Ministry for the Environment
Manatū Mō Te Taiao

PROACTIVE RELEASE COVERSHEET

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

List of documents that have been proactively released

Date	***Title***	***Author***
27 May 2024	BRF-4779: Approval of Approach – Te Rūnanga o Ngāi Tahu Fast Track-Approvals Bill Provision Request	Ministry for the Environment
8 July 2024	BRF-5009: Briefing: Ngāi Tahu Request for Provision in Fast-Track Approvals Bill	Ministry for the Environment
24 July 2024	BRF-4967: Cover note briefing for updated SAR on Fast-track Approvals Bill	Ministry for the Environment
22 August 2024	BRF-5057: Fast-track Approvals (FTA) Bill Amendment paper policy and workability changes and draft Cabinet paper	Ministry for the Environment
15 August 2024	BRF-5155: Aide memoire: Meeting advice on prioritization and allocation in the Fast-track Approvals Bill	Ministry for the Environment and Ministry for Business, Innovation & Employment
15 August 2024	BRF-5172: Aide memoire: Meeting advice on the purpose clause and conditions for the Fast-track Approvals Bill	Ministry for the Environment and Ministry for Business, Innovation & Employment
19 August 2024	BRF-5206: Aide memoire: Supporting Joint Ministers Meeting 19 August 2024 – Basis for Panel to Decline Approvals	Ministry for the Environment
5 September 2024	BRF-5233: Exceptions to the prioritization and allocation regimes for the Fast-track Approvals Bill	Ministry for the Environment and Ministry for Business, Innovation & Employment
6 September 2024	BRF-5247: Fast-track Approvals Bill – Advice on Expert Panel Capacity	Ministry for the Environment
26 September 2024	BRF-5401: EEZ Act related to provisions in the FTA Bill	Ministry for the Environment
11 September 2024	Cabinet Paper: Fast-track Approvals Bill Amendment Paper relating to policy and workability changes	Ministry for the Environment

Information redacted **YES**

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

Summary of reasons for redaction

Some information has been withheld for the reasons of:

a) 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

BRF-4779: Approval of Approach - Te Rūnanga o Ngāi Tahu Fast Track-Approvals Bill Provision Request

Date submitted: 27 May 2024
Tracking number: BRF-4779
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 seek a decision from delegated Ministers with respect to the Ngāi Tahu request **Agree** to the recommendations in this briefing	29 May 2024
To Hon Simeon BROWN **Minister of Transport**	**Agree** to the recommendations in this briefing	31 May 2024
To Hon Shane JONES **Minister for Regional Development**	**Agree** to the recommendations in this briefing	31 May 2024
To Hon Tama POTAKA **Minister for Māori Crown Relations**	**Agree** to the recommendations in this briefing	31 May 2024

Actions for Minister's office staff
Should the Minister agree to seek a decision from delegated Ministers with respect to the Ngāi Tahu request, **forward** a copy of this briefing to the Minister of Transport, Minister for Regional Development and Minister for Māori Crown Relations for their decision; **Return** the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).

Appendices and attachments
1 – Recommendations table. 2 – Te Rūnanga o Ngāi Tahu submission on the Fast-track Approvals Bill. 3 – Te Rūnanga o Ngāi Tahu rationale memo provided on 1 May 2024.

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Kiriana Haze		
Responsible Manager	Andrew Hampton		
General Manager	Clare Maihi	s 9(2)(a)	✓

Minister's comments

Approval of Approach - Te Rūnanga o Ngāi Tahu Fast-Track Approvals Bill Provision Request

Key messages

1. Te Rūnanga o Ngāi Tahu (TRoNT) have requested specific provision be made in the Fast-track Approvals Bill (the Bill) that they believe will provide protections for the Ngāi Tahu settlement. These matters were raised by TRoNT in their Select Committee submission on the Bill in April (Appendix 2), in a rationale memo supplied by TRoNT on 1 May 2024 (Appendix 3) and were also raised with you prior to the Bill being introduced to the House.

2. In their submission, rationale memo, and other accompanying correspondence, TRoNT have suggested drafting provisions in the Bill that would include defining Te Rūnanga o Ngāi Tahu and the takiwā of Ngāi Tahu Whānui per Te Rūnanga o Ngāi Tahu Act 1996, and require ***particular regard*** be made to any views and comments provided by TRoNT in the Fast-track system for any projects within the Ngāi Tahu takiwā.

3. Minister Bishop directed that Ministry for the Environment (MfE) officials work with TRoNT on preparing advice regarding this matter and accordingly, this briefing has been shared with TRoNT (following necessary redactions) for feedback. It is important to note:

    a) Not all the feedback, views, and position of TRoNT have been reflected verbatim in the briefing, however, TRoNT's position is provided in full at Appendix 2 and 3.

    b) Any views of TRoNT reflected in this briefing are clearly caveated as such to not confuse the advice of officials with the position of TRoNT.

    c) No corresponding process or engagement has been undertaken with other iwi on this issue, including Te Tau Ihu iwi who have an area of interest which overlaps with the Ngāi Tahu takiwā.

4. While the request in TRoNT's submission does not exclude or prevent any other iwi or Māori groups with interests in the takiwā from participating in processes under the Bill, the position of MfE is that this would have the effect of elevating the influence of Ngāi Tahu with respect to projects within the takiwā, above all other participants in the system. The weighting of 'have particular regard' is not provided for anywhere in the current Bill drafting.

5. s 9(2)(g)(i) [redacted]

Recommendations

We recommend you:

a) **Agree** to seek decisions from delegated Ministers with respect to the Ngāi Tahu request (Minister Bishop only);

Yes | No

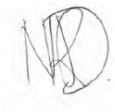
b) **Agree** to the recommendations set out in Appendix One of this briefing.

Yes | No

c) **Note** that should you agree to proceed with an option that requires changes to the Fast-track Approvals bill, your decision will be reflected in BRF-4752 and subsequently in the Departmental Report to the Select Committee.

Noted

Signatures



Nadeine Dommisse
Deputy Secretary
Environmental Management and Adaptation
27 May 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

Hon Simeon BROWN
Minister of Transport
Date

Hon Shane JONES
Minister for Regional Development
Date

Hon Tama POTAKA
Minister for Māori Crown Relations
Date

Approval of Approach - Te Rūnanga o Ngāi Tahu Fast-Track Approvals Bill Provision Request

Purpose

1. This briefing responds to Minister Bishop's direction for MfE officials to work alongside Te Rūnanga o Ngāi Tahu (TRoNT) and present you with options relating to TRoNT's Select Committee submission on Fast-track Approvals Bill (the Bill) which proposes, among other matters, the inclusion of drafting within the Bill that might provide stronger protections for the Ngāi Tahu settlement. This briefing provides you with:

    c) The Select Committee submission from TRoNT (Appendix 2) and a memo from TRoNT outlining in detail the rationale for their proposed drafting (Appendix 3);

    d) options and recommendations for how you might strike a balance of providing for the level of protection that TRoNT seek, whilst still maintaining fairness for all Post-Settlement Governance Entities (PSGEs) and their respective settlements; and

2. Should you agree to proceed with an option that requires changes to the Bill, your decision will be reflected in an upcoming Cabinet paper and subsequently in the Departmental Report to the Select Committee.

Background & Context

Ngāi Tahu have requested specific provisions relating to their settlement in the Bill

3. The Bill provides an overarching protection for Treaty settlement arrangements at clause 6 – providing that all persons exercising powers, functions and duties under the Bill must act in a manner that is consistent with existing Treaty settlements. This includes the Ngāi Tahu Claims Settlement Act 1998 and the Deed of Settlement signed in 1997.[1]

4. Prior to the Bill's introduction in the House on 7 March 2024 the Bill was released to TRoNT (subject to confidentiality undertakings). On 1 March 2024, TRoNT sent a letter to you outlining their concerns that clause 6 of the Bill provides insufficient protection for the Ngāi Tahu settlement, Ngāi Tahu Whānui and the takiwā. Accordingly, they sought "express and appropriate provision in the Bill to this effect."[2] These concerns were not able to be considered in time for the Bill at introduction.

5. The Select Committee agreed that agencies could undertake further engagement on the Bill with PSGEs and other Māori representative groups during the submission period. Officials met with Te Rūnanga o Ngāi Tahu staff on 18 March 2024. During that meeting TRoNT provided some additional context to the requested amendments and on 28

[1] TRoNT select committee submission on Fast-track Approvals Bill submitted April 2024: "Te Rūnanga is not opposed to fast-tracking and expects to work constructively with the Crown to enable the delivery of critical infrastructure and developments where economic, environmental, social and cultural well-being is advanced in the Takiwā. However, if this legislation is used to approve projects which in any way threaten or diminish our rangatiratanga or undermine Crown commitments arising from Te Tiriti or our Te Tiriti Settlements, Ngāi Tahu will pursue its rights to the fullest extent possible." – p.1
[2] TRoNT rationale memo provided to MfE, 1 May 2024 – p.1

March 2024 Minister Bishop responded to TRoNT advising that the concerns raised were already mitigated in the Bill.

6. Minister Bishop had a phone meeting in April 2024 with the Chair of TRoNT, Justin Tīpa. Following this, Minister Bishop directed officials to work with TRoNT staff on options for drafting in the Bill that would go some way to meet the intent of TRoNT, and TRoNT agreed to provide a rationale for this request. TRoNT made a submission to the Select Committee which was made available to officials on 20 April 2024 and TRoNT also separately provided the rationale memo for their request to MfE on 1 May 2024.

7. The analysis in this paper is based on the TRoNT submission, contextualised by the rationale memo and associated correspondence with TRoNT. Generally, TRoNT are seeking drafting provisions that have two parts:

    a) an inclusion that provides explicit recognition and definition of Te Rūnanga o Ngāi Tahu and the Takiwā of Te Rūnanga of Ngāi Tahu (per the Te Rūnanga o Ngāi Tahu Act 1996) and that Ngāi Tahu Whānui, as defined in section 2 of Te Runanga o Ngai Tahu Act 1996, must be represented by Te Runanga o Ngāi Tahu in accordance with that Act[3], and;

    b) any person exersing functions, powers, and duties in Bill to have “particular regard” to TRoNT views and comments provided in accordance with the Bill when projects occur in the Ngāi Tahu takiwā.

Te Rūnanga o Ngāi Tahu position (Not the position of MfE officials – paragraph 9)

8. TRoNT consider this drafting is needed to uphold their settlement, and the Crown’s acknowledgement within it of Ngāi Tahu rangatiratanga over the takiwā. When providing feedback to officials for this briefing TRoNT reiterated from their rationale memo that inclusion of the proposed provisions is justified as:

    a) the current Treaty settlement provision at clause 6 does not, in and of itself, provide sufficient protection for or uphold aspects of the Ngāi Tahu settlement;

    b) Ngai Tahu does not have an "area of interest" in its settlement. It has a statutorily defined takiwā over which the Crown has recognised Ngāi Tahu rangatiratanga and its status as tangata whenua. Failure to include the proposed provisions would undermine Ngāi Tahu rangatiratanga in the takiwā, as specifically recognised by the Crown in the Ngāi Tahu Settlement and Te Runanga o Ngai Tahu Act 1996. Ngāi Tahu is the only iwi having this explicit recognition;

    c) Significant aspects of the Ngāi Tahu Settlement, that have potential to be undermined by the fast-track consenting process, require the Crown to "have particular regard" to Ngāi Tahu views and values. These are in relation to the application of Tōpuni, Deeds of Recognition, Statutory Advisor roles, Taonga Species management and Department of Conservation Protocols. The TRoNT view is that the fast-track regime will allow decisions to be made that are inconsistent with these mechanisms, should it not include the proposed provisions. It is the TRoNT

[3] Letter from TRoNT to Ministers Bishop, Jones, Brown, Potaka – 1 March 2024

view that should the Bill not include the proposed provisions to this effect, the Crown will derogate the role of Ngāi Tahu in resource and conservation management; and

d) Given the extent of conservation land in the Ngāi Tahu takiwā, and therefore the importance of the above mentioned settlement mechanisms (at (c) above) to Ngāi Tahu, the TRoNT position is that without including the proposed provisions, Ngāi Tahu is disproportionately impacted and at increased risk of adverse impacts by the fast-track regime.

Recognise and define Te Rūnanga o Ngāi Tahu and the takiwā

Te Rūnanga o Ngāi Tahu Act 1996

9. Te Rūnanga o Ngāi Tahu was established by Te Rūnanga o Ngāi Tahu Act 1996. Section 15(1) of that Act states that "Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu whānui". Section 15(2) provides that, where any enactment requires consultation with any iwi or with any iwi authority, that consultation shall, with respect to matters affecting Ngāi Tahu Whanui, be held with Te Rūnanga o Ngāi Tahu. Because of this, Te Rūnanga o Ngāi Tahu would already represent Ngāi Tahu whānui in any Crown or third-party engagement under the Bill.

10. The first part of the Ngāi Tahu request is an inclusion that provides explicit recognition and definition of Te Rūnanga o Ngāi Tahu and the Takiwā of Te Rūnanga of Ngāi Tahu (per the Te Rūnanga o Ngāi Tahu Act 1996) and that Ngāi Tahu Whānui, as defined in section 2 of Te Runanga o Ngai Tahu Act 1996, must be represented by Te Runanga o Ngāi Tahu in accordance with that Act.

11. Ngāi Tahu have noted there are specific references for other groups already in the Bill (clauses relating to Te Ture Whaimana in the Waikato River settlements, and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019).[4] While those are referred to in the Bill (and the reasons for that are set out below) – the Bill does not provide any increased influence or weighting to them.

The bill makes reference to Ngā Rohe Moana o Ngā Hapū o Ngāti Porou and Te Ture Whaimana for specific reasons

12. Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 [NHNP Act] recognises the rights and interests of ngā hapū o Ngāti Porou in the common marine and coastal area. It is a result of ngā hapū o Ngāti Porou and the Crown entering into a deed of agreement in 2008 under the Foreshore and Seabed Act 2004 (FSB Act). A deed to amend the deed of agreement was signed in 2017, following the repeal and replacement of the FSB Act with the Marine and Coastal Area (Takutai Moana) Act 2011. Ngā hapū o Ngāti Porou are the only group to enter arrangements under the Foreshore and Seabed Act 2004, with all other Takutai Moana arrangements falling under the subsequent Takutai Moana legislation. Because of this, a specific reference to the NHNP Act was required in the Bill

[4] Letter from TRoNT to Ministers Bishop, Jones, Brown, Potaka – 1 March 2024

to ensure the legislation was captured by the relevant protections for Treaty settlements and other arrangements.

13. In 2008, Waikato-Tainui and the Crown reached a settlement over the claims to the Waikato River that resulted in the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. This Act includes some of the most complex natural resources arrangements in the country. The Waikato River arrangements intersect with the Resource Management Act 1991 (RMA) in a significant and complex manner across multiple domains including national direction, planning, consenting, and overarching system governance. A key element of this arrangement is legislative recognition of the Vision and Strategy for the Waikato River – Te Ture Whaimana o Te Awa o Waikato – as the primary direction-setting document for the River and its catchment.[5]

14. Under the Waikato-Tainui Kiingitanga Accord 2008 the Crown has an obligation to consider, when introducing new legislation, whether the legislation needs to include a specific legislative recognition of Te Ture Whaimana, regardless of whether the recognition is the same or substantially similar to what is provided for under the Waikato-Tainui settlement legislation.[6]

15. Clause 7 of the Bill restates verbatim what the Waikato River settlement legislation says about Te Ture Whaimana. Te Ture Whaimana is also set out in the Upper Waikato River Act, and the Waipā River Act. Elements of the Waikato River arrangements are also reflected in settlements of six other iwi/collectives: Ngāti Maniapoto, Te Arawa River Iwi, Ngāti Tūwharetoa, Raukawa, Ngāti Hauā, Ngāti Koroki Kahukura, and the proposed settlement negotiated with Pare Hauraki, as they relate to parts of the River.

16. A provision was included in section 104 of the repealed Natural and Built Environment Act 2023 (NBEA) recognising Te Ture Whaimana as the primary direction setting document for the Waikato River (as is expressly stated in the settlement legislation). That Te Ture Whaimana clause was retained through the NBEA repeal process and on 19 Feb Minister Bishop agreed (BRF-4239 refers) to include a specific clause confirming the role of Te Ture Whaimana as the primary direction setting document for the Waikato River in the Fast-track Bill, subject to necessary modification to suit the fast-track context.

Specific recognition of Te Rūnanga o Ngāi Tahu Act 1996 was used in previous resource management legislation

17. There is recent precedent for specifically reflecting consultation obligations under the TRoNT Act, for Te Rūnanga o Ngāi Tahu to represent Ngāi Tahu whānui in engagement, in the recent NBEA. Schedule 7(5) of the NBEA stated, “For all purposes of this schedule relating to composition discussions and appointment processes in respect of the regional planning committees, Ngāi Tahu Whanui, as defined in section 2 of Te Runanga o Ngai

[5] Waikato Tainui Raupatu Claims Settlement Act 2010, s.5.

[6] Waikato-Tainui Kiingitanga Accord 3(4)(a) the Crown has an obligation to consider “whether, by analogy with the nature and subject matter of the statutes in which the Vision and Strategy has been given statutory recognition under the settlement, such new legislation should also include express legislative recognition of the Vision and Strategy in the same or substantially similar form to that provided under the settlement.” At 3(4)(b) where appropriate, any such new legislation when it is introduced into Parliament shall include express legislative recognition of the Vision and Strategy in the same or substantially similar form to that provided under the settlement.”

Tahu Act 1996, must be represented by Te Runanga o Ngāi Tahu in accordance with that Act."

s 9(2)(h)

18. s 9(2)(h)

19.

Increased influence for TRoNT with respect to projects within the takiwā

Te Rūnanga o Ngāi Tahu position (Not the position of MfE officials – paragraphs 21-22)

20. TRoNT propose in their submission that the second part of their request (that decision-makers have '*particular regard'* to their views for projects within the takiwā*)* be inserted as a new clause 8 of the Bill (immediately following Te Ture Whaimana clause). TRoNT justification for this is set out in their words in their Select Committee submission (Appendix 2) and their rationale memo (Appendix 3).

21. TRoNT have also outlined in their rationale memo examples of cultural redress that Ngāi Tahu holds in the conservation estate in the takiwā where a similar weighting of "having particular regard" is reflected. Some examples include being a statutory adviser to the Minister of Conservation in respect of Tōpuni, Deeds of Recognition and Statutory acknowledgement areas. TRoNT state in their rationale memo regarding these examples:

> *These roles cemented Ngāi Tahu voices in the development of the planning landscape which determines what activities can occur in the Takiwā. As currently drafted, the Bill changes this landscape, and does not provide a similar role for Ngāi Tahu as above. The Bill enables the Minister of Conservation to approve projects that may be inconsistent with the Conservation Act and/or inconsistent with conservation management strategies and conservation management plans. It also enables the joint Ministers to approve projects that would otherwise be prohibited under the RMA and Wildlife Act 1953 (among many other changes). In this context, and again noting the unique aspects of the Ngāi Tahu Settlement, the proposed drafting to "have particular regard" to the views of Te Rūnanga as set out in Option 1 is necessary and addresses (in part) the concerns we have as to the changing landscape.*[7]

[7] TRoNT Rationale Memo (1 May 2024) at para 3.16.

There are provisions in the Bill to provide for iwi views

22. There is no specific provision in the Bill that requires that iwi views are given any particular weight. However, in relation to the consideration of iwi views:

    a) Clause 6 requires the expert panel, joint Ministers and others to undertake their functions under the Act in a manner that is consistent with Treaty settlement obligations – the Bill therefore already provides for consistency with Treaty settlements.

    b) Clause 19 provides that the joint Ministers when considering a referral application must invite comments from a range or parties, including the relevant iwi authorities and Treaty settlement entities. Clause 16 also requires the applicant to engage with relevant iwi and Treaty settlement entities and to include a summary of that consultation in the referral application.

    c) Before deciding to accept an application for referral under clause 22, Ministers must consider the consultation required to be undertaken with relevant Māori groups and any comments received within the timeframe. If a Treaty settlement or related arrangement provides for the consideration of any document, arrangement or other matter, the joint Ministers must give that document, arrangement, or other matter the same or equivalent effect through the joint Ministers' process and decision making as it would have under the relevant legislation. If a Treaty settlement or related arrangement provides for procedural matters, joint Ministers must comply with those requirements also. Ministers may decline an application for referral if they consider that any part of it is inconsistent with a relevant Treaty settlement.

    d) If the application is referred to a panel, schedule 3 clause 5 requires that the panel convenor and panel must comply with any procedural arrangements, including any consultation requirements with iwi or hapu, in any relevant Treaty settlement Act, iwi participation legislation, Mana Whakahono a Rohe or joint management agreement as if they were a relevant decision maker; or obtain the agreement of the relevant Treaty settlement entity or iwi authority to adopt a modified arrangement (agreement may not be unreasonably withheld). If agreement is not reached the panel must stop processing the application.

    e) Several other provisions in the schedules of the Act require the panel to comply with obligations that would otherwise apply to local authorities or other decisionmakers under Treaty settlements, such as schedule 4 clause 32(3).

s 9(2)(g)(i)

The northern boundary of the Ngāi Tahu takiwā overlaps with the rohe of Te Tau Ihu Iwi (comprised of Ngāti Kuia, Rangitāne, Ngāti Apa, Ngāti Koata, Ngāti Rārua, Ngāti Toa, Ngāti Tama, Te Ātiawa) and some Te Tau Ihu iwi have settlements in which the Crown has formally acknowledged interests that also overlap with the Ngāi Tahu northern boundary.

24. TRoNT are not seeking an acknowledgement of exclusive rangatiratanga over the takiwā in the Bill and what they have proposed in their submission does not exclude any

other iwi or Māori groups who have interests within the takiwā to contribute through the current drafted processes in the Bill. S 9 (2)(g)(i)

Risks

25. s 9(2)(g)(i)

26. The issue raised by Te Rūnanga o Ngāi Tahu is not unique to their settlement, and so any solution to their request to have 'particular regard' given to their views for projects in their takiwā should ideally have general application to all PSGEs for their areas of interest across the board. s 9(2)(g)(i)

A global option for all PSGEs

27. The issue raised by TRoNT is not unique to their settlement, and so any solution to their request to have 'particular regard' given to their views for projects in their takiwā should ideally have general application to all PSGEs for their areas of interest across the board. If such a provision applied to all iwi in their area of interest in a region, as is already the case with iwi management plans and local government, it would not require any decision maker to elevate one voice above another. s 9(2)(g)(i) s 9(2)(h) In the recommendation table (Appendix 1) there is an option for you to approve officials providing you with more advice on this option.

s 9(2)(h)

28. s 9(2)(h)

29.

30.

31.

s 9(2)(h)

32.

33.

34.

35.

s 9(2)(h)

Ministry for the Environment
Manatū Mō Te Taiao

Appendix 1: Recommendations Table

Process step	Option	Advice	Recommendations	Decision
Additional requirement in interpretation	1. (a) Include verbatim definitions as defined in Te Rūnanga o Ngāi Tahu Act 1996 of: a) Te Rūnanga o Ngāi Tahu b) the Takiwā of Te Rūnanga of Ngāi Tahu c) Ngāi Tahu Whānui (b) Include that Ngāi Tahu Whānui must be represented by Te Runanga o Ngāi Tahu in accordance with Te Rūnanga o Ngāi Tahu Act 1996.	*Option 1* – s 9(2)(g)(i) s 9(2)(h)	**Agree** to include the provision set in Option 1 [Recommended] **OR**	Yes | No
	2. Retain existing settings	*Option 2* - s 9(2)(h)	**Agree** to retain the existing settings [Not recommended]	Yes | No
Treaty settlements	**3.** Include provision that would require for any project within the takiwā of Ngāi Tahu Whānui that all persons exercising functions, powers, and duties to have particular regard to the views and comments of Te Rūnanga o Ngāi Tahu.	*Option 3* – s 9(2)(g)(i)	**Agree** to include the provision set in Option 3 [Not recommended] **OR**	Yes | No
	4. Provide for 'particular regard' to be given by all persons exercising functions, powers and duties under the Bill to all PSGEs for projects in their recognised area of interest	s9 (2)(g)(i) and s 9(2)(h)	**Agree** to officials providing you with further advice on the provision set out in Option 4 [Recommended] **AND**	Yes | No
	5. Retain existing settings.	*Option 5* – s 9(2)(g)(i)	**Agree** to retain the existing settings [Recommended]	Yes | No

Appendix 2

Te Rūnanga o Ngai Tahu Response to the Fast-Track Approvals Bill

Withheld in full under s18(d) as it is publicly available on the Parliament website

Ministry for the Environment
Manatū Mō Te Taiao

Briefing: Ngāi Tahu Request for Provision in Fast-Track Approvals Bill

Date submitted: 8 July 2024
Tracking number: BRF- 5009
Security level: Legally privileged, In-confidence

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.	11 July 2024

Appendices and attachments
1. s 9(2)(h) [redacted]
2. Options and recommendations table
3. Examples of provisions provided by Ngāi Tahu to Ministers and/or officials

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Kiriana Haze		
Responsible Manager	Anna Galvin		
General Manager	Clare Maihi	s 9(2)(a) [redacted]	✓

Ngāi Tahu Request for Provision in Fast-Track Approval Bill

Purpose

1. On 3 July 2024 you asked officials to provide you with legal advice on the letter you received from Justin Tīpa, Chair of Te Rūnanga o Ngāi Tahu (TRONT) on 12 June 2024.

2. s 9(2)(f)(iv) [redacted].

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

4. This aide memoire provides you with a summary of the background, recent engagement, and the following appendices:

   a) s 9(2)(h) [redacted]

   b) **Appendix 2:** An options, recommendations and decisions table.

   c) **Appendix 3:** Further analysis of other legislation that TRONT have provided you or the Ministry for the Environment (MfE) regarding this matter where TRONT consider similar provisions have been provided by the Crown.

Background

5. TRONT proposed in their Environment Select Committee submission on the Bill, and associated correspondence prior to and following, that specific provisions relating to their Treaty settlement be included in the Bill. This request included decision-makers having '*particular regard'* to TRONT views for projects within the Ngāi Tahu takiwā.

6. On 27 May 2024 you received BRF-4779 which sought decisions from you and Ministers Brown, Jones and Potaka regarding TRONT's request.[1] The options, recommendations and your decisions from BRF-4779 were:

[1] TRONT received a redacted copy of the draft, near finalised, advice which they provided comment on. BRF-4779 also attached in full their rationale memo for the request, provided to MfE on 1 May 2024. This memo was in addition to their submission to the Environment Select Committee for the bill.

Option	Recommendation and your decision
Te Rūnanga o Ngāi Tahu Act 1996 (a) Include verbatim definitions as defined in Te Rūnanga o Ngāi Tahu Act 1996 of: I. Te Rūnanga o Ngāi Tahu II. the Takiwā of Te Rūnanga of Ngāi Tahu III. Ngāi Tahu Whānui (b) Include that Ngāi Tahu Whānui must be represented by Te Runanga o Ngāi Tahu in accordance with Te Rūnanga o Ngāi Tahu Act 1996.	9 (2)(f)(iv) [redacted]
'Particular Regard' in Takiwā To include provision that would require, for any project within the takiwā of Ngāi Tahu Whānui, that all persons exercising functions, powers, and duties to have particular regard to the views and comments of Te Rūnanga o Ngāi Tahu.	Officials **did not recommend** this option and recommended that existing settings be maintained. Officials also offered to provide you with further advice, at your agreement, to explore providing such a provision to all Post Settlement Governance Entities (PSGEs).

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

Recent engagement with Ngāi Tahu

8. In a letter to you on 12 June 2024 TRONT stated they do not see the risks to the Crown, in terms of equal treatment to Te Tau Ihu iwi (who have overlapping interests in the takiwā) and other post-settlement governance entities, as a reason to not provide for the clause sought (identified under Part Two above). s 9 (2)(h) [redacted]

9. At your 3 July 2024 meeting with Justin Tīpa, Mr Tīpa verbally provided you with examples where TRONT see similar provision they are seeking for the Fast-track Approvals bill was met in other legislation. TRONT also outlined in their rationale memo to MfE officials, dated 1 May 2024, examples of redress that Ngāi Tahu holds where weighting of "having particular regard" applies. Appendix 3 provides you with these examples.

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

11. Officials have discussed this advice at a high level with Ngāi Tahu representatives, who have maintained the views set out in TRONT's 12 June letter. They have also requested copies of the final advice provided to you on this matter, which we will work through with your office.

Providing for Ngāi Tahu preferred option

12. s 9(2)(f)(iv) [redacted]

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

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

15. The options, recommendations and decisions table at Appendix 2 provides you with the same options table from BRF-4779 for you to reconsider. If you choose to pursue the option of "for any project within the takiwā of Ngāi Tahu Whānui, that all persons exercising functions, powers, and duties to have particular regard to the views and comments of Te Rūnanga o Ngāi Tahu" officials will work with Crown Law and Te Arawhiti on how this might be provided for, and provide you with further advice, noting the exact wording requested by Ngāi Tahu might be different but the intent of their request (greater influence) would be reflected. s 9(2)(h) [redacted]

Recommendations

We recommend that you:

a. [redacted]

Noted

AND

b. **Confirm** your decisions in BRF-4779 stand (summarised at Appendix 2) and that BRF-4779 may be sent to Ministers Brown, Jones and Potaka for their consideration/decisions

Decisions at Appendix 2

OR

c. **Reconsider** your decision regarding providing greater Ngāi Tahu influence (Option 3 in Appendix 2)

Decisions at Appendix 2

AND

d. **Note** that if this reconsideration option is selected, officials will provide further advice on how this might be provided for noting the exact wording requested by Ngāi Tahu might be different, but the intent of their request would be reflected s 9(2)(h) [redacted]

Noted

Signatures

Clare Maihi
General Manager - Te Tiriti and Te Ao Māori
Environment Management and Adaptation
8 July 2024

Hon Chris Bishop
Minister Responsible for RMA Reform
Date

Appendix 1: s 9(2)(h)

s 9(2)(h)

s 9(2)(h)

[redacted]

s 9(2)(h) [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

BRF- 5009

Ministry for the Environment
Manatū Mō Te Taiao

Appendix 2: Options, recommendations and decisions table

Option	Advice	FOR ACTION: Recommendations and Decisions
Option 1 (a) Include verbatim definitions as defined in Te Rūnanga o Ngāi Tahu Act 1996 of: a. Te Rūnanga o Ngāi Tahu b. the Takiwā of Te Rūnanga of Ngāi Tahu c. Ngāi Tahu Whānui (b) Include that Ngāi Tahu Whānui must be represented by Te Runanga o Ngāi Tahu in accordance with Te Rūnanga o Ngāi Tahu Act 1996.	**Option 1** s 9(2)(f)(iv) s 9(2)(h)	**Agree / Disagree** to include the provision set in Option 1 *Recommended* **OR**
Option 2 Retain existing settings	s 9(2)(h)	**Agree / Disagree** to retain the existing settings (make no change) *Not recommended*
Option 3 Include provision that would require for any project within the takiwā of Ngāi Tahu Whānui, all persons exercising functions, powers, and duties to have particular regard to the views and comments of Te Rūnanga o Ngāi Tahu.	**Option 3** s 9(2)(h)	**Agree / Disagree** to include the provision set in Option 3 *Not recommended – however, if this option is pursued officials will provide further advice on how this might be provided for noting the exact wording requested by Ngāi Tahu and set in Option 3 might be different, but the intent of their request would be reflected* **OR**
Option 4 Provide for 'particular regard' to be given by all persons exercising functions, powers and duties under the Bill to all PSGEs for projects in their recognised area of interest	**Option 4** More analysis would be required for your consideration, s 9(2)(h)	**Agree / Disagree** to officials providing you with further advice on the provision set out in Option 4 *Recommended* **OR**
Option 5 Retain existing settings.	**Option 5** s 9(2)(h)	**Agree / Disagree** to retain the existing settings *Recommended*

Appendix 3: An overview of examples TRONT have provided in discussion or correspondence with Ministers and MfE regarding the matter of this Aide Memoire – [*Legally privileged*]

Ngāi Tahu provided examples	Analysis
Water Services Entities Act 2022 No 77 (as at 17 February 2024), Public Act – New Zealand Legislation (See Schedule 2 Parts 8 and 9) (Now repealed) *This example was provided by TRONT in Ministers meeting (3 July).* The Act is now repealed, but it provided under Part 8 for a Water Service Entity district for Nelson, Tasman and Marlborough (Part 8 of schedule 2); and a Water Service Entity District for Canterbury and the West Coast, with the service area described as being "the parts of the districts of the following territorial authorities within the boundaries of the takiwā of Ngāi Tahu as described in section 5 of Te Runanga o Ngai Tahu Act 1996"	s 9(2)(h)
Canterbury Regional Council (Ngāi Tahu Representation) Act 2022 *This example was provided by TRONT in Ministers meeting (3 July).* Provides TRoNT the right to appoint up to 2 members to the Canterbury Regional Council in accordance with this Act.	s 9(2)(h)
Education and Training Act 2020 – relating to Te Pūkenga (see Schedule 13 and Cl.9) *This example was provided by TRONT in Ministers meeting (3 July)* Requires "Te Pūkenga—New Zealand Institute of Skills and Technology must operate in a way that allows it to develop meaningful partnerships with Māori employers and communities and to reflect Māori-Crown partnerships to ensure that its governance, management, and operations give effect to Te Tiriti o Waitangi and to respond to the needs of, and improve outcomes for, Māori learners, whānau, hapū, and iwi."	s 9(2)(h)
Pae Ora (Healthy Futures) Act 2022 No 30 (as at 27 July 2023), Public Act Contents – New Zealand Legislation *This example was provided by TRONT in Ministers meeting (3 July).* The legislation provides for iwi-Māori partnership boards to represent local Māori perspectives in relation to hauora Māori needs, aspirations and outcomes, related performance of the health sector, and the design and delivery of services and public health interventions within localities.	s 9(2)(h)

Ngāi Tahu provided examples	Analysis
	[redacted]
New Zealand Conservation Authority *Example provided by TRONT in Rationale Memo 1 May 2024 (text below from memo):* "The Ngāi Tahu Settlement was negotiated in a context where the higher order planning documents (created under the RMA, Conservation Act, Wildlife Act etc.) defined the types of activities that could occur within the Takiwā. Accordingly, a significant outcome of the Ngāi Tahu settlement was, in part, the creation of dedicated seats on the New Zealand Conservation Authority (NZCA) and relevant conservation boards in the Takiwā for Ngāi Tahu - the NZCA and conservation boards being the entities that approve and/or set the relevant conservation framework alongside the Minister."	s 9(2)(h) [redacted]
Tōpuni *Example provided by TRONT in Rationale Memo 1 May 2024 (text below from memo):* "…In the Ngāi Tahu Settlement, a Tōpuni places an 'overlay' of Ngāi Tahu values over specific pieces of land managed by the Department of Conservation. It is a requirement of the Ngāi Tahu Settlement that the NZCA and conservation boards have particular regard to Ngāi Tahu values when it approves or otherwise considers any general policy, conservation management strategy or conservation management plan."	s 9(2)(h)
Statutory Adviser *Example provided by TRONT in Rationale Memo 1 May 2024 (text below from memo):* "Te Rūnanga is a statutory adviser to the Minister of Conservation in respect of Tōpuni, Deeds of Recognition and Statutory Acknowledgement Areas. As a statutory adviser, Te Rūnanga may provide advice directly to the Minister of Conservation in respect of those sites when the Minister is considering any draft conservation management plan or strategy, or any national park management plan, or when formulating written recommendations to the NZCA…the statutory adviser role requires the Minister to have particular regard to the views of Te Rūnanga."	s 9(2)(h)

Ngāi Tahu provided examples	Analysis
Deeds of Recognition *Example provided by TRONT in Rationale Memo 1 May 2024 (text below from memo):* "… The combination of Deeds of Recognition and Statutory Acknowledgements provide Ngāi Tahu with input into decisions made by the Crown as a landowner in these areas, and, through the RMA, into decisions about the activities of the Crown or any other persons which affect the areas. Through these instruments, the mana of Ngāi Tahu is recognised and given operational effect in day-to-day management."	s 9(2)(h)
Department of Conservation Protocols *Example provided by TRONT in Rationale Memo 1 May 2024 (text below from memo):* "The protocols prescribe the processes for and require that the Department of Conservation have particular regard to the views of Te Rūnanga o Ngāi Tahu when making decisions related to: cultural materials, freshwater fisheries, the culling of species of interest to Ngāi Tahu, historic resources, the RMA, and visitor and public information"	s 9(2)(h)
Taonga Species Management *Example provided by TRONT in Rationale Memo 1 May 2024 (text below from memo):* *"Having acknowledged the cultural, spiritual, historic, and traditional association of Ngāi Tahu with taonga species, the Minister of Conservation, and Director-General must with respect to all taonga species, consult with, and have particular regard to the views of Te Rūnanga when making policy decisions…"*	s 9(2)(h)

Ministry for the Environment
Manatū Mō Te Taiao

Briefing: Cover note briefing for updated SAR on Fast-track Approvals Bill

Date submitted: 24 July 2024
Tracking number: BRF-4967
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**	For noting only	24 July 2024

Actions for Minister's office staff

Forward this briefing to:

Hon Simeon Brown, Minister for Energy; Ministry for Local Government; Minister of Transport;

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

Hon Tama Potaka, Minister of Conservation; 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

1. Appendix One: Supplementary Analysis Report: Fast-track Approvals Bill (Updated 24 July 2024)

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

Minister's comments

Cover note briefing for updated SAR on Fast-track Approvals Bill

Key messages

1. The Ministry for the Environment provided a supplementary analysis report (SAR) when the Fast-track Approvals Bill (the Bill) was considered for introduction by Cabinet on 4 March 2024 [CAB-24-MIN-0666].

2. The SAR has been updated to support the Cabinet paper (CAB-431) seeking agreement to policy and workability changes to the Bill for recommendation to the Environment Committee in the departmental report on the Bill. Changes address matters raised in submissions, and workability issues identified by officials.

3. The original content of the SAR has been largely retained, with any changes in the body of the report identified with an underline of the added wording or strike-out of wording removed. These tracked changes have been limited to only matters which are directly related to the new decisions being made in CAB-431.

4. A new section has been included in Section 2 of the SAR called ‘Section 2: New matters which are directly related to further decision-making on points raised in submissions and workability issues’ which includes additional matters from the Department of Conservation.

5. This new section also provides an overview of the amendments sought in response to submissions received with regards to Te Ao Māori policy, and how these changes impact on the options assessment previously provided.

6. A new Treaty Impact Analysis (TIA) has been prepared of the key decisions sought in CAB-431. This is attached to the updated SAR report as an appendix.

7. The decisions sought in CAB-431 which are particularly relevant to Māori rights and interests and the Crown’s obligations under the Treaty relate to:

    a. ineligibility provisions in respect of land transport or electricity network infrastructure projects on Māori freehold land and general land owned by Māori

    b. timeframes for consultation with Māori groups on applications under consideration by Ministers or the panel

    c. the definition of “existing” Treaty settlements where that term is used in the Bill;

    d. panel expertise and appointment requirements.

Next steps

8. The SAR will be appended to CAB-431 for lodgement on 25 July 2024.

9. CAB-431 is anticipated to be considered by Cabinet on 29 July 2024.

Signatures

s 9(2)(a)

Thomas O'Flaherty
Manager – Fast Track Bill team
24 July 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

BRF-4967 Appendix 1 withheld in full per s18(d)
This document is available: https://environment.govt.nz/assets/publications/FTAB-24-Supplementary-Analysis-Report-PCO_Redacted.pdf

Briefing: Fast-track Approvals (FTA) Bill Amendment paper policy and workability changes and draft Cabinet paper

Date submitted: 22 August 2024
Tracking number: MfE BRF-5057
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	28 August 2024
To Hon Shane JONES **Minister for Regional Development**	Agree to the recommendations in this briefing	28 August 2024

Actions for Minister's office staff

Forward this briefing to:

Hon Simeon Brown, Minister for Transport, Minister for Energy, Minister of Local Government

Hon Paul Goldsmith, Minister for Arts, Culture and Heritage

Hon Tama Potaka, Minister of Conservation, 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 Resources

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

Appendices and attachments

Appendix one: CAB-460 Fast-track Approvals Bill Amendment Paper relating to policy and workability changes

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Kyle Moffat		
Chief Advisor	Kevin Guerin	s 9(2)(a)	✓

Ministry for the Environment
Manatū Mō Te Taiao

FTA Bill Amendment paper policy and workability changes and draft Cabinet paper

Key messages

1. On 29 July 2024, Cabinet agreed to a range of recommended policy and workability changes to the FTA Bill (CAB-24-MIN-0272). The Cabinet paper noted that further policy changes were being considered for the Bill and where necessary these would be delivered through an Amendment Paper at the Committee of the Whole House.

2. On 19 August 2024, joint Ministers agreed to some policy and workability changes to be included in the Fast-track Approvals Bill through an Amendment Paper.

3. In addition, more advice will be provided regarding the 'high bar' for decline and prioritisation and allocation. The Department of Conservation will also seek decisions on matters delegated to the Minister of Conservation and Minister for Regional Development.

4. This briefing provides advice on the following:

    a. extension of timeframes for review by the Minister for Māori Crown Relations: Te Arawhiti and Minister for Māori Development

    b. submissions related to accommodate activities under the Marine and Coastal Area (Takutai Moana) Act 2011

    c. workability matters.

5. There are a number of detailed decisions contained in this paper. These are required to enable accurate Parliamentary Counsel Office drafting.

6. All these matters will be reflected in the final Cabinet paper prior to lodgement with Cabinet Economic Committee on 12 September. In the interim, we have provided placeholders in square brackets.

7. The Cabinet paper seeks approval of the agreed policy and workability changes and agreement to issue the Parliamentary Counsel Office with drafting instructions on Amendment Paper matters. It also seeks authorisation for the Minister Responsible for RMA Reform and Minister for Regional Development to make other minor and technical changes as required for drafting purposes.

Recommendations

We recommend that you:

Extension of timeframes for Minister's review

a. **agree** the timeframe for the Minister for Māori Crown Relations: Te Arawhiti and Minister for Māori Development to comment on the Treaty settlements and other obligations report is extended from 5 to 10 working days

Yes | No

b. **agree** the timeframe for the Minister for Māori Crown Relations: Te Arawhiti and Minister for Māori Development to provide comment on the panel's report is extended from 5 to 10 working days

Yes | No

c. **agree** the default timeframe for the panel's consideration is extended from 25 working days to 30 working days

Yes | No

Submissions related to accommodated activities under the Marine and Coastal Area (Takutai Moana) Act 2011

d. **note** officials have assessed submissions suggesting 'accommodated activities' under the Marine and Coastal Area (Takutai Moana) Act 2011 are provided for and do not recommend changes to these provisions

Noted

Workability matters

e. **note** that the Minister can only accept a project in part if the applicant puts the option forward in the referral application, and that part meets the eligibility criteria (including the significant regional/national benefits test) on its own

Noted

f. **agree** the Local Government Official Information and Meetings Act 1997 applies, with any necessary modifications, to a panel convenor

Yes | No

g. **agree** that the Bill includes an Order in Council process to change the name of the authorised person on a listed project in Schedule 2

Yes | No

h. **agree** that application for an amendment of the authorised person in Schedule 2 is made to the Minister for Infrastructure. That an application must include information such as the interest of the successor in the project, their legal interests (if any) in the project site, and compliance or enforcement action against the applicant (confirmed by the relevant authority). The Minister must consider the information provided in the application before

deciding that the person is appropriate to become the authorised person and before recommending the making of an Order in Council

Yes | No

i. **agree** that the Bill include a general requirement to only allow people to apply (at referral and substantive) who would ordinarily be able to apply under the parent legislation (subject to any exemptions agreed for Crown Minerals Act permits/arrangements if added to the Bill)

Yes | No

j. **agree** that the trigger for non-listed projects and Part B listed projects being able to continue using an expiring approval, is lodgement of the substantive application rather than referral application. Noting this approach is consistent with the decision in the Bill taken for Part A listed projects

Yes | No

Process matters

k. **agree** to seek Cabinet authorisation to delegate decision making authority to the Minister Responsible for RMA Reform and Minister for Regional Development on minor or technical changes required for drafting purposes to ensure the Bill reflects the policy intent of decisions

Yes | No

l. **agree** to circulate the draft Cabinet paper for Ministerial consultation between 29 August and 05 September

Yes | No

m. **agree** to lodge the final Cabinet paper with Cabinet Economic Committee on 12 September

Yes | No

n. **agree** to forward this briefing to Hon Simeon Brown, Minister for Energy, Minister of Local Government, Hon Paul Goldsmith, 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 Resources.

Yes | No

Signatures

s 9(2)(a)

Nadeine Dommisse
Deputy Secretary, Environmental Management and Adaption
Ministry for the Environment
21 August 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

Hon Shane JONES
Minister for Regional Development
Date

Fast-track Approvals (FTA) Bill Amendment paper policy and workability changes and draft Cabinet paper

Purpose

1. On 19 August 2024, joint Ministers discussed policy and workability changes to be included in the Fast-track Approvals (FTA) Bill through an Amendment Paper (AP). Matters discussed included purpose clause and conditions, prioritisation and allocation, listed projects, cost recovery, Crown Minerals Act, land management approvals, and leases and rights of first refusal.

2. We are preparing further advice regarding the 'high bar' for decline and prioritisation and allocation which will be provided by 6 September 2024. The Department of Conservation will also seek decisions on matters delegated to the Minister of Conservation and Minister for Regional Development.

3. There remains outstanding policy and workability changes that require decisions for inclusion through an AP. This briefing:

    a. outlines the process for amendments to the FTA Bill

    b. provides advice on some additional policy and workability matters:

        i. extension of timeframes for review by the Minister for Māori Crown Relations: Te Arawhiti and Minister for Māori Development

        ii. submissions related to accommodated activities under the Marine and Coastal Area (Takutai Moana) Act 2011

        iii. workability matters.

    c. attaches the draft Cabinet paper (Appendix one) to seek Cabinet approval to agreed changes and agreement to issue the Parliamentary Counsel Office (PCO) with drafting instructions on AP matters.

4. The Department of Conservation (DOC) will also seek decisions for matters included in the attached draft Cabinet paper.[1] As agreed on 19 August 2024, those decisions have been delegated to the Minister of Conservation and Minister for Regional Development.

5. The attached draft Cabinet paper contains outstanding decisions within square brackets. The final paper will reflect all decisions made prior to lodgement with the Cabinet Economic Committee (ECO) on 12 September 2024.

[1] DOC decisions are sought regarding land management approvals, land exchanges, leases and first right of refusal, and freshwater fisheries approvals.

6. The attached draft Cabinet paper also seeks Cabinet authorisation for the Minister Responsible for RMA Reform and Minister for Regional Development to make other minor and technical changes required for PCO drafting purposes.

Amendment paper context and process

7. On 7 March 2024, the FTA Bill was introduced to the House and referred to the Environment Select Committee (the Committee). The intent of the FTA Bill is to provide a fast-track decision-making process to facilitate the delivery of infrastructure and other development projects with significant regional or national benefits.

8. On 29 July 2024, Cabinet agreed to changes to the Bill (CAB-24-MIN-0272) to support workability and address some of the principal concerns and suggested improvements raised by submitters through the Select Committee process. These changes were reflected in the Departmental Report, which officials delivered to the Environment Committee on 2 August 2024.

9. Cabinet also agreed that where practicable, Ministers would seek Cabinet agreement to further policy changes to be delivered via an AP at the Committee of the Whole House (COWH). There are two separate Cabinet papers covering other matters to be included as amendments to the FTA Bill. These relate to:

    a. the issuing of some Crown Minerals Act 1991 mining permits under the FTA Bill *(Including Crown Minerals Act 1991 permitting in the Fast-track Approvals Bill)*

    b. the inclusion of listed projects in the Bill *(Fast-track Approvals Bill – Listed Projects).*

10. Cabinet agreement to policy and workability changes are necessary for PCO when drafting legislation, when proposed changes go beyond the scope of existing decisions.

11. Once drafted, all amendments to the FTA Bill will be presented as a combined AP pack to the Cabinet Legislation Committee (LEG) for approval in October, ahead of the COWH stage.

12. Officials will continue to advise Ministers on options for further refinement as necessary.

Outstanding policy and workability decisions

Extension of timeframes for Ministers' review

13. On 29 July 2024, Cabinet agreed to extend the timeframe for relevant portfolio ministers (and other parties) to comment on applications pre-referral from 10 working days to 20 working days on the basis 10 days is insufficient to provide quality advice and information. The Bill currently provides a separate role for the Minister of Māori Development and the Minister for Māori Crown Relations at two stages in the process, with a timeframe of 5 working days each time. This separate role was not captured in the above decision.

14. The first stage is consultation on the Treaty settlements and other obligations report pre-referral (clause 13(3) of the Bill), and the second is an opportunity to comment on the

draft report of the panel, on the panel's assessment of the project in relation to relevant Treaty settlements, and any conditions relevant to that assessment before the panel finalises its report (clauses 25(2) and (3) of the Bill).

15. Submissions on this raised concern about the short timeframes, with recommendations that they are extended. Officials agree that 5 working days is insufficient to provide an adequate opportunity for review and consideration at both stages given the likely complexity of projects. This view is supported by officials' experience in providing advice on Māori rights and interests under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA), which was limited to approvals under the Resource Management Act 1991 (RMA) as opposed to approvals under multiple statutes.

16. A 5 working day timeframe is likely to inhibit the extent to which the role of the Minister for Māori Crown Relations: Te Arawhiti and Minister for Māori Development can meet the policy intent which is to provide a meaningful protection for Māori rights and interests and support for Māori economic development aspirations.

17. To balance the views of submitters, officials' views as to workability of the timeframes, and the purpose of the FTA Bill we recommend the timeframe for the Minister for Māori Crown Relations: Te Arawhiti and Minister for Māori Development to fulfil their functions under the Bill be extended from 5 working days to 10 working days.

18. A flow-on effect of extending this timeframe would be to decrease the panel's consideration period. To mitigate this, we also recommend the overall default timeframe for the panel's consideration is extended from 25 to 30 working days.

Submissions related to accommodated activities under the Marine and Coastal Area (Takutai Moana) Act 2011

19. The FTA Bill provides that activities are ineligible in a customary marine title (CMT) or protected customary right (PCR) area without written consent of the rights holder (clauses 18(c) and (d)).[2] This mirrors the "permission right" provided for in the Takutai Moana Act and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (Ngā Hapū o Ngāti Porou Act).[3]

20. Those Acts also include provisions for specified 'accommodated activities/matters' that are exempt from the permission right, which are currently not provided for in the FTA Bill. Accommodated activities include existing infrastructure. The Takutai Moana Act also provides a process for new infrastructure to become a deemed accommodated activity. That process is led by the Minister for Land Information, requires engagement and potential negotiation of compensation if the permission right is waived, and usually takes a minimum of three months.

21. Submitters including Transpower, Bay of Plenty Regional Council, and Northport raised concerns in submissions on the FTA Bill that current ineligibility criteria of the Bill do not provide for accommodated activities.

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[2] An equivalent provision was included in the Covid-19 Recovery (Fast-track Consenting) Act 2020.
[3] The ineligibility criteria also includes requirements under section 55 of the Takutai Moana Act to have written permission from PCR groups to carry out resource consents that will have a more than minor adverse effect on the exercise of the PCR.

22. Officials have assessed the submissions and do not recommend changes to the Bill. This is because the scale of the issue raised by submitters is likely to be small in practice. CMT-recognised areas to date cover only relatively small parts of the coastline, so even where projects do include the coastal marine area, there will currently be limited cases in which permission will be required from the rights holder.

23. Further, designing a deeming process that fits within the FTA Bill is likely to be complex, contentious and challenging to complete within the time remaining to pass the Bill. In addition, doing so might conflict with clause 6 of the Bill, which requires persons exercising powers, functions and duties under the Bill can act in a manner consistent with customary rights.

24. On that basis officials do not recommend changes to provide for accommodated activities.

Workability matters

Minister may accept a project in full or in part

25. You previously decided (BRF-4115) that the Minister may refer all or part of a project to the expert panel. To give effect to this, we propose a process for how the relevant part of a project is determined by the Minister, and for discussion about this with the applicant.

26. We recommend the applicant must indicate in their referral application as an option for the Minister's consideration, a part of their project that they wish to be considered for approval, if for example the project as a whole cannot be accepted or if, for a Part B listed project, the applicant wishes to only apply for part of the project as listed.

27. The Minister can then choose whether to accept the project in full or to accept the part of the project for referral, or decline (but only where the applicant has applied for the same). If a part of a project is referred it needs to (on its own) meet the eligibility criteria (including the significant regional or national benefits test) and any other criteria for referral under the Act. Noting that applicants may choose to only apply for one part of a project, and any referral decision needs to be able to stand alone.

Application of LGOIMA to panel convenor

28. Clause 16 applies certain provisions of the Local Government Official Information and Meetings Act 1987 (LGOIMA) to an expert panel. The Official Information Act 1982 (OIA) applies to the information the Ministry or Minister might receive in relation to fast-track applications (or advice tendered to Ministers), and to the Environmental Protection Authority as a crown entity.

29. Officials have identified a gap as there is nothing that clearly applies either the OIA or the LGOIMA to the panel convenor. We recommend clause 16 is amended to include the panel convenor.

Ability to update the authorised person

30. The current drafting of the FTA Bill does not set out a process for when an authorised person (the person who is able to lodge an application for the project) specified in Schedule 2 of the Act can be updated (for part A and part B listed projects), and we recommend that the Bill provides for this.

31. We recommend that written application for an amendment of the authorised person in Schedule 2 is made to the Minister for Infrastructure. The application would be required to include information such as the interest of the successor in the project, their legal interests (if any) in the project site, and compliance or enforcement action against the applicant (confirmed by the relevant authority). Information requirements have not changed from what was originally required in Schedule 2. The Minister would be required to consider these matters before determining that the person is appropriate to become the authorised person and before recommending the making of an Order in Council to change the name of the authorised person in Schedule 2. Noting there is no corresponding provision for authorised person in a referral decision as an amendment to the authorised person can be made through a referral application.

Who can make an application for approval

32. There are some cases under the relevant legislation where applications for approvals can only be made by specific people (or cannot be made by certain people), for example only permit holders can apply for access arrangements. However, the current drafting of the FTA Bill only reflects one of these cases – it only allows a requiring authority to apply for a notice of requirement, as under the RMA.

33. We recommend the Bill includes a general requirement to only allow people to apply who would ordinarily be able to apply under the parent legislation. We note that an exception to this requirement is recommended in the Crown Minerals Act Cabinet paper.

Ability to operate under existing approval

34. The Bill enables consent holders for existing activities to continue operating under the existing consent beyond its expiry date, so long as the consent application is lodged with the consent authority at least 6 months before expiry (or 3 months, at the discretion of the consent authority). This approach is reflected in Schedule 4 clause 4 of the Bill for approvals under that schedule.

35. Current drafting specifies that for non-listed projects and Part B listed projects, the approval holder is able to continue to operate under the existing approval of the parent legislation, providing a referral application is made within 6 months of enactment of the Act or at least 3 months before expiry of the approval. This is different to the decision taken for Part A listed projects where the trigger is lodgement of the substantive application.

36. We recommend taking a consistent approach for all projects, so that the trigger for being able to continue using an expiring approval under the parent legislation is that the substantive application must be lodged within 6 months of the enactment of the Act or at least 3 months before expiry of the approval. This approach will prevent any uncertainty about the ability for Part B listed and non-listed projects to continue using an expiring approval if a referral application is declined.

Impact analysis

37. The supplementary analysis report (SAR) and updates for the FTA Bill were previously granted quality assurance exemptions due to the Bill's introduction in the first 100 days.

38. The Ministry for Regulation have advised that all policy changes to be contained in an AP are subject to impact analysis and quality assurance requirements.

39. For the draft Cabinet paper, due to timing constraints, a placeholder quality assurance statement has been included. This will be updated in the finalised version prior to lodgement to ECO.

Te Tiriti analysis

40. Te Tiriti analysis of the proposals in this paper is high-level due to time constraints and has not been informed by engagement on the proposals with Treaty partners, including post-settlement governance entities (PSGEs). However, the recommended policy proposals are broadly aligned with the submissions to Environment Committee on the Bill by Māori groups, including PSGEs and takutai moana applicant groups.

41. There are numerous settlement commitments that require the Crown to engage on policy or legislative proposals related to natural resources. In addition, the Crown has obligations under the Treaty principle of partnership to make informed decisions in good faith towards Māori, which may require consultation[4] on these proposals.

42. The proposal to extend the timeframes for the Minister for Māori Crown Relations: Te Arawhiti and Minister for Māori Development to review both the Treaty settlements and other obligations report and the panel report will provide a better opportunity for comprehensive review of these documents. In doing so, it will support the policy intent of providing a further safeguard in the Bill to protect Māori rights and interests and the Crown's obligations to do so under Te Tiriti.

43. Officials' high-level analysis of the recommended proposals has otherwise not identified significant impacts on the Crown's rights and obligations under Te Tiriti.

Other considerations

Consultation and engagement

44. This briefing was developed in consultation with the Ministry for Business, Innovation & Employment. The following agencies were consulted the Department of Conservation, Ministry for Primary Industries, the Ministry for Culture and Heritage, and Land Information New Zealand.

Next steps

45. Ministers requested further advice on the 'high bar' for decline and prioritisation and allocation (joint meeting 19 August). Advice on those matters will be provided by 6 September for decisions to be reflected in the attached draft Cabinet paper.

[4] Legislation Design and Advisory Committee, *Legislation Guidelines: 2021 edition*.

46. Outstanding decisions are currently contained in the attached draft Cabinet paper within square brackets. Once taken, these will be reflected in the final Cabinet paper to be lodged for ECO on 12 September.

47. The following provides a timetable of next steps for the AP:

Action	Date
Initial feedback and approval for consultation from Ministers	By 28 Aug
Ministerial consultation on policy for APs	29 Aug – 05 Sept
Final date for Ministerial decisions	09 Sept
Lodge AP Cabinet policy paper for ECO	12 Sept
If agreed, PCO drafting of AP content (note, tight time constraints mean drafting and finalisation need to occur concurrently with Ministerial consultation)	16 Sept to 29 Sept
AP Cabinet policy paper considered at ECO	18 Sept
AP Cabinet policy paper considered at Cabinet	23 Sept
Ministers receive a LEG pack (briefing/draft LEG Cabinet paper) which combines agreed additions into the AP for decisions	17 Oct
Ministerial consultation	21 Oct – 28 Oct
Ministers receive final versions and supporting materials	29 Oct
Lodge AP Cabinet LEG paper	31 Oct
AP LEG paper considered at LEG	14 November
AP LEG paper considered at Cabinet	18 November
AP introduced at Committee of the Whole House stage	Before 1 Dec
Fast-track Approvals Bill enacted	Before the end of 2024

Document 5

Ministry for the Environment
Manatū Mō Te Taiao

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Aide memoire: Meeting advice on prioritisation and allocation in the Fast-track Approvals Bill

Date submitted: 15 August 2024
Tracking number: BRF-5155; MBIE 2424-0683
Sub Security level: In-Confidence
MfE priority: Urgent

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
Nil

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Responsible Manager	Thomas O'Flaherty	s 9(2)(a)	
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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 prioritisation and allocation in the Fast-track Approvals Bill

Purpose

1. This briefing seeks policy direction on whether further changes are needed via an amendment paper to the Fast-track Approvals Bill (the Bill) to clarify the priority and order of fast-track approvals and their relationship to existing resource allocation limits and approvals.

Background

2. On 29 July, Cabinet agreed to a range of policy and workability changes to the Bill (CAB-24-MIN-0272). These changes were reflected in the Fast-track Approvals Bill Departmental Report, which officials delivered to the Environment Select Committee on 2 August.

3. The Cabinet paper noted that further policy changes and workability fixes were being considered for the Bill and where necessary these would be delivered through amendment papers at the Committee of the Whole House stage.

4. Officials are carrying out this work and will provide a briefing to Ministers with recommended policy and workability changes to be included in amendment papers on 22 August. At this stage amendment papers are likely to be required for:

    - including the listed projects in Schedule 2 of the Bill
    - including additional Crown Minerals Act processes in the Bill
    - cost recovery provisions
    - making further critical workability fixes to the Bill.

Analysis and advice

The Bill is unclear on some key questions relating to prioritisation and allocation of competing applications for limited resources

5. The fast-track system is likely to lead to competing applications for the same limited resources and incompatible applications for overlapping space. Limited resources such as freshwater, coastal space, conservation land, minerals and geothermal resources may be subject to a range of proposed competing applications. These uses may include irrigation, aquaculture, critical infrastructure, mining, renewable energy production, and tourism.

6. Applications made under the fast-track regime may also compete with earlier in time applications made under the ‘parent’ legislation (e.g. the Resource Management Act 1991 (RMA), the Crown Minerals Act 1991, and the Conservation Act 1987).

Applications may also be made for activities that, if approved, could negatively impact the access to resources authorised by existing holders of rights allocated under 'parent' legislation.

7. The existing 'parent' legislation currently manages the prioritisation of applications for competing activities in various ways. For RMA applications, subject to specific limitations, a 'first in, first-served' approach applies as a default, with the first to file a complete application taking priority. An application with priority will be processed first and assessed as if the other applications do not exist. The next application in line is then assessed taking into account the priority application (if that has been approved). The first in, first served approach to the order in which applications are processed is not explicitly stated in the RMA and has been developed by the courts over time (particularly in the context of competition for coastal space for aquaculture and for the use of freshwater).

8. While 'first in, first served' is the default for the order in which competing applications are to be processed, the RMA enables the Minister and local authorities to use alternatives in certain situations. For example, RMA plans can include allocation methods and limits on resource use, and consent authorities can impose conditions on resource consents recognising flow sharing arrangements between resource users. In respect to coastal marine space, the RMA has mechanisms which Ministers can use to deal with competing marine farm consent applications.

9. The RMA also contains some provisions preventing existing resource users on fixed term consents being gazumped by other resource users. In particular, the RMA prioritises reconsenting applications from existing resource users over other applicants (subject to certain conditions).

10. The courts have also considered whether consents can be granted that would detract from consents already granted to someone else. Again, the RMA is not explicit on this point. In *Aoraki*[1] the High Court found that a where a resource was already fully allocated in a physical sense to a permit holder, a consent authority could not lawfully grant another party a permit to use the same resource. That case concerned an application to extract water for irrigation from above an existing hydro generation power station.

11. Approvals under the Conservation Act are also generally processed on a first in, first served basis, but that Act also empowers the Minister for Conservation to undertake an allocation process (for example a tender[2]).

12. The fast-track approvals system provides a separate pathway, potentially enabling competing applications for limited resources to avoid queues, and other processes which determine the order applications are considered and to be progressed more rapidly.

13. In particular, the Bill allows applications for approvals not previously able to be applied for such as prohibited activities, land exchanges for various categories of conservation land, and approvals inconsistent with water conservation orders. Existing frameworks, such as water allocation limits or targets in regional plans, or rules relating to marine

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[1] *Aoraki Water Trust v Meridian Energy Ltd* [2005] 2 NZLR 268 (HC).
[2] For example, DOC has used a tender to manage excess demand in relation to landing rights at the Milford Aerodrome.

farms, are considerations in the Bill but do not carry as much weight compared to its purpose of facilitating the delivery of infrastructure and development projects with significant regional or national benefits.

14. Issues of priority and certainty of allocation rights are very important to applicants and holders of existing approvals. We have identified some areas where it is unclear how the fast-track approach as designed will work in practice or interact with existing resource management prioritisation and allocation systems.

15. We want to further test these areas and their underlying intent with Ministers to determine if further changes are needed to ensure the Bill is clear, workable and certain for applicants and other resource users.

16. In particular, the Bill is currently largely silent or unclear on:

    - how the priority between applications made under the fast-track system is determined (i.e. whether a first in, first served or other approach applies)

    - whether approvals issued under the Bill will be able to exceed current resource allocation limits and, if so, how any implications for existing approval holders will be considered and managed

    - whether applications for renewing existing approvals under any regime will have priority over applications for new activities under both the fast-track system and 'parent' legislation

    - how competing applications to limited resources will be prioritised under the Bill and between fast-track applications and applications already made under other legislation

    - whether and how projects may be prioritised in terms of being referred to an expert panel – this is an issue for both listed and referred projects.

17. We recommend that the Bill is as clear as possible on these matters. Without further clarification there is a risk that fast-track decision making may not achieve the policy intent, and will be uncertain, subject to legal challenge, and slowed down.

18. We provide further analysis and options on these matters below.

What approach is used to prioritise applications in the fast-track system?

19. The Bill is not explicit on the approach to be used to determine the order by which applications for new activities under the fast-track system are assessed (prioritisation). This may result in uncertainty and challenge.

20. Where the Bill does not already specify an approach, we recommend specifying that prioritisation of applications for new activities within the fast-track system is determined by a 'first in, first-served' approach. This approach would apply to both the assessment of referral applications and in determining the order of substantive applications to be heard by expert panels.

21. Unless a deadline is set by the referral minister, applicants under referred projects have 2 years to lodge their substantive application with the panel. The first to lodge a complete substantive application at the panel stage would be first in the queue and be assessed ahead of other applications within the fast-track system.

22. However, there may be circumstances where Ministers wish to give an application greater priority to be considered because it is urgent. We propose that an additional mechanism be developed to enable Ministers, at the referral decision-making step, to identify urgent projects that they consider appropriate to be heard first by an expert panel and tag the project accordingly. When the complete substantive application is lodged, this will be considered at the front of the queue for the panel convenor to set up the expert panel for.

23. This additional mechanism would not be intended to override the 'first in, first served' approach, which seeks to prioritise applications for limited resources, but is a process step to ensure that urgent projects are not delayed behind other less urgent projects and recognises the resourcing constraints in New Zealand for progressing projects. This is anticipated to be a mechanism used in extraordinary circumstances, due to the implications on fairness and equity. An example of where this may be appropriate to be exercised is to provide a pathway for a new energy project to be implemented ahead of next winter to respond to an identified energy shortfall. Ministers may also wish to consider amendments to enable certain projects to be "pulled to the front of the queue". This could occur through a power to direct the EPA to give priority to allocating specified urgent projects for panel consideration. Further work is needed to development these additional mechanisms. s 9(2)(h)

Should fast-track approvals be able to exceed current resource allocation limits and if so how will implications for existing approval holders and regulatory mechanisms be managed?

24. The Bill does not require the allocation of limited resources to accord with existing allocation frameworks and limits, including under RMA plans and policy statements. Therefore, unless specifically addressed in the Bill, approvals that breach current allocation limits could be granted under the fast-track system.

25. If approvals are granted in a way that exceeds allocation limits, this could have very significant impacts for existing users. For example, if a water resource is fully allocated and a new user is granted an additional water take, this impacts how much water is left for other users, and water reliability. Other users in the catchment would still need to comply with minimum flows, which would likely be triggered more often, and which the council must enforce. As a result, existing irrigation schemes and individual takes for agriculture and horticulture would need to ration or stop taking water more often during a season where water reliability is impacted by the new take. A hydro-generation scheme using the same resource could similarly be impacted and need to reduce its use of the resource.

26. We would like to confirm with Ministers whether the intent of the Bill is either:

    - to allow the Panel to approve fast-track applications that would not be approved under the 'parent' legislation due to existing allocations and limits

    - that applications received under the Bill and approvals need to comply with any relevant allocation mechanisms applying under the 'parent' legislation and cannot re-allocate resources that have already been allocated to existing users.

There are risks in allowing approvals outside of allocation frameworks

27. The Bill as currently drafted enables the fast-track system to approve the use of limited resources outside of usual allocation frameworks. This approach maximises opportunities for the development of fast-track projects but presents risks of removing or impinging on existing users' rights.

28. Where a fast-track approval grants the use of a limited resource beyond allocation limits, other users of that resource will be affected. For a resource like freshwater, this could mean less water is left for power generation or irrigation. Other users of the resource are likely to have invested heavily in their existing activity (which individually or collectively may also be of regional or national significance) but could lose access or reliability as a result of the fast-track approval. The risk of later approvals exceeding allocation limits would create uncertainty for investment decisions, with parties unable to rely on rules and resource consent conditions to set the parameters. The Bill reduces the opportunity for existing users to be involved in decision-making, so some of the implications of exceeding allocation limits may not be fully identified and considered by decision-makers during the fast-track process.

29. Where there are existing landowner approvals such as concessions under the Conservation Act (which include leases granting an interest in land and the right to exclusive possession), an additional fast-track approval over the same area would erode the right of the existing concessionare and could create significant legal complexities for the Department of Conservation.

30. For the agencies and authorities which operate allocation frameworks, enforcing rules frameworks and achieving desired environmental outcomes could become more difficult if an increasing number of actors are able to operate outside parts of that framework. In *Aoraki Water Trust v Meridian Energy Ltd*[3], the High Court held that where a resource is already fully allocated in a physical sense to a permit holder, a consent authority could not lawfully grant another party a permit to use the same resource unless acting pursuant to specific statutory powers. Reasons included that the authority over-allocating the resource would be powerless to manage, control and enforce an order of preference or priority between competing permit holders. Environmental outcomes may need to be reconsidered if the limited resource becomes overallocated. For example, regional councils may need to conduct plan reviews to reset limits or allocations.

31. s 9(2)(g)(i) [redacted] A major issue for many iwi is the impact on instream values where catchments have been overallocated, and how to address that in a future regime that appropriately recognises their rights and interests.

Retaining existing allocation frameworks would better protect the rights of existing users but potentially narrow the scope of potential fast-track activities

32. One option is to amend the Bill to make it clear that fast-track applications and approvals are required to stay within existing allocation limits. However, this would likely result in some new activities not being able to be progressed in the fast-track process if they are

[3] *Aoraki Water Trust v Meridian Energy Ltd* [2005] 2 NZLR 268 (HC). The Court commented that the existing consent holder 'must reasonably expect to proceed with planning and investment on the basis that the consent authority will honour its commitment. Indeed, refusal to recognise that expectation would seriously undermine public confidence in the integrity of water permits.'

unable to show that there is allocation available for their activity under the relevant allocation framework in the 'parent' legislation.

33. For RMA approvals, this could prevent the panel from granting a consent such as a water, coastal, or discharge consent that would contravene an allocation limit relating to the relevant resource.

34. For concessions under the Conservation Act, this could prevent the panel from agreeing to grant a concession over land where the new concession would not be compatible with the existing one, for example if one is for exclusive occupation. For exchanges under the Conservation Act this could preventing the panel from agreeing to authorise an exchange over land where there is an existing agreement to exchange in place.

35. Implementing this option may also require new ineligibility criteria to be included in the Bill, to limit applications for resources that are nearly or already fully allocated or providing appropriate links in each of the 'parent' legislation schedules.

We recommend adding additional measures to the Bill if the intent is to be able to allocate beyond existing allocation limits

36. The other option is to allow the allocation beyond resource allocation limits. If this option is favoured, then we recommend the following measures are added to the Bill to help provide some protection to the rights of existing approval holders:

    - enabling existing users the ability to have their application for renewal determined ahead of applications for new activities competing for the same resource (covered in more detail below)

    - requiring expert panels, when considering the merits of an application, to test the impacts, including cumulative impacts, that may arise from granting the approval for an overallocated resource

    - enabling expert panels to address impacts arising from overallocation either through accepting the impacts and applying conditions where appropriate or declining a proposal.

37. These measures would be in addition to other Bill provisions that may act as mitigations against the impacts of over allocation on the environment. For instance, the Bill enables the referral minister to decline an application on the basis that the project may have significant adverse effects on the environment (which could include cumulative effects). The minister must also seek and consider comments from other ministers, local government, and relevant Māori groups, which can help to identify relevant matters affecting allocation under the parent legislation.

Should applications for renewing existing approvals have priority over applications for new activities under both the fast-track system and 'parent' legislation?

38. Under the RMA established activities and existing resource consent holders have a level of protection over new activities for the same resource. Section 124B of the RMA works with related provisions to give priority to an existing consent holder to have their new consent application determined ahead of anyone else competing for the same resource. This reflects the often-substantial investment in the existing activity over time since it was first approved and provides certainty to existing consent holders within a first in, first served framework.

39. You have previously agreed to apply sections 124 and 165ZH of the RMA [BRF-4307]. These sections, and section 17ZAA of the Conservation Act, provide for existing activities to continue to operate while renewal approvals are sought.

40. However, the Bill as currently drafted does not provide protection to those seeking to renew existing approvals with respect to other applications. At present the Bill does not contain the equivalent of section 124B of the RMA. As an example, section 124B works with related provisions to prevent an existing water take being gazumped by a second applicant lodging first in time and securing priority for processing ahead of a renewal application by an existing consent holder. Section 124B is an example of a provision that modifies the strict application of first in first served.

41. If Ministers want a similar protection to apply in the fast-track system, and between the fast-track system and 'parent' legislation, we recommend that an approach like under sections 124A-C of the RMA is included in the Bill. This provision would apply to applications regardless of whether the fast-track system enables allocation of resources above or within resource allocation limits.

42. Adopting this approach would mean that regardless of whether the application is under the 'parent' legislation or the fast-track system, existing users would have priority (eg. if a renewal application is received and a fast-track application for a new activity is received under the Bill for the same resource, the renewal application under the RMA would receive priority).

How should competing applications to limited resources be prioritised under the Bill and between fast-track applications and applications already made under other legislation?

43. As noted above, it is likely that there will be competing applications made for limited resources under the fast-track regime, and for overlap between fast-track applications and applications under existing 'parent' legislation.

44. The Bill provides some direction on how competing and incompatible activities that apply for the same resource will be prioritised under the fast-track process:

    - Under clause 6 of Schedule 12, relating to the Fisheries Act 1996, the Chief Executive of the Ministry of Primary Industries must give higher priority to processing a request made by a panel for a recommendation on an aquaculture decision than a request made as a consequence of consents granted under the RMA.

    - Clause 3 of Schedule 9 enables consideration of additional matters, including alternative uses of space in the Exclusive Economic Zone that may have better strategic, economic, environmental purposes than the activity being applied for. The referral minister may consider these factors when deciding to refer a project.

45. The Bill is not clear on whether fast-track applications for new activities could proceed ahead of competing applications lodged first under 'parent' legislation. Allowing fast-track applications to jump the queue, would raise issues of fairness and equity. It would also risk a 'gold-rush' of fast-track applications in order to establish priority position and clog up the fast-track system.

46. We recommend clarifying that any applications being progressed under parent legislation will retain their priority order in relation to competing applications made later under either that parent legislation, or the fast-track process. This would give people

confidence to submit applications under existing 'parent' legislation if this is the most appropriate or preferred pathway, without the risk that their application is gazumped by a later in time application under the fast-track process.

47. The practical effect of this would be that some fast-track applications may be declined or suspended while decisions are made on existing applications under the parent legislation.

48. The Bill also has limited mechanisms to determine where there are competing or conflicting uses or to manage situations where multiple fast-track applications are received at approximately the same time for the same limited resource

49. As one way of helping to deal with this, we recommend the Bill includes an additional requirement for parties who are invited to comment on referral and substantive applications to identify any existing approvals or applications for activities that may be competing for the same resource.

50. Officials are working to identify other potential mechanisms for the Bill to better manage competing applications and can provide further advice on these ahead of being included in the Cabinet paper proposing content for the amendment paper.

How should listed projects in Schedule 2 of the Bill be afforded priority?

51. The Bill provides for three pathways for projects to be referred to an expert panel:

    - Projects listed in Schedule 2A of the Bill that will be directly referred to an expert panel

    - Projects listed in Schedule 2B of the Bill that the referral Minister must consider referring to an expert panel

    - Applying to the Minister to have a project referred to an expert panel (referred projects).

52. Projects listed under Schedule 2A will receive a degree of priority over referred projects in the fast-track system in that they can proceed straight to the substantive application stage. However, all projects, regardless of whether they are listed or referred will still need to submit a substantive application for panel consideration.

53. Being a listed project under Schedule 2A has the advantage of providing certainty of referral. This should enable a substantive application to be prepared and submitted more quickly. However, in practice, an applicant for a referred project could submit an application for substantive approvals ahead of a listed project and obtain priority order in the queue.

54. If Ministers wish listed projects to proceed ahead of referred projects, then officials can provide advice on options to achieve this.

55. The terms of reference for the Fast-track Advisory Group in respect of listed projects required recommendations on the priority of projects both in terms of their worthiness of being listed, as well as the order in which they should be referred to an Expert Panel post-enactment.

56. Accordingly, the Advisory Group has prioritised the project on a sectoral basis. This prioritisation has been undertaken based on limited information and officials have

identified a risk that prioritisation of projects within Schedules 2A and 2B may result in projects that are immediately ready to lodge a substantive application being required to wait for others that are less ready to advance.

57. We recommend that Ministers discuss how prioritisation for Schedule 2 should be addressed, including whether a first in, first served approach should generally be applied to Schedule 2 projects (so that projects are given priority in the order that their substantive application is made to an expert panel).

58. Should Ministers still wish to prioritise between Schedule 2 projects, the Advisory Group's recommendations could be used to inform this. The officials report which will be provided on 22 August will also include high level commentary on prioritisation of the recommended projects on a sector-by-sector basis. However, it will not, in the time available, be able to give clear recommendations on a cross-sector approach to prioritisation.

Te Tiriti analysis

59. The Te Tiriti analysis of the proposals in this paper is high-level due to time constraints and has not been informed by engagement on the proposals with Treaty partners including post-settlement governance entities.

60. There are numerous settlement commitments that require the Crown to engage on policy or legislative proposals related to natural resources.[4] In addition, the Crown has obligations under the Treaty principle of partnership to make informed decisions in good faith towards Māori. Consultation is often considered an effective means of gaining such information, particularly on options that depart from the status quo.

61. Insofar as the recommendations in this paper provide for maintaining the status quo with respect to prioritisation of applications and allocation of resources, we consider the Te Tiriti impacts will be relatively low. This is because there will be limited change to how Māori rights and interests are currently provided for, and existing arrangements provided for through settlements and other mechanisms, such as Mana Whakahono ā Rohe and joint management agreements, will continue to be provided for.

62. If you decide to progress options that change existing prioritisation and allocation regimes that enable over-allocation or give priority to applications under the fast-track process, there are likely to be significant impacts from a Treaty perspective. This may require consideration of policy design and of whether additional protective steps are needed in light of the other changes. The impact on various settlement commitments may be significant. There may also be implications for previous Crown commitments on Māori freshwater rights and interests[5] and future policy work to address Māori rights and interests in freshwater and/or other resource allocation issues that could form part of phase 3 of the resource management reforms.

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[4] For example, the Relationship Agreement between the Ministry for the Environment and Maniapoto (Te Nehenehenui) Clauses 10.1-10.2; Cl 2.5 of the Kiingitanga Accord between the Crown and Waikato-Tainui; and the Ngāti Maru Relationship Agreement with the Ministry for the Environment, clause 7.1.

[5] As recorded in the Supreme Court in 2013 (*New Zealand Māori Council v Attorney General* [2013] NZSC 6, [2013] 3 NZLR 31 at [145]).

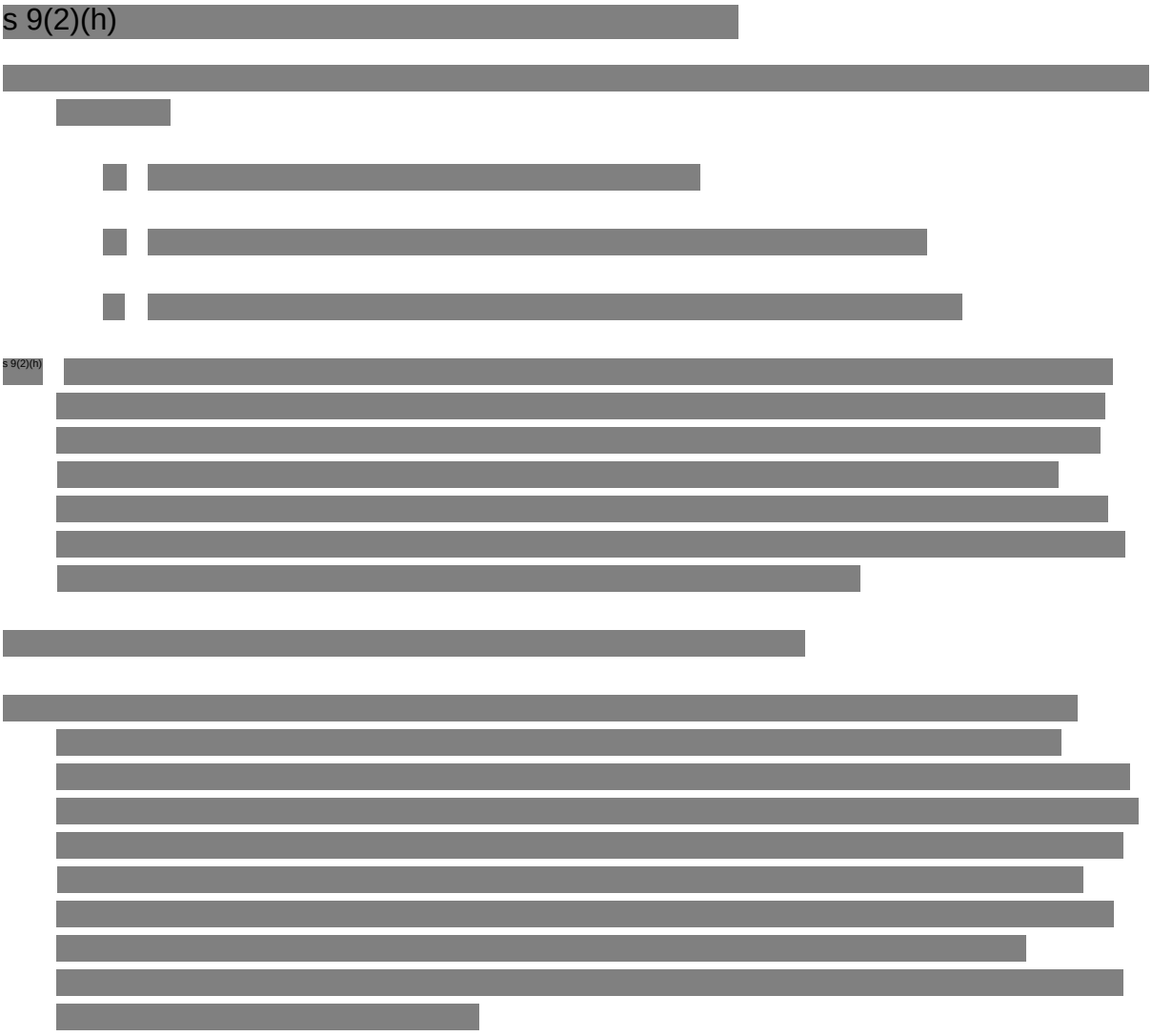
63. These negative impacts may be somewhat mitigated by the overarching obligation for persons exercising functions, powers and duties under the Bill to act in a manner consistent with settlements and customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 and supporting provisions in the Bill, such as those related to condition-setting. The interactions between those provisions and the new prioritisation or allocation provisions would need to assessed in further detail. Effects on Māori rights and interests that are provided for under Te Tiriti but not under settlements or customary rights recognised in relevant legislation would be more significant given the absence of a Treaty clause and uncertainty regarding how Treaty clauses in underlying legislation will be applied by system users or interpreted by the courts.

Other considerations

Consultation and engagement

64. This advice was developed in consultation with the Department of Conservation, the Ministry for Primary Industries, the Ministry for Culture and Heritage, and Land Information New Zealand.

s 9(2)(h)



s 9(2)(h)

[redacted]

s 9(2)(h)

Financial, regulatory and legislative implications

78. No financial, regulatory, or legislative implications are associated with the proposals in this briefing.

Next steps

79. Ministers are scheduled to meet on 19 August to discuss this advice and the wider process and approach to developing amendment papers to the Bill.

80. We will incorporate ministers' decisions or direction into the briefing and draft Cabinet paper due to be delivered to ministers on 22 August seeking policy and workability decisions for inclusion in an amendment paper.

Signatures

Martyn Pinckard
General Manager (acting) – Resource Management System
Minstry for the Environment
15 August 2024

Susan Hall
Policy Director, Building Resources and Markets
Ministry of Business, Innovation and Employment
15 August 2024

Ministry for the Environment
Manatū Mō Te Taiao

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Aide memoire: Meeting advice on the purpose clause and conditions for the Fast-track Approvals Bill

Date submitted: 15 August 2024
Tracking number: MfE BRF-5172
Sub Security level: In-Confidence
MfE priority: Urgent

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
Nil

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Minister's comments

Ministry for the Environment
Manatū Mō Te Taiao

Meeting advice on the purpose clause and conditions for the Fast-track Approvals Bill

Purpose

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

2. This aide memoire provides you detail to inform this discussion where changes or clarifications are sought for:

   i the purpose clause and decision-making framework

   ii condition setting.

3. The meeting agenda includes a recommendations table to guide your discussion. We have outlined where recommendations relating to the above items are in the agenda.

Purpose clause and decision-making framework

[agenda recommendations 1-3]

4. The purpose of the Bill is to provide a fast-track process to approve infrastructure and other development that is of significant regional or national benefit. The current drafting however also refers to a process, rather than the focus being on the policy intent of the Bill.

5. The current purpose clause is *"… to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits."*

6. We recommend removing the process reference *"The purpose of this Act is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits."* We note that final drafting is subject to Parliamentary Counsel Office discretion.

7. Ministers previously agreed to weight first the purpose of the Bill, above relevant matters in the underlying legislation. The way that the criteria applied by the Panel is framed, with the highest weighting for the FTA Bill purpose, is intended to provide clear legislative direction on how decisions are made and to set a high bar for decline.

The decision-making framework

8. When considering each approval, in all cases the expert panel must:

   i first, give greatest weight to the purpose of the Bill (except in relation to the net conservation benefit test for land exchanges)

ii second, consider factors under existing legislation for each relevant approval sought.[1]

9. The overall decision-making framework includes condition-setting, which gives strongest weighting to the purpose of the Bill. The expert panel then issues a set of decisions on the overall project.

Significant benefits

10. When the expert panel form its own view about the extent to which a project will deliver significant regional or national benefits, they are required to:

    i explicitly consider the project as listed (for Part A projects) or all the Ministers' reasons for approving the referral application

    ii have regard to the more comprehensive information about a project based on information received at substantive stage. The panel needs to be able to make their own determination as information on the project, including its scope may have substantially changed from, or in some cases not have been available, when the project was listed or referred.

11. This means that the expert panel can come to their own view, as long as they have regard to the Minister's reasons and the information they get through the panel process (in which case they might decide to take a different view on information that the Minister wasn't aware of when making their decision).

Condition setting

[agenda recommendations 4-6]

12. Condition-setting is part of the decision-making framework where the purpose of the Bill has greater weight than other considerations, including those relating to condition-setting. In practice, the greater weighting of the purpose means that an expert panel would set conditions that enable the operation or development of a project, while managing adverse effects. It also means an expert panel would not set conditions that impede project delivery.

13. The Bill currently provides, where applicable under current legislation, a proportionate approach to setting conditions, and cost-benefit analysis of conditions on approvals. The panel is empowered to impose conditions on each approval, considering the Bill's purpose and framework and drawing on existing parent legislative frameworks and case law.

14. If you wish to change this approach and instead include specific requirements for condition setting in the Bill, this will need to be designed around the different kind of approvals in the Bill, For example, the Fisheries Act has an absolute test in that

[1] Note that section 17(u)(5) of the Conservation Act 1987, which is a threshold test on whether a lease can be granted, would still apply.

decisions are not conditioned[2] and conditions for Conservation approvals will need to consider Crown interests (eg, bonds for rehabilitation, and access approvals have their own characteristics.

15. Where a specific standard set of requirements is possible, there is a legal risk that the wording will be subject to legal challenge and interpretation. If Ministers are comfortable with such a risk, a general approach would be designed, subject to the proviso above about certain legislation, to require that conditions be proportionate and undergo cost-benefit analysis.

16. It is important to note that there may still be rare circumstances when conditions themselves (even proportionate ones) make a project uneconomic or reduce benefits such that it no longer meets the requirements of the legislation.

Te Tiriti analysis

17. The Te Tiriti analysis of the proposals in this paper is high-level due to time constraints and has not been informed by engagement on the proposals with Treaty partners, including post-settlement governance entities.

18. There are numerous settlement commitments that require the Crown to engage on policy or legislative proposals related to natural resources. In addition, the Crown has obligations under the Treaty principle of partnership to make informed decisions in good faith towards Māori, which may require consultation[3] on these proposals.

19. Officials' high-level analysis of the proposals has not identified significant impacts on Māori rights and interests or Māori economic development aspirations.

[2] However, an aquaculture decision can be tagged to and dependent on a particular consent condition, if that condition is material to the aquaculture decision

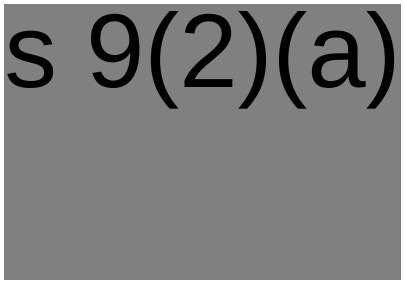
[3] Legislation Design and Advisory Committee, *Legislation Guidelines: 2021 edition*.

Next steps

20. We will incorporate your direction into the briefing and draft Cabinet paper due to be delivered to you on 22 August 2024, seeking further policy and workability decisions for inclusion in an amendment paper.

21. That draft Cabinet paper seeks Cabinet agreement to issue the Parliamentary Counsel Office with drafting instructions.

Signatures

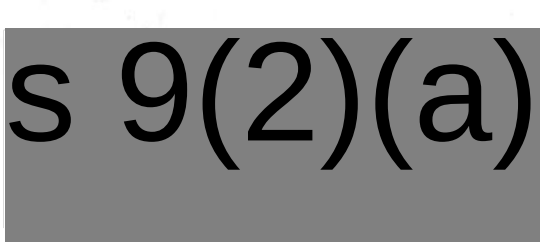


Martyn Pinckard

General Manager (acting) – Resource Management System

Ministry for the Environment

15 August 2024



Susan Hall

Policy Director, Building Resources and Markets

Ministry of Business, Innovation and Employment

15 August 2024

Document 7

Ministry for the Environment
Manatū Mō Te Taiao

Aide memoire: Supporting Joint Ministers Meeting 19 August 2024 - Basis for Panel to Decline Approvals

Date submitted: 19 August 2024
Tracking number: BRF-5206
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	Kevin Guerin		
Responsible Manager	Thomas O'Flaherty		
Deputy Secretary	Nadeine Dommisse	s 9(2)(a)	✓

Supporting Joint Ministers Meeting 19 August 2024 - Basis for Panel to Decline Approvals

1. You are meeting with Joint Ministers tonight to discuss the Fast-Track legislation including Listed Projects. This aide memoire is to support discussion under item B: Purpose clause and conditions for the Fast-track Approvals Bill (the Bill). Item B seeks to make a clarifying change to the purpose, to ensure that it is read as substantive rather than process focused, and confirms existing policy intent.

Further drafting work is needed

2. Further work is needed, however, on the interaction between:

    a. the purpose and common provisions in the Bill itself

    b. the hierarchy between the Bill purpose and provisions in the parent legislation, which is laid out in each schedule.

3. The policy intent of the Bill includes that approvals can in some circumstances be declined. While the Bill generally allows for decline, it has emerged in the select committee process that current drafting is incomplete. In particular:

    a. there are not always sufficiently clear criteria for some of the relevant legislation setting out the circumstances in which a panel can decline, what benefits are to be considered how, or how conditions are to be set

    b. when decisions are made by the panel for each type of approval, before the full set of decisions is agreed, there is explicit weighting to the fast-track purpose, but weighting of other factors under the relevant legislation is not sufficiently clear.

4. Thresholds for decline could include, but are not limited to:

    a. significant adverse environmental effects that cannot be avoided, remedied, mitigated, offset or compensated and remain so significant that they outweigh facilitating delivery of infrastructure and development projects with significant regional or national benefits

    b. project overall has net benefits, noting this may be difficult to assess in practice

    c. expressly list the situations in which a Panel may decline (eg, in the way that clause 21 currently does for the referral decision.

5. This is part of a broader issue that more specific and clearly weighted considerations for the panel could better enable decision-makers to move away from constraints and considerations under existing law.

There is time and authority to do this work and viable options exist

6. There is existing delegated authority for yourself and Minister Jones to make decisions on these matters [CAB-24-MIN-0272 refers]. Officials are developing this advice and consider that practical options exist to make the Bill work as intended. In terms of timing of that advice to and decisions by yourself and Minister Jones:

a. the select committee will consider the Bill further in the week of 23 September 2024 and deliberate in the week of 14 October 2024 before reporting back on 18 October 2024

b. the Cabinet paper to approve Amendment Papers will be lodged on 12 September 2024 to drafting in time for Cabinet to approve them on 18 November 2024.

7. While not seeking decisions on particular options, these could include:

a. laying out how factors under parent legislation in each schedule might lead on overall judgement to a decline for an approval despite the higher weighting of the FTAB purpose, eg, thresholds for decline

b. clarifying what benefits are to be assessed and how

c. ensuring conditions are proportionate, workable and benefits exceed costs

d. clarifying how a panel might deal with a situation where it is not possible to impose conditions that would fully address the serious adverse impacts of an approval in a way that preserves the project's regional and national benefits; eg, decline, accept that serious adverse impacts remain, or grant with the required conditions.

8. At this time, our understanding is that the above options would not require further changes to the purpose itself but cannot completely rule that out.

9. We also note that there is an inherent tension and trade-off between all the options:

a. <u>less prescriptive</u> - better allows for decisions to respond to circumstances, greatest weight to the purpose of the Bill will tend towards an 'approve' decision, likely to be litigated as people seek clarification, requires more trust in the processes and system working, less certainty of outcome;

b. <u>more prescriptive</u> - relies on the selected list of circumstances or the threshold articulated being well-scoped; risks misalignment and potentially perverse or unanticipated outcomes when applied to situations as they arise.

Supporting the conversation tonight

10. To support delivery of this advice, officials suggest that Ministers in considering item B:

5A note the concerns expressed by submitters that the current drafting of the Bill as a whole means it is not clear how a project could be declined

5B note that officials have confirmed to the select committee that the policy intent is to enable decline and that further work is being done on options to ensure this is clear in the Bill while preserving its policy intent

5C note that officials will advise Ministers Bishop and Jones, under the existing Cabinet delegation [CAB-24-MIN-0272 refers]., on options to address the above

5D note that the way the above options are applied is likely to vary by schedule due to the different nature of the tests being applied for each piece of legislation; eg, fisheries tests or Crown interests in conservation land.

Document 8

Ministry for the Environment
Manatū Mō Te Taiao

Briefing: Exceptions to the prioritisation and allocation regimes for the Fast-track Approvals Bill

Date submitted: 5 September 2024
Tracking number: BRF-5233
Sub Security level: In-Confidence
MfE priority: Urgent

Actions sought from Ministers		
Name and position	***Action***	***Response by***
To Hon Chris BISHOP **Minister Responsible for RMA Reform**	Agree to the recommendations in this paper	9 September 2024

Actions for Minister's office staff
Forward this briefing to Hon Shane Jones, Minister for Regional Development **Return** the signed briefing to the Ministry for the Environment (RMPMO@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 Authors	Emily Allan and Ross Scrivener		
Responsible Manager	Thomas O'Flaherty	s 9(2)(a)	
General Manager	Martyn Pinckard	s 9(2)(a)	✓

Minister's comments

Exceptions to the prioritisation and allocation regimes for the Fast-track Approvals Bill

Key messages

1. This briefing provides further advice on clarifying when exceptions may be made to the priority and order of fast-track applications and their relationship to existing resource allocation limits and approvals.

The first-in first-served principle will generally determine the order of consideration, and allocation of contested resources

2. The Fast-track Approvals Bill (the Bill) is not explicit on the approach to be used to determine the order by which applications for new activities under the fast-track system are assessed (prioritisation). The order of assessment matters because this usually determines access to contested resources. The lack of clarity in the Bill may result in uncertainty and challenge.

3. We understand that based on our previous advice on 15 August 2024, Ministers are comfortable with fast-track applications being generally determined on a 'first in, first-served' basis so that the first applicant to file a complete substantive application would be first in the queue and be assessed ahead of any other applications for the same limited resources.

Prioritising applications under the fast-track system

4. Where a fast-track application is identified that should progress urgently, and there are no competing applications, the Minister could direct the panel convenor to expedite the administrative functions needed to establish a panel ahead of other applications.

5. [LEGALLY PRIVILEGED] s 9(2)(h) [redacted]

6. We also recommend the Minister is required to have regard to a range of matters and follow a process set out in the Bill before making a decision on whether to proceed with the reprioritisation of competing applications.

Ensuring the fast-track regime operates generally within allocation limits

7. Except in certain cases, the Bill does not currently require the allocation of access to limited resources to accord with existing allocation frameworks and limits. At the meeting on 19 August 2024, Fast-track Ministers asked for more advice on how the fast-track regime could operate broadly within allocation limits.

8. The most effective way to achieve a fast-track regime which operates generally within allocation limits in the time available is to revise the Bill's eligibility criteria, including not enabling the consideration of prohibited activities in a 'parent' legislation.

9. If no changes are desired to the Bill's eligibility criteria, then we recommend either:

    i relying on the provisions currently in the Bill for panel decision making and condition setting to address issues of over-allocation where they potentially arise; or (recommended)

    ii prescribing or listing the allocation limits that are intended to be retained in the 'parent' legislation through a secondary legislation mechanism and providing an intervention mechanism to exceed these allocation limits (not recommended).

Recommendations

We recommend that you:

1. **note** that officials provided Fast-track Ministers with initial advice on prioritisation and allocation in the Fast-track Approvals Bill (the Bill) on 15 August 2024 (BRF-5155; MBIE 2424-0683)

General prioritisation principles in the Fast-track Approvals Bill

2. **agree** that, based on the 15 August 2024 advice, the presumptive approach for prioritising fast-track applications is for:

    i. competing applications for limited resources, whether lodged under the Bill or 'parent' legislation, and including listed and referred projects, will be assessed on a first in, first served basis that is determined at the point a complete substantive application is lodged

    ii. applications being progressed under 'parent' legislation to retain their first in, first served priority order for assessment ahead of any competing applications made at a later date under either that 'parent' legislation or the fast-track process

    iii. a provision equivalent to sections 124A-C of the Resource Management Act 1991 (RMA) to be included in the Bill, whereby applications by existing users seeking renewal of RMA consents, either under the fast-track or the RMA, will be considered before fast-track applications for new activities using the same limited resource

    Yes | No

3. **agree** that in order to continue operating under an expiring approval (whether under the 'parent' legislation or the fast-track regime) while a renewal application is considered under the Bill, the renewal application must be made in the period that begins 6 months before the expiry of the existing approval (rather than the enactment of the Act); and ends 3 months before the expiry of the existing approval

    Yes | No

4. **note** that at their meeting on 19 August 2024, Fast-track Ministers asked for additional advice on the ability for Ministers to override the proposed first in, first served prioritisation approach in the Bill and enable an expert panel to exceed existing resource allocation limits in certain circumstances

Tools to support the first in, first served approach and enable the Minister to prioritise projects within fast track

5. **agree** to include a requirement in the Bill for agencies and bodies who administer the 'parent' legislation under which approvals are sought and relevant local authorities to the best of their knowledge identify and provide details of any existing applications for activities that may be competing for the same resource as the fast-track application

Yes | No

6. **agree** that the existing mechanism in the Bill to allow the Minister to suspend an application is amended to:

    i. enable the suspension to apply from the point at which a substantive application has been deemed complete

    ii. include an additional matter so that the Minister may direct the suspension of fast-track applications in order to manage any conflicts arising from competing applications under the first in first served approach, including any reprioritised competing applications

Yes | No

Ability to change the priority and order for processing and determining fast-track applications

7. **agree** that for both competing and non-competing applications, the Bill enables the Minister to decide at their own initiative whether to reprioritise applications

Yes | No

8. **note** that when considering options for the prioritisation of applications there is a need to distinguish between where there is only one application seeking to use the resource (non-competing application) and where there are two or more applications seeking to use the same resource (competing applications)

9. **note** that:

    i. prioritising competing applications would be significantly more challenging and carry greater risk than prioritising non-competing applications

    ii. there is the option of choosing to limit the ability for the Minister to prioritise an application to only cases where there are no competing applications

The Minister may direct the panel convenor to prioritise non-competing applications

10. **agree** that the Minister may decide to prioritise a non-competing application for a listed or referred project ahead of other applications where the Minister considers there is a need for an application to progress urgently and there is a risk of delay in that application being considered by a panel, upon request and as described in the substantive application

Yes | No

11. **agree** that where there are no known competing applications for the same resource under fast-track and 'parent' legislation, the Bill enables the Minister to, either at the time they refer the listed or referred project to the panel or at the substantive application stage, direct the panel convenor in writing to prioritise the establishment of an expert panel to consider the application ahead of other applications

Yes | No

The Minister may reprioritise competing applications

12. **agree** that the Minister may decide whether to reprioritise competing applications where the Minister considers there are exceptional circumstances that mean it may be appropriate to amend the default approach to priority (first in first served) because of the relative importance of projects and the likely risk of delay, upon request and as described in the substantive application

Yes | No

13. **agree** that where there are competing applications for a resource under either the fast-track system or the 'parent' legislation, the Bill enables the Minister to disapply the first in, first served approach so that a prioritised application is determined before competing applications

Yes | No

[LEGALLY PRIVILEGED]

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

Process for prioritising competing applications

15. **agree** that the Minister must have regard to the following matters when deciding to prioritise one competing application above others:

    i. the impact that prioritising one project would have on other competing applications, including cost and time impacts, and considering how far progressed competing applications are within the fast-track or 'parent' legislation regime

    ii. the relative benefits of the project, including in assisting the economic, social or cultural development of a distinct group, community or district

    iii. any reasons of urgency for one application to proceed ahead of others (eg, a natural disaster response or recovery or other emergency reason)

    iv. the capacity and readiness of the applicants to deliver the project, including whether all the necessary approvals have been applied for under fast-track and/or been secured through other processes

    v. impacts on existing resource users and approval holders and the limited resource in question

vi. any Treaty settlements or customary rights recognised under relevant legislation.

Yes | No

16. **agree** that the Bill contains the following steps to ensure the process for reprioritising competing applications is as transparent as possible:

    i. the Minister must consider suspending the processing of all competing applications while the Minister makes a decision on whether to reprioritise the order of processing

    ii. the Minister must provide competing applicants and the processing bodies with written notice of the Minister's intention to override first in, first served and set out their reasons for doing so

    iii. the Minister must give competing applicants an opportunity, within a timeframe set by the Minister, to respond to the notice of intention and provide any further relevant information ahead of a final decision being made

    iv. the Minister must consult with and may request any further information from other Ministers, agencies, local authorities, Māori groups and any other relevant party and set a timeframe for those parties to provide any additional information

    v. the Minister must provide their final decision to the competing applicants and make it publicly available

    vi. there would no right of appeal of the Minister's decision (although an application could be made for judicial review)

Yes | No

17. **note** that the Minister, having considered whether to reprioritise competing applications, may decide:

    i. to disapply the first in, first served approach and prioritise the urgent project ahead of all or some of the competing applications in the queue

    ii. that the current first in, first served ordering of the competing applications and process should be maintained

18. **agree** that the Bill will enable the Minister to suspend the processing of competing applications under all of the 'parent' legislations of the Bill

Yes | No

19. **agree** that the Minister may initiate a process to decide whether to reprioritise competing applications at any time up until the competing applications are approved

Yes | No

Remaining within existing allocation limits and enabling the expert panel to grant an approval that exceeds existing allocation limits

20. **note** that at the meeting on 19 August 2024, fast-track Ministers indicated a preference for fast-track applications and approvals to comply with any existing allocation rules and limits and asked for further advice on how the fast-track system can achieve this

21. **note** that the clearest way to achieve a fast-track regime where decisions are constrained by existing limits and requirements in the 'parent' legislation is to:

    i. revise the Bill's eligibility criteria, including not enabling the consideration of prohibited activities in 'parent' legislation

    ii. revise the decision-making settings so that the Bill's purpose is weighed equally with the planning documents of the 'parent' legislation

22. **note** that in the time available, adjustments could be made to the Bill's eligibility criteria, but revising the decision-making settings would require significant additional policy work

23. **agree** to revise the Bill's eligibility criteria, including not enabling the consideration of prohibited activities which relate to an allocation limit in a 'parent' legislation

    Yes | No

24. **agree** that land management approvals that confer property rights cannot be 'over-allocated' by the panel

    Yes | No

25. **agree** to:

    i. **either** rely on the provisions currently in the Bill for panel decision making and condition setting so that issues of over-allocation are considered by panels where they potentially arise (recommended)

    Yes | No

    ii. **or** prescribe or list the allocation limits and rules that are intended to be retained in the 'parent' legislation through a secondary legislation mechanism and provide an intervention mechanism to exceed these allocation limits (not recommended).

    Yes | No

Signatures

s 9(2)(a)

Martyn Pinckard
General Manager (acting) – Resource Management System
Ministry for the Environment
5 September 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

Exceptions to the prioritisation and allocation regimes for the Fast-track Approvals Bill

Purpose

1. This briefing provides further advice on clarifying when exceptions may be made to the priority and order of fast-track applications and their relationship to existing resource allocation limits and approvals.

Background

2. Officials are working on further policy and workability improvements to the Fast-track Approvals Bill (the Bill) for potential inclusion in amendment papers to be presented at the Committee of the Whole House stage.

3. On 15 August 2024, officials provided you with initial advice on how the Bill could be clarified with regards to the priority and order of fast-track applications and their relationship to existing resource allocation limits and approval holders [BRF-5155; 2424-0683].

4. Fast-track Ministers met on Monday 19 August 2024 to discuss this advice, although no decisions were taken. Ministers requested further advice on:

    i the ability for the referral Minister (the Minister) to override the general prioritisation approach in the Bill

    ii enabling an expert panel to exceed existing resource allocation limits in certain circumstances.

Analysis and advice

Overall approach to prioritisation in the fast-track regime

5. [LEGALLY PRIVILEGED] s 9(2)(h) [redacted]

6. Applications made under the fast-track regime may compete with each other for the use of resources (such as water, land, or marine space) and may compete with earlier applications made under the 'parent' legislation (eg, the Resource Management Act 1991 (RMA), the Crown Minerals Act 1991, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, and the Conservation Act 1987).

7. As noted in our previous advice, we propose a 'first in, first-served' approach so that the first applicant to file a complete substantive application would be first in the queue and be assessed ahead of any other applications for the same limited resources. The next application in line is then assessed, taking into account the decision on the first (if that has been approved). For clarity this would also include where a complete substantive land exchange application has been lodged under the fast-track regime.

8. We also recommended in our previous advice that:

    i the Bill provides protection to those seeking to renew existing RMA approvals with respect to other applications for new activities made under fast-track or 'parent legislation' (based on the approach under sections 124A-C of the RMA)

    ii applications being progressed under 'parent' legislation will retain their first in, first served priority order for assessment ahead of any competing applications made at a later date under either that 'parent' legislation or the fast-track process.

Changing the priority and order for processing and determining fast-track applications

9. We understand that Ministers would like the ability to prioritise particular fast-track projects where this is considered necessary, including being able to override the first in, first served model to enable applications to proceed ahead of other competing applications.

10. It is expected that generally the panel convener will assign applications to panels in the order the EPA determines them to be complete. Where there are competing applications for a resource and the first in, first served approach applies, panels will need to decide on applications based on the order the substantive applications were lodged. For applications where there is no competition for the resource, the panel convenor will set up panels in an order they consider is most efficient based on available resources and expertise. This may not always align with the order in which the substantive applications were received, but the decision will not affect applicants' eligibility for resources under the first in, first served principle.

11. The mechanism and process for the Minister to set a different order of priority for applications needs to vary depending on whether there are competing applications for the same resource and if a first in, first served ordering applies.

12. Our view is that prioritising competing applications would be significantly more challenging and carry greater risk than prioritising an application where there is no competition for the same resource. You could choose to limit the ability for the Minister to prioritise an application to only cases where there are no competing applications. This is our preferred approach. However, should you wish to enable prioritisation among competing applications then we have provided advice on a process for this below.

13. We recommend that the ability for the Minister to change the priority of competing applications is reserved for exceptional circumstances. This may be in cases where the Minister considers that it may be appropriate to amend the default approach to priority (first in first served) because of the relative importance of projects and the likely risk of delay.

14. For non-competing applications we anticipate this to be in cases where the Minister considers there is an important project that needs to progress urgently and there is a

likely risk of delay in it being considered by an expert panel. This could occur where there is a backlog of applications to be processed and assigned to a panel.

15. Given the potential implications of using a reprioritisation mechanism, we also recommend the Bill only enables the Minister to decide to reprioritise applications at their initiative and that applicants would not be able to request it.

16. [LEGALLY PRIVILEGED] s 9(2)(h) [redacted]

17. Officials have provided you with separate advice on expert panel capacity and have recommended amending the Bill to enable the appointment of additional panel conveners (BRF-5247). If agreed this should allow more panels to be stood up at the same time. This would potentially lessen the need for the Minister to use a prioritisation tool especially in relation to non-competing applications.

18. Implementing a first in, first served approach, and providing a mechanism for changing the priority and order of fast-track approvals, will also require stronger information flows between the fast-track system and the existing systems operating under the 'parent' legislation. Information sharing will be key to identifying competing applications, managing issues of competing priority between applications for the same resource, and understanding the potential effects of applications on the environment and on existing users of the resource.

19. The Bill currently provides for engagement with councils and key stakeholders early in the application process, and the ability for the Environmental Protection Authority (EPA) to request information from relevant administering agencies and local authorities on listed Schedule 2A or referred projects.

20. However, this will not be sufficient to ensure efficient management of competing applications. We propose that an additional requirement is included in the Bill for agencies and bodies who administer the 'parent' legislation under which approvals are sought and relevant local authorities to, the best of their knowledge, identify any existing non-fast-track applications for activities that may be competing for the same resource.

21. We also recommend that the existing mechanism in the Bill to allow the Minister to suspend an application is amended to:

    i apply the suspension from the point at which a substantive application has been deemed complete

    ii include an additional matter that the Minister may direct the suspension of fast-track applications in order to manage any conflicts arising from competing applications under the first in first served approach, including any reprioritised competing applications.

Prioritising non-competing applications for urgent projects

22. Where there is no competition for the same resource, the Minister could direct the panel convenor to expedite the administrative functions needed to establish a panel ahead of other applications. This direction could be provided at the time the Minister refers the project to the panel or at the substantive application stage and apply to both listed and referred projects.

23. The direction issued by the Minister would direct the panel convenor to prioritise setting up a panel to consider the application ahead of other applications once they receive the complete application from the EPA.

24. Before making a direction, the Minister should be satisfied that there are no competing applications and making the direction will not interfere with any other related applications either under the fast-track regime or the 'parent legislation'. The Minister may need to enquire specifically on this matter as part of inviting written comments on the referral application, and the EPA would need to check that no other competing applications had come in between the referral decision and the substantive application being lodged.

25. If by the time the urgent application lodges its substantive application, there are competing applications ahead of the urgent application (ether in the fast-track system or under the 'parent' legislation), then first in first served would take effect. At that point the Minister may choose to intervene to reprioritise the competing applications using the process as set out below.

Prioritising competing applications

26. When Ministers are considering whether to prioritise a project ahead of another project competing for the same resource, they would need to consider disapplying the first in, first served approach and directing that a particular fast-track application is decided ahead of other competing applications made under either the fast-track system or the 'parent' legislation.

27. [LEGALLY PRIVILEGED] s 9(2)(h) [redacted]

28. In considering whether to override the first in, first served model and prioritise one particular fast-track application over other earlier-in-time pending applications, we recommend the Bill requires the Minister to make an assessment while having regard to the following matters:

    i the impact that prioritising one project would have on other applications, including cost and time impacts, and considering how far progressed other competing applications are within the fast-track or 'parent' legislation regime

    ii the relative benefits of the projects, including in assisting the economic, social or cultural development of a distinct group, community or district

    iii any reasons of urgency for one application to proceed ahead of others (eg, a natural disaster response or recovery or other emergency reason)

iv the capacity and readiness of the applicants to deliver the project

v impacts on existing resource users and approval holders and the limited resource in question

vi any Treaty settlements or customary rights recognised under relevant legislation.

29. Following their assessment the Minister may decide to prioritise a particular project ahead of other competing applications, or decide that the current first in, first served ordering and process is appropriate. If the Minister does decide to prioritise a particular project this would involve progressing the priority project ahead of all or some of the applications in the queue.

30. Officials have provided you with separate advice on expert panel capacity, and the potential option for a panel to hear multiple applications concurrently (BRF-5247). Should this be agreed, then the Minister's final decision on reprioritisation could include requiring the competing applications to be heard by the panel in the priority order determined by the Minister.

31. The Minister would need to be provided with sufficient information to be properly informed in making a decision on reprioritisation. This information would likely only be available once the substantive application is lodged and would require information to be provided by the responsible agency, local authority and other agencies to inform the Minister's decision. The information used by the Minister to make a decision should include:

    i material relating to all pending applications seeking to use the same resources (whether those are under the fast-track system or 'parent' legislation)

    ii material submitted as part of the referral and substantive applications for each of the competing projects

    iii the likely or potential impacts of the existing priority order and any proposed change in the priority on the various applicants and on the natural resources in question.

32. We recommend the Bill also contains the following steps and features to ensure the process is as transparent as possible:

    i the Minister must consider whether to direct the suspension of the processing of the competing applications while they make a decision on whether to reprioritise the order of applications

    ii the Minister must be required to provide competing applicants and the processing bodies with written notice of the intention to consider overriding first in, first served and set out their reasons for it

    iii the Minister must give competing applicants an opportunity, within a timeframe set by the Minister, to respond to the notice of intention and provide any further relevant information ahead of a final decision being made

    iv the Minister must consult with and may request further information from other Ministers, local authorities, affected Māori groups and any other relevant party and set a timeframe for those parties to provide any additional information

v the Minister must provide their decision to the competing applicants and make it publicly available

vi the Minister's decision cannot be appealed.

33. The Bill will need to enable the Minister to suspend the processing of competing applications in 'parent' legislation while a reprioritisation process takes place and while the reprioritised application is progressed.

34. We propose that the Minister may initiate a process to decide whether to reprioritise competing applications at any time up until the competing applications are granted. This will likely create potentially significant uncertainty for applicants already in the fast-track process or being considered under the parent legislation. The negative impacts and risk associated with reprioritising competing applications will generally be higher the further through a decision process the competing applications are. However, the requirement for the Minister to consider the impact that prioritising the project would have on other applications, including cost and time impacts, is intended to provide a check on upsetting applications that are already well advanced.

Ensuring fast-track approvals are generally within existing allocation limits

35. As noted in our previous advice, existing allocation frameworks, including water allocation limits, targets in regional plans, rules relating to marine farms or limits in conservation management strategies and plans, are considerations in the Bill but do not carry as much weight compared to its purpose of facilitating the delivery of infrastructure and development projects with significant regional or national benefits.

36. Except in certain cases, the Bill does not currently require the allocation of limited resources to accord with existing allocation frameworks and limits, including under RMA plans and policy statements.[1] This reflects the clear direction Ministers have provided, including that prohibited activities are eligible activities in the fast-track regime. Therefore, unless specifically addressed in the Bill, approvals that breach current allocation limits could be granted under the fast-track regime.

37. Providing for allocation beyond allocation limits could have significant impacts on other system users, who may have (longstanding) existing use rights and may have made significant investments on that basis, such as hydro generation or irrigation infrastructure. A decision to over allocate may diminish the availability of this resource and reduce established use rights. While the RMA is clear that a resource consent is neither real nor personal property,[2] this risk could create considerable uncertainty for existing users reliant on the availability of this resource.

38. Officials understand that you would like more advice on how the fast-track regime could operate generally within allocation limits.

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[1] Ineligibility criteria in the Bill prevent the referral of applications that do not comply with alternative allocation regimes established under Part 7A RMA for space in the coastal marine area

[2] In *Hampton v Canterbury RC* [2015] NZCA 509, (2015) 18 ELRNZ 825, the Court of Appeal stated that "By declaring that a resource consent is neither real nor personal property the Act excludes what the law might otherwise imply, namely the unqualified liberty of using a consent as the holder wishes, the right to exclude others, the power of alienation, and the right to immunity from expropriation".

How the fast-track regime could operate generally within allocation limits

39. Existing allocation rules and limits under the 'parent' legislation are developed through a framework across planning documents. These are interconnected with multiple objectives supporting the methods and approaches to form a cohesive and comprehensive system. Many provisions in plans and policy statements have allocative effects. As a result, there is no clear single or overarching 'parent' legislative mechanism to link to so that the allocation of limited resources is broadly retained. Nor is there a clear definition of the term "allocation limits or rule" that can be used to distinguish these provisions.

Eligibility criteria in the Bill

40. To achieve a fast-track regime which operates broadly within allocation limits, it would be important to consider the appropriateness of the eligibility criteria in the Bill.

41. Prohibited activities are the most definitive tool used in some 'parent' legislation to impose a hard limit in the case of activities that have been given that classification (although they are not universally used in plans). Furthermore, not all legislation within the fast-track system uses prohibited activities to create hard limits within the system in the same way. The statutory framework for conservation legislation outlines activities that cannot be granted under other legislation. These concessions, or where permissions may not be granted are quite different to "prohibited activities" in an RMA sense where a consent may not even be applied for.

42. The decision to enable consideration of prohibited activities under the RMA in clause 17(5) of the Bill could be amended or removed, which would better reflect the mechanisms to direct allocation in the 'parent' legislation. Officials recommend that the key design matter to enable prohibited activities to be considered in the fast-track regime be revisited.

The weighting of planning documents in the Bill

43. There is no clear single or overarching 'parent' legislative mechanism to provide a fast-track framework that would operate generally within allocation limits. Rather, the planning documents under the 'parent' legislation would need to be weighted equally to the purpose of the Bill. This would give the obligations in the 'parent' legislation to a similar level of direction on decision-making in the fast-track system as they currently hold in the 'parent' legislation. The purpose of the Bill would be just another component to consider when making decisions but does not override the current weight afforded in the 'parent' legislation.

44. Amending the weighting of the purpose comparatively to the planning documents of the 'parent' legislation would alter the fundamental design matters in the Bill. Officials do not consider this to be a feasible option, due to the extensive changes that would be needed to the drafting of the Bill to achieve this.

Allocations under conservation approvals

45. The conservation approvals within the scope of fast track are not primarily concerned with 'resource allocation within limits' in the same way as the RMA. Concessions and access arrangements grant property rights over public conservation land. This is a legal agreement (often in the form of a lease or licence) granting permission to use land

owned by the Crown for a specific activity, rather than a permission to use a certain allocation of a resource.

46. [LEGALLY PRIVILEGED] s 9(2)(h) [redacted]

47. It is therefore recommended that permissions that confer property rights (ie concessions and crown minerals act access arrangements) are not considered to be resource allocations that can be exceeded.

How the fast-track regime could provide some protection against allocating beyond limits in fast-track approvals

48. If Ministers do not want to change these key design matters, then there are two potential options to provide some protection against allocating beyond limits in fast-track approvals.

49. The first option is to leave the Bill as is and rely on the provisions for panel decision making and condition setting to address issues of over-allocation where they potentially arise. We expect these matters would be considerations for the panel as the Bill now drafted. This would provide flexibility for allocation to be within or beyond limits and the decision for this would sit with the expert panel. Panel decisions in relation to these matters would need to be made in accordance with the decision-making requirements of the Bill and we expect that decisions may not necessarily reflect the allocation regimes in the 'parent' legislation. This is our recommended option if Ministers do not wish to change the key design matters. Further advice has been provided to you on how the panel can make decisions, including where they may decline applications (BRF-5227; 2425-1058 refers).

50. The second option is to prescribe in a secondary legislation mechanism the limits that need to be met for applications and approvals within the fast-track regime. This option would provide for flexibility for the schedule to be updated through an order in council, without changes needed to the primary legislation. This option could draw through the specific categories of allocation regimes to manage competing interest for a limited resource. We do not recommend listing specific rules due to the risks if the settings for the prescribed limits are not in the right place, and the nature of the change processes for the underlying documents meaning that it would likely not be feasible to maintain an up-to-date list.

Te Tiriti analysis

51. The Te Tiriti analysis of the proposals in this paper have not been informed by engagement on the specific proposals with Treaty partners, including post-settlement governance entities. There are numerous settlement commitments that require the Crown to engage on policy or legislative proposals related to natural resources. In addition, the Crown has obligations under the Treaty principle of partnership to make informed decisions in good faith towards Māori, which may require consultation on these proposals.

52. The pace of policy development and the lack of engagement on the specific proposals mean it is difficult to assess their potential impacts from a Te Tiriti perspective, or how they may be perceived by Treaty partners. However, the Crown has undertaken engagement with iwi/Māori during recent years on Māori rights and interests in the allocation of natural resources, including freshwater and geothermal resources, and that engagement has informed this analysis.

53. It is important to note that decisions on prioritisation and allocation are likely to be viewed in the context of the Bill as a whole. The Bill includes some protections for Māori rights and interests outside of Treaty settlements and customary rights recognised under specific legislation but, as stated in previous advice on the Treaty impacts of various proposals and by submitters during the select committee process, there are elements of it that may be perceived to diminish existing protections for Māori rights and interests in underlying legislation.

54. To the extent the options in this paper retain existing prioritisation and allocation limits, the proposals do not fundamentally change how Māori rights and interests are provided for under the current system, although could be perceived to exacerbate existing challenges for Māori groups in accessing resource use permissions, particularly for freshwater.[3] s 9(2)(f)(iv)

Lack of involvement in decision-making

55. If applications are prioritised and/or existing allocation limits are exceeded through the fast-track system, affected (non-applicant) Māori groups will have a limited or no role in this decision-making, depending on the policy options agreed to.

56. s 9(2)(f)(iv)

s 9(2)(f)(iv)

s 9(2)(f)(iv)

LEGALLY PRIVILEGED – *Legal advice on certain allocation issues*

s 9(2)(h)

[redacted]

Approach to prohibited activities

59. If you agree to exclude prohibited activities that relate to allocation limits from the Bill, this will likely go some way towards addressing concerns from Māori groups regarding their inclusion raised in submissions to the select committee. In many cases, activities may have been prohibited under regional or district plans in consultation with Māori groups, including setting allocation limits and minimum flows through intensive engagement with iwi and hapū. Excluding those activities from the fast-track process would preserve the role of decision-making for Māori in respect of those activities.

Providing for Māori rights and interests in natural resources

60. Māori rights and interests in natural resources may vary depending on the circumstances including specific resource. In respect of freshwater and geothermal resources, the Crown has specifically acknowledged that Māori have rights and interests, though the form and nature of their recognition in the RMA system is of ongoing discussion.[6] To the extent that overriding existing allocation limits contributes to the over-allocation of rights to use natural resources such as freshwater, or diminishes the quality of those resources, doing so may be perceived to have a negative impact on the Crown's ability to meet its Treaty obligations to actively protect Māori rights and interests in those resources.

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s 9(2)(h)

[redacted]

[6] See *New Zealand Māori Council v Attorney General [2013] NZSC 6, [2013] 3 NZLR 31 at [145]*.

61. The potential impact may be mitigated by existing provisions in the Bill that require consultation with Māori groups, consideration of Māori rights and interests by decision-makers, and which provide for Māori to benefit from the regime. However, protections for Māori rights and interests in natural resources in the RMA and other underlying legislation are intended to be subject to the development-focussed purpose of the Bill, to the extent they apply outside of settlements or customary rights recognised under relevant legislation. As such, decision-makers may be constrained in their ability to provide for those interests when making decisions about allocation, except to the extent those interests are protected through settlements or customary rights and therefore subject to clause 6.

s 9(2)(h)

62. s 9(2)(h)

s 9(2)(f)(iv)

s 9(2)(f)(iv)

s 9(2)(h)

s 9(2)(h)

s 9(2)(f)(iv)

s 9(2)(h) [redacted]

Other considerations

Consultation and engagement

68. This advice was developed in consultation with the Department of Conservation, the Ministry for Primary Industries, the Ministry for Culture and Heritage, and Land Information New Zealand.

s 9(2)(h) [redacted]

s 9(2)(h) [redacted]

s 9(2)(h)

Financial, regulatory and legislative implications

76. No financial, regulatory, or legislative implications are associated with the proposals in this briefing.

Next steps

77. Ministers are scheduled to meet on 10 September 2024 to discuss this advice and the wider process and approach to developing amendment papers to the Bill.

78. We will incorporate ministers' decisions or direction into the briefing and draft Cabinet paper seeking policy and workability decisions for inclusion in an amendment paper which is due to be lodged on 12 September 2024, for consideration by ECO on 19 September 2024 and Cabinet on the 23 September 2024.

s 9(2)(h)

Ministry for the Environment
Manatū Mō Te Taiao

Briefing: Fast-track Approvals Bill – Advice on Expert Panel Capacity

Date submitted: 6 September 2024
Tracking number: BRF- 5247
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	9 September 2024

Actions for Minister's office staff

Forward this briefing to:

To Hon Shane JONES, consistent with joint delegation
Minister for Regional Development
Hon Simeon BROWN
Minister of Transport

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

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Authors	Max Gander-Cooper, Ben Bunting	s 9(2)(a)	
Responsible Manager	Stephanie Frame	s 9(2)(a)	
General Manager	Ilana Miller	s 9(2)(a)	✓

Minister's comments

Fast-track Approvals Bill – Advice on Expert Panel Capacity

Key messages

1. The level of interest in becoming a project listed in Schedule Part A (2A) of the Fast-track Approvals Bill ('the Bill') was significantly higher than anticipated. Officials discussed this with you on 26 August 2024.

2. There is a risk that when applications are lodged for the eligible projects in Schedule 2A of the Bill there is the potential to 'overload' the system and either slow it down, or create queues or backlogs at certain milestones, none of which is desirable.

3. Potential risks can be managed by either legislative or operational mechanisms. The goal is to ensure that sufficient expert panels have capacity to efficiently and effectively respond to the potentially high volume of applications.

4. You requested officials consider whether the Bill could be amended to enable flexibility including the ability to establish standing panels – either sector-specific or region-specific. Officials consider that standing panels could be achieved by minor changes to the Bill to bolster the number, capability and capacity of expert panels and allow them to consider multiple projects concurrently.

5. Officials' recommendations require your decision before 10 September 2024 so to be included in a Cabinet paper seeking amendments to the Bill, to be lodged on 12 September 2024.

6. The scope of this advice is limited to the capacity of the panel convener and expert panels. It does not provide advice on prioritisation and/or sequencing of projects in the system. That is the subject of separate advice.

Recommendations

Officials recommend that you:

a. **note** officials consider the panel appointment system as currently drafted in the Bill is sufficient to enable the efficient functioning of the system in the long term but may not be sufficient to cope with an initial surge

b. **agree** that officials should amend the Bill to enable the appointment of additional panel conveners who meet the requirement to be a current or former (including retired) Environment Court Judge or High Court Judge

Yes | No

c. **agree** that officials should amend the Bill to enable panels to be appointed to consider multiple applications concurrently

Yes | No

d. **note** the amendment at (c) would allow operational flexibility including the creation of standing panels

e. **agree** that officials should amend the Bill to remove the requirement for the panel convener to consult with the Minister when appointing panel members and panel chairs

Yes | No

f. **approve** officials to seek Cabinet approval of (b), (c) and (e) for inclusion in an amendment paper.

Yes | No

Signatures

s 9(2)(a)

Ilana Miller
Programme Director – Fast-track Implementation
Ministry for the Environment
6 September 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

Fast-track Approvals Bill – Advice on Expert Panel Capacity

Purpose

1. This briefing seeks policy direction to prepare an amendment paper to the Bill to enable sufficient panels to be appointed to service a larger number of Schedule 2A applications than initially anticipated.

Background

2. You met with officials on 26 August 2024 to discuss the process for making decisions on the final lists of projects for inclusion in Schedule 2.

3. After reviewing the potential volume of applications for inclusion on 2A (199) you requested advice on additional options to ensure sufficient panels can be appointed to assess all applications in a timely manner. There is a risk the Bill as drafted doesn't enable sufficient capacity in the system to address an initial surge of applications.

4. You have requested advice on whether the Bill could be amended to enable the panel convener to appoint standing panels to consider projects within a particular sector or region.

Analysis and advice

5. While a surge of applications is anticipated quickly after enactment, it is important that the design and operation of the system is enduring and can respond to change in demand over time.

6. Officials consider that only minor changes to the Bill as drafted are necessary to enable sufficient system capacity. Therse changes could increase efficiency by enabling:

    i the appointment of multiple panel conveners. As drafted the Bill provides for a single panel convener across the system, which puts too much pressure on one individual in the event of an influx of applications, and which doesn't allow for the panel convener to have other commitments, or to take time off as required

    ii panels to consider multiple applications concurrently, or consecutively, as appropriate. This would enable panels to consider applications more quickly and could enable the appointment of standing panels if required

    iii the panel convener to appoint panel chairs and panel members without consulting with the Minister.

7. These changes aim to provide more flexibility in the system so that expert panels can be stood-up and make decisions more quickly, to reduce the administrative burden of panel

establishment, and to better allow the system to respond to the higher than anticipated initial demand.

8. Officials have proposed amendments which would enable standing panels if the volume of applications called for it, but also enables panels to consider more than one application at once. Officials consider this provides a flexible and enduring solution to address both a potential surge in initial applications, and to enable additional options for future panels as necessary, thus expanding system capability to deal with changes in demand over time, while still meeting your policy intent.

Existing limitations on panel capacity

9. Regardless of approach, there are some known limitations that affect the capacity and capability of expert panels under all regulatory regimes in New Zealand. These include potential for panel members to have conflicts of interest due to their previous involvement in a matter, availability outside of their panel commitments, and the relatively small pool of experts who can provide advice to panels (particularly on highly technical and novel matters where limited experts may already be engaged by applicants).

10. This briefing does not propose solutions to these constraints as officials consider these are intrinsic to the size of the country and nature of consenting regimes. This briefing instead proposes solutions to speed up panel appointment processes and options to enable panels to consider more applications.

Discussion

Status quo

11. The Bill as currently drafted allows the panel convener to appoint a panel of up to four members (with the discretion to appoint more if required) to consider each application that is received. It sets out the qualifications, accreditations, skills and expertise of the panel convener, panel chairperson and panel members.

12. One of the criteria in the Bill for a panel chair is a person who is accredited under section 39A of the Resource Management Act 1991 (RMA). This was not the case under the previous COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA).

13. The Ministry for the Environment's website[1] lists 170 individuals who are accredited under section 39A of the RMA and have a current chair endorsement. So, there are many more potential panel chairs available than were available under the FTCA which should create some additional capacity in the system.

14. Officials consider that the process set out in the Bill as currently drafted is sufficient to manage the anticipated normal volume of applications (after any surge) for the lifetime of the legislation. Given the requirement for an applicant to demonstrate their project will have "significant regional or national benefits", officials do not anticipate that there will be a large number of suitable applications entering the system each year. For example, under the FTCA, where the key requirement was that projects could "urgently promote

[1] Certificate holders - non-local body elected members | Ministry for the Environment

employment", which we consider to be a lower barrier to entry, only 108 projects were referred between mid-2020 and mid-2023.

15. The exception to this is likely to be within the first year or two after enactment. While there is no guarantee that applicants will be ready to lodge their substantive applications immediately after enactment, if a significant volume of the 2A projects are applied for soon after the Bill is enacted then the system may need additional capacity for the timely standing up of expert panels.

Appointing additional panel conveners

16. The Bill currently states that the Minister must, after consulting the other relevant portfolio Ministers, appoint a former (including retired) Environment Judge or High Court Judge to be the panel convener for the purposes of this Act for a term determined by the Minister.

17. Officials consider that to create additional capacity in the system the Bill could be amended to enable you to appoint additional panel conveners (while still meeting the criteria of being an Environment or High Court Judge). This would theoretically allow more panels to be stood up in the same amount of time and would allow for the panel conveners to meet their other commitments without compromising the pace of panel appointment.

18. This would also build resilience into the system, insofar as it would enable the system to continue to function if one panel convener were to be unavailable (for reason of illness, holiday etc).

19. This would be a relatively straightforward amendment to the Bill with limited policy implications and risks.

Standing panels

20. Officials do not consider the Bill as drafted allows for the appointment of standing panels, and it would be a departure from the current policy intent to redraft the Bill to move from project-specific panels to standing panels. The system has been designed to support determination of projects on a case-by case basis given the breadth of possible projects, locations and parent legislation involved, and to meet Treaty settlement requirements.

21. Officials have considered the option of amending the legislation to enable the appointment of standing panels (for particular sectors or regions) rather than one panel per individual application.

22. Rather than amending the Bill to build a framework for permanent standing panels, officials propose that you amend the Bill to create sufficient flexibility to enable panels to consider more than one project at a time. This would enable the panel convener to refer multiple projects to the same panel for concurrent or sequential consideration.

23. This would enable the appointment of standing panels where very high volumes of applications were received but would also enable greater efficiency when the system did not have sufficient applications within a sector or region to justify the ongoing operation of standing panels.

24. There are other matters that would need to be managed with this mechanism, such as:

    i how panels would apportion charging for their time

ii the potential for a smaller pool of available experts without conflicts when considered across a series of applications (since there may be a greater chance they will be conflicted or be already engaged by one of the applicants)

iii differing requirements for panel expertise for different projects

iv how to meet Treaty settlement requirements.

25. Officials consider these matters could be addressed operationally and therefore not require changes to the Bill.

Requirement for panel convener to consult with Minister

26. Clauses 2(5) and 4(1) of the Bill require the panel convener to appoint expert panel members and chairs "in consultation with the Minister". This was agreed by Cabinet in January 2024 [CAB-24-MIN-0008 refers].

27. Officials consider that this requirement has the potential to significantly slow down the appointment of panel members as it adds a consultation step to the panel convener's role and makes panel appointments subject to Ministerial availability.

28. The appointment of panel chairs and members is also a decision-point in the process which can be legally challenged. Including Ministerial input on panel appointments may open the Minister up to unnecessary legal scrutiny of their input.

29. Officials recommend amending the Bill to remove the requirement for the panel convener to consult with Ministers on panel appointments, and instead give the panel convener sole responsibility to appoint panel members. This will ensure the appointment process is not exposed to the potential for unnecessary delay.

Te Tiriti analysis

30. If panels were to consider sector-specific projects from multiple regions, that would have implications for all iwi in those regions. Iwi groups will have widely varying perspectives on, and capacity to respond to, the projects under consideration.

Other considerations

Consultation and engagement

31. This advice was developed in consultation with the Department of Conservation, the Ministry for Primary Industries, the Ministry for Culture and Heritage, and Land Information New Zealand.

Legal issues

32. Officials do not consider any legal issues arise from this paper.

Financial, regulatory and legislative implications

33. If more than one panel convener is appointed, any associated costs not recoverable from applicants will be borne by the Crown.

Next steps

34. Ministers are scheduled to meet on 9 September 2024 to discuss this advice and the wider process to developing amendment papers to the Bill.

35. Officials will incorporate ministers' decisions or direction on this advice into the briefing and draft Cabinet paper seeking policy and workability decisions for inclusion in an amendment paper to be lodged on 12 September 2024, for consideration by the Cabinet Economic Policy Committee on 19 September 2024 and by Cabinet on 23 September 2024.

Document 10

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. s 9(2)(h)

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

Cabinet Economic Policy Committee

Summary

Fast-track Approvals Bill: Amendment Paper Relating to Policy and Workability Changes

Portfolios **RMA Reform / Regional Development**

Purpose

This paper seeks approval for further policy and workability changes to the Fast-track Approvals Bill (the Bill).

Previous Decisions

In July 2024, Cabinet:

- approved a number of policy and workability changes to the Bill for inclusion in the departmental report;
- noted that where further changes are considered practicable, portfolio Ministers will seek Cabinet agreement and changes will be made through Amendment Papers during the Committee of the Whole House stage.

[CAB-24-MIN-0272]

Proposal

The proposed changes to the Bill relate to:

- clarifying the purpose statement to focus more clearly on the delivery of infrastructure and development projects with significant regional or national benefits;
- clarifying how any competing fast-track applications are prioritised for consideration;
- providing a process for amending the 'authorised person' (the person authorised to lodge an application for the project) under a Schedule 2 application;
- amending the provisions relating to ineligibility criteria on local authority owned reserves and certain customary fisheries management areas;
- broadening the scope of freshwater fish-related approvals;
- clarifying the policy and procedural matters relating to exchanges of public conservation land;
- clarifying matters relating to leases and rights of first refusal relating to concessions and access arrangements;
- specifying matters relating to the implementation of land management decisions, including mitigation thresholds and initiatives;

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

Impact Analysis

A supplementary analysis report was provided when the Bill was considered for introduction by Cabinet in March 2024. An Annex to the supplementary analysis report is **attached**. Officials consider that this Annex partially meets the quality assurance criteria (**paragraph 51**).

Financial Implications

An adequate cost recovery regime will be required. Authority is sought for the Minister Responsible for RMA Reform and the Minister for Regional Development to make 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.

Legislative Implications

The proposed amendments will be progressed through Amendment Papers to the Bill.

Regulations will be required to implement the cost recovery regime.

Timing Matters

Amendment Papers to the Bill are expected to be submitted to LEG for approval in early November 2024. They would then be tabled at the Committee of the Whole House stage by the end of 2024.

Communications

A press statement will be released at an appropriate time.

Consultation

Paper prepared by MfE and MBIE. MCH, Crown Law, PCO, DOC, LINZ, Te Arawhiti and MPI were consulted.

The Minister Responsible for RMA Reform and the Minister for Regional Development indicate that the Minister of Finance, Minister for the Public Service, Minister for Energy, Minister of Local Government, Minister of Transport, Minister of Justice, Minister for Emergency Management and Recovery, Minister of Police, Minister of Agriculture, Minister of Conservation, Minister for Māori Crown Relations: Te Arawhiti, Minister for Māori Development, Minister of Climate Change, Minister for the Environment, Minister for Land Information, and Parliamentary Under-Secretary Simon Court were consulted, and that the ACT Party and New Zealand First were also consulted.

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

Purpose clause and decision-making framework

1 agree to change the purpose of the Bill to: *The purpose of this Act is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits*;

2 note that retaining a role for underlying legislation, but with greater weight given to the Bill's purpose, is intended to provide a clear legislative direction on how an application (listed or referred) is prepared and assessed, and decisions are made, and to set a high bar for decline;

Priority and order of fast-track applications

3 agree that where fast-track applications compete for a limited resource, those applications should be determined by a 'first-in-first-served' approach;

4 agree that the order for assessing fast-track applications under the first in, first served approach be determined at the point a complete substantive application is lodged (either with the expert panel or, in the case of a land exchange proposal, with the Department of Conservation ahead of the panel consideration);

5 agree that applications being progressed under either the parent legislation or the fast-track regime will retain their first in, first served priority order for assessment ahead of any competing applications made at a later date under either the parent legislation or the fast-track process;

6 agree that a provision equivalent to sections 124A-C of the Resource Management Act 1991 (RMA) be included in the Bill to allow existing users seeking renewal of RMA approvals, either under the fast-track legislation or the RMA, to be considered before fast-track applications for new activities using the same resource;

7 agree that 'competing applications' means where two or more applications are competing for some or all of the same limited resource to the extent that both or all of the applications could not be fully exercised;

8 agree that to help identify competing applications and manage competing priority between applications for the same resource:

8.1 the agencies and bodies who administer the parent legislation under which approvals are sought, and relevant local authorities, will be required to identify, to the best of their knowledge, any existing non-fast-track applications for activities that may be competing for the same resource;

8.2 the existing mechanism in the Bill to allow the Minister to suspend a fast-track application will be amended to:

8.2.1 apply the suspension from the point at which a substantive application has been deemed complete;

8.2.2 include an additional matter so that the Minister may direct the suspension of fast-track applications to manage any conflicts arising from competing applications;

9 agree that the Minister may direct the panel convenor in writing, at the referral or the substantive application stage, to prioritise the establishment of an expert panel to consider a fast-track application for a listed or referred project ahead of other applications where:

9.1 the application needs to progress urgently and there is the likelihood of delay in that application being considered by a panel;

9.2 there are no other known competing applications for the same resource under the fast-track system or parent legislation;

10 agree that it be clarified in the Bill that land management approvals that confer property rights cannot be 'over-allocated' by expert panels;

Ability to update the authorised person under Schedule 2 application

11 agree that the Bill include an Order in Council process to change the name of the authorised person on a listed project in Schedule 2;

Ineligibility criteria on local authority-owned reserves and certain customary fisheries management areas

12 agree that written consent of a local authority reserve owner or managing body be removed as an ineligibility criterion at the referral stage;

13 agree that, if the project covers a reserve owned or managed by a local authority, the written consent of that local authority must be included in the substantive application for it to be considered complete, and the local authority may not unreasonably withhold their agreement;

14 agree that the ineligibility criteria regarding projects with potential impacts on certain customary fisheries management areas be removed;

15 agree to align the approach to customary fisheries management areas with other Treaty settlement processes in the Bill;

Broadening the scope of freshwater fish related approvals

16 agree that authorisations for any dams and diversions be deemed to be granted under the Freshwater Fisheries Regulations and have the same force and effect as if granted under those Regulations;

17 agree that the following additional 'complex' approvals normally requiring authorisation under Freshwater Fisheries Regulations 42 and 43 be included in the Bill as a fast-track freshwater fisheries approval:

17.1 any permanent dam or diversion (with the exception of some weirs); and

17.2 any culvert or ford that permanently blocks fish passage;

18 agree that 'standard' activities that are dealt with by the fast-track resource consent include:

18.1 any culvert or ford that could impede fish passage, with the exception of those that permanently block fish passage;

18.2 weirs that comply with the conditions of regulation 72 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020;

18.3 the following ‘temporary’ works, defined as works:

18.3.1 where active disturbance to the waterbody (eg, diversions, in-stream operations, removal of gravel) does not persist for more than three months;

18.3.2 that do not occur during the white baiting season, where the works are within 500 m of the coast;

18.3.3 that do not occur during the spawning season where the works are in an area known to be used for trout, salmon or native fish spawning; or

18.3.4 where repeated disturbance is required (eg, for staged works), there is a period of at least six months between each period of temporary works;

19 agree that the referral application for a project related to activities in freshwater must include the following information:

19.1 identification of whether an instream structure is proposed (including formal notification of any dam or diversion structure) and the extent to which this may impede fish passage; and

19.2 identification of whether any fish salvage activities or other activities within scope of Schedule 8 are proposed;

20 agree that the following information be required in the substantive application to ensure users have certainty and the Panel has all the information it needs to make robust decisions:

20.1 in relation to the structure and any fish facility: type, dimensions, design, placement, flows, operating regime;

20.2 the freshwater species and values of the pathway (with particular focus on threatened, data deficient, and at-risk species as defined in the New Zealand Threat Classification System);

20.3 quality and quantity of the surrounding habitat (at the proposed structure location, upstream and downstream);

20.4 how the passage of fish will be provided or impeded;

21 agree that, consistent with the approach to consents, the applicant must comply with conditions on freshwater fisheries approvals and the Panel may recommend any conditions considered necessary for the purpose of managing effects;

22 agree that the Panel consider the following additional matters (subject to the greater weighting of the purpose of the Bill) when making a decision on consents or approvals relating to activities in freshwater:

22.1 alignment with best practice and the New Zealand Fish Passage Guidelines;

22.2 management of risks to freshwater values or habitat, including prevention of access to or spread of invasive species;

22.3 availability and quality of upstream and/or downstream habitat;

22.4 presence of threatened, data deficient, and at-risk species under the New Zealand Threat Classification System; and

22.5 advantages of providing fish passage upstream and/or downstream;

23 agree that for 'complex' freshwater fisheries approvals, the Department of Conservation be required to provide a report (including advice on the matters referred to above) to the Panel and the Panel must consider that report;

24 agree that the timeframe for a decision on any requirement for a fish facility under the Freshwater Fisheries Regulations does not apply to approvals under the Bill, given the Bill has its own timeframes;

Policy and procedural matters for land exchanges

25 agree that the Panel decision to approve a land exchange through the fast-track process be a 'conditional approval' that outlines legal and technical conditions to be met before the final contracts for the exchange are signed;

26 agree that the completion of relevant steps following conditional approval be at the applicant's cost;

27 agree that existing rights holders on the land proposed for exchange be added to the list of people and groups who can comment on an exchange;

28 agree that the applicant be required to have consulted with existing rights holders before applying for referral, and must provide details of their comments in the referral application;

29 agree that a resolution with existing property rights holders does not need to be achieved prior to the conditional decision of the panel, but where resolution is outstanding, this must be included as a condition of the approval that must be satisfied before the exchange can occur;

30 agree that any reasonable costs incurred by the Department of Conservation be recoverable from the applicant, including:

30.1 in the negotiation process with existing rights holders; and

30.2 using external experts to undertake activities required to facilitate an exchange;

31 agree that any reasonable costs incurred in the negotiation process with existing property rights holders be recoverable by the rights holder from the applicant;

32 agree that:

32.1 if the land offered by the applicant is of lower financial value than the land being sought through the land exchange, the applicant be required to pay the difference to the Crown to offset any Crown losses that would result from the land exchange; and

32.2 the Crown will not be required under any circumstances to make payment to the applicant to provide for equity of financial value as part of a land exchange;

Leases and rights of first refusal (RFR) relating to concessions and access arrangements

33 agree that written approval of the holder of a relevant RFR be required for leases to be granted where the term will (or is likely to with subsequent renewals) extend beyond 50 years;

34 agree that written approval of the RFR holder be required as an information requirement at referral, and that an application cannot be considered complete and referred to fast-track without this approval;

Land management approvals

35 agree that the Panel may pass the approval decision to the Minister responsible for the land if they are not satisfied they have adequate information to assess Crown risk for a particular project or they cannot adequately mitigate Crown liability in the given case;

36 agree that the Minister responsible for the land concerned have the discretion to 'call-in' the decision on the approval if the risks for the Crown reach any of the following thresholds:

36.1 for concessions and access arrangements:

36.1.1 novel infrastructure projects (i.e. with less understood effects and risks);

36.1.2 projects with significant potential for public health and safety consequences;

36.1.3 projects with large downstream liabilities (e.g. significant costs for the Crown at the end of its life or if the project fails);

36.2 for land exchanges where:

36.2.1 displacing existing users/operators could have significant financial or legal implications;

36.2.2 the Crown would be accepting a financial loss;

36.2.3 the land proposed to be acquired by the Crown may result in significant ongoing costs to manage;

37 agree that there be a requirement for pre-application engagement with the Department of Conservation (cost-recoverable) and specific information requirements relating to Crown risks and liabilities for the substantive application;

38 agree that the Bill provide for the Department of Conservation (or other relevant agency if not conservation land) to provide a report that:

38.1 describes any relevant issues, risks, liabilities, including a description of the Crown's interest in the land/resources that needs to be protected;

38.2 outlines mitigating conditions that may be applied and whether these adequately address any relevant issues;

38.3 makes a recommendation to the Panel on which conditions should be put in place to mitigate Crown risk and liabilities;

39 agree that the Panel may request additional advice from the Department of Conservation (or other relevant agency) as necessary, and that this servicing be cost recoverable by the agency;

40 agree that the Panel must inform the Minister responsible for the land before deciding on land management approvals;

41 agree that the Panel can extend timeframes or ‘stop the clock’ to seek independent expert advice on the viability, risks and potential liabilities of a project in relation to land management decisions;

42 agree that Bill allow the Minister responsible for the land to set mandatory non-environmental terms and conditions as a matter of policy for contracts;

Cost recovery

43 agree 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;

44 agree 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;

45 agree 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;

46 agree 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;

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

48 agree 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;

49 note that the cost recovery regulations will be considered by the Cabinet Legislation Committee, to be made through the usual Order in Council process at Executive Council post-Royal Assent of the Bill;

Next steps

50 agree to progress the above changes through introducing an Amendment Paper/s at the Committee of the whole House stage on the Fast-track Approvals Bill;

51 authorise the Minister for RMA Reform and the Minister for Regional Development to issue drafting instructions to the Parliamentary Council Office to make the above changes to the Fast-track Approvals Bill;

52 authorise the Minister Responsible for RMA Reform and Minister for Regional Development to:

52.1 take decisions on the approach to setting fees and levies, the use of a centralised collection agency, and on any other policy or technical matters relating to cost recovery for inclusion in the Amendment Paper and/or regulations;

52.2 make any further outstanding policy decisions or technical changes, including decisions under existing delegations by any Minister, required for drafting purposes.

Janine Harvey
Committee Secretary

Hard-copy distribution:
Cabinet Economic Policy Committee

Office of the Minister Responsible for RMA Reform

Office of the Minister for Regional Development

ECO - Cabinet Economic Policy Committee

Fast-track Approvals Bill Amendment Paper relating to policy and workability changes

Proposal

1. This paper seeks approval for policy and workability changes to the Fast-track Approvals Bill (the Bill).

Relation to government priorities

2. This work supports the National/New Zealand First Coalition Agreement's commitment to deliver fast-track approvals legislation for projects of regional or national significance.

Executive Summary

3. On 29 July 2024, Cabinet agreed to recommend policy and workability changes to the Bill through the Departmental report [CAB-24-MIN-0272]. Cabinet also noted that where further changes are considered practicable, relevant portfolio Ministers will seek Cabinet agreement and changes will be made through Amendment Papers (APs) during the Committee of the Whole House stage. This paper seeks agreement on further changes identified.

4. Accompanying this paper is a second paper that would also inform Amendment Papers to the Bill: *Including Crown Minerals Act 1991 permitting in the Fast-track Approvals Bill.* A further paper will seek agreement to projects to list in the Bill by the end of September 2024.

5. Changes proposed in this paper relate to:

    5.1 clarifying the purpose clause

    5.2 priority and order of applications in relation to resource allocation

    5.3 ability to update the authorised person under a Schedule 2 application

    5.4 ineligibility criteria on local authority owned reserves and certain customary fisheries management areas

    5.5 broadening the scope of freshwater fish related approvals to include more complex and technical freshwater activities

    5.6 clarifying policy and procedural matters for exchanges of public conservation land

    5.7 leases and rights of first refusal relating to concessions and access arrangements

    5.8 implementation of land management decisions including mitigation thresholds and initiatives

5.9 delaying Bill commencement to align with regulations to allow recovery of the costs of processing and making decisions on fast-track applications

6. APs to the Bill would be presented to the Cabinet Legislation Committee for approval in early November. The APs would be then tabled at the Committee of the Whole House stage of the Bill by the end of 2024.

Proposed policy changes

Purpose clause

7. The purpose of the Bill as currently drafted is: "The purpose of this Act is to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits." We propose amending the purpose so it focuses more clearly on the delivery of infrastructure and development of projects, as opposed to simply providing a process to facilitate their delivery. We note that final drafting is subject to Parliamentary Counsel Office discretion.

8. Cabinet previously agreed to give greatest weight to the purpose of the Bill, above relevant matters in the underlying legislation [CAB-24-MIN-0272]. Retaining a role for underlying legislation, while giving greater weight to the Bill purpose, provides clear legislative direction on how an application (listed or referred) is prepared, assessed and decided, and sets a higher bar for decline.

Priority and order of fast-track applications and resource allocation

9. Applications made under the fast-track regime may compete with each other and with applications made under the parent legislation for the use of limited resources (such as water, land, or marine space). Competing applications arise where there are two or more applications competing for some or all of the same limited resource to the extent that both or all of the applications could not be fully exercised. The Bill requires clarification on how these competing applications are prioritised. Without further clarification there is a risk that fast-track decision making will be uncertain, subject to legal challenge, and slowed down.

10. We propose the Bill has three general principles, that apply to both listed and referred projects, for how competing applications are prioritised for consideration:

    10.1 Fast-track applications competing to use a limited resource will be determined by a 'first-in-first-served' approach. The first to lodge a complete substantive fast-track application to the expert panel (or with the Department of Conservation ahead of the panel consideration in the case of a land exchange proposal) will have their application assessed ahead of other applications for the limited resource within the fast-track approvals system.

    10.2 Applications being progressed under either the parent legislation or the fast-track regime will retain their first in, first served priority order for assessment ahead of any competing applications made at a later date under either the parent legislation or the fast-track process.

    10.3 A provision equivalent to sections 124A-C of the RMA is included in the Bill to allow existing users to seek renewal of RMA consents, either under the fast-track legislation or the RMA, before fast-track applications for new activities using the same resource are considered.

11. These principles will give people confidence to continue to submit and progress applications under parent legislation and provide a level of certainty to existing RMA

consent holders who often have made a substantial investment in their existing activity over time since it was first approved.

12. To help identify competing applications and manage any issues of competing priority between applications for the same resource, we propose:

    12.1 that the Bill requires agencies and bodies who administer the parent legislation under which approvals are sought and relevant local authorities to identify, to the best of their knowledge, any existing non-fast-track applications for activities that may be competing for the same resource

    12.2 that the existing mechanism in the Bill to allow the Minister to suspend a fast-track application is amended to:

        12.2.1 apply the suspension from the point at which a substantive application has been deemed complete

        12.2.2 include an additional matter so that the Minister may direct the suspension of fast-track applications to manage any conflicts arising from competing applications.

13. There may be circumstances where a fast-track application, for either a listed or referred project, needs urgent consideration by an expert panel but this is likely to be delayed, for example due to administrative bottlenecks within the system. In these cases, we propose that the Bill enables the Minister to be able to direct the panel convenor in writing to prioritise the administrative steps to set up a panel to consider the urgent application ahead of other fast-track applications.

14. We propose limiting this power to cases where there are no other applications, either under the fast-track system or parent legislation, that are competing for the same resources as the prioritised application under first in, first served. Changing the order of competing applications and overriding the first in, first served approach would be complex and carry a high risk of generating legal challenge.

15. Except in certain cases, the Bill does not currently require the allocation of limited resources to accord with existing allocation frameworks and limits. Expert panels will consider and address issues of over-allocation where they potentially arise through their decision making and condition setting. Land management approvals, including concessions and access arrangements, grant property rights over public conservation land. This is a legal agreement (often in the form of a lease or licence) granting permission to use land owned by the Crown for a specific activity. These permissions are not able to be "over-allocated" in the same way that other resource allocations. We propose clarifying in the Bill that land management approvals that confer property rights are resources that cannot be over-allocated by expert panels.

Ability to update the authorised person under a Schedule 2 application

16. An 'authorised person' means the person listed in either Schedule 2 (listed projects) or the referral decision (unlisted projects) as authorised to lodge an application for the project. The Bill currently does not set out a process for when an authorised person specified in schedule 2 of the Act (and therefore listed in the Act itself) can be updated and we propose that the Bill provides for this. (Note that a corresponding provision for authorised person in a referral decision is not proposed as an amendment to the authorised person can be made through a referral application).

17. We propose that the Bill sets out that when an amendment to the authorised person specified in schedule 2 is sought, a detailed written application for an amendment must be made to the Minister.

18. The Minister must consider the information provided in the application before deciding that the person is appropriate to become the authorised person and before recommending the making of an Order in Council to make the change to schedule 2.

Ineligibility criteria on local authority owned reserves and certain customary fisheries management areas

19. On 29 July, Cabinet agreed that the Departmental Report recommend that a project cannot be referred to the expert panel without the written consent of the reserve owner, and any managing body (which covers local authorities) if the project includes reserve land that is either not vested in the Crown, not managed by DOC, or both. It also specified that the landowner may not unreasonably withhold their agreement to the reserve being part of the project area (CAB-24-MIN-0272).

20. We have subsequently found that, when applied to council owned or managed reserves, this provides an unnecessary barrier to entry for some projects. We therefore propose removing this as an ineligibility criterion and instead moving the need for permission as part of the substantive application stage.

21. We propose that if the project covers a reserve owned or managed by a local authority, the written consent of that local authority must be included in the substantive application for it to be considered complete and the local authority may not unreasonably withhold their agreement. This is to ensure protection of property rights and acknowledgement of where costs and risks may fall.

22. The Departmental Report also recommended changes to ensure the definition of Treaty settlements explicitly includes customary fisheries management areas established to give effect to Treaty settlements[1], and to make projects ineligible for referral if they have a more than minor effect on the use and management of these areas without agreement from the relevant tangata whenua.

23. We propose that rather than making projects with potential impacts on these areas ineligible for referral, the Bill should instead take an approach consistent with how other Treaty settlements are provided for. Impacts identified on certain customary fisheries management areas will inform the Report on Treaty settlements and consideration at the referral and approval stages. This achieves consistency and enables impacts to be assessed in the context of the Bill's purpose and processes, while allowing individual circumstances to be considered in more detail beyond the referral stage.

Broadening the scope of freshwater fish related approvals

24. The original policy intent for including freshwater fisheries approvals in the Bill was to include common and less technically complex activities that impact on freshwater fish, such as the construction of culverts or fish salvage. These would be addressed as part of a resource consent rather than through separate conservation approvals.

25. More complex and technical freshwater activities, including permanent, large, instream structures such as dams and other structures that may impede or permanently obstruct

[1] Mātaitai reserves, taiāpure-local fisheries, and certain areas subject to bylaws, provided for under Part 9 of the Fisheries Act 1996.

fish passage, were not included within the scope of the Bill as introduced. Approvals for such activities would need to use existing legislation, outside of the fast-track process.

26. To meet the policy intent of the one stop shop, we propose that these approvals should be integrated into the Bill.

27. To give effect to an expanded and clarified scope, we propose the following:

    27.1 expanding the scope of the Bill to provide for approvals of more complex structures via the one stop shop

    27.2 specifying what is considered 'less complex' and can be approved via a resource consent under the Bill, and what is considered 'more complex' and be approved via a freshwater fisheries approval under the Bill

    27.3 how to distinguish between these two types of activities in the Bill

    27.4 specifying what is considered 'temporary' works (and therefore able to be approved via a resource consent alone)

    27.5 specifying information needs at the application stage

    27.6 specifying what information is needed to support decision-making by the Expert Panel.

Policy and procedural matters for land exchanges

28. Exchanges of public conservation land (PCL) held by the Crown for alternative land are likely to be sought by developers who may want more autonomy and long-term certainty over land use than they would have if they obtained a concession or access arrangement to use PCL.

29. To ensure the fast-track exchange process is clear and workable for land exchanges, we propose the following:

    29.1 detail on how to incorporate land transaction due diligence with the panel process and the need for the panel's decision to be a 'conditional approval'

    29.2 detail on how to provide for existing users' rights where they might conflict with the land exchange (eg, existing concession holders)

    29.3 ensuring costs of external experts are cost-recoverable (eg, surveyors, engineers).

Leases and rights of first refusal relating to concessions and access arrangements

30. Rights of first refusal (RFR) in Treaty settlement legislation often apply to PCL.

31. RFR are triggered in most, if not all, Treaty settlement legislation if the term of the lease being granted (including rights of renewal or extensions, whether in the lease or granted separately) is, or could be, for 50 years or longer. Approvals for significant infrastructure projects (eg, dams and mines) are likely to require a lease through a concession or access arrangement, and they will presumably seek these for more than 50 years (especially including renewal rights or extensions).

32. These leases would trigger RFR, meaning the panel would need to offer leases on the same terms to any RFR holders, both because of the obligation in clause 6 of the Bill

(requirement to “act in a manner that is consistent with the obligations arising under existing Treaty settlements”), and because it would be unlawful not to honour statutory RFR. If 50+ year leases were granted despite RFR obligations and without RFR holder consent, those decisions would be vulnerable to judicial review and voidable.

33. To prevent this, we propose that written approval of the holder of a relevant RFR is required for leases to be granted where the term will (or is likely to with subsequent renewals) extend beyond 50 years.

34. We also propose that written approval of the RFR holder is required as an information requirement at the referral stage and that an application cannot be considered complete and referred to fast-track without this approval.

Land management approvals

35. Concessions, land access arrangements under the Crown Minerals Act 1991 (CMA), and land exchanges, are landowner decisions that reflect the Crown’s property rights. These decisions differ in nature from the other approvals in the Bill and expose the Crown to potential legal, financial and health and safety risks.

36. On 29 July 2024, Cabinet agreed that the panel makes land management decisions but that the Minister of Infrastructure, the Minister of Conservation, and the Minister for Resources will determine how that is implemented, including appropriate mitigation thresholds and initiatives [CAB-24-MIN-0272]. This is in the context of protecting the Crown from risks and liabilities associated with land exchange, concession and access arrangement decisions.

37. To achieve this, we propose the following:

    37.1 the panel can pass the decision to the land-owning minister responsible for the land in certain circumstances

    37.2 the land-owning minister can ‘call-in’ the decision if the risks for the Crown reach a certain threshold related to Crown risks:

        37.2.1 for concessions and access arrangements:

            37.2.1.1 novel infrastructure projects (ie, with less understood effects and risks)

            37.2.1.2 projects with significant potential for public health and safety consequences

            37.2.1.3 projects with large downstream liabilities (eg, significant costs for the Crown at the end of its life or if the project fails)

        37.2.2 for land exchanges where:

            37.2.2.1 displacing existing users/operators could have significant financial or legal implications (eg, someone’s multi-million-dollar concession is required to cease, and the Department of Conservation (DOC) might be liable)

            37.2.2.2 the Crown would be accepting a financial loss

37.2.2.3 land proposed to be acquired by the Crown may result in significant ongoing costs to manage (eg, subject to known natural hazard risks or contamination issues)

that pre-engagement with DOC is required before lodging a referral application.

37.3 that there are specific information requirements for the substantive application related to Crown risks and liabilities

37.4 that the Bill provides for DOC (or other relevant agency if not conservation land) to provide a report describing risks and issues, liabilities, description of the Crown's interests, mitigating conditions and whether these address the relevant issues and makes a recommendation on conditions

37.5 that the panel may request additional advice from DOC or other relevant agency as necessary

37.6 that the panel be required to inform the land-owning Minister on all of its decisions impacting the Crown's interest in land/resources prior to finalising them

37.7 the ability for the panel to extend timeframes or "stop the clock" to seek independent expert advice on the viability, risks and potential liabilities of a project

37.8 the land-owning Minister be empowered to set mandatory non-environmental terms and conditions as a matter of policy that would apply to all fast-track contracts (eg leases) related to conservation land.

Cost recovery

38. The Bill provides for some, but not full, cost-recovery for processing applications. There is ambiguity around the extent of the costs that can be recovered, and by whom. It is critical that the full costs of performing functions and duties, and exercising powers in the fast-track system are recoverable from users from commencement to avoid:

38.1 subsidisation in processing applications (ie, a direct Crown subsidy)

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

39. To achieve this, we propose to:

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

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

39.3 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

39.4 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

39.5 expand provisions in the Bill that relate to the recovery of unpaid fees as debt, and the ability to object to costs, to ensure they apply to all approvals.

40. The commencement date of the Bill is currently the day after Royal Assent. We propose 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.

41. We also seek a delegation for the Minister Responsible for RMA Reform and the Minister for Regional Development to make 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 (if needed). The regulations (if needed) would be made by the Governor-General, by Order in Council, on the recommendation of the responsible Minister, subject to authorisation by the Cabinet Legislation Committee, and then Cabinet, as soon as possible after the Bill has Royal Assent.

Cost-of-living Implications

42. No cost-of-living implications analysis has been conducted to inform this section.

Financial Implications

43. All work to develop the fast-track regime and associated legislation has been funded from existing agency baselines. The operation of a fast-track consenting regime will entail expenditure for the Crown.

44. This paper seeks agreement to additional provisions to facilitate cost-recovery from users for individual applications. If an adequate cost recovery regime is not in place in time for Bill commencement, this would generate financial risk to the Crown, as costs will need to be met from existing agency baselines.

45. There will be some financial risk to the Crown in respect of costs associated with any appeals or judicial review of decisions made.

Legislative Implications

46. The proposals in this paper would require changes to the Bill. We propose to make these changes through Amendment Papers at the Committee of the Whole House stage.

47. Any regulations for cost recovery would need to be made through Order in Council, after consideration by the Cabinet Legislation Committee. New regulations cannot be made through an Amendment Paper, so the Order in Council process would be done in tandem.

Impact Analysis

Regulatory Impact Statement

48. A Regulatory Impact Statement has been completed and is attached in **Appendix 1.**

49. The Regulatory impact analysis panel (Ministry for the Environment) has reviewed the "Annex to Supplementary Analysis Report – Fast-track Approvals Bill Amendment Paper

1 Policy Matters" (Annex to the SAR) using standard assessment criteria (complete, convincing, clear and concise, and consulted).

50. The Panel notes that the original SAR for the Fast-track Approvals Bill was exempt from the requirement for quality assurance as quality assurance of regulatory impact statements was suspended for decisions relating to 100 Day Plan proposals taken within the 100 Days. The original SAR was internally peer reviewed and considered to be fit-for-purpose to inform Cabinet's consideration, given the time constraints.

51. The Annex to the SAR assesses the impacts of proposals to improve the workability of the Fast-track Approvals Bill. The Panel considers that the Annex to the SAR partially meets the Quality Assurance criteria. The Annex to the SAR is relatively clear and concise given the range and number of proposals. It articulates the rationale for the proposals, the alternative options considered, and the key constraints and limitations. It meets the convincing criterion for its identification and assessment of options for amendments to the Fast-track Approvals Bill to improve its workability. However, while the Annex to the SAR improves on the original SAR it has been developed in compressed timeframes with limited data and evidence to inform assessment of options and impacts of proposals meaning the analysis is largely qualitative in nature.

Climate Implications of Policy Assessment

52. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal, as the threshold for significance is not met. This proposal is administrative, relating to policy, workability changes, and cost-recovery regulation.

Treaty Impact Assessment

53. A Treaty Impact Assessment is included in the Regulatory Impact Statement attached in **Appendix 1.**

Population Implications

54. No population implications have been identified relating to this content.

Human Rights

55. A human rights report was not prepared for this paper. The policy changes proposed in this paper are not expected to alter the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993 compliance report provided by the Ministry of Justice on the Bill for introduction.

Use of external resources

56. External resources contributed to the cost-recovery and implementation preparation section of this paper.

Consultation

57. This paper was developed by the Ministry for the Environment in conjunction with the Ministry for Business, Innovation and Employment and the Department of Conservation. The following agencies and parties were consulted on this paper, Land Information New Zealand, the Department of Conservation, the Ministry for Primary Industries, Te Arawhiti, Parliamentary Counsel Office, s 9(2)(h) and the Ministry for Culture and Heritage.

Communications

58. Subject to Cabinet approval of the proposals in this paper, a press statement on changes to the Fast-track Approvals Bill will be released at enactment.

Proactive Release

59. We intend to release this paper proactively after the Bill receives Royal Assent, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

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

Purpose clause and decision-making framework

1. **agree** to change the purpose of the Bill to "*The purpose of this Act is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits"*

2. **note** that retaining a role for underlying legislation, but with greater weight given to Bill purpose, is intended to provide clear legislative direction on how an application (listed or referred) is prepared, assessed and decisions made and to set a high bar for decline

Priority and order of fast-track applications

3. **agree** that where fast-track applications compete for a limited resource, those applications should be determined by a 'first-in-first-served' approach

4. **agree** that the order for assessing fast-track applications under the first in, first served approach is determined at the point a complete substantive application is lodged (either with the expert panel or, in the case of a land exchange proposal, with the Department of Conservation ahead of the panel consideration)

5. **agree** that applications being progressed under either the parent legislation or the fast-track regime will retain their first in, first served priority order for assessment ahead of any competing applications made at a later date under either the parent legislation or the fast-track process

6. **agree** that a provision equivalent to sections 124A-C of the RMA is included in the Bill to allow existing users seeking renewal of RMA approvals, either under the fast-track legislation or the RMA, to be considered before fast-track applications for new activities using the same resource

7. **agree** that 'competing applications' means where two or more applications are competing for some or all of the same limited resource to the extent that both or all of the applications could not be fully exercised

8. **agree** that to help identify competing applications and manage competing priority between applications for the same resource:

    8.1 the agencies and bodies who administer the parent legislation under which approvals are sought and relevant local authorities are required to identify, to the best of their knowledge, any existing non-fast-track applications for activities that may be competing for the same resource

8.2 the existing mechanism in the Bill to allow the Minister to suspend a fast-track application is amended to:

8.2.1 apply the suspension from the point at which a substantive application has been deemed complete

8.2.2 include an additional matter so that the Minister may direct the suspension of fast-track applications to manage any conflicts arising from competing applications

9. **agree** that the Minister may direct the panel convenor in writing, at the referral or the substantive application stage, to prioritise the establishment of an expert panel to consider a fast-track application for a listed or referred project ahead of other applications where:

9.1 the application needs to progress urgently and there is the likelihood of delay in that application being considered by a panel

9.2 there are no other known competing applications for the same resource under the fast-track system or parent legislation

10. **agree** that it is clarified in the Bill that land management approvals that confer property rights cannot be 'over-allocated' by expert panels

Ability to update the authorised person under schedule 2 application

11. **agree** that the Bill includes an Order in Council process to change the name of the authorised person on a listed project in schedule 2

Ineligibility criteria on local authority owned reserves and certain customary fisheries management areas

12. **agree** that written consent of a local authority reserve owner or, managing body, is removed as an ineligibility criterion at the referral stage

13. **agree** that, if the project covers a reserve owned or managed by a local authority, the written consent of that local authority must be included in the substantive application for it to be considered complete and the local authority may not unreasonably withhold their agreement

14. **agree** that the ineligibility criteria regarding projects with potential impacts on certain customary fisheries management areas be removed

15. **agree** to align the approach to customary fisheries management areas with other Treaty settlement processes in the Bill

Broadening the scope of freshwater fish related approvals

16. **agree** that authorisations for any dams and diversions are deemed to be granted under the Freshwater Fisheries Regulations and have the same force and effect as if granted under those regulations

17. **agree** that the following additional 'complex' approvals normally requiring authorisation under Freshwater Fisheries Regulations 42 and 43 are included in the Bill as a fast-track freshwater fisheries approval:

17.1 any permanent dam or diversion (with the exception of some weirs); and

17.2 any culvert or ford that permanently blocks fish passage.

18. **agree** that ‘standard’ activities that are dealt with by the fast-track resource consent include:

    18.1 any culvert or ford that could impede fish passage, with the exception of those that permanently block fish passage; and

    18.2 weirs that comply with the conditions of regulation 72 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020

    18.3 the following ‘temporary’ works, defined as works:

    18.4 where active disturbance to the waterbody (eg, diversions, in-stream operations, removal of gravel) does not persist for more than three months;

    18.5 that do not occur during the white baiting season, where the works are within 500 m of the coast;

    18.6 that do not occur during the spawning season where the works are in an area known to be used for trout, salmon or native fish spawning; or

    18.7 where repeated disturbance is required (eg, for staged works), there is a period of at least 6 months between each period of temporary works.

19. **agree** that the referral application for a project related to activities in freshwater must include the following information:

    19.1 identification of whether an instream structure is proposed (including formal notification of any dam or diversion structure) and the extent to which this may impede fish passage; and

    19.2 identification of whether any fish salvage activities or other activities within scope of schedule 8 are proposed.

20. **agree** that the following information is required in the substantive application to ensure users have certainty and the Panel has all the information it needs to make robust decisions:

    20.1 in relation to the structure and any fish facility: type, dimensions, design, placement, flows, operating regime;

    20.2 the freshwater species and values of the pathway (with particular focus on threatened, data deficient, and at-risk species as defined in the New Zealand Threat Classification System);

    20.3 quality and quantity of the surrounding habitat (at the proposed structure location, upstream and downstream);

    20.4 how the passage of fish will be provided or impeded.

21. **agree** that, consistent with the approach to consents, the applicant must comply with conditions on freshwater fisheries approvals and the Panel may recommend any conditions considered necessary for the purpose of managing effects

22. **agree** that the Panel considers the following additional matters (subject to the greater weighting of the purpose of the Bill) when making a decision on consents or approvals relating to activities in freshwater:

    22.1 alignment with best practice and the NZ Fish Passage Guidelines;

    22.2 management of risks to freshwater values or habitat, including prevention of access to or spread of invasive species;

    22.3 availability and quality of upstream and/or downstream habitat;

    22.4 presence of threatened, data deficient, and at-risk species under the NZ Threat Classification System; and

    22.5 advantages of providing fish passage upstream and/or downstream.

23. **agree** that for 'complex' freshwater fisheries approvals, DOC is required to provide a report (including advice on the matters in (i)) to the Panel and the Panel must consider this report

24. **agree** that the timeframe for a decision on any requirement for a fish facility under the Freshwater Fisheries Regulations does not apply to approvals under the Bill given the Bill has its own timeframes

Policy and procedural matters for land exchanges

25. **agree** that the Panel decision to approve a land exchange through the fast-track process is a 'conditional approval' that outlines legal and technical conditions to be met before the final contracts for the exchange are signed

26. **agree** that the completion of relevant steps following conditional approval is at the applicant's cost

27. **agree** that existing rights holders on the land proposed for exchange are added to the list of people and groups who can comment on an exchange

28. **agree** that the applicant is required to have consulted with existing rights holders before applying for referral and must provide details of their comments in the referral application

29. **agree** that a resolution with existing property rights holders does not need to be achieved prior to the conditional decision of the panel, but where resolution is outstanding, this must be included as a condition of the approval that must be satisfied before the exchange can occur

30. **agree** that any reasonable costs incurred by DOC are recoverable from the applicant including:

    30.1 in the negotiation process with existing rights holders; and

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

31. **agree** that any reasonable costs incurred in the negotiation process with existing property rights holders be recoverable by the rights holder from the applicant

32. **agree** that:

32.1 if the land offered by the applicant is of lower financial value than the land being sought through the land exchange, the applicant is required to pay the difference to the Crown to offset any Crown losses that would result from the land exchange; and

32.2 the Crown will not be required under any circumstances to make payment to the applicant to provide for equity of financial value as part of a land exchange

Leases and rights of first refusal (RFR) relating to concessions and access arrangements

33. **agree** that written approval of the holder of a relevant RFR is required for leases to be granted where the term will (or is likely to with subsequent renewals) extend beyond 50 years

34. **agree** that written approval of the RFR holder is required as an information requirement at referral and that an application cannot be considered complete and referred to fast-track without this approval

Land management approvals

35. **agree** that the Panel may pass the approval decision to the Minister responsible for the land if they are not satisfied they have adequate information to assess Crown risk for a particular project or they cannot adequately mitigate Crown liability in the given case

36. **agree** that the Minister responsible for the land concerned has the discretion to 'call-in' the decision on the approval if the risks for the Crown reach any of the following thresholds:

36.1 for concessions and access arrangements:

36.1.1 novel infrastructure projects (i.e. with less understood effects and risks)

36.1.2 projects with significant potential for public health and safety consequences

36.1.3 projects with large downstream liabilities (eg, significant costs for the Crown at the end of its life or if the project fails).

36.2 for land exchanges where:

36.2.1 displacing existing users/operators could have significant financial or legal implications

36.2.2 the Crown would be accepting a financial loss.

36.2.3 the land proposed to be acquired by the Crown may result in significant ongoing costs to manage

37. **agree** that there is a requirement for pre-application engagement with DOC (cost-recoverable) and specific information requirements relating to Crown risks and liabilities for the substantive application

38. **agree** that the Bill provides for DOC (or other relevant agency if not conservation land) to provide a report that:

38.1 describes any relevant issues, risks, liabilities, including a description of the Crown's interest in the land/resources which needs to be protected

38.2 outlines mitigating conditions that may be applied and whether these adequately address any relevant issues

38.3 makes a recommendation to the panel on which conditions should be put in place to mitigate Crown risk and liabilities.

39. **agree** that the Panel may request additional advice from DOC (or other relevant agency) as necessary and that this servicing is cost recoverable by the agency

40. **agree** that the Panel must inform the Minister responsible for the land before deciding on land management approvals

41. **agree** that the panel can extend timeframes or "stop the clock" to seek independent expert advice on the viability, risks and potential liabilities of a project in relation to land management decisions

42. **agree** that Bill allows the Minister responsible for the land to set mandatory non-environmental terms and conditions as a matter of policy for contracts

Cost recovery

43. **agree** 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

44. **agree** 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

45. **agree** 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

46. **agree** 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

47. **agree** 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

48. **agree** 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

49. **note** that the cost recovery regulations will be considered by the Cabinet Legislation Committee, to be made through the usual Order in Council process at Executive Council post-Royal Assent of the Bill

Next steps

50. **agree** to progress the above changes through introducing an Amendment Paper/s at the Committee of the whole House stage on the Fast-track Approvals Bill

51. **authorise** the Minister for RMA Reform and the Minister for Regional Development to issue drafting instructions to Parliamentary Council Office to make the above changes to the Fast-track Approvals Bill

52. **authorise** the Minister Responsible for RMA Reform and Minister for Regional Development to:

    52.1 take decisions on the approach to setting fees and levies, the use of a centralised collection agency, and on any other policy or technical matters relating to cost recovery for inclusion in the Amendment Paper and/or regulations

    52.2 make any further outstanding policy decisions or technical changes, including decisions under existing delegations by any Minister, required for drafting purposes.

Authorised for lodgement

Hon Chris Bishop

Minister Responsible for RMA Reform

Hon Shane Jones

Minister for Regional Development

Appendix 1 withheld in full per s18(d)
This document is avaibale: https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/fta-bill-amendment-papers/