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Ministry for the Environment
Manatū Mō Te Taiao

PROACTIVE RELEASE COVERSHEET

Minister	Bishop	**Portfolio**	RMA Reform
Subject Matter	Fast Track Approvals Bill	**Date to be published**	24 May 2024

List of documents that have been proactively released		
Date	***Title***	***Author***
15 Dec 2023	BRF-3993: Fast-track consenting Amendment Bill BRF-3993: Appendix 1 BRF-3993: Appendix 3 BRF-3993: Appendix 4	MFE
12 Jan 2024	BRF-4073: Fast-Track Consenting Draft Cabinet Paper	MFE
5 Feb 2024	BRF-4115/MBIE 2324-1800: Fast-track consenting delegated decisions - Ministerial referral and eligibility.	MFE/MBIE
12 Feb 2024	BRF-4240: Engagement with Te Tai Kaha and Pou Taiao on FTC	MFE
14 Feb 2024	BRF-4203/MBIE-2324-2098: Fast-track Consenting Bill - Policy Decisions Tranche 2A BRF-4203 Appendix 1 BRF-4203 Appendix 4	MFE/MBIE
16 Feb 2024	BRF-4239: Fast Track Consenting Bill - Policy decisions tranche 2B	MFE
23 Feb 2024	BRF-4308: Meeting with all PSGEs to advise on fast-track process.	MFE
26 Feb 2024	BRF-4307: Fast-track delegated decisions.	MFE
26 Feb 2024	BRF-4329: Cover Briefing for CAB-385	MFE
29 Feb 2024	BRF-4374: Cover Briefing for CAB 385: Fast-track Approvals Bill: Approval for introduction Cabinet paper - Fast-track Approvals Bill –Approval for introduction. Cabinet paper - Appendix 1 Cabinet paper - Appendix 2 Cabinet paper - Appendix 4	MFE

Information redacted **YES**

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

Summary of reasons for redaction

Some information has been withheld for the reasons of a) maintaining legal privilege, b) to protect the privacy of natural persons and c) maintain the constitutional convention protecting the confidentiality of advice rendered by Ministers and officials

Ministry for the Environment
Manatū Mō Te Taiao

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Fast-track legislation delegated decisions Paper #1

Date submitted: 5 February 2024

Tracking number: MFE BRF-4115 / MBIE # 2324-1800

Security level: In Confidence

Priority: Urgent

Actions sought from Ministers		
Name and position	***Action sought***	***Response by***
To Hon Chris BISHOP **Minister of Housing** **Minister for Infrastructure** **Minister Responsible for RMA Reform** Hon Simeon BROWN **Minister for Energy** **Minister of Local Government** **Minister of Transport** Hon Tama POTAKA **Minister of Conservation** **Minister for Māori Crown Relations: Te Arawhiti** Hon Penny SIMMONDS **Minister for the Environment** Hon Shane JONES **Minister for Oceans and Fisheries** **Minister for Regional Development** **Minister for Resources**	This paper seeks Ministers' decisions on policy for drafting of the Fast-Track Consenting bill, in relation to: 1. the purpose of the legislation 2. the process for Ministers to consider and refer projects to an Expert Panel 3. 'one stop shop': interaction of different legislation, and statutory approvals to include in the fast-track legislation 4. appeal rights 5. Treaty settlements 6. rollover of implementation provisions Ministers are invited to signal their preferred options on these matters in Table A at the end of this paper.	8 February 2024

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

Proactive Release Note—This appendix list is incorrect. The correct appendices are those attached.

Appendices and attachments
• Appendix 1 – Delegated decision tables A and B • Appendix 2 – Crown law advice on policy proposals • Appendix 3 – Initial Treaty Impact Assessment • Appendix 4 - Examples of what influence Treaty settlements and other arrangements provide for in practice

Key contacts			
Position	***Name***	***Cell phone***	***First contact***
Ministry for the Environment			
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Ministry of Business, Innovation and Employment			
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Deputy Chief Executive	Paul Stocks	s 9(2)(a)	

Minister's comments

Fast-track legislation delegated decisions Paper #1

Key messages

1. The Minister Responsible for RMA Reform intends to take a phased approach to reform of the resource management system. The purpose of this regime is to lift New Zealand's living standards, lift productivity, and grow the economy while still protecting the environment.

2. Phase two of the Government's Resource Management Act 1991 (RMA) Reform agenda includes introducing this permanent one-stop-shop fast-track consenting regime, making progress on the Going for Housing Growth package, and introducing other amendments to make it easier to get things done in New Zealand across aquaculture, farming, energy and other industries.

3. On 23 January 2024 Cabinet agreed [CAB-24-MIN-0008] to develop this new, permanent fast-track consenting regime aimed at enabling infrastructure and other projects that have significant local, regional and national benefits.

4. Cabinet authorised delegated Ministers to jointly make further detailed decisions on policy for the Fast-track Consenting bill (FTC bill). The Cabinet proposals on fast-track consenting are intended to improve decision making timeframes and give greater investment certainty, with well-designed projects having a clear and fast path to consent.

5. This briefing and the following delegated decisions briefing (to be provided on 12 February 2024) set out key design decisions for drafting the legislation. These briefings also signal policy areas that will need further design following the introduction of the bill - including testing through select committee.

6. To ensure the legislation can achieve these Government objectives, careful design is required to ensure it is workable, efficient and avoids risks of legal challenge in implementation.

7. This includes clear provisions on how to ensure the FTC bill, and its implementation, interacts with other legislation to achieve a one-stop shop and meets obligations under existing Treaty settlements. Ministers also need to be aware of the legislation's consistency with the Treaty of Waitangi more generally, and associated legal risks.

8. **Appendix 1, Table A** of this briefing seeks decisions from delegated Ministers on key policy questions. These decisions will have substantive legal implications and substantive impacts on the resource management system, as well as implications for Māori rights and interests under the Treaty of Waitangi. They also have substantive impacts on Treaty settlements and other legislative

arrangements[1] that Cabinet has agreed are to be protected under the FTC bill [CAB-24-MIN-0008 refers].

9. **Appendix 1, Table B** seeks detailed policy decisions from the Minister Responsible for RMA Reform on matters necessary for drafting the legislation and addressing procedural issues. Table B gives effect to the decisions in Table A and is based off the relevant provisions in the Fast-Track Consenting Act 1010 (FTCA) and Natural and Built Environment Act (NBA) with necessary adjustments.

Approvals to include in the FTC Bill

10. This briefing largely addresses RMA aspects of the FTC bill. Further advice is needed on how to provide a one-stop-shop system with other legislation. Legislation currently being considered is listed in the Table below:

Acts	Recommended approach
Wildlife Act 1953 Reserves Act 1977 Conservation Act 1987 Heritage New Zealand Pouhere Taonga Act 2014	Officials recommend that you agree to incorporate approvals under these Acts into the FTC bill and direct officials to undertake further work on approvals under these Acts for incorporation into the FTC bill through the select committee process
Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 Land access provisions under the Crown Minerals Act 1991	Officials are currently scoping inclusion of approvals under these Acts in the FTC bill and will provide advice in the next delegated decisions briefing
Public Works Act 1981	Land Information New Zealand (LINZ), working with Ministry of Transport (MoT), Ministry of Business, Innovation & Employment (MBIE), delivery agencies including NZ Transport Agency (NZTA), KiwiRail and Transpower, will provide advice to the Ministers for Land Information, Transport and Infrastructure by 23 February 2024 on challenges incorporating the Public Works Act into the FTC bill and potential options relating to land acquisition processes, including the relationship to a one-stop shop process.

[1] When referencing Treaty settlements and other arrangements we are including reference to the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, and joint management agreements and mana whakahono ā rohe agreed under the RMA (Treaty settlements and other arrangements).

11. Further analysis is needed on how to limit substance considerations or requirements to provide for a "lower hurdle" in respect of Fast-track projects. Achieving this within the timeframes for introduction will be highly challenging. Unlike the RMA where previous fast-track models have been drafted and implemented, no such work has previously been undertaken on these Acts and they are complex and difficult pieces of legislation: this means more work is required to craft a fast-track carve out. Decisions under these Acts are frequently subject to legal challenge. The Wildlife Act, in particular, is widely acknowledged to be nearly unworkable and requires replacement.

12. In addition, all Conservation laws are subject to a strong Treaty clause at present which is innately tied up with the processes and rights that are read into the operation of these Acts. Understanding how this will play out in the new regime, or changes that may be required in respect of that, also requires more work than is feasible in the timeframe for decisions on drafting for introduction.

13. Finally, there is no possibility of engagement with Māori (which would have to span both settled and unsettled iwi) on incorporation of these Acts prior to delegated Ministers' decisions as no options have yet been approved for consultation purposes.

14. We therefore recommend you can agree in principle to include these Acts in the regime and signal to the Select Committee your intent to look further at how these approvals can be fully integrated into a one stop shop for potential inclusion at a later Parliamentary stage by an Amendment paper.

Treaty and Treaty settlement implications

15. The policy decisions made on the FTC bill will be significant for Māori in terms of how Māori rights and interests are recognised and protected,[2] Treaty of Waitangi considerations, and the protection of Treaty settlements. These are addressed in more detail in the Treaty Impact Assessment. A preliminary but incomplete assessment is attached to this briefing; more comprehensive assessment with be provided along with other impact analysis when Cabinet considers the FTC bill for introduction.

16. Further specific decisions will be sought on these matters in the next delegated decisions briefing, as many of the Treaty and Treaty settlement considerations flow from the decisions sought in this briefing. For instance, choices around whether the new fast-track consenting regime will include permissions under the Conservation, Reserves and Heritage Acts, and how the FTC bill interacts with provisions in the RMA and other Acts that recognise Māori rights and interests.

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[2] Māori have a range of rights and interests in respect to natural resources, which have repeatedly been recognised as very significant. The Crown has Te Tiriti o Waitangi | Treaty of Waitangi obligations to provide for and protect Māori rights and interests in relation to resource management legislation and policy development. See for example Waitangi Tribunal, 2011. The Report on the Management of the Petroleum Resource (Wai 796).

17. It is important that in making decisions on the FTC bill at this stage of the process, Ministers are fully informed of Māori rights and interests in respect of the environment and the implications of these under the FTC bill. This includes awareness of existing protections for Māori rights and interests in the existing relevant legislation. Māori would generally expect these protections for Māori rights and interests to be carried over from the existing legislation (such as the RMA) to the new regime. More advice on these matters will be provided in the subsequent delegated decisions paper.

18. Treaty settlements and other arrangements are one aspect of broader Treaty issues that Cabinet has agreed will be protected. With regards to Treaty settlements and other arrangements we note the following:

    i. Settlements and other arrangements contain mechanisms that provide for post-settlement governance entities (PSGEs) to have varying degrees of influence on decisions. These include appointment of members to hearing panels, recognition of certain matters in RMA planning documents, and provision for places of significance to be recognised in decision making (eg, in respect of certain natural resources such as the Waikato River or areas subject to statutory acknowledgements).

    ii. In addition to RMA processes, settlements and other arrangements provide for input into decisions under other legislation that could be included in the FTC bill such as the Conservation Act 1987, the Wildlife Act 1953, and the Heritage New Zealand Pouhere Taonga Act 2014 (see examples at Appendix 4 for further detail).

    iii. Such arrangements were negotiated and agreed on the basis of existing legislative protections for Māori and Treaty of Waitangi clauses in the relevant legislation (eg, under Part 2 of the RMA – particularly sections 6(e), 7(a) and 8). Some Treaty settlements alter decision making-standards by reference to existing provisions such as section 4 of the Conservation Act that requires the Act to be administered to give effect to the principles of the Treaty of Waitangi.

    iv. In some cases, settlements and other arrangements require the Crown to engage with relevant parties on the development of new policy.

19. 9(2)(f)(iv) [redacted]

20. Meeting its commitment to include protections for Treaty settlements and other arrangements requires the Government to:

    i. ensure PSGEs and other representative groups have an equivalent degree of influence under the FTC bill as they otherwise would under the

RMA and other legislation by virtue of their Treaty settlement or other arrangement

ii. engage meaningfully with affected groups on the development of the FTC bill on how settlements and other arrangements will be upheld.

21. The more the FTC bill departs from existing legislation, the more protections will be required to uphold Treaty settlements and other arrangements. The required protections will depend on the decisions set out below. Officials will provide further advice on the required protections and how they will affect the FTC bill following the decisions sought in this paper.

22. Given the potentially significant impact of these decisions on settlements and other arrangements, and the timeframes for introducing the FTC bill, officials are seeking to engage with affected groups as much as possible ahead of introduction. There have been a range of views expressed during engagement to date, including support for a fast-track process and a desire to understand more about the proposed process. In particular, Ministers' high level discussions indicate support for their vision for the fast-track regime and what it will deliver. Crown Law advice is that legal risk will be mitigated by as much engagement as possible.

23. Officials will continue to work with PSGEs which could result in recommendations for changes to the bill through subsequent Parliamentary stages to protect settlements and Māori rights and interests more generally.

24. The policy work supporting the analysis and advice below has been developed at pace and has had some limited discussion with some Māori groups (some PSGEs, Te Tai Kaha, and advisers to National Iwi Chairs), local government and other stakeholders. The Treaty Impact Assessment and advice on Treaty settlements and other arrangements reflects this.

Legal Advice

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

Parliamentary Counsel Office comment

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

Next steps

27. We will provide you a second briefing seeking decisions on the design of the FTC bill on 12 February 2024. This briefing will include advice on further matters including the purpose of the FTC bill, the circumstances in which a panel can't grant approvals, and listed projects.

28. Ministers Bishop and Jones will seek Cabinet approval to introduce the FTC bill at the 4 March 2024 Cabinet meeting. This paper is intended to go direct to Cabinet. The bill will continue to be drafted over the next four weeks for introduction by 7 March 2024.

Recommendations

We recommend that you:

a. **note you are meeting** on 8 February 2024 to reach consensus on your preferred options

b. **indicate** your preferred options in the decisions table at Appendix 1 **Table A** which includes detailed decisions on the purpose, other approvals, weighting of the FTC bill, eligibility criteria, projects that would be ineligible, what the fast-track process does and who gets to make decisions

c. agree to delegate detailed decisions to enable drafting instructions and some procedural matters to Minister Bishop (listed at Appendix 1 **Table B)**

Yes | No

d. **note** Cabinet agreed the legislation will include protections for Treaty of Waitangi settlements and other legislative arrangements [CAB-24-MIN-0008 refers]

e. **note** decisions on the key policy questions in Appendix 1 will have substantive impacts on how Treaty settlements and other arrangements are upheld in the FTC bill and officials will provide further advice on appropriate mechanisms to do so following Ministers' decisions

f. **note** that given the timeframes for developing the FTC bill, it is likely the Crown will be unable to meet commitments in some settlements relating to engagement on policy development

g. **note** officials will provide more impact analysis as part of the final Legislation paper to Cabinet seeking introduction of the Bill.

Signatures

Nadeine Dommisse

Deputy Chief Executive, Environmental Management and Adaptation

Ministry for the Environment

Date

Paul Stocks

Deputy Chief Executive, Building, Resources and Markets

Ministry of Business, Innovation and Employment

Date

Hon Chris BISHOP

Minister of Housing

Minister for Infrastructure

Minister Responsible for RMA Reform

Date

Hon Simeon BROWN

Minister for Energy

Minister of Local Government

Minister of Transport

Date

Hon Tama POTAKA

Minister of Conservation

Minister for Māori Crown Relations: Te Arawhiti

Date

Hon Penny SIMMONDS

Minister for the Environment

Date

Hon Shane JONES

Minister for Oceans and Fisheries

Minister for Regional Development

Minister for Resources

Date

Appendix 1: Table A - key policy questions

29. On 23 January 2024, Cabinet agreed to develop a new, permanent fast-track consenting regime (FTC bill) aimed at enabling infrastructure and other projects that have significant local, regional and national benefits. Cabinet agreed to delegate detailed policy decisions to delegated Ministers [CAB-24-MIN-0008].
30. **Table A** seeks agreement to further key policy questions needed to develop the FTC bill. Delegated Ministers are meeting on 8 February to discuss this.
31. We recommend that after making decisions on Table A, Ministers delegate the detailed policy decisions required for drafting instructions (**Table B**) to the Minister Responsible for RMA Reform. These detailed decisions including some procedural matters will give effect to the decisions in this table and are based of the relevant provisions in the FTCA/NBA with adjustments made.
32. Decisions on the options below will have substantive impacts on how Treaty settlements and other legislative arrangements[3] are upheld in the FTC bill and legal implications.
33. The table below includes a summary of the general advice, Treaty Impact Assessment, Treaty settlement and other arrangements, and legal advice for each proposal. The more detailed Treaty Impact Analysis is included in Appendix 3 and legal advice from Crown Law is in Appendix 2

Proposal	Options	Decisions	Advice and Analysis
I. The purpose of this legislation	**note** the purpose of the FTC bill noted by Cabinet was: *enabling infrastructure and other projects that have significant local, regional and national benefits, while continuing to promote the sustainable management of natural and physical resources for current and future generations* **agree** *a)* EITHER that the purpose of the FTC bill will be the one noted by Cabinet b) OR direct officials to provide further advice on the purpose in Briefing Note #2 on how it can be weighted more in favour of development	**Yes | No** **Yes | No**	**General Advice** The purpose noted by Cabinet was: *enabling infrastructure and other projects that have significant local, regional and national benefits, while continuing to promote the sustainable management of natural and physical resources for current and future generations.* The wording of this purpose requires a balancing of development and environmental outcomes, and further work could be undertaken to weigh the purpose in favour of development. Officials can provide further advice on this in Briefing Note #2. We also can advise on whether 'local' benefits should be listed in the purpose, given this could open up a very large number of applications. **Treaty Impact Assessment** Enabling infrastructure and other projects would support Māori development interests. The inclusion of the promotion of "sustainable management of natural and physical resources for current and future generations" provides some protection of Māori environmental protection interests. Should further advice be sought from officials in Briefing Note #2, officials will include further Treaty impact analysis.

[3] When referencing Treaty settlements and other arrangements we are including reference to the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, and joint management agreements and mana whakahono ā rohe agreed under the RMA (Treaty settlements and other arrangements).

Proposal	Options	Decisions	Advice and Analysis
II. Other approvals included in the FTC bill	**Decision** **agree in-principle** to include relevant approvals under the following legislation in the 'one stop shop' but note that work on all aspects of these approvals cannot be completed for the FTC bill as introduced: a. Conservation Act 1987 b. Wildlife Act 1953 c. Heritage New Zealand Pouhere Taonga Act 2014 d. Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (subject to further advice in next briefing) e. Crown Minerals Act 1991 (s61 land access provisions) (subject to further advice in next briefing) **direct** officials to undertake further work such that all relevant aspects of these approvals can be incorporated through the select committee process and introduced through Amendment Papers **note** that infrastructure providers identify the Public Works Act 1981 as highly significant and land acquisition issues as a key determinant of project timeframes, but that this process: a) relates to securing necessary property rights to enable construction b) is not related to environmental effects c) will take longer than the 100 day timeframe to resolve **agree** that LINZ, working with MoT, MBIE, delivery agencies including NZTA, KiwiRail and Transpower, provide advice to the Ministers for Land Information, Transport and Infrastructure by 23 February 2024 on challenges raised and potential options relating to land acquisition processes, and relationship to a one stop shop process	**Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No**	**General Advice** Cabinet has agreed that the FTC bill will be a 'one stop shop' for approvals under other legislation in addition to the Resource Management Act 1991 (RMA). In addition to RMA approvals (consents, notices of requirement and alterations to designations) officials' initial thinking is that the following approvals could be included in the 'one stop shop' but further analysis and engagement is required to identify how best to ensure their workability to achieve the purpose of this legislation: • Conservation Act 1987 • Wildlife Act 1953 • Reserves Act 1977 • Heritage New Zealand Pouhere Taonga Act 2014. Officials are doing further scoping work on the following legislation and will advise in the next briefing if they should be included for a 'one stop shop'. • Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 • Crown Minerals Act 1991 (s61 land access provisions). **Treaty Impact Assessment:** Each statutory regime the FTC bill will interact with has its own specific provisions for Māori interests and different Treaty clauses. The regimes have been modified by Treaty settlements in different ways. Additional Treaty impact analysis and engagement with Māori is required on the approvals that could be included in the 'one stop shop' to identify and propose options to address any issues. There are long-standing issues regarding the impact of the Public Works Act on Māori. Significant policy work including Treaty impact analysis is required if Ministers are to consider removing appeals under the Public Works Act 1981 through the FTC bill. **Treaty settlements and other arrangements** The different statutes that could be brought under the FTC bill all interact with Treaty settlements in different ways. Additional analysis and engagement with iwi will be required to determine how the FTC bill will affect Treaty settlements depending on which legislation is included within its scope, and how these can be protected.

Proposal	Options	Decisions	Advice and Analysis
III. Weighting of FTC bill purpose in making decisions under other Acts	**agree** that the purpose of the FTC bill is generally to be weighted above the purpose and provisions of other Acts in the one stop shop **note** that it is also necessary to provide detailed guidance for how that weighting is given effect in applying specific decision-making considerations in other legislation **note** there are precedents in the Housing Accords and Special Housing Areas Act 2013 and the FTCA which would avoid the additional work of designing entire new approaches, and that doing so is also not feasible in the time available . **agree** that officials should draw on such precedents in applying key decision-making criteria under other Acts while ensuring that the weighting of the FTC bill purpose is maintained . **note** officials may need to provide further advice on this issue in delegated decisions briefing #2	**Yes | No** **Yes | No**	**General Advice** Other legislation such as the Reserves Act 1977 and the Conservation Act 1987 have key statutory criteria that will need to be considered by decision makers when making decisions on approvals/permits provided under that legislation. You need to decide how decision makers (the Expert Panel) under the proposed FTC bill will consider such provisions. There are two ways of addressing the issue: • creating entire new frameworks reflecting the purpose of the FTC bill • applying the existing frameworks by: o either making them subject to the purpose of the FTC bill o or giving a higher weighting to the FTC bill purpose in decision-making. The first approach is not possible in the time available and is unnecessary to achieve your objectives. The second type of approach was taken for: • the Housing Accords and Special Housing Areas Act 2013: *(1) An authorised agency, when considering an application for a resource consent under this Act and any submissions received on that application, must have regard to the following matters, giving weight to them (greater to lesser) in the order listed:* *(a) the purpose of this Act:* *(b) the matters in Part 2 of the Resource Management Act 1991:* *(c) any relevant proposed plan:* *(d) the other matters that would arise for consideration under—* • COVID- 19 FTCA: *When considering a consent application in relation to a referred project and any comments received in response to an invitation given under section 17(3), a panel must, subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act, have regard to…* Officials will provide further advice on these decisions and how they are considered by decision makers under the FTC bill in the next delegated decisions paper. ***Treaty Impact Assessment*** Part 2 of the RMA requires the principles of the Treaty be taken into account and contains other provisions (eg, ss 6(e) and 7(a)) that assist the Crown in meeting its obligations to provide for and protect Māori rights and interests under the RMA. If the weighting of these provisions is reduced by making them subject to the purpose of the FTC bill, this could impact on the ability to provide for and protect Māori rights and interests under the FTC bill. Equivalent provisions to those in Part 2 could be included in the FTC bill to mitigate this risk. Officials will provide further advice about appropriate provisions to protect Māori rights and interests subject to Ministers' decisions. *Treaty settlements and other arrangements* Similarly, how Treaty settlements and other arrangements are protected is affected by whether Part 2 of the RMA continues to apply as they were agreed pursuant to those provisions. Similar issues will exist under other statutes such as the Conservation Act. Officials will provide further advice on appropriate mechanisms to uphold settlements and other arrangements subject to Ministers' decisions.

Proposal	Options	Decisions	Advice and Analysis
IV. Eligibility criteria	. **agree** the responsible Ministers (Infrastructure, Transport and Regional Development) when referring a project **must** consider: a) whether the project would be consistent with the purpose of the Act b) whether the project is viable to proceed for development in the near future c) whether access to the fast-track process will enable the project to be processed in a more timely and cost-efficient way than under 'normal' processes d) the impact referring this project will have on the efficient operation of the fast-track process e) the significance of the project to delivering on regional and national benefits f) the application has sufficient information to inform the Minister's referral decision	**Yes | No**	**General Advice** Official recommend including eligibility criteria in the FTC bill to influence and prioritise what projects can access the 'fast-track' process. If this is included Ministers will need to make these considerations when determining whether to fast-track a project. Under these criteria a large number of projects are likely to be eligible for fast-tracking. We anticipate further testing of these criteria will be a focus of the Select Committee process. **Treaty Impact Assessment** Information requirements could mean an application has sufficient detail to enable the Minister to make a decision informed impact on Māori rights and interests and Treaty settlements. Further, the discretionary eligibility criteria may support Māori development and climate adaptation aspirations.
	. **agree** Ministers when referring a project **may** consider if it: a) has been identified as a priority project in a central government, local government or sector plan/strategy (eg, general policy statement or spatial strategy) b) will deliver nationally or regionally significant infrastructure c) will increase the supply of housing, address housing needs, and/or contribute to a well-functioning urban environment d) will deliver significant economic benefits e) will support primary industries, including aquaculture f) will support development of natural resources, including minerals and petroleum g) support climate change mitigation, including the reduction or removal of greenhouse gases/emissions h) will support adaptation, resilience and recovery from natural hazards i) will address significant environmental issues j) is consistent with local or regional planning documents including spatial strategies	**Yes | No**	

Proposal	Options	Decisions	Advice and Analysis
V. Projects that would be ineligible	. **agree** that if one or more of the following conditions are met a project will not be eligible for fast-tracking: a) the activity is prohibited under a National Policy Statement, National Environmental Standard or a Regional or District Plan b) it would occur on land returned under a Treaty settlement, or Identified Māori land, without agreement (in writing) from the relevant landowner(s) c) it would occur in a customary marine or protected customary rights area without agreement from the rights holder/group d) it includes an activity that would occur within an aquaculture settlement area unless it has the required authorisation	**Yes | No**	**General Advice** Officials recommend that the FTC bill states conditions where a project will not be eligible for fast-tracking. Under the RMA, some planning documents will state that specific activities (eg, discharge of raw wastewater to rivers) are prohibited and are therefore unable to occur and cannot receive approvals. Prohibited activities often have significant environmental effects. If you do not agree with this, we will need to determine how panels can consider prohibited activities when making decisions on RMA approvals. **Treaty Impact Assessment** The proposal that projects would be ineligible on land returned under a Treaty settlement or identified Māori land – unless permitted by the owners – provides an important protection, whilst also enabling Māori landowners to support or undertake development (eg, papakāinga). Further advice is to be provided on whether the FTC bill includes a Treaty clause and/or prescriptive provisions about how Māori rights and interests are to be protected. What Ministers decide in this regard could have a bearing on a project's eligibility in terms of impact on these rights and interests. **Treaty settlements and other arrangements** Officials will provide further advice on whether other ineligibility criteria are required to protect Treaty settlements and other arrangements.
VI. What does the fast-track process do and who gets to make decisions	T**he Role of Ministers and Expert Panels (EP) for non-listed projects** 15. **note** that Cabinet has agreed that Ministers refer a project to an EP. The EP will determine conditions. If the EP decides that the project's approvals should not be granted, the applicant will be able to reapply to be referred once it has addressed the EP's concerns. The panel can only decide that approvals shouldn't be granted in limited circumstances *Circumstances where an EP can decide not to grant approvals* 16. **note** officials are working through circumstances where a panel can decide not to grant approvals and will provide further advice in Briefing Note #2. 17. to support official's analysis, **agree in-principle** which of the following circumstances that an EP can choose not to grant approvals: a) if they are inconsistent with Treaty Settlements b) if they are inconsistent with a National Policy Statement or National Environmental Standard, including any limits and targets c) if they are inconsistent with a Regional or District Plan d) if they enable development in an area where there are significant risks from natural hazards, or occur in an area where the project could exacerbate this	**Yes | No** **Yes | No** **Yes | No** **Yes | No**	**General Advice** Further decisions are needed on the role of Parliament/Ministers and the EP in granting approvals for referred projects. **Treaty impact assessment** From a Treaty impacts perspective, whether a project is able to be declined by the Minister or the EP is relevant (for example an EP would likely be independently constituted with statutory appointment criteria and requirements). The circumstances under which a project can be declined will be highly significant for Māori. Officials will provide further advice about any appropriate provisions to provide for and protect Māori rights and interests in circumstances under which a project can be declined. **Treaty settlements and other arrangements** Upholding Treaty settlements and other arrangements will require robust analysis of a project and engagement with relevant parties. If the EP is unable to decline applications, particularly where they are inconsistent with a Treaty settlement, protections from previous fast-track regimes (NBA and FTCA) will not be able to be drawn on directly and further work will need to be carried out to ensure protections are applied at the Ministerial referral stage where the consent decision is being made. The extent to which previous engagement with Māori on those previous regimes is relevant to the FTC bill will likely also be lessened due to the difference in the regimes.

Proposal	Options	Decisions	Advice and Analysis
	e) if appropriate and feasible conditions cannot be applied to mitigate risks f) if new information indicates a project is unsuitable.	**Yes | No** **Yes | No**	
VII. Listed Projects	**The role of Parliament and EPs in listed projects** 18. **note that** Parliament refers a project to an EP. The EP will determine conditions. If the EP decides that the project's approvals should not be granted, the applicant will be able to reapply to be referred once it has addressed the EPs concerns. The panel can only decide that approvals shouldn't be granted in limited circumstances 19. **note** that officials will provide further advice on what the limited circumstances could be in Briefing Note #2		9(2)(f)(iv) [redacted] **Treaty impact assessment** Listing projects that are deemed to have approved consents would have efficiency and certainty benefits for any listed projects that would support Māori development interests, though would reduce time and flexibility in understanding any Māori rights and interests associated with the project. This would put additional onus on ensuring engagement with Māori on projects to be listed in the FTC bill occurs beforehand. **Treaty settlements and other arrangements** Listing projects that are deemed to have approved consents will require implications for Treaty settlements and other arrangements to be addressed before enactment of the legislation, including engagement requirements.

Appendix 2: Summary of Legal Advice

s 9(2)(h)

[redacted]

2 pages withheld under s9(2)(h)

Appendix 3: Full Crown Law Legal Advice s9(2)(h)

Ministry for the Environment
Manatū Mō Te Taiao

BRF 4240: Meetings with Pou Taiao and Te Tai Kaha regarding fast-track consenting and wider resource management reform

Date submitted: 12 February 2024
Tracking number: BRF-4240
Security level: Confidential
MfE priority: Urgent

Name and position	***Action sought***
To Hon Chris Bishop **Minister Responsible for RMA Reform**	Agree to prioritise meetings with Pou Taiao and Te Tai Kaha

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

Appendices and attachments
Nil

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Jerren Tweedie		
Responsible Manager	Sam Ritchie	s 9(2)(a)	
General Manager	Clare Maihi	s 9(2)(a)	✓

Minister's comments

Meetings with Pou Taiao and Te Tai Kaha regarding fast-track consenting and wider resource management reform

Key messages

1. This briefing responds to your request for advice about engagement with Pou Taiao and Te Tai Kaha.

2. Officials understand you have a hold in your diary to meet with Pou Taiao sometime in the week of 19 February 2024, and a hold in your diary to meet with Te Tai Kaha on 22 February 2024.

3. Pou Taiao and Te Tai Kaha are representatives of iwi-Māori interests in resource management, and therefore have significant interests in the proposed fast-track consenting bill and wider resource management reform.

4. It is appropriate you meet with both groups at a rangatira ki te rangatira (leader to leader) level regarding the proposed fast-track consenting legislation and wider resource management reform programme.

5. The timing of the proposed meetings and the introduction of the fast-track consenting bill means there will be limited opportunity for the meetings to influence the content of the fast-track consenting bill as introduced. There is a need for a robust Parliamentary Select Committee process to manage risk arising from the truncated policy development and engagement processes prior to introduction.

6. These meetings are an opportunity for you to continue to establish a positive working relationship with iwi leaders, which will support progress in the Government's work programme.

Background

NICF – Crown relationship and Statement of Engagement

7. The National Iwi Chairs Forum (NICF) – Crown engagement approach, as set out in the NICF – Crown Statement of Engagement, is divided into Pou, where lead Ministers and Pou Chairs agree sets of mutual priorities which form the basis of regular reporting back at NICF quarterly hui (BRF-4032 refers).

8. As you are aware, you are lead Minister for Pou Taiao, Pahia Turia is the new Pou Chair for Pou Taiao, and the Ministry for the Environment (MfE) is the lead agency for Pou Taiao.

Meeting with Pou Taiao

9. On 29 January 2024 you met with the Pou Taiao Chair and Pou Taiao technicians (BRF-4081 refers).

10. Pou Taiao technicians indicated the top three priorities for Pou Taiao work going forward. The priorities indicated by technicians are:

    i. Fast-track consenting legislation and broader RM Reform;

    ii. Freshwater and the National Policy Statement for Freshwater Management (NPS-FM); and

    iii. Water services reform.

11. On 2 February 2024 you attended the NICF quarterly Forum report back session, where it was agreed a further meeting would be organised to confirm the Pou Taiao priorities (BRF-4138 refers).

12. Iwi advisors have indicated this meeting should be substantive, rather than a further, short introductory meeting. Officials recommend you have a substantive meeting of at least an hour with Pou Taiao the week of 19 February 2024, to enable detailed discussion around priorities, particularly fast-track consenting.

13. As the Minister for Māori Crown Relations: Te Arawhiti Hon Tama Potaka is lead coordinator for the Crown – NICF relationship, it is appropriate he convene the meeting with Pou Taiao. Should you confirm you will meet with Pou Taiao representatives, officials will work with the Office for Māori Crown Relations – Te Arawhiti regarding Minister Potaka convening the meeting. Should the meeting be confirmed, officials will provide you with supporting material, including talking points.

Te Tai Kaha – prior engagement on resource management reforms

14. Te Tai Kaha is a collective of prominent Māori organisations formed in March 2021 to engage with the government on Māori rights and interests in freshwater and resource management reform, following government engagement with key iwi/Māori groups on these matters in 2020. Te Tai Kaha has a key focus on Māori rights and interests for groups such as Māori landowners, urban communities, marae and customary right holders. This is important as in some cases, these groups may not have the same access to resource/structures/communication channels that larger PSGEs have.

15. Te Tai Kaha member organisations are:

    - The New Zealand Māori Council (NZMC)

    - Federation of Māori Authorities (FOMA)

    - Ngā Kaiārahi o te Mana o te Wai Māori (formerly Kāhui Wai Māori).

16. Throughout 2022, the Ministry for the Environment engaged with Te Tai Kaha and their technical experts on resource management reforms policy development. Officials also kept Te Tai Kaha updated on work being undertaken to give effect to Cabinet's commitment to upholding Treaty settlements under the now-repealed Natural and Built Environment Act 2023 and Spatial Planning Act 2023.

17. Officials recommend you meet with Te Tai Kaha on 22 February. Should the meeting be confirmed, officials will provide you with supporting material, including talking points.

Engagement with PSGEs

18. Cabinet has committed to upholding Treaty settlements and other relevant arrangements in the development of fast-track consenting legislation (CAB-24-MIN-0008 refers). Officials are engaging with post-settlement governance entities (PSGEs) and other relevant representative organisations regarding proposed fast-track consenting legislation, however engagement opportunities have been limited by the truncated timeframes.

19. We understand you have a meeting confirmed with Justin Tipa, Chair of Te Rūnanga o Ngāi Tahu, on 19 February (BRF-4236 refers).

20. There is risk arising from the very limited opportunities for engagement with PSGEs and other relevant representative organisations on fast-track consenting prior to introduction of the bill. In addition to meeting with Pou Taiao and Te Tai Kaha, officials recommend you meet with select PSGEs prior to introduction of the fast-track bill to continue to establish a positive working relationship with iwi leaders, which will support progress in the Government's work programme. Officials will continue to work with your office regarding individual requests to meet with you from PSGEs and other relevant Māori representative organisations.

Recommendations

We recommend you:

a. **Agree** to meet with Pou Taiao the week of 19 February 2024; **Yes I No**

b. **Note** officials will work with the Office for Māori Crown Relations – Te Arawhiti regarding the Minister form Māori Crown Relations: Te Arawhiti Hon Tama Potaka convening the meeting in his role as lead coordinator for the Crown – National Iwi Chairs Forum relationship;

c. **Agree** to meet with Te Tai Kaha on 22 February2024; and **Yes I No**

d. **Note** officials will provide you with supporting material, including talking points, ahead of these meetings.

Signatures

Clare Maihi
General Manager, Te Tiriti and Te Ao Māori

12 February 2024

Hon Chris Bishop
Minister Responsible for RMA Reform

Date

BRF-4203: Fast-Track Consenting Bill - Policy Decisions Tranche 2A

Date submitted: 14 February 2024
Tracking number: MFE BRF-4203 /MBIE 2324-2098
Security level: In Confidence
MfE priority: Urgent

Actions sought from Ministers		
Name and position	***Action sought***	***Response by***
To Hon Chris BISHOP **Minister of Housing** **Minister for Infrastructure** **Minister Responsible for RMA Reform** Hon Simeon BROWN **Minister for Energy** **Minister of Local Government** **Minister of Transport** Hon Paul GOLDSMITH **Minister of Justice** Hon Tama POTAKA **Minister of Conservation** **Minister for Māori Crown Relations: Te Arawhiti** Hon Penny SIMMONDS **Minister for the Environment** Hon Shane JONES **Minister for Oceans and Fisheries** **Minister for Regional Development** **Minister for Resources**	Discuss the policy questions in this Briefing at a delegated Ministers meeting on 15 February 2024	15 February 2024

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

Appendices and attachments
1. Appendix 1: Decision tables 2. Appendix 2: Legal advice 3. Appendix 3: Treaty Impact Assessment 4. Appendix 4: Process diagram

Key contacts			
Position	***Name***	***Cell phone***	***First contact***
Ministry for the Environment			
Responsible Manager	Arron Cox /Jo Gascoigne		
Deputy Chief Executive	Nadeine Dommisse	[redacted]	✓
Ministry of Business, Innovation and Employment			
Principal Author	Daniel Brown	[redacted]	
Deputy Chief Executive	Paul Stocks	[redacted]	

Minister's comments

BRF-4203: Fast-Track Consenting bill - Policy Decisions Tranche 2A

Key messages

1. Establishing a permanent fast-track consenting process as a ‘one-stop-shop’ to urgently speed up essential development is a priority for the Coalition Government.

2. On 23 January 2024 Cabinet agreed [CAB-24-MIN-0008] the new fast-track process should:

    i. enable infrastructure and other projects that have significant local, regional and national benefits

    ii. improve decision making timeframes and give greater investment certainty

    iii. provide well-designed projects a clear and fast path to consent.

3. Cabinet delegated authority for Ministers to make the detailed policy decisions needed to finalise the design of the new regime, and issue drafting instructions to the Parliamentary Counsel Office (PCO) to draft the Fast-track Consenting bill (FTC bill) for introduction by 7 March 2024.

4. Detailed policy decisions are being sought from you in tranches. The first tranche was provided on 5 February 2024 and covered the majority of the legislative design, process for Ministers to ‘fast-track’ projects to a Panel, what legislation could be included in the one stop shop, appeal rights and procedural and implementation matters.

5. Delegated Ministers will be meeting on 15 February 2024 to discuss remaining decisions to introduce the fast-track legislation. The key outstanding matters requiring decisions from you include confirmation of who will make decisions on approvals (Ministers or Panel), how to uphold treaty settlements and how to include other approvals.

6. This advice summarises decisions made so far and seeks final key decisions needed to develop the legislative framework. As per the process previously agreed responsible Ministers will work with officials to finalise the drafting in line with these decisions.

7. We anticipate that one further tranche of decisions may be needed to complete the Bill for introduction. Some complex policy areas requiring further development (eg, Public Works Act) may also need to be introduced later during the Parliamentary process.

Analysis and advice

8. This legislation is a priority for the Coalition Government. It is currently the only project in the 100-day plan to be given a red rating by the Department of Prime Minister and Cabinet. These decisions will help ensure the project remains on track for introduction by 7 March 2024. To meet this deadline, some particularly complex aspects of the new regime may need to be introduced later in the Parliamentary process.

9. A summary of the decisions made to date, and the decisions being sought by Ministers at this meeting are outlined in the table below. Priority matters for 15 February 2024 are indicated in bold.

Strengthening the purpose	**Seeking your direction at the meeting on 15 February 2024.**
Treaty clause	**Seeking your direction at the meeting on 15 February 2024**
One Stop Shop	**Seeking your direction at the meeting on 15 February 2024.**
Referral process	
How projects will access the fast-track process	Decided.
What projects can and can't access fast-track	Decided. Open to broad range of projects.
Judicial review of decisions	Decided. Decisions will be able to be reviewed, including decisions to refer.
Expert Panel process	
Composition of Panels	Procedural matter, anticipated as part of detailed decisions in briefing to be provided 16 February 2024. Same composition recommended as COVID fast-track.
Paying panels market rate	Procedural matter, anticipated as part of detailed decisions in briefing to be provided 16 February 2024. Panels to be paid market rate.

Who grants or declines projects – Ministers or Panels	**Seeking your confirmation at meeting on 16 February 2024. Whether Ministers decide and panels provide recommendations.**
Who panel seeks comments from	Procedural matter, anticipated as part of detailed decisions in briefing to be provided 16 February 2024. Limited group of people. No public involvement.
Timeframes	Procedural matter, anticipated as part of detailed decisions in briefing to be provided 16 February 2024. Same as COVID fast-track.
Appealing panel decision	Decided. Limited appeals to high court. Can't be appealed by the public.

Feedback received through initial engagement

10. Cabinet agreed that targeted engagement be undertaken to inform the design of the regime and the development of the Bill. Cabinet also agreed that officials will work with relevant entities to ensure any impacts on Treaty of Waitangi Settlements and other legislative arrangements are addressed appropriately.

11. We have subsequently undertaken high-level engagement with local government, PSGEs and development and environmental interests to inform them of the high-level proposals.

Local Government

12. Local Government noted that Ministers should seek their input when deciding to refer applications and that Panel should do the same.

13. They think that Regional and District plans should be considered when panels/Ministers when making decisions on approvals.

Māori groups

14. Many PSGEs have raised concerns with both the timeframes for engaging on these matters before decisions are taken by Ministers and the level of detail able to be shared. Despite this, this engagement has contributed to developing clearer policy options for upholding settlements in the FTC Bill.

15. A summary of the feedback received from PSGEs through the recent engagement will be provided in the next briefing note. Based on initial engagement, it is likely that some PSGEs or Māori representative groups will

consider the proposed protection options presented in this advice will not sufficiently uphold Treaty settlement and related arrangements or act in a manner consistent with the Treaty principles.

16. We will provide the Minister Responsible for RMA Reform with further advice on future engagement options.

Development and environment interests

17. Infrastructure and development sector stakeholders are broadly supportive of a fast-track process and provided feedback on the detail.

18. Environmental NGOs raised concerns about the potential for the process to allow development without environmental and community safeguards and the level of political involvement from Ministers. Concern was also raised that the process will limit public participation.

Recommendations

We recommend that you:

a. **note** that Cabinet and delegated Ministers have already made many of the policy decisions needed to confirm the legislative design of the Fast-Track Consenting Bill

b. **note** that the focus for this meeting is to confirm remaining policy decisions on legislative design, approvals under various Acts (residual policy decisions), Treaty protection clauses

c. **indicate** your preferred options in the decisions table at Appendix 1 **Table A**

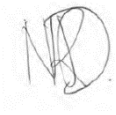
Yes | No

d. **agree** to delegate detailed decisions to enable drafting instructions and some procedural matters to Minister Bishop, Minister Potaka (for detailed Conservation Act, Wildlife Act, Reserves Act and Freshwater Fisheries Regulations) and Minister Goldsmith (for Heritage Act).

Yes | No

e. **note** a briefing on detailed policy decisions to enable drafting will be provided on 16 February and Cabinet will discuss introducing the legislation on 04 March

Signatures



Nadeine Dommisse
Deputy Secretary – Environmental Management and Adaptation
Ministry for the Environment
14 February 2024

Paul Stocks
Deputy Chief Executive, Building, Resources and Markets
Ministry of Business, Innovation and Employment
Date

Hon Chris BISHOP
Minister of Housing
Minister for Infrastructure
Minister Responsible for RMA Reform

Date

Hon Simeon BROWN
Minister for Energy
Minister of Local Government
Minister of Transport

Date

Hon Paul GOLDSMITH
Minister of Justice

Date

Hon Tama POTAKA
Minister of Conservation
Minister for Māori Crown Relations: Te Arawhiti

Date

Hon Penny SIMMONDS
Minister for the Environment

Date

Hon Shane JONES
Minister for Oceans and Fisheries
Minister for Regional Development
Minister for Resources

Date

Appendix 1: Table A

Proposal	Options and Recommendations	Decisions	Advice and Analysis
Decision-making	**Option 1 – Panel makes substantive decision, if Panel cannot approve, joint Ministers may invite applicant to re-scope project and re-apply** 1. **Note** that a Panel's assessment would give primacy to the purpose of the fast-track legislation, therefore creating a high threshold for decline for projects that would deliver significant regional and national benefits 2. **Agree** that a Panel's decision is the substantive decision for the purpose of proceeding with the project or lodging an appeal 3. **Agree** that joint Ministers may decide if they wish to discuss the application with the applicant and/or invite the applicant to re-scope and resubmit their project to address the issues identified in the Panel's decision 4. **Note** that the legislation would not need to specify the step above, as it would be enabled in practice once joint Ministers receive notice of the Panel's decision 5. **Note** that the process would also enable applicants to modify their project and re-apply **Option 2 – joint Ministers make substantive decision based on report and recommendations from Expert Panel** 6. **Agree** that the Panel would provide a report and recommendations to joint Ministers, who would make the substantive decision on an application 7. **Agree** that joint Ministers' decision is the substantive decision for the purpose of proceeding with the project or lodging an appeal 8. **Note** that, if you choose this option, we will provide further advice on specific considerations for ministerial decision-making,	**Noted** **Yes | No** **Yes | No** **Noted** **Noted** **Yes | No** **Yes | No** **Noted**	Following your direction and advice on this matter, officials considered two options for how substantive decisions are made on applications. **Option 1** avoids the legal risks associated with joint Ministers making the substantive decision and provides greater certainty for applicants and a more efficient decision-making process. Under this option: • The substantive decision remains with the Panel which would make its decision and give notice to the applicant, joint Ministers, and other relevant parties. This notice would include the decision, reasons, and information about the applicant's appeal rights (refer BRF-4115 delegated decisions table B). The applicant has the right of appeal on the expert panel's decision on points of law only. • On receiving notice of the Panel's decision, joint Ministers may choose to discuss the application with the applicant, and invite the applicant to re-scope and resubmit for referral their project to address issues identified in the Panel's decision. The applicant can also modify the project and re-apply without an invitation. The invitation does not give any guarantee the consent will be granted but gives the applicant an indication of whether the Minister thinks it is worthwhile re-applying. • If the applicant re-applied, the application would progress quicker than the first time, as the information and issues associated with the project would already be well understood by the responsible agency advising on the referral decision, and the Panel considering the substantive decision. This approach provides greater certainty for applicants about the status of their projects, as they can rely on the Panel's decision for the purposes of proceeding with the project or lodging an appeal. Under **Option 2**, joint Ministers make the substantive decision based on a report and recommendations prepared by the Panel. This approach creates significant legal risk for joint Ministers as their decisions are likely to be challenged. If you choose Option 2, we will provide further advice on specific considerations for ministerial decision-making, including how joint Ministers take the Panel's report and recommendations into account. [redacted] [redacted] Development implications Under recommendation 1 above, the purpose of the FTC bill has a higher weighting, which directs a development focus in the decision-making under either Option 1or Option 2. Option 2 is likely to provide less certainty and a less efficient process for applicants, given the additional step in the process (EP preparing a report and recommendations, then joint Ministers making a substantive decision). **System efficiency** Option 1 provides greater certainty and avoids the risks associated with joint Ministers making the substantive decision. It also reduces the administrative step (time and cost) of agencies re-advising ministers on projects, as would be required if the Minister was making the statutory decision whether to accept or refuse the Panel's recommendations. **Treaty Impact Assessment** The decisions sought below regarding Treaty settlements / arrangements and Māori rights and interests will determine the extent to which those matters are provided for in substantive decision making. Some existing Treaty settlements / other arrangements include procedural matters relating to the appointment of a decision-making body for hearings and decisions on resource consent applications. These include, for example, requirements for iwi or hapū to participate in the appointment of hearing commissioners; or to be on panels hearing resource consent applications. [redacted]

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	including how joint Ministers take the Panel's report and recommendations into account in their final decision		
Purpose	**Option 1 – purpose focused on facilitating project delivery** 9. **Agree** the purpose of the legislation should be focused on providing a fast-track decision-making process to facilitate the delivery of infrastructure and development projects with significant regional and national benefits **Option 2 – purpose focused on project delivery as a primary consideration, while still providing for sustainable management as a secondary consideration** 10. **Agree** the purpose of the legislation should be focused on providing a fast-track decision-making process to facilitate the delivery of infrastructure and development projects with significant regional and national benefits, and, to a lesser extent, taking into account the sustainable management of natural and physical resources for current and future generations	**Yes | No** **Yes | No**	**General Advice** The purpose noted by Cabinet was: enabling infrastructure and other projects that have significant local, regional and national benefits, while continuing to promote the sustainable management of natural and physical resources for current and future generations. You have directed that the term "local" be removed. You have also asked officials to consider an alternative to the purpose noted by Cabinet that places greater weighting on enabling projects with significant regional and national benefits to proceed, and that this weighting should be stronger than the weighting for sustainable management or other environmental protections. Officials have identified two options for achieving this in the purpose statement. **Option 1** would focus only on facilitating project delivery with consideration of sustainable management/environmental protection matters at the expert panel stage. **Option 2** would retain provision for sustainable management in line with the purpose noted by Cabinet, while creating a stronger weighting toward enabling development. **Development implications** Both purpose options outlined above would achieve a greater focus on development than the purpose noted by Cabinet. Option 1 provides a clearer and more direct development focus than Option 2. **System efficiency** Option 1 would best support system efficiency, as it would reduce complexity for decision-makers by: • not requiring consideration of sustainable management at the referral stage (environmental and other factors would be considered as part of condition setting by the expert panel) • not applying sustainable management to other legislative approvals, where its application is untested. Treaty Impact Assessment Enabling infrastructure and other projects could support Māori development interests, but it is critical that Treaty and Māori interests are protected at the same time. The inclusion of the promotion of "sustainable management of natural and physical resources for current and future generations" would provide some protection of Māori interests in relation to cultural and environmental matters, but other protections for Treaty settlements / Māori interests are also recommended below.
Expert Panel– Assessment	11. **Note** that the assessment of other legislative approvals to be included in the one-stop shop would be considered under their respective Acts (see advice below). The RMA would not be applied to those Acts. 12. **Agree** that when the expert panel considers an application, they must take into account the following matters, giving weight to them (greater to lesser) in the order listed: a. the purpose of the FTC bill	**Noted** **Yes | No**	**General Advice** You have requested advice on having a higher weighting to the purpose of the FTC bill in the decision-making (as per feedback on BRF-4115 Table A). The recommended solution is – The purpose of the bill has primacy in decision-making. Normal considerations under existing legislation inform decision making but have lesser weight. Legislative direction is required on how an application (listed or referred) is prepared, assessed and decisions made in order to mitigate risks of legal challenge and provide certainty for applicants. The underlying RMA decision-making framework provides a practical mechanism for this, but in accordance with ministerial direction, needs to be read as subservient to the purpose of the fast-track legislation itself. This approach is similar to section 34 of Housing Accords

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	b. considerations under relevant existing legislation, for example for resource consents, giving weight to them (greater to lesser) in the order listed: i. the matters in Part 2 of the RMA; and ii. any relevant national direction, operative and proposed plans/policy statements under the RMA; and iii. relevant assessment clauses of the RMA (and legislation that directs RMA decision-making), where the application is being assessed under that Act.		and Special Housing Areas Act 2013 (HASHAA)[1], where there is a clear hierarchy providing direction to decision makers. The Expert Panel would take into account the purpose of this FTC bill as a primary consideration, and then give lesser weight to other matters (for example for decisions on resource consent RMA Part 2, National Direction, Section 104 etc, have lesser weight). **Development implications** This approach supports certainty for applicants/developers wanting to use the system. It sets out clearly the role of the RMA framework for both the applicant's preparation of a consent application and framing decision making, within the context of the higher weighting to the purpose of the FTC bill which directs a development focus in the decision-making. In practise this means that **despite any inconsistency of the project in relation to RMA documents, the panel nevertheless could be satisfied a project should go ahead.** **System efficiency** Efficiency is served by clearly defined processes with uncertainty minimized. Applicants and decision makers need certainty about what is taken into account, and roles and functions across the regime. The FTC bill needs to clearly identify what is considered, and when a decision will be made on a project (ie, consent granted with conditions so the applicant can legally undertake their project, or consent declined), and who is making the decision. **Treaty Impact Assessment** Part 2 of the RMA requires the principles of the Treaty be taken into account and contains other provisions (eg, ss 6(e) and 7(a)) that assist the Crown in meeting its obligations to provide for and protect Māori rights and interests under the RMA. If the weighting of these provisions is reduced by making them subject to the purpose of the FTC bill, this could impact on the ability to provide for and protect Māori rights and interests under the FTC bill. The same applies to section 4 of the Conservation Act (Treaty principles) and the Treaty/Māori provisions in other one stop shop statutes. Equivalent provisions to those in Part 2 could be included in the FTC bill to mitigate this risk. Further advice on Treaty protections is provided below. **Treaty settlements and other arrangements** Similarly, how Treaty settlements and other arrangements are protected is affected by whether Part 2 of the RMA / section 4 of the Conservation Act continues to apply as they were agreed pursuant to those provisions. Further advice is provided below on appropriate mechanisms to uphold settlements and other arrangements subject to Ministers' decisions.
Ineligible activities and prohibited activities	You have requested further advice around prohibited activities' eligibility for fast-tracking. **Option 1** prohibited activities are not ineligible, but joint Ministers' may consider prohibited activity status as part of their referral decision.		**General advice:** There are a range of six activity classes under the RMA: permitted, controlled, restricted discretionary, discretionary, non-complying and prohibited. Prohibited activities are the most restrictive activity status and rarely used. They are specified in rules (within District and Regional plans and Environmental Standards) not in National Policy Statements. Under the RMA prohibited activities may not be carried out, and no resource consent can be sought or granted. If you wish to proceed with **Option 1**, we recommend including prohibited activities as a discretionary ground for joint

[1] This refers to HASHAA section 34 which states that an authorised agency, when considering an application for a resource consent under this Act and any submissions received on that application, must have regard to the following matters, giving weight to them (greater to lesser) in the order listed:
(a) the purpose of this Act:
(b) the matters in Part 2 of the Resource Management Act 1991:
(c) any relevant proposed plan:
(d) the other matters that would arise for consideration under—
(i) sections 104 to 104F of the Resource Management Act 1991, were the application being assessed under that Act:
(ii) any other relevant enactment (such as the Waitakere Ranges Heritage Area Act 2008):
(e) the key urban design qualities expressed in the Ministry for the Environment's New Zealand Urban Design Protocol (2005) and any subsequent editions of that document.

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	Option 2 retains prohibited activities as ineligible (the FTCA approach). **Option 1:** 13. **Agree** that a project is not ineligible for fast-tracking if it includes an activity that is a prohibited activity under the RMA 14. **Agree** that joint Ministers when making their referral decision, may (but are not required to) decline to refer a project on the basis that it includes a prohibited activity under the RMA (in addition to the other discretionary grounds to decline as recommended below) OR **Option 2:** 15. **Agree** that a project will not be eligible for fast-tracking if it includes an activity that is a prohibited activity under the RMA	**Yes | No** **Yes | No** **Yes | No**	Ministers to be able (but not required to) decline to refer a project. This would ensure joint Ministers are: • able to decline projects including activities that are prohibited for very good reasons (eg, building height restrictions needed to keep approaches into airports clear) • not required to decline prohibited activities for matters such as aquaculture projects where an outdated District plan identifies this as a prohibited activity. **Development implications:** Prohibited activities often have significant environmental or human health effects (eg, discharge of raw wastewater to rivers, the burning of hazardous substances and associated discharge of contaminants to air). Many prohibited activities are also there to protect existing significant infrastructure (eg Auckland Airport's to protect the operation of the airport). To ensure sensible protections are retained, we do not recommend a blanket removal of prohibited activities. **System efficiency:** Allowing contents to be granted for all prohibited activities would be novel in the current consenting framework and may be subject to challenge. It would also create uncertainty for system users (eg, airports) about their operating context, and uncertainty for significant national infrastructure (eg, the Maui and Kapuni gas pipelines where prohibited activities are used to protect these). These risks can be somewhat mitigated by providing joint Ministers the discretion to decline to refer an application on the basis that it includes a prohibited activity. **Treaty Impact Assessment:** If prohibited activities under the RMA were able to proceed through the new FTC system, this would override RMA plans, potentially conflicting with some Treaty settlements (particularly those that provide for a specific function in plan making). Certain Treaty settlements provide mechanisms for Treaty settlement entities and perspectives to have a strong influence on policy statements and plan (eg on the Waikato River). This input could include advice that certain activities be prohibited. Therefore, allowing prohibited activities in the fast-track regime could undermine those settlements and limit the intent and effect of the settlement. This risk can be somewhat mitigated by: • the inclusion of protections for Treaty settlements • providing joint Ministers the discretion to decline to refer an application on the basis that it includes a prohibited activity.
Ministerial referral assessment and decision-making – grounds for Ministers to decline	**Discretionary grounds for joint Ministers to decline to refer projects to an Expert Panel** This option: a. involves carrying over the intent of the FTCA approach, which would provide broad discretion for joint Ministers to be able to decline to refer a project (including where a project might meet the eligibility criteria, but is undesirable for another reason that wasn't foreseen by the legislation). b. includes some changes to the FTCA approach in relation to the discretionary grounds for		Discretionary grounds for joint Ministers to decline to refer projects to an Expert Panel These decisions build on decisions sought in BRF-4115 in relation to the decision to approve a referral application, and requirement to give notice of the referral decision. We recommend carrying over the intent of the FTCA approach to decision-making on referral applications. This approach would allow joint Ministers to make a referral decision, informed by advice from agencies and those who provided written comments, and assess the project on its merits. Joint Ministers would: • have broad discretion to decline, similar to the grounds under the FTCA and Natural and Built Environment Act 2023 (NBA). There would be no expectation that an application is approved because it is an eligible activity, and joint Ministers would be able to decline an application for any other relevant reason • be required to decline a referral application that is inconsistent with the purpose of the Act, includes an ineligible activity, or where directing the project to a panel would be inconsistent with a Treaty settlement, the NHNP Act, Takutai Moana Act, Mana Whakahono ā Rohe or Joint Management Agreement. We recommend some changes to the FTCA approach on the discretionary grounds for joint Ministers to decline to refer a project: • removing "the project is inconsistent with a relevant national policy statement" – we understand your intention is that the consideration of national direction, and weighting to be applied to it, is addressed at the Expert Panel

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	joint Ministers to decline to refer projects: a. removing "the project is inconsistent with a relevant national policy statement" b. (if prohibited activities are not ineligible), adding "the activity is a prohibited activity under the RMA"		stage (see recommendations x-z below) • (if prohibited activities are not ineligible), adding "the activity is a prohibited activity under the RMA" – see above. **Development implications** This approach supports certainty for developers wanting to use the system by providing clarity where a project will or may be declined. The ability to decline an application "for any other relevant reason" may detract from this – however, this ground has only been used as a reason for decline three times under the FTCA, and always in conjunction with another reason for decline (eg, that the project would be more appropriate for the standard RMA consenting process). We therefore do not consider this will be an issue in practice. [redacted] **Treaty Impact Assessment** It will be important that the Minister is required to decline and application for referral if that would be inconsistent with Treaty settlements / arrangements or the other matter. That will provide a clear signal to Treaty settlement / related entities that the protection of these matters is a key factor in the fast-track process.
	16. **Note** Cabinet agreed that the responsible Minister may decline a referral application after seeking input from relevant parties, if satisfied that the project does not meet the eligibility criteria.	**Noted**	
	17. **Agree** that joint Ministers must decline a referral application if: a. it is not consistent with the purpose of the Act; b. directing the project to a panel would be inconsistent with a Treaty settlement, the NHNP Act, Takutai Moana Act, Mana Whakahono ā Rohe or Joint Management Agreement; or c. it includes an ineligible activity.	**Yes** | No	
	18. **Agree** the Minister may, but is not required to, decline a referral application (even for an eligible activity) if: d. another legislative mechanism is more appropriate for the application e. the activity may have significant adverse effects on the environment f. the applicant has poor compliance history under the relevant legislation g. the activity would occur on land returned under a Treaty settlement, and has not been agreed to in writing by the relevant	**Yes** | No	

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	landowner h. the activity would occur on land that the Minister for Treaty of Waitangi Negotiations considers is required for the settlement of any historical Treaty claim **19. Agree** the joint Ministers should be able to decline an application for any other relevant reason	**Yes | No**	
Listed projects	Delegated Ministers have directed that there will be two categories of listed projects: • **Category A** which are automatically referred to an expert panel, and • **Category B** which will include projects that do not meet all required information for an immediate referral decision, but whose significance is recognised in the Act for future referral and Expert Panel decisions and processes 2. **Agree** that the Act will include two categories of listed projects, being: a. **Category A** are projects which: i. meet all information requirements for a referral process and ii. meet the purpose of the Act, and all relevant ineligibility and eligibility criteria applying to the Ministerial referral process iii. will be automatically referred to an expert panel for decision, without having to apply for a ministerial referral iv. [Note] can only be declined by the expert panel on the following grounds: ▪ *As per ministerial direction above* b. **Category B** are projects which: i. are likely to meet the purpose of the Act, but for which there is not enough information to determine	**Yes | No**	Cabinet agreed that "in addition to the standard application process, the bill will contain a schedule of individual consented projects ("listed projects") to be automatically referred to an Expert Panel"; and that these projects would be subject to the same criteria as referred projects. That means that any applicant who wished to have a project listed would be required to provide all the information specified in the legislation and be ready to be consented and have conditions applied. Early indication from agencies suggest that there will be a limited number of projects of regional or national significance that meet these criteria that can be identified and assessed in time for introduction, but the legislation can be drafted to enable the proposed approach and the projects added through later parliamentary stages. Given the direction provided, the Act could make the distinction between: • projects of significance to New Zealand which are well progressed and will have a consent application and other required permits ready to lodge within the next 6 months (Category A) • projects of significance to New Zealand that will not have a consent application or other required permits ready to lodge in the immediate future. (Category B). Such a distinction enables Parliament to signal what projects of significance would benefit from the fast-track process, while setting appropriate approval processes in view of the level and quality of the information available at the time of enactment. Category A projects would be automatically referred to the Expert Panel after enactment. Category B projects would be subject to the Ministerial referral assessment as they become ready. Due to the limited information likely to be available for Category B projects, it will not be possible to adequately assess their eligibility in advance and they may not succeed in their application to be referred. However, their acknowledgement in Category B would indicate their importance when Ministers and Expert Panels come to make decisions on them. **System efficiency** Parliament's signals on Categories and B will provide greater certainty to the system. **Treaty Impact Assessment** Treaty settlements / arrangements and Māori interests in respect of Category B will be provided in the same way they are provided for non-listed projects. Officials will provide further advice on how these matters can be provided for Category A projects.

Proposal	Options and Recommendations	Decisions	Advice and Analysis
	whether the project meets all relevant ineligibility and eligibility criteria. ii. will have to apply for ministerial referral to an expert panel using the process as set out in the Act. iii. however, the relevant Minister and expert panel must have in addition, particular regard to the significance of the benefits of the project in their decision-making. iv. can be declined by the expert panel on the same grounds as referred projects.		

Treaty

Proposal	Options and Recommendations	Decisions	Advice and Analysis
Upholding Treaty settlements / specified arrangements	**Option A** **20. Agree** an overarching clause which states: a) All persons exercising functions and powers under the FTC Bill must act in a manner consistent with Treaty settlements and specified arrangements; and b) Treaty settlements and specified arrangements must be given the same or equivalent effect under the FTC Bill as they would have under the equivalent processes in the original legislation (eg, RMA, Conservation Act); and c) the same Treaty and related provisions under the original legislation (such as the Treaty/Māori protections in Part 2 of the RMA and s4 of the Conservation Act) apply to processes and relevant decisions under the FTC Bill. **Option B** **21. Agree** a general clause, similar to the COVID-19 Recovery (Fast-track Consenting) Act 2020 section 6(a), which would require those undertaking functions and powers under the FTC Bill to act in a manner consistent with the principles of the Treaty and Treaty settlements and specified arrangements. **Option C** **22. Agree** Option B, plus a clause stating, similar to section 17 of the COVID-19 Recovery (Fast-track Consenting) Act 2020, that Ministers' obligations under in-scope legislation are satisfied by compliance with a list a specific provisions identifying what Ministers are required to do to satisfy that obligation. **Option D** **23. Agree** A clause stating that, in recognition of the Crown's obligations under the Treaty of Waitangi, the FTC Bill includes a list of specific provisions designed to protect Treaty settlements and specified arrangements, and Māori interests. **24. Note** that, irrespective of the decision made above, and to provide clarity and certainty for decision-makers on what is required through the process, it is recommended that specific protections sought in Table B are included in the FTC Bill)	**Yes | No** **Yes | No** **Yes | No** **Yes | No** **Noted**	The coalition agreements confirm that the government will honour the undertakings made by the Crown through past Treaty of Waitangi settlements. Cabinet has agreed to the FTC Bill including protections for Treaty of Waitangi settlements and other legislative arrangements including under the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management agreements under the RMA (CAB-24-Min-0008 at 35) (**Treaty settlements and specified arrangements**). There are numerous commitments in Treaty settlements and specified arrangements that relate expressly to resource consent processes and approval processes under the conservation legislation. The FTC Bill will need to include protections for those commitments. Officials recommend Option A because it provides the clearest assurance to iwi that while the government is progressing a faster, one-stop shop approach to approving significant projects it will also recognise Treaty settlements/specified arrangements and Māori rights and interests along the way. The legislation will provide for faster decision-making within timeframes and will include other legislative schemes additional to the RMA. But Treaty settlements/specified arrangements and Māori rights to participate in and influence consenting processes for these significant projects will be respected. Option A provides the most straightforward illustration of that commitment by stating explicitly that the same or equivalent rights and standards as currently apply through Treaty settlements and in-scope legislation will apply in the new fast-track regime. This reflects that existing Treaty settlements were negotiated in the context of those provisions – PSGEs will expect that the *same* rights are recognised. This approach would also assure yet-to-settle iwi that the opportunity to have a say on projects that may impact on land or other interests of theirs that might yet be the subject of redress through a future Treaty settlement, is also preserved. Officials consider that, while other options identified have some merit, they are less desirable because: Option B is a standalone Treaty principles and settlements clause within the fast-track legislation and would be a clear confirmation of the intention to uphold those matters. However, by requiring actions "consistent with the principles of the Treaty", that standard may fall short of what is widely acknowledged as a high standard in the Conservation Act to administer that regime in a manner that "gives effect to the principles of the Treaty of Waitangi". Standards in the FTC Bill less than those confirmed to Māori through Treaty settlements will risk legal challenge by Māori. Option C is a descriptive Treaty clause and has the merit of having Parliament state positively both that Ministers' Treaty obligations are satisfied, and how they are satisfied (with reference to other specific provisions in the bill). But, in effect, it may change unilaterally the obligations of the Crown compared to those negotiated through Treaty Settlements; it does not preserve and re-state them in the way Option A does. Option D is also a descriptive Treaty clause that has the benefit of listing the various ways in which the Crown's Treaty obligations are met in the legislation. However, this too amounts to Parliament changing and stating what those obligations are without re-negotiating them with iwi. If Ministers choose not to follow our recommendation and instead prefer Options B, C or D, officials recommend paragraphs a) and b) of Option A are also included in the legislation to ensure Treaty settlements / specified arrangements are adequately protected.

One stop shop – Conservation approvals

Proposal	Options	Decisions	Advice and Analysis
Conservation authorisations to include in OSS	**25. Agree to include the following Conservation Authorisations in the OSS** a. Wildlife Act, b. Conservation Act, c. Freshwater Fisheries Regulations, d. Reserves Act		
(I) Scope of land classifications covered	**26. Agree** that applications for fast-track permits under the Wildlife Act, **Conservation** Act, Freshwater Fisheries Regulations, and Reserves Act, must not relate to land listed under Schedule 4 of the Crown Minerals Act 1991	**Yes | No**	**General Advice** You have a choice about which conservation land classifications are within scope of the fast-track regime. Public conservation land (PCL) is variable in terms of the magnitude of the conservation values and the purposes for which it is held, and who it is held/administered by.
	27. Agree that a **project** will be ineligible for the Fast-Track process if it requires permissions on Schedule 4 land *Additions/exclusions in terms of land covered for the purposes of the Fast-Track process*	**Yes | No**	Schedule 4 of the Crown Minerals Act includes categories of PCL that warrant the highest levels of protection (eg, national parks, nature reserves). In these areas, there is an expectation of very minimal human intervention and/or they are considered to be special areas where activities should be related to the use and management of those areas (eg, national parks). Officials recommend that these areas are excluded from the fast-track regime.
	28. Agree to exclude the Coromandel Peninsula-specific elements of Schedule 4 **for** the purposes of the Fast-Track Bill.	**Yes | No**	**Schedule 4 land covers approximately 1/3 of PCL leaving a further 2/3 subject to the fast-track regime.** However, you may choose to allow the fast-track regime to apply to the Coromandel-specific aspects of Schedule 4; all PCL on the Coromandel Peninsula (and the internal waters) is included in Schedule 4 regardless of its status. This is because of strong public opposition to mining in that region.
	29. Agree to add to the areas excluded from the Fast-Track Bill as if they were listed in Schedule 4: e. ecological areas held under the Conservation Act 1987 f. national reserves held under the Reserves Act 1977	**Yes | No**	Officials recommend adding the following to the list of lands excluded for Fast-Track purposes: • Ecological areas that are of similar value to scientific reserves which are listed in Schedule 4. There are 44 ecological areas collectively covering approximately 130,000 hectares. • National reserves protect values of national or international importance. Their classification then cannot be changed except by Act of Parliament (similar to national parks). Currently, there are only 5 in NZ, 4 of which are overlays over historic or scenic reserves.
	30. Agree that if permissions are requested in relation to World Heritage Areas for Fast-Track projects, the Minister of Conservation must be consulted.	**Yes | No**	World Heritage Areas will also need to be carefully considered in fast-track processes to meet international obligations and protect New Zealand's reputation.
	31. Agree that applications for fast-track permits under the Wildlife Act, Conservation Act, Freshwater Fisheries Regulations, and Reserves Act, must not relate to a reserve under the Reserves Act that is owned, managed or administered by an entity other than DOC or local authorities, unless the owner and administering body agree.	**Yes | No**	Reserves under the Reserves Act have varying ownership and management arrangements – they may be owned, managed, or vested in councils, iwi or community groups. There have been no discussions with other reserve managers in the development of this policy. Similar landowner risks and liabilities arise for this decision as for the decisions on concessions below. Therefore, officials recommend excluding non-Crown or local government owned and administered reserves unless prior agreement of the owner and administering body has been provided.
	32. Agree to retain the requirement that the decision maker shall not grant an application for a concession if the proposed activity could reasonably be undertaken in another location that is either off PCL or is in another conservation area where the potential adverse effects would be significantly less.	**Yes | No**	For concessions, the requirement that the activity could not reasonably take place in a location off public conservation land should be retained. This requirement is an important backstop to avoid unnecessary effects on conservation land and adverse incentives (eg, where it may be cheaper to lease PCL instead of purchasing land). In practice, this test has rarely limited developments. Examples of projects that have proceeded after meeting this test include the Huntly Bypass, Griffin Creek hydroelectric scheme, numerous powerlines and telecommunications towers, and mines. **Development implications**

Proposal	Options	Decisions	Advice and Analysis
			Preventing projects from accessing the fast-track pathway, or preventing certain approvals from being sought through it, reduces the potential for this legislation to enable development. However, other pathways exist for projects to be consented/acquire approvals which may be more appropriate for those projects than the fast-track regime. That will also free up space in the fast-track system for more easily resolved development projects. [redacted] **Treaty Impact Assessment** The proposal that projects would be ineligible on land returned under a Treaty settlement or identified Māori land – unless permitted by the owners – provides an important protection, whilst also enabling Māori landowners to support or undertake development (eg, papakāinga).
(II) Other general matters for conservation-related approvals	**33.** **Agree** that authorisations under the Fast-Track Bill relating to Conservation authorisations must be able to be declined if any conservation-related Fast-Track mandatory requirements agreed to below are not able to be met. **EITHER**: **<u>Option 1 – Subsequent approvals under Fast-Track</u>** a. **Agree** that where subsequent variations and conservation-related authorisations are required in relation to approved Fast-Track projects, these will be determined through the Fast-Track process. **OR** **<u>Option 2 – Subsequent approvals through standard decisionmakers under Fast-Track provisions</u>** b. **Agree** that where subsequent variations and conservation-related authorisations are required in relation to approved Fast-Track projects, these will be determined through normal decision-makers but subject to the provisions of the Fast-Track Bill. **34.** **Agree** that if offsetting or compensation is provided for in relation to projects with adverse effects on PCL, the offsetting or compensation will be for use on PCL. **35.** **Note** that conditions will often be required to be applied to approvals for the purposes of follow up operational agreements (eg, translocation arrangements) and monitoring/enforcement. **36.** **Agree** to add conservation expertise to the Panels where appropriate.	**Yes | No** **Yes | No** **Yes | No** **Yes | No** **Noted** **Yes | No**	**General Advice** The amount of information required to assess conservation and Treaty-related considerations for conservation legislation would be onerous for Ministers to work through at the referral decision, so it is important for a panel to be able to decline a consent if it does not meet the mandatory requirements set out for conservation legislation. Variations to conservation authorisations are common following initial decisions as projects evolve. Variations and subsequent approvals should be assessed through the same provisions as they were originally granted (i.e. the fast-track process). The decision-maker could either be the Panel or the standard decision-makers under conservation legislation. In order to maintain the integrity of the PCL network, it is important to ensure that any offsetting or compensation related to adverse impacts on PCL are applied on other areas of PCL rather than non-conservation land. Under previous fast-track regimes, expert panels have required only RMA expertise. Where the panel needs to consider approvals under conservation legislation a different type of expertise may be required (eg, land management, species knowledge) to ensure that conditions are appropriately applied and reduce legal risk stemming from a lack of familiarity with conservation legislation. **Development implications** Ensuring variations and subsequent approvals are assessed consistently with the original decision provides greater certainty for developers. **System efficiency** Option 2 for subsequent approvals is less likely to take up Panel time that may otherwise be assigned to other projects. **Treaty Impact Assessment** Ensuring appropriate expertise on Panels will support ensuring that conservation related Treaty obligations are not undermined. The ability for the Panel to decline authorisations also supports upholding Treaty settlements.

Proposal	Options	Decisions	Advice and Analysis
(III) Treaty matters	**37. Note** that delegated Ministers have confirmed that the Fast-Track Bill will uphold Treaty settlements.	**Noted**	**General advice** All Treaty settlements include significant conservation redress, and the Treaty has been described as a core feature of the relationship between the Crown generally, DOC and Māori in relation to conservation.
	38. Note that conservation redress within Treaty settlements is a complex landscape to navigate: spanning freehold land transfer, land vesting, creation of legal personalities with specific statutory connections to wider conservation laws, and involvement in governance and DOC/MOC decision-making including on permissions or plans**.**	**Noted**	There is a wide range of conservation redress. The range and number of redress commitments reflect Cabinet guidance that redress is commensurate with the strength of association of an iwi with a place or landscape. The types of activity that would be progressed through an Fast-Track process would be of interest to iwi and hapū. The more straightforward types of redress (deeds of recognition, statutory acknowledgements and overlay classifications) are intended to provide for iwi involvement and recognition of their cultural and historic interests in the process leading up to DOC decision-making.
	39. Note that DOC currently notifies iwi of permission applications in their area and consults relevant iwi and hapū on permissions decisions and takes their views and interests into account – and that in some cases this is built into settlements or relationship agreements.	**Noted**	[redacted]
	40. Note that what upholding Treaty settlements means in this context is not straightforward and is likely to be subject to dispute and litigation**,** and this is further complicated by reference to section 4 of the Conservation Act in some settlements (Acts, Deeds, or further instruments).	**Noted**	Some redress involves iwi in activities directly (for example preparing strategies and plans) or in some form of decision-making role (joint management, involvement in Conservation Management Strategies (CMS) and Conservation Management Plans (CMP), approval of management plans). These types of redress are intended to provide iwi with a hands-on involvement in mechanisms for managing and protecting whole landscapes. They could be frustrated by a process that was not required to consider their ambitions or expectations for those landscapes or didn't allow them to influence decision-making.
	41. Note that your decisions to date, including detailed decisions approved by Minister Bishop, would apply to conservation related settlement redress by, eg,: c. ruling out projects that occur on land returned under a Treaty settlement, or identified Māori land, that has not been agreed to by the landowner(s). d. including in identified Māori land legal personality areas (such as Te Urewera), and land under a Treaty settlement managed under the Conservation Act or Reserves Act. e. requiring a report on Treaty settlement and other obligations before accepting an application for referral and that an application may be declined on that basis. f. requiring that the Panel must comply with the procedural arrangements in relevant Treaty documents unless agreement from the relevant entity is obtained, but that the entity must not unreasonably withhold their agreement. g. enabling consideration of iwi interests in Panel appointments.	**Noted**	There are forms of redress that involve the transfer of land (in fee-simple or with encumbrances) to iwi, or to vest in the entity itself (Te Urewera, Whanganui River, Taranaki Maunga). This includes land administered under the Reserves Act. DOC recommends these legal entities should be excluded as equivalent to Schedule 4 Crown Minerals Act land. There are relationship agreements which commit DOC to working with the iwi to explore both process and decision-making roles, and potentially subsequent transfer of sites. 57 (of 65) have specific section relating to concessions/statutory authorisations. [redacted]
	42. Note that DOC is the responsible agency that will provide the report on Treaty settlement and other obligations in respect of conservation-related approvals.	**Noted**	There is public conservation land that will or is very likely to be subject to a future settlement: for example, all of the public conservation land north of Auckland up to and including the Mangamuka Range, and land that makes up North Island east coast harbours. Areas that may already have been subject to settlement for one iwi may also be subject to additional settlements by other iwi. The framework for the Fast-Track regime agreed to date builds in protections for Treaty settlement arrangements. It is possible that these protections do not cover all of the several thousands of conservation-related settlement commitments that exist (noting there is some ambiguity in the scope of these protections), and so there is a residual risk that a settlement could be undermined by the fast-track regime. We have sought to identify key areas that require a potential carve out for ongoing protection. This framework will likely constrain the further decisions you will wish to make to streamline these approvals or create a more enabling regime – for example, to enable the Panel to override or disregard the current requirement to comply with statutory documents such as conservation management strategies and plans.
	43. Note that it is highly likely that some current process-related agreements with iwi that are not stipulated in settlements will be aggrieved by standard timeframes imposed in the Fast-Track projects, but most such agreements are noted to be subject to change and none remove the ability to change laws or undertake functions or powers.	**Noted**	**Treaty clause – s 4 of the Conservation Act** Public conservation land not subject to Treaty settlements is still subject to s 4 of the Conservation Act for conservation decision-making. Section 4 requires that the Act (and Acts listed in Schedule 1 of that Act) be 'interpreted and administered as to give effect to the principles of the Treaty of Waitangi'. This section has been described as the strongest form of Treaty clause on the statute books. While there are different verbal formulations of Treaty clauses, some stronger than others ("give effect to", or weaker such as "consistent with" (COVID Fast-Track) or an even weaker injunction such as "have regard to"), the particular verbal formulation is not always necessarily of decisive importance for any given set of facts, and what ultimately matters is the legislative indication that the principles of the Treaty need to be addressed. In many cases, the practical effect of different Treaty clauses will be the same.
	44. Note that around 60-70% of settlements include provision for decision-making frameworks as part of conservation redress and this includes procedural requirements and, in limited cases, content /substantive matters – which should be protected.	**Noted**	

Proposal	Options	Decisions	Advice and Analysis
	45. Agree that the Panel: h. must consider CMS/CMPs in making decisions on conservation-related approvals where these have been co-authored, authored, or jointly approved by iwi and seek the views of the relevant iwi before granting approvals. i. must not disapply the relevant CMS/CMP if this would undermine a Treaty settlement.	**Yes | No**	[redacted]
	46. Note that the Supreme Court has confirmed that section 4 is a powerful Treaty clause which can require a decision maker to take 'more than procedural steps' to give effect to Treaty principles.	**Noted**	
	EITHER **<u>Option 1: Section 4 of the Conservation Act continues to apply</u>** j. **Agree** that the requirement in section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi *will continue to apply* for Fast-Track referrals and projects. **OR** **<u>Option 2: Section 4 of the Conservation Act does not apply</u>** k. **Agree** that the requirement in section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi *will not apply* for Fast-Track referrals and projects and the provisions of the Fast-Track Bill, if any, will apply instead.	**Yes | No** **Yes | No**	
(IV) Wildlife Act approvals	**47. Note** that both section 4 and Treaty settlements may impact the timeframes for Wildlife Act permissions processes. **48. Note** that some Treaty settlements include requirements relating to Wildlife Act permissions that you intend to uphold, which will need to be identified and provided for. *Decision-making on protected wildlife permits/matters* **49.** EITHER **<u>Option 1 – Existing decisionmakers</u>** **a. Agree** that an applicant may apply under the Fast-Track for Wildlife Act authority to catch alive and kill wildlife, including to incidentally kill wildlife; **AND** **b. Agree** that for projects that meet the criteria for the Fast-Track regime, s 53 Wildlife Act authorities will be determined by the Director-General, and subject to any considerations and limits agreed below; **AND** **c. Agree** that for projects that meet the criteria for the Fast-Track regime, s 71 of the Wildlife Act is disapplied; **AND**	**Noted** **Noted** **Yes | No** **Yes | No** **Yes | No**	**General advice** The Wildlife Act involves permissions to hold, catch alive, handle or release, and in some cases to kill, absolutely protected wildlife. Applicants will often need lawful authority under s 53 of the Act to kill wildlife, where it will be incidentally killed as part of their operations. For certain activities, joint Ministerial consent is instead needed under s 71 (rather than s 53), where activities authorised by enactments listed in Sch 9 of the Wildlife Act (eg, the Government Roading Powers Act 1989, and others) affect wildlife. Sections 53 and 71 of the Wildlife Act are currently subject to legal challenge, and the Act itself is widely acknowledged to be nearly unworkable and needing replacement. Officials recommend that amendments to the Act outside those specifically for the fast-track regime (including any proposals to repeal s 71) are not progressed through this bill and instead are addressed in a wider review and replacement of the Wildlife Act. [redacted]

Proposal	Options	Decisions	Advice and Analysis
	d. **Agree** that in making any s 53 decision in accordance with the Wildlife Act, the Director-General may impose conditions in accordance with s 53(5) of the Wildlife Act, and such conditions can include offsetting and compensation; **AND** **e.** **Agree** that when considering a s 53 application, the Director-General's decision is subject to the process requirements of the fast-track regime, including timeline requirements; **OR**	**Yes | No** **Yes | No**	[redacted] The decision-maker for conservation approvals under the fast-track regime could remain the DG Conservation (subjective to timeframes and process improvements through the wider fast-track framework) or could become the Panel. The advantage of retaining the existing decision-maker is that conservation approvals are core business so there is access to relevant expertise and there is more likely to consistency in decision-making in contrast to Panels who are convened for a limited period. *Considerations and limits for Fast-Track projects* The Wildlife Act confers no specific priority to threatened species above other wildlife, but DOC takes threat status into account when managing and considering applications for authorisations. Applications for Wildlife Act authorities are rarely declined, but grounds to decline would include if the proposal posed a significant risk to a major population of a threatened species that could not be offset or mitigated, and so is not able to be protected. There is currently no specific ability to offset risks to wildlife under the Wildlife Act, and so this would need to be provided for, unless a consent was able to provide lawful authority for the purposes of the Wildlife Act. Officials understand you would like the purpose of the Fast-Track Bill to prevail over the purposes of other included legislation. It will remain important to ensure clarity on how wildlife is adequately protected through the fast-track regime. If there is a gap or ambiguity regarding how wildlife is to be protected, the courts will fill any such gap by looking to the statutory context, including existing provisions of the Wildlife Act. This increases legal uncertainty. DOC therefore recommends any decisions of the Panel are to take into account the Wildlife Act purpose, and subject to other statutory criteria related to irreversible loss of species and impacts on threatened and at-risk species as defined in the NZ Threat Classification System. The exact interpretation of these tests will need further work but could include considerations such as the risks of reducing genetic diversity, localised extinctions, and resilience against other adverse impacts. Under Option 2, where the Panel is the decision maker, DOC would provide a report on the effects on species and the decision-maker in setting conditions, would have regard to minimising any impacts on all protected wildlife (not just threatened species), through avoidance, mitigation or offsetting, or that any impacts which cannot be mitigated are compensated for. Conditions set by the Panel or by DOC subsequent to the Panel decisions would have effect in law as if they had been made under the Wildlife Act and the RMA to allow DOC's enforcement powers to be used, and DOC to easily amend conditions (eg, on where captive animals are to be held) in conjunction with the permit holder. **Development implications** Having a single application for all approvals that is subject to the timeframes and other process improvements of the fast-track regime will reduce costs and uncertainty for developers. **System efficiency** The proposed process improvements would likely shorten timeframes and improve efficiency, for the reasons set out above. **Treaty Impact Assessment** Wildlife species are frequently considered taonga (and some Treaty settlements list taonga species for that iwi) with DOC often managing wildlife in accordance with settlement requirements, requiring considerable specific engagement with relevant PGSE or tangata whenua. **Note**: It Is not recommended that the Fast-Track process be available for other Wildlife Act matters, such as approvals to undertake fast-track activities in wildlife sanctuaries or to allow hunting or killing of wildlife, which would rarely be required.
	<u>Option 2 – Panel as decisionmaker</u> l. **Agree** that for projects that meet the criteria for the Fast-Track regime, the Panel will determine whether approval is granted for the purposes of providing lawful authority to undertake actions otherwise prohibited by the Wildlife Act; **AND** m. **Agree** that for any fast-track consent that authorises an action that is otherwise prohibited by the Wildlife Act (such as killing wildlife), DOC is empowered to enforce any relevant conditions of the consent as if the consent is an authorisation under the Wildlife Act; **AND** n. **Agree** that a consent granted under the fast-track regime is lawful authority to do anything in respect of wildlife that is otherwise prohibited under the Wildlife Act, where the consent specifically provides for this; **AND** o. **Agree** that the Panel will take into account the purpose of the Wildlife Act (wildlife protection) in assessing wildlife effects, subject to any further considerations and limits decided below; **AND** p. **Agree** that the Panel have particular regard to a report by the Department of Conservation on the risks to wildlife; **AND** q. **Agree** that for any project that is within the fast-track regime, s 71 of the Wildlife Act is disapplied; **AND** r. **Agree** that any consent that authorises any activity in respect of wildlife can be enforced by the Department of Conservation. *Considerations and limits for Fast-Track projects under either above option* **50.** EITHER **<u>Option 1 – Irreversible loss ineligibility criteria</u>** s. **Agree** that the ineligibility criteria for the fast-track regime includes any project that is likely to cause an irreversible loss to a wildlife species that is threatened or at-risk as defined in the NZ Threat Classification System. **OR** **<u>Option 2 – Consider irreversible loss</u>** t. **Agree** that for wildlife-related permits or approvals on Fast-Track projects, the decision-maker must consider whether there is likely to	**Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No**	

Proposal	Options	Decisions	Advice and Analysis
	be an irreversible loss to a wildlife species that is threatened or at-risk as defined in the NZ Threat Classification System. **OR** **<u>Option 3 – Take into account impacts on threatened species</u>** u. **Agree** that the decision-maker must take into account impacts on threatened, data deficient, and at-risk wildlife species as defined in the NZ Threat Classification System**.** **51.** **Agree** that assessments of impacts on wildlife must be based on a report from DOC which will also set out conditions needed more generally for protected wildlife. **52.** **Agree** that activities relating to handling etc of protected wildlife must be required to meet relevant best practice standards, which can be established as part of conditions **53.** **Agree** that in setting conditions, the decision-maker must have regard to whether the condition would minimise any impacts on protected wildlife, through avoidance, mitigation or offsetting, or that any impacts which cannot be mitigated are compensated for. **54.** **Agree** that the decision of the Panel will be deemed to have been made as if under the Wildlife Act and further decisions/variations will be done under the Wildlife Act.	**Yes | No** **Yes | No** **Yes | No** **Yes | No**	
(V) Conservation Act approvals	*Scope for inclusion in the Fast-Track Bill* **55.** EITHER **<u>Option 1: Concessions for all activities are incorporated into the One Stop Shop</u>** v. **Agree** that concessions can be consider for projects that qualify for Fast-Track under the Fast-Track Bill (i.e. as per the Fast-Track qualifying criteria); **OR** **<u>Option 2: Only concessions for critical infrastructure are incorporated into the One Stop Shop</u>** w. **Agree** that concessions can only be considered the most critical infrastructure projects that qualify for Fast-Track under the Fast-Track Bill. *Determining which requirements to include* **56.** **Agree** to retain the requirement that the decision maker must consider the purpose for which the land is held. **57.** Agree to retain the requirement that the decision maker must consider the effects of the activity, structure, or facility.	**Yes | No** **Yes | No** **Yes | No** **Yes | No**	**General Advice** The Conservation Act includes processes for granting of permissions relating to activities over Crown conservation land. These approvals are referred to as a concession and take the form of a lease, licence, permit, or easement. *Scope of concessions included in the Fast-Track regime* • Concessions provide approval to a range of activities including tourism operations and infrastructure, research and monitoring stations, power generation structures, telecommunications infrastructure, and access easements. • Ministers should consider the scope of projects that are eligible for the Fast-Track process on public conservation land. The concessions regime is specifically designed to consider proposed activities and their potential effects on the protection of conservation and cultural values. • Officials have prepared two general options for the scope of inclusion in the Fast-Track. Either all concessions are in scope, or fast-tracked concessions are limited to critical infrastructure. • Critical infrastructure can include linear infrastructure (eg, roads, pipes and wires) and projects such as renewable energy projects. In some cases, critical infrastructure may be required on PCL to support a neighbouring Fast-Track project off PCL (eg, an easement for an access road is required), rather than being the focus of the Fast-Track itself (eg, a major highway referred for Fast-Track). Officials suggest aligning critical infrastructure terminology with the Public Works Act 1981, rather than the more narrow civil defence terminology. • If limited to critical infrastructure projects, the excluded projects are likely to mainly relate to significant tourism projects on conservation land, such as ski fields. These would continue to be managed through the standard concessions processes.

Proposal	Options	Decisions	Advice and Analysis
	58. **Agree** to retain the requirement that the decision maker must consider any relevant environmental impact assessment.	**Yes | No**	[redacted]
	59. **Agree** to remove the requirement for the decision-maker to decline an application if an application obviously does not comply with any relevant conservation general policy, conservation management strategy, conservation management plan or reserve management plan, except where removing the requirement would undermine Treaty Settlements.	**Yes | No**	
	60. **Agree** to remove the requirement for public notification of concession applications when aligning with the Fast-Track regime.	**Yes | No**	
	Determining the decision-maker		
	61. **Note** that a concession can confer a property right, in addition to approving access to undertake an activity on PCL, and that these two functions cannot easily be disaggregated.	**Noted**	
	[redacted]	**Noted**	**Development implications** • If the scope is limited to critical infrastructure, excluded projects are likely to include regional tourism projects on conservation land, which would continue to be managed through the standard concessions processes. The main benefit to developers of including those wider projects would be the timeframes of the Fast-Track compared with the standard concession process, assuming Ministers agree that most the current requirements for the decision maker to consider would apply to any Fast-Track concessions. • Regardless of the scope, the requirement that the activity could not reasonably take place in a location off public conservation land should be retained. This requirement avoids unnecessary effects on conservation land and mitigates adverse incentives (eg, where it may be cheaper to lease PCL instead of purchasing land). • The requirement for the decision maker to have regard to conservation management plans (incl. reserve management plans), conservation management strategies, and the Conservation General Policy could be made discretionary when making a decision on the concession. This would align with the discretion to consider NPS, NES, regional plans, and district plans that will be applied through the Fast-Track framework. The effect of removing this requirement would be potentially allowing projects that could not be granted if the planning direction must be considered. However, the extent to which this supports additional development is unknown as those projects would still be subject to the relevant effects purpose tests, and Treaty settlements. • Fast-Track projects will likely involve significant capital investment. Therefore, term lengths should be sufficient to ensure return on investment from the endeavour. The Conservation Act allows terms of 30 years, or 60 years in 'exceptional circumstances' – which is not defined by the Act. Drafting of the Fast-Track Bill could clearly state that Fast-Track projects are exceptional. The Act does provide discretion for easements beyond 60 years for where there is no other practical access or the easement is for public works. Upon expiry of a concession, any renewal would be sort through the usual concession regime, or could be referred back to the Fast-Track regime. **System efficiency** • The existing concessions regime has been designed to manage this infrastructure, and so any decisions will require significant input from DOC. Therefore, there is a risk that the Fast-Track regime includes all concession activities, it will become bloated with projects where the key complexities relate to issues that the concessions regime is best equipped to address. • Officials consider system efficiency can be achieved by applying the decision-making criteria amended for the Fast-Track regime, providing for alignment of information requirements, processes, timeframes, and removing duplicative processes between the concessions process and the Fast-Track process. Alignment of the process is also an opportunity to ensure that information relating specifically to the concession is gathered at the same time and that any duplications in required information or wider public input is avoided. Providing for these improvements to processes would be a low risk.
	63. **Note** that, in making decisions on concessions, the decision maker in a Fast-Track process (Ministers or Panel) would therefore be making decisions on managing Crown risks (i.e. on behalf of the Crown as land manager). This includes undertaking contract negotiations, including setting rental fees.	**Noted**	
	64. **Note** that DOC/MOC will continue to be responsible for all further monitoring/enforcement/variations and implementation required.	**Noted**	
	65. **EITHER** **<u>Option 1: Minister of Conservation retains decision making for concessions within the Fast-Track framework</u>** x. **Agree** that The Minister of Conservation, on behalf of the Crown, remains the decision-maker for fast-track concessions, and that concessions are excluded from the Fast-Track Bill where required for use of public conservation land; **AND** y. **Agree** to amend the Conservation Act to align processes with the Fast-Track regime and apply any alternative requirements agreed above to the consideration of Fast-Track projects. **OR** **<u>Option 2A: Expert panel assumes decision making in concurrence with the Minister of Conservation</u>** a. **Agree** that applicable concessions required for use of public conservation land will be determined by the Panel under the Fast-Track Bill, in concurrence with the Minister of Conservation	**Yes | No** **Yes | No** **Yes | No**	

Proposal	Options	Decisions	Advice and Analysis
	OR **<u>Option 2B: Expert panel assumes decision making in consultation with the Minister of Conservation</u>** a. **Agree** that applicable concessions required for use of public conservation land will be determined by the Panel under the Fast-Track Bill, in consultation with the Minister of Conservation	**Yes | No**	• Public notification is required for all concessions applications for a lease, or a licence for a term of more than 10 years. Removing the public notification requirement would avoid creating delays and inconsistencies of process. Officials recommend aligning consultation requirements with those of the overall Fast-Track process if concessions decisions continue to sit with the Minister of Conservation. **Treaty Impact Assessment** • Removing the requirement to consider CMS and CMPs creates risk, as some treaty settlements create obligations around CMS/CMPs which could be breached by excluding them from the process. Disapplying a planning document, which can direction decision-making on concessions, would have the effect of undermining those settlements that include redress relevant to the content of those planning documents. This could be mitigated by specifying that CMS/CMPs/GP are disregarded, except where required by treaty settlement obligations. • DOC is subject to more than 100 settlement tools and agreements that set out specific process or substantive obligations for the Crown in relation to their management of PCL. The significant number and variety of obligations creates a significant risk that the Crown could be challenged for not appropriately giving effect to these obligations through the Fast-Track process. In order to mitigate this risk, it would be important for these obligations to be accounted for in the design of the Fast-Track regime. • Concession terms longer than 50 years will, in some areas, trigger Rights of First Refusals provided in Treaty settlement (eg, concessions in the Ngāi Tahu takiwā). Terms that exceed those triggers should not be granted to Fast-Track projects.
(VI) Reserves Act approvals	**66. Agree** that the Fast-Track process may be applied to: z. Crown-owned reserves administered by the Department of Conservation or local authorities aa. Reserves owned and administered by local authorities bb. Any other reserves, by agreement of the reserve owner and administering body. **67. Agree** that the concessions regime will be used to provide all permissions that would otherwise be required by the Reserves Act for projects accepted into the Fast-Track process. **68. Agree** that Ministers must consider the ownership and management arrangements of any reserves (or land with conservation covenants registered against the title) affected by the projects and any existing arrangements (formal or informal) over that land when considering whether to accept the project into the Fast-Track process. **69. Agree** that Ministers' consideration of reserve matters as part of the Fast-Track application decision be informed by a report by DOC in consultation with the reserve owner/administering body as required.	**Yes | No** **Yes | No** **Yes | No**	**General Advice** The Reserves Act encompasses a wide range of reserves, held for many different purposes. These include reserves with high conservation values, such as nature and scientific reserves, but also local purpose and recreation reserves set aside for boat ramps, community buildings, sports fields, racecourses, etc. It also includes government purpose reserves managed by DOC or other agencies for purposes such as courts, defence facilities, lighthouses, railways, etc. The concession provisions in the Conservation Act also apply to DOC managed reserves, effectively replacing the many provisions in the Reserves Act under which activities could be approved. The remaining permissions under the Reserves Act apply only to reserves not managed by DOC, including local authorities, government departments, iwi and other public bodies. We recommend that reserves owned and administered by local authorities are included in the Fast-Track process. We consider that the inclusion of these reserves would be in line with the inclusion of those reserves managed by DOC that are captured by the Fast-Track process (i.e. not excluded by Schedule 4). We consider that they are likely to have similar levels of conservation value, however acknowledge they may also provide further local values – including contributing to the network of public green spaces in urban areas and stormwater retention. It is important to note that the same risk and liability issues that arise for DOC on conservation land will also apply to local government on their reserve land if the decision-maker on these permissions is no longer the landowner. No consultation has been undertaken with local authorities or LGNZ on this proposal. We recommend that the Fast-Track process is only applied to other types of reserve (i.e. those not owned by the Crown and managed by DOC or local authorities, or owned and managed by local authorities), by express agreement of the landowners and administering body (including government departments, iwi, reserve boards and other public bodies). We consider that the range of reserves and ownership and management models that could apply to them is too varied to effectively work through the policy implications in the time available to provide a more universally permissive inclusion of these reserves in the Fast-Track.
(VII) Freshwater Fisheries regulations approvals	**70. Note** that the Conservation Act, Fisheries Act, Biosecurity Act and associated regulations control a wide range of matters relating to freshwater fisheries, including for indigenous fish and sports fish (eg, trout).	**Noted**	**General Advice** The legislative regime relating to freshwater fisheries is complex and spread across the Conservation Act, Fisheries Act, Biosecurity Act and two sets of regulations. The regime covers a wide range of matters and involves three decision-makers (Minister of Conservation, Minister of Fisheries, and Fish and Game Councils). Activities

Proposal	Options	Decisions	Advice and Analysis
	71. **Agree** that Fast-Track will be limited to four matters that are commonly involved in large development applications, and that do not require complex technical assessments – cc. the approval of culverts and other structures to which the NIWA guidelines apply, and dd. the approval of fish rescue activities where the fish are moved to an alternative location in the same waterbody, and ee. the approval of temporary works for infrastructure projects that would affect fish passage or local habitat. ff. the killing of noxious fish that are encountered during fish rescue or other operations.	**Yes | No**	that are most likely to be relevant to Fast-Track projects include installation of culverts, temporary diversion of streams to allow bridge abutments to be constructed, rescue of fish from areas that are being dewatered or heavily impacted, and removal of gravel and minor re-shaping of river bends. We have identified four areas where we believe there would be benefits from inclusion in the fast-track process: • the approval of barriers to fish passage (culverts and other structures) to which the NIWA guidelines apply, and • the approval of fish rescue activities where the fish are moved to an alternative location in the same waterbody, and • the killing of noxious fish that are encountered during fish rescue or other operations. • the approval of temporary works that would affect fish passage or local habitat. In most cases, we consider that these matters can be handled by requiring that there be appropriate conditions on consents, including the inclusion of standard conditions as appropriate. If that was done, the freshwater fisheries regime would not apply to those specific activities.
	72. **Agree** that the approvals for these activities would be provided through the RM Act process (subject to specific requirements in the Fast-Track legislation), and an applicant that was acting in accordance with conditions in the Fast-Track consent in relation to those specific matters would be exempt from any equivalent freshwater fisheries legislative requirements.	**Yes | No**	Some Fast-Track projects may involve highly complex fish passage barriers (eg, where fish ladders might be required) or freshwater aquaculture. These technically complex matters are not covered by the NIWA guidelines and must be managed on a case-by-case basis by DOC and MPI and are therefore not appropriate for inclusion in the Fast-Track process.
	73. **Note** that Fast-Track projects may still require fisheries legislation consent for other activities such as harvest of fish for consumption or disturbance of spawning activities.	**Noted**	
(VIII) Crown Minerals Act approvals	*Scope for inclusion in the Fast-Track Bill* **74.** **Agree** that s61 access arrangements are in scope for approval through the Fast-Track Process.	**Yes | No**	**General Advice** The Crown Minerals Act provides a regime for managing mining activities, which includes a permit process to allocate Crown minerals, and access arrangements to allow landowners to agree (or decline) access to their land. For conservation land, the decision on access is made by the Minister of Conservation, or jointly with the Minister responsible for the Crown Minerals Act (currently the Minister for Resources) where an application involves certain minerals with a high market value. The Minister for Land Information is the Appropriate Minister for access decisions for non-conservation Crown land.
	75. **Agree** that applicants will not be able to apply for a s61 access arrangement in an area excluded through the Minerals Programme at the request of iwi and hapū.	**Yes | No**	Impacts of activities, particularly at the early exploration stage, can often be avoided through appropriate location (eg, with one operation a drilling proposal was moved from a fossil reserve to a nearby area) and ensuring that best practice is used (eg, using a helicopter to place drill rigs on platforms instead of doing earthworks, using relocatable buildings that can be easily removed). Other impacts, however, cannot be avoided. In general, if they are impacts to an irreplaceable value, decline is appropriate (eg, an ilmenite mine was declined at Barrytown because the proposal would destroy a rare type of wetland, and the miner moved to Cape Foulwind), while for less important values, compensation will be used.
	Determining which requirements to include **76.** **Agree** to RETAIN the requirements that the decision-maker must consider the following under s61(2) and s61B(2):	**Yes | No**	
	gg. (a) the objectives of any Act under which the land is administered	**Yes | No**	
	hh. b) any purpose for which the land is held by the Crown	**Yes | No**	
	ii. (d) any safeguards against any potential adverse effects of carrying out the proposed programme of work	**Yes | No**	
	jj. (da) the direct net economic and other benefits of the proposed activity in relation to which the access arrangement is sought	**Yes | No**	
	kk. (e) any other matters that the Minister(s) consider relevant.	**Yes | No**	
	77. **Agree** to MODIFY the requirement under s61(2)(c) and s61B(c) on how "any policy statement or management plan of the Crown in relation to the land" are considered, so that the decision-maker "may consider", rather than "must consider", except where modifying the requirement would undermine Treaty Settlements.	**Yes | No**	

Proposal	Options	Decisions	Advice and Analysis
	78. **Agree** that public notification of s61 applications will not be required for Fast-Track projects. *Determining the decision-maker* **79.** **Note** that the Minister of Conservation usually makes decisions on s61 approvals, though in some cases the Minister of Land Information is the Appropriate Minister. The Appropriate Minister makes decisions jointly with the Minister responsible for the Crown Minerals Act where an application involves certain minerals with a high market value. **80.** EITHER **<u>Option 1: Ministers retain decision making under the CMA within the Fast-Track framework</u>** ll. **Agree** that the Appropriate Minister (and the Minister responsible for the Crown Minerals Act where relevant), on behalf of the Crown, remain the decision-maker(s) for s61 CMA approvals; **AND** mm. **Agree** to amend the Crown Minerals Act so that, for Fast-Track projects, any alternative requirements agreed above apply and processes are aligned with the Fast-Track regime. **OR** **<u>Option 2A: Expert panel assumes decision making in concurrence with Ministers</u>** nn. **Agree** that s 61 approvals will be determined by the Expert Panel as part of the One Stop Shop, in concurrence with the Appropriate Minister (and the Minister responsible for the Crown Minerals Act where relevant). **OR** **<u>Option 2B: Expert panel assumes decision making in consultation with Ministers</u>** oo. **Agree** that s 61 approvals will be determined by the Expert Panel as part of the One Stop Shop, in consultation with the Appropriate Minister (and the Minister responsible for the Crown Minerals Act where relevant).	**Yes | No** **Noted** **Yes | No** **Yes | No** **Yes | No**	**Development implications** • Access applications are usually approved as the legislation was designed to allow impacts from mining on PCL that would not be allowed for other activities (eg, tourism operations). Also, unlike concessions decisions, there is no requirement to demonstrate that the activity cannot take place off PCL. The regime is also more permissive than the concessions regime as it provides conditions to prevent ongoing liabilities (eg, bonds) and allows compensation payments to be taken into account in determining whether impacts on conservation values will be allowed. • The Department considers that there is no need to change the criteria for decision-making, other than how "any policy statement or management plan of the Crown in relation to the land" are considered, given the current ability to consider compensation and the low rate of decline for access arrangements. • Officials note that there has been some discussion about the need for the "any other matters" criterion but recommend retaining it as it strengthens the decision makers ability to consider compensation. • Past discussions with the mining industry suggest that they would benefit most from procedural alignment with the timeframes and information requirements of the resource management process. • There are no obvious development implications between the options for the decision-maker as the considerations and powers applied will be the same. **System efficiency** • Under all options for the Fast-Track Bill, there is potential to align the timeframes, information requirements, and considerations of resource management approvals and access arrangement approvals. For example, DOC will not need to provide advice on effects on vegetation or hydrology if these are considered under the resource management approval. DOC can then focus advice on matters not considered by the RM process, such as bonds and removal of structures. • Section 14(2)(c) of the CMA allows areas to be excluded from consideration for access arrangements at the request of iwi and hapū through the Minerals Programme. These areas are in addition to those excluded through Schedule 4. Areas. Officials recommend carrying over these exclusions into the Fast-Track regime. • DOC recommends retaining the need for the decision-maker to consider any policy statement or management plan of the Crown in relation to the land where those relate are provided for in Treaty Settlement. For example, the decision maker must consider any Conservation Management Strategy co-authored with iwi.

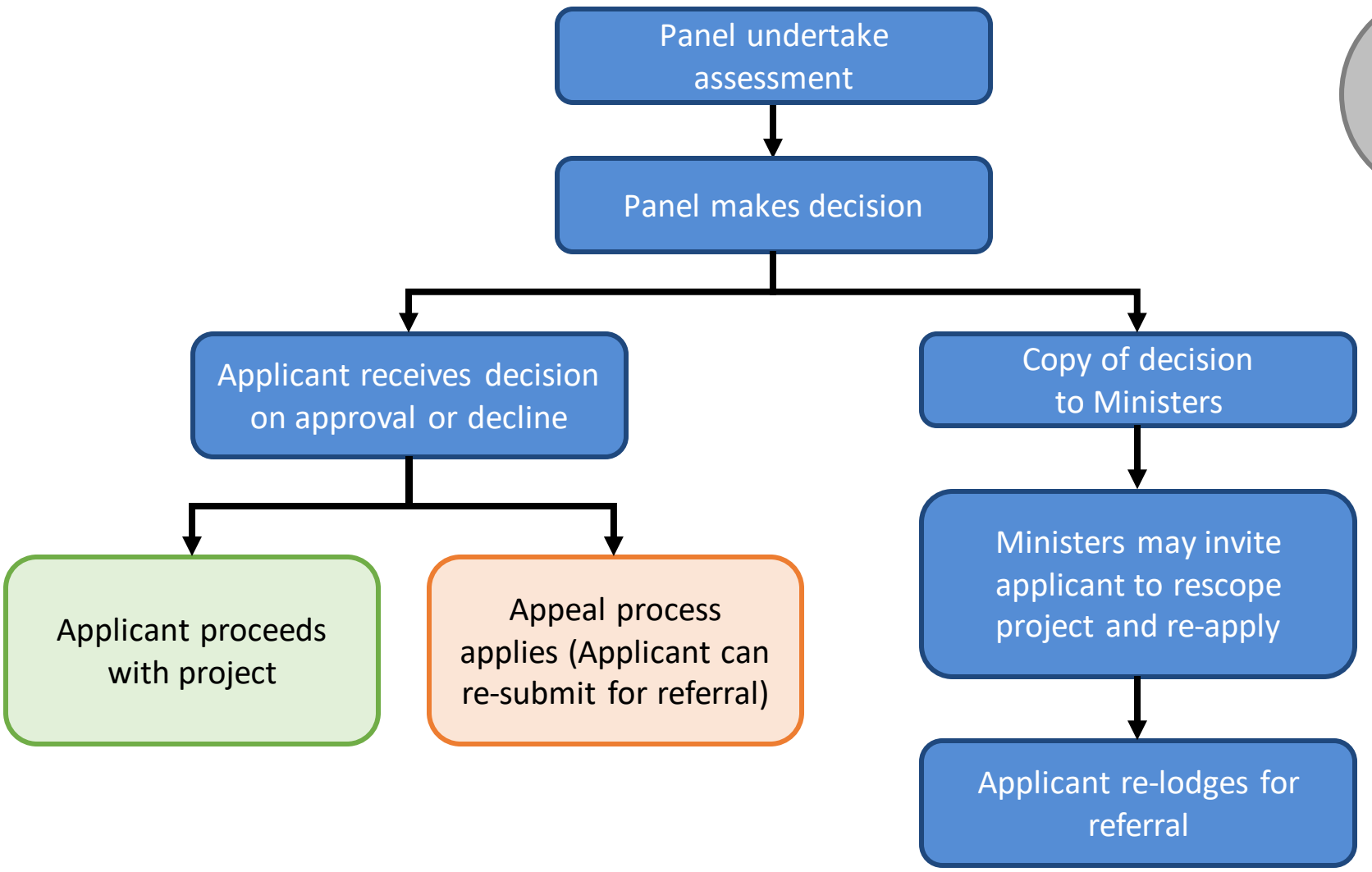
One stop shop – Heritage Authorisations

Proposal	Options	Decisions	Advice and Analysis
(IX) Include approvals under the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPT) in the FTC Bill.	**Option 2** **81. Agree** to include HNZPT approvals in the one-stop-shop by amending the HNZPT to enable applications to be made with FTC applications. Otherwise, applications/approvals will be processed separately by HNZPT under the HNZPT.	**Yes | No**	**General advice** For the vast majority of development and infrastructure projects, there is no need for approvals under the HNZPT. Most have low archaeological potential and so can apply a generic Accidental Discovery Protocol. Only about 600 archaeological authorities are required each year. There is little evidence of Heritage Act (HNZPT) approvals causing delays, costs, or duplication of work for applicants. Some infrastructure providers have identified inconsistencies between conditions for archaeological authorities and resource consents as an issue. If Ministers decide to include HNZPTA approvals in scope of the FTC, enabling approval applications to be made via the FTC process, but otherwise processing them separately under the HNZPT, would be the most efficient approach. **Development implications** There could be a benefit for applicants if amendments were made to the HNZPT to enable the Environmental Protection Authority (EPA) to manage the process overall. Potential drawbacks of this approach are that processing timeframes and costs for applicants could increase. If the purpose of the FTC bill were to prevail over the purpose of the HNZPT, cultural heritage values could be unnecessarily lost, projects delayed, and extra costs incurred. This could be mitigated through drafting of the purpose and principles of the FTC bill. Another way to mitigate some risks could be to enable the Minister (when referring) or the expert panel (when consenting) to decide whether it is appropriate for the HNZPTA approvals to be included in the one-stop-shop on a case-by-case basis. **Treaty Impact Assessment** [redacted] Most archaeological sites subject to HNZPTA approvals are of interest to Māori. The HNZPT has its own specific provisions for Māori interests and a bespoke Treaty clause. If the FTC bill treaty clause is to prevail, this should be taken into account. There are decision-making and advisory roles in the authority process that are assigned to the Māori Heritage Council, an expert entity appointed by Ministers under the HNZPT. Additional Treaty impact analysis and engagement with Māori is required on the approvals to identify and propose options to address issues. **Treaty settlements and other arrangements** The HNZPT approvals regime has been modified by Treaty settlements in different ways. HNZPT has obligations in over 130 settlement acts. Most of these require HNZPT to have regard to statutory acknowledgement areas when making archaeological authority decisions. The Crown also has obligations under many settlements to engage when policy changes are being considered. Additional analysis and engagement with iwi will be required to determine how including the HNZPTA approvals in the FTC bill will affect Treaty settlements.
	If Ministers select Option 2: **82. Agree** that the Minister or the Expert Panel can decide whether it is appropriate for HNZPT approvals to be included in the one-stop-shop on a case-by-case basis	**Yes | No**	
	83. Agree **a.** EITHER the Minister makes this decision (when referring)	**Yes | No**	
	b. OR the Expert Panel makes this decision (when consenting).	**Yes | No**	
	84. Agree **a.** EITHER the purpose of the FTC bill should prevail over HNZPT provisions	**Yes | No**	
	b. OR HNZPT provisions are not prevailed over by the FTC bill purpose (preferred)	**Yes | No**	
	85. Note that as **previously** directed by Ministers (BRF #1) officials will undertake further work such that all relevant aspects of HNZPTA approvals can be incorporated through the select committee process and introduced through Amendment Papers**.**		

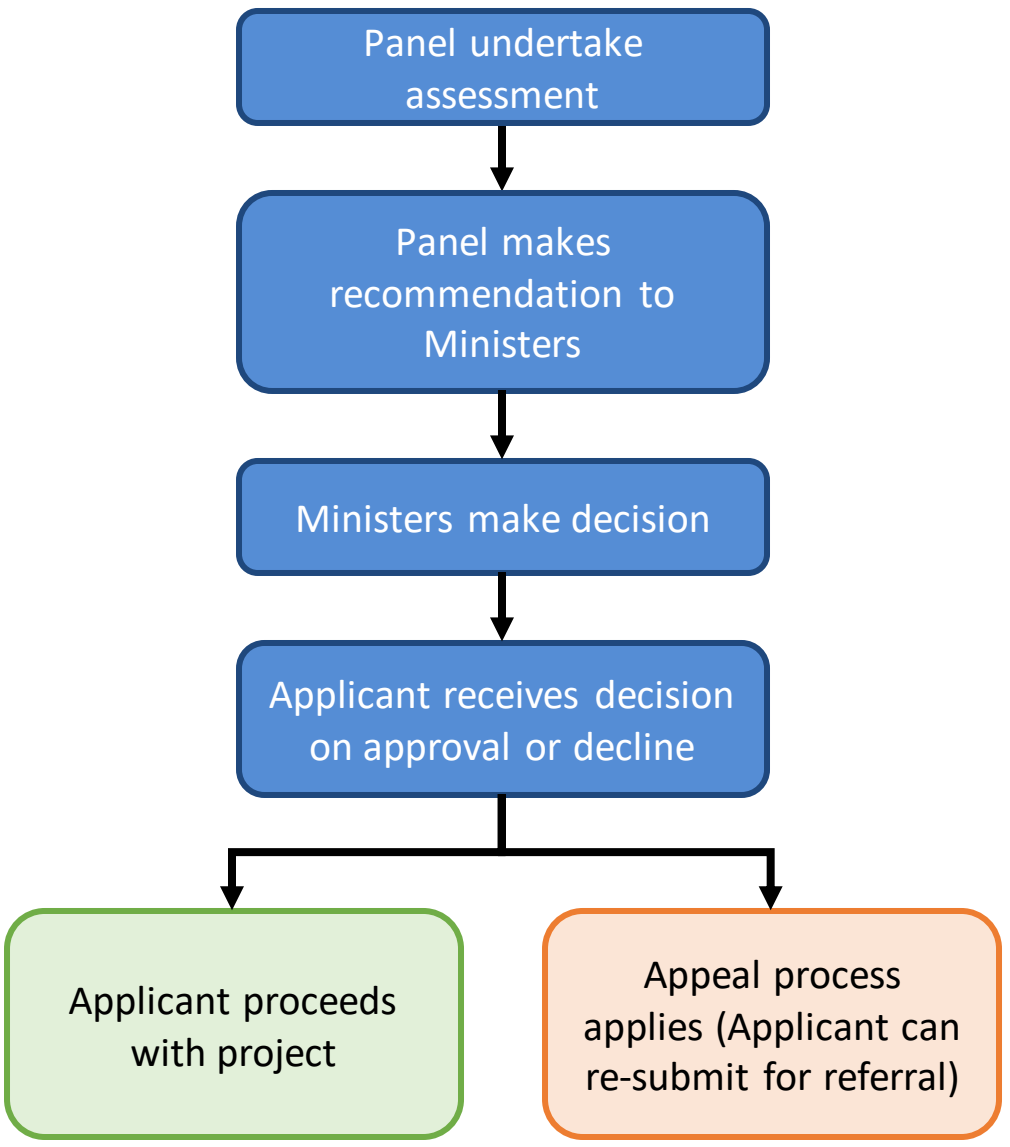
One stop shop – Exclusive Economic Zone (EEZ) Act

Proposal	Options	Decisions	Advice and Analysis
Include EEZ consents in the fast-track consenting regime	86. **Agree** to allow EEZ consents to be decided on via the fast-track consenting regime either as an individual application for a marine consent, or as part of multiple approvals required, for the same activity. 87. **Note** details on how this will work (information requirements, reports, decision making arrangements and consultation) will be provided in a future briefing.	**Yes | No**	Projects in the EEZ tend to be of significant scale and face the same types of challenges as those which the fast-track consenting regime is aiming to address. Inclusion of EEZ consenting in the fast-track consenting regime will ensure consistency across all marine zones. EEZ projects often require multiple approvals for different aspects of the development. The processes and decision criteria matters under the RMA and EEZ are similar in many ways and there are efficiencies from considering EEZ and RMA applications together.
Include eligibility criteria for activities that may utilise the fast-track consenting regime if the EEZ Act is included	88. **Agree** in principle to include eligibility criteria to clarify the circumstances when activities in the EEZ can access the fast-track consenting regime.	**Yes | No**	Relative to land-based activity there are small numbers of activities that may require marine consents and would utilise the fast-track regime. The circumstances when activities in the EEZ should be eligible to utilise the fast-track consenting regime will be outlined in subsequent advice.

Option 1



Option 2



Ministry for the Environment
Manatū Mō Te Taiao

Briefing: Fast-Track Consenting Bill – Policy Decisions Tranche 2B

Date submitted: 16 February 2024
Tracking number: BRF-4239
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 and in appendix 1.	19 February 2024

Actions for Minister's office staff
Forward this briefing to: Hon Shane Jones, Minister for Regional Development, Resources and Oceans and Fisheries. Hon Simeon Brown, Minister of Transport, Energy and Local Government. Hon Tama Potaka, Minister of Conservation, Māori Crown Relations: Te Arawhiti. **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 1: Detailed and procedural decisions to be made by delegated ministers for Fast-Track Consenting Bill 2. Appendix 2: Engagement summary for Fast-Track Consenting Bill.

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Responsible Manager	Arron Cox		
General Manager	Jo Gascoigne	[redacted]	✓

Fast-Track Consenting Bill - Policy Decisions Tranche 2B

Key messages

1. This briefing

    a. seeks your decisions on the detailed and procedural policy needed to give effect to the key decisions made by delegated Ministers in Appendix 1

    b. provide an update on engagement with local government and other interests on the fast-track legislation; and

    c. detail the next steps for introduction of the fast-track legislation.

Detailed and procedural policy decisions

2. Appendix 1 is separated into three parts: detailed decisions to implement key decisions made by delegated Ministers, procedural decisions and amendments to previous decisions.

3. You met with delegated Ministers on 15 February 2024 to discuss key policy questions for the fast-track regime. These included decisions on who the substantive decision-maker is (Ministers vs the panel) and what other approvals will be included in the legislation. To ensure drafting can continue to occur Appendix 1 seeks your agreement on the following:

    i Officials to adjust the detailed and procedural matters outlined in this and previous Briefings (Table 2 of BRF-4115) to accommodate the inclusion of 'one stop shop' approvals, begin drafting on this basis and seek retroactive approval agreement from you. We will ensure the policy intent of these provisions and the direction from delegated Ministers is upheld.

    ii Where previous decisions have been made under the assumption that the panel is the substantive decision-maker in BRF-4115, to make the necessary changes to the detailed and procedural matters and seek retroactive agreement from you (if needed)

    iii Where we are carrying over procedural provisions from the Fast-track Consenting Act and the Natural and Built Environment Act that we can make the necessary changes to fit with the intent of those provisions and direction from delegated Ministers.

4. We are also seeking detailed decisions on the following matters you have raised with us:

    iv How panel members can be paid market rate for their work

    v How the process can be cost neutral to the crown

    vi Including changes to consent conditions to be included in the legislation

vii How Ministers can consider infrastructure priority lists in referral decisions

5. We are also seeking your agreement that subject to further advice to be provided on 23 February 2024, to direct PCO to draft provisions enabling inclusion of some PWA provisions.

Engagement

6. In BRF-4203 we provided you with some of the key points that have been raised through the engagement with groups representing local government, infrastructure, development and environment interests and Māori. **Appendix 2** provides a detailed overview of all the engagement feedback received on the Fast-Track Consenting (FTC) bill.

Treaty and Treaty settlement implications

7. The decisions sought in **Appendix 1** include specific provisions to protect Treaty settlements and specified arrangements, and are related to the overarching protections outlined in Table A of BRF-4203, which we note will be subject to further discussion between Ministers.

8. Table B in Appendix 1 includes advice on how to protect Treaty Settlements and other arrangements. These may need to be changes subject to further discussion from delegated Ministers on Monday. We will come back to you on whether changes are needed following that meeting.

9. The package of recommendations to protect Treaty settlements and specified arrangements includes the overarching protections recommended in Table A of BRF-4203 and the specific, targeted provisions outlined in Appendix 1. The package seeks to help provide system efficiency and certainty for applicants and decision-makers by signposting what is required to protect settlements at various stages through the proposed process for applicants, the Ministers, and the expert panel. For example, we recommend the FTC Bill sets out the parties the applicant must engage with prior to making their application. Experience with the COVID fast-track legislation was that applicants who did this well were able to progress through the system quickly. In addition, the proposed protections aim to mitigate the risk of litigation – which could provide a large blockage in the system if groups are not satisfied the new legislation provides adequate protection for settlements.

10. Given we have only been able to have high-level discussions with Māori representative groups, including post-settlement governance entities (PSGEs) on the FTC bill and the significant interest they will have in the development of associated legislation, we are proposing ongoing engagement with these groups through both the drafting phase and post-introduction in the lead up to Select Committee.

11. Ongoing engagement will enable us to inform groups in more detail of the decisions taken by Ministers, identify where further consideration may be needed to uphold settlements in the drafting of the legislation, and to help prepare groups to engage meaningfully in the Select Committee process.

Next steps

12. The FTC bill will continue to be drafted over the next three weeks. It will be ready for introduction on 4 or 5 March 2024 and first reading on 7 March 2024.

13. On 4 March 2024, you and Minister Jones will be seeking Cabinet's approval to introduce the FTC bill.

14. We will provide you and your office with the documents, including a draft Cabinet paper, needed for Cabinet and introduction on 23 February 2024.

Recommendations

15. We recommend that you:

a. **agree** to forward this briefing and appendices to the Minister of Regional Development, the Minister of Transport and the Minister of Conservation

Yes | No

b. **agree** to the specific recommendations in Appendix 1

Yes | No

c. **agree** to direct PCO to enable provisions of the Public Works Act 1981 to be included in the bill, subject to further advice from officials on 23 February

Yes | No

d. **note** officials have undertaken limited engagement with Post-Settlement Governance Entities (PSGEs) and other representative Māori groups to inform them of how the fast-track consenting proposals may impact on Treaty settlement and other arrangements, and it will be important to continue conversations with these groups

e. **agree** to officials continuing to engage with PSGEs and other representative Māori groups in the lead up to introduction of the FTC Bill to:

i. inform them of policy decisions taken by Ministers

ii. discuss the steps taken by Ministers to uphold settlements in those decisions and provide written material where appropriate

iii. discuss the opportunities for engagement in the process going forward.

Yes | No

f. **agree** that, following introduction and referral to a Select Committee of the FTC Bill, the Ministry for the Environment seek the approval of the Select Committee to continue to engage with representative Māori groups (including post-settlement governance entities and other relevant entities) in parallel with the Select Committee process, including in relation to:

i. the inclusion of listed projects in the Bill; and

ii. how to uphold Treaty settlements and other arrangements, as well as Treaty obligations and other Māori interests through the Bill.

Yes | No

Signatures

Jo Gascoigne
General Manager
Ministry for the Environment
16 February 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform

Date

Ministry for the Environment
Manatū Mō Te Taiao

BRF-4308: Meeting with PSGEs to advise on fast-track

Date submitted: 23 February 2024
Tracking number: BRF-4308
Security level: In-Confidence

Actions sought from Ministers	
Name and position	***Action sought***
To Hon Chris Bishop **Minister Responsible for RMA Reform** Cc Hon Tama Potaka **Minister for Māori Crown Relations: Te Arawhiti**	None

Actions for Minister's Office staff
Forward a copy to the office of the Minister for Māori Crown Relations: Te Arawhiti.

Appendices
1. Talking points and Q&A for your 27 February 2024 meeting with PSGEs 2. High-level summary of PSGE and other Māori representative feedback on fast-track consenting proposals (and suggested responses) 3. List of PSGEs and other groups invited to the 27 February 2024 meeting

Key contacts at Ministry for the Environment			
Position	***Name***	***Phone***	***First contact***
Principal Author	Isabella Wilson		
Responsible Manager	Sam Ritchie	s 9(2)(a)	
General Manager	Clare Maihi	s 9(2)(a)	✓

BRF-4308: Meeting with PSGEs to advise on fast-track

Purpose

1. Alongside Minister Potaka, you are meeting with post-settlement governance entities (PSGEs) and other Māori groups to discuss fast-track consenting (FTC) proposals. We understand Ministers Jones, Brown, and Simmonds will also be in attendance.
2. This meeting has been confirmed for **3:15pm – 4:00pm, 27 February 2024**. PSGEs will attend online.
3. This meeting brief provides you:
    - information on officials' engagement with PSGEs on FTC proposals;
    - feedback received from officials' engagement with PSGEs which will likely be raised in the meeting;
    - suggested responses to questions and concerns raised in that feedback; and
    - suggested talking points for the meeting (**Appendix 1**).
4. A high-level summary of PSGE and other Māori representative feedback on fast-track consenting proposals (and suggested responses) is at **Appendix 2**.
5. A list of PSGEs and other groups invited to the 27 February meeting is at **Appendix 3.**

Background

Fast-track consenting legislation

6. Cabinet has committed to upholding Treaty settlements and other legislative arrangements in the development of FTC legislation (CAB-24-MIN-0008 refers). You, along with other delegated Ministers, have recently made decisions on detailed design aspects of the FTC legislation (BRF-4203 and BRF-4115 refer), although some decisions remain outstanding (Te Arawhiti Report 2023/2024-156 refers).
7. Following your 31 January 2024 letter to PSGEs and other relevant representative organisations regarding the Government's plan to develop FTC legislation, officials have been engaging with PSGEs and other groups regarding the proposed FTC legislation.
8. Due to the confidential nature of the FTC policy proposals, officials have only been able to share limited information with PSGEs in our engagement.
9. Officials sought and received approval from you and the Attorney General to share the draft FTC Bill with some PSGEs prior to introduction. This is being offered on a confidential basis to PSGEs with complex resource management redress that will interact with or be affected by the FTC process. Due to compressed timeframes the Bill is only likely to be available for a very limited time before introduction.
10. Officials understand Ministers want to meet with all PSGEs to advise on the FTC proposals and respond to any concerns raised.

Talking points

11. Officials have included some suggested talking points and back-pocket Q&A on the proposed fast-track regime at **Appendix 1.**

Key matters arising from engagement with PSGEs

12. Officials have been engaging with PSGEs and other Māori representative groups on the fast-track proposals. There are a range of views about proposed fast-track consenting legislation among PSGE and other groups.
13. Many groups see opportunities to promote their own development proposals in areas like aquaculture for the benefit of iwi, hapū and whānau, and are therefore interested in the process for identifying listed projects for fast-track consideration. However, many groups have also stressed this does not mean they support economic development at the cost of the environment or their communities.
14. At the same time, many groups also have significant concerns about the process and substance of the proposed bill. Most regard the very short timeframes for engagement on these proposals before decisions being taken, and lack of detailed information able to be shared with them, as unacceptable and contrary to the actions of a good Treaty partner. PSGEs have also raised the lack of funding available to engage on the proposals.
15. In terms of substance, PSGEs and other groups have raised a wide range of queries, suggestions, and concerns. Most groups we have engaged with want to ensure iwi/Māori involvement at all stages of the resulting system, and for Treaty settlements and other relevant arrangements, rights, and interests to be protected and upheld.
16. A high-level summary of feedback received from PSGEs and other Māori representative groups on the proposed FTC regime, and the approach you might take to addressing the concerns raised, is at **Appendix 2**.

Signatures

David Haines
General Manager (Acting)
Te Tiriti and Te Ao Māori

23 February 2024

Appendix 1: Talking points and back-pocket Q&A

- Thank you for meeting today to discuss the Government's fast-track consenting legislation.
- The Government has committed to developing a new fast-track consenting process for regionally and nationally significant infrastructure and developments.
- This was part of the Government's coalition agreement and will be delivered through a bill introduced in the Government's first 100-days in office, by 7 March 2024.
- The fast-track bill is part of the Government's phased approach to reforming the resource management system. The phases are:
    i. repeal of the Natural and Built Environment Act and Spatial Planning Act (now complete)
    ii. introduction of a fast-track consenting regime and targeted amendments to the Resource Management Act 1991 by late-2024
    iii. replacement of the current RMA with new resource management legislation based on the enjoyment of property rights, while ensuring good environmental outcomes (proposed for introduction in late-2026).
- The proposed fast-track bill will aim to enable infrastructure and other projects that have significant regional or national benefits, while continuing to promote the sustainable management of natural and physical resources for current and future generations.
- The proposed bill will set out a 'one-stop-shop' process for approvals under a range of legislation, including the Resource Management Act.
- Due to fast-track policy being part of the Government's 100-day work programme, there has been only limited time to engage with iwi/Māori on this.
- We have been working with iwi leaders and advisors and value that process, noting again the limited time and scope for engagement.
- I understand this timing is not ideal. However, there will be an opportunity to provide feedback on the fast-track Bill during the Select Committee process.
- The Government has committed to upholding redress in Treaty of Waitangi settlements and specified arrangements, including through the proposed fast-track regime.

The following questions may arise:

- **What projects can access the fast-track consenting process?**

  Answer: Delegated Ministers are working on this, but it is expected that a wider range of projects (eg, infrastructure, housing, aquaculture and resource extraction) will be eligible.

  The process will prioritise projects with regional and national benefits. The criteria for what constitutes regional and national benefits to be discussed at Select Committee.

- **How do projects get onto the list?**

  Answer: We are considering the process for listed projects, but we anticipate nominated projects will be assessed against the purpose of the Bill and the eligibility criteria, in the same way as a referred project (including consultation with local government and relevant Māori groups).

  Projects nominated for listing should have a greater focus on how 'ready' the project is to progress if it is listed.

  There is also an opportunity for projects to be added to the list through the Select Committee process.

- **How will the Minister decide what projects to refer to the Expert Panel?**

  Answer: Projects are eligible for referral if someone submits an application that meets the eligibility criteria. The eligibility criteria are designed to enable a broad range of activities to access the fast-track pathway, provided they would deliver significant regional and national benefits. Projects would be assessed against certain criteria (eg, consistency with the purpose of the Act, and whether they would achieve real efficiency gains from using the fast-track pathway).

  Projects would not be eligible for fast-tracking if they:

  - would occur on land returned under a Treaty settlement, or identified Māori land, without agreement (in writing) from the relevant landowner(s)
  - would occur in a customary marine or protected customary rights area without agreement from the rights holder/group
  - includes an activity that would occur within an aquaculture settlement area unless it has the required authorisation.

- **How will projects be assessed for their compliance against Treaty settlements?**

  Answer: Decisions on this are still being considered. I can provide you with further information when it becomes available.

- **Will we be able to see the Fast-Track Bill before it is introduced?**

  Answer: There will be a limited opportunity to share the bill a very short time ahead of introduction with those PSGEs who may be particularly affected by it. For more information about this you can contact Ministry for the Environment officials.

- **What funding is available for this engagement process?**

  Answer: At this stage, we do not have funding available that could be used to support engagement on development of the proposed fast-track process. However, if there is a particular financial barrier which is preventing your engagement, please let officials know.

Ministry for the Environment
Manatū Mō Te Taiao

Appendix 2: High level summary of feedback from PSGEs and other Māori representative groups on the fast-track consenting proposals

Category	Generalised feedback	Suggested response
Opportunity	• Sometimes fast-track consenting can be good. • Opportunity to promote their own development proposals – for example, how can PSGEs get their aquaculture ventures on the list of fast-tracked projects? • Opportunity to support other proposals within their rohe. • Less bureaucracy. • Support does not mean they support development at the cost of the environment. • Supportive of where this might help iwi doing things for iwi. • Iwi are looking for opportunities and want to work with the government – resource iwi to develop protections and devise how this can be done. • Support for FTC where benefits clearly accrue to local communities, not companies and interests from outside a region. • Iwi see opportunities relating to housing developments, storage and use of water, and unlocking the potential of Māori land.	The proposed fast-track regime will provide PSGEs/iwi/hapū/Māori groups the opportunity to promote development proposals they may be involved in or proposals within their rohe which benefit Māori. The information requirements for fast-track applications will include sufficient detail to enable the Minister to make a decision informed by, among other things, the impact of proposed projects on Māori rights and interests and Treaty settlements. Further, the eligibility criteria may support Māori development and climate adaptation aspirations. The proposal that projects would be ineligible on land returned under a Treaty settlement or identified Māori land – unless permitted by the owners – provides an important protection, whilst also enabling Māori landowners to support or undertake development (e.g., papakāinga).
Treaty Partnership	• Wish to be consulted as a Treaty partner (not as part of general public) on both proposal and referral process, consistent with settlement obligations. Take the time to get it right.	The Government has committed to upholding redress in Treaty of Waitangi settlements and

and Consultation	• Crown obligations to act in good faith and engage properly endure irrespective of '100-day plans'. Want to avoid litigation by ensuring genuine consultation (noting past litigation). • The Crown's apology and acknowledgement in the Treaty settlement are the most important things for many PSGEs - how will the Crown keep its promises? • Treaty settlements are enduring and won't go away. • If things of substance are happening in our areas of significance and impacting on our lands, taonga, waters, we expect to be consulted with and cooperated with. If anything prejudices that we would see it as a breach of our settlement. • Concerning that a FTC regime might contemplate changing Treaty settlement. • Concern that this FTC process may become the new consenting process. • Feels dangerous. Need to protect our voice in key decisions affecting our rohe. Need a say on what happens in our takiwā. • Iwi/hapū groups have spent many years and lots of money getting provisions into RMA plans to protect the environment and iwi/hapū interests and will be extremely frustrated and angry if FTC ignores or runs rough-shod over these. • Given the extremely compressed timeframe for engaging with PSGEs/iwi, want to see a draft of the Bill before it goes into the House. • Cautioning officials against providing advice that this is a Treaty compliant process or process that upholds settlements. Don't agree that it will.	specified arrangements, including through the proposed fast-track regime. Due to fast-track policy being part of the Government's 100-day work programme, there has been only limited time to engage with Iwi/Māori on this. We have been working with iwi leaders and advisors and value that process, noting again the limited time and scope for engagement. I understand this timing is not ideal. However, there will be an opportunity to provide your feedback on the fast-track Bill during the Select Committee process.
How will Treaty Settlements and other RMA	• PSGEs see their settlements as full and final. Would have an issue with proposals that challenge or circumvent that. • The intent of the Treaty settlement is to reset the iwi-Crown relationship and move it into a constructive place. It is not just redress provisions at the time of settlement that must be upheld, also the relationships/processes built up since in RMA space.	Cabinet has agreed that the proposed fast-track bill will include protections for Treaty of Waitangi settlements and specified arrangements including under the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act

Arrangements be upheld?	• FTC legislation must have a Treaty clause as well as specific Treaty settlement protections. Settlements were agreed in the context of the Treaty clause in s8 of the RMA, any removal of this will weaken Treaty settlement redress. • Te Ture Whaimana should be given primacy in FTC legislation. Support inclusion of a clause "of equivalent effect" to s104 of the NBA rather than an "equivalent clause". • Inclusion of other approvals (eg Heritage, DOC) will trigger other aspects of Treaty settlements outside of RMA. How can we be assured these will be upheld? • Would have concerns about projects in the EEZ given interests provided for in Treaty settlements. Iwi have interests beyond the 12 nautical mile boundary. • Will the government critically examine and confirm the new legislation is consistent with existing Treaty settlements or will iwi be expected to provide all feedback on their own respective settlements? • Will the new fast track process have the minimum standards upholding the Treaty and Treaty settlements that the Covid fast track process did? • Iwi don't have confidence Treaty settlements and other arrangements will be protected if there are no Treaty provisions in the FTC Bill. • Concern 'fast-tracking' will be achieved by removing settlement protection mechanisms supporting iwi protection of their taiao.	2019, Mana Whakahono ā Rohe and joint management agreements under the RMA. I am aware there are numerous commitments in Treaty settlements and specified arrangements that relate expressly to resource consent processes and approval processes under the conservation legislation and the fast-track legislation will need to include protections for those commitments. My officials are currently considering how to appropriately uphold Treaty settlements in the fast-track regime. They have been engaging with PSGEs and Māori groups to gather your feedback and that feedback has been relayed to us as Ministers. I acknowledge PSGEs have built and maintained relationships with various local bodies and groups in the RMA space, on top of the relationships provided for in Treaty settlements. The proposed fast-track regime will not encumber those existing relationships.
s 9(2)(ba)(i)	• s 9(2)(ba)(i)	Cabinet has agreed that the proposed fast-track bill will include protections for Treaty of Waitangi settlements and specified arrangements including under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

Iwi Aquaculture/ Fisheries feedback	• How will Aquaculture settlement areas be protected? What opportunities will there be for iwi and hapū for new aquaculture applications? • Over 1000 aquaculture consent renewals coming up; how will they be dealt with? Can they be applied for under this system? Is the intention for new aquaculture space to be made available? • What about undue adverse effects test in Fisheries Act – can this be included within scope of consents under FTC legislation?	The proposed fast-track regime will provide PSGEs/iwi/hapū/Māori groups the opportunity to promote development proposals they may be involved in or proposals within their rohe which benefit Māori, including aquaculture. The Government has committed to upholding redress in Treaty of Waitangi settlements and specified arrangements through the proposed fast-track regime, including those relating to aquaculture.
Claims yet to be settled	• How will the system recognise the rights and interests of groups still negotiating settlements or yet to enter negotiations? Not enough just to involve PSGEs. • Those yet to settle should be included on the same basis as settled groups. • Unclear how rights under the Marine and Coastal Area (Takutai Moana) Act 2011 will be upheld. How will live applications for customary title and rights in the Courts or through Crown engagement pathway be safeguarded?	My officials will be considering how to appropriately protect the rights and interests of those groups who are yet to settle their historical Treaty claims.
Process/Policy concern	*System design* • Adapting a system designed for a pandemic to something designed for economic benefit is very risky. A critical eye needs to be run over what is retained from NBA and Covid regimes. • Concern this may cut corners and elevate economic gains over environmental protections. • What are the triggers that define fast track process, approval process? • Make it mandatory for applicants to engage with PSGEs and other Māori groups when preparing applications.	I acknowledge the fast-track regimes under the COVID-19 Recovery Act and Natural and Built Environment Act were set up for different purposes – however, many of the procedural mechanisms will work well in this new system. My officials are currently considering what can be used from previous fast-track regimes – for example, the requirement to prepare a report on Treaty obligations to inform Ministers' referral decisions, and requirements for Ministers and Expert Panels to seek comments

	• Make it mandatory for the Ministers to talk to the PSGEs before a consent is sent to the Expert Panel. • Enabling activities classified as 'prohibited' in RMA plans or activities previously declined consent by councils (i.e. 'bad' projects) will be regarded as a Treaty breach and will attract litigation. • Scope of the FTC in terms of the nature and type of projects is far greater than anticipated by some PSGEs/iwi groups. • Concern that with so much of the FTC process resting in the hands of Ministers, decision making will be 'politicised' instead of what's good for Māori, local communities, and the environment. *Criteria* • What is the justification for an individual applicant having discretion to circumvent the process that the Crown has designed for everyone else? • There should be a threshold to meet before this process is applied. • Will eligibility criteria have Treaty and Treaty settlement considerations built in? • How will what iwi consider as "regionally significant" be incorporated? • Seeking clarity on what the similarities between FTC and Call-in processes are. • Criteria could include references to wāhi tapu, wāhi taonga and other valued items to protect culturally sensitive environments and features. *Eligibility* • Will category 3 marae and papakainga land under the FOSAL process be included? • Seek inclusion of Building Act approvals (similar to OIC temporary housing).	from relevant Treaty settlement / related entities and other identified Māori groups with interests at the referral stage and Expert Panel stage respectively. We are still working on finalising the eligibility criteria. The information requirements for fast-track applications will include sufficient detail to enable the Minister to make a decision informed by, among other things, the impact of proposed projects on Māori rights and interests and Treaty settlements. Further, the eligibility criteria may support Māori development and climate adaptation aspirations. The proposal that projects would be ineligible on land returned under a Treaty settlement or identified Māori land – unless permitted by the owners – provides an important protection, whilst also enabling Māori landowners to support or undertake development (e.g., papakāinga).

	• Want water storage expressly enabled even if it would be declined under RMA. • Want learning from flooding/cyclone response to be included. *Protections* • The interim FTC regime included in a Schedule both an obligation to uphold Treaty settlements as well as a process to come into force nine months later which contemplated Treaty settlement amendments. A fast-track regime should be tightly confined and should uphold settlements and not require settlement amendments. • Would like to see an equivalent of s6 of Covid FTC legislation in new regime. • How will FTC interact with the Hawke's Bay Regional Planning Committee Act 2015? • How will covenants and other arrangements PSGEs/iwi have with DOC be pulled in the FTC? • Questions around how this legislation might lessen protections for other taonga such as heritage sites of significance (particularly wāhi tapu). • Include protection for land that is subject to rights of first refusal. • There are some places that development should never be located eg, maunga tapu, wāhi tapu, wāhi tupuna, and urupā. What protections will FTC provide for these? • FTC process needs to refer to settlement documents to check for consistency of process, decision making and outcomes with commitments made by the Crown to iwi/hapū. • Concerned about potential for FTC to override rights, prerogatives and entitlements provided for in Treaty settlements and other	My officials are currently considering whether other ineligibility criteria are required to protect Treaty settlements and specified arrangements

	arrangements including relationship agreements, environmental protocols and covenants, MACA/CMT, JMAs etc.	
Expert Panels	• Concerns around how PSGEs will be represented on panels including in areas with many interested and overlapping groups. • Concern regarding cultural impact assessments having enough time for due diligence - seeking clarity on how long the expert panel process will take. • How agile will the expert panel process be, e.g. ensuring if an awa is on the boundary between several PSGEs one will not speak for the other. • How the panel will interact with local district plans.	I acknowledge how Treaty settlements and other arrangements are protected is affected by whether Part 2 of the RMA and section 4 of the Conservation Act continue to apply as they were originally agreed. My officials are working through what mechanisms are required to uphold settlements and other arrangements in this area.
Timeframes/ Information provided	• Timing for feedback is totally unacceptable. • Not enough information provided to engage with meaningfully. • Concern it is hard to “say no” to the proposal. • Would want to review the content and comment on the draft Bill.	Due to fast-track policy being part of the Government’s 100-day work programme, there has been only limited time to engage with Iwi/Māori on this. We have been working with iwi leaders and advisors and value that process, noting again the limited time and scope for engagement. I understand this timing is not ideal. However, there will be an opportunity to provide your feedback on the fast-track Bill during the Select Committee process.
Resourcing	• Will PSGEs be resourced to engage on FTC policy proposals? • In light of the urgency, expect that the costs should be carried by the Crown rather than expending settlement monies.	At this stage, we do not have funding available that could be used to support engagement on development of the proposed fast-track process. However, if there is a particular

	• Very difficult for PSGE/iwi groups to contribute meaningfully to developing the FTC without appropriate resourcing from the Crown, especially within such tight timeframes. • Will PSGEs be resourced to assess impacts of applications and provide feedback? • PSGEs are already struggling to adequately respond to RMA consents due to limited capacity and resources. Concern this will only make things worse. • Even where iwi/hapū input in the FTC process is provided for, participation will be very challenging for groups that are yet to settle or do not have access to funding.	financial barrier which is preventing your engagement, please let me know.
Other	• Object to any FTC process. • Request direct consultation on FTC regime design before progressing any further. • Due to the rushed timeframe we decline to provide substantive feedback. • The government has not properly engaged with us– we will be filing a Tribunal claim.	I encourage PSGEs to continue to work with my officials on the resource management reforms. I also encourage PSGEs to submit on the fast-track Bill during the Select Committee process.

Appendix 3: List of PSGEs and other groups invited to the 27 February 2024 meeting

Iwi	PSGE	Status
Ngātikahu ki Whangaroa	Kahukuraariki Trust	PSGE
Ngāti Kurī	Te Manawa o Ngāti Kuri	PSGE
Te Roroa	Te Roroa Manawhenua Trust	PSGE
Te Aupōuri	Te Rūnanga Nui o Te Aupōuri Trust	PSGE
NgāiTakoto	Te Rūnanga o NgāiTakoto	PSGE
Te Rarawa	Te Rūnanga o Te Rarawa	PSGE
Te Uri o Hau	Te Uri o Hau Settlement Trust	PSGE
Ngā Mana Whenua o Tāmaki Makaurau	Whenua Haumi Roroa o Tāmaki Makaurau Limited Partnership	PSGE
Ngāti Whātua o Kaipara	Ngā Maunga Whakahii o Kaipara Development Trust	PSGE
Ngāi Tai ki Tāmaki	Ngāi Tai ki Tāmaki Trust	PSGE
Ngāti Manuhiri	Ngāti Manuhiri Settlement Trust	PSGE
Ngāti Tamaoho	Ngāti Tamaoho Settlement Trust	PSGE
Ngāti Whātua Ōrākei	Ngāti Whātua o Ōrākei Trust Board	PSGE
Te Kawerau a Maki	Te Kawerau Iwi Settlement Trust	PSGE
Maniapoto (Waipa River)	Te Nehenehenui	PSGE
Waikato-Tainui (Waikato River)	Te Whakakitenga o Waikato Inc Trustee of Waikato Raupatu Land Trust, and Waikato Raupatu River Trust	PSGE
Raukawa	Raukawa Settlement Trust	PSGE
Te Arawa	Te Arawa River Iwi Trust	PSGE
Maraeroa A and B Blocks	Maraeroa A & B Trust	PSGE
Ngāti Hauā	Ngāti Hauā Iwi Trust	PSGE
Ngāti Korokī Kahukura	Taumata WiiWii Trust	PSGE
Ngāti Hinerangi	Te Puāwaitanga o Ngāti Hinerangi Iwi Trust	PSGE

Iwi	PSGE	Status
Pouakani	Te Putahitanga o Nga Ara Trust (Pouakani Trust)	PSGE
Central North Island Forests Land Collective	CNI Iwi Holdings Limited	PSGE
Ngāti Rangitihi	Te Mana o Ngāti Rangitihi Trust	PSGE
Ngāti Mākino	Ngāti Mākino Iwi Authority	PSGE
Ngāti Rangiteaorere	Ngāti Rangiteaorere Koromatua Council	PSGE
Ngāti Tūrangitukua	Ngāti Tūrangitukua Charitable Trust	PSGE
Ngāti Tūwharetoa (Bay of Plenty)	Ngāti Tūwharetoa (Bay of Plenty) Settlement Trust	PSGE
Ngāti Whakaue (Wai 94 claim)	Pukeroa Oruawhata Trust	PSGE
Tapuika	Tapuika Iwi Authority Trust	PSGE
Te Arawa Lakes	Te Arawa Lakes Trust	PSGE
Waitaha	Te Kapu o Waitaha	PSGE
Ngāti Tuwharetoa	Te Kotahitanga o Ngāti Tūwharetoa	PSGE
Affiliate Te Arawa Iwi and Hapu	Te Pumautanga o Te Arawa Trust	PSGE
Ngāti Rangiwewehi	Te Tāhuhu o Tawakeheimoa Trust	PSGE
Ngāti Awa	Te Rūnanga o Ngāti Awa	PSGE
Ngāti Manawa	Te Rūnanga o Ngāti Manawa	PSGE
Ngāti Whare	Te Rūnanga o Ngāti Whare	PSGE
Ngāti Pūkenga	Te Tāwharau o Ngāti Pūkenga Trust	PSGE
Tūhoe	Te Uru Taumatua	PSGE
Rongowhakaata	Rongowhakaata Settlement Trust	PSGE
Ngai Tāmanuhiri	Tāmanuhiri Tutu Poroporo Trust	PSGE
Ngāti Porou	Te Rūnanganui o Ngāti Porou	PSGE
Ngāti Kahungunu ki Heretaunga Tamatea	Tamatea Pōkai Whenua	PSGE
Ahuriri Hapū	Mana Ahuriri Trust	PSGE
Maungaharuru-Tangitū Hapū	Maungaharuru-Tangitū Trust	PSGE

Iwi	PSGE	Status
Ngāti Pāhauwera	Ngāti Pāhauwera Development Trust	PSGE
Rangitāne o Wairarapa Tāmaki-nui-ā-Rua	Rangitāne Tū Mai Rā Trust	PSGE
Wairoa	Tātau Tātau o Te Wairoa Trust	PSGE
Ngāti Hineuru	Te Kōpere o te iwi o Hineuru Trust	PSGE
Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua	Ngāti Kahungunu ki Wairarapa Tamaki nui-ā-Rua Settlement Trust	PSGE
Whanganui River Iwi	Ngā Tāngata Tiaki o Whanganui	PSGE
Ngaa Rauru Kiitahi	Te Kaahui o Rauru	PSGE
Taranaki Iwi	Te Kāhui o Taranaki	PSGE
Ngāruahine	Te Korowai o Ngāruahine Trust	PSGE
Te Ātiawa	Te Kōtahitanga o Te Atiawa Trust	PSGE
Ngāti Apa (North Island)	Te Rūnanga o Ngā Wairiki Ngāti Apa	PSGE
Ngāti Mutunga	Te Rūnanga o Ngāti Mutunga	PSGE
Ngāti Ruanui	Te Rūnanga o Ngāti Ruanui Trust	PSGE
Ngāti Tama	Te Rūnanga o Ngāti Tama	PSGE
Ngāti Rangi	Te Tōtarahoe o Paerangi	PSGE
Ngāti Maru (Taranaki)	Te Kāhui Maru Trust	PSGE
Taranaki Whānui ki Te Upoko o Te Ika	Port Nicholson Block Settlement Trust	PSGE
Rangitāne o Manawatū	Rangitāne o Manawatū Settlement Trust	PSGE
Ngati Toa Rangatira	Te Rūnanga o Toa Rangātira Inc (Toa Rangatira Trust)	PSGE
Ngāti Apa ki te Rā Tō	Ngāti Apa ki Te Rā Tō Post-Settlement Trust	PSGE
Ngāti Rārua	Ngāti Rārua Settlement Trust	PSGE
Ngāti Tama ki Te Tau Ihu	Ngāti Tama ki Te Waipounamu Trust	PSGE
Rangitāne o Wairau	Rangitāne o Wairau Settlement Trust	PSGE
Te Ātiawa o Te Waka-a-Māui	Te Ātiawa o Te Waka-a-Māui Trust	PSGE
Ngāti Kōata	Te Pātaka a Ngāti Koata	PSGE

Iwi	PSGE	Status
Ngāti Kuia	Te Rūnanga o Ngāti Kuia Trust	PSGE
Ngāi Tahu	Te Rūnanga o Ngāi Tahu	PSGE
Moriori	Moriori Imi Settlement Trust	PSGE
Ngāti Ranginui	Nga Hapū o Ngāti Ranginui Settlement Trust	Legislation introduced
Ngāti Tara Tokanui	Ngāti Tara Tokanui Trust	Legislation introduced
Ngāti Hei	Hei o Wharekaho Settlement Trust	Legislation introduced
Ngāti Paoa	Ngāti Paoa Iwi Trust	Legislation introduced
Hauraki Collective	Pare Hauraki Cultural Redress Trust; Pare Hauraki Forests Limited Partnership; and Pare Hauraki RFR Limited Partnership	Legislation introduced
Te Korowai o Wainuiārua	Uenuku Charitable Trust	Legislation introduced
Taranaki Maunga	Te Tōpuni Ngārahu (Collective Entity representing all eight iwi of Taranaki) - Established in Sept 2023 Te Tōpuni Kōkōrangi (Joint Governance Entity) - yet to be established.	Legislation introduced
Ngā Mana Whenua o Tāmaki Makaurau	Te Patukirikiri Iwi Inc	Deed signed
Ngā Mana Whenua o Tāmaki Makaurau	Te Ākitai Waiohua Iwi Authority	Deed signed
Ngāti Rahiri Tumutumu	Ngāti Tumutumu Trust	Deed initialled and ratified
Ngā Mana Whenua o Tāmaki Makaurau	Ngaati Whanaunga	Deed initialled and ratified
Ngā Mana Whenua o Tāmaki Makaurau	Ngāti Tamaterā Treaty Settlement Trust	Deed initialled and ratified
Ngā Mana Whenua o Tāmaki Makaurau	Ngāti Maru (Hauraki) Treaty Settlement Negotiators	Deed initialled and ratified

Iwi	PSGE	Status
Marutūāhu Collective	2 Redress Entities: Commercial redress - Marutūāhu Rōpū Limited Partnership Cultural redress - Taonga o Marutūāhu Trustee Limited	Deed initialled and ratified
Te Whānau a Apanui	Mandated individuals: Rikirangi Gage Matanuku Mahuika Natalie Coates	Deed initialled
Ngā Potiki	Ngā Pōtiki a Tamapahore Trust	Legislation introduced
Ngāi Te Rangi	Ngāi Te Rangi Settlement Trust	Legislation introduced
Whakatōhea	Te Tāwharau o Te Whakatōhea Trust	Legislation introduced
Ngā Hapū o Ngāti Porou	Ngā hapū o Ngāti Porou Pokitirua ki Whangaokena Takutai Kaitiaki Trust Whangaokena ki Onepoto Takutai Kaitiaki Trust Te Papatipu o Uepohatu me te Papatipu o te Ngaere Takutai Kaitiaki Trust Whānau Hapū of Te Aitanga a Mate Te Aowera and Te Whanau a Hinekehu Takutai Kaitiaki Trust Ngā Hapū o Waipiro Takutai Kaitiaki Trust Ngāti Wakarara and Ngāti Hau Takutai Kaitiaki Trust	Holders of Customary Marine Title under Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

Ministry for the Environment
Manatū Mō Te Taiao

Briefing: Fast-track consenting delegated decisions

Date submitted: 26 February 2024
Tracking number: BRF-4307
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 and Appendices	27 February 2024

Actions for Minister's office staff

Forward this briefing to:

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

Hon Paul Goldsmith, Minister for Arts, Culture and Heritage

Hon Tama Potaka, Minister of Conservation, Māori Crown Relations: Te Arawhiti

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

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

Appendices and attachments

Appendix 1: General procedural matters + matters identified from review of bill

Appendix 2: Matters identified during review of the bill

Appendix 3: Conservation approvals

Appendix 4: Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

Appendix 5: Crown Minerals Act 1991 + Heritage New Zealand Pouhere Taonga Act 2014

Appendix 6: Further information on ownership and administration of reserves under the Reserves Act

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Responsible Manager	Arron Cox		
General Manager	Jo Gascoigne	s 9(2)(a)	✓

Minister's comments

Fast-track consenting delegated decisions

Key messages

1. This briefing seeks your decisions on remaining policy decisions for the fast-track consenting bill (the bill).

2. You and delegated Ministers previously made decisions on the bill, most recently BRF-4239. This briefing (BRF-4307) provides remaining policy decisions to ensure drafting can continue. These recommendations are listed at the end of this briefing and in the tables in the appendices.

3. The briefing includes matters the Ministry for Primary Industry (MPI) have recommended to support existing allocation frameworks for the occupation of space in the common marine and coastal area.

One stop shop: Bundling consents, permissions and authorisations

4. To ensure the fast-track process operates as smoothly as possible, we propose making it clear when a referral application is made, that it must identify all the consents, authorities and permissions that are required for approvals available under this bill. This 'bundling' of approvals ensures all the information needed on the scope of the application is provided early in the process. Note the panel retains the ability to suspend (but not decline) the process if additional authorisations or permissions are found to be required.

5. The briefing also recommends rescinding a previous decision for a process to add projects to the schedule of projects (Schedule A) by Order in Council.

Conservation Approvals

6. In BRF-4239 (Table 2A, recommendation I) you agreed to include Department of Conservation (DoC) approvals in the fast-track process. You sought further advice on a few matters. This advice is provided in Appendix 2, as well as additional advice on procedural matters.

7. At the 15 February Joint Ministers meeting on fast-track proposals, Ministers indicated they would like more information on ownership and administration of reserves under the Reserves Act. Appendix 6 includes this.

Exclusive Economic Zone Act

8. In BRF-4239 (Table 2A, recommendation I) you agreed to include Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ) marine consents in the fast-track process. Officials noted more information would be required on the procedural mechanisms required to support the inclusion of the EEZ marine consenting regime. This additional information is included in this briefing in Appendix 4.

Offshore renewable energy projects

9. The Government is developing new legislation to allocate rights to the development of offshore renewable energy. We recommend offshore renewable energy projects cannot

access the new fast track process (either within the RMA, the EEZ Act, or both) until such time that this new legislation is in place, and appropriate permits allocated.

Heritage New Zealand Pouhere Taonga Act 2014

10. In BRF-4239 (Table 2A, recommendation IX) you agreed to include approvals under the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPT). Heritage New Zealand (HNZ) administers and determines the archaeological authorities that are to be included in the one stop shop provisions. Procedures in the bill and the HNZPT need to be aligned so that decisions about archaeological authorities can be made quickly and efficiently. These procedural alignments are set out in Appendix 4.

11. There are some specific recommendations that distinguish archaeological authorities from other one stop shop authorisations. These are recommended as follows:

    - Archaeological authorities cannot be applied for via the fast-track process on their own but must be part of an RMA consent application or notice of requirement. This approach ensures that these permissions are only considered as part of a wider project, avoiding the need to stand up a panel for a minor permission and complying with the bundling principle discussed in paragraph 4.

    - Rather than the panel considering the archaeological authority, the Ministry for Culture and Heritage (MCH) have recommended that these authorities are considered by HNZ in parallel with the panel's assessment of the project. In this way, HNZ must consider any applications for archaeological authorities and provide their recommendations to the panel which are then forwarded to the Joint Ministers. To facilitate this the provisions of the HNZPT Act have been aligned to the bill.

Crown Minerals Act 1991

12. In BRF-4239 (Table 2A, rec VIII) you agreed to include access arrangements for Crown land and land in common marine and coastal area, in the fast-track process. Procedural alignments are required between the bill and sections 53-80 of the Crown Minerals Act. These sections need to continue to apply to projects listed and referred to the fast-track consenting process. This means a person will still need to give notice to request a grant of right of access and the content of the access arrangement must be consistent with the Crown Minerals Act.

Responsible Minister(s)

13. Cabinet agreed that the Minister responsible for making referral decisions will be specified in the bill and that decisions on the responsible Minister will be made by delegated Ministers. You have indicated a preference that the responsible ministers for the purposes of referrals should be the Minister for Infrastructure, the Minister for Transport, and the Minister for Regional Development acting jointly to make referral decisions. Cabinet has also agreed that other relevant portfolio ministers would be consulted on projects. You have options for how to allocate projects to joint Ministers.

14. You have already agreed that the Minister responsible for the Crown Minerals Act will be one of the 'joint Ministers' for relevant decisions (BRF-4203 Table A), and that the Minister of Conservation will remain the decision-maker for conservation concessions (BRF-4203 Table A). We now seek your confirmation of your preferred configuration of the core joint ministers.

15. The Minister for Infrastructure would be responsible for appointing the panel convenor (BRF-4115 Table B), and we now seek your agreement to ensure consultation is undertaken with relevant portfolio ministers in that appointment process.

s 9(2)(h)

s 9(2)(h)

Recommendations

16. We recommend that you:

a. **agree** to forward this briefing and appendices to the Minister of Energy, Local Government and Transport, the Minister for Arts, Culture and Heritage, and the Minister of Conservation, Māori Crown Relations: Te Arawhiti, and the Minister of Oceans and Fisheries, Resources and Regional Development

Yes | No

b. **agree** to the specific recommendations in the Appendices.

Yes | No

Signatures

Martin Workman
Deputy Secretary
Ministry for the Environment
[Date]

Paul Stocks
Title
Second Directorate Name
[Date]

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

Ministry for the Environment
Manatū Mō Te Taiao

Appendix 1: General procedural matters + matters identified during review of the bill

Proposal	Advice	Recommendations	Decision
General procedural matters			
1) Management of projects: Bundling approvals	To ensure the fast-track process operates as smoothly as possible, we propose making it clear when a referral application is made, that it must identify all the consents, authorities and permissions that are required for approvals available under this bill. This approach does not force an applicant to apply for all the approvals through fast-track, but rather it distinguishes between identifying all the approvals required and identifying the approvals that are to be referred through the fast-track process. It ensures the applicant applies for all the fast-track approvals at the same time. That is, the approvals are "bundled up". This bundling of approvals ensures all the information needed on the scope of the application is provided early in the process. Note the panel retains the ability to suspend the process if it is discovered that additional authorisations or permissions are required.	1. **Agree** applicants must identify in their referral application, all of the consents, authorities and permissions that are being applied for under the fast-track process. 2. **Note** the panel retains the ability to suspend the process if additional authorisations or permissions are required.	**Yes | No** **Noted**
2) Adding projects to a schedule – rescinding need for Order In Council	In MFE BRF-4239 (Rec 53 and 54, Table B3) you agreed to projects being added to the schedule of projects (Schedule A) by Order in Council. As the referral pathway already provides for projects to go directly to panel (once referred by Ministers), there is no efficiency in also adding a pathway for the projects to be listed in the legislation. We have previously advised on how projects listed in central government priority lists (for example, the infrastructure priority list Te Waihanga is developing) can be considered by Ministers when making referral decisions. To do this you agreed adding "central government infrastructure priority list" to the eligibility criteria. Officials are mindful that projects may need to be considered for inclusion in a schedule through the select committee process. A parallel process to deliver this is being considered.	3. **Agree** to rescind MFE BRF-4239 recommendation 53 and 54 in Table B3, removing the ability to add projects to the schedules of projects by Order in Council, as the referral pathway provides a more efficient pathway for infrastructure priority projects to be referred by Joint Ministers directly to a panel.	**Yes | No**
3) Exercise of resource consent while applying for new consent	MPI are recommending RMA sections 124 (for activities generally) and 165ZH (for aquaculture activities) apply to projects progressing through the bill, with the necessary modifications. These sections enable consent holders for existing activities (eg, marine farming) to continue operating under the existing consent beyond its expiry date, so long as the consent is lodged with the consent authority at least 6 months before expiry (or 3 months, at the discretion of the consent authority). While the bill has been designed primarily to enable new development, there could be scenarios where significant existing developments apply to the bill to progress new consents for the same activity (ie, replacement consents).	4. **Agree** that sections 124 and 165ZH of the RMA apply to listed and referred projects with necessary modifications, including that: a. for listed projects in Category A, the consent holder will continue to be able to operate under the existing consent so long as an application is made within 6 months of the enactment of the Act or at least 3 months before expiry of the consent b. for referred projects and listed projects in Category B, the consent holder will continue to be able to operate under the existing consent so long as an application for referral is made within 6 months of the enactment of the Act or at least 3 months before expiry of the consent.	**Yes | No**
4) Ineligible projects	MPI recommend additional ineligibility criteria are included in the bill to uphold the integrity of allocation frameworks and decisions made by regional councils and Ministers under Part 7A of the RMA. Part 7A of the RMA deals with the occupation of space in the common marine and coastal area. There are provisions in Part 7A that control when resource consent applications can be made, by preventing applications where: • an allocation regime is in place in a plan, unless the applicant holds the necessary authorisation (s165J) • a stay on applications is in place while the Minister of Conservation determines whether to introduce a new allocation method at request of regional council (s165M) • the Minister of Conservation has put in place an allocation regime, unless the applicant holds the necessary authorisation (s165Q) • local Council has requested that the Minister of Aquaculture place a stay on applications (s165ZC) • Minister of Aquaculture has placed stay on applications (s165ZDB). These Part 7A provisions have not had extensive use, however, are important considerations for decision-makers under the bill to ensure cohesiveness with the RMA and, in some cases, to ensure Treaty settlement obligations are upheld. Six iwi have preferential rights to purchase a proportion of authorisations if allocated by regional councils or the Minister of Aquaculture through a tender process under Part 7A – these rights are afforded to them through their individual Treaty settlement legislation (Ngāi Tahu Claims	5. **Agree** a project is ineligible if it includes an activity (proposed to be within the common marine and coastal area) that would be prevented under section 165J, 165M, 165Q, 165ZC, or 165ZDB of the RMA.	**Yes | No**

Proposal	Advice	Recommendations	Decision
	Settlement Act 1998; Ngati Ruanui Claims Settlement Act 2003; Ngati Tama Claims Settlement Act 2003; Ngaa Rauru Kiitahi Claims Settlement Act 2005; Ngāti Awa Claims Settlement Act 2005; Ngāti Mutunga Claims Settlement Act 2006). Ensuring the bill upholds allocation regimes under Part 7A will mean the rights under these Acts are also upheld.		
5) Meaning of Treaty settlements and specified arrangements	MPI recommend that where an application for a coastal permit and/or a resource consent to undertake an activity is in the coastal marine area or the EEZ, Ministers must seek comment from the Director-Generals of the Ministry for Primary Industries, Department of Conservation, and the Secretaries for the Environment, Transport, and the Chief Executive of the Ministry of Business, Innovation and Employment. This is recommended to ensure a project being considered under this bill has regard to the fisheries settlement (eg: Treaty of Waitangi (Fisheries Claims) Settlement Act 1992). MFE BRF-4239 recommended clarity around which agreements and entities are included within 'Treaty settlements and specified arrangements' and 'Treaty settlement entity and other relevant entity'. MPI officials further recommend the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 is also explicitly included in this list to ensure obligations and protections under that Act are upheld, both within the territorial sea and the EEZ.	6. **Agree** where an application includes an application for a coastal permit and/or a resource consent to undertake an activity in the coastal marine area or the exclusive economic zone, the joint Ministers must request and have regard to the views of the Director-General of the Ministry for Primary Industries, Department of Conservation, and the Secretaries for the Environment, Transport, and the Chief Executive of the Ministry of Business, Innovation and Employment. 7. **Agree** that Treaty settlements and specified arrangements, as referenced in the bill, will include the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. 8. **Agree** that Treaty settlement entity and other relevant entity, as referenced in the bill, will include entities under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.	**Yes | No** **Yes | No** **Yes | No**
6) Eligibility criteria	In MFE BRF-4115 / MBIE # 2324-1800, Table B, recommendation 8 you agreed that applications within an aquaculture settlement area where an applicant holds the relevant authorisation are determined to be regionally and/or nationally significant projects under the bill. MPI recommend that applications in an area reserved for aquaculture activities within individual iwi settlements are also explicitly referenced in the bill as being regionally and/or nationally significant projects. This would promote development within these areas, support iwi aspirations to be realised in an efficient and effective manner and ensure consistency between projects in aquaculture settlement areas and projects in areas reserved for aquaculture in individual iwi settlements.	9. **Agree** to amend MFE BRF-4115 / MBIE # 2324-1800, Recommendation 8, Table B) as follows: a. **Agree** applications within an aquaculture settlement area gazetted under the Māori Commercial Aquaculture Claims Settlement Act 2004 where an applicant holds the relevant authorisation, or within an area reserved for aquaculture activities within individual iwi settlements, are determined to be regionally and/or nationally significant projects under the FT bill.	**Yes | No**
7) Matters a panel must consider when making a recommendation under the RMA	In MFE BRF-4203 (Table A, Recommendation 12), you agreed the matters a panel must take into account when making a recommendation and gave weight to these criteria from greater or lesser, starting with the purpose of the bill. *Reasons for Ministerial referral* MPI recommend an addition, second in or the purpose, that the panel takes into account the reasons for Ministerial referral of the project in its assessment criteria (rather than just as context). MfE officials consider this amendment is not required given the reasons for Ministerial referral will already be matters that the panel are considering. Additionally, it requires Ministers to take their referral reasons into account again when they make their final decision. We also note Ministers will be required to take into account whether a project has been listed in the legislation as part of their referral consideration (see decision 2 above). *Weight of the Bill's purpose* MPI also recommend an additional clause to ensure the purpose of the bill has greatest weight in a panel's assessment to reduce the risk of the bill being subservient to RMA instruments (and therefore works against the intention of the bill). MfE officials note the decision has already been taken that panels must give greater weight to the purpose of the bill. CLO have provided further advice on both these matters in the legal risk section above.	10. **Agree** to add "the reasons why joint Ministers referred the application or why the application was listed" as a matter the Expert Panel must consider when assessing an application. **OR** 11. **Agree** not to amend the matters the panel takes into account. 12. **Note** that where a project is inconsistent with any relevant national direction, operative or proposed plan or policy statement under the RMA, the panel can still recommend the project is approved if it meets the purpose of the bill.	**Yes | No** **OR** **Yes | No** **Noted**
8) Appointment of a panel convenor	Cabinet agreed that the Minister for Infrastructure will appoint the panel convenor. Noting that applications may include a wide range of statutory permissions, the Minister should consult with relevant ministerial colleagues in considering such appointments, given the range of skills now required with multiple statutes under consideration.	13. **Agree** that the Minister for Infrastructure will appoint the panel convenor**,** in consultation with other Ministers whose portfolios are in consideration in the application.	**Yes | No**

Proposal	Advice	Recommendations	Decision
9) Responsible Minister(s)	Cabinet agreed (CAB-24-MIN-0008, clause 20) that: a. the Ministers responsible for making referral decisions under the bill will be the Minister for Infrastructure, Minister of Transport, and Minister for Regional Development ("the joint Ministers"). You have agreed in BRF-4203) that: a. joint Ministers make substantive decisions based on report and recommendations from Expert Panel (Table A, recommendations 6 to 8) b. the Minister responsible for the Crown Minerals Act 1991 will be one of the 'joint Ministers' for relevant decisions (Table A, Conservation Approvals, recommendation 57a) c. the Minister of Conservation will remain the decision maker for conservation concessions(Table A, Conservation Approvals, recommendation 42a). There are two options on the relevant Minister(s) responsible for making the substantive decision(s): **Option 1:** "the joint Ministers" (the Minister for Infrastructure, Minister of Transport, and Minister for Regional Development) make joint decision(s) on all projects; or **Option 2:** decision(s) are made by the joint Minister whose portfolio is most relevant to the project in question (for example, transport projects are decided by the Minister of Transport). Option 1 is more procedurally efficient as it requires a single process for officials to advise joint Ministers. This option also avoids another avenue of judicial review to the decision making. Option 2 introduces more uncertainty and adds another avenue of judicial review to the decision. The approach also introduces difficulties from a practical/operational perspective. Consideration and decisions would be needed on the relevant portfolio(s) and whether applications could genuinely be split across portfolio areas of interest.	14. **Agree** that the responsible Ministers would be the Ministers for Infrastructure, Transport, and Regional Development acting as joint Ministers for the purposes of the fast-track legislation **OR** 15. **Agree** decisions are made by "the joint Minister" whose portfolio is most relevant to the project in question (for example, transport projects are decided by the Minister of Transport) 16. **Note** that the Minister responsible for the Crown Minerals Act will be one of "the joint Ministers" for relevant decisions and the Minister of Conservation will remain the decision maker for conservation concessions.	**Yes | No** **OR** **Yes | No** **Noted**

Appendix 2: Matters identified during review of the bill

Proposal	Advice	Recommendations	Decision
Responsible agency	We recommend clarifying that the responsible agency (MfE and MBIE for the purposes of drafting instructions), in consultation with other relevant agencies, provide advice and administrative support to joint Ministers for the assessment of referral applications and for their final decision on a substantive application.	1. **Agree** that the responsible agency, in consultation with other relevant agencies, provides advice and administrative support to joint Ministers for the: a. assessment of referral applications (including receiving applications and providing advice on them) b. final decision on substantive applications.	**Yes | No**
Part B listed projects	It has become clear in the drafting of the bill that the policy intent of Category B listed projects requires further refinement. We recommend the bill clarifies the intent of Category B listed projects as projects that would have significant regional or national benefits, but are not yet ready/there is not sufficient information for them to be a Part A listed project. We therefore recommend clarifying that the standard referral process applies to Category B listed projects – the only exception is that they are already deemed to have significant regional or national benefits. This would mean that joint Ministers do not need to consider the significance of the project in delivering on regional and national benefits (per cl 21(2)(d)) as that has already been established by virtue of its inclusion as a Part B listed project.	2. **Agree** to amend BRF-4203 Table B recommendation 20 as follows: a. **Agree** that the Act will include two categories of listed projects, being: b. **Category A** are projects which: i. meet the purpose of the Act, and all relevant ineligibility and eligibility criteria applying to the Ministerial referral process ii. will be automatically referred to an expert panel for decision, without having to apply for a ministerial referral. c. **Category B** are projects which: iii. ~~are likely to meet the purpose of the Act, but for which there is not enough information to determine whether the project meets all relevant ineligibility and eligibility criteria~~ iv. would have significant regional or national benefits, but for which there is not enough information to determine whether they meet all other relevant eligibility criteria and ineligibility criteria v. will have to apply for ministerial referral to an expert panel using the process as set out in the Act vi. ~~however, the relevant Minister and expert panel must have in addition, particular regard to the significance of the benefits of the project in their decision-making~~ vii. would therefore not need to satisfy the eligibility criterion relating to significant regional or national benefits viii. can be declined by ~~the expert panel~~ Joint Ministers on the same grounds as referred projects.	**Yes | No**
Purpose clause	We recommend clarifying that the policy intent of the purpose clause is to facilitate delivery of projects with “regional or national benefits” not “regional and national benefits”. We recommend applying this change to all references to “regional and national benefits” in the bill.	3. **Agree** to amend BRF-4203 Table A recommendation 9 as follows: **Agree** the purpose of the legislation should be focused on providing a fast-track decision-making process to facilitate the delivery of infrastructure and development projects with significant regional ~~and~~ or national benefits. 4. **Agree** to change all other references to “regional and national benefits” in the Bill to “regional or national benefits”.	**Yes | No** **Yes | No**
Eligibility criteria	We recommend a minor clarification to the referral decision requirements to ensure it is clear that the Ministers must be satisfied that referring a project to an Expert Panel would be consistent with the purpose of the bill. This is needed as projects themselves cannot be consistent with the purpose (to provide a fast-track process to facilitate the delivery of infrastructure and development projects with significant regional or national benefits). We also recommend clarifying that the list of matters Ministers may consider in the eligibility criteria is intended to inform their assessment of whether the project has significant regional or national benefits (ie, it is a non-exhaustive list of the types of activities that could have significant regional or national benefits). Minor clarifications are needed to earlier recommendations to ensure this policy intent is clear and aligned with the purpose clause.	5. **Agree** to amend BRF-4115 Table B recommendation 1 as follows: **Agree** the Ministers must be satisfied that referring the project would be consistent with the purpose of the Act ~~before referring it to an expert panel~~ 6. **Agree** to amend BRF-4115 Table A proposal IV as follows: **Agree** the responsible Ministers when referring a project must consider: a. Whether referring the project would be consistent with the purpose of the Act b. Whether access to the fast-track process will enable the project to be processes in a more timely and cost-efficient way than under ‘normal’ processes c. The impact referring this project will have on the efficient operation of the fast-track process	**Yes | No** **Yes | No**

Proposal	Advice	Recommendations	Decision
		d. ~~The significance of the project to delivering on regional and national benefits~~ Whether the project has significant regional or national benefits e. The application has sufficient information to inform the Minister's referral decision 1. **Agree** to amend BRF-4115 Table A proposal IV (list of matters Ministers may consider) so that it is clear this list of matters may be considered by Ministers when assessing whether a project has significant regional or national benefits.	**Yes | No**
Ministerial referral decision – grounds for Ministers to decline	You requested further advice on whether joint Ministers should be required to decline a referral application if it includes an ineligible activity. Ministers previously agreed that the bill would include activities that are ineligible to use the fast-track regime. The effect of this is that an application including an ineligible activity would be declined. We recommend including "the project includes an ineligible activity" as a reason for which a referral application must be declined to reflect that policy intent at the referral decision stage. This recommendation should also be amended to reflect the intent outlined above (under Eligibility criteria) regarding consistency with the purpose. We also recommend an amendment to the grounds for which Ministers may (but are not required to) decline a referral application. "An activity that would occur on land returned under a Treaty settlement and has not been agreed to in writing by the relevant landowner" is already an ineligible activity, so it does not need to be listed as a ground for decline as well.	2. **Agree** to amend BRF-4203 Table A recommendation 17 as follows: **Agree** that joint Ministers must decline a referral application if: a. ~~it is not~~ referring the project to a Panel would not be consistent with the purpose of the Act b. directing the project to a Panel would be inconsistent with a Treaty settlement, the NHNP Act, Takutai Moana Act, Mana Whakahono ā Rohe or Joint Management Agreement c. it includes an ineligible activity. 3. **Agree** to amend BRF-4203 Table A recommendation 18 as follows: **Agree** the Minister may, but is not required to, decline a referral application (even for an eligible activity) if: a. another legislative mechanism is more appropriate for the application b. the activity may have significant adverse effects on the environment c. the applicant has poor compliance history under the relevant legislation ~~d. the activity would occur on land returned under a Treaty settlement, and has not been agreed to in writing by the relevant landowner~~ e. the activity would occur on land that the Minister for Treaty of Waitangi Negotiations considers is required for the settlement of any historical Treaty claim.	**Yes | No** **Yes | No**
Notice of Joint Ministers' referral decision	We recommend clarifying that the EPA (as the agency providing advice and secretariat support to the Expert Panels) must be given notice of a decision to accept all or part of a referral application, in addition to the existing list of persons/groups.	4. **Agree** to include the EPA in the list of persons/groups who must be given notice of a decision to accept all or part of a referral application.	**Yes | No**
Interpretation	In BRF-4115, Table B, recommendation 69 you agreed that where the bill uses a term that is not defined it will have the same meaning as in the RMA. Given the one-stop-shop nature of the bill, we recommend that you amend this recommendation so that terms have the same meaning as in the parent legislation in respect of the statutory decision being made. This aligns with decisions made by Hon Minister Potaka in DOC-7570427 (Table 2, recommendation 6, page 7).	5. **Agree** to amend BRF-4115, Table B, recommendations 69 as follows: **Agree** that where the bill uses a term that is not defined it will have the same meaning as in the ~~Resource Management Act 1991~~ parent legislation in respect of the statutory decision being made.	**Yes | No**
Expert Panel assessment	The bill needs to clarify whether Expert Panels can recommend granting consents where they are contrary to: • section 107 of the RMA (restriction on grant of certain discharge permits); or • section 217 of the RMA (effect of water conservation order); or • an Order in Council in force under section 152 of the RMA (relating to authorisations for coastal tendering); i. any regulations made under the RMA; or • wāhi tapu conditions included in a customary marine title order or agreement; or • Section 55(2) of the Takutai Moana Act (effect of protected customary rights on resource consent applications). We recommend that Panels are not able to recommend granting a consent in these circumstances. There would be significant implications associated with allowing this (for example, if consents can be granted that	**EITHER** 6. **Agree** an Expert Panel may not recommend granting a resource consent where it would be contrary to: a. section 107 of the Resource Management Act 1991 (restriction on grant of certain discharge permits); or b. section 217 of that Act (effect of water conservation order); or c. an Order in Council in force under section 152 of that Act (relating to authorisations for coastal tendering); d. any regulations made under the RMA; or e. wāhi tapu conditions included in a customary marine title order or agreement without written agreement; or f. Section 55(2) of the Takutai Moana Act (effect of protected customary rights on resource consent applications). **OR**	**Yes | No** **OR**

Proposal	Advice	Recommendations	Decision
	are contrary to Water Conservation orders)[1]. These consents are unable to be granted under the RMA and allowing these consents through the FTC bill could undermine water conservation orders. If your preference is for Panels to be able to recommend granting a consent where any of these circumstances apply, these matters could be included in the hierarchy of decision-making matters as 'relevant provisions of the RMA'	7. **Agree** the above matters (with the exception of v and vi) are 'relevant provisions of the RMA' to be assessed in the hierarchy as previously agreed by Ministers (BRF-4203 Table A recommendation 12), where the purpose of the Fast-Track bill has primacy over RMA Part 2 and relevant RMA provisions. 8. **Note** that vi above is an ineligible activity, and activities that would occur in a customary marine title area without written agreement by the holder are also ineligible (BRF-XX Table B recommendations 23-24)	**Yes | No** **Noted**

[1] Water conservation orders are designed to recognise and protect the outstanding values of particular bodies of water. They may be applied over rivers, lakes, streams, ponds, wetlands or aquifers and geothermal water. Water conservation orders are made by the Governor-General by Order in Council on recommendation of the Minister for the Environment, following consideration by a special tribunal. Nine water conservation orders have been made under the RMA, and seven pre-date the RMA.

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Appendix 3: Conservation Approvals

Proposal	Advice and analysis	Recommendations	Decisions
Scope of land classifications covered	*A: Ecological areas and National Reserves* Ministers have previously agreed applications for fast-track permits under the Wildlife Act 1953, Conservation Act 1987, Freshwater Fisheries Regulations 1983, and Reserves Act 1977, must not relate to land listed under Schedule 4 of the Crown Minerals Act 1991. Joint Ministers did not decide whether to include ecological areas and national reserves as areas ineligible and wished to put this to Cabinet. This will not be possible for the introduction of the bill and decisions are therefore now sought on these matters. Officials recommend adding the following to the list of lands excluded for fast-track purposes because of their particular importance nationally and/or internationally: • Ecological areas that are of similar value to scientific reserves which are listed in Schedule 4. There are 44 ecological areas collectively covering approximately 130,000 hectares **(just under 1.5% of public conservation land)**. • National reserves protect values of national or international importance. Their classification cannot be changed except by an Act of Parliament (similar to national parks). Currently, there are only 5 in New Zealand, 4 of which are overlays over historic or scenic reserves. **They total just over 1% of public conservation land.** They are: o Cook Landing Site National Reserve (~0.5 ha) o JM Barker (Hapupu) National Historic Reserve (~30 ha) o Lewis Pass National Reserve (~20,000 ha) o Subantarctic Islands National Reserves (~76,000 ha) o Te Kuri a Paoa/Young Nick's Head National Historic Reserve (~39 ha). Impact: After excluding these lands, alongside previous decisions to exclude Schedule 4 Crown Minerals Act lands, approximately 62% of public conservation land remains covered by the Fast Track regime. *B: Coromandel Peninsula provisions of Schedule 4* Ministers also agreed to exclude the Coromandel Peninsula-specific elements of Schedule 4 exclusions "for the purposes of the Fast Track Bill" (ie, they are covered by the Fast-Track regime). This decision was not intended to impact the protection of the Coromandel Peninsula currently built in specifically for Crown Minerals Act access permissions but rather enable Fast Track projects more generally on the Peninsula. Allowing mining access applications to be received for parts of the Coromandel Peninsula (and its inland waters) that would usually be unable to be considered by the Crown Minerals Act and would be a significant policy change from the underlying provisions of the CMA, and officials therefore propose that this modification of Schedule 4 is NOT applied to CMA applications under the FTC bill. For avoidance of doubt, this would mean the FTC process would be unable to consider s61 CMA approvals relating to specific parts of the Coromandel Peninsula (and its inland waters) per current s61 rules. The issue of mining on the Coromandel is highly contentious, and any change is likely to face significant public opposition through select committee – this exclusion is in Schedule 4 of the CMA because of significant public opposition at the time. It was inserted during the select committee consideration of the CMA Bill to address these public concerns.	9. **Agree** that a project will be ineligible for the Fast-Track process if it requires permissions on: a. ecological areas held under the Conservation Act 1987; and b. national reserves held under the Reserves Act 1977 10. **Agree** that the Coromandel Peninsula-specific elements of Schedule 4 for Crown Minerals Act continue to apply for Crown Minerals Act permissions considered under the Fast Track Consenting bill.	**Yes | No** **Yes | No**
Presumption that use of conservation land should only be possible where lower impact options are not available	At a previous meeting, Ministers did not agree with officials' recommendation to retain the requirement that applications for concessions through the Fast Track regime not be granted on public conservation land where the activity could reasonably be undertaken in another location either off Public Conservation Lands (PCL) or in a conservation area where the potential adverse effects would be less.	11. **Agree** to retain requirement that applications for concessions through the Fast Track regime not be granted on public conservation land where the activity could reasonably be undertaken in another location either off PCL or in a conservation area where the potential adverse effects would be less. 12. **Note** that this provision: a. does not stop projects going ahead where the location is critical	**Yes / No** **Noted**

	Little analysis was provided to support Ministers' consideration of this provision and DOC recommends that Ministers reconsider this decision on the basis that: • this provision does not currently stop projects going ahead. Examples of projects that have proceeded after meeting this test include the Huntly Bypass, Griffin Creek hydroelectric scheme, numerous powerlines and telecommunications towers, and mines • the provision is a back stop that ensures that PCL is preserved from development except where necessary, and that any development on PCL is in the lowest impact location if and when multiple locations are possible • the requirement on applicants to look for the least worst location is part of normal business case and options development for large projects, whether or not PCL is involved. • the conservation regulatory system prioritises the protection of natural heritage on PCL above other matters and enables use of PCL for recreation where this does not negatively impact and for other economic development only where using PCL is necessary and where this has least negative impacts • retaining this provision will reduce negative reactions to the inclusion of conservation in the one stop shop policy and may reduce the likelihood of legal proceedings based on inappropriate use related to the purpose of the land. DOC considers that this provision is a core feature of the design of the conservation regulatory system and legislative framework: it is a necessary corollary of the purpose of setting aside land for protection in the first place. That protection is not absolute, as is evident from the fact that considerable development is already allowed in some respects under the existing regime for economic purposes. But the presumption of protection, along with carefully designed options around when concessions are appropriate, is central to the system. Alongside the other changes you have agreed to put in place, this requirement will not unreasonably frustrate the ability for the Fast Track regime to accelerate and streamline development approvals.	b. ensures that lower impact locations – including lower impact conservation locations - are required to be discounted first by the developer/applicant c. avoids unnecessary negative impacts on conservation land d. avoids adverse incentives (where it may be cheaper/easier to lease PCL than purchase private land); and e. will help to reduce opposition to the conservation aspects of the bill.	
Minister of Conservation involvement in decision-making on wildlife approvals	Ministers previously agreed that the Minister of Conservation would remain the decision maker on concessions and s61 CMA approvals. No decision has been recorded on the role of the Minister of Conservation in decision making on wildlife approvals (authorities to do anything otherwise prohibited under the Wildlife Act 1953). Given the Minister has statutory responsibility for protected wildlife, officials consider the Minister of Conservation should be included in any final decisions on wildlife approvals. This is consistent with the wider schema for conservation related approvals in the Bill. There are two options – either the Minister of Conservation is a joint decision-maker when these approvals are required, or the Minister of Conservation make these decisions alongside joint Ministers on the wider (RM consent, etc) decisions.	13. **Agree** that where an approval is sought for anything otherwise prohibited under the Wildlife Act 1953 as part of the Fast Track process, **either**: a. joint Ministers includes the Minister of Conservation when making decisions on the Panel recommendations OR b. the Minister of Conservation makes these decisions alongside the other decisions on the Panel recommendations.	**Yes | No** **OR** **Yes / No**
Concessions report at referral	You have previously agreed that, for Reserves Act permissions, Ministers should consider "the ownership and management arrangements of any reserve (or land with conservation covenants registered against the title) affected by projects and any existing arrangements (formal or informal) over that land" as part of the referral decision, and that this consideration shall be informed by a report provided by DOC (recs 45-46 of BRF-4203 Table A refer). These matters are also relevant to concessions applications under the Conservation Act relating to activities on PCL, where existing arrangements (i.e. those granted through existing concessions) may apply over land. These existing arrangements create a potential complexity which Ministers may wish to consider when deciding whether an application is appropriate for (and likely to benefit from) referral to the FTC process. We therefore recommend that DOC provides a report to Ministers on these matters to consider as part of their referral decision in relation to concessions under the Conservation Act as well as for approvals under the Reserves Act.	14. **Agree** that Ministers must consider any administration arrangements over the land and any existing arrangements (formal or informal) over Public Conservation Land affected by FTC applications when considering whether to accept the project into the Fast-Track process. 15. **Agree** that Ministers' consideration of concession matters as part of the Fast Track referral and final application decision be informed by a report from DOC (in consultation with the land administrator where this is not DOC).	**Yes | No** **Yes / No**

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Appendix 4: Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

Proposal	Advice	Recommendations	Decision
Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012			
Activities	For new activities in the EEZ (ie, offshore renewable energy), there is the potential to trigger a race for space between applicants or activities. We recommend that when referring projects to the fast-track process, Ministers should consider the economic benefits, strategic importance, impact on other current and proposed marine management regimes, and environmental impacts of the competing uses before referring an application. This will ensure Ministers can consider and refuse referral where the government is actively developing policy or the policy framework is yet to be determined (consideration of extension of the aquaculture Treaty settlement to the EEZ). Consistent with international law (particularly the London Convention and Protocol) the EEZ Act prohibits the dumping and discharge of certain substances, such as radioactive, toxic, or hazardous waste. These prohibitions should be maintained to uphold compliance with our international obligations. Decommissioning activities (as described in section 38(3) EEZ Act) are not suited for fast-track consideration. The decommissioning plan process (required under the 2021 EEZ Act decommissioning regulations) front load consultation by the operator with affected parties and provides for a non-notified consent process.	16. **Agree** where there is likely competition for space across different activities, Ministers in making a referral decision for EEZ marine consents may consider the economic benefits, strategic importance, impact on other current and proposed marine management regimes, and environmental impacts of the competing uses before referring an application to the panel. 17. **Agree** to exclude these activities from the fast-track legislation: a. Prohibited activities consistent with international law listed under the EEZ Act; and b. Decommissioning related activities; and c. Offshore renewable energy projects (both under the EEZ Act and RMA) prior to creation and implementation of the proposed new offshore renewable energy permitting legislation.	**Yes | No** **Yes | No**
Applications and information	The legislation should state what information should be included in an EEZ marine consent referral application to ensure Ministers can make informed decisions. These requirements should be based on section 20 of the FTCA and previous decisions made in relation to this clause for RMA applications, and be expanded to made relevant to the EEZ Act. Marine consent applications for the panel process should be submitted in line with the requirements of the EEZ Act in terms of the prescribed form and the information required to assess the application (section 38).	18. **Agree** that applications for an EEZ project to be referred must include the same information as required by section 20 of the FTCA with the following additions: a. Including other relevant modifications to section 20 of the FTCA already agreed to under recommendation 15 in table B2 of BRF-4239; and b. Including regional councils in the place of local authorities, in the list of persons affected; and c. Including the Minister of Conservation d. Including a statement of whether the applicant has already made consent application under the EEZ Act in respect of the same or a similar project, and if so, details of those applications and any decisions made on them; and e. Including a summary of compliance or enforcement action (if any) taken against the applicant by a regional council or the Environmental Protection Authority (EPA) under the EEZ Act. 19. **Agree** that for EEZ approvals the information requirements for applications to the panel will be the same as under section 38 off the EEZ Act. 20. **Agree** that for joint applications under the fast-track regime for activities taking place across the coastal marine area and EEZ, the impact assessment under the EEZ Act and Assessment of Environmental Effects under the RMA are to be combined.	**Yes | No** **Yes | No**
Role and composition of the panel	Decision makers under the EEZ Act are EPA staff, decision-making committees appointed by the EPA, or boards of inquiry appointed by the Minister for the Environment, depending on the type of consent. We recommend that the panel set-up to make recommendations on other approvals does so for the EEZ Act. Ministers will be the final decision-makers once panels have made their recommendation. Decision-makers under the EEZ Act are appointed based on their knowledge, skills, and experience in relation to the Act, the activity, tikanga Māori, legal expertise, and relevant technical expertise. As EEZ activities occur in lower frequency than land activities, standing panels may not have these attributes readily available. The EPA is well placed to assist the appointment of specialist members to panels for EEZ marine consents to aid considered decision-making.	21. **Agree** that a panel will make recommendations on EEZ marine consents under the EEZ Act that are referred to them, either solely or as a bundle of statutory approvals (as required). 22. **Agree** that when determining EEZ marine consents (in the EEZ alone, or for cross-boundary applications with the coastal EEZ marine area), the panel convenor should consult with the EPA to appoint members to panel. 23. **Agree** that the EPA recommends members (and the panel convenor makes appointments) based on the attributes required to assess EEZ marine consents under the EEZ Act (knowledge, skill, and experience related to the Act, the activity, the Treaty of Waitangi, legal expertise, and relevant technical expertise).	**Yes | No** **Yes | No** **Yes | No**

Proposal	Advice	Recommendations	Decision
Decision-making – Minister referral	The EEZ Act falls within the responsibility of the Minister for the Environment (with a role for the Minister for Conservation when activities extend into the coastal marine area). The relevant Minister should be consulted by Ministers in their decision to refer applications to the panel. Ministers should take into account the purpose and principles of the EEZ Act set out in Part 1 of subpart 2 of the Act (described below) when making this referral decision, with greater weight given to the purpose of the bill in line with delegated Minsters decisions on weighting have agreed that the purpose of the bill will carry a greater weight that with existing legislation to inform decision-making.	24. **Agree** that in deciding to refer an EEZ marine consent application to the panel, the Minister for the Environment (and Minister of Conservation where applicable) will be consulted on the referral. 25. **Agree** that when deciding to refer an EEZ marine consent application (in addition to the referral process considerations previously decided), Ministers must take into account the following matters, giving weight to them (greater to lesser) in the order listed: a. the purpose of the bill b. the purpose and principles of the EEZ Act set out in Part 1 subpart 2 of the Act.	**Yes | No** **Yes | No**
Matters a panel must consider when making a recommendation for consents under the EEZ Act	Delegated Ministers have agreed that the panel should apply the normal considerations under the relevant existing legislation, however these considerations will have lesser weight given the purpose of the bill. For the EEZ Act, key considerations relate to the purpose and principles, as well as the requirements for an impact statement and the considerations that must be taken into account by the marine consent authority. The purpose and principles are set out in Part 1 subpart 2, consisting of clauses on the purpose, international obligations, and the Treaty of Waitangi.	26. **Agree** that 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: a. the purpose of the bill b. the purpose and principles of the EEZ Act set out in Part 1 subpart 2 of the Act. c. any relevant EEZ policy statements under the EEZ Act. d. relevant assessment, information and decision-making clauses of the EEZ Act. 27. **Agree** for EEZ applications the panel must invite comments from those provided copies of applications for publicly notified activities under section 46 of the EEZ Act. 28. **Agree** for EEZ applications the panel may request information, commission, and seek advice from parties as outlined in sections 54 - 56 of the EEZ Act. 29. **Agree** section 63 EEZ Act will apply to the recommendation of conditions, subject to the purpose of the bill.	**Yes | No** **Yes | No** **Yes | No** **Yes | No**
Compliance monitoring and enforcement for EEZ marine consents	The EPA is the responsible authority for compliance, monitoring and enforcement (CME) activities in relation to EEZ approvals. Officials recommend this arrangement is carried over into the fast-track regime. Given EPA's CME functions, the panel should liaise with the EPA on conditions applied to fast-track marine consents.	30. **Agree** EEZ marine consents granted under the fast-track bill will be deemed to be consents granted under the EEZ Act, including for example, that the EPA retains responsibility for the compliance, monitoring and enforcement of EEZ marine consents issued under this regime. 31. **Agree** that the panel liaise with the EPA when considering conditions for EEZ marine consents.	**Yes | No** **Yes | No**
Review or change of consent conditions	Under the EEZ Act, the EPA or applicant may initiate the process to amend consent conditions. We recommend that standalone changes to EEZ conditions are not allowed under the fast-track regime given that it could 'clog up' the process and make it more inefficient. This is consistent with how most changes to consents/approvals under other fast-track regime Acts will be treated. Officials recommend that where a review or change of conditions is needed for an approved fast-track project, the EEZ Act processes will apply, subject to the decision-making criteria in the fast-track Bill and that minor changes can be decided by the EPA.	32. **Agree** that EEZ marine consents issued under the fast-track process can be reviewed and amended in circumstances consistent with the EEZ Act. 33. **Agree** that applications to change conditions for existing EEZ marine consents will not go through the fast-track regime. 34. **Agree** that where subsequent variations to EEZ marine consent conditions required in relation to approved fast-track projects are determined by the EPA under the EEZ Act, but subject to the purpose of this Bill.	**Yes | No** **Yes | No** **Yes | No**
Cost recovery	The EEZ Act requires the EPA to recover costs related to certain functions and services related to decision-making and CME activities. The ability to recover costs to undertake these activities in relation to fast-track marine consents should be retained.	35. **Agree** that the EPA will have the ability to recover the costs associated with undertaking activities under the fast-track legislation supporting decision-makers and undertaking CME activities for fast-track issued EEZ marine consents.	**Yes | No**
Appeals	The appeal process should be the same as for RMA approvals, except the parties that may appeal should be different, as no requiring authorities are involved and there may be a relevant regional council rather than a relevant local authority (in a situation where the activity also affects the coastal marine area).	36. **Agree** the process for appeals will be the same as for RMA approvals, with changes to the parties who may appeal to reflect the different parties involved in EEZ processes.	**Yes | No**

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Appendix 5: Crown Minerals Act 1991 + Heritage New Zealand Pouhere Taonga Act 2014

Proposal	Advice	Recommendations	Decision
Procedural matters required to ensure land access approvals for Crown land can be awarded through the fast-track consenting process – Crown Minerals Act 1991			
Procedural matters	Ministers previously agreed that land access arrangements under sections 61 and 61B of the Crown Minerals Act 1991 can be granted through the fast-track consenting process. These sections are for: • Access arrangements in respect of Crown land and land in common marine and coastal area and • Access arrangements in respect of Crown land where mineral not property of the Crown. There are other sections in the Crown Minerals Act within sections 53-80 (access to land other than for a minimum impact activity) that will need to continue to apply to projects listed and referred to the fast-track consenting process. This will mean a person will still need to give notice under section 59 and the content of the access arrangement must be consistent with section 60. The intention is to include access arrangements for prospecting, exploration, and mining to be part of the fast-track consenting regime.	37. **Agree** that the existing provisions within sections 53-80 of the Crown Minerals Act 1991 related to land access arrangements under the Crown Minerals Act 1991 continue to apply to projects listed and referred to the fast-track consenting process and land access arrangements approved under the fast-track consenting process.	**Yes | No**
Procedural matters for archaeological authorities - Heritage New Zealand Pouhere Taonga Act 2014			
Purpose and principles of the HNZPT Act	Ministry of Culture and Heritage (MCH) officials recommend that panel recommendations and ministerial decisions on archaeological authorities are subject to the purpose and principles of the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPT Act). Per your direction on inclusion of Treaty clauses, the Treaty clause of the HZNPT Act will not be considered.	38. **Agree** panel recommendations on archaeological authorities must consider: a. the purpose of the HNZPT Act, and b. the principles of the HNZPT Act.	**Yes | No**
Duty to act consistently with general policy	Heritage New Zealand (HNZ) must not act inconsistently with a statement of general policy adopted under the provisions of the HNZPT Act (ie, s16). MCH officials recommend that panels and Ministers issuing recommendations and decisions on archaeological authorities are subject to the same requirement as HNZ.	39. **Agree** panels and Ministers issuing recommendations and decisions on archaeological authorities must not act inconsistently with a statement of general policy adopted under the provisions of the HNZPT Act.	**Yes | No**
Applications for archaeological authorities and approval of persons	MfE and MCH officials recommend confirming that an archaeological authority (AA) cannot be applied for on its own but rather must be applied for with an RMA consent application. This is to ensure that the panel is not being stood up for small matters, but rather the authority is attached to a larger more significant project and aligns with the bundling principal recommended in Appendix 1. HNZPT has an online portal for archaeological authority applications. MCH officials recommend enabling HNZ to consider applications for archaeological authorities and provide their recommendations to the panel. This is to ensure expediency and consistency when applying the provisions of the HNZPT Act.	40. **Agree** archaeological authorities cannot be applied for to the fast-track process on their own but must be part of an RMA consent application or notice of requirement. 41. **Agree** applications can be made for archaeological authorities under HNZPT Act section 44(a) and (b) for modification and destruction of archaeological sites for development. 42. **Agree** when making a referral decision on an application which includes an archaeological authority, the relevant Ministers must consult with HNZ and the Minister for Arts, Culture and Heritage on the adequacy of information provided. 43. **Agree** in parallel with the panel's assessment of the project, HNZ (and the Māori Heritage Council as applicable to the application) must consider any applications for archaeological authorities and provide their recommendations to the panel. To facilitate this: a. apply with modifications as required, the provisions of HNZPT Act section 45(1) and 45(3) to enable the panel to pass the application to HNZ and enable HNZ to make a recommendation to the panel on whether approval should be granted b. apply section 45 to enable approval of a person to undertake the activity under an archaeological authority c. disapply HNZPT Act sections 45(4) and 45(5) to align timeframes specified in the bill for panel processing d. remove HNZ as the decision maker and replace with Joint Ministers. 44. **Agree** to apply with modifications as required, HNZPT Act section 46 which sets out the information that must be provided with application for authority.	**Yes | No** **Yes | No** **Yes | No** **Yes | No** **Yes | No**

Proposal	Advice	Recommendations	Decision
		45. **Agree** to apply with modifications as required, HNZPT Act section 47 which sets out actions where information requirements are not complete.	**Yes | No**
Procedure to determine an archaeological authority	Section 48 of the HNZPT Act allows HNZ to determine an archaeological authority. Section 49 sets out the factors relevant to making a determination, sections 50 and 51 establish the timeframes and notification of decisions and section 52 allows the imposition of conditions. These provisions are necessary to make the one-stop-shop approval under this legislation work coherently.	46. **Agree** to apply and amend HNZPT Act sections 49-52 to enable the joint Ministers to determine decisions on archaeological authorities by: a. applying and amending sections 48 and 49, including changing "determine" to "recommend" reflecting the joint Ministers' as decision-makers and enabling HNZ (and the Māori Heritage Council as applicable to the application) to make recommendations on the application and its conditions to the panel b. requiring the panel and Ministers to apply the purpose of the bill as a primary consideration, then give secondary weight to section 49 (factors relevant to making a determination) c. applying and amending sections 50 and 51 to align with the processing timeframes and decision notification procedures in the bill d. applying and amending section 52 so HNZ may make recommendations to the panel on appropriate conditions.	**Yes | No**
Review of conditions, duration and effect of an archaeological authority	Section 53 of the HNZPT Act allows for the review and cancellation of conditions on an archaeological authority. Section 54 sets out the commencement and duration of archaeological authorities which is generally 5 years but may be up to 35 years. Section 55 provides that archaeological authorities run with the land on which they are issued and can change owners. These provisions are necessary to make the one-stop-shop approval under this legislation work coherently	47. **Agree** to apply and amend HNZPT Act section 53 to enable the panel to consider a change or cancellation to conditions on an archaeological authority. 48. **Agree** to apply and amend HNZPT Act section 54 to enable the panel to recommend a commencement and duration of any archaeological authority and section 55 which provides that archaeological authorities run with the land on which they are issued and can change owners.	**Yes | No** **Yes | No**
Appeals	Sections 58 and 59 of the HNZPT Act provides for appeals. These provisions are necessary to make the one-stop-shop approval under this legislation work coherently.	49. **Agree** to apply HNZPT Act sections 58 and 59, with modifications to align the archaeological authority appeals process with the appeals process provided in the bill.	**Yes | No**
Compliance monitoring and enforcement for HNZPT archaeological authorities	Compliance, monitoring, and enforcement (CME) of approvals under fast-track will be carried out the agencies that are responsible for it under the parent legislation. We recommend this apply to archaeological authorities. HNZPT, who is responsible for CME under the HNZPT Act is best placed to provide this for authorities approved under this regime.	50. **Agree** archaeological authorities granted under the fast-track bill will be deemed to be granted under the HNZPT Act, including for example, that HNZPT retains responsibility for compliance, monitoring and enforcement of authorities issued under this regime.	**Yes | No**

Appendix 6: Further information on ownership and administration of reserves under the Reserves Act 1977

Appendix 6 – Further information on reserve ownership and administration

1. The Reserves Act encompasses a wide range of reserves, held for many different purposes. These include reserves with high conservation values, such as nature and scientific reserves, but also local purpose and recreation reserves set aside for boat ramps, community buildings, sports fields, racecourses, etc. It also includes government purpose reserves managed by DOC or other agencies for purposes such as courts, defence facilities, lighthouses, railways, etc.
2. Not all reserves under the Reserves Act are owned by the Crown or administered by DOC. Ownership of reserves may be with:
    - the Crown
    - the Crown, but vested in another body (generally a council)
    - another body (generally a council);
    - private entities (including iwi ownership).
3. The administrating bodies for reserves can include:
    - DOC
    - Local Government
    - Voluntary organisations
    - Reserve Boards
    - Trusts
    - Other Ministers/departments
    - Private individuals.

Previous Ministerial Decisions

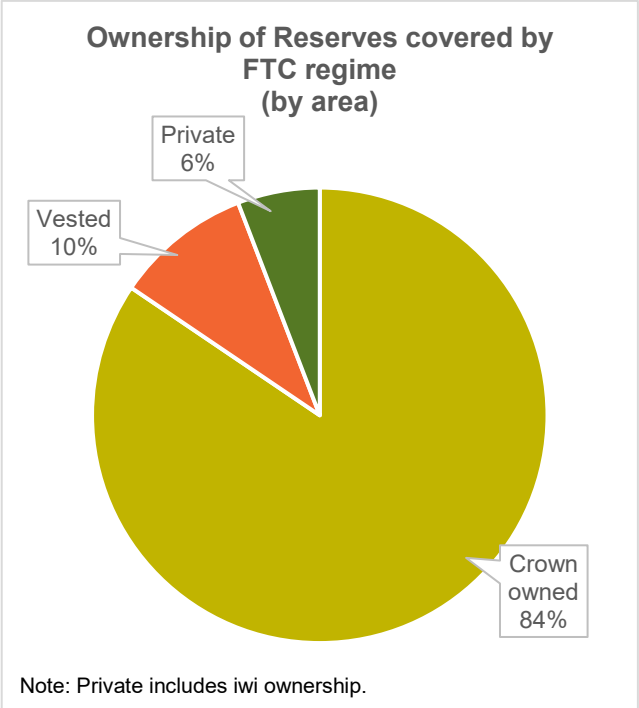
4. You have agreed that a project will be ineligible for the Fast-Track process if it requires permissions on land listed in Schedule 4 of the Crown Minerals Act 1991. This excludes 13% of reserve land from the FTC process.
5. You have also agreed that the FTC process should only be available to projects that interact with reserves that are:
    - Owned by the Crown (including vested reserves), *and* administered by either DOC or local authorities
    - Owned and administered by local authorities.
    - Any other reserves by agreement with the owner and administrator.

Most reserve area in scope of the FTC is owned and administered by the Crown

6. The below graphs show the proportions of reserves that are of categories covered by the Fast Track regime following the above decisions. DOC does not have access to data on the reserves owned directly by local authorities, as this is held by each individual Council. This means the data below does not include them.

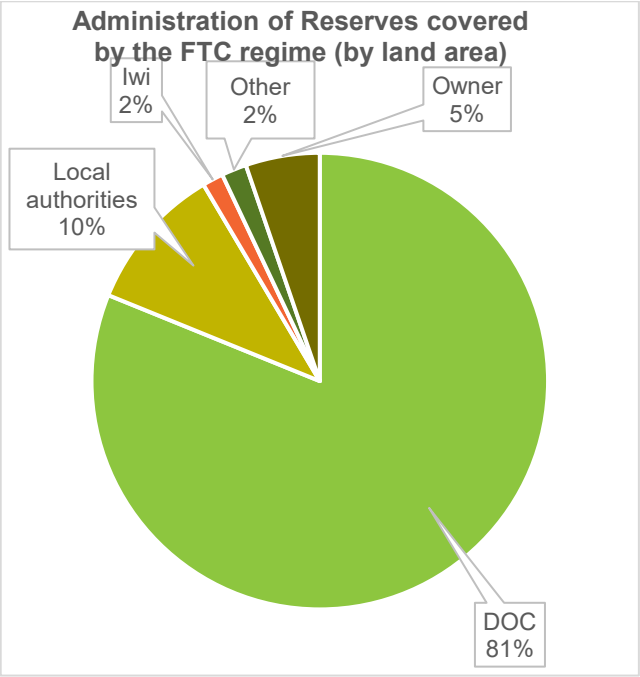
Reserve ownership

7. The below graph shows the proportion of reserve land by owner (outside of council reserves) for those reserves covered by the Fast Track regime.



Reserve administration

8. The below graph shows the proportion of reserve land by administering body (outside of council reserves) for those reserves covered by the Fast Track regime. While DOC administers most of the reserve land by area, councils manage a large number of small recreation and local purpose reserves.



ENDS

Ministry for the Environment
Manatū Mō Te Taiao

Briefing: Cover Briefing for CAB-385: Fast-Track Consenting Bill: Approval for introduction

Date submitted: 26 February 2024
Tracking number: BRF-4329
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**	Provide feedback on the attached draft Legislative Cabinet paper and the draft Legislative Statement by Monday, 26 February 2024	26 February

Actions for Minister's office staff

Forward this briefing to:
Hon Simeon Brown (Energy, Local Government, and Transport)

Hon Paul Goldsmith (Justice, Arts Culture and Heritage)

Hon Tama Potaka (Conservation and Māori Crown Relations: Te Arawhiti)

Hon Penny Simmonds (Environment)

Hon Shane Jones (Oceans & Fisheries, Regional Development, and Resources)

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

Appendices and attachments

1. CAB-385: Fast-Track Consenting Bill: Approval for introduction
2. Legislative Statement for Fast-Track Consenting Bill

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Tom MacDiarmid		
Responsible Manager	Arron Cox		
General Manager	Jo Gascoigne	s 9(2)(a)	✓

Minister's comments

Cover Briefing for CAB-385: Fast-Track Consenting Bill: Approval for introduction

Key messages

1. The purpose of this briefing is to seek feedback on a draft Legislation Cabinet paper (LEG paper) and draft Legislative statement.

2. The LEG paper provides an overview of the process to develop the fast-track legislation and seeks Cabinet endorsement of the key decisions made by delegated Ministers. It is a joint paper between you and the Minister of Regional Development, Hon Shane Jones.

3. Below are the next steps between now and introducing the Bill on Wednesday 7 March.

Friday 23 Feb	LEG paper provided to Minister Bishop, circulate to other delegated Ministers. Request feedback by Monday 26 February.
Mon 26 Feb	Ministers provide feedback on LEG paper and Legislative statement. MfE/ Parliamentary Counsel Office (PCO) to provide draft Bill to delegated Ministers late afternoon.
Tue 27 Feb	Feedback on draft Bill to be provided by delegated Ministers. Comms pack (first reading speech, Q+A, diagrams and listed project information) provided to Minister Bishop's Office. Joint ministers meet to decide final policy, final instructions to PCO.
Thu 29 Feb	LEG Cabinet Paper pack, including final Legislative statement and Supplementary Analysis Report (takes place of a RIS) provided to Office for lodging.
Fri 01 Mar	Lodge Cabinet Paper PCO provide final Bill
Mon 04 Mar	Cabinet agreement to introduce fast-track Bill
Thu 07 Mar	Fast-Track Bill introduced. We understand you intend to introduce the Bill on 7 March and seek leave for urgency to have its first reading on the same day.

Recommendations

We recommend that you:

a. **provide** feedback on the attached draft Legislative Cabinet paper: *Fast-track consenting Bill: Approval for introduction* and the draft Legislative Statement by Monday, 26 February 2024

b. **agree** to **forward** this briefing and the attached draft Cabinet paper to the following Ministers for their feedback by Monday, 26 February 2024:

    a. Hon Simeon Brown (Energy, Local Government, and Transport)

    b. Hon Paul Goldsmith (Justice, Arts Culture and Heritage)

    c. Hon Tama Potaka (Conservation and Māori Crown Relations: Te Arawhiti)

    d. Hon Penny Simmonds (Environment)

    e. Hon Shane Jones (Oceans & Fisheries, Regional Development, and Resources)

Yes | No

Signatures

Jo Gascoigne
General Manager – Resource Management System
26 February 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform

Date

Ministry for the Environment
Manatū Mō Te Taiao

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Briefing: Cover Briefing for CAB-385: Fast-Track Approvals Bill: Approval for Introduction

Date submitted: 29 February 2024
Tracking number: BRF-4374
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**	Approve the Cabinet paper and associated documents for lodgement	1 March 2024

Actions for Minister's office staff

Forward this briefing to Hon Shane Jones' Office
Lodge the Cabinet paper and associated documents

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

Appendices and attachments

LEG Cabinet Paper
Appendix 1 of LEG paper: Overview of the FT process diagram
Appendix 2 of LEG paper: Key elements of the fast-track process
Appendix 3 of LEG paper: Comparison with FTCA
Appendix 4 of LEG paper: Supplementary Analysis Report
Appendix 5 of LEG paper: Summary of engagement received
Appendix 6 of LEG paper: Treaty Impact Analysis

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

Minister's comments

Cover Briefing for CAB-385: Fast-Track Approvals Bill: Approval for Introduction

Key messages

1. Attached to this Briefing is the LEG Cabinet paper seeking approval to introduce the Fast-track Approvals Bill (Bill). This is a joint paper between yourself and the Minister for Regional Development/Resources/Oceans and Fisheries and will be discussed at Cabinet on 4 March 2024.

2. The LEG Cabinet paper:

    i seeks approval to introduce the Fast-track Approvals Bill (Bill) to the House on 07 March

    ii updates Cabinet on decisions made by delegated to Ministers

    iii seeks agreement to a full Select Committee process

    iv seeks agreement to establish and independent panel to assess listed project for inclusion in the Bill prior to enactment.

3. The LEG paper includes the following Appendices:

    i Appendix 1 of LEG paper: diagram of the fast-track process

    ii Appendix 2 of LEG paper: key elements of the fast-track process

    iii Appendix 3 of LEG paper: summary of delegated decisions

    iv Appendix 4 of LEG paper: supplementary analysis report

    v Appendix 5 of LEG paper: summary of engagement received.

4. We have made the following changes to the LEG paper following your feedback on 28 February 2024:

    i updated the ‘placeholders’ with final decisions made by delegated Ministers. This includes responsible Ministers, and Treaty Settlement protections

    ii added in recommendations for a full Select Committee process

    iii added in content and recommendations establish and independent panel to assess listed project for inclusion in the Bill prior to enactment.

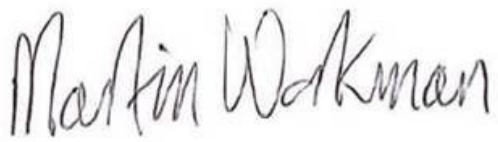
Recommendations

We recommend that you:

a. **lodge** the LEG paper and associated Appendices for Cabinet on 4 March 2024

Yes | No

Signatures



Martin Workman
Deputy Secretary
Ministry for the Environment
29 February 2024

Paul Stocks
Deputy Chief Executive, Building Resources and Markets
Ministry of Business, Innovation and Employment
29 February 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

Office of the Minister Responsible for RMA Reform
Office of the Minister for Regional Development, Oceans and Fisheries, and Resources

Cabinet
Chair, Cabinet

Fast-Track Approvals Bill: Approval for Introduction

Proposal

1. This paper:

   1.1. attaches the Fast-Track Approvals Bill (the Bill) and recommends that Cabinet authorise introduction of the Bill to the House

   1.2. seeks Cabinet's endorsement of decisions made by delegated Ministers

   1.3. seeks Cabinet decisions on next steps for the Bill.

Policy

Background

2. Consenting of major infrastructure and other projects in New Zealand takes too long, costs too much[1], and places insufficient value on the economic and social benefits of development relative to other considerations. Improving the regulatory system for approval of major projects is also crucial to environmental outcomes – for example our climate change programme, and an improved water infrastructure.

3. For New Zealand's economy to move forward, it is critical that we deliver more infrastructure and other much needed development without the excessive costs and delays currently associated with its delivery.

4. On 23 January 2024, Cabinet agreed to introduce legislation for a permanent fast-track regime by 7 March 2024 (within 100 days of taking office) [CAB-24-MIN-0008].

5. Introducing the Bill within our first 100 days in office regime is part of the National/NZ First Coalition Agreement.

6. The Bill will improve decision making timeframes and give greater investment certainty for projects that have significant regional or national benefits, providing an efficient and clear pathway to approval. A brief overview is included below and a diagram of the fast-track process is provided in **Appendix 1**. A detailed overview of the proposed fast-track process is set out in **Appendix 2**.

7. The proposed legislation will replace the Natural and Built Environment Act 2023 (NBA) fast-track consenting process, which was retained as an interim measure while a permanent fast-track consenting regime was developed.

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

Process to develop the fast-track regime

8. Preparing the Bill for introduction within the first 100 days of this government taking office has required both the policy analysis and drafting of the Bill to be done at pace.

9. Advice to Ministers was prepared in a collaborative process, led jointly by the Ministry for the Environment (MfE) and Ministry for Business, Innovation and Employment (MBIE) who worked closely with other relevant agencies.[4]

10. The Minister Responsible for RMA Reform has written to a range of stakeholders to inform them about the policy proposals and timeframes for the proposed fast-track regime, and to seek feedback, including Post-Settlement Governance Entities (PSGEs) and other relevant Māori groups. The timeframe for developing and drafting the Bill has meant engagement prior to introduction of the Bill has had to be focused on a select number of groups. The select committee process is an opportunity for people and groups to have further input into the Bill.

Seeking Cabinet approval of delegated decisions

11. On 23 January 2024, Cabinet delegated authority to a core group of ministers[5] to make further detailed policy decisions [CAB-24-MIN-0008].

12. In summary, the key elements are:

    12.1. the referral by Ministers of applications for approvals (across a range of regulatory systems) of projects of regional and national significance to Expert Panels,

    12.2. Expert Panels to recommend any appropriate conditions within a maximum 6-month timeframe, and

    12.3. Ministers to make final approvals on fast-track applications.

13. In addition, delegated Ministers made decisions to incorporate a range of procedural or administrative provisions from the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) and the NBA fast-track process.

14. We are seeking Cabinet's agreement to the decisions made by those Ministers.

Next steps for listed projects

15. Cabinet agreed [CAB-24-MIN-0008] that, in addition to the standard project application process, the bill will contain a schedule of projects ("listed projects") to be automatically referred to an Expert Panel (EP).

16. Delegated Ministers recommend that the introduced version of the Bill should include empty lists, with projects to be added to these schedules later in the legislative process.

[4] Department of Conservation, Ministry for Culture and Heritage, Te Arawhiti, Ministry of Primary Industries, Treasury, Ministry of Housing and Development, Ministry of Transport, the Department of Internal Affairs, Land Information New Zealand, and Te Waihanga/Infrastructure Commission

[5] Minister of Housing, Minister for Infrastructure, Minister of Transport, Minister for Energy, Minister of Local Government, Minister of Justice, Minister of Conservation, Minister for Māori Crown Relations: Te Arawhiti, Minister for Regional Development, Minister for Oceans and Fisheries, Minister for Resources, and Minister for the Environment.

17. These projects will be added by calling for nominations for consideration by an expert independent panel – supported by an officials' secretariat – which would make recommendations to Ministers on which projects to include in the Bill.

18. It is intended that the EP will be made up of those who will represent a range of expertise and experience on matters such as infrastructure, economic development, environment, conservation, Treaty of Waitangi and local government.

19. Next steps for this process will be announced shortly after the Bill is introduced.

Overview of the fast-track process

20. The Bill consolidates and speeds up multiple approval processes across different legislation that are typically required for large and/or complex projects. This will enable more certainty and an efficient pathway to approval.

21. The purpose of the Bill is to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits. When it comes to decision-making, the purpose of this Act will take precedence over others.

22. A broad range of activities will have access to the FTC process, providing they meet the purpose of the Bill and the specified eligibility criteria. Projects may include infrastructure, housing, resource extraction, aquaculture, agriculture, and other developments.

23. Eligibility criteria includes if the project has regional or national significance, or it would benefit from the fast-track process, and how it may address matters like housing demand and environmental issues. Some projects, which occur on specific land types (mainly associated with Treaty Settlements) will not be able to be fast-tracked (without consent of the relevant landowner and/or PSGE).

24. Ministers will have a broad ability to decline applications for fast-tracking at the referral stage. Reasons for declining may be that fast-tracking a project may be inconsistent with a Treaty settlement, or it would be more appropriate or efficient for the project to go through the normal processes.

25. Projects can access the fast-track process either by applying to be referred to an EP by joint Ministers, or through inclusion in schedules to the Bill ("listed projects").

26. An EP will be stood up to assess referred and listed projects and make recommendations to the joint Ministers. The joint Ministers make the final decision on whether approvals should be granted or declined.

27. More detail about the fast-track process is available in **Appendix 1** (fast track approvals process diagram) and **Appendix 2** (key elements of the fast-track process).

Further drafting required up to introduction

28. We are seeking Cabinet's agreement to authorise Parliamentary Counsel Office to make changes to the Bill (aligned with the policy direction set by Cabinet and delegated Ministers) up to its introduction.

29. We propose the Bill be introduced on 7 March, with the first reading on the same day under urgency, then referred to the Environment Committee.

Treaty of Waitangi and Treaty settlement implications

30. Māori have a range of rights and interests in natural resources. The Bill will be significant for Māori in terms of how these rights and interests are recognised and protected. These are addressed in more detail in the Treaty Impact Assessment attached to this paper.

31. There are 75 enacted Treaty settlements and a further 25 deeds of settlement awaiting settlement legislation. Most of these settlements contain arrangements that interact with legislative frameworks for consenting/approvals (to varying degrees). PSGEs and other relevant groups will expect these arrangements to continue to apply under the new regime. Cabinet has agreed that the Bill will include protections for Treaty Settlements, along with Takutai Moana and NHNP, Mana Whakahono ā Rohe and JMAs under the RMA (CAB-24-Min-0008), and this is explicitly provided for in the Bill.

32. The Bill strikes a balance between the economic and social interests in progressing major infrastructure and other projects, the interest in an improved regulatory system for approval of these projects as well as providing protections for Māori and other interests. Specific provisions provide for Māori rights and interests in fast-track approvals, including:

    32.1. An overarching clause requiring that persons exercising powers and functions under this Act must act in a manner consistent with existing Treaty settlements, Takutai Moana and the NHNP Act.

    32.2. Information, engagement and other procedural requirements on applicants, Ministers and the EP for particular Māori groups or interests (including Treaty settlement entities and Takutai Moana rights and title holders) at various application and decision-making points in the fast-track process.

    32.3. Carrying over of some relevant provisions, for decision makers assessment, from existing legislation, in particular in respect of sections 5, 6 and 7 RMA and other legislative protections for Māori under existing fast track processes in the RMA (however with different weightings, and varying somewhat depending on legislative context). However, there will be no overarching Treaty clause in the Bill, and Treaty clauses in existing legislation are not referred to in the Bill.

    32.4. Membership and expertise requirements for Expert Panels.

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

Impact analysis

34. The Treasury and the Ministry for the Environment previously agreed that supplementary analysis will be provided when legislation is considered by Cabinet in March 2024. A supplementary analysis report (SAR) is attached at **Appendix 3**.

35. Some of the options discussed in the SAR will impose costs on, or create savings for, a range of actors including the Crown, local government, iwi/Māori, the development community, the general public, or future generations. While the SAR can anticipate where these costs or savings will fall, their monetary value can be difficult to quantify.

Compliance

36. This Bill complies with:

    36.1. disclosure statement requirements

    36.2. the principles and guidelines set out in the Privacy Act 1993.

37. Compliance with the principles of the Treaty is addressed above at Treaty of Waitangi implications and Treaty of Waitangi settlement implications, and in **Appendix 5** – Treaty Impact Assessment.

38. The Ministry of Justice is vetting the Bill against the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993 and will produce a compliance report before the Bill is introduced.

39. No compliance issues are anticipated in relation to the United Nations Convention on the Law of the Sea. No assessment of policy against New Zealand's other international obligations has occurred.

Parliamentary Counsel Office (PCO) comment

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

Consultation

45. Development of the Bill has been led by MfE and MBIE, supported by a cross-agency group including the Department of Conservation, Ministry for Culture and Heritage, Te Arawhiti, Ministry of Primary Industries, Treasury, Ministry of Housing and Development,

Ministry of Transport, the Department of Internal Affairs, Land Information New Zealand, and Te Waihanga/Infrastructure Commission.

46. The following agencies have also been consulted by MfE and MBIE in the development of this legislation: New Zealand Transport Agency, Transpower, Environmental Protection Authority, Heritage New Zealand Pouhere Taonga, Ministry of Justice, Ministry of Health, and Te Puni Kōkiri.

Engagement on the development of the Bill

47. The Minister Responsible for RM Reform sent letters inviting local government, PSGEs, pan-Māori groups, and development and environment interest groups to meet with officials to discuss the policy proposals and provide feedback.[9] Following the letters, meetings and online discussions were held with the groups the Minister Responsible for RM reform corresponded with. Verbal and written feedback was provided.

48. The letters to PSGEs and other Māori representative groups ensured they had visibility of the proposals. The Minister Responsible for RM Reform and the Minister of Conservation recently met with all PSGEs to discuss the policy proposals for the permanent fast-track consenting regime. Officials also met separately with 47 PSGEs and other Māori representative groups to discuss the proposals and hear feedback.

49. A summary of the feedback received is provided below. A detailed summary of the feedback received is provided in **Appendix 4**.

50. Local Government noted that Ministers should seek their input when deciding to refer applications and that Expert Panels should do the same. They suggested that Regional and District plans should be considered when Ministers/Expert Panels when making decisions on approvals.

51. Many PSGEs have raised concerns with both the timeframes for engaging on these matters before decisions are taken by Ministers and the level of detail able to be shared. Despite this, this engagement has contributed to developing clearer policy options for upholding settlements in the FTC Bill.

52. Some PSGEs and Māori representative groups were concerned that the proposed protection options presented in this advice will not sufficiently uphold Treaty settlement and related arrangements, or act in a manner consistent with the Treaty principles. They also voiced concerns about the degree to which environmental protections may be eroded.

53. Infrastructure and development sector stakeholders are broadly supportive of a fast-track process and provided feedback on the detail.

54. Environmental NGOs raised concerns about the potential for the process to allow development without environmental and community safeguards and the level of political

[9] Letters were sent to:

- 78 local authorities, along with representative groups such as Local Government New Zealand, Taituarā (local government professional group), New Zealand Planning Institute, Resource Management Law Association.
- more than 50 infrastructure and development sector stakeholders, and environmental non-government entities (Environmental Defence Society, Greenpeace, Forest and Bird, Fish and Game)
- 130 Māori partners, including pan-Māori groups, Post Settlement Governance Entities, and other representative groups (PSGEs).

involvement from Ministers. Concern was also raised that the process will limit public participation.

Binding on the Crown

55. The Bill binds the Crown.

Creating new agencies or amending law relating to existing agencies

56. The Bill will not create any new agencies.

Allocation of decision-making powers

57. Joint Ministers (and the Minister of Conservation for approvals under the Conservation Act 1987) make the substantive decision on applications based on the report and recommendations from the EP. The decision-making process for approvals under the FTC Bill differs from the existing decision-making in the legislation captured in the one stop shop. The Joint Ministers' decision-making power is guided by specific criteria and input from those who are invited to comment.

58. There are limited appeal rights under this legislation. Joint Ministers' decisions can be appealed by applicants and submitters and any person who has an interest in the decision that is greater than that of the general public may appeal a decision. Appeal rights are available to the High Court on points of law only, and no appeal can be made to the Court of Appeal on a High Court determination. In limited circumstances a party could apply to the Supreme Court for leave to bring an appeal, in accordance with the Senior Courts Act 2016.

Associated regulations

59. The Bill includes a provision that allows the Governor-General, by Order in Council, to make regulations, upon recommendation by Joint Ministers, that:

    59.1. provide for procedural and administrative matters for the purpose of the fast-track consenting process

    59.2. specify requirements for a referral application

    59.3. provide for any other matters contemplated by the Bill, necessary for its administration, or necessary for giving it full effect.

Other instruments

60. The Bill contains provisions empowering the making of other legislative or disallowable instruments, as outlined above.

Definition of Minister/department

61. The responsible Ministers for the Bill are defined as the Ministers for Infrastructure, Transport, and Regional Development, acting jointly. The Minister responsible for the Crown Minerals Act 1991 will be one of the joint Ministers for relevant decisions. The Minister of Conservation will be one of the joint Ministers for Wildlife Act approvals and remains the decision-maker for conservation concessions.

62. The responsible agency is defined in the Bill as the Ministry for the Environment (MfE). MfE and the Ministry of Business, Innovation and Employment will work with other agencies to advise joint Ministers. The EPA and, where appropriate, other relevant statutory agencies, also have a role in the Bill in providing advice and secretariat support to EPs.

Commencement of legislation

63. The Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

64. We propose the Bill be introduced by 7 March 2024 with first reading on the same day under urgency. This will allow the Bill to go to select committee ahead of the one-week recess from 13-19 March. We intend for the Bill to be passed later in 2024.

65. We propose a full select committee process is undertaken. This provides time for the public to prepare and submit submissions on the Bill and time for the Committee to work through the submissions and outstanding matters in the Bill.

66. We also intend to seek leave from the Committee to enable continued engagement with PSGEs and other representative Māori groups on the Bill while it is before the Committee.

Proactive Release

67. We intend to proactively release this paper, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

We recommend that Cabinet:

1 **note** that for New Zealand's economy to move forward, it is critical that we deliver more infrastructure and other much needed development without the excessive costs and delays currently associated with its delivery.

2 **note** that Cabinet agreed to introduce legislation for a permanent fast-track regime by 7 March 2024 (within 100 days of taking office) [CAB-24-MIN-0008].

3 **note** that introducing the Bill within our first 100 days in office is part of the National/NZ First Coalition Agreement.

4 **note** that the Bill will improve decision making timeframes and give greater investment certainty for projects that have significant regional or national benefits, providing an efficient and clear pathway to approval.

5 **note** that the proposed legislation will replace the Natural and Built Environment Act 2023 (NBA) fast-track consenting process, which was retained as an interim measure while a permanent fast-track consenting regime was developed.

6 **endorse** the decisions made by delegated ministers for the design of the legislation, with the key elements being:

6.1 the referral by Ministers of applications for approvals (across a range of regulatory systems) of projects of regional and national significance to Expert Panels,

6.2 Expert Panels to recommend any appropriate conditions within a maximum 6-month timeframe, and

6.3 Ministers to make final approvals on fast-track applications.

6.4 incorporation of a range of procedural or administrative provisions from the COVID-19 Recovery (Fast-track Consenting) Act 2020 and the NBA fast-track process.

7 **note** that Cabinet agreed [CAB-24-MIN-0008] that, in addition to the standard project application process, the Bill will contain a schedule of projects ("listed projects") to be automatically referred to an Expert Panel (EP).

8 **agree** that listed projects will be proposed for inclusion into the Bill through the Departmental Report to the Environment Committee, and/or Amendment Paper when the Bill has returned to the House.

9 **agree** that listed projects will be added by calling for nominations for consideration by an expert independent panel, supported by an officials' secretariat, which would make recommendations to Ministers on which projects to include in the Bill.

10 **agree** that the EP will be made up of those who will represent a range of expertise and experience on matters such as infrastructure, economic development, environment, conservation, Treaty of Waitangi and local government.

11 **agree** that the Bill be introduced on 7 March 2024 and have its first reading the same day under urgency.

12 **agree** that the Government propose that the Bill be:

12.1 referred to the Environment Committee

12.2 enacted by the end of 2024.

13 **agree** to authorise Parliamentary Counsel Office to make changes to the Bill (aligned with the policy direction set by Cabinet and delegated Ministers) up to its introduction.

14 **agree** to authorise the Parliamentary Counsel Office to continue drafting the Bill until its introduction.

15 **note** that the responsible Ministers for the Bill are defined as the Ministers for Infrastructure, Transport, and Regional Development, acting jointly. The Minister responsible for the Crown Minerals Act 1991 will be one of the joint Ministers for relevant decisions. The Minister of Conservation will be one of the joint Ministers for Wildlife Act approvals and remains the decision-maker for conservation concessions.

Authorised for lodgement

Hon Chris Bishop
Minister Responsible for RM Reform

Hon Shane Jones
Minister for Regional Development

Appendix 1: Overview of Fast-Track approvals process diagram

Appendix 2: Key elements of the fast-track process

Appendix 3: Supplementary Analysis Report

Appendix 4: Summary of feedback received

Appendix 5: Treaty Impact Analysis

Appendix 2: Key elements of the fast-track process

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

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

- 2.1 resource consents, notices of requirement, alterations to designations and certificates of compliance under the Resource Management Act 1991 (RMA)
- 2.2 marine consents under the Exclusive Economic Zone and Continental Shelf (Environment Effects) Act 2012 (EEZ Act)
- 2.3 section 61 land access arrangements under the Crown Minerals Act 1991
- 2.4 applications for archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014
- 2.5 concessions and other permissions under the Conservation Act 1987 and Reserves Act 1977
- 2.6 approvals under the Wildlife Act 1953
- 2.7 aquaculture decisions under the Fisheries Act 1996.

3 The Bill will also include a more efficient Environment Court process for Public Works Act 1981 processes.

4 Projects can access the fast-track process through two pathways, either by the applicant applying to joint Ministers[1] to refer an application to an Expert Panel (EP), or through inclusion in the schedules of the Bill ("listed projects"). The Bill contains two categories of projects (Schedule 2: Part A and Part B):

- 4.1 Part A projects are "shovel-ready" and will be assessed against the same criteria as other projects that will apply to use the referral process. Schedule A projects will be able to be assessed by an EP upon royal assent

[1] The Ministers for Infrastructure, Transport, and Regional Development. The Minister responsible for the Crown Minerals Act 1991 will be one of the joint Ministers for relevant decisions. The Minister of Conservation will be one of the joint Ministers for Wildlife Act approvals and remains the decision-maker for conservation concessions.

4.2 Part B projects are “shovel-worthy” and are deemed to have significant regional or national benefits, but do not have enough information for assessment against the referral criteria and must be referred to the EP by the joint Ministers.

5 Projects will be added to Schedule 2 later in the legislative process following assessment by an independent expert panel.

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

6.1 that are proposed to occur on land returned under a Treaty settlement or identified Māori land without written agreement from the relevant landowner(s)

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

6.3 in a customary marine or protected customary rights area without written agreement from the relevant rights holder/group

6.4 within an aquaculture settlement area unless it has the required authorisation

6.5 that would be prevented under section 165J, 165M, 165Q, 165ZC or 165ZDB of the RMA (which deal with occupation of the common marine and coastal area)

6.6 occurring in ecological areas held under the Conservation Act 1987

6.7 occurring in national reserves held under the Reserves Act 1977

6.8 that are prohibited consistent with international law under the EEZ Act

6.9 that are decommissioning related activities

6.10 that include offshore renewable energy projects (under the EEZ Act and RMA) before the development and implementation of the proposed offshore renewable energy permitting legislation.

Fast-track referral process

7 Joint Ministers will decide whether to refer a fast-track application to an EP.

8 To aid the joint Ministers’ referral decision, projects will be assessed against a set of criteria designed to help determine whether projects are consistent with the purpose of the Act (ie, will provide significant regional or national benefits). When assessing projects, the joint Ministers must consult with relevant portfolio ministers, local authorities, agencies or statutory bodies, Treaty settlement / related entities and other identified Māori groups with interests.

9 Ministers would have broad discretion to approve or decline the referral of projects and there would be no requirement to refer an application because it is an eligible activity.

The Expert Panel

10 The role of the Expert Panel (EP) is to consider the project in detail and prepare a report and recommendations setting out whether, in the EP's view, the project should be approved or declined, with any conditions the EP considers appropriate to manage adverse effects. The purpose of the Bill will take primacy in the EP's assessment of an application, with normal considerations under existing legislation informing the assessment but having lesser weight.

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

12 EPs will be unable to seek wide input from the public on the project, instead they will be required to obtain written comments from a limited range of affected parties, including:

12.1 any group joint Ministers sought comment from at the referral stage

12.2 relevant portfolio ministers

12.3 relevant local authorities

12.4 landowners and occupiers on and adjacent to the site

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

12.6 any other person the EP considers appropriate

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

Treaty of Waitangi and Treaty settlements

14 Protections have been drafted into the Bill to help ensure Treaty settlements and other specified arrangements are upheld at all stages of the fast-track process, including:

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

14.2 an ability for joint Ministers to decline to refer an application to the EP if they consider it is inconsistent with a Treaty settlement / related arrangement.

14.3 the EP must comply (as if it were a local authority) with any Treaty settlement or specified arrangement that imposes an obligation on a local authority.

14.4 if a Treaty settlement or specified arrangement includes procedural matters relating to the appointment of a decision-making body for hearings, an EP must comply with those arrangements or obtain agreement from the relevant entity to adopt a modified arrangement.

14.5 where a Treaty settlement / specified arrangement provides for the consideration of a document (including statutory planning documents) where relevant, it must be given the same or equivalent effect.

Decision-making

15 The purpose and provisions of the Bill will take primacy over other legislation in decision making. This means that approvals can be granted despite other legislation not allowing them, such as, projects that are prohibited activities or those which are inconsistent with RMA National direction. This approach is intended to ensure key infrastructure and other development projects with significant benefits for communities are not declined where the benefit of approving the project outweighs any issue identified.

16 The EP will provide a report and recommendations to joint Ministers, who will then make the substantive decision on the application and any conditions required. Concessions under the Conservation Act 1987 will be decided by the Minister of Conservation.

17 Before making the substantive decision to amend or reject the EP's recommendations, joint Ministers will undertake an analysis of those recommendations. Ministers would also have the power to refer the application back to the applicant to amend the application or refer the application back to the EP for the panel's reconsideration of conditions. When making a decision that departs from the EP's recommendations, joint Ministers must only consider relevant matters within the legislation. Joint Ministers may also seek clarification from the EP, commission additional advice and seek further comments from affected parties to inform their consideration.

Implementation

18 The Bill provides for compliance and enforcement functions to be undertaken in line with the powers and duties under the relevant approval legislation. Local authorities will retain their compliance and enforcement functions in relation to RMA notice of requirement and resource consent conditions, as will the Environmental Protection Authority in relation to marine consents in the

exclusive economic zone, Heritage New Zealand in relation to archaeological authorities and the Department of Conservation in relation to concessions.

Judicial review and appeals

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

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

Appendix 4: Summary of feedback received

Local government (local government elected officials, leaders, and practitioners)

Category	Generalised feedback
Cost recovery	• Local government wants to ensure their input is provided for in the consent process and that their time is provided for, including at pre-application stage, throughout the process, providing advice on draft conditions of consent and after the consent is issued. • Cost recovery for local government's involvement in fast-track process needs to be provided for. There was significant concern raised and reiterated by multiple local authorities. • They noted the Covid 19 Recovery (Fast Track Consenting) Act made it difficult for local authorities to recover costs associated with the fast-track process, for example when developing conditions.
Local decision making and status of statutory plans	• Significant matter raised by local government is the status of statutory RMA plans • The legislation should provide an integrated connection between FTC and spatial planning and local government's statutory plans. • Specific concerns raised regarding the potential for a disconnect, for example where an application is made for new housing in an area that is not currently zoned, noting this will create issues regarding the provision of infrastructure. • Needs clarity around the role of local government's input into the FTC process, whether it is strictly technical, or a political view is sought. • Local government did not support the inclusion of "locally significant" projects in the FTC process as it is challenging to describe.
Treaty settlements and Joint Management Agreements	• Local government supports the new legislation upholding Treaty settlements as well as protecting existing joint management agreements and other arrangements between councils and Māori partners.
Compliance history of applicants	• Local government recommends the compliance history of an applicant should be a factor in decision making (as it is in the COVID-19 Recovery (Fast-Track Consenting) Act 2020).
Resourcing of Expert Panels	• There is significant concern about the ability to resource the Expert Panels; the lack of experts currently was noted. • The hourly rate offered is not high enough to attract Expert Panel members.
Appeals	• Support for limited grounds for appeal. • Question raised about who the respondent will be when a decision is appealed
Lapse date	• Support for longer (five-year) lapse date for consents.

Infrastructure and development sector stakeholders

Category	Generalised feedback
General comments	• General support for a standalone Act for FTC. • The 'national, regional and locally significant' approach is appropriate (noting how this is applied will need consideration). • The scope and purpose of the fast-track consent process needs to be clear. If the scope is too broad, there is a risk that the system will be clogged up by too many applications and will not be faster or cheaper in the long run. • Robust spatial planning is needed to provide for New Zealand's future infrastructure needs and spatial planning would aide in determining FTC projects. • A guide is needed regarding what constitutes significant regional or national infrastructure and development projects.
Definitions and criteria	• A broader definition of infrastructure than the RMA definition is needed. • The legislation should incorporate the concept of "infrastructure corridors" as well as recognising the interconnectedness of infrastructure. • Could be an opportunity to better link criteria for projects to the policy objectives of the legislation. • Clear criteria required in order to ensure that delays do not occur due to volume of applications.
Decision-making	• Concern about the political nature of the process. Some sector groups suggested that an independent entity should manage the process. • General support for limited grounds for declining an application as it provides certainty.
Reverse sensitivity concerns	• The fast-track consent process should still provide quality resource management outcomes including managing reverse sensitivity effects on existing land uses, preventing ad hoc development and protecting key resources for the future.
Timeframes	• Critical to include a timeframe for processing of applications in the legislation.
Right of appeal	• Support for having appeal rights only to the High Court.
Expert Panels	• Important to have enough depth and diversity of expertise and that Expert Panels are adequately resourced.
Māori partners	• The burden and pressures faced by mana whenua are recognised, the legislation needs to support mana whenua/PSGE's to ensure their participation in the FTC process.

Environmental NGOs – Forest & Bird, Environmental Defence Society, Greenpeace, Historic Places Aotearoa

Category	Generalised feedback
Process	• Concern the process is too broad and will not rule out any forms of development. • Concern the focus is not on enabling fast-track consenting but on allowing development without environmental and community safeguards. • Concern the process will not allow for public participation. • Concern that fast-track proposals will prioritise commercial and special interests over other values (e.g. ecological, water quality and water quantity) and those values will be significantly degraded. • Concern the process might be contrary to the United Nations Convention on the Law of the Sea (UNCLOS) and Fair-Trade Agreements.
Expert Panel	• Essential the Expert Panel can effectively mitigate any impacts on heritage from fast-tracked projects. • Disagree with the limited ability of the Expert Panel to decline applications.
Ministerial role	• Concern raised regarding the ability of Ministers to approve projects to the FTC process, effectively granting consent. Particular concern around the extension of FTC to include other acts. • Considered the Ministerial decision-making process to be a gross misuse of power with significant concerns around the potential for conflicts of interest and personal bias to influence decision making. Also, further concern was reiterated around the potential influence of lobbying through the Ministerial approval process.
Consultation timeframe	• Strong concern in relation to the limited time to provide feedback.

RM Practitioner Bodies – RMLA, NZPI and Papa Pounamu (technical group of Māori and Pasifika planners and RM practitioners)

Category	Generalised feedback
Purpose	• The purpose of the bill is critically important. Risk that if this overall aim is missing from the purpose, we will have a timely and efficient process that achieves poor environmental outcomes. • The achievement of outcomes for the benefit of all New Zealanders should be the overall aim of the more timely and efficient process; should be incorporated within the purpose of the bill. • Recommends there is a link between eligibility for the fast-track process and outcomes set in national policy statements, regional policy statements, and local plans. In relation to this, there was concern if significant projects were considered in isolation from the broader planning context. • Want to ensure critical infrastructure isn't excluded eg water needs • Māori land development should be a priority
Criteria and definitions	• Recommends that 'significant' project is defined in the legislation and/or qualifying criteria are used to identify significant projects. NZPI recommends the qualifying criteria for 'significant' projects be linked to national and regional strategic planning. • Have clear and unambiguous criteria for acceptance into the fast-track process. This should include identification in a strategic or spatial plan or demonstrated consistency with existing plans or community outcomes. • Recommends a report outlining how/why the projects included meet the qualifying criteria be issued alongside the bill. • Give weighting to hapū development plans
Expert Panel	• The bill should include requirements for Expert Panel membership. • Provide a greater ability for the Expert Panel to decline applications. • A wide level of discretion for an Expert Panel to apply conditions of consent.
Treaty and tangata whenua	• Adhere to purpose of the Treaty, more than about upholding Treaty Settlements; take words from Conservation Act • Support a robust pre-application process, involving iwi/Māori – Bill should incentivise early engagement
Court	• Concern about relying on Court to resolve issues
Capacity	• Need to build pool of local Māori experts for Expert Panels

Post Settlement Governance Entities and other Māori representative groups

Category	Generalised feedback	From PSGEs/Māori entities
Opportunity	• Sometimes fast-track consenting can be good. • Opportunity to promote their own development proposals – for example, how can PSGEs get their aquaculture ventures on the list of fast-tracked projects? • Opportunity to support other proposals within their rohe. • Less bureaucracy. • Support does not mean they support development at the cost of the environment. • Supportive of where this might help iwi doing things for iwi. • Iwi are looking for opportunities and want to work with the government – resource iwi to develop protections and devise how this can be done. • Support for FTC where benefits clearly accrue to local communities, not companies and interests from outside a region. • Iwi see opportunities relating to housing developments, storage and use of water, and unlocking the potential of Māori land. Want small scale projects such as papakāinga to be eligible for FTC.	[redacted]
Treaty Partnership and Consultation	• Wish to be consulted as a Treaty partner (not as part of general public) on both proposal and referral process, consistent with settlement obligations. Take the time to get it right. • Crown obligations to act in good faith and engage properly endure irrespective of '100-day plans'. Want to avoid litigation by ensuring genuine consultation (noting past litigation). • The Crown's apology and acknowledgement in the Treaty settlement are the most important things for many PSGEs - how will the Crown keep its promises? • Treaty settlements are enduring and won't go away. • If things of substance are happening in our areas of significance and impacting on our lands, taonga, waters, we expect to be consulted with and cooperated with. If anything prejudices that we would see it as a breach of our settlement. • Concerning that a FTC regime might contemplate changing Treaty settlement. • Concern that this FTC process may become the new consenting process. • Feels dangerous. Need to protect our voice in key decisions affecting our rohe. Need a say on what happens in our takiwā. • Iwi/hapū groups have spent many years and lots of money getting provisions into RMA national direction and plans to protect the environment and iwi/hapū interests	[redacted]

Category	Generalised feedback	From PSGEs/Māori entities
	and will be extremely frustrated and angry if FTC ignores or runs rough-shod over these. • Given the extremely compressed timeframe for engaging with PSGEs/iwi, want to see a draft of the Bill before it goes into the House. • Cautioning officials against providing advice that this is a Treaty compliant process or process that upholds settlements. Don't agree that it will.	[redacted]
How will Treaty Settlements and other RMA Arrangements be upheld?	• PSGEs see their settlements as full and final. Would have an issue with proposals that challenge or circumvent that. • The intent of the Treaty settlement is to reset the iwi-Crown relationship and move it into a constructive place. It is not just the redress provisions at the time of settlement that must be upheld, also the relationships/processes built up since in RMA space. • FTC legislation must have a Treaty clause as well as specific Treaty settlement protections. Settlements were agreed in the context of the Treaty clause in s8 of the RMA, any removal of this will weaken Treaty settlement redress. • Te Ture Whaimana should be given primacy in FTC legislation. Support inclusion of a clause "of equivalent effect" to s104 of the NBA rather than an "equivalent clause". • Inclusion of other approvals (eg Heritage, DOC) will trigger other aspects of Treaty settlements outside of RMA. How can we be assured these will be upheld? • Would have concerns about projects in the EEZ given interests provided for in Treaty settlements. Iwi have interests beyond the 12 nautical mile boundary. • Will the government critically examine and confirm the new legislation is consistent with existing Treaty settlements or will iwi be expected to provide all feedback on their own respective settlements? • Will the new fast track process have the minimum standards upholding the Treaty and Treaty settlements that the Covid fast track process did? • Iwi don't have confidence Treaty settlements and other arrangements will be protected if there are no Treaty provisions in the FTC Bill. • Concern 'fast-tracking' will be achieved by removing settlement protection mechanisms supporting iwi protection of their taiao.	[redacted]
[redacted]	[redacted]	[redacted]

Category	Generalised feedback	From PSGEs/Māori entities
Iwi Aquaculture/ Fisheries feedback	• What opportunities will there be for iwi and hapū for new aquaculture applications? • Need to include Aquaculture Settlement Areas within the definition of "regionally significant" otherwise iwi and hapū will not get through the front door. • Over 1000 aquaculture consent renewals coming up; how will they be dealt with? Can they be applied for under this system? Is the intention for new aquaculture space to be made available? • What about undue adverse effects test in Fisheries Act – can this be included within scope of consents under FTC legislation?	[redacted]
Claims yet to be settled	• How will the system recognise the rights and interests of groups still negotiating settlements or yet to enter negotiations? Not enough just to involve PSGEs. • Those yet to settle should be included on the same basis as settled groups. • Unclear how rights under the Marine and Coastal Area (Takutai Moana) Act 2011 will be upheld. How will live applications for customary title and rights in the Courts or through Crown engagement pathway be safeguarded?	[redacted]
Process/Policy concern	*System design* • Adapting a system designed for a pandemic to something designed for economic benefit is very risky. A critical eye needs to be run over what is retained from NBA and Covid regimes. • Concern this may cut corners and elevate economic gains over environmental protections. • What are the triggers that define fast track process, approval process? • Make it mandatory for applicants to engage with PSGEs and other Māori groups when preparing applications. • Make it mandatory for the Ministers to talk to the PSGEs before a consent is sent to the Expert Panel. • Enabling activities classified as 'prohibited' in RMA plans or activities previously declined consent by councils (i.e. 'bad' projects) will be regarded as a Treaty breach and will attract litigation. • Scope of the FTC in terms of the nature and type of projects is far greater than anticipated by some PSGEs/iwi groups.	[redacted]

Category	Generalised feedback	From PSGEs/Māori entities
	• Concern that with so much of the FTC process resting in the hands of Ministers, decision making will be 'politicised' instead of what's good for Māori, local communities, and the environment. *Criteria* • What is the justification for an individual applicant having discretion to circumvent the process that the Crown has designed for everyone else? • There should be a threshold to meet before this process is applied. • Will eligibility criteria have Treaty and Treaty settlement considerations built in? • How will what iwi consider as "regionally significant" be incorporated? • Seeking clarity on what the similarities between FTC and Call-in processes are. • Criteria could include references to wāhi tapu, wāhi taonga and other valued items to protect culturally sensitive environments and features. *Eligibility* • Will category 3 marae and papakainga land under the Future of Severely Affected Land process be included? • Seek inclusion of Building Act approvals (similar to Order in Council temporary housing). • Want water storage expressly enabled even if it would be declined under RMA. • Want learning from flooding/cyclone response to be included. *Protections* • The interim FTC regime included in a Schedule both an obligation to uphold Treaty settlements as well as a process to come into force nine months later which contemplated Treaty settlement amendments. A fast-track regime should be tightly confined and should uphold settlements and not require settlement amendments. • Would like to see an equivalent of s6 of Covid FTC legislation in new regime. • How will FTC interact with the Hawke's Bay Regional Planning Committee Act 2015? • How will covenants and other arrangements PSGEs/iwi have with DOC be pulled in the FTC? • Questions around how this legislation might lessen protections for other taonga such as heritage sites of significance (particularly wāhi tapu). • Include protection for land that is subject to rights of first refusal. • There are some places that development should never be located e.g. maunga tapu, wāhi tapu, wāhi tupuna, and urupā. What protections will FTC provide for these?	[redacted]

Category	Generalised feedback	From PSGEs/Māori entities
	• FTC process needs to refer to settlement documents to check for consistency of process, decision making and outcomes with commitments made by the Crown to iwi/hapū. • Concerned about potential for FTC to override rights, prerogatives and entitlements provided for in Treaty settlements and other arrangements including relationship agreements, environmental protocols and covenants, MACA/CMT, JMAs etc.	
Expert Panels	• Concerns around how PSGEs will be represented on Expert Panels including in areas with many interested and overlapping groups. • Concern regarding cultural impact assessments having enough time for due diligence - seeking clarity on how long the Expert Panel process will take. • How agile will the Expert Panel process be, e.g. ensuring if an awa is on the boundary between several PSGEs one will not speak for the other. • How the Expert Panel will interact with local district plans.	[redacted]
Timeframes/ Information provided	• Timing for feedback is totally unacceptable. • Not enough information provided to engage with meaningfully. • Concern it is hard to “say no” to the proposal. • Would want to review the content and comment on the draft Bill.	[redacted]
Resourcing	• Will PSGEs be resourced to engage on FTC policy proposals? • In light of the urgency, expect that the costs should be carried by the Crown rather than expending settlement monies. • Very difficult for PSGE/iwi groups to contribute meaningfully to developing the FTC without appropriate resourcing from the Crown, especially within such tight timeframes. • Will PSGEs be resourced to assess impacts of applications and provide feedback?	[redacted]

Category	Generalised feedback	From PSGEs/Māori entities
	• PSGEs are already struggling to adequately respond to RMA consents due to limited capacity and resources. Concern this will only make things worse. • Even where iwi/hapū input in the FTC process is provided for, participation will be very challenging for groups that are yet to settle or do not have access to funding.	[redacted]
Other	• Object to any FTC process. • Request direct consultation on FTC regime design before progressing any further. • Due to the rushed timeframe we decline to provide substantive feedback. • The government has not properly engaged with us– we will be filing a Tribunal claim.	[redacted]

Te Tai Kaha Collective (New Zealand Māori Council, Federation of Māori Authorities, Ngā Kaiārahi o te Mana o te Wai Māori)

Category	Generalised feedback
Treaty obligations to be upheld	• The Government has said that they intend to uphold Treaty settlements, but that there will not be a general Treaty clause. However, Treaty settlements are not the main interest for Māori under Te Tiriti. Unless all Māori rights and interests holder are recognised and protected in this legislation, Māori will inevitably challenge the legislation in the Tribunal or the courts. • The lack of clarity in the legislation on how Treaty compliance will be achieved and subsequently deferring this for the courts to determine, will leave the development community with significant uncertainty as to the parameters for decision-making and the process they are expected to follow for consenting..
Engagement in this process	• The select committee process is not a substitute for Treaty consistent engagement. It represents a Māori being able to exercise a democratic right under Article 3 but does not constitute Article 2 and 1 Treaty partnership engagement.
Experience with the Covid fast track consenting	• Practical experience with the FTCA showed that it didn't work and that while decisions were made fast upfront, the process afterwards dragged on with some taking over 2 years – a lot to do with no mechanism for facilitating engagement with Māori where it was required. • 10 working days is not enough to consider all of the information, ecological impacts and impacts on other infrastructure that is needed for one of these big projects. • Te Kāhui Māngai was used, but it is inadequate for identifying the full range of Māori groups with rights and interests. Keen for work of previous government on a database of Māori rights and responsibility-holders to be continued, offered to help with this.
Other	• The RM system will be slower and provide less certainty if Ministers are the final or substantive decision-makers. • A purpose clause prioritising project delivery over fundamental rights of New Zealanders will be challenged. • Concern that EPA won't have enough funding to implement.

Category	Generalised feedback
	• Has United Nations Declaration on the Rights of Indigenous Peoples been referenced in any advice?

National Iwi Chairs Forum Pou Taiao Grouping of Iwi Chairs

Category	Generalised feedback

Opportunity	• Not opposed in principle to the concept of fast-track consenting, if key bottom lines are protected, including:
	  ○ Sustainable health and wellbeing of the environment
	  ○ Treaty settlements and broader Māori rights (including participation)

Purpose	• Strongly opposed to weighting of purpose of FTC legislation (development) above sustainable health and wellbeing of the environment

Protections for Treaty settlements and other Māori rights and interests	• Strongly opposed to aspects of the proposals that are considered fundamentally irreconcilable with Treaty settlements and other related agreements, including undermining or bypassing:
	  ○ Treaty settlement provisions that were negotiated in the context of (and to materially alter) processes under existing legislation that may be part of the 'one-stop shop' approvals/permissions;
	  ○ safeguards for iwi and hapū interests within existing environmental statutes and planning instruments (including sections 6(e), 7(a) and 8 of the RMA); the requirement to give effect to Te Mana o Te Wai in the NPS-FM; and relevant 'Treaty principles' clauses);
	  ○ general iwi and hapū rights and interests in relation to natural resources.
	• It is critical that an overarching clause relating to the protection of Treaty settlements is included requiring that any decisions made are consistent with Treaty settlements and other Treaty-related commitments and arrangements.

Prohibited activities not ineligible, and 'deemed consents' for listed projects	• Disregards community and iwi-led decision-making • Lacks checks and balances • Concern that listed projects will be deemed approved without any engagement or approval from relevant iwi.
Role of Expert Panel	• Needs independent assessment of decision-making for large-scale projects • Unclear what weighting the EPA will be required to give to considerations arising under current statutory regimes brought under the 'one-stop shop'.

Technical advisors to the National Iwi Chairs Forum

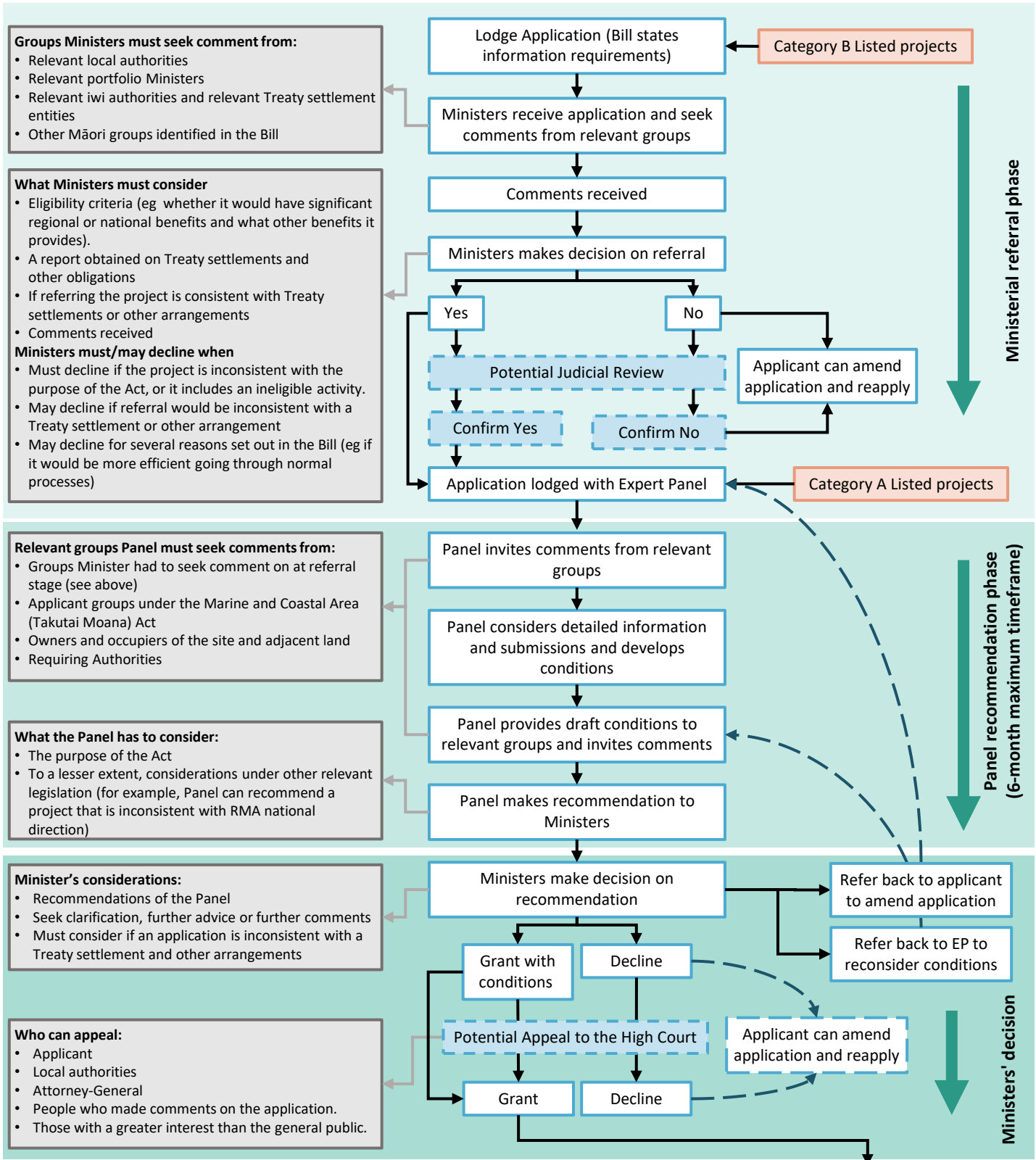
Category	Generalised feedback
Purpose	• The COVID and Cyclone recovery-related legislation had a clear purpose, and a clear reason for the need for fast-track legislation. The purpose here seems to be enabling the government to get around barriers, and this reason isn't good enough. • We have not had a clear articulation from the government what the problems are with the RMA. • We are not against efficiency changes, but we are against substantive changes which take away from the purpose of what we're all trying to achieve. • We oppose any legislation that prioritises infrastructure and development over, or at the expense of the sustainable health and wellbeing of the environment, Treaty settlement frameworks and obligations, and the rights, interests, and Treaty-consistent participation of iwi/hapū. Concern with shift away from RMA purpose to one focused on development (less weighting on environmental management). • Purpose needs to link back to the RMA purpose and associated clauses (Part 2 RMA) to protect Treaty settlements and Māori rights and interests.
Other legislative regimes brought under 'one-stop shop'	• Approving the purpose of the legislation before a decision on what other pieces of legislation will be included is flawed, as they will affect how the purpose will work. • The 'one-stop shop' approach will result in the approvals, principles and standards currently required under the Acts being considered for inclusion either being bypassed or significantly diluted. • If approval processes under existing statutes are fundamentally changed or overridden by a new fast-track bill, the statutory and policy framework upon which Treaty settlements have been negotiated and agreed will be materially and unilaterally altered. This will be a clear breach of those settlements and inconsistent with your commitment.
Listed projects and criteria for projects to be referred to Expert Panel	• Projects should not be on the list unless the applicant has the approval of relevant settlement authorities. • Engagement in this space needs to be broad and across all treaty interests – not just treaty settlement entities. • Treaty settlements can't be a 'second order' decision that is looked at after projects are referred –it has to be from the start. • Best case scenario projects simply can't be referred without the approval of relevant settlement authorities in that area, and there will need to be broader engagement (not necessarily 'approval') requirements with other Treaty interests. • Can't rely on Māori landowners, entities etc to be picking up notices about referral. Tthey need to be proactively contacted and engaged with. • Whatever the criteria is applied to referred projects it needs to be applied proactively before projects are listed in the legislation.
Eligibility criteria	• Applicants seeking approval for a project should have to demonstrate they have engaged adequately with, and provided sufficient information to relevant groups before application is approved. • The process should have some kind of veto that iwi/hapū/Māori groups can trigger. • Consistency with Treaty settlements should be a 'must' eligibility criteria.

Category	Generalised feedback
	• The eligibility criteria, as currently proposed, will allow applications for projects that are otherwise prohibited activities under the RMA. (For example, activities that a community and its local government representatives have deemed prohibited under a regional or district plan). • We oppose this proposal as it flies in the face of community and iwi decision-making. • We are further concerned that, as currently proposed, criteria for initial executive decisions regarding the inclusion of projects within the fast-track bill consenting processes will invite unwanted political lobbying from project applicants.

Infrastructure and development sector attendees at information session

- Civil Contractors New Zealand
- WasteMINZ
- Water New Zealand
- Port of Tauranga
- Meridian Energy
- Civil Contractors NZ
- Telecommunications sector
- Manawa Energy
- Tonkin + Taylor
- Property Council New Zealand
- NZ Telecommunications Forum
- Connexa
- NZ Wind Energy Association
- WasteMINZ Contaminated Land Management Sector
- SparkNZ
- Organics Sector Group, WasteMINZ
- Electricity Networks Aotearoa
- Manawa Energy
- RM Barrister
- ACE New Zealand
- Straterra
- Infrastructure NZ
- Aggregate and Quarry Association
- 2degrees
- NZ Airports Association
- Chorus

Appendix 1: Fast-track process under Fast Track Consenting Bill



Approvals covered under the Fast-Track process:

- A resource consent, notice of requirement, or certificate of compliance under the **Resource Management Act 1991**.
- Authority to do anything otherwise prohibited under the **Wildlife Act 1953**
- An approval under the **Conservation Act 1987** or the **Reserves Act 1977**
- An approval under the **Freshwater Fisheries Regulations 1983**
- An archaeological authority under the **Heritage New Zealand Pouhere Taonga Act 2014**
- A marine consent under the **Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012**
- A land access arrangement under section 61 of the **Crown Minerals Act 1991**
- Efficient Environment Court processes for **Public Works Act 1981** processes
- Aquaculture decisions under the **Fisheries Act 1996**

Next steps:

- Applicant can proceed with project
- The usual agencies are responsible for monitoring the project and enforcing conditions after it has been approved
- The Bill does not limit the right of Judicial review

Version 1 – dated 1 March 2024

Ministry for the Environment
Manatū Mō Te Taiao

BRF-3993: Fast-track consenting Amendment Bill

Date submitted: 15 December 2023
Tracking number: BRF-3993
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 meet ministerial colleagues	20 December 2023

Actions for Minister's office staff

If agreed to, forward this briefing to:

Hon Chris Bishop, Minister of Housing and Infrastructure;

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

Hon Todd McClay, Minister of Agriculture, Forestry and Hunting and Fishing;

Hon Tama Potaka, Minister of Conservation and Māori Crown Relations: Te Arawhiti;

Hon Penny Simmonds, Minister for the Environment;

Hon Shane Jones, Minister for Oceans and Fisheries, and Resources

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

Appendices and attachments

I. Appendix 1: Key design choices required to progress a FTC Bill
II. Appendix 2: Targeted amendments to the RMA, and RMA national direction, for further consideration
III. Appendix 3: Proposed timeline for introduction of a FTC Bill
IV. Appendix 4: Background context for fast-track consenting

Ministry for the Environment
Manatū Mō Te Taiao

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Cathy O'Callaghan		
Responsible Manager	Rebecca Scannell	s 9(2)(a)	
General Manager	Jo Gascoigne	s 9(2)(a)	✓

Minister's comments

BRF-3993: Fast-track Consenting Amendment Bill

Key messages

1. This briefing provides advice on first order questions to understand the scope of a fast-track consenting (FTC) regime that can be introduced within the Government's first 100 days, and what amendments could be made following this. Within this, there are two options: one a stand-alone piece of legislation or, two through an amendment to the RMA. It also suggests you meet with your ministerial colleagues with urgency to discuss the options presented in this paper to achieve this coalition governments' objectives.

2. We understand you want a permanent fast-track consenting regime for infrastructure projects and a fast-track one-stop-shop consenting and permitting process for regional and national projects of significance. You have also indicated you wish to make targeted national direction amendments to the Resource Management Act 1991 (RMA). You have options for how you take this forward depending on what you want to prioritise (eg, timeframe, versus breadth of issues addressed).

3. There are a number of other RMA matters ministers have indicated they wish to progress in order to cut red tape and achieve the government's economic growth objectives, through the FTC Bill or an alternative legislative vehicle.[1] These policy matters include housing growth, renewable energy, compliance and enforcement provisions, freshwater provisions and aquaculture.

4. There are limited PCO resources and House time available prior to 8 March 2024. As such, you will need to strike a balance between the scope of the FTC regime to be introduced in the first 100 days, quality policy outcomes, and complexity including the interaction with obligations in Treaty settlement legislation.

5. Given the tight timeframes for drafting the FTC Bill, officials recommend a meeting starting the week of 18 December 2023 with lead ministers to prioritise what matters can be included in this legislative vehicle and what matters should follow speedily in a subsequent vehicle. This paper therefore provides some detail on other proposed amendments to highlight the trade-offs and potential sequencing of these.

6. This briefing presents two key design choices for discussion with your ministerial colleagues:

[1] BRF-3951: Delivering your resource management priorities: repeal of the NBA and SPA.

a. Should this be a standalone piece of legislation or an amendment to the RMA?

b. Whether this process provides for a narrower FTC regime to be introduced within the 100 days, or a broader but longer timeframe.

7. Further design choices, and details of potential RMA and RMA national direction amendments are provided in Appendix 2.

8. Your aspirations to provide FTC can be achieved while upholding Treaty settlements. Decisions on the key design elements need to be informed by these commitments to ensure settlements are upheld.

9. Officials will provide immediate follow-up advice following a ministerial conversation to seek further detailed policy decisions to inform a cabinet paper and Bill drafting in the new year.

10. In that advice, we will recommend you seek Cabinet approval to undertake targeted engagement to inform PSGEs, relevant Māori groups, local government and other key stakeholders on the design choices and proposals in that paper.

We recommend you:

a. Note you have key choices regarding scope and timing which need to be made early so officials can proceed to prepare

b. **agree** to forward this briefing to:

i. Hon Chris Bishop, Minister of Housing and Infrastructure;

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

iii. Hon Todd McClay, Minister of Agriculture, Forestry and Hunting and Fishing;

iv. Hon Tama Potaka, Minister of Conservation and Māori Crown Relations: Te Arawhiti;

v. Hon Penny Simmonds, Minister for the Environment;

vi. Hon Shane Jones, Minister for Oceans and Fisheries, and Resources

Yes | No

c. **agree** to meet with relevant portfolio Ministers to discuss the choices for FTC provided in this briefing

Yes | No

d. **agree** to progress a fast-track consenting Bill for introduction in March 2024
Yes | No

e. **agree** to the key design choices set out in Appendix 1 Yes | No

f. **agree** to seek Cabinet approval to undertake targeted engagement on policy proposals for the Fast Track Bill, to inform PSGEs, relevant Māori groups, local government and other key stakeholders regarding what is proposed

Yes | No

g. **note** that decisions on key design elements need to be informed by and uphold Treaty and settlement and other Crown commitments

h. **note** that Treaty settlements cannot be amended without the agreement of the affected PSGEs so proposed changes to the planning or consenting framework affecting how settlement commitments work need to be first discussed with relevant PSGEs to ensure the intent and effect of settlements are upheld.

i. **agree** to seek Cabinet approval to undertake engagement with identified representatives for PSGEs or other Māori groups, on policy proposals for fast track consenting and any other proposals that may affect Treaty settlements, arrangements or commitments with Māori, in respect of the fast track Bill, subject to confidentiality undertakings

Yes | No

j. **note** that we will provide advice in January 2024 on your three-phase approach to RMA reform

k. **agree** that the recommendations in Appendix 2 which outline targeted amendments to the RMA and RMA national direction should be considered for phase two of your three-phase RMA reform programme

or

l. **direct** officials to provide advice on the feasibility of including some of them in the FTC Bill Yes | No

m. **note** following discussion with your colleagues, officials will provide immediate follow-up advice before 22 December 2023 to achieve your objectives for the FTC regime within 100 days, and how to progress other amendments.

Signatures

Nadeine Dommisse
Deputy Secretary
Environmental Management and Adaptation

15 December 2023

Hon Chris Bishop
Minister Responsible for RMA Reform

Date

BRF-3993: Fast-track Consenting Amendment Bill

Purpose

Purpose

1. This briefing provides options for ministerial consideration to clearly identify the scope of what can be included in a fast-track consenting regime established within the Government's first 100 days.

Background

Fast Track Consenting

2. On 4 December 2023, Cabinet agreed to progress repeal of the Natural and Built Environment Act 2023 (NBA) and the Spatial Planning Act 2023 (SPA) by Christmas 2023 (CAB-23-MIN-0473 refers). Cabinet noted the next RMA amendment phase would introduce FTC. The Government committed to introduce FTC within 100 days (CAB-23-MIN-0468).

3. 9(2)(f)(iv) [redacted]

4. Given the limited time and PCO resources to establish the FTC regime by 8 March, we suggest there are key design choices that should be agreed in consultation with relevant portfolio ministers with urgency.

Other Government Priorities

5. This briefing also provides initial advice on other RMA matters the Government wishes to progress, and if they could be progressed through the FTC Bill or an alternative legislative vehicle.[2] These policy matters include going for housing growth, compliance and enforcement provisions, freshwater provisions and aquaculture.

6. Cabinet has already agreed CAB-23-MIN-0486 to include an amendment to the National Policy Statement for Freshwater management, to clarify that councils should not require individual consent applicants to demonstrate how their application meets the hierarchy of obligations laid out in Te Mana o te Wai.

[2] BRF-3951: Delivering your resource management priorities: repeal of the NBA and SPA.

7. There are key choices to decide which of these policy matters will be addressed through the FTC Bill and whether an alternative vehicle will be used for some.

Key design choices to sequence and prioritise the next steps

8. There is a fundamental question of scope that needs to be resolved to prioritise and sequence the FTC regime and subsequent related amendments to the RMA and RMA national direction instruments.

9. You and your colleagues may wish to discuss whether you want the FTC Bill to set up only the new fast track consenting process, or a broader scope FTC regime with a new decision test. Within that, there is a choice as to whether to provide for a narrow FTC regime within the first 100 days, and then to broaden the scope in a subsequent but rapid process.

10. A narrow process focused only on a fast-track consenting regime has fewer timing and process risks for you. However, developing a broader scope FTC regime would not only provide a faster consenting pathway, but also overcome barriers within the RMA system that make consenting significant projects complex, protracted and uncertain.

11. The Government is committed to undertakings made by the Crown through past Treaty of Waitangi settlements. Your aspirations to provide FTC can be achieved while upholding Treaty settlements. Altering standard consent processes could impact Treaty settlement redress agreed between iwi and the Crown. Decisions on design elements need to be informed by these commitments to ensure settlements are upheld. Engagement with post-settlement governance entities (PSGEs) and other relevant iwi groups on FTC will improve the chances of its success.

12. Officials will provide further advice on how existing RMA policies and statutory tests could be adjusted if you wish to develop a broader scope FTC regime.

13. Other design choices include:

    - Does the fast-track legislation bring multiple statutory approvals into a single process – a one stop shop – or is it confined to approvals under the Resource Management Act?

        - There are different ways a one stop shop could work – eg, all decision making under one statutory process, some alignment/cross reference between statutes, or administrative coordination between decisions (or some combination of these).

14. More detail is provided in Appendix 1 on this matter.

15. Officials consider that these key choices would benefit from a discussion early in the week starting 18 December with to give officials joint direction about priorities for what can be achieved in the government's first 100 days.

Should this be a standalone piece of legislation or an amendment to the RMA?

16. There are two options for the legislative vehicle for a FTC regime:

    i a standalone FTC Act

    ii an amendment to the RMA.

17. A standalone piece of legislation (as per the FTCA), could have an explicit focus on enabling regionally/nationally significant infrastructure and development proposals. The FTCA provides a template to work from in relation to RMA approvals – acknowledging this can be improved on the basis of experience. This legislation could include multiple statutory approvals in a 'one stop shop' – noting that further work is needed on how this will operate (this is discussed further below).

18. Drafting separate legislation would increase the complexity of the task in the time available. Separate legislation would need its own Treaty clause to ensure Māori rights and interests are not 'balanced out'[3] and meet Treaty obligations, including to actively protect Māori rights and interests. The extent of departure from RMA processes may also be limited, as may be the possibility of including amendments to the RMA or RMA national direction.

19. PCO will advise on the most efficient manner in which to draft the policy proposals, which can include advising on whether stand-alone legislation or amendments to an existing Act would result in the fastest drafting outcome to facilitate introduction within the 100 days period.

Cabinet manual requirements

20. The Cabinet manual (see sections 5.11 and 5.12.) specifies that controversial matters should be shared with Cabinet prior to their release. Engagement with PMO has clarified that this would be considered a significant policy matter and therefore any written material should be cleared with the Prime Minister before it is released beyond government. If there is substantive written material, this should be shared with Cabinet before its release.

21. Officials seek your agreement (subject to Cabinet's approval) to undertake targeted (general and verbal only) engagement on the proposals in this paper immediately. If you agree, we will work with your office to arrange for you to seek Cabinet approval, and we will provide you with an engagement plan.

[3] Waitangi Tribunal *The Whanganui River Report* (Wai 167, 1999) 330.

You have also requested targeted amendments to the RMA on priority Government policies

22. There are trade-offs needed between delivering priority policies and managing the complexity and time needed to deliver.

23. 9(2)(f)(iv) [redacted]

24. We recommend that you discuss these proposals with your colleagues and indicate whether or not these should be delivered within the FTC Bill.

Next steps

25. Once you have considered this briefing the next steps are:
    i to forward the briefing to the Ministers noted;
    ii discuss the contents with relevant portfolio ministers; and
    iii seek cabinet approval (via an oral item on Monday 18 December 2023) to start engagement.
26. Officials will provide immediate follow-up advice following a ministerial conversation to seek further detailed policy decisions to inform a Cabinet paper and Bill drafting in the new year.

Ministry for the Environment
Manatū Mō Te Taiao

Appendix 1: Key design choices required to progress development of a FTC Bill

Topic	Proposal	Advice	Risks/Mitigation	Recommendations	Decision
Should this be a standalone piece of legislation or an amendment to the RMA?	There are two options: A stand-alone piece of legislation with its own purpose or An amendment to the RMA to include a FTC regime	MBIE and Te Waihanga prefer a standalone piece of legislation (as per the FTCA), with an explicit focus on enabling regionally/nationally significant infrastructure and development proposals. They consider this is the most effective way to provide a permanent, durable regime that includes the ability to bring in other non-RMA approvals as required to enable a 'one stop shop' for activities. The FTCA provides a template to work from in relation to RMA approvals – acknowledging this can be improved on the basis of experience. In addition. MBIE considers that this legislation could include multiple statutory approvals in a 'one stop shop' – noting that further work is needed on how this will operate. MfE officials agree that a separate stand-alone piece of legislation has the potential to be a 'one-stop shop' for approvals providing certainty for applicants and decision makers. Similar to FTCA, this can create implementation and timeliness benefits. 9(2)(g)(i) [redacted] The extent of departure from RMA processes and the desire to make other changes to the RMA will influence the choice between an RMA amendment or a stand-alone piece of legislation. PCO will advise on the most efficient manner in which to draft the policy proposals, which can include advising on whether stand-alone legislation or amendments to an existing Act would result in the fastest drafting outcome to facilitate introduction within the 100 days period.	Any FTC legislation would need to ensure that Treaty settlements and other rights and arrangements are upheld. While separate legislation would increase the complexity of this task, it would give rise to similar issues as including fast track in the RMA. Engagement with Treaty partners would mitigate these risks to an extent. However, given the tight timeframe, undertaking engagement to the extent required, and drafting new legislation, may be challenging.	**Agree** to either: A stand-alone piece of legislation with its own purpose **or** An amendment to the RMA to include a FTC regime	Yes | No Yes | No
Is the purpose of the RMA sufficient or appropriate for FTC?	There are three options for the purpose of FTC legislation: the RMA purpose and principles a separate purpose, subject to the RMA purpose and principles a separate purpose with no link to the RMA purpose	FTC that is subject to the purpose and principles of the RMA allows for a cohesive decision-making model across the RMA (Part 25) and RMA planning instruments for which there is established jurisprudence. Additional thought will be needed on how to ensure existing links between Treaty settlements and the RMA are maintained. A separate purpose not linked to the RMA could clarify the role of FTC and also positively influence decisions on, and improve certainty for, applications. Consideration would need to be given to an appropriate Treaty clause and provisions to ensure Treaty settlements are upheld.	The choices between using the RMA purpose and creating a separate purpose are connected to, but fairly independent of, the choice whether the FTC regime should be in a standalone Act or an amendment to the RMA. PCO will advise on drafting complexity.	**Note** that MfE recommends FTC be subject to the RMA purpose and principles alongside the development of a specific purpose for FTC. **Note** that Te Waihanga and MBIE's preferred option is a clear purpose that enables the public benefits of infrastructure, housed in standalone legislation.	

[4] Waitangi Tribunal *The Whanganui River Report* (Wai 167, 1999) 330.

[5] Part 2 of the RMA includes direction to achieve sustainable management, how matters of national importance must be addressed, and how the Treaty of Waitangi must be taken into account.

Topic	Proposal	Advice	Risks/Mitigation	Recommendations	Decision
		FTC with a separate purpose, but also subject to the RMA purpose and principles could provide additional certainty for approvals and have similar benefits to those above. These are difficult to ascertain until more analysis is undertaken. If this approach is preferred, there are options to ensure the overall intent of the FTC and RMA considerations can be achieved. A new purpose (subject to the RMA or not) may provide for outcomes to be realised faster. This would rely on drafting and weight being given to the purpose and depend on the outcomes that the process is seeking to achieve. Developing a clear separate purpose and determining regulatory system implications requires additional policy analysis. MfE recommends that FTC be subject to the RMA purpose and principles alongside the development of a specific purpose for FTC (this is consistent with the approach taken in the FTCA). Te Waihanga and MBIE also agree that a clear purpose that enables the public benefits of infrastructure is preferred, and that the FTCA provides a template to work from.		**Agree** to either: the RMA purpose and principles **or** a separate purpose, subject to the RMA purpose and principles **or** a separate purpose with no link to the RMA purpose	Yes | No Yes | No Yes | No
Does the process only provide approvals under the RMA or approvals under other legislation?	The are two options: RMA approvals only or approvals under the RMA and other legislation (for example, under the Wildlife Act 1953, Reserves Act 1977, Conservation Act 1987, Heritage New Zealand Pouhere Taonga Act 2014, Crown Minerals Act, Public Works Act, Fisheries Act)	*Approvals under multiple acts* Including non-RMA approvals under FTC to provide a 'one stop shop' for applicants would require aligning processes and decision making across different legislation, ensuring Treaty settlement obligations that relate to different pieces of legislation are upheld (eg, the Conservation Act 1987 and the Reserves Act 1977). Wider stakeholder engagement would be necessary, including with other Ministers where they are the decision maker under those Acts. Most non-RMA approvals require different assessments and information. Meaning any application would require information and expertise across various legislation adding complexity and cost of a fast-track process for applicants. Any process that includes approvals from other legislation increases the scale and complexity of analysis and drafting (for PCO). *Approvals under only the RMA* Limiting FTC to RMA approvals aligns with the RMA and FTCA. It also ensures the integrity of existing case law and RMA planning documents guiding decision making. Existing FTC procedural and administrative provisions could also be replicated. *Officials' views* MBIE prefers fast-track legislation that brings multiple statutory approvals in a 'one stop shop' – noting that further work is needed on how this will operate, or which permissions should be in scope. For example, there are different ways a one stop shop could work – eg, all decision making under one statutory process, some alignment/cross reference between statutes, or administrative coordination between decisions (or some combination of these). Acknowledging the short timeframes to develop legislation, MBIE and MfE consider officials should look at options to sequence development of Ministers' preferred approach. We recommend you direct officials to look at options to sequence development of Ministers' preferred approach, eg, whether it is necessary to focus on RMA consenting in the first instance and add other statutory decisions over time (eg, via a Supplementary Order Paper (SOP) to the Bill or through subsequent amendments).	There are multiple complexities to the option of including non-RMA approvals in the FTC Bill within the 100 days period. These include policy and engagement requirements and drafting complexity. All relevant legislation will interact with Treaty settlements to varying degrees – understanding these interactions and ensuring settlement provisions are upheld will take time and require engagement with affected settled entities.	**Note** that officials do not recommend the inclusion of non-RMA approvals in an FTC Bill if it is to be introduced in the first 100 days. **Agree** to either: RMA approvals only **or** approvals under the RMA and other legislation **and/or** **Agree** that further work be undertaken to determine which approvals would be appropriate, and direct officials to provide advice on how these could be added to the regime over time if desired.	Yes | No Yes | No Yes | No

Topic	Proposal	Advice	Risks/Mitigation	Recommendations	Decision
Are FTC activities or projects approved in principle when they are listed or referred?	There are two options for how projects enter the process: projects or activities listed in the Bill **or** projects or activities referred by Ministers.	*Listing specific projects* Listing specific projects in legislation requires an understanding of local context (including impacts on Treaty settlements) and access to detailed information about project before an FTC Bill is introduced in March 2024. Requiring significant engagement with local authorities, PSGEs and iwi, and other experts. The necessary rigor to confirm the appropriateness of a project is unlikely to be achieved in the time available. Additionally, amending legislation when a listed project is obsolete or new projects need to added is time consuming and difficult. The risks to listing projects increase if a listed project cannot be declined. Limiting a panel's consideration to the imposition of conditions to manage adverse effects rather than assessing the appropriateness of an activity may result in unacceptable environmental degradation, impact Māori rights and interests and affect communities or individual property owners who have a natural justice right to participate. *Listing specific activities* Listing specific activities (rather than projects) that can access FTC provides flexibility of who can apply. Criteria can be developed (eg public benefit, regional or national significance) to ensure that applications are appropriate (for a truncated process) and meet government priorities. *Decline at Ministerial referral stage* The ability to refer projects or activities where a Minister can decline allows for assessment (including consultation with relevant authorities) and scope for upholding Treaty settlements. Minister approval provides a check on the merits of a project and the achievement of government priorities. *Panel cannot decline* The option of Ministerial referral of projects to FTC but no ability for a Expert Panel to decline (only allowing conditions to be imposed) provides certainty. However, it risks the use of excessive conditions to manage significant environmental degradation and other impacts. The Minister will require extensive information and a substantial and comprehensive referral process as this is a decision to approve. This could be partially mitigated by limiting the types of activities and who can apply, but this may not mitigate impacts on Treaty settlements. s 9(2)(g)(i) MBIE are concerned about poorly designed projects accessing FTC and support the ability to decline a project while having a strong presumption for granting of the consent/other permissions, coupled with a prior due diligence process.	Any proposal where projects cannot be declined s 9(2)(h)	**Note** that officials recommend that an FTC should apply to a range of activities with appropriate safeguards to ensure activities meet government priorities and ensure environment and other key outcomes are met, and Treaty settlements are upheld. **Agree** that projects or activities will enter the FTC process by either: projects or activities are listed in the Bill **or** projects or activities are referred by Ministers. **Agree** that projects or activities proceeding through the FTC process: cannot be declined, panels may only impose conditions or can be declined or can be declined for only for specific reasons.	Yes | No Yes | No Yes | No Yes | No Yes | No
	There are three options how projects proceed through the FTC process: cannot be declined, panels may only impose conditions or can be declined	*Decline at Ministerial referral stage* The ability to refer projects or activities where a Minister can decline allows for assessment (including consultation with relevant authorities) and scope for upholding Treaty settlements. Minister approval provides a check on the merits of a project and the achievement of government priorities. *Panel cannot decline* The option of Ministerial referral of projects to FTC but no ability for a Expert Panel to decline (only allowing conditions to be imposed) provides certainty.			

Topic	Proposal	Advice	Risks/Mitigation	Recommendations	Decision
	or can be declined only for specific reasons.	However, it risks the use of excessive conditions to manage significant environmental degradation and other impacts. The Minister will require extensive information and a substantial and comprehensive referral process as this is a decision to approve. This could be partially mitigated by limiting the types of activities and who can apply, but this may not mitigate impacts on Treaty settlements.			
What type of activities can use FTC?	There are three options for the type of activities that can use the FTC regime: specific activities such as housing and infrastructure (could also include other government priorities such as aquaculture and mineral extraction) or any activity that delivers public benefit or meets a certain purpose or criteria or projects that meet a regional or national significance test	Limiting FTC to specific activities provides clarity of the purpose of FTC and greater certainty for applicants and decision-makers on whether particular projects would or should be approved. This supports an efficient approval process at ministerial referral stage. Despite FTCA allowing a broad range of activities, officials noted there are specific types of activities that regularly used FTCA; these are primarily infrastructure and housing related activities. We can provide additional information on this matter, should you direct this. Requiring activities to meet a regional or national significance test has the potential to limit the pool of activities that can apply. In addition, there may be confusion and duplication with the existing provisions of the RMA for direct referral and Nationally Significant Proposals. The range of activities that could use fast-track or the scope of FTC will have an impact on multiple ministerial portfolios. For instance, mineral permits, mining on conservation land and approvals in EEZ. Officials can also provide additional advice on appropriate decision makers (i.e. Ministers) once you have considered and decided on the key choices above.	Allowing a broader range of activities may create uncertainty for applicants and decision makers about which projects would or should be approved. It also requires a more extensive review of an application before it is referred, potentially reducing efficiency (and increasing cost) by requiring applicants to provide more in-depth information at the referral stage to show they meet the criteria.	**Note** that officials recommend clarity on the nature of specified activities, and a set of criteria to help determine what other activities may be eligible. **Agree** the type of activities that can use the FTC are either: specific activities such as housing and infrastructure and other government priorities such as aquaculture and mineral extraction or any activity that delivers public benefit or meets a certain purpose or criteria or projects that meet a regional or national significance test	Yes | No Yes | No Yes | No

Appendix 2: Targeted amendments to the RMA, and RMA national direction, for further consideration [withhold all the below under 9(2)(f)(iv)]

s 9(2)(f)(iv)

s 9(2)(f)(iv)

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9(2)(f)(iv)

Appendix 3: Proposed timeline for Amendment Bill introduction

	4/12/2023	11/12/2023	18/12/2023	25/12/2023	1/01/2024	8/01/2024	15/01/2024	22/01/2024	29/01/2024	5/02/2024	12/02/2024	19/02/2024	26/02/2024	4/03/2024	11/03/2024
Briefing: Policy decisions to be made for RMA Amendment Bill (including Fast Track Consenting)				STATUTORY RECESS											
PCO Drafting															
Further policy briefings and decisions															
Drafting CAB Paper and Cover Briefing															
Departmental Disclosure Statement															
Regulatory Impact Statement															
Legislative Statement															
BORA Vet															
Minister's Comms and Collateral															
Draft Bill for and CAB Pack Introduction to the House - Lodged for Committee															
CABINET with Draft Bill for Introduction to the House - LEG Committee (or ENV?)															
CABINET with Draft Bill for Introduction to the House - lodged through Minister's Office														8/03/2024	
CABINET with Draft Bill for Introduction to the House															12/3/2024

Ministry for the Environment
Manatū Mō Te Taiao

Appendix 4: Background context for fast-track consenting

FTCA and NBA fast-track

1. The FTCA was a temporary measure to fast-track consenting processes (including notices of requirement) under the RMA.[6] The legislation was driven by the need to create jobs through enabling shovel-ready projects with public benefits to support New Zealand's recovery from the economic and social impacts of COVID-19 and support certainty of ongoing investment.

2. There are various pathways under the FTCA. They are:

    i *listed projects* for ECP for considerations and they have limited discretion to decline.
    ii *referral pathway* has a similar process to be considered by ECP but will require to refer projects to ECP, and there are less restrictions on timeframes and decision making on ECP compared to the listed projects.
    iii *'permitted activities'* for activities that meet specific conditions listed in FTCA.

3. FTCA self-revoked on 8 July 2023, however, applications are still being considered by Expert Consenting Panels. NBA fast-track is being retained (after repeal) until a replacement FTC is introduced (CAB-23-MIN-0473 refers). One application has been lodged under the NBA for Ministerial referral.

4. The NBA fast-track consenting is modelled closely to the FTCA referral pathway and does not have the broad scope like FTCA. This is not a stand-alone legislation, does not list project nor include permitted activity conditions. The NBA framework (and the RMA framework during a transition period) applies.

5. There are some key differences in NBA fast-track referral pathway from the FTCA referral pathway, including but not limited to:

    i The EPA will be supporting the overall FTC process (including ministerial referral), and the Ministry does not have an explicit function to support referral.

    ii public notices to replace Orders in Council to refer projects, and Chief Environment Court Judge to appoint panel instead of a separate Ministerial appointed convenor.

    iii Eligible activities are restricted to only specific housing and infrastructure activities.

[6] It self-repealed on 8 July 2023, and was intended to only last for two years. There was an additional 1 year extension to the original end date.

6. The modifications were made to improve efficiency (based on FTCA learnings), acknowledge the NBA fast track is not an interim measure, and intended to be more outcomes focussed.

9(2)(f)(iv)

9(2)(g)(i)

Role of local authorities

10. The draft Bill does not have an explicit requirement to consult with local authorities to amend plans, and only proposes to seek views from territorial authorities for referral of projects. There's no specific mention of regional council

9(2)(f)(iv)

Ministry for the Environment
Manatū Mō Te Taiao

BRF-4073: Fast-Track Consenting Draft Cabinet Paper

Date submitted: 12 January 2024
Tracking number: BRF-4073
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***	Provide feedback on the draft Cabinet paper Forward to relevant Ministers	Monday, 15 January 2024

Actions for Minister's office staff
Forward this briefing to Ministers: Hon Simeon Brown (Energy, Local Government, and Transport) Hon Tama Potaka (Conservation, Māori Crown Relations: Te Arawhiti) Hon Shane Jones (Oceans & Fisheries, Regional Development, and Resources) **Return** the signed briefing to the Ministry for the Environment (ministerials@mfe.govt.nz and RM.Reform@mfe.govt.nz).

Appendices and attachments
1. Draft Cabinet paper – A permanent fast-track consenting regime for regional and national projects of significance 2. Policy decisions to be delegated to 'delegated Ministers' by Cabinet 3. Examples of interactions between Treaty settlement arrangements and resource management processes 4. Detailed timeline to introduction 5. Memo from Hon Bishop outlining policy direction for FTC Bill

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Principal Author	Tom MacDiarmid		
Responsible Manager	Arron Cox		
General Manager	Jo Gascoigne	9(2)(a)	□

Minister's comments

BRF-4073: Fast-Track Consenting Draft Cabinet Paper

Key messages

1. The purpose of this briefing is to:

    i. seek feedback on a draft Cabinet paper (Appendix 1)

    ii. seek your agreement on further policy decisions to inform the key design aspects of the Fast-Track Consenting (FTC) Bill

    iii. seek decisions around an approach to engagement for developing the FTC Bill and meeting Treaty settlement obligations

    iv. seek agreement to:

        a. progress targeted amendments to the Resource Management Act 1991 (RMA) in a separate Bill

        b. progress a wider RMA amendment Bill, that includes the Phase Two reforms, to be passed by the end of 2024.

2. The FTC Bill will initially be focussed on RMA processes (resource consents, notices of requirement, and certificates of compliance). Officials will provide further advice on how the FTC regime can be broadened later to include approvals under other legislation, to serve as a ‘one stop shop’ for progressing significant projects.

3. Proposals in the Cabinet paper and briefing are based on your previous decisions (BRF-3993) and your preferred direction on 21 December 2023.

4. The proposals also draw from advice provided to you by New Zealand Infrastructure Commission, 9(2)(f)(iv) [redacted] the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA), the FTC provisions temporarily preserved from the now repealed Natural and Built Environment Act (NBA), and the RMA.

5. Many details of the FTC regime will need to be worked through over the next few weeks following Cabinet’s initial higher-level decisions. The delegations in the attached draft Cabinet paper are to a small group of core Ministers as per your direction of 21 December 2023. MfE will be providing you with advice on these governance arrangements next week.

6. While the 100-day timeframe presents challenges in terms of design, engagement and drafting within this period, the proposed approach mitigates

these challenges through the parliamentary process, with a select committee stage to refine the FTC Bill.

7. 9(2)(g)(i) 

8. The draft Cabinet paper also notes that you plan to return to Cabinet to seek operational funding for the fast-track consenting regime; MfE will provide further advice on this as part of preparation for Budget 24.

MfE recommends that you:

a. **provide** feedback on the attached draft Cabinet paper: A permanent fast-track consenting regime for regional and national projects of significance by Monday, 15 January 2024

b. **agree** to **forward** this briefing and the attached draft Cabinet paper to the following Ministers for their feedback by Monday, 15 January 2024:

   i. Hon Simeon Brown (Energy, Local Government, and Transport)

   ii. Hon Tama Potaka (Conservation and Māori Crown Relations: Te Arawhiti)

   iii. Hon Shane Jones (Oceans & Fisheries, Regional Development, and Resources)

Yes | No

c. **agree** to **seek** Cabinet approval to delegate the policy decisions in Appendix 2 on the FTC Bill to the following delegated Ministers - noting that Ministers whose portfolios are impacted will be consulted:

   i. Minister of Housing

   ii. Minister for Infrastructure

   iii. Minister Responsible for RMA Reform

   iv. Minister of Transport

   v. Minister of Conservation

vi. Minister for Māori Crown Relations: Te Arawhiti

vii. Minister for Regional Development

Yes | No

d. **agree** to meet with Ministers Brown, Potaka and Jones to discuss the FTC Bill

Yes | No

e. **agree** to meet with Ministers Brown, Potaka and Jones to discuss the FTC Bill early in the w.c. 15 January

Yes | No

Policy proposals: Scope and purpose of the Bill, and treaty clause

f. **agree** that the fast-track pathway can be used for resource consents, notices of requirement, or certificates of compliance under the RMA

Yes | No

g. **agree** that the purpose of the FTC Bill (subject to further refinement) be aimed at:

i. enabling development to provide social, economic, environmental and public benefits to a district, a region or nationally, while continuing to promote the sustainable management of natural and physical resources for current and future generations; and

ii. providing a pathway that will enable efficient consenting of projects that will have regionally or nationally significant social, economic, environmental and public benefits

Yes | No

h. **agree** that agencies will refine the purpose clause and seek final approval on it from delegated Ministers

Yes | No

Policy proposals: Eligibility for fast-track process and applications

i. **agree** that a broad range of projects can access the fast-track consenting process if they provide nationally or regionally significant benefits

Yes | No

Policy proposals: Referral to the Expert Consenting Panel

j. **agree** that the Minister responsible for making referral decisions under the Bill will be specified in the FTC Bill and that decisions on the responsible Minister will be made by delegated Ministers

Yes | No

k. **agree** that the Minister will determine whether an application should be referred to the Expert Consenting Panel (ECP) or declined

Yes | No

l. **agree** that the FTC Bill will set out clear eligibility for the pathway, including by clarifying ‘regional and national significance’

Yes | No

m. **agree** that the Minister must consult with other relevant portfolio Ministers, local government and iwi including PSGEs when assessing projects

Yes | No

Policy proposals: Listed projects

n. **agree** that the Bill will contain a list of individual projects to be automatically provided to the Minister for referral assessment

Yes | No

o. **agree** that listed projects must be considered, and a referral decision made shortly after enactment

Yes | No

p. **agree** that listed projects should be subject to the same criteria in the FTC Bill

Yes | No

Policy proposals: Decision-making by Expert Consenting Panels

q. **agree** that ECPs will determine approval conditions for projects

Yes | No

r. **agree** that there will be no requirement to hear applications, and the need for a hearing and the ability to be heard is at the discretion of the ECP

Yes | No

s. **agree** that panels must invite submissions from relevant persons or groups, which will be determined by delegated Ministers

Yes | No

t. **agree** that ECPs must make decisions on consents within timeframes specified in the FTC Bill

Yes | No

Policy proposals: Upholding Treaty settlements and obligations

u. **agree** that the FTC Bill will include protections for Treaty of Waitangi settlements and other Treaty-related obligations

Yes | No

Implementation of fast-track regime

v. **agree** that an ECP will be supported by the Environmental Protection Authority (EPA)

Yes | No

w. **agree** that a Panel Convenor will be tasked with appointing ECP members

Yes | No

x. **agree** that the Ministry for the Environment (MfE) (and Department of Conservation (DoC) where projects are in the Coastal Marine Area) will provide advice to Minister on referral)

Yes | No

Next steps for delivering the FTC Bill: engagement and expert advisory group

y. **agree** that the FTC Bill should progress through a full Select Committee process

Yes | No

z. **agree** that an Expert Advisory Group to support MfE and other agencies to refine the Bill prior to and during the proposed Select Committee phase

Yes | No

aa. **agree** to write to Mayors and Local Government Chairs informing them of your intention to introduce the FTC Bill and inviting engagement with officials

Yes | No

bb. **agree** that officials can contact stakeholders with interests in infrastructure, development and the environment informing them of your intention to introduce the FTC Bill and inviting engagement with officials

Yes | No

cc. **agree** that through engagement, Māori groups are given the opportunity to work closely on provisions affecting Māori rights and interests including criteria for decision-making thresholds, appointments to decision-making panels, and how consent conditions affecting projects within their rohe will be agreed

Yes | No

dd. **agree** to write to Pou Taiao Leaders of National Iwi Chairs Forum, PSGEs, Ngā Hapū o Ngāti Porou and other iwi that are yet to settle their claims informing them of your intention to introduce the FTC Bill and inviting engagement with officials

Yes | No

ee. **agree** that where PSGEs and other iwi seek engagement, officials will do so and continue their engagement with Freshwater Iwi Advisors Group

Yes | No

Other amendments to the RMA: Targeted RMA amendments

ff. 9(2)(f)(iv)

gg.

Yes | No

Other amendments to the RMA: Phase Two amendments

hh. 9(2)(f)(iv)

Yes | No

Signatures

Jo Gascoigne
General Manager – Resource Management System 12 February 2024

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

BRF-4073: Fast-Track Consenting Draft Cabinet Paper

Purpose

1. The purpose of this paper is to:

    i. seek feedback (by 15 January 2024) on a draft Cabinet paper that:

        a. outlines the proposed fast-track consenting regime and

        b. seeks authority to issue drafting instructions to the Parliamentary Counsel Office to draft a fast-track consenting Bill for introduction by 7 March 2024

        c. seeks agreement to a Resource Management Act 1991 (RMA) amendment Bill, that include the Phase Two reforms, to be passed by the end of 2024

    ii. seek your agreement (by 15 January 2024) on further policy decisions to inform the key design aspects of the Fast-Track Consenting (FTC) Bill

    iii. seek decisions around an approach to engagement for developing the legislation and meeting treaty settlement obligations

    iv. seek agreement to:

        a. progress targeted amendments to the RMA in a separate Bill

        b. progress a wider an RMA Amendment Bill, that include the Phase Two reforms, to be passed by the end of 2024.

Introduction

2. You have directed officials to develop a Bill to provide for permanent fast-track consenting in accordance with the National/NZ First Coalition Agreement. The FTC Bill will be introduced by 7 March 2024.

3. The attached draft Cabinet paper sets out the way the FTC regime will work and seeks policy agreement from Cabinet on the key policy proposals.

4. Detailed policy decisions still need to be made. You have directed that to make the future policy decisions required to meet this deadline, you will seek Cabinet agreement for the Ministers below to make delegated decisions on policy outlined in Appendix 1.

i. Minister Brown (Energy, Local Government, and Transport.

ii. Minister Potaka (Māori Crown Relations: Te Arawhiti and Conservation) and

iii. Minister Jones (Regional Development)

5. Delegated Ministers are based on our understanding of how you would like to approach governance and decision-making on the wider reforms. Delegated Ministers should also consult with Ministers when policy impacts their portfolio areas.

6. MfE recommends you meet with Ministers Brown, Potaka and Jones to have an initial discussion on the FTC Bill prior to discussion at Cabinet.

7. The FTC Bill is part of the second phase of the Government phased approach to resource management reform:

i. Phase One (complete): repeal the Natural and Built Environment Act (NBA) and Spatial Planning Act (SPA) by Christmas 2023

ii. Phase Two: introduce a permanent fast-track regime, and make amendments to the RMA

iii. Phase Three: replace the current RMA with new legislation in 2026.

8. The other part of Phase Two involved progressing the Government priorities for RM. You have stated that you would like this Bill passed by the end of 2024.

Part 1: Advice on policy decision for the FTC Bill

9. Policy development has built on your decisions in 'BRF-3993: Fast-track consenting Amendment Bill', and your preferred direction on 21 December 2023 (see Appendix 4). It has also been informed by:

i. advice provided to you by New Zealand Infrastructure Commission

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

iii. the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA),

iv. the fast-track consenting provisions temporarily preserved from the now repealed Natural and Built Environment Act (NBA)

v. the RMA

Approvals covered by the FTC Bill

10. In BRF-3993 you agreed that the FTC Bill would only provide RMA approvals and requested further advice on how these could be included in the FTC Bill.

11. The draft Cabinet paper proposes that the FTC Bill will initially only provide for RMA approvals. Over time other approvals could be added to the FTC Bill (eg, the Wildlife Act 1953 or Heritage New Zealand Pouhere Taonga Act 2014), either through the Select Committee process or subsequent amendments.

12. Officials will work with other agencies to provide advice to you and other Ministers on including other approvals in the FTC regime in February/March 2024.

13. The Cabinet paper seeks agreement that the FTC Bill will provide approvals for consents, designations and certificate of compliance, and RMA approvals often associated with infrastructure projects.

Scope and Purpose of the Bill

14. The draft Cabinet paper includes a specific purpose statement to help direct projects into the regime and determine whether they are suitable for fast-tracking. The purpose clause is critical to the overall direction of the FTC Bill. Therefore, the Cabinet paper seeks agreement to finalise the purpose through delegated Ministers to ensure the purpose can be worked through with agencies and stakeholders.

15. The proposed basis for the purpose statement is:

    i. enabling development to provide social, economic and environmental benefits to a district, a region or nationally, while continuing to promote the sustainable management of natural and physical resources for current and future generations; and

    ii. providing for fast-track consenting and approvals of such projects to promote cost-efficient and timely completion.

16. The draft purpose has been informed by advice to you from the New Zealand Infrastructure Commission/Te Waihanga (TW-2023-319) and has been broadened to apply beyond infrastructure projects, include reference to benefits for current and future generations, and has a second clause to direct decision-makers to enable swift completion of projects.

17. MfE recommends the inclusion of a Treaty of Waitangi clause for the Bill and will provide further advice on this to delegated Ministers.

Eligible activities

18. The FTC Bill will enable a broad range of activities (including infrastructure, housing, resource extraction, aquaculture and other developments) to access the fast-track process, provided they meet the purpose of the Act, are nationally or regionally significant, and satisfy any other criteria set out in the FTC Bill.

19. MfE also recommends that the FTC Bill clearly sets out criteria for any ineligible activities, to provide as much certainty as possible to system users and ensure projects that may have significant adverse effects cannot access the fast-track process.

20. The Cabinet paper seeks to delegate decisions on criteria activities to delegated Ministers.

Ministerial decision to refer a project to expert consenting panel

21. The FTC Bill will need to state which Portfolio Minister (or Ministers) will make referral decisions. Cabinet will then be able to delegate those powers to another Minister. Agencies will provide further advice on which Minister will make referral decisions under the FTC Bill and seek agreement from delegated Ministers.

22. Officials will work with other agencies to develop the criteria projects will have to meet for referral. The criteria will ‘test’ for regional and national significance and could include other tests ie,the need to provide public benefit. The criteria in the FTC Bill will have a substantial impact on the number and scale of projects that can access the regime and the benefits and risks they pose.

23. The Cabinet paper seeks to delegate decisions on criteria activities to delegated Ministers.

24. The criteria will need to protect rights provided for in Treaty settlements, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management agreements, the Marine and Coastal Area (Takutai Moana) Act 2011 and Treaty obligations involving more general Māori rights and interests.

25. When making their decision on referring a project, MfE recommends the responsible Minister consult relevant portfolio Ministers, local government and iwi including Post Settlement Governance entities.

Consideration of a project by an expert consenting panel

26. Once a project has been referred by the Minister, an ECP will be established to set conditions on approvals within a specified timeframe.

27. In your memo, you proposed that the ECP will be unable to decline consent conditions but could seek agreement from the Minister to decline a project if they think a high threshold is met for a project to be approved.

28. MfE understands that the reasons for this is to provide infrastructure providers and developers with more certainty that their projects will be approved. 9(2)(g)(i), 9(2)(h)

29. Officials would like to test alternative mechanisms that present less risk while providing the certainty that agencies, and infrastructure and development sector are seeking. The Cabinet paper is drafted to provide for this decision to be delegated.

Listed projects

30. You would like the FTC Bill to list a range of projects that are referred directly to an ECP.

31. MfE recommends that the FTC Bill list projects that the Minister must make a referral decision on shortly (eg, a month) after the Bill is enacted. This will enable officials to undertake adequate assessment of the projects and provide advice on whether referral is appropriate.

Implementation of fast-track regime

32. MfE recommends that the Environmental Protection Authority (EPA) will support the ECP by ensuring applications have the required information and providing secretariat services. The EPA is best placed to do this as it has carried this function in fast-track processes to date.

33. Agencies are comfortable that the MfE, and DoC where projects are in the Costal Marine Area, provides advice to Ministers on referral decisions. MfE will consult with agencies where an application for fast-tracking impacts their portfolio areas.

Upholding Treaty settlements

34. There are over 75 Treaty settlements of varying complexity, all of which are unique (examples are set out in Appendix 2). These settlements have been negotiated in the context of the RMA's detailed planning and consenting framework.

35. Settlement mechanisms are designed to have a strong influence on RMA policy statements and plans, and on what activities are appropriate in a given area. Consequently, the settlements and the policy statements/plans they influence

have a significant bearing on what resource consents can and cannot be granted. The principle that a resource consent application could be declined is fundamental to the agreed Treaty settlement mechanisms.

36. A fast-track regime could impact on Treaty settlement arrangements in a number of ways, especially if there is a strong weighting toward approval of a consent for a fast-tracked project. Officials are developing options for upholding Treaty settlements in the FTC Bill and seek your agreement to undertake engagement with PSGEs and iwi leaders (para 79 to 85) to seek their input into the development of those options.

37. MfE will provide its advice on how the policy proposals in the Bill will affect PSGEs and their settlements.

38. The Crown cannot unilaterally decide how to uphold settlement redress – this must be agreed with the PSGE. From discussions with PSGEs and Freshwater Iwi Advisors last year (on the repeal of the NBA) 9(2)(ba)(i) [redacted]

Treaty analysis

39. The Crown has obligations under the Treaty of Waitangi to act honourably towards Māori and, properly understand and actively protect Māori rights and interests, so far as is reasonable in the circumstances taking into account other interests. These obligations go beyond Treaty settlements and include Crown obligations in all aspects of the fast-track Bill, whether or not a Treaty clause is used.

40. Balancing Māori interests with the wider interests and policy goals of the regime will be important.

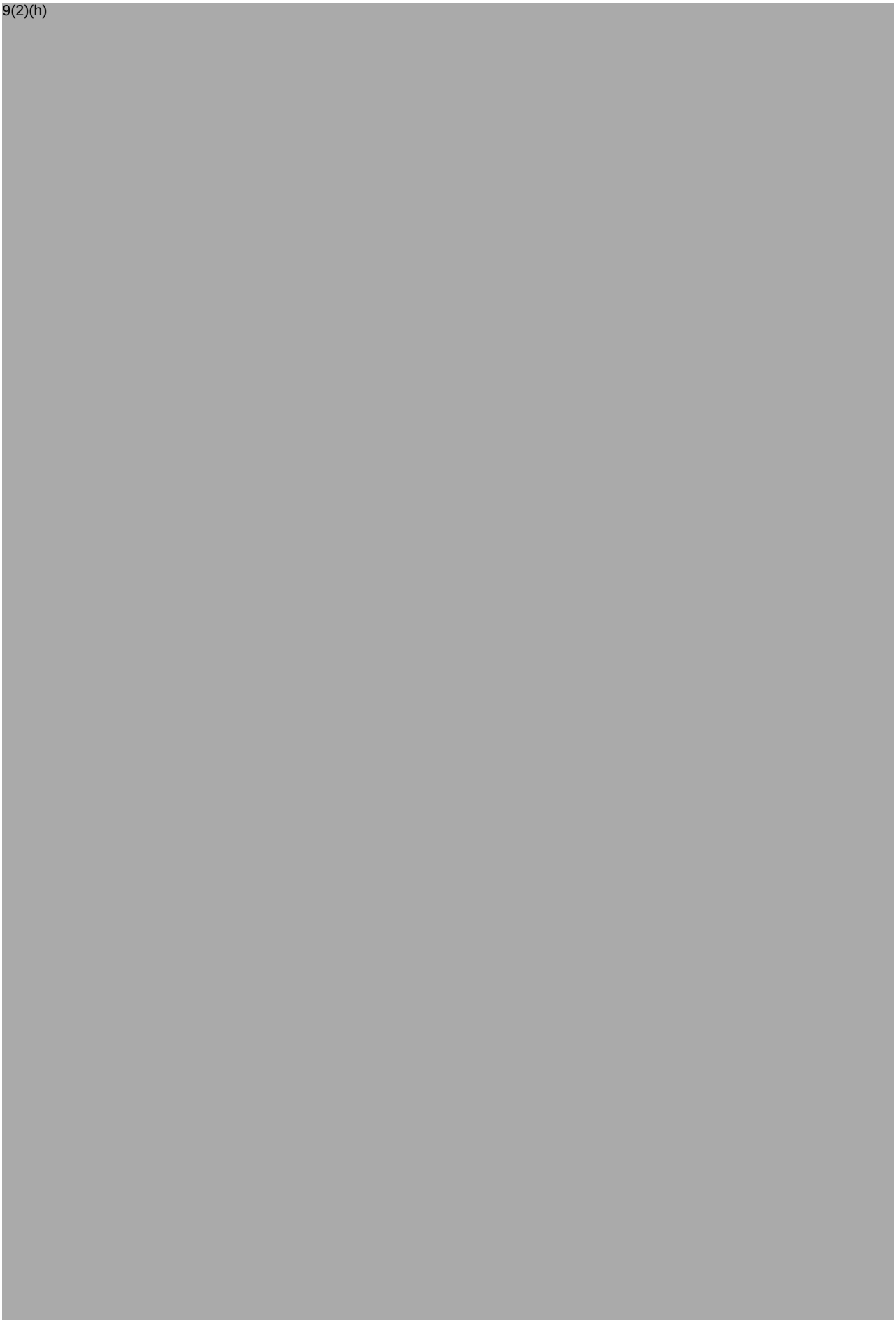
41. Policy proposals interact with Treaty obligations including a high threshold for declining a project, and strong favour toward approval of a consent. Further analysis on the interaction of these with Māori rights and interests will be provided to delegated Ministers.

42. In addition to settlements, the Crown has specific legal obligations under the Marine and Coastal Area (Takutai Moana) Act 2011, the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 and other arrangements that are relevant to the proposals in this paper. Officials will provide advice on how to address any impact of changing those consenting processes via the fast-track Bill on the rights provided for under these and other Acts.

43. This analysis provided is not a detailed analysis. A detailed Treaty analysis will be provided along with detailed policy recommendations.

Legal issues

9(2)(h)



9(2)(h)

Financial, regulatory and legislative implications

53. 9(2)(f)(iv)

54. Cabinet's impact analysis requirements apply to the proposals in the draft Cabinet paper. For 100 Day Plan proposals which seek approval for new policy, Cabinet has determined that Regulatory Impact Statements (RIS) are required but that they do not need to be quality assured. MfE has notified the Treasury's Regulatory Impact Analysis team that they were not able to prepare an accompanying RIS due to time constraints.

55. The Treasury and MfE have agreed that supplementary analysis will be provided when the Bill is considered by the Cabinet in March 2024.

Part 2: Next steps for delivering the FTC Bill

Process to introduce the FTC Bill

56. MfE anticipates introduction of the FTC Bill will require two Cabinet papers:

    i. The paper attached to this Briefing which is to be discussed at Cabinet on 23 January 2024.

    ii. A second paper seeking Cabinet approval to introduce the FTC Bill and policy decisions made by delegated Ministers. We recommend bypassing the Cabinet Legislation Committee (LEG) and taking the draft Bill straight to Cabinet on 4 March 2024.

57. As discussed in paragraph 4 you and other Ministers will need to make a series of delegated decisions on policy. Officials will continue to work with agencies (through established channels) to develop this policy and seek agreement through a number of delegated decision briefings. These will be provided to your office in due course..

58. A detailed timeframe outlining the process to introduce the FTC Bill is in Appendix 3.

Recommended legislative process

59. You will need to make a decision on the legislative process for the FTC Bill in the coming weeks. We recommend that the FTC Bill goes through the full Select Committee process as:

    i. it is a substantive policy that people and groups will want to provide input on

    ii. it will allow Parliament (and officials) to consider submissions that could improve the Bill and better achieve the outcomes the Government is seeking

    iii. will allow MfE to work with a proposed expert advisory group to continue to improve the Bill.

60. A full Select Committee process will take approximately 6 months, meaning the FTC Bill would be enacted by September/October 2024 at the earliest.

Expert input into the development of the FTC Bill

61. In your 21 December 2023 memo you indicated that Ministers wanted to appoint an expert advisory group to consider the wider amendments to the RMA and noted that it would be impractical to use this group for the development of the fast-track regime.

62. While MfE thinks that it can develop a FTC Bill that will provide a more efficient approval process, there is benefit in further refinement to ensure it is fit for purpose and usable for a wide range of developers and infrastructure providers.

63. MfE thinks there is value in convening and expert advisory group to work with MfE prior to refine the Bill via the further Cabinet decisions and the Select Committee process. The group could also provide advice on how to incorporate other approvals into the FTC regime, these additional approvals could be added through the Select Committee process. This group could consist of people representing development, commercial and environmental interests and provide an applicants and consent authorities perspective. The group could be convened just for the development of the FTC Bill.

64. Officials will provide you further advice on the role and make-up of this group in coming weeks.

Consultation and engagement

65. Your 21 December 2023 memo stated that you would like officials to engage with Local Government bodies and stakeholders on this work.

Infrastructure, development and environmental interests

66. Infrastructure providers, developers and other commercial interests are likely to have a high level of interest in the FTC Bill and will appreciate being engaged on it prior to introduction.

67. MfE recommends that you write to groups representing infrastructure, development, and commercial interest informing them of the Bill, its policy proposals and note that officials will be engaging with representative groups.

68. MfE also recommends that you write to groups representing environmental interests.

69. Officials will provide a list of groups that MfE and agencies recommend you write to.

Local government

70. Local government will have a high-level of interest in the FTC Bill as projects approved under it will be of significance to their areas, and they will be responsible for overseeing the approvals. They will appreciate being engage in the FTC Bill prior to introduction.

71. MfE suggests you also write to local government Mayors, Chairs and Chief Executives and Local Government bodies informing them of the Bill, its policy proposals and note that officials will be engaging with representative groups.

72. Officials will provide a list of groups that MfE and agencies recommend you write to.

Māori

73. MfE recommends providing Māori groups with the opportunity to engage with the policy development of the FTC Bill through its development process – both in developing policy prior to introduction and the Select Committee phase.

74. Officials proposes to use the established relationships MfE has with PSGEs and Ngā Hapū o Ngāti Porou to facilitate engagement on the FTC Bill how the proposals could affect their settlements.

75. In most cases PSGEs are an iwi authority for the purposes of the RMA so have a mandate to represent their members in relation to environmental matters. In the few cases they do not, and for iwi have yet to settle (eg, Ngāpuhi), MfE will need to undertake engagement with other representative bodies.

76. In addition, Ministers and officials should continue their engagement with Pou Taiao Leaders of the National Iwi Chairs Group and the Freshwater Iwi Advisors Group. 9(2)(ba)(i) wrote to you outlining process concerns with the repeal of the NBA and SPA and seeking an urgent meeting in January. Officials provided a briefing to you on 12 January 2024 ahead of this meeting. It is likely that meeting will need to address some of the concerns raised by 9(2)(ba)(i) in policy development on resource management reform.

77. As a first step MfE recommends you write to all PSGEs, Ngā Hapū o Ngāti Porou and key iwi that are yet to settle informing them of the Bill, the policy proposals and providing detail on how it will interact with settlement redress. The letter should also offer the opportunity to engage with MfE on the proposals.

78. MfE recommends the letter is sent as soon as policy decisions have been made by Cabinet on 23 January 2024 to allow time for as substantive an engagement process as possible.

79. The engagement process proposed is what officials consider to be the best possible in the circumstances. PSGEs and iwi leaders are likely to consider it inadequate given the significance of the changes proposed to consenting by the fast-track consenting regime.

Part 3: Other amendments to the RMA

Targeted amendments to the RMA within the next 4 months

80. Cabinet has agreed to progress the following targeted amendments to the RMA as close to the first 100 days:

81. 9(2)(f)(iv)

82. 9(2)(f)(iv) [redacted]

83. [redacted]

Phase Two amendments to the RMA

84. You have indicated that you will not pursue more extensive amendments to the RMA through the fast-track Bill. Instead, a separate RMA amendment Bill will be progressed during 2024 (RMA Bill #2).

85. 9(2)(f)(iv) [redacted]

86. [redacted]

87. [redacted]

Phase Three of the reforms

88. The idea of a select committee inquiry into using aspects of the NBA and SPA in a future system was mooted during the Committee Stage of repealing those Acts. s 9(2)(f)(iv) [redacted]

[redacted] .

89. MfE will provide you further advice in the coming months on the longer-term replacement of the current RMA. This will include advice on the suite of national direction and the options for the reform process.

Appendix 1 – Draft Cabinet paper - A permanent fast-track consenting regime for regional and national projects of significance