agencies

    f. requiring authorities that have a designation on or adjacent to the site

    g. any other person the expert panel considers appropriate and other specified persons and groups for specific approvals.

15. It is not mandatory for a panel to hold hearings as part of this process, although a panel has the discretion to do so to assist their assessment.

<u>Treaty settlements</u>

16. Protections have been drafted into the Bill to help ensure Treaty settlements and other specified arrangements are upheld throughout the fast-track process, including:

    a. a general requirement for all persons exercising functions under the Bill to act in a manner that is consistent with existing Treaty of Waitangi settlements, customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

    b. an ability for the Minister for Infrastructure to decline to refer an application to the expert panel if they consider it is inconsistent with a Treaty settlement / specified arrangement

    c. when considering a referral application, the Minister must comply with any procedural requirements in a Treaty settlement or specified arrangement

    d. if a Treaty settlement or specified arrangement includes procedural arrangements relating to the appointment of a decision-making body for hearings, or any other procedural matters, the panel must comply with those arrangements as if they

were the relevant decision-maker, or obtain agreement from the relevant entity to adopt a modified arrangement which may not be unreasonably withheld

e. where a Treaty settlement / specified arrangement provides for the consideration of a document (including statutory planning documents), it must be given the same or equivalent effect as it would have under the relevant specified Act by both the minister at referral stage and the panel at substantive stage.

Decision-making

17. Each panel must consider whether to grant the approvals sought and set appropriate conditions, or decline the approval.

18. The criteria which the panel applies when considering an application for an approval differs depending on the approval sought. However, across all approvals the purpose and provisions of the Bill apply instead of the usual processes and decision-making in existing legislation. This approach is intended to ensure the significant benefits for communities which infrastructure and other development projects provide are recognised in decision-making.

19. The Bill includes clear direction that a project may be declined if a panel forms a view that the activity has adverse impacts which are significant enough to outweigh the purpose of this Act, even after possible conditions are taken into account.

Implementation

21. The Bill provides for compliance and enforcement functions to be undertaken in line with the powers and duties under the relevant approval legislation. Local authorities will retain their compliance and enforcement functions in relation to Resource Management Act 1991 notice of requirement and resource consent conditions, as will the Environmental Protection Authority in relation to marine consents in the exclusive economic zone, Heritage New Zealand in relation to archaeological authorities and the Department of Conservation in relation to concessions, access arrangements, and wildlife approvals.

Judicial review and appeals

22. The Bill does not limit the right for any person to file a judicial review to the High Court for statutory decisions that will be taken under the Fast-track Approvals Act.

23. Appeals on panel decisions may be taken to the High Court on points of law only. After a High Court determination, no appeal may be made to the Court of Appeal, but a party may apply to the Supreme Court for leave to bring an appeal.

Ministry for the Environment
Manatū Mō Te Taiao

Briefing: Fast-track Approvals – Financing EPA implementation costs Cabinet paper

Date submitted: 7 November 2024
Tracking number: BRF-5579
Sub Security level: In-Confidence
MfE priority: Urgent

Actions sought from Ministers		
Name and position	***Action sought***	***Response by***
To: Hon Chris BISHOP **Minister Responsible for RMA Reform**	**Agree** to lodge the Cabinet paper, *Fast-track Approvals: Financing the EPA's implementation costs* on 14 November 2024 ahead of Cabinet consideration	11 November 2024
CC: Hon Penny SIMMONDS **Minister for the Environment**	For noting	N/A

Actions for Minister's office staff
Return the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz)

Appendices and attachments
Appendix 1 - Draft Cabinet paper, Fast-track Approvals: Financing the EPA's implementation costs

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Oliver Sangster		
Responsible Manager	Stephanie Frame	s 9(2)(a)	
General Manager	Ilana Miller	s 9(2)(a)	✓

Ministers' comments

Briefing: Fast-track Approvals – Financing EPA implementation costs Cabinet paper

Purpose

1. This briefing attaches a draft Cabinet paper seeking approval to provide the Environmental Protection Authority (EPA) with a $10 million repayable capital injection to support its implementation of the Fast-track Approvals (FTA) regime.

Background

2. In BRF-5522, you agreed in principle to provide the EPA with a $10 million repayable capital injection, repayable over five years, on the following terms:

    i Up to $10 million is made available to the EPA immediately

    ii It is interest free (ie, concessionary)

    iii The EPA is exempt from paying capital charge should it be incurred, and

    iv If cost recovery is insufficient over time and the capital cannot be repaid within five years, then the residual is written off (ie, a sunset clause).

3. The Minister of Finance and you agreed to seek Cabinet approval to the proposed EPA repayable capital injection by December 2024. The Minister of Finance directed Treasury to work with the EPA on the provisions of the repayable capital injection.

4. You will receive separate advice on the FTA proposed fee and levy rates. Levies will be used to cover set up and ongoing FTA implementation costs.

Proposed provisions of the repayable capital injection

5. We worked with the Treasury and EPA to refine the key terms of the repayable capital injection. The Treasury supports capital being made available to the EPA in December 2024.

6. The Treasury advised if the repayable capital injection was interest-free (ie, concessionary), then the initial-write down expenses (estimated to be around $2 million) would need to be covered through MfE's baseline. We recommend the repayable capital injection be non-concessionary to ensure the FTA regime is fully cost-recovered.

7. A capital charge exemption is no longer sought. Modelling suggests the EPA would not be over the $15 million net asset threshold for a capital charge. Should a capital charge apply in the future, it would be covered through the levies.

8. The Treasury do not support the EPA's proposed sunset clause. Treasury considers the levy should be set sufficiently high to include a buffer to mitigate the risk of insufficient applications to cover costs. The Treasury consider there is a need to regularly assess whether the EPA is on track to repay the repayable capital injection. We have incorporated Treasury feedback by:

i Utilising the low-volume scenario in setting the initial levy rates. This sets the levy at a higher amount by spreading the costs over a small number of applicants, and reduces the risk that insufficient FTA applications are received to cover the EPA's costs. This reflects that the volume of applications is still reasonably uncertain and takes into account that the sustainability of levy rates is primarily driven by the number of applications received.

ii Committing to review the FTA levy rates in early-2026 to ensure full cost recovery is occurring and that the EPA is able to repay the repayable capital injection.

iii Noting in the Cabinet paper that, in the future, Cabinet may need to consider writing off the residual sum of the repayable capital injection if insufficient applications are not received (over and above the other mitigations in place).

Next steps

9. We recommend you seek Cabinet Economic Policy Committee consideration of this proposal on 20 November and Cabinet confirmation on 25 November 2024. This requires Ministerial consultation on the proposal to be expedited and for the Cabinet paper to be lodged with the Cabinet Office on 14 November 2024.

10. Subject to Cabinet approval, we will work with Treasury and EPA to implement the repayable capital injection so this capital is available to EPA in December 2024.

Recommendations

We recommend that you:

a. **agree** to lodge the Cabinet paper, *Fast-track Approvals: Financing the EPA's implementation costs* on 14 November 2024 ahead of Cabinet consideration.

Yes | No

Signatures

s 9(2)(a)

Ilana Miller
General Manager, Delivery and Operations
Partnerships, Investments and Enablement
7 November 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date:

Ministry for the Environment
Manatū Mō Te Taiao

Talking Points: Fast-Track Approvals: Financing the EPA's implementation costs Cabinet paper

Date submitted: 20 November 2024
Tracking number: BRF-5642
Security level: In-Confidence

Actions sought from ministers	
Name and position	***Action sought***
Hon Chris Bishop **Minister Responsible for RMA Reform**	For noting only

Appendices and attachments
Nil

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Oliver Sangster		
Responsible Manager	Stephanie Frame	s 9(2)(a)	✓
General Manager	Ilana Miller		

Talking Points: Fast-Track Approvals: Financing the EPA's implementation costs Cabinet paper

Purpose

1. On 25 November 2024, you will seek Cabinet Business Committee agreement to provide the Environmental Protection Authority (EPA) with a repayable capital injection to finance its Fast-track Approvals (FTA) implementation costs. This aide memoire provides you with talking points.

Talking points

- I seek agreement to provide the EPA with a $10 million repayable capital injection to finance its FTA implementation costs before cost recovery begins. I propose the EPA repay the capital injection within five years.
- As the lead agency for FTA, the EPA will spend up to $10 million to set up necessary FTA systems and processes. It is essential these are in place before the first applications are able to be submitted in early-2025.
- The EPA will ultimately recover implementation costs from applicants through levies. However, based on modelling used to develop proposed levy amounts, officials estimate it will take up to five years for the EPA's costs to be fully recovered. The EPA does not have the capital to set up these functions before it receives levy payments from applicants.
- Subject to Cabinet approval, officials will implement the operational agreement, so capital is available to the EPA in December 2024.

Back pocket talking points

- Officials undertook robust modelling to assure the system costs and determine the levy rates required for the EPA to repay the capital injection within five years.
- The Minister of Finance directed Treasury, MfE and EPA to work together on the terms of the capital injection. Officials advise me they are comfortable with the terms.
- While the Minister for the Environment supports the proposal, she raised concerns the EPA will be in deficit by the end of 2024 due to the lag in cost recovery.

Document 13

Ministry for the Environment
Manatū Mō Te Taiao

Briefing: Fast-track cost regulations: Proposed initial fee (deposit), levy, and financial contribution values

Date submitted: 20 November 2024
Tracking number: BRF-5450
Sub Security level: In-Confidence
MfE priority: Urgent

Actions sought from Ministers		
Name and position	***Action sought***	***Response by***
To Hon Chris BISHOP **Minister Responsible for RMA Reform** **Minister for Infrastructure**	Agree to action	21 November 2024
Cc Hon Shane JONES **Minister for Regional Development**	As above	21 November 2024

Actions for Minister's office staff
Forward to Minister Jones office **Return** the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).

Appendices and attachments
a. Cost Recovery Impact Statement b. Material used in targeted policy testing c. Te Rūnanga o Ngāi Tahu submission

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Oliver Sangster		
General Manager	Ilana Miller	s 9(2)(a)	✓
General Manager	Jo Gascoigne	s 9(2)(a)	

Minister's comments

Fast-track cost regulations: Proposed initial fee (deposit), levy, and financial contribution values

Key messages

1. You have previously agreed to regulation making powers to set application fee, levy and financial contribution amounts payable by Fast-track Approvals (FTA) applicants (BRF-5334 and BRF-5429). We have been working with Parliamentary Counsel Office (PCO) to include this in an amendment paper that Cabinet Legislation Committee (LEG) will consider on 5 December 2024.

2. The primary purpose of this briefing is to seek your agreement to specific amounts to be set in regulations under the FTA Act, for initial application fee, levy and financial contributions. We will work with PCO to draft regulations in accordance with your agreement.

3. The regulations will need to be made by Order in Council (OiC), but this cannot occur until after Royal assent of the Bill. No Executive Council meeting is scheduled after third reading (under current Bill timeframes), so the OiC would need to be made in the new year, even if a paper with the regulations is able to be taken to a LEG committee meeting this calendar year.

4. To support system workability, we also seek your agreement that the scope of the regulation making power for levies to be included in the Amendment paper, also include panel convener costs (in addition to other matters directed through previous briefings). The LEG pack for this Amendment paper is due to be lodged on 28 November, however Parliamentary Counsel Office requires final drafting instructions by the close of play on Thursday 21 November.

5. We have undertaken targeted policy testing with select groups on proposed amounts payable by applicants at each of the referral, land exchange and substantive fast-track application stages. The Stage 2 Cost Recovery Impact Statement (CRIS) in Appendix A provides our analysis, including feedback from this process.

6. This briefing seeks your agreement to specific initial fee (deposit), levy and financial contribution amounts, to be set in regulations:

    i Initial fees would act as a ‘deposit’ that all applicants must pay at the time they lodge an application (referral, land exchange or substantive). If the deposit is greater than the actual and reasonable costs, the regulations will provide for partial refunds to applicants. If the deposit is insufficient, applicants would be invoiced by the Environmental Protection Authority (EPA) to recover the remaining costs.

    ii We have modelled levy amounts that will cover the EPA’s system costs associated with the Fast-track approvals process, including IT infrastructure, loan repayments for the repayable capital injection, litigation, bad debt, and related costs such as the panel convener. The amounts used in this modelling are provided in the CRIS.

iii We recommend that any interest accrued on levy and deposit funds remain with the EPA to be used for implementation purposes and applicants be informed of this upfront.

iv We have recommended set financial contributions for specified Māori groups who respond to invitations to comment at two levels;

a) Lower contribution level – for applications for referral or for substantive approval relating to only one schedule, and for land exchanges, and

b) Higher contribution level – for applications for referral or substantive approval relating to multiple schedules

7. Following your agreement to the amounts to include in regulation, we will issue drafting instructions to PCO and provide draft a Cabinet Legislation Committee (LEG) paper for consideration.

8. The timing is very tight but currently achievable to formally make regulations ahead of the 7 February 2025 ‘go-live’ date for applications. We will provide more detailed time line for making regulations in due course.

9. We intend to review the cost recovery and contributions model after the first year of implementation, with a view to advising on the appropriate level of fees, levies and financial contributions into the future.

10. Agencies are also working together to set charges to recover their respective agencies reasonable costs. We seek agreement that the Ministry for the Environment (MfE) undertake a joint targeted consultation exercise on this in early December and that we note your decisions on initial application fees, levies and financial contribution amounts (which were subject of earlier targeted consultation) as part of that. You have previously agreed that these amounts will not be set by regulations (or otherwise), but by the individual agencies, and we will report back to you on the outcome of targeted consultation.

Recommendations

We recommend that you:

a. **note** that Cabinet previously agreed that cost-recovery regulations can be made under the Fast-track Approvals legislation that relate to the setting of charges (both fees and levies) and for other matters relating to administering cost-recovery, and authorised the Minister Responsible for RMA Reform and Minister for Regional Development to take decisions on the approach to setting fees and levies and on any other policy or technical matters relating to cost recovery for inclusion in the Amendment Paper and/or regulations [CAB-24-MIN-0362]

b. **note** that the Minister for Infrastructure will be the Minister responsible for recommending regulations under the Bill, so these decisions are also sought under the Infrastructure portfolio

c. **note** you earlier agreed to provisions relating to cost recovery regulations, including setting out initial application fees (deposits) and levies for system costs (BRF-5334) and

financial contributions to specific Māori groups invited to comment on applications at various stages (BRF-5429)

d. **note** your decision at BRF-5334 (rec m), regarding the scope of a regulation-making power regarding levies, included the purpose of funding contributions toward the panel, panel convener and Crown's involvement in any litigation related to Fast-track approvals

e. **agree** that the scope of the regulation-making power regarding levies, to be included in an Amendment Paper to the Fast-track Approvals Bill to be considered by LEG Committee on 5 December, also include the purpose of recovering panel convener costs, not just those associated with litigation

Yes / No

f. **agree** that the initial application fees (deposits) payable at the time of lodging applications under the Fast-track Approvals regime to be set in regulations are:

    a. referral application: $12,000 + GST

    Yes | No

    b. land exchange application: $36,000 + GST

    Yes | No

    c. substantive application: $250,000 + GST

    Yes | No

g. **note** the proposed fees would in effect be deposit amounts payable upon making an application, with the final total charge to the applicant to be determined based on the actual and reasonable costs, consistent with your previous agreement at BRF-5334 (rec (i))

h. **note** the modelling which informed the proposed levy amounts below includes panel convener costs, which would require your policy agreement provide for (rec (d) above)

i. **agree** that, in addition to initial application fees outlined in recommendation (e) above, the levies payable at the time of lodging applications under the Fast-track Approvals regime, be as follows:

    a. referral application: $6,700 + GST

    Yes | No

    b. land exchange application: $13,400 + GST

    Yes | No

    c. substantive application: $140,000 + GST

    Yes | No

j. **agree** any interest accrued from deposit and levy amounts (recommendations (e) and (h) above remain with the Environmental Protection Authority

Yes | No

k. **agree** that the amounts payable as financial contributions for Māori groups involved in the fast-track approvals process by way of invitation to comment are:

   a. Lower contribution where approvals are sought only relating to schedule (for example, a housing development that only seeks Resource Management Act approvals):

      i. referral application: $1,500 + GST

      Yes | No

      ii. land exchange application: $1,500 + GST

      Yes | No

      iii. substantive application: $7,000 + GST

      Yes | No

   b. Higher contribution where approvals are sought relating to more than one schedule (for example, a development that requires approvals under the Conservation Act as well as the Resource Management Act):

      i. referral application: $2,000 + GST

      Yes | No

      ii. substantive application: $10,000 + GST

      Yes | No

l. **agree** to instruct Parliamentary Counsel Office to draft regulations to give effect to the above, in accordance with the regulation-making power to be included in the Amendment Paper

   Yes | No

m. **note** Ministry for the Environment is leading work across agencies in setting their reasonable fees, to support consistency where possible, as part of planning for Fast-track implementation

n. **agree** the Ministry for the Environment will undertake targeted consultation on draft agency-level fees in December 2024, jointly with other agencies responsible for Fast-track implementation

   Yes | No

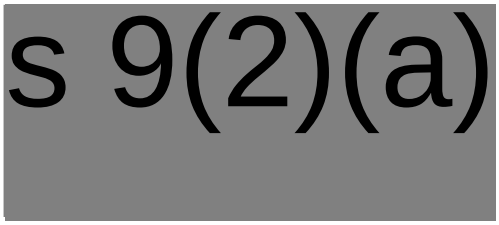
o. **agree** that the Ministry for the Environment refer to your decisions made on initial application fee, levy and financial contribution amounts, when consulting on draft agency-level fees

   Yes | No

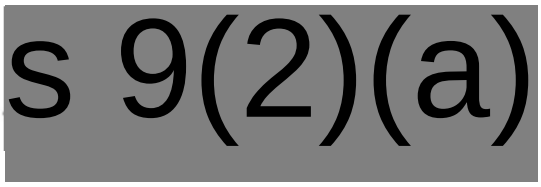
p. **agree** that the Cabinet Legislation Committee paper include a recommendation to seek approval to waive the 28-day rule, in order for the regulations to be in effect by the time applications are opened

Yes | No

Signatures



Ilana Miller
General Manager
Delivery and Operations
20 November 2024



Jo Gascoigne
General Manager – Resource Management System
20 November 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Minister for Infrastructure
Date:

Hon Shane Jones
Minister for Regional Development
Date:

Fast-track cost recovery regulations: Proposed fee, levy, and financial contribution values

Purpose

1. The purpose of this briefing to the Minister Responsible for RMA Reform, Minister for Regional Development and Minister for Infrastructure is to seek your agreement:

    i to initial application fee, levy, and financial contribution amounts, to be set in regulations under the Fast-track Approvals (FTA) Act, to be made by Order in Council before applications can be lodged

    ii that any interest accrued on initial fee and levy payments is retained by the Environmental Protection Agency (EPA)

    iii that the regulation-making power relating to levies under the FTA Act (to be included in the Bill's Amendment paper) include panel convener costs

    iv that the Ministry for the Environment lead targeted consultation on fees being set across agencies involved in implementation, and that your decisions on fees, levies and financial contribution be noted in this

Background

2. Through previous Cabinet decisions [CAB-24-MIN-0362], and briefings [BRF-5334; BRF-5429], as delegated Ministers, you agreed to the overall approach to cost recovery for FTA. Some of the key design decisions you made include:

    i the EPA be the centralised billing agency for all costs once applications are lodged

    ii a levy will be established to fund system costs, litigation expenses, and cover bad debt

    iii applicants be required to pay upfront fees and levies when lodging applications at each stage (referral, land exchange (if applicable) and substantive)

    iv the total fees payable by applicants will be based on the total actual and reasonable costs of agencies and local authorities relating to their powers, functions and duties in relation to applications (over and above the upfront deposit fee paid, with provision for partial refunds if the total costs are lower than the deposit value)

    v include regulation-making power in the Bill to enable regulations to be made to set certain fees, levy and financial contribution amounts for specific third parties

    vi that regulations provide for specific Māori groups to be paid financial contributions to support their involvement in application processes, and these costs will be recovered from applicants.

3. Following your direction on targeted policy testing, we have tested proposed values for the initial application fees (deposits), levies, and financial contributions with selected prospective users, stakeholders, and Māori groups.[1]

Analysis and advice

Panel convener costs

4. Through the amendment paper drafting process with Parliamentary Counsel Office (PCO), we have determined that our previous recommendations regarding the scope of a regulation-making power for levies did not extend to panel convener costs other than those related to litigation (BRF-5334 rec (m) refers). To support system workability, we recommend the regulation making power also enable a levy to be used to cover all panel convener costs. We seek your delegated policy agreement to issue drafting instructions to PCO to ensure the scope of the regulation-making power, through the relevant amendment paper.

5. Costs of panels costs making their decisions on fast-track approval applications would be recovered separately through application fees, rather than the levy.

Initial fee (deposit) and levy amounts

6. We recommend the relevant rates for initial fees (deposits) and levies be established in regulations as set out in Table 1 below. These are supported by the analysis and advice in the Cost Recovery Impact Statement (CRIS). All rates exclude GST.

Table 1: Proposed initial fee (deposit) and levy values for regulations

	Proposed prescribed upfront fee (deposit amount)	***Proposed levy amount***	**Total initial payment at each application stage (initial fee (deposit) + levy)**
Referral application	$12,000	$6,700	*$18,700*
Land exchange application	$36,000	$13,400	*$39,400*
Substantive application	$250,000	$140,000	*$390,000*

7. If initial fees are insufficient to cover the total cost of processing an application, you have agreed that additional costs would be recovered from the applicant by the EPA (on behalf of agencies, including local authorities), using the cost recovery provisions in the FTA Bill. If the initial fees are greater than the total recoverable cost of processing an

[1] Cabinet agreed to provide that other organisations that have a statutory role in the process (such as Post Settlement Governance Entities (PSGEs) and other Māori groups responding to invitations from Ministers or agencies to comment on referral or substantive applications) can have their costs recovered [CAB-24-MIN-0362]. Delegated Ministers subsequently agreed that initial contribution fee regulations be prepared providing for fixed amounts to be paid to specific Māori groups who respond to an invitation to comment on an application (BRF-5429 refers).

application, you have agreed that legislation will provide for partial refunds to be made at the end of the process (BRF-5334).

8. The levy amounts are based on independent modelling by MartinJenkins Ltd, including information supplied by the EPA on its implementation costs and other inputs from MfE. More information about what the levy would cover is outlined in the CRIS. Note the modelling for these levy amounts factors estimated panel convener costs (which would require your policy agreement to be covered by the regulation-making power – see paragraphs 4-5 above).

Financial contribution amounts for specific Māori groups

9. You have also agreed that fixed contributions be paid to specific Māori groups to support their ability to respond to invitations to comment on applications within the timeframe required (BRF-5429 refers).

10. Feedback from targeted policy testing was that there would ideally be a scale of contributions depending on complexity to reflect the variation in the time required to respond. Due to challenges of establishing a scale of contributions that would require further application-specific assessment, we recommend a two-tier approach (see Table 2 below) for these contributions using the number of approval types sought relating to different schedules as a simple proxy for this as follows:

    i If approvals are sought only relating to one schedule we recommend the lower contribution level, on the assumption that these applications are more likely to represent a medium level of complexity. This level will also apply to comments to the Department of Conservation on land exchange applications.

    ii If approvals are sought relating to multiple schedules, we recommend the higher contribution levels are used on the assumption that these applications are more likely to represent a higher level of complexity.

11. Many FTA applications are likely to fall into the higher contribution level category on the basis of multiple approvals being sought under the 'one stop shop' aspect of the FTA legislation. There may be some instances where only a single type of approval is sought under the FTA process, but these are likely to be less frequent s 9(2)(f)(iv) [redacted]

12. We do not anticipate that applications with a low level of complexity will be frequent users of the Fast-track process so have not proposed a third level of contribution.

Table 2: Financial contribution rates for specified Māori groups providing comments

	Lower contribution level based on medium complexity applications	**Higher contribution level based on high complexity applications**
Referral application	$1,500	$2,000
Land exchange application	$1,500	N/A
Substantive application	$7,000	$10,000

Recommendation	Recommended where approvals are sought relating to one schedule	Recommended where approvals are sought relating to more than one schedule

13. The rates are based on feedback from a range of prospective users, stakeholders, and Te Rūnanga o Ngāi Tahu. Some key feedback from these groups was that having a set fee contribution rather than actual and reasonable costs may create inequity between groups. This is because the one size fits all approach does not account for the difference in scale of iwi authorities and the different way each iwi operates.

14. Detailed feedback from Te Rūnanga o Ngāi Tahu is attached as Appendix C. The rates proposed by Ngāi Tahu are based on fast-track applications under the previous legislation which was limited to resource consents and so are expected to be an underestimate for applications received under the FTA Act.

15. It has not been possible in the timeframes to establish an approach which fully addresses the feedback received. We have estimated the contribution amounts as a middle ground which accounts for the variation in amounts of time different Māori groups will need to spend responding to applications. Contribution levels would be considered in future reviews of the cost recovery model.

Treatment of interest funds held for deposits and levy amounts

16. Interest will automatically accrue from the upfront funds held by the EPA from deposit and levy payments.

17. The EPA has flexibility in terms of allocating levy funding between various functions and activities – ie, this funding is fungible for the purpose of FTA Implementation, rather than being assigned to specific activities and purposes within that. Accordingly, the interest from levy funds held would also be fungible and provide the EPA to use this funding for the range of FTA activities it is responsible for.

18. We recommend interest accrued remain with the EPA, which would allow it to be used for its work within its FTA workstreams eg, implementation costs (including litigation or bad debt costs), or helping pay back an interest-bearing repayable capital injection that Cabinet agreement is being sought for.

19. For transparency, applicants would be informed upfront that they will have no right to claim interest from their deposited funds held for the duration of their application process.

Limitations

20. A Stage 2 CRIS has been prepared for your review by the Ministry for the Environment (Appendix A). As part of this several limitations have been identified, these include:

    i Only limited, targeted consultation has been undertaken, for a very short period

    ii The work involved in processing applications can only be roughly estimated pre-implementation, as it is a novel process

    iii The amounts recommended for financial contributions to support Māori groups are supported by very little evidence, and

iv The EPA has estimated its establishment costs, and these have been independently reviewed by MartinJenkins. Due to significant uncertainty in the pre-implementation phase of the fast-track regime, simplicity has been a focus of the initial approach outlined in this proposal.

Feedback from targeted policy testing

21. A set of proposed fee and levy values and financial contribution amounts were consulted on in a limited, targeted capacity. Targeted policy testing was undertaken with selected industry associations, prospective applicants with projects proposed to be listed in Schedule 2 of the Bill (that have also used the previous FTCA process), local authorities, and Māori groups from 21 October to 28 October 2024, with material provided by email setting out the proposed approach to cost recovery including proposed rates and their rationale. The material is included in Appendix B.

22. Written feedback was received from 18 organisations: seven prospective applicants, five industry groups, five local authorities or local authority groups, and one Māori group. The Ministry also met with a regional council representative group (Te Uru Kahika) and Te Rūnanga o Ngāi Tahu. Much of the feedback was in relation to the high level approach to cost recovery (generally supportive in principle), with less providing detail on the proposed amounts.

23. Almost all groups supported the principle of user pays underpinning the FTA legislation. Further feedback related to the complexity and variability of the projects that may utilise the FTA process, and the short timeframes within which the consultation and development of fees, levies, and financial contribution amounts was occurring. Additional issues raised are set out in the attached CRIS.

Review

24. We recommend the regulations be reviewed in 2026, that is one year after applicants can apply for FTA processes, as part of an overall implementation review that was signalled in the previous SAR on the FTA Bill[2]. This also relates to a recommendation in a draft Cabinet paper on financing the EPA's implementation costs, which has been circulated for Ministerial consultation.[3] We consider this review to be essential to ensure the cost recovery regime remains fit for purpose, considering evidence to emerge over the first year of the FTA regime's operation.

Agency-specific charging update

25. Wider feedback from stakeholders included the need to ensure the actual fees charged by agencies are reasonable. Agencies are working together to plan ahead of implementation of the FTA regime. As part of this, agencies are undertaking work to set

[2] Supplementary Analysis Report: Fast-track Approvals Bill, paragraph 140 https://www.treasury.govt.nz/sites/default/files/2024-03/sar-mfe-ftab-mar24.pdf

[3] Draft Cabinet paper CAB-508, recommendation (6) is to "agree that Ministry for the Environment will review the FTA levy rates in early-2026 to ensure full cost recovery of the FTA regime is occurring".

reasonable charges, to be recovered from applicants, and to promote collaboration and consistency where possible.

26. We seek agreement that:

    i Ministry for the Environment lead a joined-up targeted consultation process on this in early December, building on the targeted policy testing undertaken to date

    ii Your decisions made in this briefing on initial application fee, levy and financial contribution amounts, noting the relationship between these matters and that consultation would include the same groups involved in earlier consultation on draft amounts. In doing so, we would note these decisions remain subject to confirmation by Cabinet.

27. Treasury guidelines suggests that the main emphasis of consultation for fees setting should be on payers of charges (in this case, prospective). A targeted consultation approach would be consistent with earlier targeted policy testing we undertook at your direction with select groups (including some, but not all, listed project applicants). We note that non-listed project applicants would also be prospective payers of charges, so the only way to capture all prospective payers would be through full public consultation. Given the limited timeframe for agencies to confirm their fees ahead of applications being able to be lodged, we recommend continuing with targeted consultation for the initial agency fee setting.

28. The outcome of this consultation will inform agencies' decisions on setting their reasonable charges prior to applications being opened (this would not require regulation).

29. Agencies are investigating the need for changes to appropriations, so that payments for Fast-track applications can be received. We will brief Ministers once the situation is made clear; further decisions may be required if agencies' appropriations require rescoping for this purpose.

Te Tiriti analysis

30. The proposed amounts for application fees and levies are unlikely to have any Te Tiriti impacts.

31. The proposed amounts for fixed contributions are intended to be set at a level which will provide some support to Māori groups to participate in the FTA process. This in turn will help provide information relating to projects that will support Ministers and the panel in complying with clause 6 to act consistently with obligations in Treaty settlements and customary rights recognised under relevant legislation, and to support the Crown in meeting its obligations under the Treaty to actively protect Māori interests.

32. However, the proposed contributions are unlikely to cover the actual and reasonable costs of groups for providing comments for all applications, particularly those that are more complex in nature. The contributions also do not cover involvement outside of providing comments at the specified stages, such as appearing at hearings, and providing further information when requested. There is a risk that the proposals for set contributions may disincentivise groups from actively participating in the process (or to pick and choose which projects they comment on) which risks undermining the intent of

the policy. As set out above, this may also mean that less information is available to support decision-makers to act consistently with obligations in existing Treaty settlements and relevant legislation, which could increase uncertainty for projects. This will be a particular risk in areas which have a large number of projects.

Cost recovery impact analysis

33. A CRIS has been completed and is attached in **Appendix A**

34. It provides an analysis:

    i of options to recover the costs to government agencies associated with processing applications and implementing the FTA legislation, and

    ii of proposed financial contributions to be paid to Māori groups who respond to a request to comment on a fast-track application, with these financial contribution values paid by government and recovered from the relevant applicant.

35. The Ministry for the Environment and the Ministry for Primary Industries Regulatory Impact Analysis (RIA) Panel stated:

    "The CRIS partially meets the RIA quality assurance criteria. Because this work is being done at pace, limited consultation has been undertaken which has impacted the analysis needed to accurately determine the amount of work required to process a consent under the fast-track system, the number of consent applications that can be expected, and therefore what actual costs for fast-track consents might be. The number of assumptions and unknowns that underpin the analysis within the CRIS weaken overall how convincing the document is. Despite these limitations the CRIS is clear, concise, and complete and sets out the rationale for cost recovery in relation to fast track consents. It clearly sets out the context under which the proposed cost recovery framework and costs have been developed, and how this has impacted the analysis within the CRIS."

Other considerations

Consultation and engagement

36. Feedback from engagement through the targeted policy testing is set out from paragraphs 21 - 23 above. More detail is included on pages 28 and 29 of the CRIS.

37. All government agencies who may be able to recover costs under the FTA Act have been consulted and involved in the development of the overall cost recovery framework including the EPA, Department of Conservation, Ministry of Business, Innovation and Employment, Ministry for Primary Industries, Heritage New Zealand (and Ministry for Culture and Heritage), Land Information New Zealand, Te Arawhiti, and Te Puni Kōkiri. The Treasury has also been consulted and actively involved in work to support the EPA's financing

Risks and mitigations

38. The draft levy amounts have been developed from modelling based on high, medium and low scenarios for application volumes. Our recommended levy values are based on the lowest scenario for application volumes to mitigate risk of under recovering system costs. However, if the application fee and levy amounts are set overly high, this might deter prospective applicants from applying, against the risk that setting fee and levy amounts too low results in insufficient means for the EPA to recover its costs of running the system, and costs to the Crown and others processing applications.

39. There are risks of providing fixed contribution amounts to Māori groups for variable work, including the risk the contributions not being reflective of the level of work involved in any specific case.

s 9(2)(h)

Financial implications

47. There are financial implications of these proposals as they relate to the recovery of costs. The modelling inputs which underpin the proposed levy amounts, factors in a $10 million repayable capital injection, assumed interest expense and no capital charge. This is contingent on Cabinet agreeing to the repayable capital injection on this basis. A draft Cabinet paper for this purpose has been provided with a separate briefing (BRF-5579 refers).

48. The risks of setting the levy at inadequate levels are set out in the risks section above.

49. Providing contributions to Māori groups for their involvement, which are then cost-recovered from Fast-track applicants, should be cost-neutral to the Crown. However, there is a small risk of bad debt sitting with the EPA.

Regulatory and legislative implications

50. Decisions you take will feed into regulations to be made under the FTA Bill, once enacted. Once these decisions are in place and the drafting of the regulations is completed, the regulations would be made through the usual Order in Council process.

51. While regulations drafting can occur in parallel to the Bill's progression through the House, the regulations will not be able to be made by Executive Council until after Royal assent of the Act. It is our intention to progress the regulations as quickly as possible after Royal assent. The precise timing is uncertain at this stage as it is dependent on the timing of the Bill's third reading.

52. We understand the timeframe being worked to for the FTA Bill is:

    i Committee of the Whole House: 10-12 December 2024

    ii Third reading: 17 December 2024

    iii No date confirmed for Royal assent, but we note there is no Executive Council meeting scheduled after 16 December 2024.

53. For the regulation-making process, this means that:

    i while draft regulations could potentially be considered at the final LEG Committee this calendar year (the last of the year being 19 December 2024), a late lodgement would likely be required due to the 12 December 2024 lodgement deadline overlapping with the Committee of the Whole House timeframe (and the need to confirm the regulations align with final empowering provisions)

    ii either way, there will be no opportunity for the regulations to be formally made until the new year, as no Cabinet and Executive Council meetings are scheduled for this calendar year after third reading.

54. We instead recommend that the regulations be considered by Cabinet Business Committee first thing in the new year. We will provide a more detailed timeline for making the regulations operative in due course.

Next steps

55. Following your decision on amounts to include in regulation, we will issue drafting instructions to PCO.

56. We will work with the office of the Minister for Infrastructure over timing for lodgement of the regulations and associated LEG paper, as under the Bill the regulations are formally recommended by the Minister for Infrastructure. We seek your agreement that the LEG paper include a recommendation to seek a waiver to the 28-day rule, in order for the commencement of the regulations to align with when applications will be opened.

57. We recommend communicating the final initial fees and levy rates as soon as possible, to provide as much notice as possible to applicants of these fees in advance of applications being able to be lodged, so they may ready their finances as necessary.

58. Agencies are continuing to work together to plan implementation of the FTA regime. As part of this, agencies are working to set reasonable charges to be recovered from applicants, including a further joined-up consultation process in early December 2024. This will build on the outcomes of targeted policy testing undertaken to date and will inform agencies' decisions on setting their charges prior to applications being opened after the go – live date in the new year.

BRF-5450 appendices withheld in full per s18(d)
These documents are available here https://environment.govt.nz/assets/publications/CRIS-MfE-Fast-track.pdf

Document 14

Ministry for the Environment
Manatū Mō Te Taiao

Draft Cabinet Legislation Committee paper for Fast-track cost regulations

Date submitted: 28 November 2024
Tracking number: BRF-5657
Sub Security level: In-Confidence
MfE priority: Urgent

Actions sought from Ministers		
Name and position	***Action sought***	***Response by***
To Hon Chris BISHOP **Minister for Infrastructure**	Forward the draft Cabinet Legislation Committee paper and draft regulations to your relevant colleagues for Ministerial consultation	3 December 2024

Actions for Minister's office staff

Forward the draft Cabinet Legislation Committee paper and regulations for Ministerial consultation.

Return the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).

Appendices and attachments

1. Appendix: Draft Cabinet legislation paper, *Fast Track (Cost Recovery) Regulations 2024*, and its two appendices:
    a. Appendix A: Draft Fast Track (Cost Recovery) Regulations
    b. Appendix B: Stage 2 Cost Recovery Impact Statement - Cost recovery and financial contributions under the Fast-track Approvals legislation

Key contacts at Ministry for the Environment

Position	***Name***	***Cell phone***	***First contact***
Principal Author	Jane Tier		
General Manager	Ilana Miller	s 9(2)(a)	
General Manager	Jo Gascoigne	s 9(2)(a)	✓

Minister's comments

Draft Cabinet Legislation Committee paper for Fast-track cost regulations

Purpose

1. This briefing provides you with a draft Cabinet Legislation Committee (LEG) paper and the draft regulations for Fast-track Approvals fees, levies, and financial contributions to circulate for Ministerial consultation.

Background

2. You (Minister for RMA Reform and Minister for Infrastructure) and Minister Jones (Minister for Regional Development) have previously made decisions on the framework for cost recovery under the Fast-track Approvals legislation and the fee, levy, and financial contribution amounts (BRF-5334, BRF-5450 refers).

3. Under the Fast-track Approvals Bill (once enacted), the Minister for Infrastructure will be formally responsible for recommending regulations be made. This LEG paper is drafted accordingly, under the Minister for Infrastructure portfolio.

The Fast Track (Cost Recovery) Regulations 2024 will need to be enacted by the go-live date of 7 February 2025 for the fast-track applicants to be charged

4. We have circulated the draft LEG paper and regulations for agency consultation. Some departments have provided feedback which we are working through for the next version of the draft regulations.

5. The timeline for these regulations, as set out below, assumes the go-live date of 7 February 2025 for applications. The LEG paper and regulations can proceed through LEG committee before the Bill is passed but they cannot be approved by Executive Council until after the Bill has received its Royal assent (ie, after the enabling legislative provisions for the regulations have been enacted).

6. Our current understanding is that the Bill will not receive Royal assent until after the last Executive Council meeting of this calendar year, meaning that the LEG paper will not be able to go to Cabinet and Executive Council until January 2025. This will need to occur before 7 February 2025 to achieve the intended go-live date for applications. This will also require the 28-day rule for regulations to be waived. An indicative Cabinet timetable has been released for 2025 which has only one Executive Council meeting before 7 February 2025, this is on 28 January 2025.

7. If the regulations are not made before application open, applicants will be able to apply without paying upfront fees or paying levies which cover the Environmental Protection Authority's system costs.

Milestone	Date
Ministerial consultation on LEG paper	**3-9 December 2024 (5 working days)**
Provide feedback to Ministry for the Environment to incorporate any changes from Ministerial consultation	**10 December 2024**
Lodge regulations LEG paper	**12 December 2024**
Last Cabinet and Executive Council meetings of 2024	16 December 2024
Expected date for third reading of the Fast-track Approvals Bill	17 December 2024
Expected date for Royal assent of the Fast-track Approvals Bill	TBC following third reading
LEG committee consideration of draft regulations	**19 December 2024**
Cabinet and Executive Council approval of regulations	**From the Cabinet and Cabinet Committee Indicative timetable for 2025 it is *expected* that there may be a Cabinet meeting (via videoconference) on 21 January and a Cabinet and Executive Council meeting on 28 January 2025.**

Next steps

8. We will make changes to the draft LEG paper following the end of Ministerial consultation and provide the final version to your office for lodging with Cabinet Office by 12 December 2024. We will also provide you with talking points for Cabinet committee by 17 December 2024.

Recommendations

We recommend that you:

a. **Note** that the *Fast Track (Cost Recovery) Regulations 2024* will need to be enacted by the go live date of 7 February 2025 for the fast-track applicants to be charged.

b. **Note** that the *Cabinet and Cabinet Committee Indicative Timetable for 2025* indicates that the only possible Executive Council date for the regulations to be made before the go-live date is 28 January 2025.

c. **Forward** the draft Cabinet Legislation Committee (LEG) paper and its appendices (draft regulations and Cost Recovery Impact Statement) to your colleagues for Ministerial consultation, with the aim of lodging the paper with Cabinet Office by 12 December 2024.

Yes | No

d. **Note** we will make changes to the draft LEG paper following the end of Ministerial consultation and provide the final version to your office for lodging with Cabinet Office by 12 December 2024, we will also provide you with talking points for Cabinet committee by 17 December 2024.

Signatures

s 9(2)(a)

Jo Gascoigne

General Manager – Resource Management System

Environmental Management and Adaption

28 November 2024

s 9(2)(a)

Ilana Miller

General Manager – Delivery and Operations

Partnerships/Investments and Enablement

28 November 2024

Hon Chris BISHOP

Minister for Infrastructure

Date:

Document 15

Ministry for the Environment
Manatū Mō Te Taiao

Briefing: Fast-track Approvals Bill final policy decisions wrap-up

Date submitted: 29 November 2024
Tracking number: BRF-5653
Sub Security level: In-Confidence
MfE priority: Urgent

Actions sought from Ministers		
Name and position	***Action sought***	***Response by***
To Hon Chris BISHOP **Minister Responsible for RMA Reform**	Agree to the recommendations in this paper	2 December 2024
To Hon Shane JONES **Minister for Regional Development**	Agree to the recommendations in this paper	2 December 2024

Actions for Minister's office staff

Forward this briefing to for decision:
Hon Shane Jones, Minister for Regional Development

Forward this briefing for noting:
Hon Simeon Brown, Minister for Energy, Local Government and Transport;
Hon Paul Goldsmith, Minister of Justice, Minister for Arts, Culture and Heritage;
Hon Tama Potaka, Minister for Māori Crown Relations: Te Arawhiti;
Hon Penny Simmonds, Minister for the Environment;
Hon Chris Penk, Minister for Land Information;

Return the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).

Appendices and attachments

1. Appendix One – Final delegated policy decisions on Fast-track Approvals Bill

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Emily Allan		
Responsible Manager	Robyn Washbourne	s 9(2)(a)	
General Manager	Jo Gascoigne	s 9(2)(a)	✓

Minister's comments

Fast-track Approvals Bill final policy decisions wrap-up

Key messages

1. An Independent Assurance Review Panel has been established to provide advice on whether the Bill meets the Government's policy intent and identify improvements to drafting to aid clarity.

2. The Independent Assurance Review Panel concluded that the Bill largely achieves the Ministers' intent for the Bill and noted that with some small adjustments, particular aspects of the Bill could be improved.

3. Over the course of the last week, a number of solutions have been considered to resolve such matters. These solutions are provided to you in Appendix One.

4. Parliamentary Counsel Office (PCO) will undertake an internal quality review process, after these final decisions have been made.

5. We have provided four examples of how projects may be considered differently under the Bill than they were under the 'parent' legislation.

6. A policy matter has also been included to update you on how this has been finalised. No further decisions are needed to reflect this matter.

Recommendations

We recommend that you:

a. **Note** the proposed solutions at Appendix One have been developed at pace

NOTED

b. **Agree** to the decisions set out in Appendix One

Yes | No

Signatures

s 9(2)(a)

Jo Gascoigne
General Manager – Resource Management System
Environmental Management and Adaption
29 November 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date:

Hon Shane JONES
Minister for Regional Development
Date:

Fast-track Approvals Bill final policy decisions wrap-up

Purpose

1. This briefing provides a response to the comments received from the Assurance Review Panel on the Bill and also provides the last wrap-up policy matters for the Government Amendment Paper on the Fast-track Approvals Bill (the Bill).

Background

2. 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.

3. The Government's Amendment Paper (AP) 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 through ECO-24-MIN-200 CAB-24-MIN-0362.

4. To provide the Government with assurance that the Bill will achieve the original objectives, an independent assurance panel was established. This panel consisted of two members: s 9(2)(a)

5. The Government's fast-track objectives were defined for the assurance panel as:

    i a one-stop-shop for applicants seeking multiple approvals for their project

    ii an expedited process for applicants, that is faster and more streamlined than the status quo

    iii the Bill 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

    iv the Bill has a clear development focused purpose clause which has a greater weighting over the purpose clauses of the parent legislation

    v the Bill minimises the litigation risks for applicants and the Crown.

6. Both panel members provided their reports to Ministers on 20 November 2024, largely supportive that the Bill will deliver on the Government objectives, but highlighting some areas for improvement.

Analysis and advice

7. Parliamentary Counsel Office (PCO) will undertake an internal quality review process. The process consists of four components, a read through by the drafters themselves, a

peer review from an appropriately experienced drafter, a PCO proof-read by in-house editorial staff, and coding and publishing checks to ensure formatting is correct. PCO will tailor the internal quality review process to align with the Bill time available, and this may result in some of these steps occurring concurrently.

8. Ministry for the Environment (MfE) policy and legal teams have been working closely with PCO to review the iterations of the drafting to reflect ministerial policy decisions.

Response to Assurance Review Panel comments

9. Following on from the reports received by the assurance review panel members on 20 November 2024, Ministers narrowed the areas of improvement that they would like to be considered to the Bill to six matters. These matters were to:

    i move consideration of the purpose to clause 24, rather than in the schedules

    ii provide a way to synthesise report writing throughout the Bill

    iii seek further advice on limiting judicial review, similar to the Immigration Act

    iv seek further advice on tightening up the setting of conditions, as this should be no more onerous than necessary to manage the adverse effect

    v review how the Panel must set conditions related to the Wildlife Act

    vi explore giving the referral decision more weight, similar to s290A of the RMA.

10. Over the course of the week, we have worked with the assurance review panel, your offices, PCO and s 9(2)(h) to address the matters above and resolve other outstanding matters. A description proposed solutions are set out in **Appendix One** and we now seek your decisions.

11. We note that these changes have been designed at pace. Their impact on the scheme and workability of the Bill has not been able to be fully explored in the time available.

12. We are working with s 9(2)(h) and PCO to identify and mitigate integration issues as best we can while still preserving sufficient time for PCO to undertake its quality assurance process as outlined at paragraph 7.

Listed Projects

13. You have requested assurance that the Bill provides a feasible and realistic pathway for Schedule 2 projects, with a particular focus on projects which have previously been declined under parent or similar legislation.

14. Officials have considered four projects which were previously declined and tested those reasons for decline against the Bill.

15. Officials note that expert panels will need to consider complete substantive applications and undertake a full assessment against the Bill after it is enacted, neither of which officials can do in the time and with the information available. These are therefore assessments of how previous decline criteria do or do not carry through into the Bill,

rather than our advice as to whether the projects would receive approval under the new Fast-track regime.

s 9(2)(g)(i)

[redacted]

s 9(2)(g)(i)

s 9(2)(g)(i)

Wrap-Up policy matter

Subsurface Mining

36. On 21 November , MBIE provided advice noting the Bill as drafted could make it challenging for some mining projects to access the fast-track process by 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, even where there is no surface impact for the proposed activity (MBIE-6619 refers).

37. Based on that advice, Ministers agreed that subsurface Crown-mineral mining activities that do not have an impact on the surface of the land do not require such permission to be eligible for fast-track for all approvals sought under the Bill. Officials are working with PCO to make the requested changes through drafting.

38. The advice noted officials have not had time to fully assess what interactions this approach will have with the overarching obligation in the Bill for persons exercising functions to act consistently with Treaty settlements and customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

Te Tiriti analysis

39. We have not had adequate time to investigate the impacts of the proposal on the obligations of the Crown to uphold Te Tiriti.

Other considerations

Consultation and engagement

40. This advice was developed in consultation with the Department of Conservation. We have discussed the Mātaitai Reserves matter with the senior management at the Port of Tauranga and confirmed the proposed AP amendment meets their needs.

Legal issues

41. No legal issues are associated with the proposals in this briefing.

Financial, regulatory and legislative implications

42. No financial, regulatory, or legislative implications are associated with the proposals in this briefing.

Next steps

43. The decisions from this final wrap-up briefing will be incorporated, where needed, into the Legislative Cabinet Paper to support the introduction of the Government Amendment Paper on the Fast-track Approvals Bill. The Legislative Cabinet Paper will then be lodged on 5 December 2024, for Cabinet on 9 December 2024.

44. The Government Amendment Paper will be tabled in Parliament on 10 December 2024, for Committee of the Whole House stage which is scheduled for the week starting 9 December 2024.

45. The Third Reading of the Bill is scheduled for the week starting 16 December 2024, to support royal assent before Christmas.

Appendix One – Final delegated policy decisions on Fast-track Approvals Bill

Issue Raised		Decisions by ministers following assurance panel reports
1	Staging of a project	**agree** to add new clause similar to "Panel may have regard to likelihood of wider benefits emerging from later stages of a project". Exact wording is subject to PCO drafting, to align with the rest of the drafting of the Bill.
2	Cl 25D changes of version 8.0 of the Bill	**agree** to adopt 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.
3	Appeal rights - Cl 26(1)(e)	**agree** 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.
4	Judicial review - Cl 27AAB	**agree**: • if a person wishes to appeal and apply for judicial review in relation to the same decision, they must lodge the applications together; and • to keep the period for lodging judicial review applications at 20 working days (as per v 8.0 of the Bill) and extend the period for lodging appeals from 15 to 20 working days.
s 9(2)(h)	[redacted]	[redacted]


s 9(2)(h)

s 9(2)(h)

6	Proportionate conditions – Cl 24WB	**agree** that applicants should be able 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, as there is a need to create an end point to avoid multiple back and forward.
7	Change to Schedule 6, clause 1D of version 8.0 of the Bill	**agree** to alternate drafting proposed ((subject to PCO view) 1D Conditions (1) A panel— (a) **may** set conditions on a wildlife approval that it considers appropriate to ensure that best practice standards are met (b) may set any other conditions on a wildlife approval that the panel considers necessary to manage the effects of the activity on protected wildlife (2) In setting any condition under subclause (1), the panel must— (a) consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval; and (b) where more than minor……
8	Change to Schedule 6, clause 1C of version 8.0 of the Bill	**agree** to alternate drafting proposed (subject to PCO view) 1C Criteria for assessment of application for wildlife approval For the purposes of section 24W, when considering an application for a wildlife approval, including conditions under clause 1D, the panel must take into account, giving the greatest weight to paragraph (a),— (a) the purpose of this Act; and (b) the purpose of the Wildlife Act 1953 and the effects of the project on the protected wildlife that is to be covered by the approval; and (d) information and requirements relating to the protected wildlife that is to be covered by the approval, giving **less weight to** ~~greater weight~~ to requirements to protect those species that are **not**— (i) classified as threatened, data deficient, or at risk under the New Zealand Threat Classification System; or (ii) the subject of international conservation agreements.
9	Chair of panel (clause 4 of Schedule 3 of the Bill v 8.0)	**agree** to change "in consultation with Minister" from 4(2), (3) and (6) to 'may consult the Minister'. Exact wording is subject to PCO drafting, to align with the rest of the drafting of the Bill.

Document 16

Ministry for the Environment
Manatū Mō Te Taiao

Briefing: Cover note for Fast-track Approvals Bill House Pack for the Committee of the Whole House debate

Date submitted: 6 December 2024
Tracking number: BRF-5699
Sub Security level: In-Confidence
MfE priority: Urgent

Actions sought from Ministers	
Name and position	***Action sought***
To Hon Chris BISHOP **Minister Responsible for RMA Reform**	Note the attachments to support the Minister through Committee of the Whole House debate
Hon Shane JONES **Minister for Regional Development**	Note the attachments to support the Minister through Committee of the Whole House debate

Actions for Minister's office staff

Forward this briefing for noting:
Hon Simeon Brown, Minister for Energy, Local Government and Transport;
Hon Paul Goldsmith, Minister of Justice, Minister for Arts, Culture and Heritage;
Hon Tama Potaka, Minister for Māori Crown Relations: Te Arawhiti;
Hon Penny Simmonds, Minister for the Environment;
Hon Chris Penk, Minister for Land Information;

Return the signed briefing to the Ministry for the Environment (ema.pct@mfe.govt.nz and advice@mfe.govt.nz).

Appendices and attachments

1. Debate Guide
2. List of AP and responses

Key contacts at Ministry for the Environment

Position	***Name***	***Cell phone***	***First contact***
Principal Author	Emily Allan		
Responsible Manager	Robyn Washbourne	s 9(2)(a)	
General Manager	Jo Gascoigne	s 9(2)(a)	✓

Minister's comments

Cover note for Fast-track Approvals Bill House Pack for the Committee of the Whole House debate

Purpose

1. This briefing attaches a House pack and associated documents to support the Ministers through the Committee of the Whole House (COWH) stage for the Fast-track Approvals Bill.

Background

2. The Legislative Cabinet Paper (LEG Paper) and appendices will be considered by Cabinet on 9 December 2024 seeking agreement to introduction of the Government Amendment Paper (AP) to the House later that week.

Analysis and advice

3. The House pack contains:

    i A debate guide – this is an abridged guide to the AP drafting and contains context and Q&As for the relevant clauses to support your responses in the debate

    ii A list of the opposition APs which have been received to date with responses

    iii The Third Reading Speech

    iv The Legislative statement to support the Third Reading.

4. The debate guide is based on the version 13.2 of the AP drafting. Some of the recent decisions made over the last couple of days by Ministers may not be fully reflected in the debate guide, although we have made efforts to incorporate these decisions as much as possible within the timeframes available. Officials will be in the Chamber to answer your questions on these recent changes.

5. We have provided opposition APs and our advice on responses. We expect more APs to come over the next few days and some may be tabled on the day in the House (as per standing order 314). Officials will be in the Chamber to support you to respond.

6. Due to the short timeframe between lodging the LEG paper, and providing you with this House Pack there has been limited opportunity for agencies to sign out the House Pack as a whole. The individual sections of the Debate guide or responses to APs which are within the purview of relevant agencies have been provided and approved by those relevant agencies.

Running of the COWH debate

7. During the Committee of the Whole House debate, there will always be a senior official in the Chamber to support you. This will be Jo Gascoigne, or Kevin Guerin from MfE, or Susan Hall from MBIE. Relevant subject matter experts from the agencies will also be present to answer detailed questions and the most relevant agency lawyer will be present. We will ensure the most relevant officials are available to support either Minister Bishop or Minister Jones depending on how you wish to share the lead ministerial role in the Chamber.

Next steps

8. The LEG paper and AP will be considered by Cabinet on 9 December 2024.

9. The Government AP will be tabled in the House on 10 December 2024 and Committee of the Whole House is anticipated to start of 10 December 2024 under urgency and proceed for the rest of the week as needed.

Signatures

s 9(2)(a)

Jo Gascoigne
General Manager – Resource Management System
Environmental Management and Adaptation
6 December 2024

Document 17

Ministry for the Environment
Manatū Mō Te Taiao

Aide memoire: Fast-track Approvals Bill Third Reading materials

Date submitted: 13 December 2024
Tracking number: BRF-5729
Security level: In-Confidence

Actions sought from ministers	
Name and position	***Action sought***
To Hon Chris BISHOP **Minister Responsible for RMA Reform** Hon Shane JONES **Minister for Regional Development**	For noting only

Appendices and attachments
1. Draft third reading speech
2. Legislative Statement for third reading speech
3. Bullet points for a press release on third reading
4. Additional back pocket information that arose from Committee of the Whole House
5. Response to legislative scrutiny briefing memorandum

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Emily Allan		
Responsible Manager	Robyn Washbourne	s 9(2)(a)	
General Manager	Jo Gascoigne	s 9(2)(a)	✓

Fast-track Approvals Bill Third Reading materials

Purpose

1. This aide memoire provides you with the materials and information needed to support you in the third reading of the Fast-track Approvals Bill, scheduled for the week of the 16 December 2024.

Background

2. The second reading of the Fast-track Approvals Bill (the Bill) was completed on 13 November 2024. The Committee of the Whole House stage was undertaken the week of the 9 December 2024, with the Bill being reported back to the House on 12 December 2024.

3. Once a bill has been fully considered by the Committee of the Whole House, it is set down for third reading on the next sitting day. The next sitting day is scheduled for the 17 December 2024.

4. To support the third reading, attached are the draft third reading speech (**Appendix One**) and the Legislative statement (**Appendix Two**). We seek your feedback on these documents.

5. Additionally, we are providing you with some bullet points to inform a press release (**Appendix Three**), and additional back pocket information that arose from the Committee of the Whole House legislative stage (**Appendix Four**).

6. The Legislative scrutiny briefing memorandum was written by the office of the Clerk of the Environment Committee on 21 May 2024. However, there was a delay with this memorandum being provided to agencies for a response, and this was not received by agencies until 7 October 2024.

7. The communication with the office of the Clerk of the Environment Committee accepted that it was not possible for a response to be provided before the Environment Committee reported back on the Bill, which occurred on 18 October 2024. The office of the Clerk of the Environment Committee sought assurance that a response would be provided for the records. Please find the proposed response to the legislative scrutiny briefing memorandum (**Appendix Five**).

Next steps

8. The Third Reading of the Fast-track Approvals Bill has been scheduled for the week of the 16 December 2024. The Bill will then progress to Royal Assent, with the intention that this is completed prior to Christmas.

9. Additionally, the Cabinet Legislation Committee (LEG) paper for cost-recovery regulations on track for you to take it to Cabinet to be considered prior to 7 February 2025.

10. New referral applications, and substantive applications for listed projects, will be able to be received from 7 February 2025.

Signatures

s 9(2)(a)

Jo Gascoigne
General Manager

Resource Management System

13 December 2024

Legislative Statement for the Third Reading of the Fast-Track Approvals Bill

Presented to the House of Representatives in accordance with Standing Order 272

Introduction

1. The Fast-track Approvals Bill (the Bill) delivers on the coalition government's 100-day plan commitment to introduce a permanent fast-track one-stop-shop approvals regime. The Bill aims to enable faster approval of infrastructure and other projects that have significant regional or national benefits.

2. Consenting major infrastructure and other projects in New Zealand takes too long, costs too much and places insufficient value on the economic and social benefits of development relative to other considerations. The Bill contains measures that address these challenges.

3. This version of the Bill includes several updates made by Government Amendment Paper in the Committee of the Whole House stage. The most notable of these include:

    a. listing 149 projects in Schedule 2 of the Bill, allowing those projects to apply directly to the Environmental Protection Authority (EPA) for consideration by an expert panel, and removing Schedule 2, Part B

    b. providing that selected Crown Minerals Act mining approvals, complex freshwater fisheries approvals, and some changes or cancellations to conditions of resource consents may be sought as an approval under the Bill. The Bill now also provides that conditions on standard freshwater fisheries activities may be set as part of a resource consent

    c. providing for Ministerial determinations to enable the fast-track approvals process to be used for some electricity infrastructure that would otherwise be ineligible

    d. enabling an applicant to propose changes to their substantive application if the expert panel plans to decline an approval

    e. tightening the setting of conditions on projects so that they are no more onerous than necessary, including under the Schedules

    f. clarifying the high bar for declining an approval

    g. Time-limiting judicial review applications, removing the ability for persons with an interest greater than that of the general public to appeal decisions, and requiring appeals on applications for judicial review to be filed together where they relate to the same decision

    h. providing for some approvals to commence before appeal rights have been exhausted or expired

    i. clarifying that subsurface mining activities of Crown-owned minerals that do not have an impact on the surface of the land, are exempt from requiring permission from specified groups

    j. clarifying that land exchanges of Crown-owned reserves that are managed by a local authority or other non-Crown entity, can be fast-tracked without requiring the agreement of the management body

k. clarifying how the priority and order of applications competing for limited resources is addressed, including providing for notification of holders of existing resource consents before a substantive application is lodged and preventing a substantive application from progressing until competing applications are determined

l. providing that expert panels may have regard to the likelihood of wider benefits emerging from later stages of a project

m. Providing the expert panel with discretion when setting conditions on wildlife approvals, as well as removing the reference to best practice standards in condition-setting

n. establishing a comprehensive and flexible cost recovery process, with the EPA acting as a centralised collection agency

o. providing for administrators and third parties to recover actual and reasonable costs, and allowing for regulations to be made in relation to cost-recovery

p. preventing applications from being lodged until 7 February 2025 to enable sufficient time to make cost recovery regulations and panel appointments

q. expanding who may be appointed as the panel convener to include senior lawyers with expertise in resource management

r. providing for Ministers to call in, and panels to transfer to Ministers, decisions on concessions, land exchanges, and access arrangements.

4. A range of changes have also been made to improve the technical workability of the Bill.

Key Provisions of the Fast-track Approvals Bill

5. The Bill is standalone legislation with a statutory purpose focused on facilitating the delivery of infrastructure and development projects with significant regional or national benefits. A broad range of projects will be able to access the fast-track process including infrastructure, housing, resource extraction, aquaculture and other developments, provided they are not ineligible and meet the referral criteria in the Bill.

6. The fast-track process consolidates and speeds up multiple consenting and permissions processes under a range of legislation that are typically required for large and/or complex projects. The consents and permissions included are:

a. resource consents, notices of requirement, alterations to designations and certificates of compliance under the Resource Management Act 1991 (conditions on standard freshwater fisheries activities related to the Freshwater Fisheries Regulations 1983 and the Conservation Act 1987 may be set as part of a resource consent). Changes or cancellations to conditions of an existing resource consent may also be applied for in certain circumstances

b. concessions under the Conservation Act 1987 and Reserves Act approvals under the Reserves Act 1977, exchanges of some types of conservation land held under the Conservation Act 1987 and Reserves Act, and covenants in force under section 27 of the Conservation Act 1987 or section 77 of the Reserves Act 1977

c. approvals under the Wildlife Act 1953

d. applications for archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014

e. approvals or dispensations that would otherwise be applied for under regulation 42 or 43 of the Freshwater Fisheries Regulations 1983 in respect of a complex freshwater fisheries activity

f. marine consents under the Exclusive Economic Zone and Continental Shelf (Environment Effects) Act 2012 (EEZ Act)

g. Mining permits and section 61 land access arrangements under the Crown Minerals Act 1991

h. more than minor adverse effects test under the Fisheries Act 1996.

7. Projects can access the fast-track process through two pathways:

a. by being listed in Schedule 2 of the Bill. Following Royal Assent, these projects can apply directly to the EPA for consideration by an expert panel

b. by submitting a referral application and the Minister for Infrastructure will determine whether to refer the project to the fast-track process.

8. Some activities are unable to be fast-tracked. These include:

a. most activities occurring on identified Māori land, without written agreement from the landowner or a determination made under this Bill

b. activities occurring on Māori customary land, or land set apart as Māori reservation under Part 17 of Te Ture Whenua Māori Act 1993

c. activities occurring in a customary marine title area, or protected customary rights area without written agreement from the rights holder/group

d. activities on reserves held under the Reserves Act 1977 that are vested in, or managed by, someone other than the Crown or a local authority without the written agreement of the persons responsible for it

e. activities occurring within an aquaculture settlement area without the required authorisation

f. activities that would be prevented under section 165J, 165M, 165Q, 165ZC, or 165ZDB of the Resource Management Act 1991 (which deal with occupation of space in the common marine and coastal area)

g. for projects in the open ocean, activities prohibited under international law, decommissioning activities, and offshore wind activities until permitting legislation is put in place

h. activities that require permissions on national reserves held under the Reserves Act 1977, without a determination made under this Bill

i. non-mining activities on land listed in Schedule 3A of the Bill

j. an activity that cannot be granted an access arrangement under section 61 or 61B of the Crown Minerals Act 1991.

Fast-track referral process

9. The Minister for Infrastructure will decide whether to refer a project to the fast-track process.

10. The Minister may accept a project if it meets the stated criteria, which include being satisfied that the project is an infrastructure or development project that would have significant regional or national benefits. To aid the assessment of whether a project will provide significant regional or national benefits there are a number of matters the Minister may consider. When assessing projects, the Minister must seek written comments from the Minister for the Environment and relevant portfolio ministers, local authorities, agencies or statutory bodies, Treaty settlement or related entities and other identified Māori groups with interests.

11. The Minister for Infrastructure will have broad discretion to approve or decline the referral of projects and there is no requirement to refer an application because it is an eligible activity.

The Expert Panel

12. The role of the expert panel is to consider the project in detail and determine whether the approvals sought should be granted or declined, with any conditions the panel considers appropriate.

13. The purpose of the Bill will take primacy in the panel's assessment of an application, with normal considerations under existing legislation as set out in the schedules informing the assessment but having lesser weight.

14. The Bill sets out time frames for the panel's decision.

15. A panel convenor will be appointed by the Minister for Infrastructure to appoint members of expert panels. The panel convenor will be a former (including retired) Environment or High Court Judge, or a senior lawyer with resource management expertise. Panels will be chaired by either the panel convenor or a suitably qualified person, determined by the panel convenor.

16. Panels are required to obtain written comments from specified parties, including:

    a. relevant local authorities

    b. relevant iwi authorities and Treaty settlement entities, protected customary rights groups and customary marine title groups, and other specified Māori groups

    c. landowners and occupiers on and adjacent to the site

    d. the Minister for the Environment and other relevant portfolio ministers

    e. relevant administering agencies

    f. requiring authorities that have a designation on or adjacent to the site

g. any other person the expert panel considers appropriate and other specified persons and groups for specific approvals.

17. It is not mandatory for a panel to hold hearings as part of this process, although a panel has the discretion to do so to assist their assessment.

Treaty settlements

18. Protections have been drafted into the Bill to help ensure Treaty settlements and other specified arrangements are upheld throughout the fast-track process, including:

    a. a general requirement for all persons exercising functions under the Bill to act in a manner that is consistent with existing Treaty of Waitangi settlements, customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

    b. an ability for the Minister for Infrastructure to decline to refer an application to the expert panel if they consider it is inconsistent with a Treaty settlement / specified arrangement

    c. when considering a referral application, the Minister must comply with any procedural requirements in a Treaty settlement or specified arrangement

    d. if a Treaty settlement or specified arrangement includes procedural arrangements relating to the appointment of a decision-making body for hearings, or any other procedural matters, the panel must comply with those arrangements as if they were the relevant decision-maker, or obtain agreement from the relevant entity to adopt a modified arrangement which may not be unreasonably withheld

    e. where a Treaty settlement / specified arrangement provides for the consideration of a document (including statutory planning documents), it must be given the same or equivalent effect as it would have under the relevant specified Act by both the minister at referral stage and the panel at substantive stage.

Decision-making

19. Each panel must consider whether to grant the approvals sought and set appropriate conditions, or decline the approval.

20. The criteria which the panel applies when considering an application for an approval differ depending on the approval sought. However, across all approvals the purpose and provisions of the Bill apply instead of the usual processes and decision-making in existing legislation. This approach is intended to ensure the significant benefits for communities which infrastructure and other development projects provide are recognised in decision-making.

21. 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.

22. The Bill also provides for a streamlined Environment Court process under the Public Works Act 1981.

Implementation

23. The Bill provides for compliance and enforcement functions to be undertaken in line with the powers and duties under the relevant approval legislation. Local authorities will retain their compliance and enforcement functions in relation to Resource Management Act 1991 notice of requirement and resource consent conditions, as will the Environmental Protection Authority in relation to marine consents in the exclusive economic zone, Heritage New Zealand in relation to archaeological authorities and the Department of Conservation in relation to concessions, access arrangements, and wildlife approvals.

24. The date from which applications can be lodged is specified in the Bill as the 7 February 2025.

Judicial review and appeals

25. Appeals on panel decisions may be taken to the High Court on points of law only. After a High Court determination, no appeal may be made to the Court of Appeal, but a party may apply to the Supreme Court for leave to bring an appeal. Parties who may appeal a decision are the applicant, any relevant local authority, the Attorney-General, or any person or group that provided comments in response to an invitation given under the Bill.

26. An application for judicial review or notice of appeal must be filed no later than 20 working days after the relevant decision is published. If a person wishes to appeal in relation to a panel's decision on approval and apply for judicial review in relation to the same decision, those applications must be filed together

Additional back pocket information for matters that arose from Committee of the Whole House

Additional Government APs tabled in the House

- Corrections to a listed project
- Changes to appeal rights in Schedule 5

What was the late amendment you made to the Fast-track Approvals Bill?

1. It was a relatively minor change, to allow for approvals to proceed where a court process is still underway, but the Court considers it is unlikely to affect the outcome of some or all of the approvals.

What is the issue?

2. The issue was that approvals under the Bill (including land related approvals for DOC) cannot be actioned until after any appeal rights relating to that approval have been exhausted or have expired. This could result in unmerited appeals delaying projects for long periods of time.

How does it work?

3. If an appeal or judicial review is lodged, the High Court will determine whether commencement of the relevant approval(s) should take place (at the expiration of 30 days). Or, if the High Court considers the appeal has merit it may choose to stay the commencement of the approval(s).

Why was this change made?

4. To ensure that appeals without merit don't hold up approved fast-track projects.

What benefit does this new approach provide?

5. In essence, it shifts the emphasis onto appellants to argue and the courts to determine whether the approval granted by the expert panel should be able to commence immediately, or if it should be stayed pending the outcome of the appeal.

Would an appeal on one approval impact the others?

6. No, any approvals that are not appealed will commence as soon as the timeframes in the Bill expire; so projects can begin in-part where possible, consistent with the purpose of this legislation.

Does this mean an approval (e.g. a concession, access arrangement, land exchange or mining permit etc) could commence before the outcome of an appeal is known?

7. Where the appeal has merit, the court can order a "stay", preventing the approval from commencing until the appeal is resolved. Where the appeal has no merit, the court is unlikely to order a stay, which would mean the approval can commence.

What about judicial review applications?

8. The same provisions apply for judicial reviews as for appeals.

What are the timelines for the courts if they are going to order a stay?

9. If an appeal was filed on the final day for appeals, the court would have 10 working days in which to decide on a stay. This is expected to be enough time for the court to consider the merits of the appeal and decide whether the project should be held up.

Response to legislative scrutiny briefing memorandum

What is the rationale for excluding reference to Treaty principles and a requirement to act consistently with these.

1. The Bill contains specific provisions throughout the Bill to uphold Māori rights and interests including Treaty settlements and other arrangements. These specific operative provisions are intended to provide a clearer direction to decision-makers as to what is required of them than a general reference to Treaty principles would.

Why aren't decision makers required to consider a cultural impact assessment?

2. The consultation required by the applicant, along with the clause 19A report and clause 19 ministerial consultation mean there is opportunity for all relevant groups to be involved in the process early on, and to provide details of the impacts of the proposed activity without requiring a separate cultural impact assessment to be prepared.

3. As a further safeguard for Māori rights and interests the clause 19A report and the expert panel's recommendation/decision are reviewed by the Minister for Māori Development and Minister for Māori Crown Relations: Te Arawhiti.

4. If a cultural impact assessment is provided with an application, despite there being no requirement to do so, that assessment forms part of the application and will be considered by decision-makers.

Is the timeframe for providing comment in the Bill sufficient?

5. The timeframe for providing comments is sufficient. In the original version of the Bill, the timeframe for invited persons to provide comment was 10 days (on both referral and substantive applications). The Environment Committee considered this – submissions on this issue most commonly recommended 20-working days. The Committee agreed and the timeframe has been extended to 20 working days.

6. The timeframe of 20 working days is the same allowance provided for under the RMA for submissions and longer than the time provided under the FTCA, which had a timeframe of 10-days.

Is the restriction on appeal rights appropriate?

7. Appeals are provided for under the Bill are provided for, but they can only be made on points of law by the persons described in the legislation. The approach is based off the appeal rights provided for fast-track decisions under the Natural and Built Environment Act 2023.

8. This approach strikes an appropriate balance between the need for natural justice and the need for timely decision-making on significant projects. The ability to appeal provides an important avenue for natural justice, however, it can also undermine the intent of this legislation by giving opportunities for issues addressed in the fast-track process to be relitigated through the courts.

9. It is appropriate that appeals are made to the High Court on points of law (and not the Environment Court on merit) because the expert panel brings a sufficient level of expertise to the decision-making process. The merits of an application are already considered twice through the fast-track process, firstly through the referral decision where the significance of a project's benefits is considered, and secondly through the expert panel assessment stage where the effects of the project are considered more comprehensively

Are there situations where a decision made by the panel results in the compulsory acquisition of private property?

10. The Bill does not provide for the compulsory acquisition of private property as this power is managed under the Public Works Act 1981.

11. The Bill aligns two similar considerations relating to alternative sites, routes, or other methods of achieving objectives which are currently made separately under the PWA and the RMA. The Bill requires the Environment Court, when considering an objection under the PWA, to adopt the determination of the expert panel on these matters.

Does the Bill affect existing or already completed proceedings under the RMA and other legislation affected by the Bill?

12. The Bill does not affect existing or completed proceedings under the RMA and other approvals legislation. However, the Bill does not prevent projects with applications currently being considered, or applications previously declined, from being considered afresh under the fast-track process.

13. This Bill has been designed to address some of the roadblocks that regionally and nationally significant projects face under current approval frameworks. Excluding projects that have previously been rejected or held up under existing processes would be counter-productive to addressing this issue.

Why weren't the listed projects included in the Bill earlier

14. The projects went through a thorough and robust process which included an open application process run by Ministry for the Environment, analysis by officials, an independent assessment and recommendations process by an independent Advisory Group, and final decisions by Cabinet.

Why couldn't the public comment on these projects?

15. Projects which are fast-tracked under this Bill are not publicly notified. Instead, the Bill has been designed so that specific persons and groups with a particular interest in the project are invited to comment. This approach was maintained for the listed projects.

Does the Bill align with New Zealand's international commitments in relation to environmental protections?

16. The Ministry of Foreign Affairs and Trade continues to advise the Government on the international obligations that are relevant to the Bill. Officials could develop supplementary guidance for decision-makers that will help them identify the relevant international obligations that may apply to the consent application before them.

Further concerns raised in the Legislative Scrutiny Briefing Memorandum

17. Recommendations 8 and 9 of the memorandum relate to joint Ministers making the substantive decision on projects. Those concerns are resolved with expert panels now making the substantive decision.

18. Recommendation 10 of the memorandum relates to the notification of the final decision. This concern is resolved through new clause 24Y which outlines a wider range of people the decision is served to, and a requirement to make the decision public.

Document 18

Ministry for the Environment
Manatū Mō Te Taiao

Aide Memoire: Agency fees for cost recovery under Fast-track Approvals Act 2024

Date submitted: 24 January 2025
Tracking number: BRF-5753
Sub Security level: In-Confidence
MfE priority: Urgent

Actions sought from Ministers		
Name and position	***Action sought***	***Response by***
To Hon Chris BISHOP **Minister Responsible for RMA Reform** **Minister for Infrastructure**	Note attached rates set by agencies, to be published by 7 February 2025	3 February 2025
Cc Hon Shane JONES **Minister for Regional Development**	As above	3 February 2025

Actions for Minister's office staff
Forward to Minister Jones office

Appendices and attachments
1. Agency rates 2. Summary of submissions received 3. List of organisations invited to submit

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Oliver Sangster		
Acting General Manager	Stephanie Frame	s 9(2)(a)	✓

Minister's comments

Agency fees for cost recovery under Fast-track Approvals Act 2024

Key messages

1. This aide memoire advises you of rates that have been set following targeted consultation by the following central government agencies, to recover their costs incurred under the Fast-track Approvals Act 2024 (the Act) from applicants:

    - Ministry for the Environment (MfE)
    - Environmental Protection Authority (EPA)
    - Ministry for Business, Innovation and Employment (MBIE)
    - Department of Conservation
    - Office for Māori Crown Relations – Te Arawhiti (Te Arawhiti)
    - Ministry for Primary Industries (MPI)
    - Heritage New Zealand Pouhere Taonga.

2. Under the Act, government agencies are empowered to recover all actual and reasonable costs incurred from applicants, in performing or exercising functions, powers and duties in relation to an application. The Fast-track Approvals (Cost Recovery) Regulations 2025 (the Regulations) will prescribe upfront deposits and levies payable when applications are lodged. Each agency's rates need to be published online for transparency to prospective payers and the public, but the rates are not prescribed in regulation.

3. We expect in some cases, applicants' upfront payments will be sufficient to cover all recoverable costs, and applicants may receive partial refunds on their deposits. However, in complex cases additional costs will likely need to be recovered from applicants.

4. To set proposed rates for processing FTA applications, the government agencies listed above factored their direct staff time, and a share of overheads and operating costs. These costs vary across agencies, which is a key driver for the different rates set. MfE facilitated two cross-agency workshops to promote consistency where possible.

5. The agencies' proposed rates were sent to 201 organisations as a targeted consultation process. Thirteen submissions were received, which are summarised at Appendix 2. An overview of key themes and high level responses is provided in paragraph (7). Agencies considered the feedback received to determine their final hourly rates (Appendix 1).

6. To ensure overall efficiency, agencies are required to act in accordance with procedural principles under the Act (including timeliness and cost effectiveness).

7. We will review the cost recovery and contributions model in early 2026 (following the first year of implementation).

Recommendations

We recommend that you:

a. **note** that the Fast-track Approvals Act 2024 permits government agencies to recover from applicants the actual and reasonable costs associated with processing applications under the Act

b. **note** targeted consultation was carried out in December 2024 on the rates proposed by Ministry for the Environment, Environmental Protection Authority (EPA), Ministry for Business, Innovation and Employment (MBIE), Ministry for Primary Industries, Department of Conservation, Te Arawhiti and Heritage New Zealand Pouhere Taonga

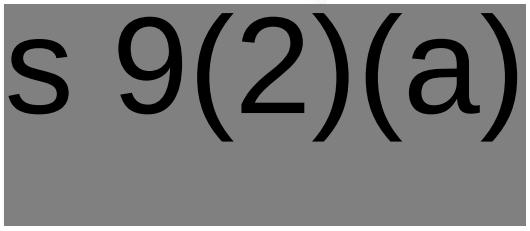
c. **note** these agencies have finalised their rates (Appendix 1, third column), and will publish these as required under the Fast-track Approvals (Cost Recovery) Regulations 2025, ahead of 7 February 2025 'go-live'

d. **note** the EPA's rates remain subject to endorsement by the EPA Board on 5 February

e. **note** rates will be reviewed in early 2026, alongside a review of the initial deposit and levy amounts set in the above regulations which Cabinet agreed to [CAB-24-MIN-0471 refers]

f. **note** only MBIE has advised us it required a change to appropriation to incur costs to process fast-track applications, which MBIE is resolving separately through briefing the Minister of Economic Development and Minister of Finance

Signatures



Stephanie Frame
Acting General Manager
Delivery and Operations
24 January 2025

Fast-track cost recovery regulations: Proposed fee, levy, and financial contribution values

Purpose

1. The purpose of this aide memoire is to advise you of the rates set by agencies to recover their costs from applicants under the Fast-track Approvals Act 2024 (the Act). These rates will be published ahead of applications being opened on 7 February 2025.

Background

2. The Act, and the Fast-track Approvals (Cost-Recovery) Regulations 2025 (the Regulations), set out a cost recovery regime which allows for government agencies and local authorities to recover their costs from prospective and actual Fast-track Approvals (FTA) applicants. Each agency is responsible for determining their actual and reasonable costs incurred in considering an application in accordance with rates set by the agency. Agencies (including local government) will recover pre-application costs (if any) from applicants directly, and application costs (post-lodgement) via the EPA's centralised invoicing system for the FTA regime, in accordance with the legislation.

3. Through its interagency governance structure, MfE has been working with government agencies involved in FTA regime. This includes the agencies listed in paragraph (1) of the *Key messages* section that intend to recover their costs from applicants[1].

4. Agencies factored their respective staff and overhead costs, which differ between agencies, to set proposed rates. Some agencies already had pre-existing cost-recovery regimes and rates they were able to build off (for example, EPA and MPI), while others had to create new rates (for example, MfE, Heritage New Zealand). Some agencies set a single aggregate rate for different roles involved within their agency (for simplicity), while others set separate rates for different roles. MfE facilitated two cross-agency workshops to promote consistency where possible, but ultimately these are individual agency decisions.

5. In December 2024, you agreed MfE would facilitate joint targeted consultation on proposed fees being set by agencies to recover their costs of considering applications under the Fast-track Approvals Act 2024 (BRF-5450 refers). This consultation occurred in early December.

[1]The consultation material did not propose any cost recovery rates for Te Puni Kōkiri, due to ongoing discussions about the respective roles of Te Arawhiti and Te Puni Kōkiri in FTA implementation. Te Puni Kōkiri does not have a cost recovery process and is working towards the settings for reasonable cost recovery rates. Te Puni Kōkiri does not anticipate heavy involvement in the pre-application cost recovery process, as it does not have a role dealing directly with applicants on applications.

Analysis and advice

Targeted consultation

6. Consultation material was sent to 201 organisations (listed in Appendix 3). This included the groups involved in the earlier targeted policy testing on upfront payment amounts set in the Regulations, as well as other organisations that have projects listed in Schedule 2 of the Act, all local authorities, and targeted sector organisations. Within the first week of consultation, 86% of recipients had opened the message, and more than half had opened the attached consultation material.

7. Despite the high level of interest indicated, only thirteen organisations provided feedback. This comprised eight prospective applicants, two industry groups, two local authorities, and one Māori group. The low response rate may have been impacted by the timeframes, as feedback was collected in the final two weeks of December before Christmas (which was necessary for agencies to make decisions ahead of the 7 February go-live date).

8. A summary of submissions is attached (Appendix 2). Key themes raised and our response are outlined below.

Topic/suggestion	**Response**
Suggestion: a single standard rate across agencies	Due to differences between agencies (for example, overheads), setting a single standard rate would risk agencies not being able to fully recover their costs, and the Crown incurring the cost of processing applications as a result.
Suggestion: Fixed amounts/cost caps for individual tasks within the overall process	We applied some assumptions to inform advice on upfront deposit amounts being set under the Regulations. However, there is insufficient data at this point to fix or cap charges for each project stage at a reasonable level to ensure full cost recovery occurs. There will also be significant variability in the types and scale of projects, so setting fixed amounts at this stage would risk cross-subsidisation between applicants.
High upfront fees and uncertain costs could make the FTA process unviable for low value projects	Agencies have endeavoured to determine rates in accordance with the Act's requirement that only actual and reasonable costs may be recovered, in keeping with the overall objective that the system is user-pays and that the Crown does not subsidise applicants to use the process. The FTA process is intended for projects that have significant regional and national benefits. We expect that high value projects will still seek to use the FTA process due to its overall benefits of faster processing of consents and limitations on appeals (compared with the standard RMA consent process). Total costs will be application-specific and depend on many factors such as the time spent on assessing and advising on applications, expert panel rates, local government cost recovery, and the number of parties involved. There will

	inevitably be some uncertainty for applicants about the total cost of the process before applying, as is the case across the resource management system generally. Alternative avenues are available, including the standard RMA consenting pathway, for applicants that consider the costs are too high to apply for the fast-track pathway for a particular project.
Processing should be timely, transparent and value for money	The Act contains overarching procedural principles that agencies must abide by, including to promote efficiency, consistency and cost-effectiveness in processing applications. Agencies have endeavoured to determine reasonable rates to recover their costs, in accordance with the Act's requirement that only actual and reasonable costs may be recovered. In practice, applicants might request cost estimates from agencies (including the EPA), which we expect would become more accurate over time as more applications are processed through FTA implementation. Agencies would respond to any queries or concerns about costs applied (as shown on invoices) on a case-by-case basis.
Discussion of upfront deposit, levy and financial contribution amounts, noted in the consultation material to be set in regulation	These matters were the subject of earlier targeted consultation in October, to inform delegated decisions on the initial regulations (BRF-5450 refers). Amendments to these figures are out of scope of this agency fees-setting exercise. Review of these aspects will be part of the one year review in early 2026.
Proposed rates from each agency	All submissions in full were distributed to each agency for their consideration, to inform their final decision making on their respective rates. Agencies have set their final rates following consultation (Appendix 1).

Monitoring and review

9. Cabinet agreed to review the FTA levy rates, to ensure full cost recovery is occurring, in 2026, i.e. one year after applicants can apply for FTA processes [CAB-24-MIN-0471 refers].

10. This review will be led by MfE, as part of the Act's overall implementation review that is required as a 100-Day Plan initiative [CAB-23-MIN-0468 refers]. MfE will monitor FTA application volumes over time, including against the assumed volumes that were used to inform the levy amounts.

11. Government agency rates will be included as part of that review, considering evidence to emerge over the first year of the FTA regime's operation. Matters raised in submissions

(for example, cost caps/fixed amounts, or a single standard government rate) can be considered further as part of that one year review.

Appropriations

12. In our previous briefing [BRF-5450 refers], we noted government agencies were investigating the need for changes to appropriations, so that payments for FTA applications can be received.

13. MBIE was the only agency that has advised it required a new appropriation for this purpose. MBIE has resolved this by briefing the Minister for Economic Development and Minister of Finance directly in early December[2].

Te Tiriti analysis

14. The consultation was targeted to a limited number of groups, including ten Māori groups[3] that were included in earlier targeted policy testing on the proposed upfront deposit and levy amounts to be set in regulation. No impacts on Treaty settlements have been identified regarding the setting of individual agency rates.

15. The sole submission that was received from a Māori organisation, s 9(2)(a) considered that the fixed financial contribution amounts (in the Regulations) for Māori groups are unlikely to reflect the estimated time spent considering applications for comment, and considers that to be inconsistent with agencies setting hourly rates to recover their actual and reasonable costs. While the financial contribution for Māori groups was outside the scope of the targeted engagement, we think this contrast in approach when compared with the cost recovery regime for agencies is also likely to be raised by others.

16. Our earlier Te Tiriti analysis on financial contributions (BRF-5450 refers) noted that the fixed contributions are set at a level which will provide some support to Māori groups to participate in the FTA process (providing comments on applications) but does not reflect full cost recovery by those groups (or differences in scale between groups). In addition to a requirement for decision-makers to act consistently with obligations in Treaty settlements and recognised customary rights, the Act obliges the Minister and panel to seek comment from relevant Māori groups. If the fixed nature of financial contributions for Māori groups means they have to draw on Treaty settlement redress to meet the additional costs of responding to government policy processes, such as providing comments on applications, then it risks undermining the durability of the very settlements the Act aims to uphold.

17. Revisiting the financial contribution amounts is beyond the scope of this current agency fees setting work, but this will be considered as part of the one year review in early 2026.

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[2] MBIE BRIEFING-REQ-0006686 refers

[3] Note: All organisations with projects listed in Schedule 2 of the Act were also included, some of which are Māori organisations e.g. iwi-led projects

Other considerations

Consultation and engagement

18. Feedback from engagement is set out in the attached summary of submissions (Appendix 2).

19. The following agencies have been consulted in the preparation of this aide memoire: EPA, Department of Conservation, MBIE, MPI, Heritage New Zealand, Ministry for Culture and Heritage, Te Arawhiti, and Te Puni Kōkiri. Land Information New Zealand were invited but opted not to be involved in the rates setting exercise, as that agency's role under the FTA Act is limited and it does not intend to recover costs. Te Puni Kōkiri does not have a cost recovery process and is working towards developing reasonable cost recovery rates.

s 9(2)(h)

[redacted]

Financial implications

22. While the rates are set to recover costs of processing applications from applicants, work volume (caseload) is applicant-driven, so there is some uncertainty about timing and resource (e.g. staff numbers) needed to respond to applications. This carries some financial risk, that agencies will need to manage. MfE has been engaging with applicants about their likely timing for lodgement of applications and will share this information with other agencies, including the EPA, which should assist with work planning.

Regulatory and legislative implications

23. There are no regulatory or legislative implications associated with this aide memoire. The ability for agencies to recover their reasonable costs is provided for in the Act, and the requirement to publish is being set in the Regulations.

Next steps

24. Agencies will publish their final rates on their respective websites following Cabinet's decisions on the Regulations, ahead of 7 February 'go live'. The EPA will link to these from the central Fast-track Approvals website that the EPA will administer.

25. Agencies have the option of recovering actual and reasonable costs for pre-application engagement by prospective applicants, which will be invoiced directly between the agency and the prospective applicant.

26. Agencies will use the EPA's centralised time sheeting system to invoice via the EPA for actual and reasonable costs incurred post lodgement. Agencies will be reimbursed by the EPA out of the initial upfront deposits paid by applicants. If and when deposit amounts are used up, additional charges will be recovered from applicants by the EPA (if any).

27. The Ministry for the Environment will continue working with agencies on process matters through the cross-agency operational structure, including planning for the cost recovery review to take place in early 2026.

Ministry for the Environment
Manatū Mō Te Taiao

Appendix 1: Agency rates for recovering costs under Fast-track Approvals Act 2025

The following agencies have confirmed their final rates following consultation.

Agency	Proposed hourly rates that were subject to targeted consultation (exc. GST)	Final hourly rates updated post-consultation (exc. GST)
Ministry for the Environment	Manager: $282 Principal: $258 Senior: $225 Advisor: $195 Assistant Advisor: $182	Manager: $238 Principal: $217 Senior: $190 Advisor: $165 Assistant Advisor: $153
Ministry for Business, Innovation and Employment	Manager: $355 Team Manager / Principal Advisor: $235 Senior Advisor: $199 Advisor: $147 Administrator: $115	Manager: $333[4] Team Leader / Principal Advisor: $220 Senior Advisor: $187 Advisor: $138 Administrator: $108
Ministry for Primary Industries	Agency rate: $177	Agency rate: $177
Department of Conservation	Agency rate: $204	Agency rate: $204
Heritage New Zealand Pouhere Taonga	Agency rate: $260	Agency rate: $260
Te Arawhiti	Agency rate: $195	Agency rate: $195

[4] MBIE notes that its 'manager' rate looks out of step with the MfE manager rate – this is because MBIE's 'manager' tier equivalents are generally referred to as Directors or General Managers in other agencies' structures

The Environmental Protection Authority (EPA) has refined rates following consultation, but these remain subject to endorsement by the EPA Board on 5 February.

	Proposed hourly rates that were subject to targeted consultation (exc. GST)	**Updated rates, subject to endorsement by EPA Board (exc. GST)**
Environmental Protection Authority	Project lead: $400-450 Team Leader / Principal Advisor: $319-$350 Senior Advisor: $266-$300 Advisor: $192-$210 Administrator: $152-$170	Surge Resourcing: $450 Team Lead / Principal Advisor: $319 Senior Advisor: $266 Advisor: $192 Administrator: $152

Appendix 2: Summary of targeted consultation feedback

Government agencies involved in Fast-track Approvals (FTA) tested their proposed rates for processing FTA applications through targeted engagement with key stakeholders between 3 and 17 December 2024. These agencies included the Ministry for the Environment (MfE), Environmental Protection Authority (EPA), Ministry of Business, Innovation and Employment (MBIE), Ministry for Primary Industries (MPI), Department of Conservation (DOC), Heritage New Zealand Pouhere Taonga, and Te Arawhiti.[5]

201 organisations were invited to comment on the proposed rates. This includes 103 FTA Listed Project Applicants,[6] 71 councils, 7 councils who are also FTA Listed Project Applicants, 9 industry associations, 8 Māori organisations, two Māori collective organisations, and one local government group. A full list of key stakeholders is included in Appendix 3.

Consultation material included each agency's proposed rates for feedback, alongside background information (including, for noting, the initial application fee (deposit), levy and financial contribution amounts to be set in regulations).

We received 13 submissions through targeted engagement

Submissions were received from eight FTA Listed Project Applicants, two councils, two industry associations, and one Māori organisation.

The Resource Management Law Association sought feedback from its membership, and the New Zealand Planning Institute sought feedback from its Resource Management Advisory Group, to inform their submissions.

MfE shared all submissions (raw feedback) and a summary of agency-specific feedback to all agencies, to inform their final decisions. Due to the low number of submissions received (relative to the number of organisations invited to submit), feedback received cannot be considered fully representative of views across the system.

There were several consistent key themes across the submissions

Cost recovery under FTA should be transparent and fair

- There was mixed support for the cost recovery provisions included within the FTA Bill. Some submitters supported the principles of cost-recovery and the centralisation of cost recovery processes via the EPA once an application has been lodged.
- A small number of submitters opposed the FTA's cost recovery provisions, stating that this was core government business and applicants should not be charged. Furthermore, there was a perception that agencies were charging higher rates to make money using a consultancy-type model. The lack of alternative services to incentivise competitive pricing, unlike the private sector, was also noted.
- Publishing the departmental fee rates and actual costs is likely to provide greater transparency for applicants, which is important for maintaining trust and accountability. In addition, submitters called for a clear cost recovery policy framework and regular reviews of the fee structures and processes.

[5] Te Puni Kōkiri (TPK) is actively considering how it might enable a cost recovery process, so did not provide a proposed cost recovery rate as part of this targeted engagement.
[6] This includes all organisations included in the 149 Listed Projects but recognises some organisations have more than one project.

- Concerns were raised that interagency discussions about applications could result in cost increases for applicants.
- Concerns were also raised about the lack of a realistic mechanism to challenge unreasonable fees, which could undermine natural justice and procedural fairness.

Significant variation in how agencies calculated and set their proposed rates

- Some submitters felt there was not enough information provided on each agency's methodology to calculate the rates.
- The lack of rationale for the inconsistent fees across agencies was confusing, particularly as agencies used a range of approaches, such as the set hourly rate versus the tiered fee structure. Concerns were also raised that there was a lack of transparency in how the fees were determined, particularly for agencies that used a tiered fee structure.
- Many submitters noted the variable range in proposed fees; there were differing views on whether the proposed fees are appropriate, with some seeing them reasonable and others considering them too high.
- Concerns were raised about the high rates charged by government agencies, particularly when compared to private sector rates or some council rates for similar processes like the RMA consent process.
- Submitters recommended alternative approaches to setting agency fees to simplify the process, such as:
    - scaled fees (i.e. a three-tiered fee structure for low, medium and high complexity applications)
    - one single fee system for all government agencies to simplify the process
    - cost caps
    - providing upfront cost estimates, or
    - introducing phased payment options to reduce financial strain on applicants.

The cost recovery system needs to provide value for money, as the existing fee structure could negatively impact applicants for smaller projects

- Submitters considered proposed rates were high, with some particularly referring to rates proposed by MfE, MPI, DOC, Heritage New Zealand and Te Arawhiti.
- Submitters considered fees may make smaller projects financially unfeasible under the FTA process.
- There was an emphasis that applicants should receive value for money, which includes timely processing, transparency and focused engagement when working with central government.

Submitters also provided feedback on other components of the FTA cost recovery regime

Several submitters provided feedback on the broader content included in the slide pack. While this was out of scope of the targeted engagement, some key themes are listed below.

- There were concerns that the initial fees (deposit) and levy amounts were excessive and do not differentiate between the project type, size or complexity. It was also unclear if the initial fees (deposit) and levy amounts cover external consultant fees.
- There was support for the financial contributions for Māori groups, but concerns were raised that it is a fixed amount sum. It was recommended that Māori groups should be

able to charge their time by the hour like government agencies to ensure they receive compensation for their involvement that reflects their time, effort and expertise.

- One submitter considered council-controlled organisations should be able to recover costs in this regime to ensure they do not subsidise fast-track applications

Appendix 3: Organisations included in targeted consultation

The following organisations were invited to comment on proposed agency rates:

- All local authorities (regional, district and unitary councils), and Te Uru Kahika (regional/unitary council representative group)
- Authorised persons (and/or their contact representatives held by MfE), for projects listed in Schedule 2 of the Fast-track Approvals Act 2024
- Industry associations:
    - Aggregate and Quarry Association
    - Aquaculture New Zealand
    - Business New Zealand
    - Employers and Manufacturers Association
    - Infrastructure New Zealand
    - New Zealand Planning Institute
    - Property Council New Zealand
    - Resource Management Law Association
    - Straterra
- Māori organisations that were included in earlier targeted policy testing on fee, levy and financial contribution amounts. Note other Māori organisations were also included as authorised persons for listed projects.
    - Maungaharuru-Tangitū Trust
    - Ngaati Koroki Kahukura Trust and Taumata Wiiwii Trust
    - Ngaati Te Ata Waiohua
    - Ngāti Kahungunu Iwi Incorporated
    - Ngāti Rongomai Iwi Trust
    - Pou Taiao Iwi Advisors
    - Te Kawerau Iwi Tiaki Trust (Te Kawerau a Maki)
    - Te Rūnanga o Ngāi Tahu
    - Te Rūnanga o Ngāti Mutunga
    - Te Tai Kaha Māori Collective

Cabinet

Minute of Decision

Report of the Cabinet Business Committee: Period Ended 29 November 2024

On 2 December 2024, Cabinet made the following decisions on the work of the Cabinet Business Committee for the period ended 29 November 2024:

Out of Scope	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
CBC-24-MIN-0111	**Fast-Track Approvals: Financing the Implementation Costs for the Environmental Protection Authority** Portfolio: RMA Reform	CONFIRMED
Out of Scope	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

Out of Scope [redacted] [redacted]

[redacted] [redacted] [redacted]

Rachel Hayward
Secretary of the Cabinet

CBC-24-MIN-0111

Cabinet Business Committee

Minute of Decision

Fast-Track Approvals: Financing the Implementation Costs for the Environmental Protection Authority

Portfolio **RMA Reform**

On 25 November 2024, the Cabinet Business Committee:

1 **noted** that in September 2024, in relation to the Fast-track Approvals (FTA) regime, Cabinet authorised the Minister Responsible for RMA Reform and Minister for Regional Development (joint Ministers) to 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 relevant Amendment Paper and/or regulations [ECO-24-MIN-0200];

2 **noted** that joint Ministers agreed that the Environmental Protection Authority (EPA) be the lead agency for implementation, and therefore responsible for recovering costs from applicants;

3 **noted** that the EPA will incur up to $10 million to implement the regime through new FTA systems and processes;

4 **noted** that the EPA's FTA implementation costs will be recovered by applicants through levies, however, it will likely take up to five years for costs to be fully recovered;

5 **agreed** to a repayable capital injection of $10 million to be made to the EPA to finance its FTA implementation costs, repayable within five years from levy funds;

6 **agreed** that Ministry for the Environment will review the FTA levy rates in early-2026 to ensure that full cost recovery of the FTA regime is occurring;

7 **agreed** to establish the following new appropriation:

Vote	Appropriation Minister	Appropriation Administrator	Title	Type	Scope
Environment	Minister for the Environment	Ministry for the Environment	Repayable Capital Injection to the Environmental Protection Authority	Non-departmental Capital Expenditure	This appropriation is limited to capital injections to provide financial support to the Environmental Protection Authority

8 **approved** the following change to appropriations to give effect to the policy decision in paragraph 5 above, with a corresponding impact on net core Crown debt:

	$m – increase/(decrease)				
Vote Environment **Minister for the Environment**	**2024/25**	**2025/26**	**2026/27**	**2027/28**	**2028/29**
Non-departmental Capital Expenditure: Repayable Capital Injection to the Environmental Protection Authority	10.000	-	-	-	-
Total Capital	**10.000**	-	-	-	**-**

9 **agreed** that the changes to appropriations for 2024/25 above be included in the 2024/25 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;

10 **noted** that the final terms of the repayable capital injection will be approved by the Minister of Finance, with reference to section 65L of the Public Finance Act 1989, in consultation with the Minister for the Environment;

11 **noted** that, as the repayable capital injection is expected to be repaid to the Crown in full and with interest no later than 2029/30, it is deemed to be fiscally neutral in terms of the Government's fiscal management approach;

12 **noted** that the interest rates to be applied on the repayable capital injection will be confirmed at the time of lending;

13 **noted** that in the instance that application volumes are lower than modelled, there is a risk that the EPA will have insufficient revenue to repay the capital injection, and that, if this occurs, advice will be provided to Ministers at the time to consider available options, which may include a request to write off the residual sum of the capital injection.

Jenny Vickers
Committee Secretary

Attendance: (see over)

Present:
Rt Hon Christopher Luxon (Chair)
Hon David Seymour
Hon Nicola Willis
Hon Brooke van Velden
Hon Shane Jones
Hon Dr Shane Reti
Hon Simeon Brown
Hon Erica Stanford
Hon Todd McClay
Hon Matt Doocey

Officials present from:
Office of the Prime Minister
Department of the Prime Minister and Cabinet

In Confidence

Office of the Minister Responsible for RMA Reform

Cabinet Business Committee

Fast-Track Approvals: Financing the EPA's implementation costs

Proposal

1 This paper seeks agreement to a $10 million repayable capital injection (capital injection) to support the Environmental Protection Authority (EPA) to implement the Fast-track Approvals (FTA) regime.

Relation to government priorities

2 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.

3 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.

Executive Summary

4 The Minister Responsible for RMA Reform and the Minister for Regional Development, under delegated authority from Cabinet, agreed the EPA would be the lead agency and therefore responsible for all applicant-facing transactions on behalf of government agencies, such as receiving FTA applications, recovering fees and levies from applicants, and administering the substantive application process.

5 The EPA will incur costs of up to $10 million, to set up necessary systems and processes to implement its new functions under the FTA regime. For the successful administration of these functions, it is essential the correct systems and processes are in place before the FTA regime commences in early-2025. Due to the EPA's financial situation and limited working capital, it cannot set up these functions without additional financial support.

6 I seek Cabinet agreement to a $10 million repayable capital injection, repayable within five years from levy funds. This is to support the EPA to implement the required new FTA systems and processes. The EPA's implementation costs will be recovered by applicants through levies. However, based on estimated application volumes, and levy amounts, it will likely take up to five years for these costs to be fully recovered.

Background

7 On 23 September 2024, Cabinet agreed to enable a comprehensive cost-recovery approach so that costs incurred in processing fast-track applications can be recovered from users [CAB-24-MIN-0362 refers]. Cabinet agreed to authorise the Minister Responsible for RMA Reform and Minister for Regional Development to 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 an Amendment Paper and/or through regulations.

8 Delegated Ministers subsequently agreed to an overall approach to cost recovery, including the EPA taking a 'lead agency role', recovering fees and levies on behalf of other agencies.

9 Cabinet is scheduled to consider regulations setting out initial fees and levy amounts, to come into effect before applications can be lodged. Levies would be used to recover setup and ongoing system costs needed to implement the FTA regime, which cannot be directly attributed to individual applications. It will also be used to build a litigation fund to cover potential FTA litigation and judicial review costs and help cover bad debts (if applicants do not pay after all debt recovery avenues are exhausted).

EPA implementation activity

10 The EPA is currently setting up FTA systems and processes, which are essential to implementing the regime, so they are established before FTA applications are lodged in February 2025. The EPA estimates its set up costs and working capital requirements to be $10 million, which includes:

10.1 setting up and delivering a centralised, interagency, invoicing function;

10.2 setting up ICT solutions including an online application portal and case management system;

10.3 leading engagement with prospective and current applicants; and

10.4 developing effective cross-agency working relationships and protocols for efficient application assessment.

11 The EPA advised it will need to incur costs prior to legislation commencing ie, before it has received any levies to recover these costs. The Ministry for the Environment has agreed to underwrite EPA with up to $2 million for setup costs to provide the EPA with assurance to get implementation work under way.

12 The EPA has a range of ongoing costs associated with supporting the FTA regime, which are not directly attributable to single applicants. For this purpose, an applicant levy is proposed, with the purpose of funding:

12.1 contributions toward the panel, panel convenor, and Crown's involvement in any litigation relating fast-track approvals;

12.2 costs associated with the EPA performing its functions and exercising its powers and duties under the legislation, where those costs are not directly recovered from applicants through the fees regime; and

12.3 covering bad debt from unpaid fees for fast-track approvals.

The EPA needs additional financing to support it to implement the FTA regime

13 The EPA does not have adequate funding to set up and deliver new FTA systems and processes before levy payments are received by applicants. The Minister for the

Environment has indicated she is concerned the EPA will be in a deficit at year end. Based on estimated application volumes, the EPA has modelled a repayment period of five years.

14 I seek Cabinet agreement to provide the EPA with a $10 million non-concessionary repayable capital injection, repayable within five years from levy funds, to cover its FTA implementation costs.

15 The non-concessionary repayable capital injection is fiscally neutral to the Crown as it will be repaid within five years. Applicants will cover all costs associated with the EPA's required new FTA systems and processes, including interest costs, through the FTA levy.

16 Should Cabinet not agree to provide the $10 million repayable capital injection, the EPA may need to delay efforts to implement its FTA functions to manage its cashflow. Alternatively, the EPA may need to divert resources from its core regulatory functions – eg, through reducing the size and throughput of Hazardous Substance application decisions.

Officials have undertaken modelling to assure costs

17 Officials have undertaken robust modelling, and engaged an external consulting firm to independently test, peer review and quality assure the overall FTA system costs and to identify the levy rates required to repay these costs.

18 The initial levy rates have been set based on a low-volume of applicants scenario. This sets the levy rate at a higher amount and reduces the risk that insufficient FTA applications are received to cover the EPA's costs. This reflects the volume of applications is still reasonably uncertain and takes into account that the sustainability of levy rates is primarily driven by the number of applications received.

19 MfE will also review the FTA levy rates in early-2026 to ensure full cost recovery is occurring and that the EPA remains able to repay the repayable capital injection. Depending on the outcome of this review, that may result in an update to FTA cost recovery regulations.

20 In the instance that application volumes are lower than modelled and FTA levy rates cannot be adjusted to ensure full cost recovery, there is a risk there will be insufficient revenue to repay the capital injection from levies. If this occurs, advice will be provided at the time for Ministers to consider options available. This may include a request to write off the residual sum of the capital injection.

21 Officials considered if undertaking a new function could bring the EPA within scope of incurring a capital charge. Modelling suggests that the EPA's net assets will remain under the $15 million threshold for a capital charge. As such, I have not sought an exemption from the capital charge at this time. Should a capital charge apply in the future, it would be covered through the levies.

Implementation

22 The Ministry, EPA and Treasury will work together to implement the proposed repayable capital injection so this capital is available to EPA in December 2024.

Cost-of-living Implications

23 There are no cost-of-living implications.

Financial Implications

24 The repayable capital injection will be fiscally neutral to the Crown. It will be repaid no later than 2029/30 and be interest bearing at market interest rates. The actual interest rate used will be confirmed by the Treasury to align with market rates at the time the loan is issued.

25 As this repayable capital injection is fiscally neutral to the Crown, there is no requirement to seek out of cycle approval from the Minister of Finance.

26 Subject to Cabinet's approval, the proposed terms of the repayable capital injection will be approved by the Minister of Finance, in consultation with the Minister for the Environment (as Minister responsible for the EPA), with reference to section 65L of the Public Finance Act 1989. Section 65L authorises the Minister of Finance to lend money on behalf of the Crown if the Minister considers it necessary or expedient in the public interest to do so.

27 In the instance that application volumes are lower than modelled and FTA levy rates cannot be adjusted to ensure full cost recovery, there is a risk there will be insufficient revenue to repay the capital injection from levies. If this occurs, advice will be provided at the time for Ministers to consider options available. This may include a request to write off the residual sum of the capital injection.

Legislative Implications

28 There are no legislative implications related to this proposal.

Impact Analysis

Regulatory Impact Statement

29 A regulatory impact analysis is not required for this paper.

Climate Implications of Policy Assessment

30 A Climate Implications of Policy Assessment is not required for this paper.

Population Implications

31 This paper is not expected to have particular population impacts.

Human Rights

32 This paper is not expected to have particular human rights impacts.

Use of external resources

33 The Ministry for the Environment engaged an external consulting firm to independently test, peer review and quality assure the overall FTA system costs and to identify the levy rates required to repay these costs.

Consultation

34 The Treasury and Environmental Protection Authority were consulted on this paper. Department of Prime Minister and Cabinet were informed.

Communications

35 No communications activities associated with this paper are planned.

Proactive Release

36 The Ministry for the Environment will proactively release this Cabinet paper within 30 business days of decisions being confirmed by Cabinet.

Recommendations

The Minister Responsible for RMA Reform recommends that the Committee:

1 **note,** in relation to the Fast-track Approvals (FTA) regime, Cabinet delegated authority to the Minister Responsible for RMA Reform and Minister for Regional Development authorisation to 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 [CAB-24-MIN-0362 refers];

2 **note,** as part of their delegated decision-making authority, joint Ministers agreed the Environmental Protection Authority (EPA) be the lead agency for implementation and therefore responsible for recovering costs from applicants;

3 **note** the EPA will incur up to $10 million to implement the regime through new FTA systems and processes;

4 **note** the EPA's FTA implementation costs will be recovered by applicants through levies, however, it will likely take up to five years for costs to be fully recovered;

5 **agree** to a repayable capital injection of $10 million to be made to the EPA to finance its FTA implementation costs, repayable within five years from levy funds;

6 **agree** that Ministry for the Environment will review the FTA levy rates in early-2026 to ensure full cost recovery of the FTA regime is occurring;

7 **agree** to establish the following new appropriation;

Vote	Appropriation Minister	Appropriation Administrator	Title	Type	Scope
Environment	Minister for the Environment	Ministry for the Environment	Repayable Capital Injection to the Environmental Protection Authority	Non-departmental Capital Expenditure	This appropriation is limited to capital injections to provide financial support to the Environmental Protection Authority

8 **approve** the following change to appropriations to give effect to the policy decision in recommendation 5 above, with a corresponding impact on net core Crown debt:

	$m – increase/(decrease)				
Vote Environment Minister for the Environment	**2024/25**	**2025/26**	**2026/27**	**2027/28**	**2028/29**
Non-departmental Capital Expenditure: Repayable Capital Injection to the Environmental Protection Authority	10.000	-	-	-	-
Total Capital	**10.000**	-	-	-	**-**

9 **agree** that the proposed changes to appropriations for 2024/25 above be included in the 2024/25 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;

10 **note** that the final terms of the repayable capital injection will be approved by the Minister of Finance, with reference to section 65L of the Public Finance Act 1989, in consultation with the Minister for the Environment;

11 **note** that, as the repayable capital injection is expected to be repaid to the Crown in full and with interest no later than 2029/30, it is deemed to be fiscally neutral in terms of the Government's fiscal management approach;

12 **note** that the interest rates to be applied on the repayable capital injection will be confirmed at the time of lending;

13 **note** that in the instance that application volumes are lower than modelled, there is a risk that the EPA will have insufficient revenue to repay the capital injection. If this occurs, advice will be provided to Ministers at the time to consider available options. This may include a request to write off the residual sum of the capital injection.

Hon Chris Bishop

Minister Responsible for RMA Reform

Cabinet

Minute of Decision

Report of the Cabinet Economic Policy Committee: Period Ended 20 December 2024

On 28 January 2025, Cabinet made the following decisions on the work of the Cabinet Economic Policy Committee for the period ended 20 December 2024:

Out of Scope

ECO-24-MIN-0313	**Fast-track Approvals (Cost Recovery) Regulations 2025** Portfolio: Infrastructure	CONFIRMED
Out of Scope	[redacted]	[redacted]

Rachel Hayward
Secretary of the Cabinet

Cabinet Economic Policy Committee

Minute of Decision

Fast-track Approvals (Cost Recovery) Regulations 2025

Portfolio **Infrastructure**

On 18 December 2024, the Cabinet Economic Policy Committee (ECO):

1 **noted** that in September 2024, ECO:

1.1 agreed to enable a comprehensive cost-recovery approach to recover from users the costs incurred by the Crown associated with all functions, powers, and duties carried out under the Fast-track Approvals legislation, including those on behalf of the panel and panel convenor;

1.2 agreed that cost-recovery regulations can be made under the Fast-track Approvals legislation that relate to the setting of charges (both fees and levies) and for other matters relating to administering cost-recovery;

1.3 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;

1.4 authorised the Minister Responsible for RMA Reform and Minister for Regional Development to take decisions on the approach to setting fees and levies and on any other policy or technical matters relating to cost recovery for inclusion in the Amendment Paper and/or regulations;

[ECO-24-MIN-0200]

2 **noted** that the Minister Responsible for RMA Reform and Minister for Regional Development under delegated authority:

2.1 subsequently agreed that the primary legislation would include the appropriate enabling provisions, and the regulations would provide for contribution fee regulations to be prepared providing for fixed amounts to be paid to Māori groups who respond to an invitation to comment on an application;

2.2 agreed to the prescribed fee, levy, and financial contribution values that are set out in the draft regulations, attached under ECO-24-SUB-0313;

3 **noted** that the Fast-track Approvals (Cost Recovery) Regulations 2025 (the Regulations) will give effect to the decisions in paragraphs 1 and 2 above;

4 **authorised** the submission to the Executive Council of the Fast-track Approvals (Cost Recovery) Regulations 2025 [PCO 26872/2.0];

5 **noted** that the Regulations come into force on 7 February 2025;

6 **noted** that a waiver of the 28-day rule is sought:

6.1 so that the Regulations can come into force so that applications for the 'go-live' date can be achieved on 7 February 2025;

6.2 on the grounds that early commencement is necessary to avoid unfair commercial advantage being taken, or the purpose of the secondary legislation being defeated;

7 **agreed** to waive the 28-day rule so that the Regulations can come into force on 7 February 2025;

8 **authorised** the Parliamentary Counsel Office to continue to make minor changes to the Regulations prior to their submission to the Executive Council to settle technical matters and ensure consistency with the empowering provisions in the primary legislation;

9 **noted** that Cabinet has agreed that Ministry for the Environment will review the levy rates in early 2026 to ensure that full cost recovery of the Fast-track Approvals regime is occurring [CAB-24-MIN-0471].

Rachel Clarke
Committee Secretary

Present:
Hon David Seymour
Hon Nicola Willis (Chair)
Hon Shane Jones
Hon Brooke van Velden
Hon Chris Bishop
Hon Erica Stanford
Hon Louise Upston
Hon Tama Potaka
Hon Matt Doocey
Hon Simon Watts
Hon Melissa Lee
Hon Penny Simmonds
Hon Chris Penk
Hon Nicola Grigg
Hon Andrew Bayly
Hon Andrew Hoggard
Hon Mark Patterson

Officials present from:
Office of the Prime Minister
Office of Hon Chris Bishop
Office of Hon Erica Stanford
Office of Hon Simon Watts
Officials Committee for ECO

In Confidence

Office of the Minister for Infrastructure

Cabinet Legislation Committee

Fast Track (Cost Recovery) Regulations 2025

Proposal

1 This paper seeks authorisation to submit the Fast Track (Cost Recovery) Regulations 2025 (the regulations) to the Executive Council attached in Appendix A.

2 The primary purpose of these regulations is to establish initial application fee (deposit) and levy amounts payable by Fast-track applicants for applications made under the Fast-track Approvals Act, once enacted, and to establish financial contribution amounts for specific Māori groups.

Executive Summary

3 The Fast-track Approvals legislation will set up a permanent fast-track regime that improves decision-making timeframes and gives greater investment certainty to facilitate the delivery of infrastructure and other development projects with significant regional or national benefits. It consolidates and speeds up multiple consenting approval processes that are often required for large and/or complex projects in a ‘one-stop-shop’ arrangement.

4 The intention is that the Fast-track Approvals system is a user-pays system, where central and local government is not required to subsidise the system, and specified Māori groups that have roles set out under the Act are supported financially to participate in application processes. When the Fast-track Approvals Bill is enacted, it will contain regulation-making powers, to be made on the recommendation of the Minister for Infrastructure, providing for fees, charges, contributions towards the costs of third parties, and levies.

5 Cabinet previously authorised the Minister Responsible for Resource Management Act Reform and Minister for Regional Development to take decisions on the approach to setting fees and levies and on any other policy or technical matters relating to cost recovery for inclusion in the Amendment Paper and/or regulations [CAB-24-MIN-0362]. The decisions taken by delegated Ministers are described in this paper in paragraphs 9 to 16 and reflected in the attached regulations.

6 The key decision being sought from this paper is the authorisation to submit to Executive Council the Fast Track (Cost Recovery) Regulations 2025, this will establish via regulation the amounts payable by Fast-track applicants and establish financial contribution amounts for specific Māori groups for

applications made under the Fast-track Approvals Act (the Act), once enacted.

Policy

7 Once the Fast-track Approvals Bill is enacted, a new one-stop-shop process will be in place for projects of national or regional significance, for approvals under multiple pieces of parent legislation.

8 The intention is that the Fast-track Approvals system is a user-pays system, where central and local government is not required to subsidise the system, and specified Māori groups that have roles set out under the Act are supported financially to participate in application processes.

The Regulations will establish initial fee (deposit) and levy amounts for applicants

9 The costs to central government agencies and local authorities will be recoverable from applicants through fees and levies set by these regulations.

10 An applicant may apply for any number and combination of approvals, depending on the specific needs of their project. The multi-agency approach and potential for significant variability in the work involved across different applications introduces a degree of complexity and initial uncertainty in the likely costs of processing applications.

11 To address the uncertainty and mitigate the risk of bad debt, the regulations set initial application fees that must be paid to the Environmental Protection Authority (EPA) as deposit amounts, which are estimates of the total actual and reasonable costs of processing applications. Different deposits will apply at each of the three application stages and types: referral applications, land exchange applications, and substantive applications. The full final fees applicants will be required to pay will be based on the full actual and reasonable costs of the work to process an application, and such the EPA may charge applicants additional fees, or issue partial refunds based on the total actual and reasonable costs incurred. The EPA will act as the centralised agency for cost recovery and will reimburse agencies for their costs once it has recovered them from applicants.

12 Agencies who can recover costs under the legislation (on their own account at pre-application stage; and through the EPA at application stages), will go through their own processes to set and publish their own reasonable charges, and these will not be prescribed in regulation.

13 In addition to the application fees, applicants will be required to pay a levy, which will fund the wider Fast-track Approvals system costs including the EPA's lead agency costs (that are not otherwise recoverable), panel convenor costs, IT costs, and funds to cover litigation and bad debt.

14 The relevant rates that delegated Ministers have agreed to for the initial fees (deposits) and levies are set out in Table 1 below. These are supported by the analysis and advice in the 'Cost Recovery and financial contributions under

the Fast-track Approvals legislation' Stage 2 Cost Recovery Impact Statement (CRIS).

Table 1: Proposed initial fee (deposit) and levy values for regulations			
	Prescribed upfront fee (deposit amount)	Levy amount	Total initial payment at each application stage (initial fee (deposit) + levy)
Referral application	$12,000 + GST	$6,700 + GST	$18,700 + GST
Land exchange application	$36,000 + GST	$13,400 + GST	$39,400 + GST
Substantive application	$250,000 + GST	$140,000 + GST	$390,000 + GST

The Regulations will establish financial contribution amounts for specific Māori groups

15 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. [1]

16 These contributions are intended to support these groups' ability to respond to invitations to comment on applications within the timeframe required, and in turn will support Ministers and the panel in complying with the requirement to act consistently with obligations in Treaty settlements and customary rights recognised under relevant legislation. It will also support the Crown in meeting its obligations under the Treaty to actively protect Māori interests.

17 Proposed rates were tested in a targeted manner. Feedback from targeted policy testing was that there would ideally be a scale of contributions depending on complexity to reflect the variation in the time required to respond. Due to challenges of establishing a scale of contributions that would require further application-specific assessment, delegated Ministers agreed to a two-tier approach (see Table 2 below) for these contributions using the number of approval types sought relating to different schedules of the legislation as a simple proxy for this as follows:

17.1 If approval is sought only relating to one schedule, the lower contribution level would apply, on the assumption that these

[1] There are workability and legal challenges in providing for cost recovery for third parties, and as such financial contributions are being provided for rather than full cost recovery. Under this approach, specified amounts would be set in regulations as financial contributions to be provided to identified Māori groups responding to invitations to comment on fast-track applications.

applications are more likely to represent a medium level of complexity. This level will also apply to comments to the Department of Conservation on land exchange applications.

17.2 If approvals are sought relating to multiple schedules, the higher contribution levels are used on the assumption that these applications are more likely to represent a higher level of complexity.

Table 2: Financial contribution rates for specified Māori groups providing comments

	Lower contribution level based on medium complexity applications	Higher contribution level based on high complexity applications
Referral application	$1,500 + GST	$2,000 + GST
Land exchange application	$1,500 + GST	$1,500 + GST
Substantive application	$7,000 + GST	$10,000 + GST

The regulations will be reviewed in 2026

18 In December 2024, Cabinet agreed that Ministry for the Environment will review the levy rates in early 2026 to ensure that full cost recovery of the Fast-track Approvals regime is occurring [CAB-24-MIN-0471]. The review is intended to cover the cost recovery approach (including these regulations), as part of an overall implementation review that was signalled in the previous Supplementary Analysis Report on the Fast-track Approval Bill.[2]

Timing and 28-day rule

19 A waiver of the 28-day rule, which requires that regulations must not come into force until at least 28 days after they have been notified in the New Zealand Gazette, is sought. An early commencement is necessary to avoid unfair commercial advantage being taken, or the purpose of the secondary legislation being defeated, because if the regulations are not in place by 7 February 2025 when applications open, fast-track applicants will not be required to pay deposits towards their total fees or levy payments to contribute towards system costs.

Compliance

20 The regulations comply with each of the following:

[2] The Supplementary Analysis Report can be found here: https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/supplementary-analysis-report-fast-track-approvals-bill/

20.1 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;

20.2 the principles and guidelines set out in the Privacy Act 2020 (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);

20.3 relevant international standards and obligations;

20.4 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

21 We do not consider regulations will have a significant impact on the Crown's ability to uphold its obligations under the Treaty of Waitangi. The contributions for Māori groups will support the Crown in meeting its obligations under the Treaty to actively protect Māori interests, however the contributions are unlikely to cover the full costs of participation in the fast-track process, and may result in inequities between groups whose interests in the application require differing amounts of time to be spent on participating.

Regulations Review Committee

22 There are no grounds for the Regulations Review Committee to draw the disallowable instrument or regulations to the attention of the House of Representatives as a Standing Order requirement.

Certification by Parliamentary Counsel

23 PCO certifies that the regulations are in order for submission to Cabinet, subject to any final amendments that I may instruct under recommendation 8.

Impact Analysis

24 The Ministry for the Environment and the Ministry for Primary Industries Regulatory Impact Analysis (RIA) Panel has reviewed the CRIS attached in Appendix B. The RIA panel stated:

> *"the CRIS partially met the RIA quality assurance criteria. The panel noted: because this work is being done at pace, limited consultation has been undertaken which has impacted the analysis needed to accurately determine the amount of work required to process a consent under the fast-track system, the number of consent applications that can be expected, and therefore what actual costs for fast-track consents might be. The number of assumptions and unknowns that underpin the analysis within the CRIS weaken overall how convincing the document is. Despite these limitations the CRIS is clear, concise, and complete and sets out the rationale for cost recovery in relation to fast-track consents. It clearly sets out the context under which the proposed cost recovery framework and costs have been developed, and how this has impacted the analysis within the CRIS."*

Publicity

25 The Ministry for the Environment will work with my Office to ensure the decisions taken regarding the approach to fees, levies, and financial contributions are sufficiently publicised to prospective applicants and parties who can recover costs or receive financial contributions, ahead of the regulations coming into force.

Proactive Release

26 I intend to proactively release this paper on the Ministry for the Environment's website subject to redaction as appropriate under the Official Information Act 1982.

Consultation

27 The development of the policy approach for cost recovery for fast-track approvals has been led by the Ministry for the Environment in consultation with the Treasury, Environmental Protection Authority, Heritage New Zealand Pouhere Taonga, Ministry for Culture and Heritage, Land Information New Zealand, Ministry of Business, Innovation and Employment, Ministry for Primary Industries, Te Puni Kōkiri, Te Arawhiti, the Department of Conservation, and Parliamentary Counsel Office. All of these agencies have been involved in or consulted on the draft regulations. The Ministry of Foreign Affairs and Trade reviewed the regulations for consistency with relevant international standards and obligations and does not consider that the regulations are inconsistent with New Zealand's international obligations.

28 The proposed fee and levy values and financial contribution amounts were consulted on in a limited, targeted capacity. Written feedback was received from 18 organisations: seven prospective applicants, five industry groups, five local authorities or local authority groups, and one Māori group. The Ministry also met with a regional council representative group (Te Uru Kahika) and Te Rūnanga o Ngāi Tahu.

29 The rates are based on feedback from a range of prospective users, stakeholders, and Te Rūnanga o Ngāi Tahu. Some key feedback from these groups was that having a set fee contribution rather than actual and reasonable costs may create inequity between groups. This is because the one size fits all approach does not account for the difference in scale of iwi authorities and the different way each iwi operates.

Recommendations:

The Minister for Infrastructure recommends that the Committee:

1 note that Cabinet previously:

1.1 agreed to enable a comprehensive cost-recovery approach to recover from users the costs incurred by the Crown associated with all functions, powers, and duties carried out under the legislation, including those on behalf of the panel and panel convenor;

1.2 agreed that cost-recovery regulations can be made under the Fast-track Approvals legislation that relate to the setting of charges (both fees and levies) and for other matters relating to administering cost-recovery;

1.3 agreed to provide that other organisations that have a statutory role in the process (such as PSGEs and other Māori groups responding to invitations from Ministers or agencies to comment on referral or substantive applications) can have their costs recovered;

1.4 authorised the Minister Responsible for RMA Reform and Minister for Regional Development to take decisions on the approach to setting fees and levies and on any other policy or technical matters relating to cost recovery for inclusion in the Amendment Paper and/or regulations [CAB-24-MIN-0362];

2 note the Minister Responsible for RMA Reform and Minister for Regional Development under delegated authority:

2.1 subsequently agreed that the primary legislation would include the appropriate enabling provisions, and the regulations would provide for contribution fee regulations to be prepared providing for fixed amounts to be paid to Māori groups who respond to an invitation to comment on an application;

2.2 agreed to the prescribed fee, levy, and financial contribution values that are set out in the attached draft regulations;

3 note the Fast Track (Cost Recovery) Regulations 2025 will give effect to the decisions referred to in recommendations 1 and 2 above;

4 authorise the submission to the Executive Council of the Fast Track (Cost Recovery) Regulations 2025;

5 note that the Fast Track (Cost Recovery) Regulations 2025 come into force on 7 February 2025;

6 note that a waiver of the 28-day rule is sought:

6.1 so that the regulations can come into force as so applications for the ‘go-live’ date can be achieved on 7 February 2025;

6.2 on the grounds that early commencement is necessary to avoid unfair commercial advantage being taken, or the purpose of the secondary legislation being defeated;

7 agree to waive the 28-day rule so that the regulations can come into force on 7 February 2025;

8 agree that the Parliamentary Counsel Office can continue to make minor changes to the regulations prior to their submission to Executive Council to

settle technical matters and ensure consistency with the empowering provisions in the primary legislation;

9 note that Cabinet has agreed that Ministry for the Environment will review the levy rates in early 2026 to ensure that full cost recovery of the Fast-track Approvals regime is occurring [CAB-24-MIN-0471].

Authorised for lodgement

Hon Chris Bishop

Minister for Infrastructure

Document 25

Talking points for Cabinet Legislation Committee – Fast Track Approvals (Cost Recovery) Regulations 2024

1. This paper seeks authorisation to submit cost recovery regulations to Executive Council, to be made under the Fast-track Approvals Act.
2. The Fast-track Approvals system is being set up as user-pays. This means that the reasonable costs that central government agencies and local authorities incur, to exercise their functions, duties, and powers in relation to a fast-tracked application, will be recoverable from applicants.
3. Cabinet authorised the Minister for Regional Development and I (as Minister Responsible for RMA Reform) to take decisions on the approach to setting fees and levies in the Amendment Paper to the Bill and in regulations.
4. The primary legislation sets out the functions, duties, and powers which are cost-recoverable, and general provisions relating to cost recovery including what can be set in regulation.
5. These regulations set out fees and levies that must be paid by applicants up front at the time they lodge their applications for approvals.
6. Under the primary legislation, the Minister for Infrastructure is responsible for recommending regulations, so I am seeking this authorisation in that portfolio capacity.

Fees (deposits)

7. The prescribed initial fees act as a deposit, and will enable the EPA to pay the various agencies to recover their reasonable costs through the one-stop-shop approach. The actual charges payable by applicants will be based on agencies' actual and reasonable cost of processing each application, and refunds will be available if the full deposit amount is not used up.
8. While the upfront deposit amounts might present a barrier to some prospective applicants for smaller projects, it is important to note that:
    a. The purpose of the Act is to facilitate the delivery of nationally and regionally significant projects, the majority of which will have considerable economic benefits, and that alternative consenting pathways are available for smaller projects
    b. The deposit amounts are within the range of costs incurred under the COVID-19 Fast-track Consenting Act, which only covered RMA approvals

(unlike the FTA's one-stop-shop approach). The range of fees charged by the EPA under FTCA for substantive applications ranged from $40,000 for the smallest scale project application (such as a subdivision), though the mid-range for applications tended to be around $150,000 to $200,000, with the highest total application cost around $400,000 (for a retirement village). More detail is presented in the Ministry for the Environment's Cost Recovery Impact Statement.

c. The deposit amounts also factor local government costs that are recoverable via the EPA (unlike the previous FTCA which didn't have any centralised system for this purpose).

d. Partial refunds will be available to more simple applications, if the deposit amount is not used up over the course of processing.

9. The regulations will require central government agencies whose costs are recoverable to publish the reasonable rates that they set for their component costs, and work is underway by agencies to consult on their proposed rates with a view to having them published ahead of the regulations' commencement.

Levies

10. The levies are set amounts that will fund system costs that cannot be attributed to individual users. These costs include things like the EPA's IT system (to be used through the cross-agency process), panel convenor costs, and potential litigation and bad debt.

11. Levy payments will be critical for the EPA to manage one-stop-shop system as lead agency, including paying back the $10 million interest-bearing Repayable Capital Injection (RCI) which Cabinet approved earlier in December for this purpose. Cabinet noted that RCI would be repaid by applicants via levies, and that levy amounts would be reviewed in early 2026 [CAB-24-MIN-0471 refers].

12. Levy amounts are proposed based on modelling which included a conservative (low) estimate volume of applications, to minimise financial risk to the EPA. This will be considered again in light of the first year of implementation of the Fast-track Approvals regime in early 2026.

Contributions to Māori groups

13. The regulations will prescribe amounts payable to Māori groups who respond to an invitation to comment on an application. Two levels are included to reflect that some applications will be medium complexity (only seeking approvals under the RMA, for example), while others will be more complex (and seek approvals under other legislation as well through the one-stop-shop regime, such as the Conservation Act and Wildlife Act).

14. This is to support these groups' ability to participate in the fast-track approval process, where there is a statutory requirement to invite comment.

15. This in turn will help provide information relating to projects that will support Ministers and the panel to act consistently with obligations in Treaty settlements and customary rights recognised under specified legislation.

16. The Environmental Protection Authority (EPA) will make the payments, and the costs of these payments will be recoverable from applicants as part of the total fees.

Consultation

17. These rates were the topic of earlier targeted consultation, including with a selection of councils, listed project applicants, and Māori groups in October 2024. All applicants whose projects are listed in Schedule 2 of the FTA Bill have been informed of these rates through the current targeted consultation on agency rates.

Commencement and waiver of 28-day rule

18. The regulations are currently in draft and will be finalised and certified following Royal assent of the Fast-track Approvals Act.

19. The regulations need to commence on 7 February 2025, which is the date on which applications open, so I am seeking a waiver to the 28-day rule. This is necessary to ensure that up front fees and levy amounts are collected evenly from all applicants who lodge their application from the go-live date.

Ministry for the Environment
Manatū Mō Te Taiao

PROACTIVE RELEASE COVERSHEET

Minister	Hon Chris Bishop	**Portfolio**	RMA Reform
Name of package	Fast-track Approvals Bill	**Date to be published**	15 March 2025

List of documents that have been proactively released		
Date	***Title***	***Author***
15 August 2024	BRF-5101: Aide memoire: Meeting advice on cost-recovery for processing Fast-track Approval applications	Ministry for the Environment Ministry of Business, Innovation & Employment
24 September 2024	BRF-5334: Cost recovery framework for fast-track approvals	Ministry for the Environment
26 September 2024	BRF-5401: EEZ Act related provisions in the FTA Bill	Ministry for the Environment
27 September 2024	BRF-5402: Resourcing the EPA for Fast-track Approvals implementation	Ministry for the Environment
4 October 2024	BRF-5429: Briefing: Further advice on cost recovery and workability matters in the FTA Bill	Ministry for the Environment
4 October 2024	BRF-5443: Briefing: Admissibility of FTA Bill Schedule 2 under Standing Orders	Ministry for the Environment
7 October 2024	BRF-5460: Aide memoire: Additional advice on cost recovery in the FTA Bill	Ministry for the Environment
24 October 2024	BRF-5487: Briefing: Draft Cabinet paper for consultation: Fast-track Approvals Bill Approval for Amendment Paper	Ministry for the Environment
24 October 2024	BRF-5522: Briefing: Fast-track Approvals implementation: In principle agreement to repayable capital injection	Ministry for the Environment
31 October 2024	BRF-5544: Briefing: Fast-track Approvals Bill – Legislative Statement and Second Reading Speech	Ministry for the Environment
7 November 2024	BRF-5579: Briefing: Fast-track Approvals – Financing EPA implementation costs Cabinet paper	Ministry for the Environment
20 November 2024	BRF-5642: Talking points: Fast-track approvals: Financing the EPA's implementation costs cabinet paper	Ministry for the Environment
20 November 2024	BRF-5450: Briefing: Fast-track cost regulations: Proposed initial fee (deposit), levy, and financial contribution values	Ministry for the Environment
28 November	BRF-5657 Draft Cabinet Legislation Committee	Ministry for the

2024	paper for Fast-track cost regulations	Environment
29 November 2024	BRF-5653: Briefing: Fast-track Approvals Bill final policy decisions wrap-up	Ministry for the Environment
6 December 2024	BRF-5699 Briefing: Cover note for Fast-track Approvals Bill House Pack for the Committee of the Whole House debate	Ministry for the Environment
13 December 2024	BRF-5729: Aide memoire: Fast-track Approvals Bill Third Reading materials	Ministry for the Environment
24 January 2025	BRF-5753: Aide Memoire: Agency fees for cost recovery under Fast-track Approvals Act 2024	Ministry for the Environment
2 December 2024	Cabinet minutes	Cabinet Office
25 November 2024	Cabinet business committee minutes	Cabinet Office
21 November 2024	CAB-508: Fast-track Approvals: Financing the EPA implementation costs	Ministry for the Environment
28 January 2025	Cabinet minutes	Cabinet Office
18 December 2024	Economic policy committee minutes	Cabinet Office
12 December 2024	CAB-507: Fast-track (cost recovery) Regulations 2024	Ministry for the Environment
12 December 2024	CAB-507: talking points	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 the 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) To protect the privacy of natural persons

b) To maintain the confidentiality of advice tendered by Ministers and officials

c) To maintain professional legal privilege