

PROACTIVE RELEASE COVERSHEET

Minister	Chris Bishop	Portfolio	RMA Reform
Subject Matter	Fast Track Approvals Bill	Date to be published	10 January 2025

List of documents that have been proactively released		
Dated	Title	Author/key agency
19 January 2024	BRF-4098: Talking points: A permanent fast-track consenting regime for regional and national projects of significance	MfE
23 January 2024	Cabinet paper and Minute: A Permanent Fast-track Consenting Regime for Regional and National Projects of Significance	Cabinet Office
14 February 2024	BRF-4203: Fast-Track Consenting Bill - Policy Decisions Tranche 2A – Appendix 3 - Treaty Impact Analysis: Fast Tack Consenting Bill – briefing 2	MfE MBIE
1 May 2024	BRF-4686: Aide memoire: Key themes from submissions to date	MfE
10 May 2024	BRF-4664 - Advice to progress Fast-Track Approvals Bill through Select Committee - proposed redactions.pdf	MfE MBIE
16 May 2024	BRF-4726: Responses from officials to questions from Environment Committee on the Fast-track Approvals Bill	MfE
16 May 2024	BRF-4750: Aide memoire: Supporting material for Select Committee appearance 23 May 2024	MfE
16 May 2024	BRF-4771: Aide memoire: Information on decision-making provisions in the Fast-track Approvals Bill	MfE
24 May 2024	BRF-4752: Second briefing on progressing Fast-track Approvals Bill through Select Committee	MfE MBIE
29 May 2024	Fast-track Approval Bill Minister meeting: Minute of decisions and actions	Minister's office
07 June 2024	BRF-4874: Aide-Memoire: Updates to support Ministerial engagement for Fast-track	MfE

10 June 2024	BRF-4854: Further information on Fast-track Approvals Bill matters	MfE MBIE
13 June 2024	BRF-4884: Aide memoire: Fast-track Approvals Bill - Māori rights and interests	MfE Te Arawhiti
19 June 2024	Fast-track Approval Bill Minister meeting: Minute of decisions and actions	Minister's office
26 June 2024	BRF-4945: Fast-track Approvals Bill: policy and workability changes for department report	MfE MBIE
29 July 2024	Cabinet paper and Minute: Fast-track Approvals Bill: Policy and Workability Changes for Departmental Report	Cabinet Office
19 August 2024	Fast-track Ministers meeting: Record of decisions and actions	Minister's office
26 August 2024	Fast-track Listed Project Minister meeting: Record of meeting	Minister's office
10 September 2024	Fast-track Ministers meeting: Record of decisions and actions	Minister's office

Information redacted	YES
Any information redacted in these documents is redacted in accordance with the Ministry for the Environment's policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under the Official Information Act 1982. Where this is the case, the reasons for withholding the information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.	
Summary of reasons for redaction	
Some information has been withheld for the reasons of: a) To protect the privacy of natural persons b) To maintain the confidentiality of advice tendered by Ministers and officials c) To maintain the effective conduct of public affairs through the free and frank expression of opinion d) To maintain professional legal privilege	



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

- 1. **Date submitted:** 19 January 2024
- 2. **Tracking number:** BRF-4098
- 3. **Security level:** Policy and Privacy

Purpose

- 1. Attached are talking points to assist you in discussion with your colleagues in Cabinet on 23 January 2024.
- 2. The focus of these talking points is the Cabinet paper “*A permanent fast-track consenting regime for regional and national projects of significance*” (the Cabinet paper), and key matters that we understand Ministers may raise.

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)	✓

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

Diagram of the fast-track process

1. We have attached a diagram of the fast-track process as currently described in the Cabinet paper (Attachment 1) to support you in discussions with Ministers. Also provided is a list of some of the major decisions delegated ministers would make if Cabinet agrees.

Funding the implementation on fast-track

2. There is no ongoing FTC funding. The funding for the fast-track NBA process was not addressed in Budget 2022.
3. There will be three funding aspects to FTC costs:
 - i) costs to agencies supporting ministerial decisions. This will be covered through baseline funding
 - ii) costs of co-ordinating the Expert Panels (EP). These can't be cost recovered or absorbed by the Environmental Protection Authority (EPA) in its baseline. The EPA is already running at a deficit which will be addressed in the Resource Management Act 1991 (RMA) replacement budget initiative (estimated \$0.5m annually)
 - iii) costs associated with the operation of individual EPs. These can be recovered from applicants.
3. You and delegated Ministers will need to determine if the costs associated with the ministerial referral process (eg time spent by officials in supporting agencies) can be recovered. This is the case for the Natural and Built Environments Act (NBA) but not the COVID-19 fast-track process.

Listed projects

4. Ministers may want to suggest projects for listing in the FTC bill.
5. We recommend that Ministers work through their officials or Minister's offices to provide these suggestions to the joint agency group led by the Ministry for the Environment.
6. We are already working with agencies to identify possible listed projects. We have also added the list in the bill drafted by Minister Jones to our working list.
7. We will provide advice to delegated Minister on listed projects in February.

Ministers may want to be added to the delegated Ministers group

8. Agencies have requested that their Ministers be added to the list of delegated Ministers (currently 4 including yourself). They may raise this with their Ministers.
9. You will be reporting back to Cabinet on the decisions made by delegated Ministers. The agencies supporting the delegate Ministers are also working with a wider group of agencies (eg Ministry of Justice and Ministry of Arts, Culture and Heritage) to ensure their interests are captured in the policy.

Concerns with projects that will be allowed to access the fast-track process

10. Agencies have differing views on the size and number of the projects that should be able to access the fast-track process. They may raise this with their Ministers. Agencies will provide further advice to delegated Ministers on this.
11. The eligibility criteria in the bill, including the 'test' for regional and national significance, will significantly impact the size and number of projects that are eligible for the fast-track process.
12. It will be important to manage the number of projects accessing the fast-track process to ensure it can operate efficiently. Too many referrals may 'flood' the panels and cause delays.
13. Ministers may ask that projects of interest to them (eg supermarkets) can have access to the fast-track process. We recommend you note their concerns and invite their officials to discuss this.

Next steps

14. Delegated Ministers will receive advice from January to February 2024. I have asked my office to arrange meetings with them too.
15. Drafting of the Bill will occur in parallel to delegated Ministers making decisions.
16. Officials from MfE and other agencies will engage with the infrastructure, development, and environmental interests, local government and Māori groups over the coming weeks. They will summarise the key messages in advice to delegated Ministers.
17. I will come back to Cabinet at the end of February/beginning of March to seek approval to introduce the FTC bill by 07 March 2024 and provide an overview of the key aspects of the Bill.
18. Once introduced the Bill will go through a Select Committee process of 4 to 6 months.



Aide memoire: Key themes from submissions to date

Date submitted: 1 May 2024

Tracking number: BRF-4686

Security level: In-Confidence

Actions sought from ministers

<i>Name and position</i>	<i>Action sought</i>
To Hon Chris BISHOP Minister Responsible for RMA Reform	For noting only

Appendices and attachments

1. Key themes from submissions on Fast-track Approvals Bill

Key contacts at Ministry for the Environment

<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Principal Author	Greg Underwood		
General Manager	Jo Gascoigne	s 9(2)(a)	✓

Key themes from submissions to date

Purpose

1. This aide memoire provides the key themes identified from submissions on the Fast-track Approvals Bill (the Bill) as of time of writing.

Background

2. Submissions on the Bill closed on 19 April 2024; just under 27,000 submissions were received. Officials are processing them at a steady pace, but it will take time to upload and tag (identify key themes) them all.
3. Given the high volume of submissions, and the limited time available to fully consider each of them, we propose to focus on identifying whether the remaining submissions support, do not support, or are neutral on the Bill, but not undertake substantial analysis of the points raised.
4. We are also prioritising consideration of submissions from major organisations, local government, practitioner, industry and iwi groups, and notable individuals or office holders. These submitters are most likely to provide practical suggestions for how the Bill may be improved. We feel confident that the key themes coming through (see Appendix 1) are representative of the majority of views being expressed by submitters.
5. Approximately 1,900 submitters have requested to be heard by the Environment Committee. The Committee will hear submissions over the next two months, and we understand they may consider holding hearings in non-sitting weeks to enable them to hear from a representative number submitters.
6. Officials will attend the hearings which will help inform our advice to you on the Bill.

Next steps

7. On 10 May 2024, we will provide you with a briefing and draft Cabinet paper seeking your approval to recommend various amendments to the Committee via the Departmental Report (DR). The cross-agency team has identified a number of inconsistencies and matters in the Bill that do not achieve the policy intent. We will recommend ways to rectify these.
8. We will also propose a number of changes to the Bill raised by submitters which you may wish to consider. The attached list of key themes provides a high-level look at some of these matters. We would appreciate your initial views on these matters and look forward to discussing with you during the week of 6 May.
9. The Cabinet paper seeking approval to recommend changes to the Committee must be lodged on 30 May 2024, for CBC consideration on 4 June 2024, and Cabinet on 10 June 2024. This will allow us to finalise the DR to be submitted to the Committee on 14 June

2024. We understand the Committee will consider the DR between 20 and 27 June 2024. The Committee is due to report back to the House on 7 September 2024.

10. There is a further opportunity to make changes to the Bill at the Committee of the Whole stage. We will provide more details on this option in the 10 May 2024 briefing.

Signatures



Jo Gascoigne
General Manager

Resource Management System

1 May 2024

Hon Chris BISHOP

Minister Responsible for RMA Reform

Date

Appendix 1: Key themes from submissions on Fast-track Approvals Bill (as at 1 May 2024)

Planning, legal and other practitioners Includes Resource Management Law Association, The Law Association, New Zealand Law Society, Te Hunga Rōia Māori o Aotearoa – The Māori Law Society, New Zealand Planning Institute.	In principle, generally support the intent to provide a simplified and comprehensive consenting regime. Concerns include: • The Bill is disproportionately pro-development and needs greater emphasis on environmental considerations. • The degree of discretion joint Ministers will have in the referral and decision-making processes and the concentration of power in the executive is inappropriate. • The lack of opportunities for public involvement in the fast-track process. • The climate impacts of projects and concerns that the legislation may be inconsistent with New Zealand’s international obligations such as the Paris Agreement. • No requirement for persons exercising functions under it to do so in accordance with Te Tiriti o Waitangi principles and obligations. • Bespoke solutions to awarding resource consents does not provide predictability and clarity to applicants of the wider community affected. • Unintended consequences and concerns about interdependencies between infrastructure.
Environmental groups Includes Environmental Defence Society, Forest & Bird, Greenpeace Aotearoa, The Environmental Law Initiative and local conservation groups.	Strongly oppose the Bill, reflecting a fundamental disagreement with the prioritisation of short-term economic gain over communities and ecosystems. Concerns include: • The disregard for existing environmental protections. • The disregard for democratic principles. • The lack of consultation with stakeholders and the lack of opportunities for public involvement in the fast-track process. • The Bill violates the Treaty of Waitangi and is therefore unconstitutional.
Business, development and infrastructure Includes Property Council, property developers, BusinessNZ, Clarus, Civil Contractors New Zealand, Transpower New Zealand Ltd, power companies.	Generally support the Bill, especially property development groups. Their feedback highlights: • Concern about too much consultation and the potential for one minister to hold up the process. • Lack of resourcing for local councils to engage in the process. • Wanting public and private plan changes (including rezoning) to be available. • The need to ensure transparency and legitimacy in ministerial decision-making. • Concern about the lack of notification for infrastructure providers • Insufficient consideration about the overall balancing of the needs for economic development and the sustainability of the environment. • Lack of timeframes for decision-makers • Processes in the Bill being more onerous than existing processes, or it being unclear/complex.
Local government Includes Auckland Council, Christchurch City, Hamilton City, Dunedin City, Bay of Plenty Regional, Greater Wellington Regional, Waikato Regional, Hawke’s Bay Reigonal Councils; Taituarā / LGNZ.	Generally support the enabling of regionally or nationally significant development, including infrastructure, but have significant drafting and implementation concerns. Some oppose the Bill in its current form. • Bill enables economic development at the cost of environmental degradation, and it is unclear how the Bill will support cultural, social and economic priorities for local communities. • Lack of regard for Māori rights and interests, the Treaty of Waitangi and risk of creating new grievances. • Concern that Ministerial decision-making is inappropriate as decisions require technical expertise and local knowledge. • Concern that projects will not be considered within the existing framework of council jurisdictions and responsibilities, reiterating the need for cost recovery in all aspects of local authority involvement. • Need for clear eligibility and acceptance criteria to avoid clogging up the system and get development in the right place. • Concern about the loss of local voice and inadequate public consultation.
Post settlement governance entities, iwi, hapū, and other Māori representative groups 77 submissions including Te Tai Kaha Māori Collective and those using the Freshwater Iwi Leaders’ Group form submission.	Strongly opposed to the Bill. Many groups specified they are not opposed to fast-track consenting generally but are opposed to this particular approval process. • Strong feedback that the lack of a requirement to comply with the principles of the Treaty of Waitangi is unconstitutional, breaches the Treaty, and conflicts with upholding settlements. • Concern about the prioritisation of development over long-term protection of the environment. • Concern at power being concentrated with three Ministers who can override panel recommendations. • Concern at the lack of protection for groups yet to settle their Treaty of Waitangi claims. • Concern at the lack of public scrutiny afforded to the listed projects process and lack of public participation in the referral process. • Concern at the inclusion of prohibited activities and previously declined activities in the eligibility criteria.
Individual submissions	Early analysis suggests most individual submitters oppose the Bill because of environmental, constitutional or Treaty concerns.
Note: This is a preliminary analysis and may not be reflective of individual submissions.	



Briefing: Progressing Fast-Track Approvals Bill through Select Committee

Date submitted: 10 May 2024

Tracking number: MfE BRF-4664; MBIE 2324-3306

Security level: In-confidence

MfE/MBIE 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	15 May 2024
To Hon Simeon BROWN Minister of Transport	Agree to the recommendations in this briefing	15 May 2024
To Hon Shane JONES Minister for Regional Development	Agree to the recommendations in this briefing	15 May 2024
To Hon Tama POTAKA Minister of Conservation	Agree to the recommendations in this briefing	15 May 2024

Actions for Minister's office staff
If agreed to, forward this briefing to: Hon Simeon Brown, Minister for Energy, Minister of Local Government Hon Paul Goldsmith, Minister for Arts, Culture and Heritage Hon Tama Potaka, Minister for Māori Crown Relations: Te Arawhiti Hon Penny Simmonds, Minister for the Environment Hon Chris Penk, Minister for Land Information Hon Shane Jones, Minister for Oceans and Fisheries, Minister for Resources Return the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).

Appendices and attachments
1. Further policy decisions on substantive decision-making, public participation and other matters raised in submissions. 2. Policy decisions required for Bill workability. 3. Timeframes for Deliverables for the Fast-Track Approvals Bill

Key contacts at Ministry for the Environment

<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Principal Author	Greg Underwood		
Responsible Manager	Jo Gascoigne		✓

Key contacts at Ministry for Business, Innovation and Employment

<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Principal Author	Francis Van Der Krogt		
Responsible Manager	Susan Hall		✓

Briefing: Advice to progress Fast-Track Approvals Bill through Select Committee

Key messages

1. This is the first of two briefings that we will be providing you with advice on potential changes to the Fast-track Approvals Bill. The advice in the briefing includes changes in response to Select Committee submissions, and proposed changes to improve the workability of the Bill. Cabinet agreement is required if the Departmental Report recommends any changes to the Select Committee which depart from previously agreed policy decisions. A further briefing will be provided on 23 May 2024 and draft Cabinet paper will be provided on 31 May 2024.
2. For any changes to the Bill beyond the Departmental Report due date (5 July 2024), a different avenue will be required such as Amendment Papers or an Amendment Bill. We note that any substantial changes will require detailed policy work to ensure they are compatible with the other elements of the Bill.
3. The first part of this briefing provides you with advice on decision-making and public participation in response to your request. These matters have been raised through submissions, and we have analysed those submissions to provide you with additional policy options to address these while delivering on the Bill's objectives. **Appendix 1** seeks your decisions on these matters.
4. The second part of this briefing summarises changes required to improve the Bill's workability. The speed at which the Bill was produced meant large parts of the Bill are not well-aligned. Officials from agencies responsible for different approvals have identified a range of improvements to resolve these issues which require Ministerial approval in **Appendix 2**. These changes align with the Bills overall policy direction.
5. The third part of this briefing covers the remaining key themes raised by submitters. We seek an indication from you here on whether you would like to revisit policy matters previously decided by Cabinet.

Background, process, and timing considerations

6. On 1 May 2024, we provided the Minister responsible for RMA reform with an aide memoire [BRF-4686] outlining the key themes from submissions to date and indicated that we would follow up with further advice (this briefing) and a draft Cabinet paper seeking approval to recommend amendments to the Committee via the Departmental Report (DR).
7. The large number of submissions¹ received has meant that the Ministry for the Environment have yet to receive all submissions for analysis; particularly those from individual submitters. From the submissions we have reviewed we are reasonably confident in the consistency of themes emerging. This briefing contains initial advice on

¹ Approximately 40,000 submissions have been received in total.

some of those matters. It will be followed up with a further briefing (on 23 May) seeking your direction on other policy matters raised by submitters.

8. We also note that the Minister for Land Information is seeking approval for a review of the Public Works Act 1981 (PWA) at Cabinet committee on 29 May 2024. The PWA Cabinet paper proposes to review the full PWA to improve its efficiency and effectiveness, and to deliver Government objectives and priorities on infrastructure, housing, resource management reform and climate adaptation. It does not propose including provisions in the FTA Bill.
9. Following your direction, we will provide you with a draft Cabinet paper for your consideration on Thursday 23 May 2024. To allow select committee timeframes to be met, this must be lodged by 13 June 2024 for ECO consideration on 19 June 2024, and Cabinet on 24 June. **Appendix 3** provides a timeline of this Bill process and for the related selection of projects to populate Schedule 2 of the Bill.
10. Ministers may wish to meet to discuss matters raised in this paper, and/or in the 23 May 2024 paper prior to seeking Cabinet approval. We can work with your offices to arrange this.

Key policy issues

Decision-making

11. You requested advice on decision-making arrangements in the Bill. The issue has drawn significant attention from submitters. Of the five main groups of submitters² we have analysed, all raised concern about different aspects of these arrangements. This included concerns about:
 - i The degree of discretion joint Ministers will have in the referral and substantive decision-making processes and the concentration of power in the executive.
 - ii The potential for polarised decision-making and ‘see sawing’ if project decisions are reversed under subsequent governments.
 - iii How about disagreement between Ministers in joint decision making will be addressed.
 - iv The rationale for having ministerial decision-making.

Other fast-track regimes provide a comparison

12. Fast-track regimes have been established before and the proposed decision-making and public participation arrangements can be compared with those in place for the COVID-19 Recovery (Fast-Track Consenting) Act 2020 (FTCA), Natural and Built Environment Act 2023 (NBA), and the National Development Act 1979. Under recent precedent, Ministers have made decisions on what is referred based on statutory criteria referral processes,

² Planning, legal and other practitioners; Environmental groups; Business, development and infrastructure; Local government; Post settlement governance entities, iwi, hapū, and other Māori representative groups.

with final substantive decisions resting with expert panels. The following table compares different aspects of these regimes:

Table 1: Comparison of decision-making arrangements with other fast track regimes.

	Fast-track Approvals Bill 2024	Natural and Built Environment Act 2023	COVID-19 Recovery Act 2020	National Development Act 1979
Referral	Joint Ministers.	Usually Minister for the Environment.	Usually Minister for the Environment.	-
Scrutiny	Expert Panel	Expert Consenting Panel	Expert Consenting Panel	Planning Tribunal
Final decision	Joint Ministers.	Expert Consenting Panel	Expert Consenting Panel	Governor-General in Council
Appeals	Appeals limited to certain persons on points of law	Appeals limited to certain persons on points of law	Appeals limited to certain persons on points of law	Appeals available to any person to the Court of Appeal against the validity of an Order-in-Council ³

13. There are some differences between the range of persons with appeal rights identified in those statutes. We are working through any departures from the 2020 and 2023 Acts and will provide advice on whether any changes may be desirable in the 23 May 2024 briefing.

Consider having Panels make the final decision on applications

14. Many submitters recommend adopting the approach of the NBA and FTCA where Panels make the final decisions on applications. This approach:

- s 9(2)(h) [REDACTED]
- Reduces the risk that a project's social license is undermined in a case where Ministers may depart from the recommendations of the panel.
- Speeds up decisions by removing a stage in the process.
- Protects Ministers from perceptions of bias and conflicts of interest.

15. By retaining substantive decision rights, Ministers would be able to make their own determination under the legislation on the balance to be struck between the regional and national benefits of fast-track projects and the application of conditions under the associated legislation (eg, the Resource Management Act 1991). If they disagreed with the recommendations of the panel, they could depart from those recommendations.

16. If Ministers would like to consider the option of moving final decision-making from themselves to panels, there are options to strengthen how the Bill directs panel decision-making:

- i. ensuring that panels include members with strong credentials in economic sectors linked to projects could help ensure that development benefits are recognised.

³ Note that the process under the National Development Act involved a recommendation from the Planning Tribunal, which followed full public notification, hearings and rights of cross-examination. It does not appear that appeals were limited to points of law only.

- ii. providing more guidance to panels on the nature or scale of regional and national benefits that the Government is seeking to enable.
 - iii. ensuring panels have access to expert advisors on economic and regional development.
 - iv. allowing panels sufficient time to gather and commission the information they need to assess risks could reduce their inclination to recommend constraining conditions to manage uncertainty.
 - v. Clarifying the purpose statement to make sure the outcomes sought by the legislation are patently clear to decision-makers. MBIE considers the clause could be clarified to achieve this, but both MfE and MBIE note that most submitters consider the purpose statement to be strongly aligned to development.
17. There are protections in the Bill as drafted to guide the decision-making by expert panels. Most notably, panels are required to give pre-eminence to the development-focussed purpose statement which provides clear direction on the aims of the legislation.
18. We would welcome a discussion on these options and can provide further advice through the 23 May 2024 briefing.

Role of ministers with an environmental perspective

19. You could consider including a Minister holding an environmental perspective as joint Minister. Doing so could expand the range of perspectives which are considered, noting that decisions require ministerial consensus.

Public participation

20. You requested advice on public participation arrangements in the Bill. Of the five main groups of submitters we have analysed, all raised concern about different aspects of these arrangements. Their suggestions to address this include:
- i. Requiring landowners and occupiers to be consulted before the first application is made.
 - ii. Giving the Panel the ability to expand consultation based on the scale, nature and extent of potential effects.
 - iii. Strengthening provisions to utilise local voice and knowledge.
 - iv. Requiring public consultation when Crown land and the coastal marine area is involved.
 - v. Requiring notification to infrastructure providers.
 - vi. Allowing greater rights to appeal against Ministers decisions.

Consider providing more time for Panels to identify the parties to seek comment from

21. Increasing opportunities for public involvement may provide decision-makers with more relevant information, but it comes at the cost of expediency. The absence of public notification has been a key feature of the NBA and COVID-19 fast-track regimes as it

allows expert panels to be more targeted in the way different views are considered on projects. We do not recommend changing this approach.

22. Applications that require/would benefit from full public notification are not appropriate for fast-tracking, and they should be turned down at referral on the basis that another approval pathway is more appropriate.
23. To strike an appropriate balance, we recommend giving the Panel five more days to identify the additional parties they consider are appropriate to seek comment from, when they are considering applications. Each application will have different circumstances which determine who the most relevant parties are, and providing sufficient time for the Panel to receive advice on those circumstances means their process can be better informed. Ministers may wish to adopt this policy change regardless of where responsibility lies for the substantive decision on fast-track applications.

Written agreement for large network infrastructure projects

24. We are aware of an issue where large network infrastructure projects may not be able to obtain the written agreement of all relevant landowners and interested parties to support their referral application. This is a particular issue for projects that will cross multiple land titles, such as roading and transmission projects. Under the draft Bill, such projects are ineligible for fast-tracking because of the way the ineligibility clause is drafted.
25. The ineligibility criteria in respect of landowner approval for identified Māori land are stronger than was the case under the COVID-19 and NBA legislation. The rationale for this was to provide for Māori rights and interests in the absence of other provisions in those Acts, such as a treaty clause and cultural impact assessment requirements.
26. We will provide further advice in the 23 May 2024 briefing on how interests in Māori land can be protected alongside ensuring large network infrastructure projects can access the referral pathway. Some of the options we are exploring are:
 - i Making the matter a discretionary consideration for the referral decision
 - ii Including cultural matters as grounds for declining substantive recommendations or decisions
 - iii Requiring written approvals to be sought at the substantive application stage instead of the referral stage.

Improving the Bill's workability

27. The speed at which the Bill was produced meant large parts of the Bill are not well-aligned. Officials from agencies responsible for different approvals have identified a range of improvements to resolve these issues which require Ministerial approval in **Appendix 2**. These changes align with the Bills overall policy direction.
28. These changes are necessary to avoid delays and barriers when the fast-track process is underway.
29. Overarching policy issues which require your decision are:

- i Alignment of timeframes and information requirements for referral, Panel assessment and ministerial decision-making where multiple approvals involved, including consultation requirements and clarifying who is responsible for these
- ii Clarifying where/how process additions/modifications apply ie, at referral or panel stage, and instead of or in addition to the general process requirements
- iii Clarifying panel composition, timeframes, information, consultation and consideration requirements, and addressing procedural matters in Schedule 3
- iv Addressing inconsistent references to Mana Whakahono ā Rohe (MWaR) and Joint Management Agreements (JMAs), and applying Part 10 of Te Ture Whenua Māori Act 1993 (TTWMA) to the Bill
- v Refining cost recovery functions
- vi Clarifying and improving agency support requirements
- vii Further decisions on aquaculture relating to pre-requests on aquaculture agreements, application notification and recommendation requirements, commencement of coastal permits and aquaculture agreements and compensation declarations.

Further policy issues raised in submissions

30. The Select Committee process is underway with the Committee currently hearing public submissions on the Fast-track Approvals Bill. Just under 40,000 people submitted on the Bill⁴. In addition to the themes on ministerial responsibilities and public participation, other key themes emerging from submissions are:
- i The Bill is disproportionately pro-development and needs greater emphasis on environmental considerations.
 - ii Concern that there is no requirement for persons exercising functions to do so in accordance with the principles and obligations of Te Tiriti o Waitangi / the Treaty of Waitangi.
 - iii Concern that the processes in the Bill, are unclear/complex, or lack adequate timeframes.

Balancing development with other considerations

31. Some submitters have noted the significant shortcomings with the existing resource management system, including the complexity, cost, and uncertainty of its processes, and welcomed the objective of addressing these challenges. Submitters have also cited the effectiveness of previous fast track regimes, and the value they can provide in a larger resource management system. However, others consider that the Bill is disproportionately pro-development and needs greater emphasis on environmental, social, or cultural considerations. Suggestions from submitters to address this concern include:

⁴27,000 submissions were received with one submission from Forest & Bird containing a further 14,000 submissions.

- i. Amending the purpose of the Bill to recognise environmental values.
- ii. Making the most harmful activities ineligible for fast-track.
- iii. Making RMA prohibited activities ineligible.
- iv. Place greater emphasis on considering climate impacts (natural hazards and emissions).

Treaty of Waitangi

- 32. A wide range of submitters, including Māori and non-Māori groups such as the Legislation Design and Advisory Committee and the New Zealand Law Society, raised significant concerns about the absence of a requirement to act in accordance with Te Tiriti o Waitangi / the Treaty of Waitangi principles, including how this impacts:
 - i. the interests of Māori groups yet to settle their historical Treaty claims;
 - ii. certainty for decision-makers and applicants under the Bill regarding how Treaty clauses in underlying legislation should be applied; and
 - iii. the Crown's ability to uphold settlements.
- 33. Officials provided advice on options for a Treaty clause prior to introduction of the Bill. Given the number and nature of submissions received on this matter, we will work with the Crown Law Office to provide additional advice on options for Cabinet's consideration, as well as further analysis of and advice on submissions received from Māori groups.

Further matters

- 34. Some submitters (including the Parliamentary Commissioner for the Environment) have recommended including a sunset clause which would repeal this legislation upon the enactment of a new resource management system. In the absence of a sunset clause, a number of key groups have recommended the Bill include a monitoring and review clause to ensure legislation is performing sufficiently and as intended.
- 35. Submissions also contain practical suggestions to improve the Bill. Officials will continue to analyse submissions to identify those improvements, where they align with the policy decisions you (and Cabinet) make. These changes will be covered in the Departmental Report and are not covered in this Briefing.
- 36. We will provide advice on these key matters in a following briefing. A more fulsome analysis of submissions will be included in the Departmental Report.

Recommendations

- a. **Consider** the recommendations contained in Appendices

Yes | No

- b. **Note** that we will provide further advice and recommendations will be provided on 23 May 2024 and draft Cabinet paper will be provided on 31 May.

Noted

- c. **Agree** to forward this briefing to Hon Simeon Brown, Minister for Energy, Minister of Local Government, Hon Paul Goldsmith, Minister for Arts, Culture and Heritage, Hon Tama Potaka, Minister for Māori Crown Relations: Te Arawhiti, Hon Penny Simmonds, Minister for the Environment, Hon Chris Penk, Minister for Land Information, Hon Shane Jones, Minister for Oceans and Fisheries, Minister for Resources

Yes | No

- d. **Agree** to meet joint ministers to discuss matters raised in this paper, and/or the 23 May paper, prior to Cabinet consideration.

Yes | No

Next Steps

37. Following your direction, we will provide you with a draft Cabinet paper for your consideration on Thursday 23 May 2024. To allow select committee timeframes to be met, this must be lodged by 13 June 2024 for ECO consideration on 19 June 2024, and Cabinet on 1 July. **Appendix 3** provides a timeline of this Bill process and for the related selection of projects to populate Schedule 2 of the Bill.

Signatures



Nadeine Dommissse
Deputy Secretary, Environmental
Management and Adaptation

MfE
10 May 2024



Paul Stocks
Deputy Secretary Building, Resources and
Markets

MBIE
10 May 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

Hon Simeon BROWN
Minister of Transport
Date

Hon Shane JONES
Minister for Regional Development
Date

Hon Tama POTAKA
Minister of Conservation
Date

Appendix 1: Further policy decisions on substantive decision-making, public participation, and other matters raised in submissions

Process step	Points raised in submissions	Advice	Recommendations	Decision
Substantive decision-making	- The degree of discretion joint Ministers will have in the referral and decision-making processes and the concentration of power in the executive. - Approach creates a potential for decision-making that is not objective or independent, brings risks of conflicts of interest for Ministers. - Potential for polarised decision-making and ‘see sawing’ if decisions are reversed under subsequent governments. - Submitters recommended for joint Ministers to make referral decisions, but the expert panel make substantive decisions, or improving checks and balances on ministerial power. - Submitters recommended including the Minister for the Environment as a joint Minister. - The New Zealand Law Society note that “it is possible for some, or all of the Ministerial portfolios of the Joint Ministers to be held by a single individual. If this were to occur, the Joint Ministers’ broad powers would be concentrated on a single individual”. The New Zealand Law Society recommend including a requirement for the relevant portfolios to be held by at least three separate persons appointed as Ministers.	Joint Ministers as final decision-makers - Perceived ‘safeguard’ for applicants by having Ministers make the final decision. However, in practice this is likely to be undermined by the increased risk of legal challenge of ministers’ decisions if they deviate from the Panel’s recommendations, and the risk of undermining a project’s social license if the decision is seen to be politically driven. - Should you wish to maintain the joint Ministers as decision-makers, you could consider including other Ministers in the joint Ministers group, such as the Ministers responsible for the Environment, Conservation and Climate Change. Doing so would expand the range of perspectives which are considered beyond the predominantly development-focused portfolios of the current joint Ministers. Expert Panels as final decision-makers - Avoids the risks associated with joint Ministers making the substantive decision. - Reduces the administrative step (time and cost) of agencies re-advicing ministers on projects, as would be required if the Minister was making the statutory decision whether to accept or refuse the Panel’s recommendations. - A statutory timeframe for the Expert Panel’s report is included in the Bill creating greater certainty and process efficiency. - Expert Panel as decision-maker is likely to give greater public confidence in decision-making as the Panel is independent and impartial. Note fast-track concession means a concession under Part 3B of the Conservation Act 1987 or a Reserves Act approval.	1. Agree that the Minister for the Environment is a Joint Minister EITHER (Ministerial decision-making) 2. Agree to retain existing policy settings on ministerial decision-making OR (Panel decision-making) 3. Agree that Joint Ministers make the referral decision 4. Agree that Expert Panels make the substantive decision to approve or decline projects 5. Agree that the exceptions to the above are fast-track concessions and access arrangements (in line with previous policy decisions) 6. Agree that aquaculture decisions are made by MPI as they would be under the Fisheries Act 7. Note the substantive decision would be subject to the decision-making hierarchy where the purpose of the FTA Bill (which is strongly weighted towards development and facilitating delivery of projects) has primacy over considerations in other legislation	Yes No Yes No Yes No Yes No Yes No Yes No Yes No
Public participation	- Scope of parties who are invited to comment on applications and ensuring Panel receives the appropriate info and expertise - Require landowners and occupiers to be consulted before a fast-track application is made. - Give the Panel the ability to expand consultation based on the scale, nature and extent of potential effects. - Strengthen provisions to utilise local voice and knowledge. - Require public consultation when Crown land and the coastal marine area is involved. - Require notification to infrastructure providers. - Allow greater rights to appeal against Ministers decisions.	- As it stands, there is no public notification, as per existing fast-track legislation. Instead, comment is sought from specified parties. - To ensure the Panel has sufficient time to receive advice up front about the other parties that should be approached on a case-by-case basis, we recommend extending 5 working day (WD) timeframe for Panel to send out application for comment after receiving it to 10WD - We do not recommend specifying additional parties that must be approached on every application (eg, NGOs) as under the FTCA – this creates additional resourcing pressure on NGOs to respond and represent the public interest on every application.	8. Agree to extend the 5-working day timeframe for the Panel to send out an application for comment after receiving it from the EPA to 10WD, to provide sufficient time for the Panel to seek advice on the scope of parties from whom written comments should be sought	Yes No
Application of certain clauses to courts	The Chief Justice has raised an issue in her submission around the application of certain clauses in the Bill to the courts. Namely: Clause 6 (Obligations relating to Treaty settlements and recognised customary rights): the Chief Justice questions “whether it is intended to apply to judges in the exercise of judicial powers and, if it is, whether that is appropriate. [...] In the context of cases coming before them, the courts will also be required to determine what the legislation (including Clause 6) requires of decision-makers, and whether those requirements have been met. It is unusual, against	We agree with the Chief Justice’s submission and note that there was no policy intent to include courts within the scope of these clauses. We recommend including a clause that clarify that these provisions (clauses 6 and 31) do not apply to courts or procedural and administrative matters concerning courts. This clause could be based on s 741 of the NBA, which dealt with a similar issue in relation to the Environment Court.	9. Agree that clauses 6 (Obligations relating to Treaty settlements and recognised customary rights) and 31 (regulations) do not apply to courts or procedural and administrative matters concerning courts.	Yes No

	that background, to apply a provision such as Clause 6 directly to the courts.” Clause 31 (Regulations): The Chief Justice notes the current drafting “could extend to the making of rules of court practice and procedure. [...] there is a constitutional convention that rules of court concerning practice and procedure of the Senior Courts should only be made with the concurrence of the judiciary.”			
Application of OIA to Panel	The Ombudsman’s submission noted “As it is presently drafted, the Bill does not make the expert panels that are convened to advise on applications subject to the Ombudsmen Act. I am not aware of any rationale for departing from the expectations set out in the LDAC guidelines set out above. As the panel performs a public function, including holding hearings (in some circumstances) and producing a written report with recommendations to joint Ministers, I recommend the Committee make amendments to ensure the panel is subject to the Ombudsmen Act. This can be done by including reference to the panel in Schedule 1 of the Ombudsmen Act.”	We agree with the Ombudsman’s submission that the Expert Panel should be subject to the Ombudsmen Act.	10. Agree that Expert Panels are subject to the to the Ombudsmen Act 1975 (and, by extension, the Official Information Act 1982)	Yes No
Transparency	OAG advice The New Zealand Law Society recommend including safeguards to “ensure the powers under this legislation are appropriately exercised, and there are mechanisms in place to increase transparency and accountability about the assessment and consideration of applications, and to promote public confidence in the decision-making processes.”	We agree with those submitters’ suggestions and recommend that the Bill include a requirement to record and publish: - the reports obtained under clause 13(1); - the applications considered under clause 17; - the applications declined under clause 21; - the applications accepted under clause 22; and - the Panel’s report, under clause 25(7) - Joint Ministers’ reasons for deviating from the Panel’s recommendations, and any additional advice/comment/clarification sought in support of that	If Joint Ministers remain the decision-maker: 11. Agree to include a requirement to record and publish: a. the reports obtained under clause 13(1); b. the applications considered under clause 17; c. the applications declined under clause 21; d. the applications accepted under clause 22; and e. the Panel’s report, under clause 25(7) f. Joint Ministers’ reasons for deviating from the Panel’s recommendations, and any additional advice/comment/clarification sought in support of that If the Expert Panel is the decision-maker: 12. Note the Bill requires the Panel to produce a report setting out its recommendations and the reasons for those recommendations 13. Note the Bill requires joint Ministers’ decision to be published on the responsible agency’s internet site 14. Agree the Bill should require the Panel’s report and decision to be published on the EPA’s internet site	Yes No Yes No

Appendix 2: Policy decisions required for Bill workability

Table 1: General process decisions

Process step	Policy intent	Advice	Recommendations	Decision
Decision-making				
Responsible agency (substantive issue)	The Bill currently identifies MBIE and MfE as responsible agencies. Delegated Ministers agreed (BRF-4239 Table B1 recommendation 5-6) that this was intended as a place holder. In practice, the responsible agency works in consultation with other relevant agencies, particularly as their expertise will be required in relation to approvals.	<i>Option 1 (recommended) – MfE is the responsible agency, working in consultation with other relevant agencies</i> This option replicates FTCA and NBA fast-track approach, noting that in practice MfE will work closely with other agencies as required (including through the requirement to seek comments from relevant portfolio ministers). We recommend one agency has administrative responsibility for the regime to ensure efficiency and timeliness of operation. <i>Option 2 – MfE and MBIE are the responsible agencies</i> This option would create significant administrative complexity and uncertainty – for example, there would be a need for joint advice and sign-off on each decision step under the Bill (including minor decisions such as who to seek written comments from), it would be unclear to applicants which agency to send their application to, and it would be unclear which agency supports any appeals against decisions made under the Bill.	EITHER 1. Agree that MfE is the responsible agency in the Bill, and will work in consultation with other relevant agencies (including MBIE) to implement the Bill OR 2. Agree that MfE and MBIE are the responsible agencies All options 3. [If MOC is sole decision-maker for fast-track concessions]: Agree DOC is the responsible agency in relation to fast-track concessions 4. [If CMA Ministers are sole decision-maker/s for access arrangements]: Agree DOC and MBIE are the responsible agency in relation to access arrangements 5. Agree MPI is the responsible agency in relation to aquaculture decisions 6. Note that the responsible agency will work in consultation with other relevant agencies with statutory responsibilities and portfolio interests to implement the Bill	Yes No Yes No Yes No
Referral				
Referral application Clauses 10, 14, 15, 16 (technical issue)	The referral application is primarily intended to provide sufficient information to understand: • The scope of the project and an overview of the different approvals required for it • How the project aligns with the eligibility and ineligibility criteria • Whether the applicant has complied with pre-application consultation requirements, and identified the persons likely to be affected by the project	<i>Pre-application consultation</i> The applicant should be required to engage with all relevant agencies, not just those that administer legislation (for example, MCH administers the HNZPT Act, but it is HNZPT who would be responsible for advising on applications)	7. Agree include relevant statutory and other bodies and departments in the pre-application requirements	Yes No
Processing of referral application Clauses 13, 19, 20 (substantive issue)	The policy intent of clause 13 is to require the Minister to obtain a report on Treaty settlements and other obligations and to consider this report before making a decision to refer an application. The policy intent of clause 19 is to ensure the Minister invites comments from relevant Māori groups, local authorities and portfolio Ministers before making a decision to refer an application. A broader purpose of both provisions is to help ensure the Minister is adequately informed of Māori interests and views before making a referral decision.	<i>Who Ministers must seek written comments from</i> The Bill requires joint Ministers to consult other relevant portfolio Ministers (who would be supported by their agencies) on referral applications. It is not necessary (and risks introducing complexity) to require written comments to be sought from agencies in addition to this. Sch 5 cl 11 and Sch 9 cl 5 should therefore be removed. Joint Ministers should be able to request further information from the relevant statutory and other bodies and departments, in addition to the applicant and relevant local authorities. <i>Obligation to consult</i> The Bill includes an obligation for Ministers to consult a specified list of Māori groups on referral applications in clause 19(2), in addition to the obligation to seek written comments from those groups in clause 19(1). This creates an unnecessary overlap and lack of clarity as the Māori groups referred to in both clauses are inconsistent. To address this, we recommend deleting clause 19 (2) and ensuring that the Māori groups that are included in clause	8. Agree to remove Sch 5 cl 11 and Sch 9 cl 5 (so written comments aren't required to be sought at referral stage from agencies) 9. Agree that Sch 5 cl 12 (which allows joint Ministers to request further information from the relevant statutory and other bodies and departments) is included in cl 20(1) so that it applies generally not just in relation to Conservation and Reserves Act approvals. 10. Agree that the responsible agency be required to provide Ministers with the list of parties that the Ministers must invite written comments from in clause 19 (1) 11. Agree to delete clause 19 (2) and, in clause 19(1), require Ministers to invite written comments from the parties identified in clause 13(2). 12. Agree that the clause 13 report will be prepared by the responsible agency in consultation with relevant statutory bodies and include information about Treaty settlements that relate to any land, species or other resources within the relevant project area and information relevant to Ministers' obligations under clause 22(2).	Yes No Yes No Yes No Yes No

Process step	Policy intent	Advice	Recommendations	Decision
		19 (2) but not in 19 (1) are included in 19 (1) by referring back to the parties identified in clause 13. <i>Clause 13 Treaty settlements and other obligations report</i> In order to ensure Ministers and the panel receive comprehensive advice about relevant considerations related to clause 6, we recommend: - the clause 13 report should be prepared by the responsible agency in consultation with the relevant statutory and other bodies; - clause 13(2)(b) is amended to include information about Treaty settlements that relate to any land, species or other resources within the project area, to ensure all relevant Treaty settlement arrangements are recorded; - the clause 13 report includes relevant information to support Ministers' compliance with requirements at clause 22(2) related to the consideration of documents, arrangements and other matters and procedural requirements in Treaty settlements, the Marine and Coastal Area (Takutai Moana) Act 2011, and the Ngā Hapū o Ngāti Porou Act 2019.		
Notice of decision / matters joint Ministers may specify Clauses 23-24 (technical issue)	Clauses 23-24 specify who joint Ministers must provide notice of the referral decision to. Clause 23 allows Ministers to specify certain matters in the referral decision, including: - Persons authorised to lodge a substantive application - Restrictions that apply to the activity (eg, location) - Information that must be submitted to the Panel - Persons or groups the Panel must seek written comments from - Timeframes for the Panel to process applications, which may differ from the timeframes that would otherwise apply Sch 5 cl 13 allows Ministers to specify what approvals are able to be considered by the Expert Panel in the referral decision.	Sch 5 cl 13 is not needed - applicants should be able to apply to the Panel for all approvals needed within the scope of the project as defined in their referral application. Sch 5 cl 14 should be integrated into cl 24(2) to ensure that all relevant statutory and other bodies and departments are given notice where joint Ministers decide to accept a referral application.	13. Remove Sch 5 cl 13 14. Integrate Sch 5 cl 14 into cl 24(2) so that it applies generally, not just in relation to Conservation Act and Reserves Act approvals.	Yes No Yes No
Inconsistent references to Mana Whakahono ā Rohe (MWaR) and Joint Management Agreements (JMAS) (substantive issue)	Cabinet agreed that the fast-track legislation will include protections for settlements and other legislative arrangement including the Takutai Moana Act, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act, MWaR and JMAS under the RMA (CAB-24-MIN-0008 rec 35 (23 January 2024) refers). Generally, this policy decision means that protections for MWaR and JMAS should be consistent with protections for Treaty settlements, Takutai Moana and Ngā Hapū o Ngāti Porou. However, there is one exception as MWaR and JMAS are not included in the overarching obligations under clause 6, which is pursuant to Minister's decisions on 28 February. The other difference with MWaR and JMAS is that, due to their nature as RMA instruments, they are only relevant to RMA approvals and not the other one-stop-shop approvals. Hence the policy intent is that the Bill should include protections for MWaR and JMAS, except in regard to the overarching obligations in clause 6, where relevant for RMA approvals.	Given the pace of policy development/drafting, there are some unintended inconsistencies in references to MWaR/JMAS throughout the Bill. For example, MWaR/JMAS are not referred to in the information/engagement requirements on the applicant - but are referred to at every subsequent engagement step including the parties Ministers and the panel must seek comments from and provide notice to. They are also not directly referenced in the clause 22(2) requirements on Ministers to provide for procedural matters and documents/arrangements etc in Treaty settlements (although they are intended to be covered by the term "related arrangements" in that clause, see rec 19 and footnote 1 in BRF-4239 Appendix 1) and some similar schedule 4 provisions. In sum, the areas of the Bill where we have identified there are inconsistencies where MWaR and JMAS are not currently	15. note that officials have identified some inconsistencies in references to Mana Whakahono ā Rohe (MWaR) and Joint Managements Agreements (JMAS) that affect Bill workability and intend to address these consistently with the existing policy approvals (which includes <u>not</u> referencing MWaR and JMAS in clause 6 of the Bill)	Yes No

Process step	Policy intent	Advice	Recommendations	Decision
		referred to but should be are clauses 14 (3) (h), 16 (1), 22 (2), Sch 3 clauses 5 (2) (b) and (3), and Sch 4 clause 20 (5).		
Application of Part 10 of Te Ture Whenua Māori Act 1993 (TTWMA) to the Bill (substantive issue)	The policy intent of the FTA Bill is to better enable regionally and nationally significant development projects. There are also some protections for Māori land in the FTA Bill, which recognise the policy intent that projects should not occur on identified Māori land (which includes Māori freehold land) unless the owners of that land agree in writing to it. Related to this are a few clauses in the FTA Bill where owners of Māori land are to be invited by the joint Ministers to provide written comments on a referral application (cl 19) or by the panel for a listed or referred project (Sch 4, cl 20 (3) and (5)). In order to ensure the process is timely and efficient, there are timeframes associated with these provisions.	If the FTA Bill does not have an express provision to the contrary, the timings for owners of Māori freehold land (that is owned by more than 10 persons and not vested in a trust or trustees) to respond will be subject to Part 10 of TTWMA. Part 10 (s 181(4)) will extend notice periods under the FTA Bill for those landowners so that the period does not begin to run until the court has appointed an agent or made a decision, plus an additional 10 working days. This recognises these landowners are more difficult to notify. The timings and processes under Part 10 (which can take a few months to run) could frustrate the operation of the FTA Bill in terms of timely processes. Section 353 of the RMA (rarely used) limits the timings under Part 10, TTWMA to a maximum extension of 20 working days from the usual notice period. This provision raises some Te Tiriti issues as there is a risk this timing will still not give sufficient time for the owners of Māori land to respond and meet their obligations. This could result in inequity for those owners and adversely impact on iwi/Māori relationships. We consider, however, that the inclusion of a s353 type provision in the FTA Bill is justified in this particular circumstance, to balance meeting the policy intent of the Bill (expediency) and ensuring adequate protection for this Māori land. Joint Ministers or the panel will have the discretion under a s 353 type provision to further extend the timings for response by more than 20 days.	16. Agree to include a provision similar to s353 of the RMA in the FTA Bill so that Part 10 of TTWMA shall apply except in relation to where the joint Ministers or panel are seeking written comments, where in no case shall the period be able to be extended by more than 20 working days unless otherwise provided by the joint Ministers or panel.	Yes No
Expert Panel				
Expert Panel composition and procedural matters Schedule 3 (technical issue)	Schedule 3 clauses 1-9 set out the functions, appointment process, composition, and membership requirements for the Expert Panel. 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. A Panel Convenor must be appointed by the Minister, after consulting the other relevant portfolio Ministers. The panel convenor, in consultation with the Minister, must appoint a suitably qualified lawyer or planner as chairperson or act as the chairperson themselves. Panels must collectively have: - knowledge, skills, and expertise relevant to the purpose of the FTA Bill - knowledge and skills required for matters specific to the project, including the technical expertise relevant to the project - an understanding of te Tiriti o Waitangi/the Treaty of Waitangi and its principles - an understanding of tikanga Māori and mātauranga Māori - if appropriate, conservation expertise.	<i>Panel convener and chairperson</i> Sch 5 cl 15(1) (in respect to concessions under the Conservation Act) requires the Panel convener to consult relevant portfolio ministers on the appointment of panels. We do not consider this is necessary as, in practice, the EPA will work with the relevant agencies to advise the Panel convener on Panel composition that includes nominated persons; collective knowledge and expertise; and persons that are available and not conflicted. If this requirement was retained, we would need to build a process (and timeframes) around how the Panel convenor undertakes this consultation. Sch 5 cl 15(2) states that the Panel chair may have a suitable environmental qualification instead of RMA s 39A accreditation. This subclause should be removed – the s 39A accreditation is not a purely environmental qualification, instead it is focused on directing hearings and supporting a decision-making process. It would therefore not be appropriate to substitute this for any other environmental qualification. Sch 9 clause 8 requires a Panel convenor to consider the need for expertise specific to the EEZ. Instead of listing the different types of expertise required for different approvals, we recommend merging Sch 9 cl 8 and Sch 3 cl 7. We also recommend removing Sch 3 cl 7(1)(e) and instead amending Sch 3 cl 7(1)(a) so that	17. Remove Sch 5 cl 15 (in respect to processes under the Conservation Act) 18. Remove Sch 3 cl 7(1)(e) and Sch 9 cl 8 that lists different types of expertise and instead amend Sch 3 cl 7(1)(a) to refer to knowledge, skills, and expertise relevant to the approvals being considered 19. Include “relevant statutory and other bodies and departments” in Sch 3 cl 12(2) 20. Clarify that ‘relevant local authority’ and ‘relevant iwi authority’ in Sch 3 cl 3(2) includes jurisdictions affected by a proposed EEZ consent application based on their proximity to the activity. 21. Amend Sch 3, cl 5(1) to include reference to the requirements under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.	Yes No Yes No Yes No Yes No Yes No

Process step	Policy intent	Advice	Recommendations	Decision
	Panels are comprised of a maximum of four members (unless additional members are warranted, in the panel convenor's discretion, to accommodate matters specific to the project (Sch 3 cl 3(6)). Panels must include: - one person nominated by the relevant local authorities - one person nominated by the relevant iwi authorities	Panel members must collectively have expertise relevant to the approvals being considered by the Panel . <i>Requirement to assist the Panel</i> Sch 3 clause 12(2) requires local authorities to assist the Panel if requested – this should be expanded to include all relevant statutory and other bodies and departments. <i>EP composition</i> The Bill needs to clarify that, in relation to EEZ approvals, 'relevant local authority' and 'relevant iwi authority' includes jurisdictions affected by the application based on the project's proposed location. This would reflect the approach under the EEZ Act, where relevant local authorities and iwi authorities who may be affected by the application are considered due to cross-boundary effects between the EEZ and coastal marine area. <i>Procedural matters in the context of Treaty settlements and other arrangements</i> Clause 6 requires persons exercising functions under the Bill to do so consistently with, among other matters, customary rights recognised under the Ngā Hapū o Ngāti Porou Act 2019. That Act contains procedural matters that may be relevant to the expert panel and therefore should be included in schedule 3 clause 5(1). Specifically, section 17 of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 provides that NHNP may nominate a member of a board of inquiry, where a matter is within ngā rohe moana o ngā hapū o Ngāti Porou. The panel may need to act consistently with that provision where a matter that may have otherwise proceeded under the RMA instead proceeds under the fast-track process.		
Cost recovery Sch 3 cl 14-15 (technical issue)	The Bill includes provisions that allow for the EPA, responsible agency, and other relevant agencies to recover the actual and reasonable costs incurred by undertaking FTA functions.	The provisions in Sch 3 cl 14-15 need to be amended to remove the reference to Ministers – this should only apply to the responsible agency, EPA, and relevant agencies/authorities that have a function, duty or power under the Act.	22. Agree to amend Sch 3 cl 14-15 to remove reference to the Minister recovering costs and clarify instead that it is the responsible agency, EPA and other relevant statutory bodies/agencies that may recover costs under these provisions	Yes No
Substantive application Schedule 4 clause 3, 5, 6, 7, 8, 9, and 31 (substantive issue)	The substantive application includes all technical information required to assess whether the project should be approved or declined, and appropriate conditions – for example, an assessment of environmental effects. The substantive application is lodged with the EPA, which provides secretariat support to the Expert Panel.	We recommend a minor policy change to Sch 4 cl 17, which requires the scope of information in application to be of sufficient detail to correspond to the scale and significance of environmental effects – this is an RMA-centric term, so we instead recommend framing this in terms of the scale and significance of the matters being assessed for the approvals being sought. <i>Information requirements</i> Information requirements for applicants for conservation approvals are not currently provided for in the Bill. We recommend providing for these information requirements to ensure applicants have certainty on what information they must provide <i>Completeness check</i> The Bill currently only provides 5 working days for the completeness check of a substantive application. This was carried	23. Agree that the scope of information required in an application should be in sufficient detail to correspond to the type of approval sought, and the scale and significance of the matters being assessed 24. Agree that the EPA undertakes the completeness check of a substantive application, in consultation with the relevant statutory or other bodies or departments 25. Extend the timeframe for the EPA's completeness check to 15 working days to provide for the range of approvals available in the one-stop shop 26. Agree to the inclusion of information requirements for conservation approvals, land exchanges and covenants that reflect the information requested by DOC to process those approvals under existing processes.	Yes No Yes No Yes No Yes No

Process step	Policy intent	Advice	Recommendations	Decision
		over from the FTCA – however, this was not feasible even under the FTCA and was extended to 10 working days for NBA fast-track. We recommend extending this timeframe to 15 working days, given the additional complexity involved in the one-stop shop approach and need for the EPA to consult with other agencies to determine completeness.		
Consultation requirements Sch 4 clause 20-22 (technical issue)		Schedule 4 cl 20 currently includes different lists of parties that must be invited to provide written comments on listed projects and referred projects. We recommend changes to reduce duplication and complexity: - The Panel should be required to seek comments from the same parties for both listed and referred projects – the only difference is that for referred applications, the referral decision may specify additional parties, and relevant parties identified in the cl 13 report (if this report is not obtained for listed projects) - Instead of listing parties such as the Director-General of Conservation and Heritage New Zealand Pouhere Taonga individually, the Panel should be required to seek written comments from all relevant statutory or other bodies or departments - New Zealand Infrastructure Commission should be removed from this list – not every project will be infrastructure-related, so we suggest it is best left to the Panel’s discretion (or Ministers in the referral order) to decide whether they should be included in relation to each project - Instead of listing ministerial portfolios, the requirement should be the same as cl 19(1)(b) (“relevant portfolio ministers”) – this will be more durable as ministerial portfolios and responsibilities often change	27. Agree the Panel must seek written comments from the same parties for both listed and referred projects 28. Agree to remove specific reference to the Director-General of Conservation and HNZPT in Sch 4 cl 20, and instead include all relevant statutory or other bodies or departments” 29. Agree to remove the New Zealand Infrastructure Commission from the list of parties the Panel must seek written comments from (making it optional if relevant to the project) 30. Agree to include “relevant portfolio ministers” instead of the list of specified portfolio ministers	Yes No Yes No Yes No Yes No
Hearing and other procedures Sch 4 clauses 25-28 (technical issue)	The Bill allows for the Minister to direct a suspension in processing an approval, and enables applicants to request a suspension. If a suspension is granted, notice must be given to relevant parties (including those from whom written comments were sought).	We recommend ensuring notice of any suspension in processing is also provided to the relevant statutory bodies or departments (eg, HNZPT, DOC, and MPI).	31. Agree that notice of any suspension or resumption of processing of an application should be provided to any relevant statutory or other bodies or departments	Yes No
Panel assessment (substantive issue)	Ministers previously agreed (BRF-4203) 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 - The purpose of the FTA Bill - Considerations under relevant existing legislation. Assessment criteria under relevant existing legislation are then set out in Schedules 4-12. These are intended to direct the Panel’s assessment of substantive applications and its recommendations on conditions and whether to grant/decline the project. Joint Ministers are intended to be subject to the same framework in making their final decision.	<i>Hierarchy of assessment criteria for RMA applications</i> The assessment criteria in Sch 4 cl 32 apply relative weightings to sections 5, 6 and 7 of the RMA, and, for example, relative weightings between national direction and other relevant RMA provisions. We consider this creates additional complexity and associated legal risk, and is not consistent with the general policy to give weighting to (1) the purpose of the FTA Bill, then (2) the relevant matters in the underlying legislation. We therefore recommend clarifying Sch 4 cl 32 so that Panels are required to give weighting to (1) the purpose of the FTA Bill, then (2) the relevant RMA matters. The Panel determine the appropriate consideration and weighting to be applied to the RMA matters in accordance with the RMA and established jurisprudence, subject to the primacy given to the purpose of the FTA Bill.	32. Amend Sch 4 cl 32 to clarify that the matters the Panel must consider when assessing a consent application or notice of requirement are (with weight given greater to lesser): - The purpose of the FTA Bill - Relevant RMA matters (noting the below list will be weighted as appropriate according to the RMA decision-making framework, subject to (a)): - The purpose of the RMA - RMA sections 6-7 - the provisions of any of the following, if relevant, made under the Resource Management Act 1991: - a national environmental standard: - other regulations: - a national policy statement: - a New Zealand coastal policy statement:	

Process step	Policy intent	Advice	Recommendations	Decision
		We also recommend removing Mana Whakahono ā Rohe and Joint Management Agreements from this specified list, as these are process-driven matters, not decision-making criteria. MWaR and JMA should instead be considered through the development of the cl 13 report and requirements in the Bill to seek written comments from those parties. <i>Further matters relevant to consent applications and notices of requirement for listed and referred projects</i> The Bill is currently not consistent with the requirements of the Ngā Hapū o Ngāti Porou Act 2019 (NHNP Act) and therefore the requirements at clause 6. Specifically, sch 4 cl 33(4) does not provide for the NHNP Act requirement that in some cases a consent authority must “recognise and provide for” the environmental covenant where an activity is within, adjacent to, or directly affecting a customary marine title area – which is a higher standard than “have regard to”. In addition, the NHNP Act does not apply to notices of requirement. Therefore sch 4 cl 33(4) should be amended to reflect the weightings provided for in the NHNP Act and remove references to notices of requirement.	e. a regional policy statement or proposed regional policy statement; f. a plan or proposed plan; and g. iwi management plans: iv. other relevant provisions of the RMA or any other legislation that direct decision making under the Resource Management Act 1991 (for example, sections 104 to 107 of that Act and the provisions referred to in clauses 31 to 35). 33. Amend sch 4 cl 33(4) to reflect the weightings provided for in the Ngā hapū o Ngāti Porou Act 2019 and remove references to notices of requirement.	Yes No Yes No
Conditions Sch 4 clause 38(1)-(3) and (5) (substantive issue)	The Bill provides for Panels to recommend conditions it considers appropriate.	The Bill does not currently provide for the ability to set conditions on concessions although this was intended as part of previous policy decisions. Concessions require conditions associated with fees, bonds, restoration etc. The Conservation Act and existing process already provide for these, so we recommend applying that framework in the Bill.	34. Agree to clarify that an Expert Panel may recommend that a fast-track concession be subject to conditions in accordance with sections 17X, 17Y, and 17Z of the Conservation Act.	Yes No
Timeframes for Panel’s report and recommendations (substantive issue)	<i>Timeframes for Panel report</i> Cabinet agreed [CAB-24-MIN-0066] that Expert Panels must recommend any appropriate conditions within a maximum 6-month timeframe. We understand this to mean six months from when the Panel receives the substantive application from the Panel Convener, to when the Panel provides its report and recommendations. We note that some fast-track applications may be able to proceed much faster than this. In some circumstances, however, more time may be required (for example, the HNZPT Act triggers a 40 working day timeframe where there is an archaeological authority application over a pā site). <i>Timeframes for agencies to provide advice</i> The Bill contains various provisions requiring agencies to provide advice or reports to inform decision-making. For example: - Sch 6 cl 1(3) requires the EP to request the DG-Conservation to provide a report on risks and impacts - Sch 7 cl 4 states the EP must refer an archaeological authority application to HNZPT, and consider the recommendations made by HNZPT. - Sch 12 cl 2 requires the DG-MPI to make a recommendation on the aquaculture decision to be made	<i>Timeframes for Panel report</i> We recommend including an ability for the Panel convenor to recommend to joint Ministers (after consulting the relevant statutory bodies / agencies), and joint Ministers to decide, an appropriate timeframe for the Panel to provide its report and recommendations. This would be based on the complexity of the project and matters relevant to the approvals sought. This approach would allow an appropriate timeframe to be set after the EPA and relevant agencies have advised on any matters relevant to specific approvals that may require a different timeframe. As the Bill integrates ten different regulatory approval processes, it would be difficult to set a fixed timeframe that would cater to all possible scenarios without resorting to the ‘slowest common denominator’. For example, some applications that only involve RMA approvals may be able to progress within a shorter timeframe, whereas some complex applications involving multiple approvals may require additional time. Others may require additional time – eg, some Treaty settlements require DOC to follow a specified process in its decision-making, including a 20-working day timeframe for consultation on applications for approvals. We consider this approach would provide flexibility in the system so that timeframes can be tailored to the project, and any additional requirements factored in.	35. Agree that, instead of joint Ministers being able to specify a timeframe for the Panel’s decision in the referral decision, the Panel convenor may (after consulting the relevant statutory bodies / agencies) recommend, and joint Ministers may decide, an appropriate timeframe for the Panel to provide its report and recommendations based on the complexity of the project and matters relevant to the approvals sought 36. Agree that where no recommendation is made by the Panel convenor (or agreed to by Joint Ministers), the Panel must provide its report and recommendations within the existing 25 working days after written comments and any requested advice/reports are received. 37. Agree that, where an approval requires expert advice to be sought from the relevant statutory body/agency, the Panel convenor must seek that advice as soon as practicable after they receive the application from the EPA 38. Agree that expert advice from a relevant statutory body/agency must be provided by the end of the 10-working day timeframe that begins when a Panel is established and calls for written comments from specified parties. 39. Agree that Sch 6, cl 1(3) is amended to clarify that the report the panel must request from the DG of Conservation reports on risks to protected wildlife and matters set out in cl 1(2). 40. Agree that the EPA must provide advice from agencies in accordance with Sch 4 cl 28(4)-(6).	Yes No Yes No Yes No Yes No Yes No Yes No

Process step	Policy intent	Advice	Recommendations	Decision
		Where the Panel convenor does not recommend an alternative timeframe to joint Ministers (or joint Ministers do not agree to the recommended timeframe), we recommend that the standard 25 working day (from when written comments and reports/advice are received) timeframe applies – we anticipate that this will average out to less than six months per application, from lodgement to Panel (recommendation/decision). <i>Timeframes for agencies to provide advice</i> In order to ensure the relevant statutory bodies/agencies have sufficient time to prepare this advice, we recommend that where an approval triggers such a requirement, the Panel convenor is required to forward the application to the relevant statutory body/agency as soon as practicable after they receive the application from the EPA. This will allow those statutory bodies/agencies to begin preparing the advice while the Panel is being stood up. We recommend including a requirement that the advice must be provided to the EPA by the end of the 10-working day timeframe that begins when a Panel calls for written comments from specified parties, and that the advice must be provided to the members of the Panel, applicant, and every person or group that provided comments (in accordance with Sch 4 cl 28(4)-(6))		
Ministerial decision to grant/decline approval				
Joint Ministers' decision to grant/decline approval Clause 25, Schedule 4 clauses 40, 42, and 43 Note: if Ministerial decision remains. This process is not required if the Expert Panel makes the approval decision. (substantive issue)	At this stage, joint Ministers receive the Panel's report and recommendations. This would be provided to joint Ministers by the responsible agency. If joint Ministers agree with the Panel's recommendations, the project is either declined or approved with the relevant approvals subject to the conditions (if any) specified. If joint Ministers wish to deviate from the Panel's recommendations, they must do one or more of the following: - seek clarification from the panel on any recommendation - commission additional advice - seek further comments from any affected parties The additional advice/comments should be provided to the Panel (with the EPA acting as secretariat) and the Panel would then consider this and provide an updated report and recommendations to the responsible agency, which would provide it to joint Ministers.	s 9(2)(h) We recommend: - the Panel should provide its report and recommendations to the responsible agency to provide to joint Ministers – this will ensure there is a clear record of ministerial advice provided and decisions made - where joint Ministers wish to deviate from the Panel's recommendations, we recommend that they <i>must</i> (rather than <i>may</i>) seek further clarification, advice, and/or comments - we recommend that further clarification, advice, and/or comments are sought via the Panel, so that the Panel can consider these in the round in the context of its report and recommendations, and provide an updated report/recommendations to joint Ministers (via the responsible agency)	if Ministerial decision remains. This process is not required if the Expert Panel makes the approval decision. 41. Agree that the Panel's report and recommendations must be provided to the responsible agency, which will provide it to joint Ministers 42. Agree that, if joint Ministers wish to deviate from the Panel's recommendations, they must do one or more of the following: c. seek clarification from the panel on any recommendation d. commission additional advice e. seek further comments from any affected parties 43. Agree that (a)-(c) above must be sought from the Panel, and the Panel must then provide an updated report and recommendations to the responsible agency, which will provide it to joint Ministers 44. Agree that if Ministers still wish to deviate from the Panel's recommendations following subsequent advice/engagement, Ministers have to give reasons and then would direct the responsible agency (in consultation with relevant statutory agencies) to prepare the decision for them.	Yes No Yes No Yes No Yes No
Other decisions required				
Listed projects – additional requirements for Panel stage for Part A listed projects	Part A listed projects do not go through the referral stage – they may apply directly to the EPA for consideration by an Expert Panel. This means the Panel won't have access to some of the information	As drafted, the Bill does not provide a mechanism for the panel to have access to information provided at referral stage in respect of Part A listed projects. The Panel requires this	45. Agree that, as soon as practicable after received a complete application for a Part A listed project from the EPA, the Panel	Yes No

Process step	Policy intent	Advice	Recommendations	Decision
(substantive issue)	Part B listed projects and referred projects are required to provide at the referral stage.	information to support compliance with the overarching obligations under clause 6, as well as to determine who it should seek comments from. To address this, we recommend: - The Panel convenor is required to seek a clause 13 report from the responsible agency for a Part A listed project as soon as practicable after receiving the complete application from the EPA, and the responsible agency is required to provide the report within 10 days. This timing aligns with recommendation [xx] above in respect of advice from relevant statutory bodies/agencies. - Substantive applications for Part A listed projects must include the information and engagement requirements for referred projects in clauses 14 and 16 respectively, to the extent not already covered by the substantive application requirements. In respect of Sch 2A listed projects, there is a requirement for the panel to use the clause 13 report to determine who it engages with but there is currently no provision for the preparation of a clause 13 report (given this happens at referral stage, which listed projects bypass). To address this, we recommend the panel convenor be required to seek a clause 13 report from the responsible agency when they receive an application from the EPA, which must be provided within 10 working days. The convenor will also need to request advice from other agencies at this stage (sch 6 cl1(3), sch 7 cl 4, sch 12 cl 2), so this fits with this step in the process. Given there would not have been comments received by the Minister as the referral step is bypassed, the clause 13 report for Sch 2A projects should not have to include the requirement in clause 13 (2) (k) to provide a summary of comments received.	convenor is required to seek a clause 13 report from the responsible agency 46. Agree that the responsible agency is required to provide a clause 13 report within 10 working days from a request from the EPA. 47. Agree the clause 13 report in relation to Part A projects is not required to comply with the requirements of clause 13 (2) (k), as there will be no written comments from the referral stage to provide. 48. Agree that substantive applications for Part A listed projects must comply with the same requirements as referred projects set out in clauses 14 and 16.	Yes No Yes No Yes No
Schedule 10 – Process under Crown Minerals Act (substantive issue)	<i>Ineligible land types</i> Currently Schedule 4 of the Crown Minerals Act 1991 is used as a proxy for lands and waters that are ineligible for referral to the Fast-Track process. This is because land and waters listed in Schedule 4 are expected to have very minimal human intervention (e.g. nature reserves, scientific reserves, wilderness areas and marine reserves), and/or they are special areas where human activities are more frequent and intensive but should be carefully managed (e.g. national parks). However, the use of Schedule 4, which is a list created for mining access arrangements, as a list for eligibility for non-mining activities can be confusing to those interpreting the Bill.	<i>Ineligible land types</i> We recommend that the Bill has its own equivalent of Schedule 4 of the CMA that outlines lands and waters that are ineligible for referral to the Fast-Track process. We also recommend that, similar to the CMA, the Bill has a mechanism that enables new high value protected areas to be added to the list of ineligible areas through Order in Council. For example, should the Hauraki Marine Protection Bill pass, the new marine protection tools will be added to Schedule 4 of the CMA and should also be added to the list of ineligible activities for the FTA Bill.. Note, a person can apply for an access arrangement for mining-related activities over land listed in items 12 and 13 of Schedule 4 in the CMA (relating to mining in the Coromandel), as per the status quo.	64. Agree that reflecting your decisions regarding Schedule 4 of the Crown Minerals Act, the Bill includes its own Schedule of ineligible lands and waters for non-mining activities. 65. Agree that new high value protected areas can be added to the Schedule of ineligible lands and waters through Order in Council on the recommendation of the Minister of Conservation.	Yes No Yes No

Table 2 – further decisions on aquaculture and fisheries

Process step	Policy intent	Advice	Recommendations	Decision
Chief executive of MPI makes recommendation on aquaculture decision				
Pre-request aquaculture agreement (substantive issue)	If applicant wants to obtain a pre-request aquaculture agreement with potentially affected quota holders, then this must be done before lodging an application with the EPA.	Delegated ministers previously agreed that pre-request aquaculture agreements must be lodged with the chief executive of MPI before the Panel requests the chief executive to provide a recommendation on an aquaculture decision. We recommend it would be more efficient if the pre-request aquaculture agreement is instead required to be lodged with the chief executive of MPI before the application is lodged with the EPA. Subsequent amendments are required to s186ZM of the Fisheries Act.	1. Agree to require that any pre-request aquaculture agreement (if an agreement is sought) for a coastal permit application involving aquaculture activities must be lodged with the chief executive of MPI before the application is lodged with the EPA. 2. Agree to amend the Fisheries Act so that the pre-request aquaculture agreement process in section 186ZM includes appropriate reference to the consent applications lodged under the Fast-track Approvals Bill. 3. Agree to remove Schedule 12, clause 3 and Schedule 4, subclause 26(5), and make consequential modifications to Schedule 4, subclauses 26(6) and 27(1).	Yes No Yes No Yes No
Notification of application to chief executive of MPI (technical issue)	Where an application for a coastal permit for aquaculture activities is received and the EPA is satisfied it complies with relevant requirements, the EPA must provide the application to the chief executive of MPI and request a recommendation on an aquaculture decision. This is the point where the recommendation on an aquaculture decision process formally commences.	We recommend it would be more efficient for the EPA (rather than the Panel at a later point in time) to provide the application to the chief executive of MPI and request a recommendation on an aquaculture decision when it provides the application to the Panel. If the EPA is sending two or more requests to the chief executive of MPI at a time, the EPA must indicate the order in which the applications were received. Only applications for new aquaculture activities or applications for certain existing aquaculture activities ¹ will require an aquaculture decision.	4. Agree that, where an application for a coastal permit for aquaculture activities is received, the EPA must, once it is satisfied that the application complies with the relevant requirements, provide the application to the chief executive of MPI and request a recommendation on an aquaculture decision. 5. Agree that the EPA is not required to follow the steps in the above recommendation if the application for a coastal permit is by a person who already holds a coastal permit to occupy the same space in a common marine and coastal area for aquaculture activities, unless a previous aquaculture decision in relation to that area included a condition under section 186H(3) of the Fisheries Act 1996. 6. Agree that, if the EPA is sending two or more requests to make a recommendation on an aquaculture decision to MPI at a time, the EPA must indicate the order in which the applications were received. 7. Agree to remove Schedule 4, clause 18 and Schedule 12, clause 2.	Yes No Yes No Yes No Yes No
Chief executive of MPI making recommendation on aquaculture decision (substantive issue)	The chief executive of MPI will make a recommendation on an aquaculture decision directly to joint ministers. This will involve the chief executive of MPI following a process set out under a new subpart to Part 9A of the Fisheries Act, based on the existing subpart 1 but with necessary modification to reflect the Fast-track Approvals process compared to the RMA consenting process. This process will include the ability for the chief executive of MPI to seek information or consult certain persons for the purposes of making aquaculture decision, which must occur in parallel with the Panel seeking written comments on the application.	We recommend it would be more efficient for the chief executive of MPI to make a recommendation on an aquaculture decision directly to joint Ministers rather than to the Panel, as the aquaculture decision is a technical threshold test that is quite different to an RMA consent decision. It is unlikely and unnecessary for the Panel to have the specific technical expertise to assess such a decision. Further analysis has also concluded that to ensure the aquaculture decision process under the Bill is workable, a new subpart in Part 9A of the Fisheries Act prescribing the process will be required, rather than depending on Schedule 12, clause 4. In order for the aquaculture decision process to effectively occur it will require necessary connections with the parallel Panel process to consider the coastal permit application, including:	8. Agree that the chief executive of MPI is required to make a recommendation on an aquaculture decision in accordance with the Fisheries Act and provide it to the responsible agency within 5 working days of the Panel making its recommendation on the proposal. 9. Agree that the responsible agency must provide the recommendation on an aquaculture decision to joint Ministers alongside the Panel recommendation on the consent application and any other approvals required by the proposal. 10. Agree to amend the Fisheries Act 1996 to include a new subpart in Part 9A that provides for the aquaculture decision process related to coastal permit applications for aquaculture activities progressed under the Fast-track Approvals Bill, and that these amendments are	Yes No Yes No Yes No

¹ where a previous aquaculture decision in relation to that area included a condition under section 186H(3) of the Fisheries Act.

Process step	Policy intent	Advice	Recommendations	Decision
		- The Panel must inform the chief executive of MPI at least 1 working day prior to seeking written comments on the application so that the parallel consultation process can efficiently occur - The chief executive of MPI must provide to the Panel copies of any submissions received during the consultation process undertaken under Part 9A of the Fisheries Act	based on Subpart 1 of Part 9A with necessary modifications to reflect the different role of the chief executive of MPI in the process. 11. Agree to require the chief executive of MPI to provide to the Panel copies of any submissions received during the consultation process undertaken under Part 9A of the Fisheries Act. 12. Agree that the Panel must inform the chief executive of MPI that the Panel is seeking written comments at least 1 working day prior to seeking written comments on the application. 13. Agree to remove Schedule 4, clause 29 and Schedule 12, clauses 4, 5, 6, 7 and 8.	Yes No Yes No Yes No
Joint Ministers make aquaculture decision				
Joint Ministers make an aquaculture decision (substantive issue)	If joint Ministers decide to grant a coastal permit application where the chief executive of MPI has been requested to make a recommendation on an aquaculture decision, they must also make an aquaculture decision in line with the technical criteria in Part 9A of the Fisheries Act. Joint Ministers must request the chief executive of MPI update the recommendation on an aquaculture decision if they propose to make changes to the consent conditions for the coastal permit that would alter the proposed area to be occupied by the aquaculture activity or that relates to the character, intensity, or scale of the aquaculture activities. Joint Ministers can make an aquaculture decision that is different from the recommendation made by the chief executive of MPI.	As discussed above, we recommend that to ensure the aquaculture decision process under the Bill is workable, a new subpart in Part 9A of the Fisheries Act prescribing the process will be required, rather than depending on Schedule 12, clause 4 (which applies, with necessary modifications, the existing subpart in Part 9A relating to aquaculture decisions for consent applications processed under the RMA). This is particularly important to ensure that joint Ministers can make aquaculture decisions in line with the technical criteria in Part 9A of the Fisheries Act. The nature of the aquaculture decision (which requires decision-makers to make a determination or reservation about the extent to which a proposed aquaculture activity will have an undue adverse effect on commercial, recreational, or customary fishing) means that using these criteria, rather than the purpose of the Bill, is important to avoid risks, including those associated with precedent effects of aquaculture decisions made for applications processed under the FTA Bill on future aquaculture decisions.	14. Agree to amend the Fisheries Act 1996 to include a new subpart in Part 9A that provides for the aquaculture decision process related to coastal permit applications for aquaculture activities progressed under the Fast-track Approvals Bill, and that these amendments are based on Subpart 1 of Part 9A with necessary modifications to reflect that joint Ministers will make the aquaculture decision, and that the decision can differ from the recommendation made by the chief executive of MPI. 15. Agree that: - joint Ministers will make the aquaculture decision in accordance with the technical criteria in Part 9A Fisheries Act [recommended]; or - joint Ministers will make the aquaculture decision in accordance with the purpose of the Fast-track Approvals Bill and the technical criteria in Part 9A of the Fisheries Act [not recommended] 16. Agree to remove Schedule 12 clauses 9 and 10.	Yes No Yes No Yes No
Commencement of coastal permits for aquaculture activities granted under the Bill (technical issue)	If joint Ministers decide to grant a coastal permit application where the chief executive of MPI has been requested to make a recommendation on an aquaculture decision, then the consent has a bespoke approach to commencement in order to give effect to the aquaculture decision made by joint Ministers.	We recommend amendments to Schedule 12 of the Bill and s116A RMA to ensure it is clear when coastal permits for aquaculture activities can commence following an aquaculture decision by joint Ministers. We have identified that Schedule 4 subclause 41(4) is no longer required as joint Ministers are also making the aquaculture decision.	17. Agree to amend Schedule 12 to: - enable joint Ministers, where they make a determination, to note any consent conditions they identified when making the aquaculture decision that may not be changed or cancelled unless a further aquaculture decision is made - require joint Ministers, where they make a reservation in relation to recreational fishing or customary fishing or commercial fishing involving stocks or species not subject to the quota management system, to not grant the coastal permit with respect to the areas affected by the reservation - require joint Ministers, where they make a reservation in relation to commercial fishing involving stocks or species subject to the quota management system, to include consent conditions on the coastal permit showing the areas affected by the reservation and notify the applicant that the coastal permit will not commence in the area affected by the reservation unless: - an aquaculture agreement is registered in accordance with the Fisheries Act; or	Yes No

Process step	Policy intent	Advice	Recommendations	Decision
			ii. a compensation declaration has been registered under the Fisheries Act 18. Agree to amend Schedule 12, clause 13 so that coastal permits for aquaculture activities granted under the Bill commence in accordance with s116A RMA. 19. Agree to amend s116A RMA to enable coastal permits for aquaculture activities granted under the Bill to commence in the same way any other resource consents granted under the Bill would commence, except where joint Ministers have made a reservation in relation to commercial fishing involving stocks or species subject to the quota management system, in which case s116A(5) must enable consent authorities to amend coastal permits to remove areas affected by a reservation if an aquaculture agreement or compensation declaration has been registered under the Fisheries Act 20. Agree to remove Schedule 4, subclauses 41(4) and 45(4).	Yes No Yes No Yes No
Aquaculture agreements and compensation declarations (technical issue)	Where joint Ministers make a reservation in relation to commercial fishing involving QMS stock, the Fisheries Act enables aquaculture agreements and compensation declarations to be used in order for the coastal permit for aquaculture activities to commence.	We recommend that amendments are made to Subpart 4 of Part 9A of the Fisheries Act so that the aquaculture agreement, compensation declaration, and memorial provisions include appropriate reference to the aquaculture decision process related to coastal permit applications for aquaculture activities progressed under the Fast-track Approvals Bill. Parallel amendments to the Fisheries (Aquaculture Compensation Methodology) Regulations 2012 will also be required.	21. Agree to amend Subpart 4 of Part 9A of the Fisheries Act and the Fisheries (Aquaculture Compensation Methodology) Regulations 2012 so that the aquaculture agreement, compensation declaration, and memorial provisions includes appropriate reference to the aquaculture decision process related to coastal permit applications for aquaculture activities progressed under the Fast-track Approvals Bill. 22. Agree to remove Schedule 12, clauses 11 and 12.	Yes No Yes No
Other decisions required				
Appeals and judicial review (substantive issue)	Appeals and judicial review of the joint Ministers' aquaculture decision can be made through the single process prescribed in the Bill.	Currently under the Fisheries Act the chief executive of MPI's aquaculture decision (for coastal permits granted under the RMA) cannot be appealed but can be judicially reviewed. Judicial reviews must be lodged within 30 working days of notification of the decision. s 9(2)(h) s 9(2)(h) We therefore recommend that appeals and judicial review of the joint Ministers' aquaculture decision are made through a single process under the Bill (alongside any other relevant approvals such as the consent application), rather than separately.	23. Agree that appeals and judicial review of the joint Ministers' aquaculture decision are made through a single process under the Bill (alongside any other relevant approvals such as the consent application), rather than separately.	Yes No
s 9(2)(f)(iv)	s 9(2)(f)(iv)	s 9(2)(f)(iv)	s 9(2)(f)(iv)	Yes No
				Yes No

Process step	Policy intent	Advice	Recommendations	Decision
		S 9(2)(f)(iv)		
s 9(2)(f)(iv)	S 9(2)(f)(iv)	S 9(2)(f)(iv)	S 9(2)(f)(iv)	Yes No
				Yes No
				Yes No

Appendix 3: Timeframes for Deliverables for the Fast-Track Approvals Bill

Deliverable	Due date
BRF-4664 <i>Advice to progress Fast Track Approvals Bill through Select Committee</i>	10 May 2024 – to Minister's Office
Second Briefing: matters raised in submissions and matters raised directly by Ministers	23 May – to Minister's Office
CAB-431 <i>Fast-track Approvals Bill – Policy Decisions for Departmental Report</i>	• 31 May – to Minister's Office • 31 May – 10 June: Ministerial consultation • 13 June – Lodgement • 19 June – ECO • 1 July -Cabinet
Select Committee Departmental Report	Due to committee on 5 July, Committee to consider on 11 and 12 July
Final report of Fast-track Advisory Group due to Ministers	8 August
Cabinet approval of projects for inclusion in Bill and any other matters for Amendment paper	• 21 August – ECO (TBC) • 26 August Cabinet (TBC)
Select Committee Report Back	7 September 2024
Second Reading, Committee of the Whole House, Third Reading, and Enactment	TBC
Implementation (first panels set up)	As soon as possible after enactment (further advice to come)



Briefing: Responses from officials to questions from Environment Committee on the Fast-track Approvals Bill

Date submitted: 16 May 2024

Tracking number: BRF-4726

Security level: Parliamentary privilege

MfE priority: Not urgent

Actions sought from Ministers

<i>Name and position</i>	<i>Action sought</i>
To Hon Chris BISHOP Minister Responsible for RMA Reform	For noting only
CC To Hon Tama POTAKA Minister of Conservation	For noting only

Actions for Minister's office staff

Forward this briefing to:

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

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

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

Hon Penny Simmonds, Minister for the Environment;

Hon Chris Penk, Minister for Land Information;

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

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

Appendices and attachments

1. Aide memoire to Environment Committee: Non-threatened species in the Fast-Track Approvals Bill
2. Aide memoire to Environment Committee: Crown Minerals Act and the Fast-Track Approvals Bill
3. Aide memoire to Environment Committee: First report on further engagement with PSGE's and other Māori representative groups
4. Aide memoire to Environment Committee: Key themes from submissions on Fast-Track Approvals Bill (as at 1 May 2024)

s 9(2)(f)(iv)

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

Minister's comments

Responses from officials to questions from Environment Committee on the Fast-track Approvals Bill

Key messages

1. Officials provided an initial briefing to the Environment Select Committee (the Committee) on the Fast-track Approvals Bill on 11 April 2024.
2. Two questions were made of officials at this meeting on 11 April 2024:
 - Committee member, Hon James Shaw, asked officials to provide advice on how Schedule 4 of the Crown Minerals Act is being applied in the ineligibility criteria of the Fast-track Approvals Bill.
 - Committee member, Simon Court, asked what examples of species would not classify as Threatened, Data Deficient, or At Risk for the purposes of Schedule 6, clause 1(2)(c) in the Fast-track Approvals Bill.
3. The advice requested and provided to the Committee is attached as **Appendix One** and **Appendix Two**.
4. On 28 March 2024, the Chair of the Committee, Hon David MacLeod (the Committee Chair), responded to Hon Chris Bishop, Minister Responsible for RMA Reform, agreeing that the Ministry for the Environment (MfE) as advisors to the Committee should undertake further engagement on the Fast-track Approvals Bill with Post Settlement Governance Entities (PSGEs) and other Māori representative groups.
5. To ensure appropriate visibility of these engagements and their influence on advice, the Committee Chair asked that officials:
 - i inform the Committee of relevant engagements under this authorisation and what the consulted entities' or individuals' views were, including via monthly briefings to the Committee on the results of engagements with Māori entities and individuals; and
 - ii draw the Committee's attention to instances where officials have engaged with entities that have not made written submissions to the Committee.
6. Attached at **Appendix Three** is the first report on further engagement with PSGEs and other Māori representative groups.
7. On the 9 May 2024, the Committee requested that officials provide them with a list of key themes coming from submissions.
8. A list of key themes coming from submissions is included in **Appendix Four**. This was undertaken as at 1 May 2024, but officials are confident this represents the key themes across the majority of submissions.

9. The Committee has asked a number of further questions (**Appendix Five**), and we anticipate more questions will be posed to officials over the coming weeks. We will keep you informed of these and provide our answers as they are delivered.
10. These questions, and the responses from officials to the Committee are provided to you for transparency to enable you to better understand the considerations of the Committee on the Fast-track Approvals Bill.

Next steps

11. The Committee will continue to hear oral submissions from the public in the coming weeks, following the close of public written submissions on the 19 April 2024.
12. Oral submissions from the public are anticipated to be heard by the Committee until Friday 14 June 2024.

Signatures



Jo Gascoigne
General Manager
RM Systems Team
16 May 2024

Hon Chris Bishop
Minister Responsible for RMA Reform
Date:



Aide memoire to Environment Committee: Non-threatened species in the Fast Track Approvals Bill

Date submitted: 26 April 2024

Security level: Parliamentary Privilege

Actions sought from Environment Committee

Hon David MacLeod, Chairperson of the Environment Committee

For information

Key contacts at Department of Conservation

<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Director, Policy	Sam Thomas	s 9 (2)(a)	✓

Examples of non-threatened species

Question

1. Officials provided an initial briefing to the Environment Select Committee on the Fast Track Approvals Bill on 11 April 2024. Committee member, Simon Court asked what examples of species would not classify as Threatened, Data Deficient, or At Risk for the purposes of Schedule 6, clause 1(2)(c) in the Fast Track Approvals Bill
2. The Fast Track Approvals Bill provides for approvals normally acquired under the Wildlife Act. This includes permissions to hold, catch, handle or release, and in some cases to kill, absolutely protected wildlife (which is much broader than threatened wildlife).
3. Under the Bill, Schedule 6, clause 1(2)(c) states that, when considering whether to provide a wildlife approval, joint Ministers or a panel must take into account impacts on Threatened, Data Deficient, and At Risk wildlife species (as defined in the New Zealand Threat Classification System).

Response

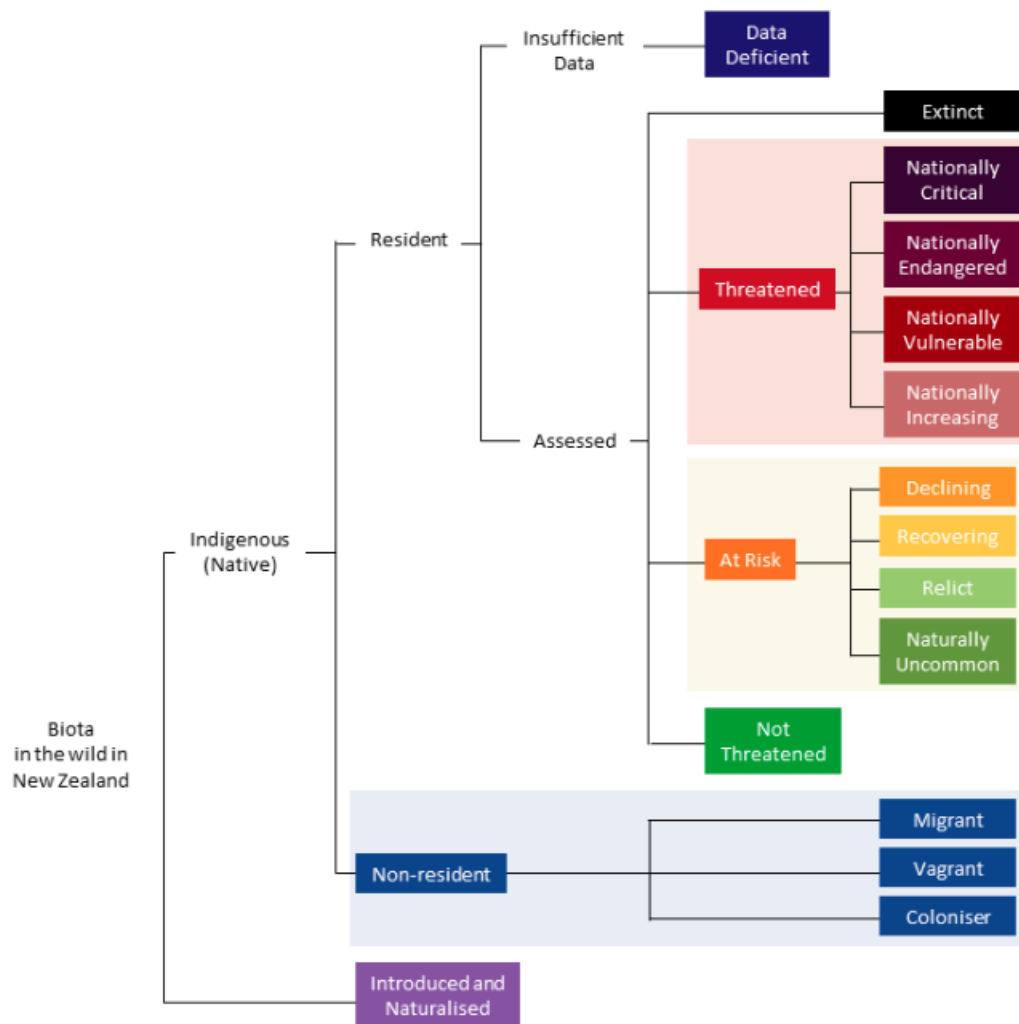
Types of wildlife in scope

4. The Fast Track Approvals Bill provides for authority to do anything otherwise prohibited under the Wildlife Act 1953. This relates to all native birds, bats, frogs, and reptiles, some native land invertebrates, some marine fish, and some marine corals.
5. The Wildlife Act (and therefore the Fast Track Approvals Bill) does not cover approvals associated with whales, dolphins, seals and sea lions which are protected under the Marine Mammals Protection Act 1978. Freshwater fish are also not covered by wildlife approvals.

The New Zealand Threat Classification System

6. The New Zealand Threat Classification System (NZTCS) assesses the conservation status of groups of plants, animals and fungi. It uses a rules-based approach to assess the risk of extinction based on estimates of population size and trend projected over three generations. Species are categorised as:
 - i. Data deficient - those that cannot be assessed due to a lack of current information about their distribution and abundance. Some data deficient species that have not been seen for many years may well be extinct or threatened.
 - ii. Extinct - there is no reasonable doubt, following repeated surveys, that the last individual has died.
 - iii. Threatened – covers:

- Nationally Critical - most severely threatened, facing an immediate high risk of extinction
 - Nationally Endangered - facing high risk of extinction in the short term
 - Nationally Vulnerable - facing high risk of extinction in the medium term
 - Nationally Increasing - small but increasing population still facing a risk of extinction in the medium term
- iv. At Risk – covers:
- Declining - population declining but still moderately common
 - Relict - small population stabilised after declining
 - Naturally Uncommon - naturally small population and therefore susceptible to harmful influences
 - Recovering - population increasing after previously declining
- v. Not Threatened – those that have large, stable populations (sometimes due to ongoing conservation management, e.g. North Island brown kiwi)
- vi. Non-resident Native – covers Migrant, Vagrant and Coloniser sub-categories depending on their patterns of presence in New Zealand.
- vii. Introduced and Naturalised – those that have become naturalised in New Zealand after being deliberately or accidentally introduced by humans. Most of these species are not protected by the Wildlife Act.
7. For most groups of species, a panel of experts meets to assess their status. These experts are drawn from the New Zealand and international science and conservation community. The experts use information from databases, scientific publications and information from the public as well as their own knowledge.
8. The NZTCS is administered by the Department of Conservation (DOC).

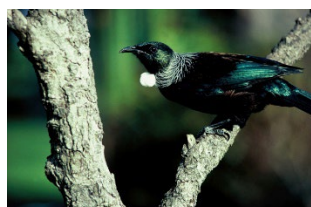


Flow diagram 1: The New Zealand Threat Classification System (NZTCS) categories

Species that do not qualify as Threatened, Data Deficient or At Risk

9. Examples of species that are protected by the Wildlife Act 1953 but are not classified as either Threatened, Data Deficient, or At Risk and will not have impacts on them taken into account under the Fast Track Approvals Bill are:

Tūī (Not Threatened)



Whale shark (Non-resident Native – Migrant)



Image: Justin Henry. Creative Commons

North Island
Brown Kiwi (Not
Threatened)



Northern
grass skink
(Not
Threatened)



Australian little
bittern (Non-
resident Native
– Vagrant)



Bellbird (Not
Threatened)



Australian barn
owl (Non-
resident Native
– Coloniser)



Image: Fir0002/Flagstaffotos. Creative Commons

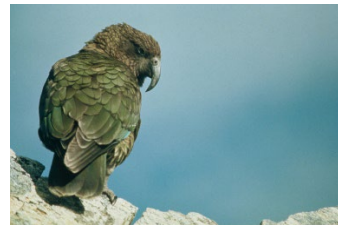
Ruru (Not
Threatened)



Species that do qualify as Threatened, Data Deficient or At Risk

10. Examples of species that are Threatened, Data Deficient, or At Risk and will have impacts on them taken into account are:

Kea
(Threatened -
Nationally
Endangered)



Manta ray
(Data
Deficient)

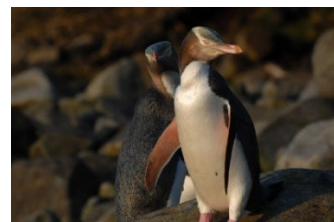


Image: Dr Mark Erdmann

Northern royal
albatross
(Threatened -
Nationally
Vulnerable)



Yellow-eyed
penguin
(Threatened
- Nationally
Endangered)



Southern
Duvaucel's
gecko
(Threatened -
Nationally
Increasing)



Archey's
frog (At Risk
– Declining)



© JamesReardon.org

Some types of black coral (At Risk – Naturally Uncommon)



Long-tailed bat (Threatened – Nationally Critical)



Some types of land snail (Threatened – Nationally Critical)



Image: Mark Anderson

Campbell Island teal (Threatened – Nationally Increasing)

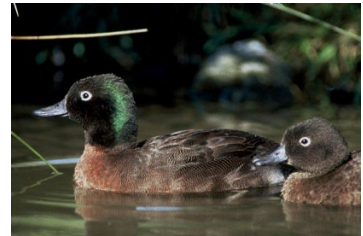
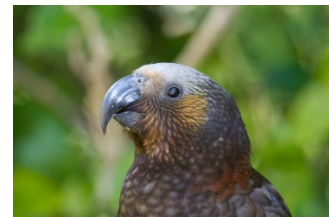


Image: Garry Norman

Tuatara (At Risk – Relict)



North Island kaka (At Risk – Recovering)



Signatures

A handwritten signature in blue ink, appearing to read 'Sam Thomas'.

Sam Thomas
Director, Policy
Department of Conservation
26 April 2024



Aide memoire to Environment Committee: Crown Minerals Act and the Fast Track Approvals Bill

Date submitted: 26 April 2024

Security level: Parliamentary Privilege

Actions sought from Environment Committee

Hon David MacLeod, Chairperson of the Environment Committee

For information

Key contacts at Department of Conservation

<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Director, Policy	Sam Thomas	s 9 (2)(a)	✓

Key contacts at Ministry for Business Innovation and Employment

<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Policy Director	Susan Hall	s 9 (2)(a)	✓

Clarification of relationship between ineligibility criteria and Schedule 4 of the Crown Minerals Act

Question

1. Officials provided an initial briefing to the Environment Select Committee on the Fast Track Approvals Bill on 11 April. Committee member, Hon James Shaw, asked officials to provide advice on how Schedule 4 of the Crown Minerals Act is being applied in the ineligibility criteria of the Fast Track Approvals Bill.
2. The question arose from a discussion on how Schedule 4 is being used as a proxy for defining areas ineligible for Fast Track approvals. It relates to clause 18(h) of the Fast Track Approvals Bill.

Response

Background

Mining permissions

3. Mining rights and land access for mining activities are regulated under the Crown Minerals Act 1991 (CMA). The CMA requires someone who wants to prospect, explore or mine a Crown-owned mineral (defined below) on Crown land to obtain:
 - i. a mineral permit from the Crown to prospect, explore, or mine for Crown-owned minerals¹ (administered by the Ministry of Business Innovation and Employment);
 - ii. an access arrangement from the landowner, which gives them permission to access the land to conduct mining activities (administered by DOC in the case of public conservation land).

Access arrangements for Crown land and land in the common marine and coastal area

4. Section 61 of the CMA specifies that the appropriate Minister (the Minister of Conservation for public conservation land), along with the Minister responsible for the CMA in some cases, may enter into an access arrangement in respect of Crown land with a mineral permit holder. The access arrangement enables the permit holder to access the land to undertake mining operations (exploration, prospecting, or mining depending on their mineral permit).
5. Access arrangements provided for in section 61 (access arrangements in respect of Crown land and land in common marine and coastal area) and 61B (access arrangements in respect of Crown land where mineral not property of the Crown) are in scope of the Fast Track Approvals Bill.

¹ Some exceptions are detailed at section 8 of the CMA.

Schedule 4 – land access restrictions

6. Section 61(1A) of the Crown Minerals Act places restrictions on the types of mining activities that can take place on certain categories of land (and waters) set out in Schedule 4. In the areas specified in Schedule 4, an access arrangement can only be approved for certain low impact mining activities such as:
 - I. activities necessary for the construction, use, maintenance, or rehabilitation, of an emergency exit or service shaft for an underground mining operation, where these cannot safely be located elsewhere, provided that it does not result in—
 - i. any complete stripping of vegetation over an area exceeding 100 square metres; or
 - ii. any permanent adverse impact on the profile or surface of the land which is not a necessary part of any such activity.
 - II. activities that do not result in—
 - i. any complete stripping of vegetation over an area exceeding 16 square metres; or
 - ii. any permanent adverse impact on the profile or surface of the land that is not a necessary part of any safety operations above.
 - III. a minimum impact activity (e.g. surveying, sampling by hand or low-impact mechanical methods)
 - IV. gold fossicking in a designated gold fossicking area
 - V. any special purpose mining activity carried out in accordance with a mining permit (an activity carried out to demonstrate historical mining methods).
7. Currently there are 14 areas listed in Schedule 4 which includes some general types of conservation land (items 1-8 which includes national parks, nature reserves, scientific reserves, wilderness areas, sanctuaries, marine reserves, Ramsar wetlands), as well as some specific locations (items 9-14 which includes Otahu Ecological Area, Parakawai Geological Area, conservation land in the Mercury Islands, conservation land on the Coromandel Peninsula, the internal waters of the Coromandel and two scenic reserves).
8. Schedule 4 can be amended (e.g. new areas added or existing ones removed) following an Order in Council process outlined in the Crown Minerals Act (section 61(4)).

How Schedule 4 relates to the Fast Track Approvals Bill

9. In the Fast Track Approvals Bill, Schedule 4 of the Crown Minerals Act is relevant in two different ways:
 - i. As it applies to access arrangements for mining activities; and
 - ii. As a reference for land that is ineligible for non-mining activities in the Fast Track regime

Mining activities – status quo for all Schedule 4 land

10. The policy intent is that for mining activities, projects requiring an access arrangement under the Crown Minerals Act on Schedule 4 land are **eligible** for the Fast Track Approvals process **BUT** only for low impact activities that are currently allowable under the status quo. This includes the Coromandel areas of Schedule 4.
11. Prohibiting those low impact mining activities under the Fast Track Bill would be a greater restriction on mining than is currently provided for under the Crown Minerals Act.
12. The prevailing purpose of the Fast Track Approvals Bill may increase the likelihood of an access arrangement being granted for mining on Schedule 4 land, but it will not change that it could only be granted for low impact activities.

Non-mining activities – all Schedule 4 land ineligible except Coromandel

13. Schedule 4 of the Crown Minerals Act includes the categories of public conservation land that warrant the highest levels of protection. For this reason, it has been used in the Bill as a reference for land that should be protected from the activities that the Fast Track Approvals Bill enables (clause 18(h)).
14. There is an expectation of very minimal human intervention in Schedule 4 areas (e.g. nature reserves, scientific reserves, wilderness areas and marine reserves), and/or they are special areas where human activities are more frequent and intensive but should be carefully managed (e.g. national parks).
15. The policy intent is that projects on Schedule 4 land are **ineligible** for the Fast Track Approvals process. However, there is an exception for non-mining activities on Coromandel land (items 12 and 13 in Schedule 4²).

Why is the Coromandel treated differently for non-mining activities?

16. The Coromandel area is unique in that all conservation land (regardless of whether it is a national park or category otherwise listed in Schedule 4) and the internal waters are listed in Schedule 4. This means, that under the Crown Minerals Act, only low impact mining activities can occur there, like on other Schedule 4 land. The Fast Track Approvals Bill is not intended to change what mining activities can be enabled on Schedule 4 land.
17. However, the policy intent is that non-mining activities *should* be able to take place in the Coromandel region. This means that the region will be able to benefit from the types of critical infrastructure and development that the Bill is trying to facilitate (e.g. roads, transmission lines, ports).

Issues for further consideration

18. We intend to consider two matters through the Select Committee process:

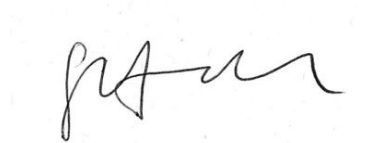
² Item 12 is all conservation land in the Coromandel Peninsula, regardless of whether it fits categories otherwise listed in Schedule 4, and item 13 is the internal waters of the Coromandel Peninsula.

- i. Whether referencing Schedule 4 for non-mining projects is too confusing and the Bill should have its own independent clause relating to ineligible areas; and
- ii. Whether, from a drafting perspective, the ineligibility clauses appropriately achieve the policy intent set out above.

Signatures



Sam Thomas
Director Policy
Department of Conservation
26 April 2024



Susan Hall
Policy Director
**Ministry of Business, Innovation and
Employment**
26 April 2024



Aide memoire to Environment Committee: List of Māori group submitters on Fast-track Approvals Bill

Date submitted: 14 May 2024

Tracking number: AM-EC10

Security level: Parliamentary Privilege

Actions sought from Environment Committee

Hon David MacLeod, Chairperson of the Environment Committee

For noting only

Appendices and attachments

Appendix One – List of submitters who identify as Māori groups

Key contacts at Ministry for the Environment

<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Principal Author	Zsofia Hellyer		
Responsible Manager	Jo Gascoigne	s 9 (2)(a)	✓

List of Māori group submitters on Fast-track Approvals Bill

Question

1. On 2 May 2024, you requested a list of submitters on the Fast-track Approvals Bill who identify as Māori groups and asked they be categorised by type, to assist your consideration of the nature of groups engaging with the committee.

Response

2. A full list of submitters who identify as Māori groups is attached as **Appendix One**.
3. Officials have categorised groups using information provided in the submission or publicly available. The number of submitters in each category is summarised in the table below.

Category	Number of submitters
Group that represents hapū, including whanau groups	96
Iwi authority, including post-settlement governance entities	107
Māori district council or committee	16
Māori education group, including wānanga, kura kaupapa and student associations	14
Marae, including marae trusts	37
Owner(s) of Māori land	20
Pan Māori groups	7
Takutai Moana (marine and coastal area) rights holder or applicant	3
Other (includes health organisations, advocacy groups, industry specific groups, housing organisations and others)	41
Unknown	6

Signatures



Jo Gascoigne
General Manager

Resource Management System

14 May 2024

Appendix 3 - Table

Submitter Name	Wish to be heard?	Type of Māori group
Agnes Walker and Whanau	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Araukuukuu Hapu	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Awataha Marae Maori Committee	Yes	Māori district council or committee
CNI Iwi Land Management Limited	Yes	Iwi Authority (includes PSGEs)
E Tipu E Rea Whanau Services	Yes	Other
Hapai Te Hauora Tapui Limited	Yes	Other
Hineuru Iwi Trust	Yes	Iwi Authority (includes PSGEs)
IWI ME HAPU TAKUTAI MOANA APPLICANTS and MIRUMIRU PA KI MAROKOPA AND KIRITEHERE	Yes	Takutai Moana rights holder or applicant
Kahui Poutiaki O Ngati Torehina Ki Mataka (Representative Body of Ngati Torehina Ki Mataka)	Yes	Other
Kahuitara A2B2E3 Incorporated	Yes	Owner of Māori Land (includes Ahu Whenua trusts)
Korohe Marae Ngati Hine	Yes	Marae (includes marae trusts)
Mana Ahuriri Holdings Limited Partnership	Yes	Iwi Authority (includes PSGEs)
Mana Ahuriri Trust	Yes	Iwi Authority (includes PSGEs)
Manaakitia Maori Inc	Yes	Unknown
Mangaroa Incorporation	Yes	Owner of Māori Land (includes Ahu Whenua trusts)
Manuel pou family whanau trust	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Maori and Psychology Research Unit	Yes	Māori Education Group (includes Wānanga, Kura Kaupapa and Student Associations)
Maori Party	Yes	Other
Maori Women's Development Inc	Yes	Other
Mauatua Trust - Te Whanau a Apanui	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Maungaharuru-Tangitu Trust	Yes	Iwi Authority (includes PSGEs)
Mauri O Te Wharetangata Hapuu	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Moriori Imi Settlement Trust	Yes	Iwi Authority (includes PSGEs)
Muaupoko Tribal Authority	Yes	Iwi Authority (includes PSGEs)
Nga Mahinga o Ngati Kahu o Torongare	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
NGA HAPU O NGA MOUTERE TRUST	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Nga hapu o Ngati Porou	Yes	Iwi Authority (includes PSGEs)

Nga Hapu o Otaki	Yes	Iwi Authority (includes PSGEs)
Nga Hapu o Poutama	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Nga Haumi	Yes	Māori Education Group (includes Wānanga, Kura Kaupapa and Student Associations)
Nga Kaitiaki Taiao o Ngati Rangi ki Ngawha	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Nga Potiki a Tamapahore Trust	Yes	Iwi Authority (includes PSGEs)
Nga Rangahautira	Yes	Māori Education Group (includes Wānanga, Kura Kaupapa and Student Associations)
Nga rangatahi-a-Iwi	Yes	Pan-Māori Group (includes FILG, TTK, FOMA, IMSB, NZMC, etc.)
Nga Runanga Papa Atawhai o Tamaki Makaurau, Te Tai Tokerau me Te Hiku o Te Ika	Yes	Not a Māori group
Nga Tai ki Mauao Hapu Collective	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Nga Tirairaka o Ngati Hine	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Nga Toenga o Nga Tamariki a Iharaira me Nga Uri o Maungapohatu Charitable Trust (TWO SUBS)	Yes	Iwi Authority (includes PSGEs)
Nga Uri o Tamainupo ki Whaingaroa Trust	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Nga Uri o te Whanau Heretaunga	Yes	Unknown
Nga Waihua o Paerangi (Ngati Rangi)	Yes	Iwi Authority (includes PSGEs)
Nga Waihua o Paerangi Ltd (Ngati Rangi)	Yes	Iwi Authority (includes PSGEs)
Ngaati Te Ata Waiohū	Yes	Owner of Māori Land (includes Ahu Whenua trusts)
Ngai Tahu Property Limited	Yes	Other
Ngai Tai ki Tamaki Trust Limited	Yes	Iwi Authority (includes PSGEs)
Ngai Tamahaua Hapu	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngai Tamahaua Trust	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngai Tamarawaho Hapu	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngai Tukairangi Trust	Yes	Owner of Māori Land (includes Ahu Whenua trusts)
Ngakau Kotahi	Yes	Other
Ngati Apa ki te Ra To Charitable Trust	Yes	Iwi Authority (includes PSGEs)
Ngati Haua Iwi Trust (Waikato)	Yes	Iwi Authority (includes PSGEs)
Ngati Haua Iwi Trust	Yes	Iwi Authority (includes PSGEs)
Ngati Hikitunga Incorporated	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Huia ki Katihiku	Yes	Marae (includes marae trusts)
Ngati Huri E Tu	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)

Ngati Kaahu A TAMAPAHORE TRUST	Yes	Marae (includes marae trusts)
Ngati Kahumoana	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Kahungunu Iwi Incorporated	Yes	Iwi Authority (includes PSGEs)
Ngati Kahungunu ki Wairarapa Tamaki nui-a-Rua Settlement Trust	Yes	Iwi Authority (includes PSGEs)
Ngati Koroki ki Otaki	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Kuku and Whareroa Marae	Yes	Marae (includes marae trusts)
Ngati Kuta ki Te Rawhiti Charitable Trust	Yes	Iwi Authority (includes PSGEs)
Ngati Mahuri	Yes	Takutai Moana rights holder or applicant
Ngati Maiotaki	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Manu	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Manuhiri Settlement Trust	Yes	Iwi Authority (includes PSGEs)
Ngati Mohitaka O Nu Tireni	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Moko Marae	Yes	Marae (includes marae trusts)
Ngati Mutunga o Wharekauri Iwi Trust	Yes	Iwi Authority (includes PSGEs)
Ngati Pahauwera Development Trust	Yes	Iwi Authority (includes PSGEs)
Ngati Pikiāo	Yes	Iwi Authority (includes PSGEs)
Ngati Pikiāo Environmental Society Incorporated	Yes	Iwi Authority (includes PSGEs)
Ngati Ranginui Fisheries Trust	Yes	Iwi Authority (includes PSGEs)
Ngati Ranginui Ngati Kahu	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Ruamahue Hapu	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Tahu-Ngati Whaoa Runanga Trust	Yes	Iwi Authority (includes PSGEs)
Ngati Taka Hapu	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Tamaoho Trust	Yes	Iwi Authority (includes PSGEs)
Ngati Tarawhai Iwi Trust	Yes	Iwi Authority (includes PSGEs)
Ngati Turangitukua Charitable Trust	Yes	Iwi Authority (includes PSGEs)
Ngati Whatua Orakei Trust	Yes	Iwi Authority (includes PSGEs)
Ngunguru Maori Committee	Yes	Marae (includes marae trusts)
Nukuhau Pa	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
NZ Maori Council	Yes	Pan-Māori Group (includes FILG, TTK, FOMA, IMSB, NZMC, etc.)
opaea whanau trust	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Pakiri G Ahu Whenua Trust	Yes	Owner of Māori Land (includes Ahu Whenua trusts)
Pirirakau Tribal Authority - Incorporated	Yes	Iwi Authority (includes PSGEs)

Potaka Marae	Yes	Marae (includes marae trusts)
Pou Taiao	Yes	Pan-Māori Group (includes FILG, TTK, FOMA, IMSB, NZMC, etc.)
Proclaimed Hapu	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Puke Kaikioire Maori Committee, Whangarei	Yes	Māori district council or committee
Rangatira E Trust	Yes	Owner of Māori Land (includes Ahu Whenua trusts)
Rangitaawhi	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Rangitaiki River Forum	Yes	Māori district council or committee
Rangitane o Manawatu Settlement Trust	Yes	Iwi Authority (includes PSGEs)
Rangitane o Wairarapa Incorporated	Yes	Iwi Authority (includes PSGEs)
Rauahi and Aporina Whanau Trust	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Raukawa Charitable Trust	Yes	Iwi Authority (includes PSGEs)
Roa	Yes	Unknown
Rongowhakaata Iwi Trust	Yes	Iwi Authority (includes PSGEs)
Ruapuha Uekaha Hapu Trust	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Tahaaroa Lakes Trust	Yes	Owner of Māori Land (includes Ahu Whenua trusts)
Taike E! Next Gen	Yes	Not a Māori group
Tainui o Tainui (Tainui) Hapu	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Takahiwai Maori Committee. Est. 1977	Yes	Māori district council or committee
Takitimu Maori council	Yes	Māori district council or committee
Tamaki Legal, on behalf of Te Whanau a Kai et al	Yes	Other
Tamatea Pokai Whenua	Yes	Iwi Authority (includes PSGEs)
Tangata Marae	Yes	Marae (includes marae trusts)
Tangiteroria Maori Committee	Yes	Māori district council or committee
Tapuika Iwi Authority	Yes	Owner of Māori Land (includes Ahu Whenua trusts)
Tatau Tatau o Te Wairoa	Yes	Iwi Authority (includes PSGEs)
Ngaati Koroki Kahukura Trust and Taumata Wiiwii Trust	Yes	Iwi Authority (includes PSGEs)
TE AATAARANGI KI ROTO O TAINUI	Yes	Māori district council or committee
Te Aeto hapu	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Ahiwaru Trust	Yes	Owner of Māori Land (includes Ahu Whenua trusts)
Te Ahiwaru Trust	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Arawa ki Tai Trust	Yes	Māori district council or committee
Te Arawa Lakes Trust	Yes	Iwi Authority (includes PSGEs)
Te Aroha Kanarahi Trust	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)

Te Atiawa ki te Upoko o te Ika a Maui Potiki Trust	Yes	Iwi Authority (includes PSGEs)
Te Atiawa ki Whakarongotai Charitable Trust	Yes	Iwi Authority (includes PSGEs)
Te Atiawa o te Waka-a-Maui Trust	Yes	Iwi Authority (includes PSGEs)
Te Au o te Wai o Ngāti Awa Project team (Te Runanga o Nga	Yes	Iwi Authority (includes PSGEs)
Te Hononga o Nga Hapu o Ngapuhi Nui Tonu	Yes	Unknown
Te Hunga Roia Maori o Aotearoa - Maori Law Society Inc	Yes	Other
Te Kaunihera Maori o Patiki	Yes	Māori district council or committee
Te Kaunihera o Nga Neehi Maori o Aotearoa	Yes	Other
Te Kauru	Yes	Māori Education Group (includes Wānanga, Kura Kaupapa and Student Associations)
Te Kawerau Iwi Tiaki Trust (Te Kawerau a Maki)	Yes	Iwi Authority (includes PSGEs)
Te Kohao Health	Yes	Other
Te Komiti Nui o Ngati Whakaue	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Kooraha Marae	Yes	Marae (includes marae trusts)
Te Korowai o Ngaruahine	Yes	Iwi Authority (includes PSGEs)
Te Korowai o Wainuiarua (Uenuku, Tamakana and Tamahaki)	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Mahurehure hapu Pa Mahinga Pa Matauranga	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Mana Moana o Ngati Irapuaia Trust	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Maru o Ngati Rangiwehewhi Iwi Authority	Yes	Iwi Authority (includes PSGEs)
Te Matapihi Tirohanga Mo Te Iwi	Yes	Other
Te Mauri o Maniapoto - Council of Kaumatua Te Nehenehenui Trust	Yes	Māori district council or committee
Te Nehenehenui	Yes	Iwi Authority (includes PSGEs)
Te Ohu Kaimoana	Yes	Pan-Māori Group (includes FILG, TTK, FOMA, IMSB, NZMC, etc.)
Te Ohu Mahuri - Ngati Hokopu Taiao Working Group	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Pae Ao	Yes	Māori district council or committee
Te Parawhau ki tai	Yes	Other
Te Patupo Iwi Trust	Yes	Iwi Authority (includes PSGEs)
Te Patuwai Tribal	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Pou o Tainui Marae Committee	Yes	Marae (includes marae trusts)
Te Putahitanga o Te Waipounamu	Yes	Marae (includes marae trusts)

Te Puu Ao Charitable Trust	Yes	Māori Education Group (includes Wānanga, Kura Kaupapa and Student Associations)
Te Rakato Marae	Yes	Marae (includes marae trusts)
Te Rangapu Mana Whenua o Tauranga Moana	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Raranga a Te Kuihi Trust	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Runanga Nui o Te Aupouri	Yes	Iwi Authority (includes PSGEs)
Te Runanga o Ngai Tahu	Yes	Iwi Authority (includes PSGEs)
Te Runanga o Ngai Te Rangi	Yes	Iwi Authority (includes PSGEs)
TE RUNANGA O NGATI AWA	Yes	Iwi Authority (includes PSGEs)
Te Runanga o Ngati Awa	Yes	Iwi Authority (includes PSGEs)
Te Runanga o Ngati Hine	Yes	Iwi Authority (includes PSGEs)
Te Runanga o Ngati Manawa	Yes	Iwi Authority (includes PSGEs)
Te Runanga o Ngati Mutunga	Yes	Iwi Authority (includes PSGEs)
Te Runanga o Ngati Rarua	Yes	Iwi Authority (includes PSGEs)
Te Runanga o Ngati Ruanui Trust	Yes	Iwi Authority (includes PSGEs)
Te Runanga o Ngati Tamakopiri	Yes	Iwi Authority (includes PSGEs)
Te Runanga o Ngati Whakaue ki Maketu	Yes	Iwi Authority (includes PSGEs)
Te Runanga o Ngati Whatua	Yes	Iwi Authority (includes PSGEs)
Te Runanga o Raukawa	Yes	Iwi Authority (includes PSGEs)
Te Runanga o Toa Rangatira	Yes	Iwi Authority (includes PSGEs)
Te Runanga o Waihao	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Runanga o Whaingaroa	Yes	Iwi Authority (includes PSGEs)
Te Runanganui o Ngati Porou Trustee Ltd	Yes	Iwi Authority (includes PSGEs)
Te Ruunanga o Ngaati Mahuta ki te Hauaauru	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Tai Kaha Maori Collective	Yes	Pan-Māori Group (includes FILG, TTK, FOMA, IMSB, NZMC, etc.)
Te Taiao o Kawhia Moana Society Incorporated	Yes	Other
Te Taiwhenua o Heretaunga Trust	Yes	Marae (includes marae trusts)
Te Tihi o Ruahine Whanau Ora Alliance charitable trust	Yes	Other
Te Tira Whakamataki	Yes	Other
Te Tumu Paeroa - Office of the Māori Trustee	Yes	Other
Te Uru Kahika	Yes	Other
Te Wairahi Charitable Trust	Yes	Other

Te Wakaminenga Pouerua ki Waitangi Komiti Maori ki Te Kaunihera Maori O Te Tai Tokerau	Yes	Marae (includes marae trusts)
Te Whakakitenga o Waikato Waikato-Tainui	Yes	Iwi Authority (includes PSGEs)
Te Whanau a Rangiwhakaahu Hapu Trust	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Whanau a Ruataupare ki Tokomaru	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Whanau o Pakiri Incorporated	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Whare Taiao o Rangitane	Yes	Iwi Authority (includes PSGEs)
Tinopai RMU Limited	Yes	Other
Tuwharetoa Maori Trust Board	Yes	Iwi Authority (includes PSGEs)
Umuariki and Taumata o Mihi Marae(s)	Yes	Marae (includes marae trusts)
Utu-Aa-Matimati	Yes	Other
Waahi Paa	Yes	Marae (includes marae trusts)
Wai 262 Taumata Whakapumau	Yes	Pan-Māori Group (includes FILG, TTK, FOMA, IMSB, NZMC, etc.)
Waihi Marae Reservation Trust	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Wairewa Runanga Incorporated	Yes	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Wakatu Incorporation	Yes	Owner of Māori Land (includes Ahu Whenua trusts)
Wellington Tenths Trust and Palmerston North Maori Reserve Trust	Yes	Owner of Māori Land (includes Ahu Whenua trusts)
Whakatohea Maori Trust Board	Yes	Iwi Authority (includes PSGEs)
Albert and Sophie Ketu Whanau Trust	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
chief of foreign affairs (United Tribes Of Aotearoa)	No	Pan-Māori Group (includes FILG, TTK, FOMA, IMSB, NZMC, etc.)
Ki Ora NZ	No	Other
Korokota Martae, Titoki. Te Parawhau Hapu; Ngati Whatua me Ngapuhi Iwi (THREE SUBS)	No	Marae (includes marae trusts)
Kura auaha ltd	No	Māori Education Group (includes Wānanga, Kura Kaupapa and Student Associations)
Mangaparae papakainga, Nga Uri o Urikore	No	Other
Manukorihi Hapu	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Maori Midwives ki Tahu	No	Other
Maori women welfare league	No	Other
Matawhaanui Trust	No	Iwi Authority (includes PSGEs)
Matihetihe Marae Trust on behalf of the hapu of Te Tao Maui me Te Hokoheha	No	Marae (includes marae trusts)

Maungaroa Whanau Trust	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
New Zealand Maori Council - Temple View Committee, Hamilton District	No	Māori district council or committee
Nga Aho Whakaari Maori in Screen	No	Other
Nga Hapu o Ngati Kopaki me Ngati Te Ara	No	Iwi Authority (includes PSGEs)
Nga Hapu o Tokomaru Akau	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Nga Hapu O Waimarama	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Nga Kahu o Torongare Hapu Rohe Waiomio Whangarei rohe	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Nga Kaitiaki o Nga Wai Maori	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Nga Kaitiaki O Nga Wai Maori	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Nga Kaitiaki o Puketapu Trust	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Nga Tangata o te Akaaka Matua	No	Other
Nga Tokorima a Hinemanuhiri Trust	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Nga Uri O Ngamurikaitaua	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Nga uri whakaheke o Harata raua ko Matuaaiwi Solomon	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngaa Uri o Maahanga Trust (TWO SUBS)	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngaati Wairere Taiao	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngai Tahu o Mohaka Waikare	No	Owner of Māori Land (includes Ahu Whenua trusts)
Ngai Tamarawaho Environmental and Development Unit	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngai Tamawera, Te Tawera and Te Pahipoto hapu	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngai Tauria - Maori Students Association at Victoria University of Wellington	No	Māori Education Group (includes Wānanga, Kura Kaupapa and Student Associations)
Ngai Te Ahi Hapu	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngai Tukairangi Hapu	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngai Tumapuhia-a-rangi Hapu Incorporated	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
NGAPEKE 6C AHU WHENUA TRUST	No	Owner of Māori Land (includes Ahu Whenua trusts)
Ngapuhi Nui tonu committee association unincorporated Maori Development Act 1962	No	Other
Ngati Huia Ki Poroutawhao	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Haka Patuheuheu Hapu	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Hinemanu, Ngai Te Upokoiri Me Ona Piringa Hapu Authority	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)

Ngati Hinerangi Ngati Hinekiri Hapu	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Kikopiri Reservation Trustees	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Koata Trust	No	Takutai Moana rights holder or applicant
Ngati Kura Hapu	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Kuri - Te Matai Pa (Tapuika)	No	Iwi Authority (includes PSGEs)
Ngati Kuri Trust Board	No	Iwi Authority (includes PSGEs)
Ngati Oneone Hapu	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Paoa Iwi Trust	No	Iwi Authority (includes PSGEs)
Ngati Pikiaro Iwi Trust	No	Iwi Authority (includes PSGEs)
Ngati Poporo Hapu	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Rongomai Iwi Trust	No	Iwi Authority (includes PSGEs)
Ngati Ruaiti Nukumarū Marae Committee Incorporated Society	No	Marae (includes marae trusts)
Ngati Tama ki Te Waipounamu Trust	No	Iwi Authority (includes PSGEs)
Ngāti Te Au Hapū	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ngati Te Roro o te Rangi Hapu Trust	No	Iwi Authority (includes PSGEs)
Ngati Te Wehi	No	Iwi Authority (includes PSGEs)
Ngati Tukorehe and Te Iwi of Ngati Tukorehe Trust	No	Iwi Authority (includes PSGEs)
Ngati Tumutumu Trust	No	Iwi Authority (includes PSGEs)
Ngati Tumutumu Trust	No	Iwi Authority (includes PSGEs)
Ngati Uenukukopako Iwi Trust	No	Iwi Authority (includes PSGEs)
Ngati Waewae, Ngati Tuwharetoa	No	Iwi Authority (includes PSGEs)
Ngatiruahine Marae Trust Committee	No	Marae (includes marae trusts)
Oakura Pa Ngati Tairi Hapu	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ohore Consultancy	No	Other
Ohotu 1c1 Trust - Matahiwi Marae Whanganui River	No	Marae (includes marae trusts)
On Behalf of the Matau Marae Committee	No	Marae (includes marae trusts)
Onuku Maori Lands Trust	No	Marae (includes marae trusts)
Oroua-Kauwhata Maori Committee	No	Māori district council or committee
Parana Te Hunahuna Whanau Trust	No	Owner of Māori Land (includes Ahu Whenua trusts)
Paraparaumu Maori Committee - NZ Maori Council	No	Māori district council or committee
Paremata 2F15B Trust	No	Owner of Māori Land (includes Ahu Whenua trusts)
Patuharakeke Te Iwi Trust Board	No	Iwi Authority (includes PSGEs)

Pohatuiri Marae Trust	No	Marae (includes marae trusts)
Rangitane Tu Mai Ra Trust	No	Iwi Authority (includes PSGEs)
Rangiwaewa Marae Trust	No	Marae (includes marae trusts)
Rawhitiroa Owairaka Marae	No	Marae (includes marae trusts)
Richard and Ellen Houkamau Whanau Trust	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Ta Tupu Foundation Trust	No	Other
Taiohi Morehu	No	Other
Taipua Te Rei Trust	No	Owner of Māori Land (includes Ahu Whenua trusts)
Takanui peneaha McLaughlin trust	No	Other
Takapaukura Limited	No	Other
Takutai Moana and Mita Pomana Whanau	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Tanenuiarangi Manawatu Incorporated	No	Iwi Authority (includes PSGEs)
Tangata Humaaria Charitable Trust	No	Other
Taranaki Whanui ki te Upoko o Te Ika - Port Nicholson Block Settlement Trust	No	Iwi Authority (includes PSGEs)
Taumata o te Ra Marae Trust Reservation	No	Marae (includes marae trusts)
Te Akitai Waiohua Settlement Trust	No	Iwi Authority (includes PSGEs)
Te Arawa River Iwi Trust	No	Iwi Authority (includes PSGEs)
Te Aue Tipene and Witeria Ashby Whanau Trust	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Hapu o Ngati Wheke Inc	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Hononga o Nga Awa Trustees Limited	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Houhanga A Rongo Marae	No	Marae (includes marae trusts)
Te Kaahui o Rauru	No	Iwi Authority (includes PSGEs)
Te Kahui Maru Trust	No	Iwi Authority (includes PSGEs)
Te Kahui o Taranaki Trust	No	Iwi Authority (includes PSGEs)
Te Kahuinga Tumuaki	No	Māori Education Group (includes Wānanga, Kura Kaupapa and Student Associations)
TE KAPU O WAITAHA	No	Iwi Authority (includes PSGEs)
Te Kopua Marae	No	Marae (includes marae trusts)
Te Kotahitanga o Ngati Tuwharetoa	No	Iwi Authority (includes PSGEs)
Te Kura o Waharoa	No	Māori Education Group (includes Wānanga, Kura Kaupapa and Student Associations)

Te Kurahuna Ltd	No	Māori Education Group (includes Wānanga, Kura Kaupapa and Student Associations)
Te Makomako Papakainga Whanau	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Mana o Ngati Rangitihi	No	Iwi Authority (includes PSGEs)
Te Ngaakau-aa-Kiwa Charitable Trust	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Paerata Whanau Trust	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te pata	No	Marae (includes marae trusts)
Te Pumautanga o Te Arawa Trust	No	Iwi Authority (includes PSGEs)
Te Rawhiti Marae	No	Marae (includes marae trusts)
TE ROOPU TAIAO O NGATI WHAKATERE TRUST	No	Other
Te Ropu Wahine Maori Toko i te Ora The Maori Womens Welfare League	No	Other
Te Roroa Manawhenua Trust	No	Iwi Authority (includes PSGEs)
Te Runanga A Iwi O Ngapuhi	No	Iwi Authority (includes PSGEs)
Te Runanga o Nga Wairiki Ngati Apa	No	Iwi Authority (includes PSGEs)
Te Runanga o Ngati Tama	No	Iwi Authority (includes PSGEs)
Te Runanga o Raukawa	No	Iwi Authority (includes PSGEs)
Te Runanga o Te Rarawa	No	Iwi Authority (includes PSGEs)
Te Runanga of Ngati Kuia	No	Iwi Authority (includes PSGEs)
Te Ruruku Pa	No	Marae (includes marae trusts)
Te Tarai o Rahiri Marae	No	Marae (includes marae trusts)
Te Tatau o Te Arawa	No	Other
Te Taumutu Runanga	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Tini o Hakuturi	No	Māori Education Group (includes Wānanga, Kura Kaupapa and Student Associations)
Te Tumatakahuki Hapu	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Uri o Hau Settlement Trust	No	Iwi Authority (includes PSGEs)
Te Uri O Hikihiki Ki Whangaruru	No	Māori district council or committee
Te Uri O Te Aho Hapu	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Wahapu o Hokianga	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Waimana Kaaku Tribal Executive	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Waiora	No	Unknown
Te Wairoa Tapokorau Whanui Trust	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)

Te Wananga o Raukawa Foundation	No	Māori Education Group (includes Wānanga, Kura Kaupapa and Student Associations)
Te Wananga o Te Rangi Aniwaniwa	No	Māori Education Group (includes Wānanga, Kura Kaupapa and Student Associations)
Te Whakahiapo Maori Law Student Association	No	Māori Education Group (includes Wānanga, Kura Kaupapa and Student Associations)
Te Whakaruruhau Kohanga Reo	No	Māori Education Group (includes Wānanga, Kura Kaupapa and Student Associations)
Te Whanau a Tutawake	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Whanau Papara-Pomare-Talbot-Edmonds	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te Whare Hauaaauru ki Uta	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Te whare oranga o te puaha o waikato	No	Marae (includes marae trusts)
The Pohatu and Knight Whanau	No	Group that represents Hapū (e.g. hapū collectives, individual hapū)
Tiaki Taiao O Te Tai Tokerau	No	Other
Tini Waitara Marae	No	Marae (includes marae trusts)
Tokerau A14A2	No	Unknown
Tuhoe Hauora	No	Other
Tuhourangi Tribal Authority	No	Iwi Authority (includes PSGEs)
Tukuahau whanau trust	No	Owner of Māori Land (includes Ahu Whenua trusts)
Waiohau Maori Committee	No	Māori district council or committee
Waiohau Marae Reservation Trust	No	Marae (includes marae trusts)
Waipuka 3B1C1 and Estate PukePuke Tangiora	No	Owner of Māori Land (includes Ahu Whenua trusts)
Waipuka 3B1C1 Waipuka Inc 1977 and Estate PukePuke Tangiora committee of 9 whanau members	No	Owner of Māori Land (includes Ahu Whenua trusts)
WaipukaInc	No	Owner of Māori Land (includes Ahu Whenua trusts)
Whakawehi 113 Trustees	No	Other
Whenuakura Marae	No	Marae (includes marae trusts)



Aide memoire to Environment Committee: Key themes from submissions on Fast-track Approvals Bill (as at 1 May 2024)

Date submitted: 16 May 2024

Tracking number: AM-EC07

Security level: Parliamentary Privilege

Actions sought from Environment Committee

Hon David MacLeod., Chairperson of the Environment Committee

For noting only

Appendices and attachments

Appendix One: Key themes from submissions on Fast-track Approvals Bill (as at 1 May 2024)

Key contacts at Ministry for the Environment

<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Principal Author	Emily Allan		
Responsible Manager	Jo Gascoigne	s 9 (2)(a)	✓

Key themes from submissions on Fast-track Approvals Bill (as at 1 May 2024)

Question

1. On 9 May 2024, you asked officials to provide you with a list of key themes coming from submissions so far.

Response

2. Submissions on the Bill closed on 19 April 2024. Just under 27,000 separate submissions were received, with one submission from Forest & Brid containing a further 14,000 submissions making a total number of submissions around 40,000. Officials are processing them at a steady pace, but it will take time to upload and tag (identify key themes) them all.
3. A list of key themes coming from submissions so far is included in **Appendix One**. This was undertaken as at 1 May 2024, but we are confident this represents the key themes across the majority of submissions.

Next steps

4. We will report to you again through the Departmental Report on the completed analysis of submissions received.

Signatures



Jo Gascoigne
General Manager
Resource Management System
16 May 2024



Appendix One: Key themes from submissions on Fast-track Approvals Bill (as at 1 May 2024)

Appendix 4 - Table	Classification
Appendix 1: Key themes from submissions on Fast-track Approvals Bill (as at 1 May 2024)	
Planning, legal and other practitioners Includes Resource Management Law Association, The Law Association, New Zealand Law Society, Te Hunga Rōia Māori o Aotearoa – The Māori Law Society, New Zealand Planning Institute.	In principle, generally support the intent to provide a simplified and comprehensive consenting regime. Concerns include: • The Bill is disproportionately pro-development and needs greater emphasis on environmental considerations. • The degree of discretion joint Ministers will have in the referral and decision-making processes and the concentration of power in the executive is inappropriate. • The lack of opportunities for public involvement in the fast-track process. • The climate impacts of projects and concerns that the legislation may be inconsistent with New Zealand’s international obligations such as the Paris Agreement. • No requirement for persons exercising functions under it to do so in accordance with Te Tiriti o Waitangi principles and obligations. • Bespoke solutions to awarding resource consents does not provide predictability and clarity to applicants of the wider community affected. • Unintended consequences and concerns about interdependencies between infrastructure.
Environmental groups Includes Environmental Defence Society, Forest & Bird, Greenpeace Aotearoa, The Environmental Law Initiative and local conservation groups.	Strongly oppose the Bill, reflecting a fundamental disagreement with the prioritisation of short-term economic gain over communities and ecosystems. Concerns include: • The disregard for existing environmental protections. • The disregard for democratic principles. • The lack of consultation with stakeholders and the lack of opportunities for public involvement in the fast-track process. • The Bill violates the Treaty of Waitangi and is therefore unconstitutional.
Business, development and infrastructure Includes Property Council, property developers, BusinessNZ, Clarus, Civil Contractors New Zealand, Transpower New Zealand Ltd, power companies.	Generally support the Bill, especially property development groups. Their feedback highlights: • Concern about too much consultation and the potential for one minister to hold up the process. • Lack of resourcing for local councils to engage in the process. • Wanting public and private plan changes (including rezoning) to be available. • The need to ensure transparency and legitimacy in ministerial decision-making. • Concern about the lack of notification for infrastructure providers • Insufficient consideration about the overall balancing of the needs for economic development and the sustainability of the environment. • Lack of timeframes for decision-makers • Processes in the Bill being more onerous than existing processes, or it being unclear/complex.
Local government Includes Auckland Council, Christchurch City, Hamilton City, Dunedin City, Bay of Plenty Regional, Greater Wellington Regional, Waikato Regional, Hawke’s Bay Reigonal Councils; Taituarā / LGNZ.	Generally support the enabling of regionally or nationally significant development, including infrastructure, but have significant drafting and implementation concerns. Some oppose the Bill in its current form. • Bill enables economic development at the cost of environmental degradation, and it is unclear how the Bill will support cultural, social and economic priorities for local communities. • Lack of regard for Māori rights and interests, the Treaty of Waitangi and risk of creating new grievances. • Concern that Ministerial decision-making is inappropriate as decisions require technical expertise and local knowledge. • Concern that projects will not be considered within the existing framework of council jurisdictions and responsibilities, reiterating the need for cost recovery in all aspects of local authority involvement. • Need for clear eligibility and acceptance criteria to avoid clogging up the system and get development in the right place. • Concern about the loss of local voice and inadequate public consultation.
Post settlement governance entities, iwi, hapū, and other Māori representative groups 77 submissions including Te Tai Kaha Māori Collective and those using the Freshwater Iwi Leaders’ Group form submission.	Strongly opposed to the Bill. Many groups specified they are not opposed to fast-track consenting generally but are opposed to this particular approval process. • Strong feedback that the lack of a requirement to comply with the principles of the Treaty of Waitangi is unconstitutional, breaches the Treaty, and conflicts with upholding settlements. • Concern about the prioritisation of development over long-term protection of the environment. • Concern at power being concentrated with three Ministers who can override panel recommendations. • Concern at the lack of protection for groups yet to settle their Treaty of Waitangi claims. • Concern at the lack of public scrutiny afforded to the listed projects process and lack of public participation in the referral process. • Concern at the inclusion of prohibited activities and previously declined activities in the eligibility criteria.
Individual submissions	Early analysis suggests most individual submitters oppose the Bill because of environmental, constitutional or Treaty concerns.
Note: This is a preliminary analysis and may not be reflective of individual submissions.	

Redacted per s9(2)(f)(iv)



Aide memoire: Supporting material for Select Committee appearance 23 May 2024

Date submitted: 16 May 2024

Tracking number: BRF-4750

Security level: In-Confidence

Actions sought from Ministers	
<i>Name and position</i>	<i>Action sought</i>
To Hon Chris BISHOP Minister Responsible for RMA Reform	For noting only

Appendices and attachments
Appendix 1: Key themes from submissions on Fast-track Approvals Bill
Appendix 2: Talking points

Key contacts at Ministry for the Environment			
<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Principal Author	Lisa Johnston		
General Manager	Jo Gascoigne	s 9 (2)(a)	✓

Supporting material for Select Committee appearance 23 May 2024

Purpose

1. This aide memoire provides you with summaries of key submission themes and Select Committee lines of inquiry, alongside talking points to support your appearance in front of the Environment Committee on 23 May 2024.

Background

2. You are set to appear in front of the Environment Committee who are scrutinising the Fast-track Approvals Bill (the Bill), on Thursday May 23 2024 from 8:50am – 9:20am.
3. Submissions on the Bill closed on 19 April 2024; with just under 27,000 submissions received. Approximately 1,900 submitters have requested to be heard by the Environment Committee (the Committee). Committee hearings commenced on 2 May 2024 and these will run until 14 June 2024.
4. Officials are continuing analyse submissions to ensure fulsome advice is provided to the Committee through the Departmental Report (DR) on 5 July 2024. You will be provided a copy of this for your information prior to delivery to the Committee.
5. On 1 May 2024, we provided you with an aide memoire that gave a high-level overview of key themes from submissions (BRF-4686). On 10 May 2024, you received the first of two briefings (BRF-4664) with further detail on these themes and options for changes to the Bill in response to these. Once these decisions have been finalised, officials can recommend various amendments to the Committee via the DR.
6. Officials attend each hearing and will be there next week to support your appearance, both online and in person.

Key themes from submissions

7. Key themes from both oral and written submissions from core stakeholders include:
- a. The degree of discretion joint Ministers will have in the referral and substantive decision-making processes and the concentration of power in the executive.
 - b. Prioritisation of development over long-term protection of the environment
 - c. Opportunities for public participation
 - d. Lack of regard for Māori rights and interests, the Treaty of Waitangi and risk of creating new grievances
 - e. Concern at the inclusion of prohibited activities and previously declined activities in the eligibility criteria
 - f. General support of the intent of the Bill from submitters in the business and development sector.

Key lines of inquiry from the Select Committee

8. Key lines of inquiry from the Select Committee include:
- a. Role of the Expert Panel in decision-making; should the three Ministers have the final decision; should there be other Ministers included; should this decision sit with the Expert Panel.
 - b. Are the timeframes in the Bill appropriate – should these be extended; would a triage be appropriate to provide complex applications more time; should there be timeframes for Ministerial decision making.
 - c. Consultation requirements, and if the groups listed in Clause 19 are sufficient.
 - d. Should listed projects be considered through Select Committee; more transparency provided on how listed projects are determined.
 - e. The types of activities that should be enabled: ie are coal mining or seabed mining activities appropriate; should only climate positive projects be provided for; should this only be for renewable energy or infrastructure projects; should applications previously determined by the courts be included/excluded; should RMA prohibited activities be excluded.
 - f. Scope and supply chains; how far should an application go to consider ancillary activities ie aggregate extraction for roading project, access arrangements for quarry application.
 - g. Should the Bill have a sunset clause.

9. You have received advice from officials on a number of points above (BRF-4664), with a further briefing due to you on 23 May 2024. You can signal to the Committee more generally that you are working through the issues listed above with officials.
10. Due to your appearance being limited to 30 minutes, it is expected that Committee members will focus on the core issues described above. Should they get into more technical detail, officials will be there to support you on this.
11. Please see attached talking points in Appendix 2.

Signatures

A handwritten signature in black ink, appearing to read 'Jo Gascoigne', with a stylized, sweeping flourish underneath.

Jo Gascoigne
General Manager

Resource Management System

16 May 2024

Appendix 1: Key themes from submissions on Fast-track Approvals Bill (as at 1 May 2024)

Planning, legal and other practitioners Includes Resource Management Law Association, The Law Association, New Zealand Law Society, Te Hunga Rōia Māori o Aotearoa – The Māori Law Society, New Zealand Planning Institute.	In principle, generally support the intent to provide a simplified and comprehensive consenting regime. Concerns include: • The Bill is disproportionately pro-development and needs greater emphasis on environmental considerations. • The degree of discretion joint Ministers will have in the referral and decision-making processes and the concentration of power in the executive is inappropriate. • The lack of opportunities for public involvement in the fast-track process. • The climate impacts of projects and concerns that the legislation may be inconsistent with New Zealand’s international obligations such as the Paris Agreement. • No requirement for persons exercising functions under it to do so in accordance with Te Tiriti o Waitangi principles and obligations. • Bespoke solutions to awarding resource consents does not provide predictability and clarity to applicants of the wider community affected. • Unintended consequences and concerns about interdependencies between infrastructure.
Environmental groups Includes Environmental Defence Society, Forest & Bird, Greenpeace Aotearoa, The Environmental Law Initiative and local conservation groups.	Strongly oppose the Bill, reflecting a fundamental disagreement with the prioritisation of short-term economic gain over communities and ecosystems. Concerns include: • The disregard for existing environmental protections. • The disregard for democratic principles. • The lack of consultation with stakeholders and the lack of opportunities for public involvement in the fast-track process. • The Bill violates the Treaty of Waitangi and is therefore unconstitutional.
Business, development and infrastructure Includes Property Council, property developers, BusinessNZ, Clarus, Civil Contractors New Zealand, Transpower New Zealand Ltd, power companies.	Generally support the Bill, especially property development groups. Their feedback highlights: • Concern about too much consultation and the potential for one minister to hold up the process. • Lack of resourcing for local councils to engage in the process. • Wanting public and private plan changes (including rezoning) to be available. • The need to ensure transparency and legitimacy in ministerial decision-making. • Concern about the lack of notification for infrastructure providers • Insufficient consideration about the overall balancing of the needs for economic development and the sustainability of the environment. • Lack of timeframes for decision-makers • Processes in the Bill being more onerous than existing processes, or it being unclear/complex.
Local government Includes Auckland Council, Christchurch City, Hamilton City, Dunedin City, Bay of Plenty Regional, Greater Wellington Regional, Waikato Regional, Hawke’s Bay Regional Councils; Taituarā / LGNZ.	Generally support the enabling of regionally or nationally significant development, including infrastructure, but have significant drafting and implementation concerns. Some oppose the Bill in its current form. • Bill enables economic development at the cost of environmental degradation, and it is unclear how the Bill will support cultural, social and economic priorities for local communities. • Lack of regard for Māori rights and interests, the Treaty of Waitangi and risk of creating new grievances. • Concern that Ministerial decision-making is inappropriate as decisions require technical expertise and local knowledge. • Concern that projects will not be considered within the existing framework of council jurisdictions and responsibilities, reiterating the need for cost recovery in all aspects of local authority involvement. • Need for clear eligibility and acceptance criteria to avoid clogging up the system and get development in the right place. • Concern about the loss of local voice and inadequate public consultation.
Post settlement governance entities, iwi, hapū, and other Māori representative groups 350 submissions including Te Tai Kaha Māori Collective and those using the Freshwater Iwi Leaders’ Group form submission.	Strongly opposed to the Bill. Many groups specified they are not opposed to fast-track consenting generally but are opposed to this particular approval process. • Strong feedback that the lack of a requirement to comply with the principles of the Treaty of Waitangi is unconstitutional, breaches the Treaty, and conflicts with upholding settlements. • Concern about the prioritisation of development over long-term protection of the environment. • Concern at power being concentrated with three Ministers who can override panel recommendations. • Concern at the lack of protection for groups yet to settle their Treaty of Waitangi claims. • Concern at the lack of public scrutiny afforded to the listed projects process and lack of public participation in the referral process. • Concern at the inclusion of prohibited activities and previously declined activities in the eligibility criteria.
Individual submissions	Early analysis suggests most individual submitters oppose the Bill because of environmental, constitutional or Treaty concerns.
Note: This is a preliminary analysis and may not be reflective of individual submissions.	

Appendix 2: Talking points

General:

- I would like to acknowledge your work and the amount of time you are putting into this process.
- As you will be aware, the Fast-track Approvals Bill (the Bill) was developed at pace and there are a number of issues which officials continue to advise Ministers on.
- While I am across policy intent of this Bill, I am not in the minutia of detail that officials are. I will try my best to answer your questions but there may be some more detailed information that is best presented by officials rather than me.

Substantive decision-making and timeframes

- Delegated Ministers agreed that joint Ministers make the substantive decision (whether to grant or decline approvals) based on a report and recommendations from the Expert Panel.
- We believe that by giving Ministers the final say, it will provide project owners with more certainty and encourage those with regionally or nationally significant projects to throw their hat in the ring.
- Other relevant portfolio Ministers are invited to comment on referral applications before the joint Ministers make a decision on whether to refer a project to the Panel.
- The Expert Panels are still there to assess the projects and provide us a report with their suggested conditions. This step ensures we have the settings right and Ministers can make well-informed decisions.
- It is intended Ministers will make decisions on whether to decline or approve projects in a timely manner.
- As I have said publicly, the Government will take a good look at whether ministers should have final decision-making powers and we are currently receiving advice on this.

Development and environmental protections:

- The Bill is intended to provide a more efficient and certain process for projects with significant regional or national benefits. We want to enable the development of infrastructure and housing.
- Joint Ministers will be looking closely at how to balance environmental considerations against enabling development.
- Joint Ministers can decline an application for referral on the basis it has adverse environmental effects.
- The Expert Panel must use the underlying legislation and associated documents (eg, national direction, regional plans) to inform how environmental effects can be managed and consider planning settings in local and regional plans.

Opportunities for public participation

- The notification settings in the Bill mirror those contained in the Natural and Built Environment Act 2023 (NBA) and COVID Fast-track regimes. We kept these in to keep the process efficient. They have worked well in the past and we are not proposing to change them.

- Applications that require/would benefit from full public notification are not appropriate for fast-tracking, and they will be turned down at referral on the basis that another approval pathway is more appropriate.
- At each stage there are clear consultation requirements for applicants, the joint Ministers and the Expert Panel.
- Clause 19 sets out the consultation requirements for specific stakeholders, we are receiving advice on expanding or clarifying this from officials.

Treaty of Waitangi

- The Government has committed to protecting Treaty settlements and related arrangements which is reflected throughout the Bill in both:
 - an overarching clause requiring persons exercising functions to do so in a manner that is consistent with existing Treaty settlements and customary rights recognised in relevant legislation
 - specific requirements on applicants, Ministers and the expert panel throughout the process.
- The intention of the specific obligations related to Māori rights and interests, in addition to the provisions related specifically to settlements, is to meet the Crown's obligations under the Treaty.
- The intention is also to balance those obligations against Ministers' objectives with respect to infrastructure, as set out in the purpose of the Bill.

Inclusion of prohibited activities and previously declined activities

- 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.
- The key difference between this Fast-track Bill and the other regimes is that this is a one-stop-shop which encompasses much more than just consents under the Resource Management Act 1991 (RMA).
- Some activities are ineligible for fast-tracking (cl 18) – these include activities that would occur on specific land types, mainly associated with Treaty Settlements (without consent of the relevant landowner and/or Post Settlement Governance Entity (PSGE)), activities relating to occupation of the common marine and coastal area where there is an allocation approach, and prohibited or decommissioning related activities under the Economic Exclusion Zone (EEZ) Act.
- Some projects could have been declined previously for one reason or another under the RMA or other Acts. If those project owners do decide to apply under the Fast-track Approvals Bill, they will be assessed carefully against the eligibility criteria as any other project will be.

Listed projects

- An independent Advisory Group has been established to assess projects and make recommendations for inclusion in the schedules of the Bill.
- It was agreed by the Environment Committee that it would not be assessing project applications and would focus on the scrutiny of the Bill itself.
- The Advisory Group's work is already underway and runs until 2 August 2024.

Sunset clause

- The FTA Bill itself is repealing the NBA Fast-track legislation. If, through the RM reform process, it is considered the FTA Bill is no longer needed then the new Bill can repeal this one.
- The COVID-19 Fast-track legislation was set up with a narrow purpose and was timebound for these reasons, which is why it had a sunset clause. Subsequent legislation iterations have widened this scope and therefore it is not deemed necessary to have a sunset clause.



Aide memoire: Information on decision-making provisions in the Fast-track Approvals Bill

Date submitted: 16 May 2024

Tracking number: BRF-4771

Security level: In-Confidence

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

Attachments
Appendix 1: Policy intent of the Fast-track Approvals Bill process s 9(2)(h)

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

Information on decision-making provisions in the Fast-track Approvals Bill

Purpose

1. This aide memoire gives you detail on the decision-making provisions contained in the Fast-track Approvals Bill.
2. A flow-chart stepping out the Fast-track Approvals process is contained in Appendix 1.
3. s 9(2)(h)

Project referral decision-making

4. Ministers responsible for deciding whether a project is to be referred to the Expert Panel are the Minister for Infrastructure, Minister of Transport, and Minister for Regional Development ("joint Ministers").

Substantive decision-making

5. There are decision making roles for other ministers when making the final substantive decision whether to grant or decline approval.
6. Ministers agreed that:
 - i. the Minister of Conservation is the sole decision-maker for fast-track concessions
 - ii. the Minister of Conservation is also one of the joint Ministers for approvals in relation to the Wildlife Act
 - iii. for Crown Minerals Act (CMA) approvals, the appropriate Minister (which is the Minister charged with administration of the land, for example the Minister of Conservation, or the Minister for Land Information) and for some types of CMA approvals, the Minister responsible for the CMA.

Consensus

7. When ministers are required to make decisions jointly, they must come together to reach agreement on the application – the decision is not a case of ‘majority rules’ and if ministers cannot agree to approve an application, they must decline it. This would mean that, in practice, any issues with specific approvals could be managed either through conditions or, if that is not possible, by declining that part of the project within the overall decision.
8. Further decisions are required for the workability of this decision-making within the one stop shop approach. This advice and recommendations are contained in BRF-4664.

Signatures



Jo Gascoigne
General Manager – Resource Management System

16 May 2024

Policy intent of the Fast-track Approvals Bill process

Ministers receive application, seek comments, and make decision on referral

Anyone can apply to have their project fast-tracked by lodging an application which includes the necessary information. This includes undertaking the engagement described in clause 16.

Joint Ministers must seek comment on the application from:

- relevant local authorities
- relevant portfolio Ministers
- relevant iwi authorities and relevant Treaty settlement entities
- other Māori groups identified in the Bill.

Joint Ministers then consider whether to fast-track a project by referring it to a panel. In doing so, they must consider:

- the comments received on the application
- whether the project is eligible (e.g. whether it would have significant regional or national benefits and what other benefits it provides)
- the report obtained on Treaty settlements and obligations
- if referring the project is consistent with Treaty settlements or other arrangements

Relevant groups Panel must seek comments from:

- groups Minister had to seek comment on at referral stage (see above)
- applicant groups under the Marine and Coastal Area (Takutai Moana) Act
- owners and occupiers of the site and adjacent land requiring authorities.

What the Panel has to consider:

- the purpose of the Act
- to a lesser extent, considerations under other relevant legislation (for example, Panel can recommend a project that is inconsistent with RMA national direction).

Ministers consider recommendation from the Panel and make substantive decision

The joint Ministers decide whether they agree with the Panel's recommendation. If they do not agree with the Panel's recommendation, they may seek further advice or comments and clarification from the Panel.

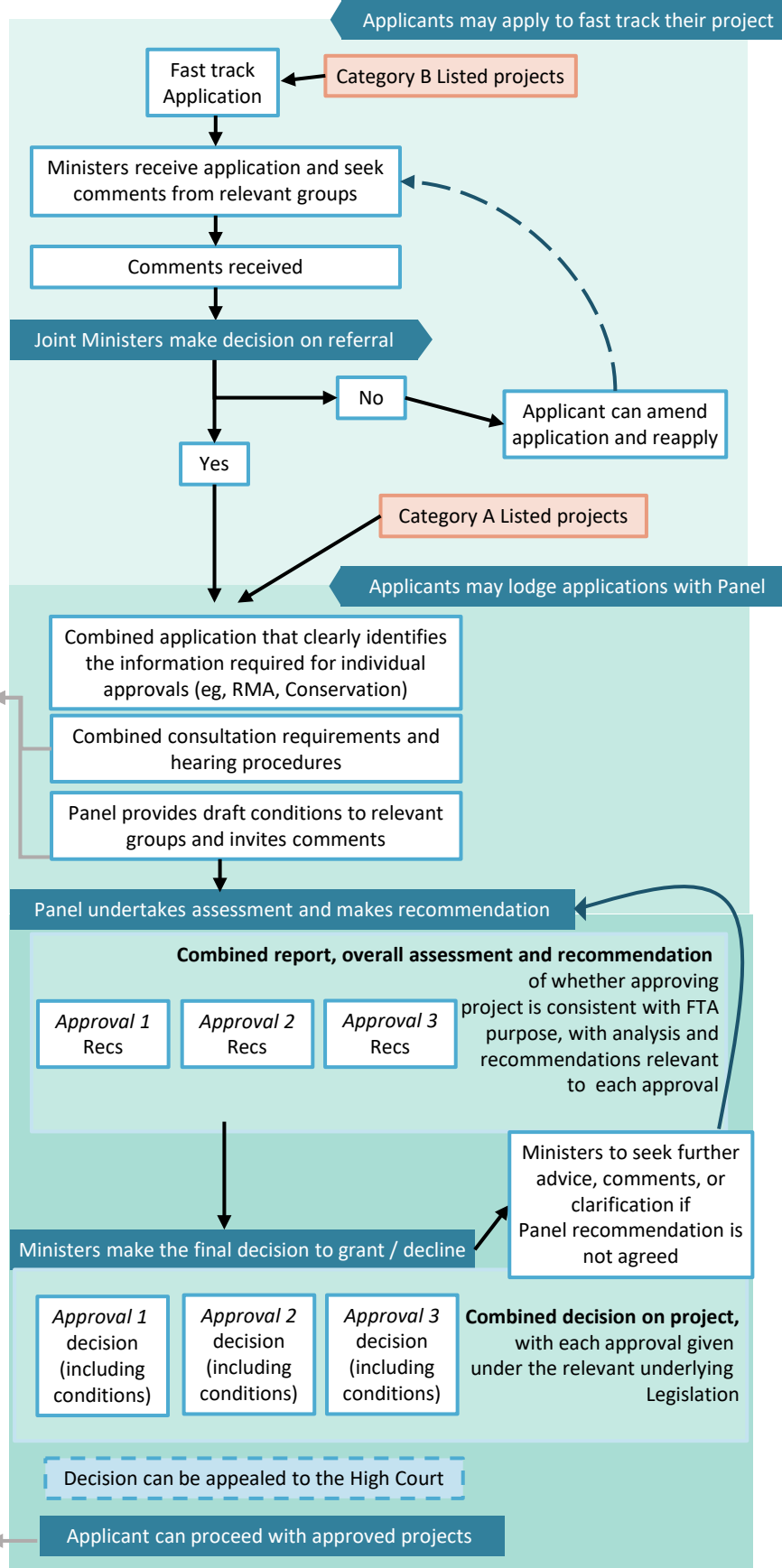
The policy intent is for decisions to be made and notified at the same time, but each approval is granted/declined separately, relevant to their underlying legislation.

The following people can appeal the Ministers decision:

- applicant
- local authorities
- Attorney-General
- people who made comments on the application.
- those with a greater interest than the general public.

Next steps:

- 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.





Briefing: Second briefing on progressing Fast-track Approvals Bill through Select Committee

Date submitted: 24 May 2024

Tracking number: MfE BRF-4752; MBIE 2324-3476

Security level: In-confidence

MfE/MBIE 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	29 May 2024
To Hon Simeon BROWN Minister of Transport	Agree to the recommendations in this briefing	29 May 2024
To Hon Shane JONES Minister for Regional Development	Agree to the recommendations in this briefing	29 May 2024
To Hon Tama POTAKA Minister of Conservation	Agree to the recommendations in this briefing	29 May 2024

Actions for Minister's office staff
If agreed to, forward this briefing to: Hon Simeon Brown, Minister for Energy, Minister of Local Government Hon Paul Goldsmith, Minister for Arts, Culture and Heritage Hon Tama Potaka, Minister for Māori Crown Relations: Te Arawhiti Hon Penny Simmonds, Minister for the Environment Hon Chris Penk, Minister for Land Information Hon Shane Jones, Minister for Oceans and Fisheries, Minister for Resources Return the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).

Appendices and attachments
1. Substantive and technical decisions covered in this briefing 2. Joint Ministers meeting pack a. Combined decision tables from both BRF-4664 and this briefing (BRF-4752) b. Meeting agenda c. Submission summary tables – MfE and DoC

Key contacts at Ministry for the Environment			
<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Principal Author	Lisa Johnston		
Responsible Manager	Jo Gascoigne	s 9(2)(a)	✓

Key contacts at Ministry for Business, Innovation and Employment			
<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Principal Author	Francis Van Der Krogt		
Responsible Manager	Susan Hall	s 9 (2)(a)	✓

Briefing: Second briefing on progressing Fast-track Approvals Bill through Select Committee

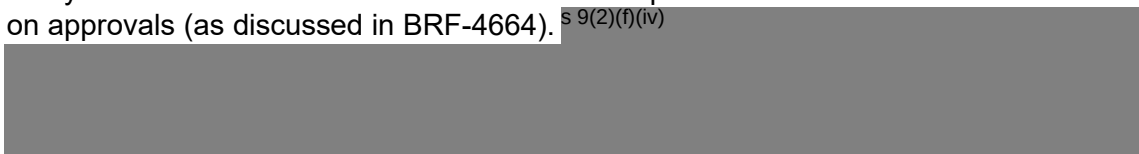
Key messages

1. This is the second of two briefings providing you with advice on proposed changes to the Fast-track Approvals Bill (the Bill). On 10 May, BRF-4664 provided you with advice on substantive decision-making and public participation, key matters raised in submissions, and recommended changes to improve the Bill's workability. This briefing expands on several elements discussed in the previous briefing and seeks your decisions on a second suite of workability changes.
2. Cabinet agreement is required if the Departmental Report recommends any changes to the Select Committee which depart from previously agreed policy decisions. Decisions contained in this briefing will be reflected in a draft Cabinet paper, which will be provided on 31 May 2024.
3. For any changes to the Bill beyond the Departmental Report due date (5 July 2024), a different avenue will be required through Amendment Papers or an Amendment Bill. We note that any substantial changes will require detailed policy work to ensure they are compatible with the other elements of the Bill.
4. The first part of this briefing provides you with advice on the decision-making framework for the Minister of Conservation, plan changes, prohibited (and ineligible) activities, environmental considerations and Treaty matters. **Appendix 1** seeks your decisions on these matters.
5. The second part of this briefing summarises further decisions required to improve the Bill's workability. The speed at which the Bill was produced meant large parts of the Bill are not well-aligned. Officials from agencies responsible for different approvals have identified a range of improvements to resolve these issues which require Ministerial approval (contained in **Appendix 1**). These changes align with the Bill's overall policy direction.
6. A meeting for joint Ministers is scheduled on Wednesday 29 May. A meeting pack is contained in **Appendix 2**. This includes a combined table containing decisions from both BRF-4664 and this briefing, split into two parts – substantive decisions (**Table A**) and technical decisions (**Table B**). For the purposes of the meeting on 29 May, please use the tables in **Appendix 2**. A meeting agenda is also attached.

Key policy issues

Decision-making framework for the Minister of Conservation

7. Many submitters have recommended that the Expert Panel is the final decision-maker on approvals (as discussed in BRF-4664). ^{s 9(2)(f)(iv)}



Plan changes

8. Under the existing Resource Management Act 1991 (RMA) processes, projects that are 'out of zone' or would otherwise conflict with policy direction in the relevant local authority plan are able to proceed by one of two pathways:
 - i. apply for a resource consent – consistency with the planning framework and effects associated with the project will be assessed by the relevant council. This may include the availability of the necessary infrastructure to support the specified project and/or whether significant adverse effects can be appropriately managed. This is an application for an approval (consent) for the specified project; and/or
 - ii. submit a private plan change request – a plan change is not an approval (consent), it is a change to the local authority plan that would better support a project. For example, changing land zoned rural to residential to enable future housing development as permitted activities. There are many matters a council will assess, alongside community and iwi involvement. There are multiple options already available to the Minister for the Environment to expediate the plan change process and are further explained below.

Overview of plan change processes

9. District and regional plans are prepared by councils and guide the use of a region or district's natural and physical resources. During development, plans have community input and iwi involvement and are publicly or limited notified. Procedural matters are set out in the RMA that a council must follow to develop or review a plan. Decisions must be made within two years of notification, and the council makes the final decisions.
10. Regional plans tend to focus on the natural environment, such as the coast, soil, water bodies and the air. District plans concern the use and development of land, including managing subdivision. The RMA allows anyone to seek changes to a district or regional plan through a request for a private plan change, or a council proposed change. Plan changes are not a consent however, but they can facilitate development through a change to a plan's zoning and/or rules. A plan change process is generally used for large-scale developments that are not aligned with the current zoning or controls and where a change to the zoning or rule framework would pave the way for ongoing projects consistent with the relevant district and regional plans.

Current expediated plan change processes available under the RMA

11. The RMA provides for a Streamlined Planning Process (SPP), whereby a council can apply to the Minister for the Environment for a bespoke process within timeframes and parameters set by the Minister. This can include private plan changes. Procedural matters in the RMA, include consultation, notification and submissions. The Minister for the Environment is the final decision-maker, and their decision is not subject to appeal. The Western Bay of Plenty District Council's recent SPP decision is an example, supporting housing growth in Ōmokoroa and Te Puke.
12. Part 6AA of the RMA also sets out the process for proposals of national significance. This provides for councils and applicants for private plan changes to apply to either the

Environmental Protection Authority or the Minister for the Environment to “call” a proposal in, or the Minister themselves to call a matter in, and direct it to go through either a Board of Inquiry or Environment Court process, within a nine-month set timeframe.

13. The RMA also includes a special Freshwater Planning Process, available for regional councils to change their freshwater plans, and an Intensification Streamlined Planning Process for territorial authorities to change their district plans to insert intensification provisions.

Submissions

14. Some submitters have expressed that there is a gap in the Bill by not including plan changes to enable rezoning. However, some councils including Auckland Council and Hamilton City Council do not support the inclusion of plan changes. Councils raised concerns around natural justice, the loss of the local voice, consequential impacts of spot-zoning and the relationship of decisions with other council-functions, including funding decisions, Long-Term Planning, and spatial planning.

Previous fast-track legislation

15. Under the COVID-19 Recovery (Fast-track consenting) Act (FTCA) 2020, some developments (including the Sleepyhead Foam Factory at Ohinewai, and Drury Town Centre, Auckland), obtained resource consent approvals under the FTCA to advance development of their projects, while their private plan changes were progressing.

Risks with including plan changes into the Bill

16. A plan change is a form of approval that could facilitate the delivery of infrastructure and development projects with significant regional or national benefits. The application of zoning to a specific parcel or parcels of land within a larger zoned area is possible. However, they fragment zoning and planning and are not consistent with integrated management of resources (including infrastructure). A resource consent for a specific project as opposed to changing the underlying zoning is more in keeping with the intent and purpose of the Bill.
17. Inclusion of plan changes in the Bill would significantly increase the complexity and scale of the Bill and consequential impacts to the existing RMA processes would need to be considered and developed in consultation with affected partners. It is not feasible to address these matters within the existing timeframes for enactment by the end of 2024.

Prohibited activities

Activities prohibited under the RMA

s 9(2)(h)

18. s 9(2)(h)

19. s 9 (2)(h)



Previously declined projects

21. Several submitters also call for disallowing applications for approvals for projects previously declined. These projects may have been declined as the adverse effects were considered to be too significant and unable to be addressed through conditions.
22. If Ministers wish to strengthen the Bill's environmental safeguards, deeming RMA prohibited activities and previously declined projects ineligible are two ways to achieve this. Other options to strengthen the Bill's environmental safeguards are addressed under environmental matters, below.

Environmental matters

23. We previously advised you that, while some submitters are encouraging of the Bill's intent, many submitters have raised concerns suggesting that the Bill is disproportionately pro-development and needs greater emphasis on environmental considerations.
24. If Ministers wish to address this concern without creating new barriers for fast-track projects, you could include additional environmental matters as a reason to decline an application at the referral and substantive decision stage. This would be in addition to the existing considerations in clause 21(2)(c), where Ministers may decline an application if a project may have significant adverse effects on the environment.

Treaty of Waitangi

25. Many submissions from both Māori and non-Māori groups, including multiple local and regional councils and industry groups such as Hughes Development, raised significant concerns that, while clause 6 requires decision-makers to act consistently with Treaty settlements and customary rights, the Bill does not contain sufficient acknowledgement of and protections for the rights of hapū and iwi yet to settle their historical Treaty of Waitangi claims. Submitters noted several ways the process in the Bill could better provide for these matters, including:
 - i. shifting decision-making from Ministers to the Expert Panel, which will include a member nominated by the relevant iwi authority or authorities
 - ii. giving more weight to environmental sustainability in decision-making
 - iii. increasing timeframes for engagement; and
 - iv. providing a consistent role for hapū in the approvals process.

26. Many submitters also raised concerns specific to the overarching obligations in clause 6 and in particular:
- i. the absence of a requirement for decision-makers to consider the principles of the Treaty of Waitangi
 - ii. a lack of clarity regarding how Treaty clauses in underlying legislation will or should be applied by decision-makers; and
 - iii. that the use of the word "existing" may be interpreted in a way that precludes protections for future Treaty settlements.
27. You considered extensive advice from officials, s 9(2)(h), on options for clause 6 prior to the introduction of the Bill and we do not consider it necessary to re-state that advice. We have provided additional advice where required, and options for addressing submitters' concerns, at **Appendix 1**. We have provided separate advice to address parts of the submission from Te Rūnanga o Ngāi Tahu [BRF-4779 refers].

Substantive decisions required

28. Substantive policy decisions are required and include the following matters:
- i. prohibited and ineligible activities – prohibited activities under the RMA and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), and previously declined projects
 - ii. applications, referral and assessment - application and referral requirements, pre-requests, processing, conditions, and Expert Panel assessments
 - iii. timeframes – for Expert Panel assessments, consultation, and consent lapse periods.
 - iv. treaty of Waitangi and Māori rights and interests
 - v. conservation approvals; and
 - vi. machinery of government and judicial matters – administering agencies, Official Information Act requests, transparency, clauses applying to courts.

Decisions required for improving the Bill's workability

29. The speed at which the Bill was produced meant large parts of the Bill are not well-aligned. Officials from agencies responsible for different approvals have identified a range of improvements to resolve these issues which require Ministerial approval in **Appendix 2**. These changes align with the Bills overall policy direction.
30. These changes are necessary to avoid delays and barriers when the fast-track process is underway. In some cases, the matters have not been raised by submitters, instead were identified as a priority to ensure a well-functioning Bill. These matters include:
- i. include the continuing delivery of existing infrastructure to eligible activities
 - ii. extending the lapse period for resource consents and designations to five years; and
 - iii. scope of appeals

Delegating further technical changes

31. There are additional technical matters or matters of minor policy clarification related to decisions already made. We propose a delegation in the Cabinet Paper to the Minister for RM Reform.

Next Steps

32. On 24 May, the Minister for Resources is receiving further advice from MBIE on the potential inclusion of certain Crown Minerals Act permitting decisions within the Bill, as part of a one-stop-shop. If the Minister decides to propose this inclusion, material on the proposed approach will be shared with Ministers in advance of the 29 May Fast-track Ministerial meeting.
33. A meeting pack is contained in **Appendix 2** to support the joint Ministers meeting on Wednesday 29 May. This includes a combined table containing decisions from both BRF-4664 and this briefing (BRF-4752) that has been split into two parts – substantive decisions (**Table A**) and technical decisions (**Table B**). For the purposes of the meeting on 29 May, please use the tables in **Appendix 2**. A meeting agenda is also attached.
34. Decisions contained in the attached tables will be reflected in a draft Cabinet paper, to be provided on 31 May 2024.

Recommendations

- a. **Consider** the recommendations contained in Appendices **Yes | No**
- b. **Note** that a Cabinet paper will be provided on 31 May. **Noted**
- c. **Agree** to forward this briefing to Hon Simeon Brown, Minister for Energy, Minister of Local Government, Hon Paul Goldsmith, Minister for Arts, Culture and Heritage, Hon Tama Potaka, Minister for Māori Crown Relations: Te Arawhiti, Hon Penny Simmonds, Minister for the Environment, Hon Chris Penk, Minister for Land Information, Hon Shane Jones, Minister for Oceans and Fisheries, Minister for Resources **Yes | No**
- d. **Agree** to authorise Hon Chris Bishop to approve further minor and technical changes [to the Bill] which do not require Cabinet approval. **Yes | No**

Signatures



Nadeine Dommissey
Deputy Secretary, Environmental
Management and Adaptation

MfE
24 May 2024



Paul Stocks
Deputy Secretary Building, Resources and
Markets

MBIE
24 May 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

Hon Simeon BROWN
Minister of Transport
Date

Hon Shane JONES
Minister for Regional Development
Date

Hon Tama POTAKA
Minister of Conservation
Date

Process step	Advice	Recommendations	Decision
Ineligible activities clause 18 (substantive issue)	<i>Prohibited Activities under the RMA and previously declined projects.</i> A large number of submitters, including the Parliamentary Commissioner for the Environment (PCE), New Zealand Planning Institute, Resource Management Law Association, Pou Taiao and Ngāi Tahu have recommended that activities prohibited under the RMA should be deemed ineligible for fast tracking. A number of submitters also call for applications for projects previously declined to be ineligible. The design of the Fast-track regime intentionally allows for a wide range of projects to be considered, including projects that have activities that would be prohibited under the Resource Management Act 1991 (RMA), and projects previously denied resource consents or other approvals. Prohibited activities were not included in the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA). Some projects included matters that required interpretation or assessment as to whether they were prohibited. Where a project was referred the prohibited matter was determined by expert panel. Under the FTCA previously declined projects were able to be considered for fast-tracking. This is also the case under the Resource Management Act (RMA) and Natural Built Environment Act - Fast-track (NBA-FT). If Ministers wish to strengthen the Bill's environmental safeguards, deeming RMA prohibited activities and projects previously declined by a court as ineligible, are two ways to achieve this. Other options to strengthen the Bill's environmental safeguards are addressed under environmental considerations, below. Section 87A of the RMA states that if an activity is classified as prohibited, no application for resource consent can be lodged for the activity and no resource consent can be granted. Rules in regional or district plans that classify an activity as prohibited are made through the schedule 1 plan making process and are subjected to the normal plan making requirements and statutory tests as for other activity classifications. Such a classification can also be challenged via an appeal to the Environment Court. Prohibited activities are not commonly used in plans, but when used, often serve a purpose to protect human health or to protect housing or other infrastructure from natural hazards. Such examples of prohibited activities include building height restrictions near airports, prohibitions on burning certain noxious materials in urban settings, building residential properties in flood zone, and some aquaculture activities within certain areas of the Coastal Marine Area. There is also risk that a district plan could be amended to prohibit an activity, such as mining. However, without a full survey of RMA instruments, it is not possible to advise fully on the full range of activities that are "prohibited" under the RMA. Additionally, the RMA itself classifies certain activities as prohibited, such examples include prohibition on mercury mining which was inserted to adhere with New Zealand's international obligations under the Minimata Convention, and the prohibition of certain activities in the National Environmental Standards made under the RMA. It is feasible that a potentially significant national or regional benefits could be prevented from accessing the fast-track process if "prohibited activities" are added to the ineligibility criteria (rather than being discretionary reasons for decline). However, adding this category of activities to the ineligibility criteria will increase the environmental protections in place. s 9(2)(h) s 9 (2)(h)	<i>Prohibited Activities</i> 1. Agree to include prohibited activities under the RMA in the ineligibility criteria in cl 18. <i>Previously declined projects</i> 2. Agree to include projects previously declined by a court, in the ineligibility criteria in cl 18.	Yes No Yes No

	<i>Environmental considerations</i> In MfE BRF-4664; MBIE 2324-3306 we advised you that, while some submitters are encouraging of the Bill’s intent, many submitters have raised concerns suggesting that the Bill is disproportionately pro-development and needs greater emphasis on environmental considerations. Incorporating sustainable management (or similar environmental themes) into the Bill has been commonly suggested, and many submitters have called for stronger environmental safeguards. Some submitters have suggested the following matters should prevent a project from being fast tracked: • Projects which worsen New Zealand’s climate emissions or increase natural hazard risk. • Projects that cause serious risk to human health and safety. • Projects which would degrade water bodies covered by a Water Conservation Order • Projects which harm important ecological areas and at-risk or threatened ecosystems and species • Habitats of particular significance for fisheries management The policy intent of the Bill is to facilitate infrastructure and development by making approvals for projects faster and easier. The Environmental standards and practices are still intended to be drawn upon as set out in the RMA. Clause 21(2) of the Bill enables, as a discretionary matter, projects that may have significant adverse effects on the environment to be declined for referral. An alternative way to introduce environmental considerations is to have additional safeguards, so they are not fast-tracked. If Ministers wish to consider the inclusion of more environmental considerations, additional matters could be included more specifically as reasons the joint Ministers may refuse a project.	3. Agree for the inclusion of additional environmental matters that may be considered as reasons to decline a referral or substantive application.	Yes No
	<i>EEZ and coastal marine area ineligible activities</i> Under the RMA and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, the dumping of radioactive waste/matter, toxic or hazardous waste, and incineration of waste and other matter are prohibited activities. These activities relate to New Zealand’s international commitments (particularly under the London Convention/Protocol) and to the dumping of radioactive waste/matter, toxic or hazardous waste, and incineration of waste and other matter. The regulations under both Acts provide for the dumping of organic material of natural origin and, dredged material, and inert, inorganic geological material with a marine consent, which is of relevance to sand and seabed mining. The Bill provides for any prohibited activity under the EEZ Act to be an ineligible activity. However, the Bill does not provide for the same activities in the coastal marine area to also be ineligible. This is because, under the RMA they are “prohibited activities”. As such, they are only a discretionary reason for decline under the Bill. A large number of submitters raised that prohibited activities under the RMA should be ineligible. The Environmental Defence Society (EDS), the Resource Management Law Association, and the MFAT identified that activities in the EEZ deemed ineligible by the Bill, have not had the equivalent status applied to them if they occurred in the coastal marine area under the RMA. However, for prohibited activities under the EEZ Act we recommend clarifying in the FTA Bill that they are listed as ineligible whether they are proposed to be undertaken in the EEZ or the coastal marine area. This will prevent the risk that the FTA Bill will enable dumping activity in the coastal marine area that is in contravention of our international obligations. Note no decision is required if decision is made to include prohibited activities under the RMA in the ineligibility criteria in cl 18.	4. Agree that the activities prohibited in accordance with New Zealand’s international commitments are ineligible activities in relation to the EEZ and the coastal marine area.	Yes No
Timeframes for specified parties to provide comments (substantive issue)	As currently drafted, the Bill provides for anyone who is invited to provide written comments at referral stage (cl 19(5)) and at panel stage (in accordance with Sch 4 cl 21(1)), to do so within 10 working days. There is strong opposition to the 10-working day timeframe for a number of submitters, including iwi and Takutai Moana rights holders, and councils, to comment on proposed projects at clauses 19 (ministerial referral consultation), clause 21 of schedule 4 (panel consultation), and clause 5 of schedule 12 (Fisheries Act approvals).	5. Agree that the timeframes for specified parties to provide written comments on the referral and substantive applications are extended from 10 to 20 working days. 6. Agree to extend the targeted consultation process for aquaculture decisions under sch 12 to also be 20 days.	Yes No Yes No

	Many submitters including Pou Taiao and Ngāi Tahu propose this is extended to a minimum of 20 days to enable groups to provide substantial advice given the likely scale of the projects and the likelihood of multiple simultaneous proposals in a region. We consider submitters have made a persuasive case that the timeframes are inadequate for comprehensive responses, raising the risk that decision-makers receive incomplete information, undermining their ability to make good decisions on fast-track applications. Current timeframes of 10 working days for parties to provide comments is the same timeframe under the FTCA and NBA FT which only provide fast-tracking of RMA consents and requirements and this has been found to be challenging for those commenting on projects. The complexities of parties commenting on a project that covers a number of approvals under the one-stop-shop, will further add challenges to those requested to comment. In support of submitters concerns, we recommend 20 working days for any comments to be received for both referral and panel stages. This would enable a more appropriate timeframe for parties to consider the project and provide comments.		
Treaty of Waitangi (substantive issue)	The Coalition Government has committed to protecting Treaty settlements, and this is reflected in an overarching obligation in clause 6 for all persons exercising functions, power and duties to act in a manner “consistent with the obligations arising under existing Treaty settlements; and customary rights recognised under [relevant legislation]”. There are also specific provisions throughout the Bill. Many submitters have significant concerns those provisions do not sufficiently provide for either settlements or Māori rights and interests outside of settlements. Submitters noted several ways the Bill could better provide for Māori rights and interests in decision-making, the weighting of environmental sustainability considerations, increasing timeframes for engagement and providing a consistent role for hapū in the approvals process. Advice on these matters is included in this briefing and BRF-4664/MBIE 2324-3306. Submitters also raised concerns that clause 6 does not refer to the principles of the Treaty and that this creates a lack of clarity regarding how Treaty clauses in underlying legislations will apply. They also noted the word “existing” may be interpreted to preclude protections for future Treaty settlements. Submitters noted it is the first time since 1975 that the Crown has enacted legislation related to the environment that does not place a duty on decision-makers in relation to the Treaty or its principles; the lack of such a requirement is inconsistent with the commitment to upholding settlements; and that while it is the Coalition Government's stated intention to review references of the principles of the Treaty in other legislation, that work has not yet been opened for public scrutiny or debated by Parliament and it is therefore premature to exclude reference the principles of the Treaty in this Bill. Prior to the introduction of the Bill, you considered advice from officials on many of the points subsequently raised by submitters. In addition to that advice: • In relation to the word “existing” in clause 6, we understand the policy intention is to include Treaty settlements that exist at the time functions, powers and duties are exercised, rather than settlements that exist at the time the legislation is enacted. We consider this intention could be achieved, and any ambiguity limited, by removing the word “existing” from clause 6, which would go some way to addressing concerns regarding the rights of iwi yet to settle historical Treaty claims. • The number and nature of submissions regarding the absence of reference to the principles of the Treaty indicates both strong concerns from iwi/Māori and the public generally and a wide-spread lack of clarity regarding the applicability of Treaty clauses in underlying legislation. These matters could lead to the legislation or specific projects being challenged post-enactment, which may impede the effective and timely delivery of the one stop shop. Ways to directly address the concerns raised by submitters include: 1. Agreeing to amend clause 6 to require persons exercising functions, powers, and duties under the legislation act in a manner consistent with the principles of the Treaty of Waitangi, which is the same standard required by the COVID-19 Recovery (Fast-track Consenting) Act 2020. 2. Agreeing for the Bill to provide explicitly for persons exercising functions, powers, and duties under the legislation to apply the Treaty provisions in underlying legislation where relevant (such as section 8 of the Resource Management Act or section 4 of the Conservation Act).	7. Agree to remove the word “existing” from clause 6 Option 1: 8. Agree to require persons exercising functions, powers, and duties under the legislation to act consistently with the principles of the Treaty; or OR Option 2 9. Agree to require persons exercising functions, powers, and duties under the legislation to apply the Treaty provisions in underlying legislation where relevant.	Yes No Yes No Yes No

	There are also specific changes identified by submitters that could be made to better provide for Māori rights and interests throughout the process while still providing a timely and comprehensive approvals process, including: 1. shifting decision-making from Ministers to the expert panel, which will include a member nominated by the relevant iwi authority or authorities (see recommendation 4 in Appendix 1 of BRF 4664/MBIE 2324-3306); 2. increasing the weighting for environmental sustainability considerations in decision-making by amending discretionary matters for declining projects (see recommendation 3 in this Appendix); and 3. increasing timeframes for parties to provide comments on applications (see recommendations 5 and 6 in this Appendix). We note this option does not address the lack of clarity submitters have noted regarding how Treaty clauses in underlying legislation will be applied.		
Ineligibility activities – clause 18(a) (technical issue)	Ministers previously agreed that activities occurring on identified Māori land and land returned under a Treaty settlement without agreement in writing from the relevant landowner would be ineligible for fast-track. Ministers also intended for the fast-track pathway to be available to government network infrastructure projects. Clause 18(a) makes a project ineligible for referral for fast-tracking if it includes an activity that would occur on identified Māori land or land returned under a Treaty settlement, where written agreement has not been obtained by the relevant landowner. For some projects, particularly linear infrastructure (such as roading and rail), with respect to identified Māori land, requiring this level of detail at the initial stage of the process may create challenges for projects accessing Fast-track for consent approvals. The same issue has not been identified for land returned under a Treaty settlement (unless written agreement has been obtained from the landowner). Some submissions support the retention of clause 18(a) as it currently stands and the protection of both these categories of land. The FTCA included as an ineligible activity, projects that would occur on land returned under a Treaty settlement, where written agreement had not been obtained by the relevant landowner. The Bill reflects the wording in the FTCA but extends the requirements to include identified Māori land, because there is no Treaty clause on the Bill. It is the identified Māori land that is the subject of this recommendation. The NBA-FT does not include these ineligibility requirements, instead they are included as discretionary grounds for declining referral applications. We have identified a workability issue where large network infrastructure projects may face challenges obtaining written agreement at the referral stage from owners of identified Māori land. We consider both objectives can be met (protection of interests in identified Māori land, and ensuring government infrastructure projects are generally able to access the fast-track process). If Ministers wish to consider this issue, we at a high level we have identified three options: 1) Maintain the status quo; or 2) Make the written approval of landowners a discretionary matter to decline referral (no longer ineligible without written approval). Noting, as above, that submissions on this matter have supported the retention of clause 18A. 3) Move the requirements to the substantive application stage. This would mean that applicants can access the referral pathway, but the protections would remain for identified Māori land. It would not fully resolve the issue of developers being required to acquire approval from landowners prior to a consent being issued, but would provide more time and certainty of acceptance into the fast-track process to undertake this step; and provide protections for identified Māori land. However, officials need more time to provide further policy advice to Ministers on these options and to consider other options. The recommendations are therefore made on an in principle basis at this stage. Officials seek your initial feedback on this issue. We will then provide more detailed advice to Ministers on these options (or possible alternative options). Officials therefore recommend that a delegation is sought to the Ministers for RMA Reform; Transport; Regional Development and Conservation to make final decisions on options.	Option 1 – Agree in Principle to one of the Following Options (subject to further advice): 10. Agree to maintain the existing policy direction in the Bill that part of cl 18(a) makes a project ineligible for fast-tracking if it includes an activity that would occur on identified Māori land, where written agreement has not been obtained by the relevant landowner. OR Option 2 11. Agree to move cl 18(a) requirements projects that would occur on identified Māori land, without written agreement, from being an ineligibly criterion to a matter that may be considered by Ministers as a reason to decline a referral application. OR Option 3 12. Agree to move cl 18(a) requirements as they apply to identified Māori land from the referral stage to the substantive application stage. 13. Note that officials have not had time to provide detailed policy advice on the options, and may need to identify alternative options for consideration. 14. Agree to seek Cabinet approval to delegate final decisions on these options to the Ministers for RMA Reform; Transport; Regional Development and Conservation.	Yes No Yes No Yes No Yes No
Referral application for EEZ marine consents Schedule 9, clause 3 (technical issue)	The FTA Bill provides for consideration of alternative uses of the marine space that may have better strategic, economic, environmental purposes than the activity being applied for. Ministers may give regard to these factors when deciding to refer a project This allows allocation of public marine space to be considered, rather than relying on a simply first-in first-served approach.	15. Agree to move consideration of alternative uses from the referral stage to the panel recommendation and Ministerial decision stage.	Yes No

	This clause also allows for applications to be put on hold where the government is actively developing policy or the policy framework is yet to be determined (for example, consideration of the aquaculture Treaty settlement to the EEZ). Currently this provision applies at the referral stage. The Environment Committee has questioned officials how the Bill prioritises competing and incompatible activities occurring in the same space, and WWF has similarly questioned how decisions made will provide for the highest and best value from public space. This clause can help make this determination. It may be difficult for joint Ministers to exercise their discretion on this issue at the referral stage. This is because the information supplied at that stage may be limited. Its consideration would also slow down the referral decision, and as a result, would not align with the ‘gateway’ intent of the referral stage. An alternative approach would be for the applicant to provide further information in its application to the expert panel for its assessment. This information would then inform recommendations to Ministers and Ministers could then have regard to this analysis in making their final decision. The level of interest for activities in the EEZ is likely to be similar to those intended to occur in the coastal marine area. We recommend this comparative analysis (an assessment of the proposed activity and alternative activities against the matters raised in subclause (2)) should be extended to applications for activities in the coastal marine area, to cover coastal permits under the RMA.	16. Agree to extend the comparative assessment (currently applied to Fast-Track applications for projects in the EEZ) to also cover Fast-track applications for activities occurring in the coastal marine area	Yes No
Panel Assessment Schedule 9, clause 9 (substantial issue)	The assessment criteria in schedule 9 cl 9 apply relative weightings to between certain sections of the EEZ Act and with any relevant EEZ policy statements. We consider this creates additional complexity and associated legal risk and is not consistent with the general policy to give weighting to (1) the purpose of the FTA Bill, then (2) the relevant matters in the underlying legislation. We recommend clarifying Schedule 9 cl 9 so that Expert Panels are required to give weighting to (1) the purpose of the FTA Bill, then (2) the relevant EEZ Act matters. The Expert Panel determine the appropriate consideration and weighting to be applied to the EEZ Act matters in accordance with the EEZ Act and established jurisprudence, subject to the primacy given to the purpose of the FTA Bill. This reflects the same advice and recommendation (rec 32) of the 10 May Briefing, related to the RMA in schedule 4.	17. Agree to amend Schedule 9 cl 9 to clarify what matters the Panel must consider when assessing an EEZ marine consent application are (with weight given greater to lesser): a. the purpose of the FTA Bill b. relevant EEZ Act matters (noting the below list will be weighted as appropriate according to EEZ Act decision-making framework, subject to a)): i. the purpose of the EEZ Act ii. the purpose and principles of the EEZ Act set out in subpart 2 of part 1 of that Act iii. any relevant policy statements iv. any relevant provisions of the EEZ Act relating to assessments and the provision of information.	Yes No
Eligible activities to continue to deliver existing activities Clause 17 (technical issue)	To meet renewable energy targets, New Zealand needs to retain existing generation, transmission, and distribution. Much of this needs re consenting - and in some cases repowering – in the near future. The volume of re consenting is similar to the volume of new consenting for new energy infrastructure. Meridian’s submission raises this matter. The FTA Bill proposes a streamlined decision-making process to facilitate the delivery of infrastructure and development projects but doesn’t explicitly state in cl 17(3) that existing activities can apply for a new consent to be continued. The Bill has been designed to specifically consider the continuing delivery of existing infrastructure, including re consenting aquaculture projects (Sch 4 cl 4). The existing policy is intended to be maintained, but an amendment is recommended at cl 17(3)(b) as follows: “will deliver or continue to deliver regionally or nationally significant infrastructure”.	18. Agree to amend the FTA Bill to explicitly include the continuing delivery of existing infrastructure.	Yes No
Lapse period Sch 4 cl 39(8) and (9) (technical issue)	The Bill includes a lapse period for resource consents and designations of two years. This has been bought over from the Fast-Track (COVID) Consenting Act (FTCA). Some submitters have raised issues that this period is too short, and not aligned with other statutes, including the RMA. The lapse periods may be too short for major infrastructure projects that need to obtain approvals before securing finance, and then make other preparations, before “giving effect” to the resource consent or designation. It is recommended that Expert Panels on a case by case basis, determine an appropriate lapse period for approvals, with a default period of five years as opposed to the current two years. This generally aligns with the RMA.	19. Agree that Expert Panel can recommend, and the decision can include a suitable lapse period. 20. Agree the lapse period is five years if the decision doesn’t set an alternative lapse period.	Yes No Yes No

Scope of appeals Clause 26 Schedule 7, cl 15 (technical issue)	The FTA Bill currently provides that appeals to the High Court against the final decision of joint Ministers on a question of law, applies to all approvals in the Bill (clause 26) Schedule 7 cl 15 of the Bill, applies cl 26, with all necessary modifications. The Bill also applies relevant Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act (NHNPA) 2019 provisions in the fast-track process. Section 32 of the NHNPA requires the Environment Court to have regard to the environmental covenant on appeals for archaeological authorities. The Bill as currently drafted, doesn't contemplate appeals to the Environment Court. We recommend that clause 26 of the FTCA Bill restricting appeals of the joint Ministers' decision, to the High Court on points of law only, applies to all approvals in the Bill (including heritage approvals).	21. Agree that clause 26 of the FTCA Bill, restricting appeals only to the High Court on points of law, applies to all approvals in the Bill (including heritage approvals).	Yes No
Delegation of further decisions	There are additional technical matters or matters of minor policy clarification related to decisions already made. We propose a delegation in the Cabinet Paper to the Minister for RM Reform	22. Agree further delegation to the Minister for RM Reform to make decisions on additional technical matters or matters of minor policy clarification related to decisions already made.	Yes No

FURTHER DECISIONS ON CONSERVATION APPROVALS FOR WORKABILITY AND TO RESPOND TO SUBMISSIONS

Proposal	Advice	Recommendations	Decision
GENERAL			
Decision-making on conservation approvals	THIS RECOMMENDATION ONLY NEEDS TO BE CONSIDERED IF MINISTERS WISH TO CHANGE THE DECISION-MAKER TO BE THE EXPERT PANEL You previously agreed to the following final decision-makers for conservation approvals and land decisions: - Wildlife approvals – Minister of Conservation with Joint Ministers - Concessions – Minister of Conservation - Crown Minerals Act access arrangements - the Appropriate Minister (Conservation for conservation land) and the Minister responsible for the Crown Minerals Act (where relevant as per the status quo) - Land exchanges – Minister of Conservation - Conservation covenants – Minister of Conservation s 9(2)(f)(iv)	23. s 9(2)(f)(iv)	Yes / No

Proposal	Advice	Recommendations	Decision
	s 9(2)(f)(iv) [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]		
Input from relevant statutory bodies	Some submitters are concerned with the lack of requirement in the Bill to consult with statutory bodies (New Zealand Conservation Authority (NZCA), Conservation boards, Fish and Game Council New Zealand, and New Zealand Game Animal Council) where relevant. Submitters want to ensure the bodies can share their knowledge of potential impacts on conservation values, and fishing and hunting activities. These submitters think the Bill should include a requirement to invite written comments from these statutory bodies on referral and substantive applications for Fast Track projects. These bodies have statutory responsibilities for their areas and represent conservation, hunting and fishing interests. None have existing direct responsibilities related to approvals in the Bill except for the NZCA; under section 18A of the National Parks Act 1980 the Minister of Conservation is required to consult the NZCA in respect of any notice requesting a mining access arrangement for a national park. Certain restricted access arrangements are the only activity that is provided for in the Bill within national parks. As the Bill is drafted, it does not disapply section 18A of the National Parks Act which means the NZCA would need to be consulted as above. You will need to decide if you wish to maintain this requirement and, if you do not wish to retain it, it will need to be disapplied in the Bill. You also have a second decision to make on whether to include these bodies in the list of those invited to comment on fast track applications to provide perspectives that would not otherwise be represented throughout the process.	24. Agree that the New Zealand Conservation Authority will be invited to comment on the referral and substantive applications for projects that include access arrangements in a national park. 25. Agree to include the New Zealand Conservation Authority (NZCA), relevant conservation boards, Fish and Game Council New Zealand, and New Zealand Game Animal Council to the list of those invited to comment on referral and substantive fast track applications.	Yes / No Yes / No
CONCESSIONS AND Crown Minerals Act ACCESS ARRANGEMENTS (Schedules 5 and 10)			
Process for setting non-environmental conditions on concessions and Crown Minerals Act approvals (Schedule 5 and Schedule 10)	In addition to conditions on measures to avoid or reduce adverse effects, a concession also covers a range of issues such as the concession term, concession fees, fee dispute resolution process, and health and safety requirements (hereafter referred to as non-environmental conditions). To assist the Panel in its consideration, we recommend DOC provides a report to the Panel that: <u>Advises on environmental conditions</u> for the Panel's consideration and the Panel then decides on what conditions to provide to Ministers. <u>Sets the non-environmental conditions</u> that the Panel must include in its report to the Ministers. The Panel is unlikely to be in a position to comment on these conditions given that they are linked to liabilities and DOC's role as land manager. It means	26. Agree that DOC provides a report to the Panel providing advice on the concession/access arrangement and the conditions the concession should cover. 27. Agree that DOC sets the non-environmental conditions of the concession/access arrangement.	Yes / No Yes / No

Proposal	Advice	Recommendations	Decision
	the Panel does not have to get into the details of commercial elements of the contract and allows the Panel a more streamlined process focusing on the environmental aspects. The Panel would not seek comments on the non-environmental conditions that DOC sets, but DOC would work with the applicant in the process of setting them. Crown Minerals Act access arrangements are similar to concessions approvals and deal with many of the same issues and types of land – they require contracts with the setting of fees, bonds, and terms and conditions related to the use of land, including those relevant to liabilities. Given these similarities, we recommend that the process for setting terms and conditions for access arrangements follows the same approach as for concessions.		
Reconsideration of concessions decision	Section 17ZJ of the Conservation Act provides for the Minister of Conservation to reconsider a concessions decision at the request of the applicant – either the decision to decline the concession, or the conditions placed on a granted concession (prior to the concession being implemented). We recommend disapplying this provision. There are no similar provisions made for similar conditions placed on resource consents under the fast-track process (the objection and appeals processes available under the standard RMA process have not been provided for). We do not consider that there is a sufficiently unique requirement for environmental concession conditions to have a specific reconsideration provision available to the applicant only, and this would be unaligned with the other permissions being granted under the FTA Bill. Assuming, you have agreed to our recommended approach above, we recommend that DOC provides the applicant’s comments on the non-environmental conditions in DOC’s report to the Panel which would then be provided to the Minister with the recommendation report. This enables the Minister to consider the applicant’s views on the non-environmental conditions that DOC has set within the fast-track process rather than having a separate reconsideration process.	28. Agree to <u>disapply</u> Section 17ZJ of the Conservation Act 1987 for fast track projects and that DOC will provide comments from the applicant on the non-environmental conditions for the Panel to pass on to the Minister to consider for final decision. AND 29. Agree that the Minister of Conservation may make changes to the non-environmental conditions.	Yes / No Yes / No
Concessions on reserves owned by local authorities	You previously agreed that reserves owned by local authorities are eligible for Fast track. If a local authority owns a reserve, they need to be able to make decisions about how they manage it. They will have to bear the costs and risks associated with the reserve and its use, so they need to agree to the activity. This requires them to have decision-making power over the concession, so we recommend that the written permission of the local authority reserve owner is required for the project to be eligible for Fast Track. This is consistent with the approach in the Bill for other reserves not owned by the Crown and reflects feedback in council submissions.	30. Agree that a new ineligibility criterion is included in the Bill that a project cannot be referred to Fast Track without the written consent of the local authority if a local authority-owned reserve is part of the project area.	Yes No
Crown Minerals Act (Schedule 10)			
Report for Crown Minerals Act approvals	You previously agreed that, for concessions, Ministers must consider any administration arrangements over the land and any existing arrangements (formal or informal) over public conservation land affected by Fast Track applications when considering whether to accept the project into the Fast-Track process, and that this and the final decision should be informed by a report from DOC (BRF-4307). Crown Minerals Act land access arrangements are similar to concessions approvals and deal with many of the same issues and types of land. For the same reason a land report is required for concessions, one should also be required for Crown Minerals Act land access arrangements.	31. Agree that Ministers’ consideration of Crown Minerals Act access arrangements as part of the Fast-track referral and the Panel’s recommendation report is informed by a land report from DOC (in consultation with the land administrator where this is not DOC).	Yes No
CONSERVATION COVENANTS (Schedule 5, Part 4)			
Inclusion of conservation covenants (Schedule 5, Part 4)	When you previously agreed to include the amending or revoking of conservation covenants through the Fast Track Approvals Bill, officials noted that further work was needed on how this part of any Fast Track application should be managed alongside the resource consent and ‘one stop shop’ approvals.	32. Agree that the amending and revoking of covenants will not be part of the Panel process but will be subject to the same timeline for final advice to the Minister.	Yes No

Proposal	Advice	Recommendations	Decision
	You agreed that conservation covenants could only be amended or revoked by mutual consent of the Minister of Conservation and the landowner and following a similar process as under the Urban Development Act 2020. We recommend that changes to conservation covenants should occur in parallel to the Panel process but not through the Panel process. This is because revoking or amending of conservation covenants requires specific agreement between the landowner and the Minister of Conservation. Adding the Panel into the process would add extra steps. In contrast to other approvals, the Minister of Conservation cannot agree to change or revoke the covenant without having the landowner's consent. Therefore, landowner consent is required at the time of the Minister's decision and must be required at the substantive application stage at the latest. Within this constraint, there are two timing options for requiring landowner consent; it may be required for referral or the substantive application. For avoidance of doubt, we recommend the Minister must receive a report from DOC to inform their final decision. The way the Bill is drafted, there is no provision for any advice to the Minister to inform the final decision.	EITHER Option 1 33. Agree that a project is ineligible for fast-tracking if written landowner consent to a change to a conservation covenant has not been obtained. OR 34. Agree to require written landowner consent for the substantive application stage. 35. Agree to clarify in the Bill that DOC provides a report to the Minister of Conservation to inform the final/substantive decision-making on changes to covenants.	Yes No Yes No Yes No
CONSERVATION LAND EXCHANGES (Schedule 5, Part 3)			
Eligibility	Eligible land The Bill's description of lands that are eligible for an exchange is unclear and not aligned with Ministers' previous decisions on the eligibility of Schedule 4 land. We recommend clarifying this. In your previous decisions you agreed to allow exchanges under Fast Track but noted that exchanges "would not be considered for any land listed in Schedule 4 of the Crown Minerals Act 1991 as Ministers have agreed that no projects involving such land are eligible for Fast Track – this ensures the integrity of the most highly protected classifications of public conservation land (PCL)." However, the broad eligibility criteria for the Bill have since developed further and we recommend that land eligible for an exchange is consistent with the broader ineligibility criteria of the Bill. This means that exchanges: - Could not be requested on Schedule 4 land except on the Coromandel specific areas (items 12 and 13). - Could not be requested on national reserves Consistent with policy direction already reflected in the Bill, exchanges should also only be possible for land owned by the Crown and managed or administered by DOC under the Conservation Act or Reserves Act. Rights of first refusal and gift-backs As per previous advice (24-B-0087 refers), conservation land is often subject to terms and conditions related to its use. If it is no longer required or being used for conservation purposes it can be subject to rights of first refusal in Treaty settlements or gift-backs to those that originally provided the land to DOC. This significantly complicates an exchange process with uncertain legal implications. Te Rūnanga o Ngāi Tahu has submitted that any land exchange should not breach or circumvent the right of first refusal mechanism. We recommend clarifying in the Bill that where an exchange would trigger a right of first refusal or gift-back requirement, it is not able to progress. § 9(2)(g)(i)	Eligible land 36. Note that current policy is for exchanges not to be eligible on land in Schedule 4 of the Crown Minerals Act. 37. Agree, for the avoidance of doubt, that an exchange can only be provided in the Bill for Crown owned land managed by DOC under the Conservation Act or administered by DOC under the Reserves Act 38. Agree, for the avoidance of doubt, that exchanges cannot be requested on land that is listed in the ineligibility criteria of the Bill (clause 18): a. Land listed in items 1-11 and 14 of Schedule 4 of the Crown Minerals Act (i.e. exchanges could be requested for the Coromandel land listed in items 12 and 13). b. National reserves Rights of first refusal and gift-backs 39. Agree, for the avoidance of doubt, that land cannot be exchanged where the exchange would trigger a right of first refusal or a gift-back.	Note Yes No Yes No Yes No
Alignment with the broader Fast Track process	§ 9(2)(f)(iv)	40. § 9(2)(f)(iv)	Yes No

[illegible]

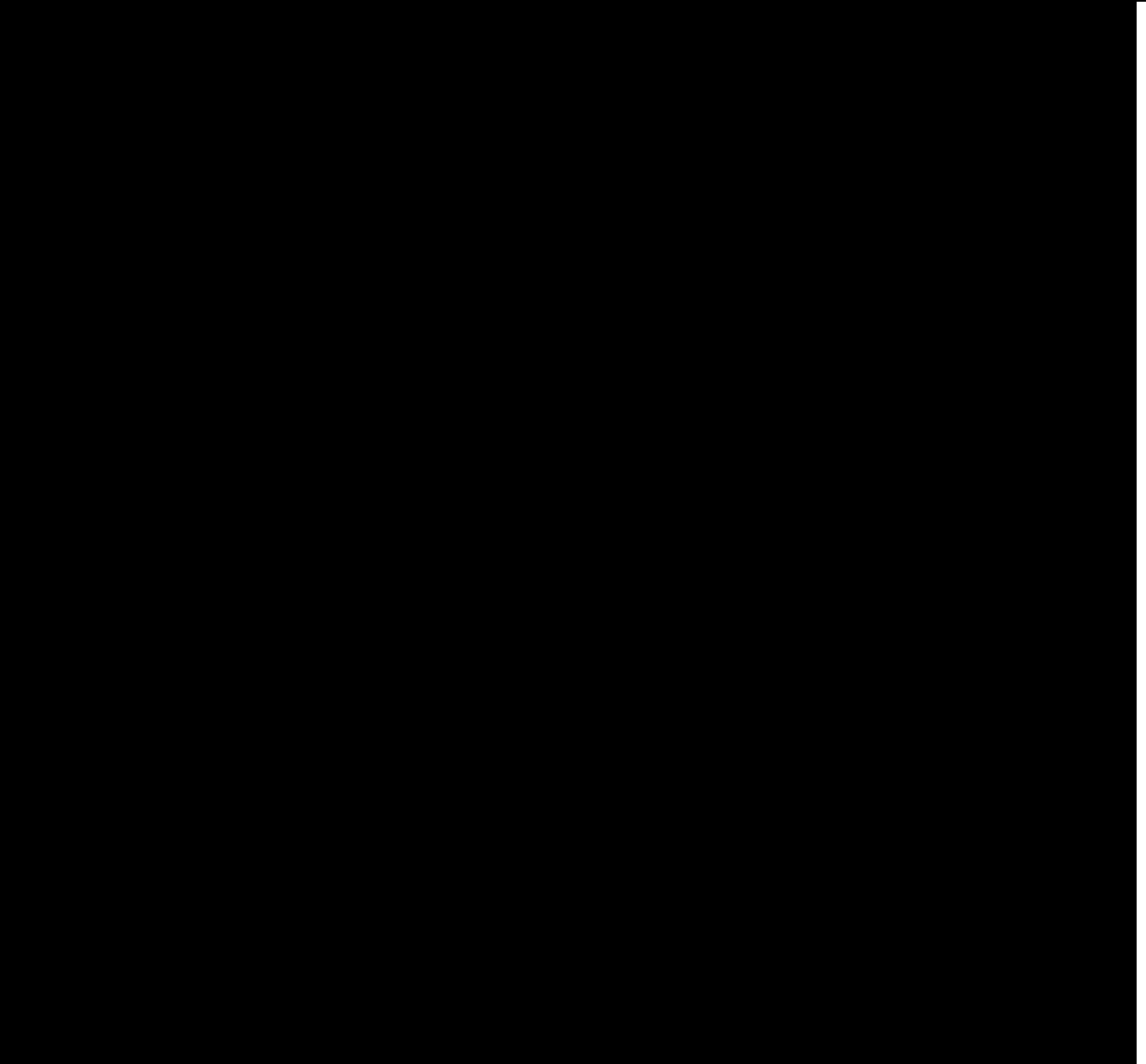
Proposal	Advice	Recommendations	Decision
Consideration of international conservation agreements	Some submitters have raised concerns that the Bill is inconsistent with our international obligations, such as the Convention on Migratory Species of Wild Animals. They flag a particular concern for endangered migratory species on Appendix 1 of the Convention and have concerns that the wide discretion under the Bill could include the killing or disturbance that may cause further decline of the species and reputational risks for New Zealand. The Bill is likely to allow impacts on wildlife that would not have otherwise occurred under the existing system. This is consistent with Government objectives to enable more development. However, DOC has identified there is a gap in the Bill regarding those migratory species that: - are protected by the Wildlife Act, and - do not get assessed under the New Zealand Threat Classification System because they spend part of their lifecycle elsewhere, and - are considered threatened or endangered under international agreements that New Zealand is signatory to (such as the Convention on Migratory Species of Wild Animals). Because these species are not given a threat status under the New Zealand Threat Classification System, they will not qualify for the provision in the Bill that requires “taking into account” impacts on them. An example of this is the whale shark. We recommend that there is an explicit provision for wildlife approvals in the Bill that requires the consideration of species that are the subject of international agreements. Generally, the impact on New Zealand if we are perceived not to be adhering to our international conservation agreements is reputational. However, providing an explicit provision is a way to ensure these factors are considered without providing a barrier to development.	44. Agree that for wildlife approvals, the Bill will include a provision to take into account species that are the subject of international conservation agreements.	Yes No

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Table 1: Substantive decisions

Process step	Advice	Recommendations	Decision
Substantive decision-making (BRF-4664)	Submissions highlighted the following points: - The degree of discretion joint Ministers will have in the referral and decision-making processes and the concentration of power in the executive. - Approach creates a potential for decision-making that is not objective or independent, brings risks of conflicts of interest for Ministers. - Potential for polarised decision-making and ‘see sawing’ if decisions are reversed under subsequent governments. - Submitters recommended for joint Ministers to make referral decisions, but the expert panel make substantive decisions, or improving checks and balances on ministerial power. - Submitters recommended including the Minister for the Environment as a joint Minister. - The New Zealand Law Society note that “it is possible for some, or all of the Ministerial portfolios of the Joint Ministers to be held by a single individual. If this were to occur, the Joint Ministers’ broad powers would be concentrated on a single individual”. The New Zealand Law Society recommend including a requirement for the relevant portfolios to be held by at least three separate persons appointed as Ministers. Joint Ministers as final decision-makers - Perceived ‘safeguard’ for applicants by having Ministers make the final decision. However, in practice this is likely to be undermined by the increased risk of legal challenge of ministers’ decisions if they deviate from the Panel’s recommendations, and the risk of undermining a project’s social license if the decision is seen to be politically driven. - Should you wish to maintain the joint Ministers as decision-makers, you could consider including other Ministers in the joint Ministers group, such as the Ministers responsible for the Environment, Conservation and Climate Change. Doing so would expand the range of perspectives which are considered beyond the predominantly development-focused portfolios of the current joint Ministers. Expert Panels as final decision-makers - Avoids the risks associated with joint Ministers making the substantive decision. - 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. - A statutory timeframe for the Expert Panel’s report is included in the Bill creating greater certainty and process efficiency. - Expert Panel as decision-maker is likely to give greater public confidence in decision-making as the Panel is independent and impartial. Note fast-track concession means a concession under Part 3B of the Conservation Act 1987 or a Reserves Act approval.	1. Agree that the Minister for the Environment is a Joint Minister EITHER (Ministerial decision-making) 2. Agree to retain existing policy settings on ministerial decision-making OR (Panel decision-making) 3. Agree that Joint Ministers make the referral decision 4. Agree that Expert Panels make the substantive decision to approve or decline projects 5. Agree that the exceptions to the above are fast-track concessions and access arrangements (in line with previous policy decisions) 6. Agree that aquaculture decisions are made by MPI as they would be under the Fisheries Act 7. Note the substantive decision would be subject to the decision-making hierarchy where the purpose of the FTA Bill (which is strongly weighted towards development and facilitating delivery of projects) has primacy over considerations in other legislation	Yes No Yes No Yes No Yes No Yes No Yes No NOTE
Decision-making on conservation approvals (BRF-4752)	THIS RECOMMENDATION ONLY NEEDS TO BE CONSIDERED IF MINISTERS WISH TO CHANGE THE DECISION-MAKER TO BE THE EXPERT PANEL You previously agreed to the following final decision-makers for conservation approvals and land decisions: - Wildlife approvals – Minister of Conservation with Joint Ministers - Concessions – Minister of Conservation - Crown Minerals Act access arrangements - the Appropriate Minister (Conservation for conservation land) and the Minister responsible for the Crown Minerals Act (where relevant as per the status quo) - Land exchanges – Minister of Conservation - Conservation covenants – Minister of Conservation s 9(2)(f)(iv)	8. s 9(2)(f)(iv)	Yes No

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	s 9(2)(f)(iv) 		
Joint Ministers' decision to grant/decline approval Clause 25, Schedule 4 clauses 40, 42, and 43 Note: if Ministerial decision remains. This process is not required if the Expert Panel makes the approval decision. (BRF-4664)	At this stage, joint Ministers receive the Panel's report and recommendations. This would be provided to joint Ministers by the responsible agency. If joint Ministers agree with the Panel's recommendations, the project is either declined or approved with the relevant approvals subject to the conditions (if any) specified. If joint Ministers wish to deviate from the Panel's recommendations, they must do one or more of the following: • seek clarification from the panel on any recommendation • commission additional advice • seek further comments from any affected parties The additional advice/comments should be provided to the Panel (with the EPA acting as secretariat) and the Panel would then consider this and provide an updated report and recommendations to the responsible agency, which would provide it to joint Ministers. S 9(2)(h) 	If Ministerial decision remains. This process is not required if the Expert Panel makes the approval decision. 9. Agree that the Panel's report and recommendations must be provided to the responsible agency, which will provide it to joint Ministers 10. Agree that if joint Ministers wish to deviate from the Panel's recommendations, they must do one or more of the following: a. seek clarification from the panel on any recommendation b. commission additional advice c. seek further comments from any affected parties 11. Agree that (a)-(c) above must be sought from the Panel, and the Panel must then provide an updated report and recommendations to the responsible agency, which will provide it to joint Ministers 12. Agree that if Ministers still wish to deviate from the Panel's recommendations following subsequent advice/engagement, Ministers	Yes No Yes No Yes No Yes No

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	We recommend: - the Panel should provide its report and recommendations to the responsible agency to provide to joint Ministers – this will ensure there is a clear record of ministerial advice provided and decisions made - where joint Ministers wish to deviate from the Panel’s recommendations, we recommend that they <i>must</i> (rather than <i>may</i>) seek further clarification, advice, and/or comments - we recommend that further clarification, advice, and/or comments are sought via the Panel, so that the Panel can consider these in the round in the context of its report and recommendations, and provide an updated report/recommendations to joint Ministers (via the responsible agency)	have to give reasons and then would direct the responsible agency (in consultation with relevant statutory agencies) to prepare the decision for them.	
Ineligible activities clause 18 <i>Prohibited Activities under the RMA and previously declined projects.</i> (BRF 4752)	A large number of submitters, including the Parliamentary Commissioner for the Environment (PCE), New Zealand Planning Institute, Resource Management Law Association, Pou Taiao and Ngāi Tahu have recommended that activities prohibited under the RMA should be deemed ineligible for fast tracking. A number of submitters also call for applications for projects previously declined to be ineligible. The design of the Fast-track regime intentionally allows for a wide range of projects to be considered, including projects that have activities that would be prohibited under the Resource Management Act 1991 (RMA), and projects previously denied resource consents or other approvals. Prohibited activities were not included in the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA). Some projects included matters that required interpretation or assessment as to whether they were prohibited. Where a project was referred the prohibited matter was determined by expert panel. Under the FTCA previously declined projects were able to be considered for fast-tracking. This is also the case under the Resource Management Act (RMA) and Natural Built Environment Act - Fast-track (NBA-FT). If Ministers wish to strengthen the Bill’s environmental safeguards, deeming RMA prohibited activities and projects previously declined by a court as ineligible, are two ways to achieve this. Other options to strengthen the Bill’s environmental safeguards are addressed under environmental considerations, below. Section 87A of the RMA states that if an activity is classified as prohibited, no application for resource consent can be lodged for the activity and no resource consent can be granted. Rules in regional or district plans that classify an activity as prohibited are made through the schedule 1 plan making process and are subjected to the normal plan making requirements and statutory tests as for other activity classifications. Such a classification can also be challenged via an appeal to the Environment Court. Prohibited activities are not commonly used in plans, but when used, often serve a purpose to protect human health or to protect housing or other infrastructure from natural hazards. Such examples of prohibited activities include building height restrictions near airports, prohibitions on burning certain noxious materials in urban settings, building residential properties in flood zone, and some aquaculture activities within certain areas of the Coastal Marine Area. There is also risk that a district plan could be amended to prohibit an activity, such as mining. However, without a full survey of RMA instruments, it is not possible to advise fully on the full range of activities that are “prohibited” under the RMA. Additionally, the RMA itself classifies certain activities as prohibited, such examples include prohibition on mercury mining which was inserted to adhere with New Zealand’s international obligations under the Minamata Convention, and the prohibition of certain activities in the National Environmental Standards made under the RMA. It is feasible that a potentially significant national or regional benefits could be prevented from accessing the fast-track process if “prohibited activities” are added to the ineligibility criteria (rather than being discretionary reasons for decline). However, adding this category of activities to the ineligibility criteria will increase the environmental protections in place. s 9(2)(h) 	<i>Prohibited Activities</i> 13. Agree to include prohibited activities under the RMA in the ineligibility criteria in cl 18. <i>Previously declined projects</i> 14. Agree to include projects previously declined by a court, in the ineligibility criteria in cl 18.	Yes No Yes No

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Ineligible activities clause 18 Environmental considerations (BRF 4752)	In MfE BRF-4664; MBIE 2324-3306 we advised you that, while some submitters are encouraging of the Bill’s intent, many submitters have raised concerns suggesting that the Bill is disproportionately pro-development and needs greater emphasis on environmental considerations. Incorporating sustainable management (or similar environmental themes) into the Bill has been commonly suggested, and many submitters have called for stronger environmental safeguards. Some submitters have suggested the following matters should prevent a project from being fast tracked: • Projects which worsen New Zealand’s climate emissions or increase natural hazard risk. • Projects that cause serious risk to human health and safety. • Projects which would degrade water bodies covered by a Water Conservation Order • Projects which harm important ecological areas and at-risk or threatened ecosystems and species • Habitats of particular significance for fisheries management The policy intent of the Bill is to facilitate infrastructure and development by making approvals for projects faster and easier. The Environmental standards and practices are still intended to be drawn upon as set out in the RMA. Clause 21(2) of the Bill enables, as a discretionary matter, projects that may have significant adverse effects on the environment to be declined for referral. An alternative way to introduce environmental considerations is to have additional safeguards, so they are not fast-tracked. If Ministers wish to consider the inclusion of more environmental considerations, additional matters could be included more specifically as reasons the joint Ministers may refuse a project.	15. Agree for the inclusion of additional environmental matters that may be considered as reasons to decline a referral or substantive application.	Yes No
Ineligible activities clause 18 <i>EEZ and coastal marine area ineligible activities</i> (BRF 4752)	Under the RMA and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, the dumping of radioactive waste/matter, toxic or hazardous waste, and incineration of waste and other matter are prohibited activities. These activities relate to New Zealand’s international commitments (particularly under the London Convention/Protocol) and to the dumping of radioactive waste/matter, toxic or hazardous waste, and incineration of waste and other matter. The regulations under both Acts provide for the dumping of organic material of natural origin and, dredged material, and inert, inorganic geological material with a marine consent, which is of relevance to sand and seabed mining. The Bill provides for any prohibited activity under the EEZ Act to be an ineligible activity. However, the Bill does not provide for the same activities in the coastal marine area to also be ineligible. This is because, under the RMA they are “prohibited activities”. As such, they are only a discretionary reason for decline under the Bill. A large number of submitters raised that prohibited activities under the RMA should be ineligible. The Environmental Defence Society (EDS), the Resource Management Law Association, and the MFAT identified that activities in the EEZ deemed ineligible by the Bill, have not had the equivalent status applied to them if they occurred in the coastal marine area under the RMA. However, for prohibited activities under the EEZ Act we recommend clarifying in the FTA Bill that they are listed as ineligible whether they are proposed to be undertaken in the EEZ or the coastal marine area. This will prevent the risk that the FTA Bill will enable dumping activity in the coastal marine area that is in contravention of our international obligations. Note no decision is required if decision is made to include prohibited activities under the RMA in the ineligibility criteria in cl 18.	16. Agree that the activities prohibited in accordance with New Zealand’s international commitments are ineligible activities in relation to the EEZ and the coastal marine area.	Yes No
Ineligibility activities – clause 18(a) (BRF 4752)	Ministers previously agreed that activities occurring on identified Māori land and land returned under a Treaty settlement without agreement in writing from the relevant landowner would be ineligible for fast-track. Ministers also intended for the fast-track pathway to be available to government network infrastructure projects. Clause 18(a) makes a project ineligible for referral for fast-tracking if it includes an activity that would occur on identified Māori land or land returned under a Treaty settlement, where written agreement has not been obtained by the relevant landowner. For some projects, particularly linear infrastructure (such as roading and rail), with respect to identified Māori land, requiring this level of detail at the initial stage of the process may create challenges for projects accessing Fast-track for	Option 1 – Agree in Principle to one of the Following Options (subject to further advice): 17. Agree to maintain the existing policy direction in the Bill that part of cl 18(a) makes a project ineligible for fast-tracking if it includes an activity that would occur on identified Māori land, where written agreement has not been obtained by the relevant landowner. OR	Yes No

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	consent approvals. The same issue has not been identified for land returned under a Treaty settlement (unless written agreement has been obtained from the landowner). Some submissions support the retention of clause 18(a) as it currently stands and the protection of both these categories of land. The FTCA included as an ineligible activity, projects that would occur on land returned under a Treaty settlement, where written agreement had not been obtained by the relevant landowner. The Bill reflects the wording in the FTCA but extends the requirements to include identified Māori land, because there is no Treaty clause on the Bill. It is the identified Māori land that is the subject of this recommendation. The NBA-FT does not include these ineligibility requirements, instead they are included as discretionary grounds for declining referral applications. We have identified a workability issue where large network infrastructure projects may face challenges obtaining written agreement at the referral stage from owners of identified Māori land. We consider both objectives can be met (protection of interests in identified Māori land, and ensuring government infrastructure projects are generally able to access the fast-track process). If Ministers wish to consider this issue, we at a high level we have identified three options: 1) Maintain the status quo; or 2) Make the written approval of landowners a discretionary matter to decline referral (no longer ineligible without written approval). Noting, as above, that submissions on this matter have supported the retention of clause 18A. 3) Move the requirements to the substantive application stage. This would mean that applicants can access the referral pathway, but the protections would remain for identified Māori land. It would not fully resolve the issue of developers being required to acquire approval from landowners prior to a consent being issued, but would provide more time and certainty of acceptance into the fast-track process to undertake this step; and provide protections for identified Māori land. However, officials need more time to provide further policy advice to Ministers on these options and to consider other options. The recommendations are therefore made on an in principle basis at this stage. Officials seek your initial feedback on this issue. We will then provide more detailed advice to Ministers on these options (or possible alternative options). Officials therefore recommend that a delegation is sought to the Ministers for RMA Reform; Transport; Regional Development and Conservation to make final decisions on options.	Option 2 18. Agree to move cl 18(a) requirements projects that would occur on identified Māori land, without written agreement, from being an ineligibly criterion to a matter that may be considered by Ministers as a reason to decline a referral application. OR Option 3 19. Agree to move cl 18(a) requirements as they apply to identified Māori land from the referral stage to the substantive application stage. 20. Note that officials have not had time to provide detailed policy advice on the options, and may need to identify alternative options for consideration. 21. Agree to seek Cabinet approval to delegate final decisions on these options to the Ministers for RMA Reform; Transport; Regional Development and Conservation.	Yes No Yes No Note Yes No
Schedule 10 – Process under Crown Minerals Act (BRF-4664)	<i>Ineligible land types</i> Currently Schedule 4 of the Crown Minerals Act 1991 is used as a proxy for lands and waters that are ineligible for referral to the Fast-Track process. This is because land and waters listed in Schedule 4 are expected to have very minimal human intervention (e.g. nature reserves, scientific reserves, wilderness areas and marine reserves), and/or they are special areas where human activities are more frequent and intensive but should be carefully managed (e.g. national parks). However, the use of Schedule 4, which is a list created for mining access arrangements, as a list for eligibility for non-mining activities can be confusing to those interpreting the Bill. We recommend that the Bill has its own equivalent of Schedule 4 of the CMA that outlines lands and waters that are ineligible for referral to the Fast-Track process. We also recommend that, similar to the CMA, the Bill has a mechanism that enables new high value protected areas to be added to the list of ineligible areas through Order in Council. For example, should the Hauraki Marine Protection Bill pass, the new marine protection tools will be added to Schedule 4 of the CMA and should also be added to the list of ineligible activities for the FTA Bill. Note, a person can apply for an access arrangement for mining-related activities over land listed in items 12 and 13 of Schedule 4 in the CMA (relating to mining in the Coromandel), as per the status quo.	22. Agree that reflecting your decisions regarding Schedule 4 of the Crown Minerals Act, the Bill includes its own Schedule of ineligible lands and waters for non-mining activities. 23. Agree that new high value protected areas can be added to the Schedule of ineligible lands and waters through Order in Council on the recommendation of the Minister of Conservation.	Yes No Yes No
Processing of referral application Clauses 13, 19, 20 (BRF-4664)	The policy intent of clause 13 is to require the Minister to obtain a report on Treaty settlements and other obligations and to consider this report before making a decision to refer an application. The policy intent of clause 19 is to ensure the Minister invites comments from relevant Māori groups, local authorities and portfolio Ministers before making a decision to refer an application.	24. Agree to remove Sch 5 cl 11 and Sch 9 cl 5 (so written comments aren't required to be sought at referral stage from agencies) 25. Agree that Sch 5 cl 12 (which allows joint Ministers to request further information from the relevant statutory and other bodies and	Yes No Yes No

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	A broader purpose of both provisions is to help ensure the Minister is adequately informed of Māori interests and views before making a referral decision. <i>Who Ministers must seek written comments from</i> The Bill requires joint Ministers to consult other relevant portfolio Ministers (who would be supported by their agencies) on referral applications. It is not necessary (and risks introducing complexity) to require written comments to be sought from agencies in addition to this. Sch 5 cl 11 and Sch 9 cl 5 should therefore be removed. Joint Ministers should be able to request further information from the relevant statutory and other bodies and departments, in addition to the applicant and relevant local authorities. <i>Obligation to consult</i> The Bill includes an obligation for Ministers to consult a specified list of Māori groups on referral applications in clause 19(2), in addition to the obligation to seek written comments from those groups in clause 19(1). This creates an unnecessary overlap and lack of clarity as the Māori groups referred to in both clauses are inconsistent. To address this, we recommend deleting clause 19 (2) and ensuring that the Māori groups that are included in clause 19 (2) but not in 19 (1) are included in 19 (1) by referring back to the parties identified in clause 13. <i>Clause 13 Treaty settlements and other obligations report</i> In order to ensure Ministers and the panel receive comprehensive advice about relevant considerations related to clause 6, we recommend: - the clause 13 report should be prepared by the responsible agency in consultation with the relevant statutory and other bodies; - clause 13(2)(b) is amended to include information about Treaty settlements that relate to any land, species or other resources within the project area, to ensure all relevant Treaty settlement arrangements are recorded; the clause 13 report includes relevant information to support Ministers' compliance with requirements at clause 22(2) related to the consideration of documents, arrangements and other matters and procedural requirements in Treaty settlements, the Marine and Coastal Area (Takutai Moana) Act 2011, and the Ngā Hapū o Ngāti Porou Act 2019.	departments) is included in cl 20(1) so that it applies generally not just in relation to Conservation and Reserves Act approvals 26. Agree that the responsible agency be required to provide Ministers with the list of parties that the Ministers must invite written comments from in clause 19 (1) 27. Agree to delete clause 19 (2) and, in clause 19(1), require Ministers to invite written comments from the parties identified in clause 13(2) 28. Agree that the clause 13 report will be prepared by the responsible agency in consultation with relevant statutory bodies and include information about Treaty settlements that relate to any land, species or other resources within the relevant project area and information relevant to Ministers' obligations under clause 22(2).	Yes No Yes No Yes No
Substantive application Schedule 4 clause 3, 5, 6, 7, 8, 9, and 31 (BRF-4664)	The substantive application includes all technical information required to assess whether the project should be approved or declined, and appropriate conditions – for example, an assessment of environmental effects. The substantive application is lodged with the EPA, which provides secretariat support to the Expert Panel. We recommend a minor policy change to Sch 4 cl 17, which requires the scope of information in application to be of sufficient detail to correspond to the scale and significance of environmental effects – this is an RMA-centric term, so we instead recommend framing this in terms of the scale and significance of the matters being assessed for the approvals being sought. <i>Information requirements</i> Information requirements for applicants for conservation approvals are not currently provided for in the Bill. We recommend providing for these information requirements to ensure applicants have certainty on what information they must provide <i>Completeness check</i> The Bill currently only provides 5 working days for the completeness check of a substantive application. This was carried over from the FTCA – however, this was not feasible even under the FTCA and was extended to 10 working days for NBA fast-track. We recommend extending this timeframe to 15 working days, given the additional complexity involved in the one-stop shop approach and need for the EPA to consult with other agencies to determine completeness.	29. Agree that the scope of information required in an application should be in sufficient detail to correspond to the type of approval sought, and the scale and significance of the matters being assessed 30. Agree that the EPA undertakes the completeness check of a substantive application, in consultation with the relevant statutory or other bodies or departments 31. Agree to extend the timeframe for the EPA's completeness check to 15 working days to provide for the range of approvals available in the one-stop shop 32. Agree to the inclusion of information requirements for conservation approvals, land exchanges and covenants that reflect the information requested by DOC to process those approvals under existing processes.	Yes No Yes No Yes No Yes No
Panel assessment (BRF-4664)	Ministers previously agreed (BRF-4203) 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 - The purpose of the FTA Bill - Considerations under relevant existing legislation.	33. Agree to amend Sch 4 cl 32 to clarify that the matters the Panel must consider when assessing a consent application or notice of requirement are (with weight given greater to lesser): a. The purpose of the FTA Bill	Yes No

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	Assessment criteria under relevant existing legislation are then set out in Schedules 4-12. These are intended to direct the Panel’s assessment of substantive applications and its recommendations on conditions and whether to grant/decline the project. Joint Ministers are intended to be subject to the same framework in making their final decision. <i>Hierarchy of assessment criteria for RMA applications</i> The assessment criteria in Sch 4 cl 32 apply relative weightings to sections 5, 6 and 7 of the RMA, and, for example, relative weightings between national direction and other relevant RMA provisions. We consider this creates additional complexity and associated legal risk, and is not consistent with the general policy to give weighting to (1) the purpose of the FTA Bill, then (2) the relevant matters in the underlying legislation. We therefore recommend clarifying Sch 4 cl 32 so that Panels are required to give weighting to (1) the purpose of the FTA Bill, then (2) the relevant RMA matters. The Panel determine the appropriate consideration and weighting to be applied to the RMA matters in accordance with the RMA and established jurisprudence, subject to the primacy given to the purpose of the FTA Bill. We also recommend removing Mana Whakahono ā Rohe and Joint Management Agreements from this specified list, as these are process-driven matters, not decision-making criteria. MWaR and JMA should instead be considered through the development of the cl 13 report and requirements in the Bill to seek written comments from those parties. <i>Further matters relevant to consent applications and notices of requirement for listed and referred projects</i> The Bill is currently not consistent with the requirements of the Ngā Hapū o Ngāti Porou Act 2019 (NHNP Act) and therefore the requirements at clause 6. Specifically, sch 4 cl 33(4) does not provide for the NHNP Act requirement that in some cases a consent authority must “recognise and provide for” the environmental covenant where an activity is within, adjacent to, or directly affecting a customary marine title area – which is a higher standard than “have regard to”. In addition, the NHNP Act does not apply to notices of requirement. Therefore sch 4 cl 33(4) should be amended to reflect the weightings provided for in the NHNP Act and remove references to notices of requirement.	b. Relevant RMA matters (noting the below list will be weighted as appropriate according to the RMA decision-making framework, subject to (a)): - The purpose of the RMA - RMA sections 6-7 - the provisions of any of the following, if relevant, made under the Resource Management Act 1991: - a national environmental standard: - other regulations: - a national policy statement: - a New Zealand coastal policy statement: - a regional policy statement or proposed regional policy statement: - a plan or proposed plan; and - iwi management plans: - other relevant provisions of the RMA or any other legislation that direct decision making under the Resource Management Act 1991 (for example, sections 104 to 107 of that Act and the provisions referred to in clauses 31 to 35). 34. Agree to amend sch 4 cl 33(4) to reflect the weightings provided for in the Ngā hapū o Ngāti Porou Act 2019 and remove references to notices of requirement.	Yes No
Panel Assessment Schedule 9, clause 9 (BRF 4752)	The assessment criteria in schedule 9 cl 9 apply relative weightings to between certain sections of the EEZ Act and with any relevant EEZ policy statements. We consider this creates additional complexity and associated legal risk and is not consistent with the general policy to give weighting to (1) the purpose of the FTA Bill, then (2) the relevant matters in the underlying legislation. We recommend clarifying Schedule 9 cl 9 so that Expert Panels are required to give weighting to (1) the purpose of the FTA Bill, then (2) the relevant EEZ Act matters. The Expert Panel determine the appropriate consideration and weighting to be applied to the EEZ Act matters in accordance with the EEZ Act and established jurisprudence, subject to the primacy given to the purpose of the FTA Bill. This reflects the same advice and recommendation (rec 32) of the 10 May Briefing, related to the RMA in schedule 4.	35. Agree to amend Schedule 9 cl 9 to clarify what matters the Panel must consider when assessing an EEZ marine consent application are (with weight given greater to lesser): - the purpose of the FTA Bill - relevant EEZ Act matters (noting the below list will be weighted as appropriate according to EEZ Act decision-making framework, subject to a)): - the purpose of the EEZ Act - the purpose and principles of the EEZ Act set out in subpart 2 of part 1 of that Act - any relevant policy statements - any relevant provisions of the EEZ Act relating to assessments and the provision of information.	Yes No
Conditions Sch 4 clause 38(1)-(3) and (5) (BRF-4664)	The Bill provides for Panels to recommend conditions it considers appropriate. The Bill does not currently provide for the ability to set conditions on concessions although this was intended as part of previous policy decisions. Concessions require conditions associated with fees, bonds, restoration etc. The Conservation Act and existing process already provide for these, so we recommend applying that framework in the Bill.	36. Agree to clarify that an Expert Panel may recommend that a fast-track concession be subject to conditions in accordance with sections 17X, 17Y, and 17Z of the Conservation Act.	Yes No
Listed projects – additional requirements for Panel stage for Part A listed projects (BRF-4664)	Part A listed projects do not go through the referral stage – they may apply directly to the EPA for consideration by an Expert Panel. This means the Panel won’t have access to some of the information Part B listed projects and referred projects are required to provide at the referral stage. As drafted, the Bill does not provide a mechanism for the panel to have access to information provided at referral stage in respect of Part A listed projects. The Panel requires this information to support compliance with the overarching obligations under clause 6, as well as to determine who it should seek comments from. To address this, we recommend: The Panel convenor is required to seek a clause 13 report from the responsible agency for a Part A listed project as soon as practicable after receiving the complete application from the EPA, and the responsible agency is required to provide the report within 10 days. This timing aligns with recommendation [xx] above in respect of advice from relevant statutory bodies/agencies.	37. Agree that, as soon as practicable after received a complete application for a Part A listed project from the EPA, the Panel convenor is required to seek a clause 13 report from the responsible agency 38. Agree that the responsible agency is required to provide a clause 13 report within 10 working days from a request from the EPA. 39. Agree the clause 13 report in relation to Part A projects is not required to comply with the requirements of clause 13 (2) (k), as there will be no written comments from the referral stage to provide.	Yes No Yes No Yes No

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	Substantive applications for Part A listed projects must include the information and engagement requirements for referred projects in clauses 14 and 16 respectively, to the extent not already covered by the substantive application requirements. In respect of Sch 2A listed projects, there is a requirement for the panel to use the clause 13 report to determine who it engages with but there is currently no provision for the preparation of a clause 13 report (given this happens at referral stage, which listed projects bypass). To address this, we recommend the panel convenor be required to seek a clause 13 report from the responsible agency when they receive an application from the EPA, which must be provided within 10 working days. The convenor will also need to request advice from other agencies at this stage (sch 6 cl1(3), sch 7 cl 4, sch 12 cl 2), so this fits with this step in the process. Given there would not have been comments received by the Minister as the referral step is bypassed, the clause 13 report for Sch 2A projects should not have to include the requirement in clause 13 (2) (k) to provide a summary of comments received.	40. Agree that substantive applications for Part A listed projects must comply with the same requirements as referred projects set out in clauses 14 and 16.	Yes No
Timeframes for Panel's report and recommendations (BRF-4664)	<i>Timeframes for Panel report</i> Cabinet agreed [CAB-24-MIN-0066] that Expert Panels must recommend any appropriate conditions within a maximum 6-month timeframe. We understand this to mean six months from when the Panel receives the substantive application from the Panel Convener, to when the Panel provides its report and recommendations. We note that some fast-track applications may be able to proceed much faster than this. In some circumstances, however, more time may be required (for example, the HNZPT Act triggers a 40 working day timeframe where there is an archaeological authority application over a pā site). <i>Timeframes for agencies to provide advice</i> The Bill contains various provisions requiring agencies to provide advice or reports to inform decision-making. For example: - Sch 6 cl 1(3) requires the EP to request the DG-Conservation to provide a report on risks and impacts - Sch 7 cl 4 states the EP must refer an archaeological authority application to HNZPT, and consider the recommendations made by HNZPT. - Sch 12 cl 2 requires the DG-MPI to make a recommendation on the aquaculture decision to be made <i>Timeframes for Panel report</i> We recommend including an ability for the Panel convenor to recommend to joint Ministers (after consulting the relevant statutory bodies / agencies), and joint Ministers to decide, an appropriate timeframe for the Panel to provide its report and recommendations. This would be based on the complexity of the project and matters relevant to the approvals sought. This approach would allow an appropriate timeframe to be set after the EPA and relevant agencies have advised on any matters relevant to specific approvals that may require a different timeframe. As the Bill integrates ten different regulatory approval processes, it would be difficult to set a fixed timeframe that would cater to all possible scenarios without resorting to the 'slowest common denominator'. For example, some applications that only involve RMA approvals may be able to progress within a shorter timeframe, whereas some complex applications involving multiple approvals may require additional time. Others may require additional time – eg, some Treaty settlements require DOC to follow a specified process in its decision-making, including a 20-working day timeframe for consultation on applications for approvals. We consider this approach would provide flexibility in the system so that timeframes can be tailored to the project, and any additional requirements factored in. Where the Panel convenor does not recommend an alternative timeframe to joint Ministers (or joint Ministers do not agree to the recommended timeframe), we recommend that the standard 25 working day (from when written comments	41. Agree that, instead of joint Ministers being able to specify a timeframe for the Panel's decision in the referral decision, the Panel convenor may (after consulting the relevant statutory bodies / agencies) recommend, and joint Ministers may decide, an appropriate timeframe for the Panel to provide its report and recommendations based on the complexity of the project and matters relevant to the approvals sought 42. Agree that where no recommendation is made by the Panel convenor (or agreed to by Joint Ministers), the Panel must provide its report and recommendations within the existing 25 working days after written comments and any requested advice/reports are received. 43. Agree that, where an approval requires expert advice to be sought from the relevant statutory body/agency, the Panel convenor must seek that advice as soon as practicable after they receive the application from the EPA 44. Agree that expert advice from a relevant statutory body/agency must be provided by the end of the 10-working day timeframe that begins when a Panel is established and calls for written comments from specified parties. 45. Agree that Sch 6, cl 1(3) is amended to clarify that the report the panel must request from the DG of Conservation reports on risks to protected wildlife and matters set out in cl 1(2). 46. Agree that the EPA must provide advice from agencies in accordance with Sch 4 cl 28(4)-(6).	Yes No Yes No Yes No Yes No Yes No Yes No

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	and reports/advice are received) timeframe applies – we anticipate that this will average out to less than six months per application, from lodgement to Panel (recommendation/decision). <i>Timeframes for agencies to provide advice</i> In order to ensure the relevant statutory bodies/agencies have sufficient time to prepare this advice, we recommend that where an approval triggers such a requirement, the Panel convenor is required to forward the application to the relevant statutory body/agency as soon as practicable after they receive the application from the EPA. This will allow those statutory bodies/agencies to begin preparing the advice while the Panel is being stood up. We recommend including a requirement that the advice must be provided to the EPA by the end of the 10-working day timeframe that begins when a Panel calls for written comments from specified parties, and that the advice must be provided to the members of the Panel, applicant, and every person or group that provided comments (in accordance with Sch 4 cl 28(4)-(6)).		
Timeframes for specified parties to provide comments (BRF 4752)	As currently drafted, the Bill provides for anyone who is invited to provide written comments at referral stage (cl 19(5)) and at panel stage (in accordance with Sch 4 cl 21(1)), to do so within 10 working days. There is strong opposition to the 10-working day timeframe for a number of submitters, including iwi and Takutai Moana rights holders, and councils, to comment on proposed projects at clauses 19 (ministerial referral consultation), clause 21 of schedule 4 (panel consultation), and clause 5 of schedule 12 (Fisheries Act approvals). Many submitters including Pou Taiao and Ngāi Tahu propose this is extended to a minimum of 20 days to enable groups to provide substantial advice given the likely scale of the projects and the likelihood of multiple simultaneous proposals in a region. We consider submitters have made a persuasive case that the timeframes are inadequate for comprehensive responses, raising the risk that decision-makers receive incomplete information, undermining their ability to make good decisions on fast-track applications. Current timeframes of 10 working days for parties to provide comments is the same timeframe under the FTCA and NBA FT which only provide fast-tracking of RMA consents and requirements and this has been found to be challenging for those commenting on projects. The complexities of parties commenting on a project that covers a number of approvals under the one-stop-shop, will further add challenges to those requested to comment. In support of submitters concerns, we recommend 20 working days for any comments to be received for both referral and panel stages. This would enable a more appropriate timeframe for parties to consider the project and provide comments.	47. Agree to extend the targeted consultation process for aquaculture decisions under sch 12 to also be 20 days. 48. Agree that the timeframes for specified parties to provide written comments on the referral and substantive applications are extended from 10 to 20 working days.	Yes No Yes No
Public participation (BRF-4664)	Points raised in submissions: • Scope of parties who are invited to comment on applications and ensuring Panel receives the appropriate info and expertise • Require landowners and occupiers to be consulted before a fast-track application is made. • Give the Panel the ability to expand consultation based on the scale, nature and extent of potential effects. • Strengthen provisions to utilise local voice and knowledge. • Require public consultation when Crown land and the coastal marine area is involved. • Require notification to infrastructure providers. • Allow greater rights to appeal against Ministers decisions. As it stands, there is no public notification, as per existing fast-track legislation. Instead, comment is sought from specified parties. To ensure the Panel has sufficient time to receive advice up front about the other parties that should be approached on a case-by-case basis, we recommend extending 5 working day (WD) timeframe for Panel to send out application for comment after receiving it to 10WD	49. Agree to extend the 5-working day timeframe for the Panel to send out an application for comment after receiving it from the EPA to 10WD, to provide sufficient time for the Panel to seek advice on the scope of parties from whom written comments should be sought	Yes No

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	We do not recommend specifying additional parties that must be approached on every application (eg, NGOs) as under the FTCA – this creates additional resourcing pressure on NGOs to respond and represent the public interest on every application.		
Treaty of Waitangi (BRF 4752)	The Coalition Government has committed to protecting Treaty settlements, and this is reflected in an overarching obligation in clause 6 for all persons exercising functions, power and duties to act in a manner “consistent with the obligations arising under existing Treaty settlements; and customary rights recognised under [relevant legislation]”. There are also specific provisions throughout the Bill. Many submitters have significant concerns those provisions do not sufficiently provide for either settlements or Māori rights and interests outside of settlements. Submitters noted several ways the Bill could better provide for Māori rights and interests in decision-making, the weighting of environmental sustainability considerations, increasing timeframes for engagement and providing a consistent role for hapū in the approvals process. Advice on these matters is included in this briefing and BRF-4664/MBIE 2324-3306. Submitters also raised concerns that clause 6 does not refer to the principles of the Treaty and that this creates a lack of clarity regarding how Treaty clauses in underlying legislations will apply. They also noted the word “existing” may be interpreted to preclude protections for future Treaty settlements. Submitters noted it is the first time since 1975 that the Crown has enacted legislation related to the environment that does not place a duty on decision-makers in relation to the Treaty or its principles; the lack of such a requirement is inconsistent with the commitment to upholding settlements; and that while it is the Coalition Government's stated intention to review references of the principles of the Treaty in other legislation, that work has not yet been opened for public scrutiny or debated by Parliament and it is therefore premature to exclude reference the principles of the Treaty in this Bill. Prior to the introduction of the Bill, you considered advice from officials on many of the points subsequently raised by submitters. In addition to that advice: • In relation to the word “existing” in clause 6, we understand the policy intention is to include Treaty settlements that exist at the time functions, powers and duties are exercised, rather than settlements that exist at the time the legislation is enacted. We consider this intention could be achieved, and any ambiguity limited, by removing the word “existing” from clause 6, which would go some way to addressing concerns regarding the rights of iwi yet to settle historical Treaty claims. • The number and nature of submissions regarding the absence of reference to the principles of the Treaty indicates both strong concerns from iwi/Māori and the public generally and a wide-spread lack of clarity regarding the applicability of Treaty clauses in underlying legislation. These matters could lead to the legislation or specific projects being challenged post-enactment, which may impede the effective and timely delivery of the one stop shop. Ways to directly address the concerns raised by submitters include: 1. Agreeing to amend clause 6 to require persons exercising functions, powers, and duties under the legislation act in a manner consistent with the principles of the Treaty of Waitangi, which is the same standard required by the COVID-19 Recovery (Fast-track Consenting) Act 2020. 2. Agreeing for the Bill to provide explicitly for persons exercising functions, powers, and duties under the legislation to apply the Treaty provisions in underlying legislation where relevant (such as section 8 of the Resource Management Act or section 4 of the Conservation Act). There are also specific changes identified by submitters that could be made to better provide for Māori rights and interests throughout the process while still providing a timely and comprehensive approvals process, including: 1. shifting decision-making from Ministers to the expert panel, which will include a member nominated by the relevant iwi authority or authorities (see recommendation 4 in Appendix 1 of BRF 4664/MBIE 2324-3306); 2. increasing the weighting for environmental sustainability considerations in decision-making by amending discretionary matters for declining projects (see recommendation 3 in this Appendix); and	50. Agree to remove the word “existing” from clause 6 Option 1: 51. Agree to require persons exercising functions, powers, and duties under the legislation to act consistently with the principles of the Treaty; or OR Option 2: 52. Agree to require persons exercising functions, powers, and duties under the legislation to apply the Treaty provisions in underlying legislation where relevant.	Yes No Yes No Yes No

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	3. increasing timeframes for parties to provide comments on applications (see recommendations 5 and 6 in this Appendix). We note this option does not address the lack of clarity submitters have noted regarding how Treaty clauses in underlying legislation will be applied.		
Inconsistent references to Mana Whakahono ā Rohe (MWaR) and Joint Management Agreements (JMAs) (BRF-4664)	Cabinet agreed that the fast-track legislation will include protections for settlements and other legislative arrangement including the Takutai Moana Act, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act, MWaR and JMAs under the RMA (CAB-24-MIN-0008 rec 35 (23 January 2024) refers). Generally, this policy decision means that protections for MWaR and JMAs should be consistent with protections for Treaty settlements, Takutai Moana and Ngā Hapū o Ngāti Porou. However, there is one exception as MWaR and JMAs are not included in the overarching obligations under clause 6, which is pursuant to Minister's decisions on 28 February. The other difference with MWaR and JMAs is that, due to their nature as RMA instruments, they are only relevant to RMA approvals and not the other one-stop-shop approvals. Hence the policy intent is that the Bill should include protections for MWaR and JMAs, except in regard to the overarching obligations in clause 6, where relevant for RMA approvals. Given the pace of policy development/drafting, there are some unintended inconsistencies in references to MWaR/JMAs throughout the Bill. For example, MWaR/JMAs are not referred to in the information/engagement requirements on the applicant - but are referred to at every subsequent engagement step including the parties Ministers and the panel must seek comments from and provide notice to. They are also not directly referenced in the clause 22(2) requirements on Ministers to provide for procedural matters and documents/arrangements etc in Treaty settlements (although they are intended to be covered by the term "related arrangements" in that clause, see rec 19 and footnote 1 in BRF-4239 Appendix 1) and some similar schedule 4 provisions. In sum, the areas of the Bill where we have identified there are inconsistencies where MWaR and JMAs are not currently referred to but should be are clauses 14 (3) (h), 16 (1), 22 (2), Sch 3 clauses 5 (2) (b) and (3), and Sch 4 clause 20 (5).	53. Note that officials have identified some inconsistencies in references to Mana Whakahono ā Rohe (MWaR) and Joint Managements Agreements (JMAs) that affect Bill workability and intend to address these consistently with the existing policy approvals (which includes <u>not</u> referencing MWaR and JMAs in clause 6 of the Bill).	NOTE
Application of Part 10 of Te Ture Whenua Māori Act 1993 (TTWMA) to the Bill (BRF-4664)	The policy intent of the FTA Bill is to better enable regionally and nationally significant development projects. There are also some protections for Māori land in the FTA Bill, which recognise the policy intent that projects should not occur on identified Māori land (which includes Māori freehold land) unless the owners of that land agree in writing to it. Related to this are a few clauses in the FTA Bill where owners of Māori land are to be invited by the joint Ministers to provide written comments on a referral application (cl 19) or by the panel for a listed or referred project (Sch 4, cl 20 (3) and (5)). In order to ensure the process is timely and efficient, there are timeframes associated with these provisions. If the FTA Bill does not have an express provision to the contrary, the timings for owners of Māori freehold land (that is owned by more than 10 persons and not vested in a trust or trustees) to respond will be subject to Part 10 of TTWMA. Part 10 (s 181(4)) will extend notice periods under the FTA Bill for those landowners so that the period does not begin to run until the court has appointed an agent or made a decision, plus an additional 10 working days. This recognises these landowners are more difficult to notify. The timings and processes under Part 10 (which can take a few months to run) could frustrate the operation of the FTA Bill in terms of timely processes. Section 353 of the RMA (rarely used) limits the timings under Part 10, TTWMA to a maximum extension of 20 working days from the usual notice period. This provision raises some Te Tiriti issues as there is a risk this timing will still not give sufficient time for the owners of Māori land to respond and meet their obligations. This could result in inequity for those owners and adversely impact on iwi/Māori relationships. We consider, however, that the inclusion of a s353 type provision in the FTA Bill is justified in this particular circumstance, to balance meeting the policy intent of the Bill	54. Agree to include a provision similar to s353 of the RMA in the FTA Bill so that Part 10 of TTWMA shall apply except in relation to where the joint Ministers or panel are seeking written comments, where in no case shall the period be able to be extended by more than 20 working days unless otherwise provided by the joint Ministers or panel.	Yes No

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	(expediency) and ensuring adequate protection for this Māori land. Joint Ministers or the panel will have the discretion under a s 353 type provision to further extend the timings for response by more than 20 days.		
Treaty settlements (BRF-4664)	Section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act declares that certain claims by Māori in respect of non-commercial fishing give rise to ongoing Treaty obligation on the Crown. To give effect to s10, regulations made under Part 9 of the Fisheries Act must be protected alongside current references to fisheries settlements under Treaty of Waitangi (Fisheries Claims) Settlement Act, and customary marine rights under the Marine and Coastal (Takutai Moana) Act. The Bill’s protections for fisheries settlements are made through reference to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. This needs to be broadened to include protections against activities that may affect the rights of customary fishers in areas they have been granted as reserves for their use and management (mātaihai¹ reserves and taiāpure²). These areas are established to give effect to treaty settlement agreements, but are delivered through the Fisheries Act and related Fisheries regulations (rather than the Settlement Act itself). This addition will ensure that ongoing obligations on the Crown arising from fisheries settlements are protected as new regulations are added or amended, and achieves parity between customary fishing areas and customary marine areas. As well as cl 18 ineligibility criteria, subsequent amendments to clauses requiring consideration of, engagement with or notification for these customary fisheries rights holders are also needed.	55. Agree to include reference in the definition of “Treaty settlement Act” to “regulations and bylaws that give effect to s10 of that Act under Part 9 of the Fisheries Act 1996”. 56. Agree to include, in the cl 18 ineligibility criteria, an activity that would occur in a gazetted mātaihai reserve or taiāpure, or an area managed through bylaws delivered through regulations under Part 9 of the Fisheries Act 1996, that would have more than minor adverse effect on the use and management of that mātaihai reserve, taiāpure, or area managed through bylaws and has not been agreed to by the relevant mana whenua. 57. Agree to include references to account for mātaihai reserves, taiāpure, or areas managed through bylaws established under Part 9 of the Fisheries Act 1996 where relevant including clauses 3, 13(2), 14, 16, 19, 21, 24 and schedule 4 clause 12, 20, 32, 33, 35 and 37.	Yes No Yes No Yes No
Responsible agency (BRF-4664)	The Bill currently identifies MBIE and MfE as responsible agencies. Delegated Ministers agreed (BRF-4239 Table B1 recommendation 5-6) that this was intended as a place holder. In practice, the responsible agency works in consultation with other relevant agencies, particularly as their expertise will be required in relation to approvals. <i>Option 1 (recommended) – MfE is the responsible agency, working in consultation with other relevant agencies</i> This option replicates FTCA and NBA fast-track approach, noting that in practice MfE will work closely with other agencies as required (including through the requirement to seek comments from relevant portfolio ministers). We recommend one agency has administrative responsibility for the regime to ensure efficiency and timeliness of operation. <i>Option 2 – MfE and MBIE are the responsible agencies</i> This option would create significant administrative complexity and uncertainty – for example, there would be a need for joint advice and sign-off on each decision step under the Bill (including minor decisions such as who to seek written comments from), it would be unclear to applicants which agency to send their application to, and it would be unclear which agency supports any appeals against decisions made under the Bill.	EITHER 58. Agree that MfE is the responsible agency in the Bill, and will work in consultation with other relevant agencies (including MBIE) to implement the Bill OR 59. Agree that MfE and MBIE are the responsible agencies All options 60. [If MOC is sole decision-maker for fast-track concessions]: Agree DOC is the responsible agency in relation to fast-track concessions 61. [If CMA Ministers are sole decision-maker/s for access arrangements]: Agree DOC and MBIE are the responsible agency in relation to access arrangements 62. Agree MPI is the responsible agency in relation to aquaculture decisions 63. Note that the responsible agency will work in consultation with other relevant agencies with statutory responsibilities and portfolio interests to implement the Bill	Yes No Yes No Yes No Yes No Yes No Yes No
Application of certain clauses to courts (BRF-4664)	The Chief Justice has raised an issue in her submission around the application of certain clauses in the Bill to the courts. Namely: Clause 6 (Obligations relating to Treaty settlements and recognised customary rights): the Chief Justice questions “whether it is intended to apply to judges in the exercise of judicial powers and, if it is, whether that is appropriate. [...] In the context of cases coming before them, the courts will also be required to determine what the legislation (including Clause 6) requires of decision-makers, and whether those requirements have been met. It is unusual, against that background, to apply a provision such as Clause 6 directly to the courts.” Clause 31 (Regulations): The Chief Justice notes the current drafting “could extend to the making of rules of court practice and procedure. [...] there is a constitutional convention that rules of court concerning practice and procedure of the Senior Courts should only be made with the concurrence of the judiciary.”	64. Agree that clauses 6 (Obligations relating to Treaty settlements and recognised customary rights) and 31 (regulations) do not apply to courts or procedural and administrative matters concerning courts.	Yes No

¹ Mātaihai reserves recognise and provide for traditional fishing through local management. They allow customary and recreational fishing but usually do not allow commercial fishing.

² Taiāpure (local fisheries) are estuarine or coastal areas that are significant for food, spiritual, or cultural reasons. They allow all types of fishing and are managed by local communities

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	We agree with the Chief Justice’s submission and note that there was no policy intent to include courts within the scope of these clauses. We recommend including a clause that clarify that these provisions (clauses 6 and 31) do not apply to courts or procedural and administrative matters concerning courts. This clause could be based on s 741 of the NBA, which dealt with a similar issue in relation to the Environment Court.		
Application of OIA to Panel (BRF-4664)	The Ombudsman’s submission noted “As it is presently drafted, the Bill does not make the expert panels that are convened to advise on applications subject to the Ombudsmen Act. I am not aware of any rationale for departing from the expectations set out in the LDAC guidelines set out above. As the panel performs a public function, including holding hearings (in some circumstances) and producing a written report with recommendations to joint Ministers, I recommend the Committee make amendments to ensure the panel is subject to the Ombudsmen Act. This can be done by including reference to the panel in Schedule 1 of the Ombudsmen Act.” We agree with the Ombudsman’s submission that the Expert Panel should be subject to the Ombudsmen Act.	65. Agree that Expert Panels are subject to the to the Ombudsmen Act 1975 (and, by extension, the Official Information Act 1982)	Yes No
Transparency (BRF-4664)	OAG advice The New Zealand Law Society recommend including safeguards to “ensure the powers under this legislation are appropriately exercised, and there are mechanisms in place to increase transparency and accountability about the assessment and consideration of applications, and to promote public confidence in the decision-making processes.” We agree with those submitters’ suggestions and recommend that the Bill include a requirement to record and publish: - the reports obtained under clause 13(1); - the applications considered under clause 17; - the applications declined under clause 21; - the applications accepted under clause 22; and - the Panel’s report, under clause 25(7) Joint Ministers’ reasons for deviating from the Panel’s recommendations, and any additional advice/comment/clarification sought in support of that	If Joint Ministers remain the decision-maker: 66. Agree to include a requirement to record and publish: - the reports obtained under clause 13(1); - the applications considered under clause 17; - the applications declined under clause 21; - the applications accepted under clause 22; and - the Panel’s report, under clause 25(7) - Joint Ministers’ reasons for deviating from the Panel’s recommendations, and any additional advice/comment/clarification sought in support of that If the Expert Panel is the decision-maker: 67. Note the Bill requires the Panel to produce a report setting out its recommendations and the reasons for those recommendations 68. Note the Bill requires joint Ministers’ decision to be published on the responsible agency’s internet site 69. Agree the Bill should require the Panel’s report and decision to be published on the EPA’s internet site	Yes No Note Note Yes No
Delegation of further decisions (BRF 4752)	There are additional technical matters or matters of minor policy clarification related to decisions already made. We propose a delegation in the Cabinet Paper to the Minister for RM Reform	70. Agree further delegation to the Minister for RM Reform to make decisions on additional technical matters or matters of minor policy clarification related to decisions already made.	Yes No
Additional matters - DOC			
Cost Recovery (BRF-4664)	MPI can recover costs associated with preparing a recommendation on an aquaculture decision (including any updates at the request of joint Ministers) and supporting joint Ministers make an aquaculture decision. Currently Schedule 12 clause 14 provides that the chief executive of MPI may recover costs from applicants for aquaculture decisions (although there are notable drafting errors in the clause). Further analysis indicates that it would be preferable that the existing cost recovery regulations under the Fisheries Act (clause 18A of Schedule 2 of the Fisheries (Commercial Fishing) Regulations 2001 are used, with necessary modifications to provide for the aquaculture decision process related to coastal permit applications for aquaculture activities progressed under the Fast-track Approvals Bill.	71. Agree to amend Schedule 2, Clause 18A of the Fisheries (Commercial Fishing) Regulations 2001 so that it provides for cost recovery for the aquaculture decision process related to coastal permit applications for aquaculture activities progressed under the Fast-track Approvals. 72. Agree to remove Schedule 12, clause 14.	Yes No Yes No
Input from relevant statutory bodies	Some submitters are concerned with the lack of requirement in the Bill to consult with statutory bodies (New Zealand Conservation Authority (NZCA), Conservation boards, Fish and Game Council New Zealand, and New Zealand Game		

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(BRF 4752)	Animal Council) where relevant. Submitters want to ensure the bodies can share their knowledge of potential impacts on conservation values, and fishing and hunting activities. These submitters think the Bill should include a requirement to invite written comments from these statutory bodies on referral and substantive applications for Fast Track projects. These bodies have statutory responsibilities for their areas and represent conservation, hunting and fishing interests. None have existing direct responsibilities related to approvals in the Bill except for the NZCA; under section 18A of the National Parks Act 1980 the Minister of Conservation is required to consult the NZCA in respect of any notice requesting a mining access arrangement for a national park. Certain restricted access arrangements are the only activity that is provided for in the Bill within national parks. As the Bill is drafted, it does not disapply section 18A of the National Parks Act which means the NZCA would need to be consulted as above. You will need to decide if you wish to maintain this requirement and, if you do not wish to retain it, it will need to be disapplied in the Bill. You also have a second decision to make on whether to include these bodies in the list of those invited to comment on fast track applications to provide perspectives that would not otherwise be represented throughout the process.	73. Agree that the New Zealand Conservation Authority will be invited to comment on the referral and substantive applications for projects that include access arrangements in a national park. 74. Agree to include the New Zealand Conservation Authority (NZCA), relevant conservation boards, Fish and Game Council New Zealand, and New Zealand Game Animal Council to the list of those invited to comment on referral and substantive fast track applications.	Yes No Yes No
Process for setting non-environmental conditions on concessions and Crown Minerals Act approvals (Schedule 5 and Schedule 10) (BRF 4752)	In addition to conditions on measures to avoid or reduce adverse effects, a concession also covers a range of issues such as the concession term, concession fees, fee dispute resolution process, and health and safety requirements (hereafter referred to as non-environmental conditions). To assist the Panel in its consideration, we recommend DOC provides a report to the Panel that: <u>Advises on environmental conditions</u> for the Panel's consideration and the Panel then decides on what conditions to provide to Ministers. <u>Sets the non-environmental conditions</u> that the Panel must include in its report to the Ministers. The Panel is unlikely to be in a position to comment on these conditions given that they are linked to liabilities and DOC's role as land manager. It means the Panel does not have to get into the details of commercial elements of the contract and allows the Panel a more streamlined process focusing on the environmental aspects. The Panel would not seek comments on the non-environmental conditions that DOC sets, but DOC would work with the applicant in the process of setting them. - Crown Minerals Act access arrangements are similar to concessions approvals and deal with many of the same issues and types of land – they require contracts with the setting of fees, bonds, and terms and conditions related to the use of land, including those relevant to liabilities. Given these similarities, we recommend that the process for setting terms and conditions for access arrangements follows the same approach as for concessions.	75. Agree that DOC provides a report to the Panel providing advice on the concession/access arrangement and the conditions the concession should cover. 76. Agree that DOC sets the non-environmental conditions of the concession/access arrangement.	Yes No Yes No
Reconsideration of concessions decision (BRF 4752)	Section 17ZJ of the Conservation Act provides for the Minister of Conservation to reconsider a concessions decision at the request of the applicant – either the decision to decline the concession, or the conditions placed on a granted concession (prior to the concession being implemented). We recommend disapplying this provision. There are no similar provisions made for similar conditions placed on resource consents under the fast-track process (the objection and appeals processes available under the standard RMA process have not been provided for). We do not consider that there is a sufficiently unique requirement for environmental concession conditions to have a specific reconsideration provision available to the applicant only, and this would be unaligned with the other permissions being granted under the FTA Bill. Assuming, you have agreed to our recommended approach above, we recommend that DOC provides the applicant's comments on the non-environmental conditions in DOC's report to the Panel which would then be provided to the Minister with the recommendation report. This enables the Minister to consider the applicant's views on the non-environmental conditions that DOC has set within the fast-track process rather than having a separate reconsideration process.	77. Agree to <u>disapply</u> Section 17ZJ of the Conservation Act 1987 for fast track projects and that DOC will provide comments from the applicant on the non-environmental conditions for the Panel to pass on to the Minister to consider for final decision. AND 78. Agree that the Minister of Conservation may make changes to the non-environmental conditions.	Yes No Yes No

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Concessions on reserves owned by local authorities (BRF 4752)	You previously agreed that reserves owned by local authorities are eligible for Fast track. If a local authority owns a reserve, they need to be able to make decisions about how they manage it. They will have to bear the costs and risks associated with the reserve and its use, so they need to agree to the activity. This requires them to have decision-making power over the concession, so we recommend that the written permission of the local authority reserve owner is required for the project to be eligible for Fast Track. This is consistent with the approach in the Bill for other reserves not owned by the Crown and reflects feedback in council submissions.	79. Agree that a new ineligibility criterion is included in the Bill that a project cannot be referred to Fast Track without the written consent of the local authority if a local authority-owned reserve is part of the project area.	Yes No
Report for Crown Minerals Act approvals (BRF 4752)	You previously agreed that, for concessions, Ministers must consider any administration arrangements over the land and any existing arrangements (formal or informal) over public conservation land affected by Fast Track applications when considering whether to accept the project into the Fast-Track process, and that this and the final decision should be informed by a report from DOC (BRF-4307). Crown Minerals Act land access arrangements are similar to concessions approvals and deal with many of the same issues and types of land. For the same reason a land report is required for concessions, one should also be required for Crown Minerals Act land access arrangements.	80. Agree that Ministers’ consideration of Crown Minerals Act access arrangements as part of the Fast-track referral and the Panel’s recommendation report is informed by a land report from DOC (in consultation with the land administrator where this is not DOC).	Yes No
Inclusion of conservation covenants (Schedule 5, Part 4) (BRF 4752)	When you previously agreed to include the amending or revoking of conservation covenants through the Fast Track Approvals Bill, officials noted that further work was needed on how this part of any Fast Track application should be managed alongside the resource consent and ‘one stop shop’ approvals. You agreed that conservation covenants could only be amended or revoked by mutual consent of the Minister of Conservation and the landowner and following a similar process as under the Urban Development Act 2020. We recommend that changes to conservation covenants should occur in parallel to the Panel process but not through the Panel process. This is because revoking or amending of conservation covenants requires specific agreement between the landowner and the Minister of Conservation. Adding the Panel into the process would add extra steps. In contrast to other approvals, the Minister of Conservation cannot agree to change or revoke the covenant without having the landowner’s consent. Therefore, landowner consent is required at the time of the Minister’s decision and must be required at the substantive application stage at the latest. Within this constraint, there are two timing options for requiring landowner consent; it may be required for referral or the substantive application. For avoidance of doubt, we recommend the Minister must receive a report from DOC to inform their final decision. The way the Bill is drafted, there is no provision for any advice to the Minister to inform the final decision.	81. Agree that the amending and revoking of covenants will not be part of the Panel process but will be subject to the same timeline for final advice to the Minister.	Yes No
		EITHER	
		Option 1	
		82. Agree that a project is ineligible for fast-tracking if written landowner consent to a change to a conservation covenant has not been obtained.	Yes No
		OR	
		83. Agree to require written landowner consent for the substantive application stage.	Yes No
		84. Agree to clarify in the Bill that DOC provides a report to the Minister of Conservation to inform the final/substantive decision-making on changes to covenants.	Yes No
Eligibility (BRF 4752)	Eligible land The Bill’s description of lands that are eligible for an exchange is unclear and not aligned with Ministers’ previous decisions on the eligibility of Schedule 4 land. We recommend clarifying this. In your previous decisions you agreed to allow exchanges under Fast Track but noted that exchanges “would not be considered for any land listed in Schedule 4 of the Crown Minerals Act 1991 as Ministers have agreed that no projects involving such land are eligible for Fast Track – this ensures the integrity of the most highly protected classifications of public conservation land (PCL).” However, the broad eligibility criteria for the Bill have since developed further and we recommend that land eligible for an exchange is consistent with the broader ineligibility criteria of the Bill. This means that exchanges: - Could not be requested on Schedule 4 land except on the Coromandel specific areas (items 12 and 13). - Could not be requested on national reserves Consistent with policy direction already reflected in the Bill, exchanges should also only be possible for land owned by the Crown and managed or administered by DOC under the Conservation Act or Reserves Act. Rights of first refusal and gift-backs As per previous advice (24-B-0087 refers), conservation land is often subject to terms and conditions related to its use. If it is no longer required or being used for conservation purposes it can be subject to rights of first refusal in Treaty	Eligible land 85. Note that current policy is for exchanges not to be eligible on land in Schedule 4 of the Crown Minerals Act. 86. Agree, for the avoidance of doubt, that an exchange can only be provided in the Bill for Crown owned land managed by DOC under the Conservation Act or administered by DOC under the Reserves Act 87. Agree, for the avoidance of doubt, that exchanges cannot be requested on land that is listed in the ineligibility criteria of the Bill (clause 18): a. Land listed in items 1-11 and 14 of Schedule 4 of the Crown Minerals Act (i.e. exchanges could be requested for the Coromandel land listed in items 12 and 13). b. National reserves Rights of first refusal and gift-backs	Note Yes No Yes No

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	settlements or gift-backs to those that originally provided the land to DOC. This significantly complicates an exchange process with uncertain legal implications. Te Rūnanga o Ngāi Tahu has submitted that any land exchange should not breach or circumvent the right of first refusal mechanism. We recommend clarifying in the Bill that where an exchange would trigger a right of first refusal or gift-back requirement, it is not able to progress. s 9(2)(g)(i)	88. Agree , for the avoidance of doubt, that land cannot be exchanged where the exchange would trigger a right of first refusal or a gift-back.	Yes No
Alignment with the broader Fast Track process (BRF 4752)	s 9(2)(f)(iv)	s 9(2)(f)(iv)	Yes No Yes No
Public comment on land exchanges (BRF 4752)	Land exchanges are significantly different to other approvals in the Bill given it results in the loss of public conservation land in one area and the gaining of public land in another part of the country that may not be in the same region. Exchanges can involve significant changes to public land and how it may be used or accessed by the public indefinitely. There is strong public interest in land exchanges s 9(2)(g)(i) Public notification or provision to comment on an exchange is not included in the Bill currently. Full public notification would enable greatest transparency. However, it is likely to take 3-4 months at a minimum. If you wish to include some level of public engagement but not as extensive as full public notification you could provide for the invitation of written comments from a limited range of people for the land exchange process. The invitation to comment could be limited in duration and in terms of who is able to input.	91. Note that land exchanges are significantly different to other approvals in the Bill, as this process involves a land transaction rather than just permission to use land. 92. Agree to: a. DOC seeking written comments from the people and groups who are listed in the Bill as being able to comment during the Panel process, with a timeframe consistent with the timeframes for comment in the Bill. AND	Note Yes No

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	If you agree to some level of public involvement, we propose that, at a minimum, those already provided with the opportunity to comment on applications under the Bill are invited to comment, with timeframes consistent with those for comment in the Panel process. We also recommend some modifications to this list to provide for the interests of unsettled iwi. The ownership and management arrangements of conservation land are often the subject of Treaty settlement negotiations.	b. Include unsettled iwi groups to the list of those who is invited to comment on land exchanges.	Yes No
Consideration of international conservation agreements (BRF 4752)	Some submitters have raised concerns that the Bill is inconsistent with our international obligations, such as the Convention on Migratory Species of Wild Animals. They flag a particular concern for endangered migratory species on Appendix 1 of the Convention and have concerns that the wide discretion under the Bill could include the killing or disturbance that may cause further decline of the species and reputational risks for New Zealand. The Bill is likely to allow impacts on wildlife that would not have otherwise occurred under the existing system. This is consistent with Government objectives to enable more development. However, DOC has identified there is a gap in the Bill regarding those migratory species that: - are protected by the Wildlife Act, and - do not get assessed under the New Zealand Threat Classification System because they spend part of their lifecycle elsewhere, and - are considered threatened or endangered under international agreements that New Zealand is signatory to (such as the Convention on Migratory Species of Wild Animals). Because these species are not given a threat status under the New Zealand Threat Classification System, they will not qualify for the provision in the Bill that requires “taking into account” impacts on them. An example of this is the whale shark. We recommend that there is an explicit provision for wildlife approvals in the Bill that requires the consideration of species that are the subject of international agreements. Generally, the impact on New Zealand if we are perceived not to be adhering to our international conservation agreements is reputational. However, providing an explicit provision is a way to ensure these factors are considered without providing a barrier to development.	93. Agree that for wildlife approvals, the Bill will include a provision to take into account species that are the subject of international conservation agreements.	Yes No
Additional matters - Aquaculture and fisheries			
Pre-request aquaculture agreement (BRF-4664)	If applicant wants to obtain a pre-request aquaculture agreement with potentially affected quota holders, then this must be done before lodging an application with the EPA. Delegated ministers previously agreed that pre-request aquaculture agreements must be lodged with the chief executive of MPI before the Panel requests the chief executive to provide a recommendation on an aquaculture decision. We recommend it would be more efficient if the pre-request aquaculture agreement is instead required to be lodged with the chief executive of MPI before the application is lodged with the EPA. Subsequent amendments are required to s186ZM of the Fisheries Act.	94. Agree to require that any pre-request aquaculture agreement (if an agreement is sought) for a coastal permit application involving aquaculture activities must be lodged with the chief executive of MPI before the application is lodged with the EPA. 95. Agree to amend the Fisheries Act so that the pre-request aquaculture agreement process in section 186ZM includes appropriate reference to the consent applications lodged under the Fast-track Approvals Bill. 96. Agree to remove Schedule 12, clause 3 and Schedule 4, subclause 26(5), and make consequential modifications to Schedule 4, subclauses 26(6) and 27(1).	Yes No Yes No Yes No
Chief executive of MPI making recommendation on aquaculture decision (BRF-4664)	The chief executive of MPI will make a recommendation on an aquaculture decision directly to joint ministers. This will involve the chief executive of MPI following a process set out under a new subpart to Part 9A of the Fisheries Act, based on the existing subpart 1 but with necessary modification to reflect the Fast-track Approvals process compared to the RMA consenting process. This process will include the ability for the chief executive of MPI to seek information or consult certain persons for the purposes of making aquaculture decision, which must occur in parallel with the Panel seeking written comments on the application. We recommend it would be more efficient for the chief executive of MPI to make a recommendation on an aquaculture decision directly to joint Ministers rather than to the Panel, as the aquaculture decision is a technical threshold test that is quite different to an RMA consent decision. It is unlikely and unnecessary for the Panel to have the specific technical expertise to assess such a decision.	97. Agree that the chief executive of MPI is required to make a recommendation on an aquaculture decision in accordance with the Fisheries Act and provide it to the responsible agency within 5 working days of the Panel making its recommendation on the proposal. 98. Agree that the responsible agency must provide the recommendation on an aquaculture decision to joint Ministers alongside the Panel recommendation on the consent application and any other approvals required by the proposal. 99. Agree to amend the Fisheries Act 1996 to include a new subpart in Part 9A that provides for the aquaculture decision process related to coastal permit applications for aquaculture activities progressed under the Fast-track Approvals Bill, and that these amendments are based on Subpart 1	Yes No Yes No Yes No

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	Further analysis has also concluded that to ensure the aquaculture decision process under the Bill is workable, a new subpart in Part 9A of the Fisheries Act prescribing the process will be required, rather than depending on Schedule 12, clause 4. In order for the aquaculture decision process to effectively occur it will require necessary connections with the parallel Panel process to consider the coastal permit application, including: - The Panel must inform the chief executive of MPI at least 1 working day prior to seeking written comments on the application so that the parallel consultation process can efficiently occur - The chief executive of MPI must provide to the Panel copies of any submissions received during the consultation process undertaken under Part 9A of the Fisheries Act	of Part 9A with necessary modifications to reflect the different role of the chief executive of MPI in the process. 100.Agree to require the chief executive of MPI to provide to the Panel copies of any submissions received during the consultation process undertaken under Part 9A of the Fisheries Act. 101.Agree that the Panel must inform the chief executive of MPI that the Panel is seeking written comments at least 1 working day prior to seeking written comments on the application. 102.Agree to remove Schedule 4, clause 29 and Schedule 12, clauses 4, 5, 6, 7 and 8.	Yes No Yes No Yes No
Notification of application to chief executive of MPI (BRF-4664)	Where an application for a coastal permit for aquaculture activities is received and the EPA is satisfied it complies with relevant requirements, the EPA must provide the application to the chief executive of MPI and request a recommendation on an aquaculture decision. This is the point where the recommendation on an aquaculture decision process formally commences. We recommend it would be more efficient for the EPA (rather than the Panel at a later point in time) to provide the application to the chief executive of MPI and request a recommendation on an aquaculture decision when it provides the application to the Panel. If the EPA is sending two or more requests to the chief executive of MPI at a time, the EPA must indicate the order in which the applications were received. Only applications for new aquaculture activities or applications for certain existing aquaculture activities³ will require an aquaculture decision.	103.Agree that, where an application for a coastal permit for aquaculture activities is received, the EPA must, once it is satisfied that the application complies with the relevant requirements, provide the application to the chief executive of MPI and request a recommendation on an aquaculture decision. 104.Agree that the EPA is not required to follow the steps in the above recommendation if the application for a coastal permit is by a person who already holds a coastal permit to occupy the same space in a common marine and coastal area for aquaculture activities, unless a previous aquaculture decision in relation to that area included a condition under section 186H(3) of the Fisheries Act 1996. 105.Agree that, if the EPA is sending two or more requests to make a recommendation on an aquaculture decision to MPI at a time, the EPA must indicate the order in which the applications were received. 106.Agree to remove Schedule 4, clause 18 and Schedule 12, clause 2.	Yes No Yes No Yes No Yes No
Joint Ministers make an aquaculture decision (BRF-4664)	If joint Ministers decide to grant a coastal permit application where the chief executive of MPI has been requested to make a recommendation on an aquaculture decision, they must also make an aquaculture decision in line with the technical criteria in Part 9A of the Fisheries Act. Joint Ministers must request the chief executive of MPI update the recommendation on an aquaculture decision if they propose to make changes to the consent conditions for the coastal permit that would alter the proposed area to be occupied by the aquaculture activity or that relates to the character, intensity, or scale of the aquaculture activities. Joint Ministers can make an aquaculture decision that is different from the recommendation made by the chief executive of MPI. As discussed above, we recommend that to ensure the aquaculture decision process under the Bill is workable, a new subpart in Part 9A of the Fisheries Act prescribing the process will be required, rather than depending on Schedule 12, clause 4 (which applies, with necessary modifications, the existing subpart in Part 9A relating to aquaculture decisions for consent applications processed under the RMA). This is particularly important to ensure that joint Ministers can make aquaculture decisions in line with the technical criteria in Part 9A of the Fisheries Act. The nature of the aquaculture decision (which requires decision-makers to make a determination or reservation about the extent to which a proposed aquaculture activity will have an undue adverse effect on commercial, recreational, or customary fishing) means that using these criteria, rather than the purpose of the Bill, is important to avoid risks, including those associated with precedent effects of aquaculture decisions made for applications processed under the FTA Bill on future aquaculture decisions.	107.Agree to amend the Fisheries Act 1996 to include a new subpart in Part 9A that provides for the aquaculture decision process related to coastal permit applications for aquaculture activities progressed under the Fast-track Approvals Bill, and that these amendments are based on Subpart 1 of Part 9A with necessary modifications to reflect that joint Ministers will make the aquaculture decision, and that the decision can differ from the recommendation made by the chief executive of MPI. 108.Agree that EITHER: a. joint Ministers will make the aquaculture decision in accordance with the technical criteria in Part 9A Fisheries Act [recommended] OR b. joint Ministers will make the aquaculture decision in accordance with the purpose of the Fast-track Approvals Bill and the technical criteria in Part 9A of the Fisheries Act [not recommended] 109.Agree to remove Schedule 12 clauses 9 and 10.	Yes No Yes No Yes No

³ where a previous aquaculture decision in relation to that area included a condition under section 186H(3) of the Fisheries Act.

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Commencement of coastal permits for aquaculture activities granted under the Bill (BRF-4664)	If joint Ministers decide to grant a coastal permit application where the chief executive of MPI has been requested to make a recommendation on an aquaculture decision, then the consent has a bespoke approach to commencement in order to give effect to the aquaculture decision made by joint Ministers. We recommend amendments to Schedule 12 of the Bill and s116A RMA to ensure it is clear when coastal permits for aquaculture activities can commence following an aquaculture decision by joint Ministers. We have identified that Schedule 4 subclause 41(4) is no longer required as joint Ministers are also making the aquaculture decision.	110.Agree to amend Schedule 12 to: a. enable joint Ministers, where they make a determination, to note any consent conditions they identified when making the aquaculture decision that may not be changed or cancelled unless a further aquaculture decision is made b. require joint Ministers, where they make a reservation in relation to recreational fishing or customary fishing or commercial fishing involving stocks or species not subject to the quota management system, to not grant the coastal permit with respect to the areas affected by the reservation c. require joint Ministers, where they make a reservation in relation to commercial fishing involving stocks or species subject to the quota management system, to include consent conditions on the coastal permit showing the areas affected by the reservation and notify the applicant that the coastal permit will not commence in the area affected by the reservation unless: i. an aquaculture agreement is registered in accordance with the Fisheries Act; or ii. a compensation declaration has been registered under the Fisheries Act 111.Agree to amend Schedule 12, clause 13 so that coastal permits for aquaculture activities granted under the Bill commence in accordance with s116A RMA. 112.Agree to amend s116A RMA to enable coastal permits for aquaculture activities granted under the Bill to commence in the same way any other resource consents granted under the Bill would commence, except where joint Ministers have made a reservation in relation to commercial fishing involving stocks or species subject to the quota management system, in which case s116A(5) must enable consent authorities to amend coastal permits to remove areas affected by a reservation if an aquaculture agreement or compensation declaration has been registered under the Fisheries Act 113.Agree to remove Schedule 4, subclauses 41(4) and 45(4).	Yes No Yes No Yes No Yes No
Aquaculture agreements and compensation declarations (BRF-4664)	Where joint Ministers make a reservation in relation to commercial fishing involving QMS stock, the Fisheries Act enables aquaculture agreements and compensation declarations to be used in order for the coastal permit for aquaculture activities to commence. We recommend that amendments are made to Subpart 4 of Part 9A of the Fisheries Act so that the aquaculture agreement, compensation declaration, and memorial provisions include appropriate reference to the aquaculture decision process related to coastal permit applications for aquaculture activities progressed under the Fast-track Approvals Bill. Parallel amendments to the Fisheries (Aquaculture Compensation Methodology) Regulations 2012 will also be required.	114.Agree to amend Subpart 4 of Part 9A of the Fisheries Act and the Fisheries (Aquaculture Compensation Methodology) Regulations 2012 so that the aquaculture agreement, compensation declaration, and memorial provisions includes appropriate reference to the aquaculture decision process related to coastal permit applications for aquaculture activities progressed under the Fast-track Approvals Bill. 115.Agree to remove Schedule 12, clauses 11 and 12.	Yes No Yes No
Appeals and judicial review (BRF-4664)	Appeals and judicial review of the joint Ministers' aquaculture decision can be made through the single process prescribed in the Bill. Currently under the Fisheries Act the chief executive of MPI's aquaculture decision (for coastal permits granted under the RMA) cannot be appealed but can be judicially reviewed. Judicial reviews must be lodged within 30 working days of notification of the decision. § 9(2)(h)	116.Agree that appeals and judicial review of the joint Ministers' aquaculture decision are made through a single process under the Bill (alongside any other relevant approvals such as the consent application), rather than separately.	Yes No

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	We therefore recommend that appeals and judicial review of the joint Ministers’ aquaculture decision are made through a single process under the Bill (alongside any other relevant approvals such as the consent application), rather than separately.		

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Table 2: Technical decisions

Process step	Advice	Recommendations	Decision
Referral application for EEZ marine consents Schedule 9, clause 3 (BRF 4752)	The FTA Bill provides for consideration of alternative uses of the marine space that may have better strategic, economic, environmental purposes than the activity being applied for. Ministers may give regard to these factors when deciding to refer a project. This allows allocation of public marine space to be considered, rather than relying on a simply first-in first-served approach. This clause also allows for applications to be put on hold where the government is actively developing policy or the policy framework is yet to be determined (for example, consideration of the aquaculture Treaty settlement to the EEZ). Currently this provision applies at the referral stage. The Environment Committee has questioned officials how the Bill prioritises competing and incompatible activities occurring in the same space, and WWF has similarly questioned how decisions made will provide for the highest and best value from public space. This clause can help make this determination. It may be difficult for joint Ministers to exercise their discretion on this issue at the referral stage. This is because the information supplied at that stage may be limited. Its consideration would also slow down the referral decision, and as a result, would not align with the ‘gateway’ intent of the referral stage. An alternative approach would be for the applicant to provide further information in its application to the expert panel for its assessment. This information would then inform recommendations to Ministers and Ministers could then have regard to this analysis in making their final decision. The level of interest for activities in the EEZ is likely to be similar to those intended to occur in the coastal marine area. We recommend this comparative analysis (an assessment of the proposed activity and alternative activities against the matters raised in subclause (2)) should be extended to applications for activities in the coastal marine area, to cover coastal permits under the RMA.	117. Agree to move consideration of alternative uses from the referral stage to the panel recommendation and Ministerial decision stage. 118. Agree to extend the comparative assessment (currently applied to Fast-Track applications for projects in the EEZ) to also cover Fast-track applications for activities occurring in the coastal marine area	Yes No Yes No
Eligible activities to continue to deliver existing activities Clause 17 (BRF 4752)	To meet renewable energy targets, New Zealand needs to retain existing generation, transmission, and distribution. Much of this needs consenting - and in some cases repowering – in the near future. The volume of consenting is similar to the volume of new consenting for new energy infrastructure. Meridian’s submission raises this matter. The FTA Bill proposes a streamlined decision-making process to facilitate the delivery of infrastructure and development projects but doesn’t explicitly state in cl 17(3) that existing activities can apply for a new consent to be continued. The Bill has been designed to specifically consider the continuing delivery of existing infrastructure, including consenting aquaculture projects (Sch 4 cl 4). The existing policy is intended to be maintained, but an amendment is recommended at cl 17(3)(b) as follows: “will deliver or continue to deliver regionally or nationally significant infrastructure”.	119. Agree to amend the FTA Bill to explicitly include the continuing delivery of existing infrastructure.	Yes No
Lapse period Sch 4 cl 39(8) and (9) (BRF 4752)	The Bill includes a lapse period for resource consents and designations of two years. This has been bought over from the Fast-Track (COVID) Consenting Act (FTCA). Some submitters have raised issues that this period is too short, and not aligned with other statutes, including the RMA. The lapse periods may be too short for major infrastructure projects that need to obtain approvals before securing finance, and then make other preparations, before “giving effect” to the resource consent or designation. It is recommended that Expert Panels on a case by case basis, determine an appropriate lapse period for approvals, with a default period of five years as opposed to the current two years. This generally aligns with the RMA.	120. Agree that Expert Panel can recommend, and the decision can include a suitable lapse period. 121. Agree the lapse period is five years if the decision doesn’t set an alternative lapse period.	Yes No Yes No

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Scope of appeals Clause 26 Schedule 7, cl 15 (BRF 4752)	The FTA Bill currently provides that appeals to the High Court against the final decision of joint Ministers on a question of law, applies to all approvals in the Bill (clause 26) Schedule 7 cl 15 of the Bill, applies cl 26, with all necessary modifications. The Bill also applies relevant Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act (NHNPA) 2019 provisions in the fast-track process. Section 32 of the NHNPA requires the Environment Court to have regard to the environmental covenant on appeals for archaeological authorities. The Bill as currently drafted, doesn't contemplate appeals to the Environment Court. We recommend that clause 26 of the FTCA Bill restricting appeals of the joint Ministers' decision, to the High Court on points of law only, applies to all approvals in the Bill (including heritage approvals).	122. Agree that clause 26 of the FTCA Bill, restricting appeals only to the High Court on points of law, applies to all approvals in the Bill (including heritage approvals).	Yes No
Referral application Clauses 10, 14, 15, 16 (BRF-4664)	<i>The referral application is primarily intended to provide sufficient information to understand:</i> <i>The scope of the project and an overview of the different approvals required for it</i> <i>How the project aligns with the eligibility and ineligibility criteria</i> <i>Whether the applicant has complied with pre-application consultation requirements, and identified the persons likely to be affected by the project.</i> <i>Pre-application consultation</i> The applicant should be required to engage with all relevant agencies, not just those that administer legislation (for example, MCH administers the HNZPT Act, but it is HNZPT who would be responsible for advising on applications)	123. Agree include relevant statutory and other bodies and departments in the pre-application requirements	Yes No
Notice of decision / matters joint Ministers may specify Clauses 23-24 (technical issue) (BRF-4664)	Sch 5 cl 13 is not needed - applicants should be able to apply to the Panel for all approvals needed within the scope of the project as defined in their referral application. Sch 5 cl 14 should be integrated into cl 24(2) to ensure that all relevant statutory and other bodies and departments are given notice where joint Ministers decide to accept a referral application.	124. Agree to remove Sch 5 cl 13 125. Agree to integrate Sch 5 cl 14 into cl 24(2) so that it applies generally, not just in relation to Conservation Act and Reserves Act approvals.	Yes No Yes No
Expert Panel composition and procedural matters Schedule 3 (BRF-4664)	<i>Schedule 3 clauses 1-9 set out the functions, appointment process, composition, and membership requirements for the Expert Panel.</i> <i>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.</i> <i>A Panel Convenor must be appointed by the Minister, after consulting the other relevant portfolio Ministers. The panel convenor, in consultation with the Minister, must appoint a suitably qualified lawyer or planner as chairperson or act as the chairperson themselves.</i> <i>Panels must collectively have:</i> <i>knowledge, skills, and expertise relevant to the purpose of the FTA Bill</i> <i>knowledge and skills required for matters specific to the project, including the technical expertise relevant to the project</i> <i>an understanding of te Tiriti o Waitangi/the Treaty of Waitangi and its principles</i> <i>an understanding of tikanga Māori and mātauranga Māori</i> <i>if appropriate, conservation expertise.</i> <i>Panels are comprised of a maximum of four members (unless additional members are warranted, in the panel convenor's discretion, to accommodate matters specific to the project (Sch 3 cl 3(6)). Panels must include:</i> <i>one person nominated by the relevant local authorities</i> <i>one person nominated by the relevant iwi authorities</i> <i>Panel convener and chairperson</i> Sch 5 cl 15(1) (in respect to concessions under the Conservation Act) requires the Panel convener to consult relevant portfolio ministers on the appointment of panels. We do not consider this is necessary as, in practice, the EPA will work with	126. Agree to remove Sch 5 cl 15 (in respect to processes under the Conservation Act) 127. Agree to remove Sch 3 cl 7(1)(e) and Sch 9 cl 8 that lists different types of expertise and instead amend Sch 3 cl 7(1)(a) to refer to knowledge, skills, and expertise relevant to the approvals being considered 128. Agree to include "relevant statutory and other bodies and departments" in Sch 3 cl 12(2) 129. Agree to clarify that 'relevant local authority' and 'relevant iwi authority' in Sch 3 cl 3(2) includes jurisdictions affected by a proposed EEZ consent application based on their proximity to the activity 130. Agree to amend Sch 3, cl 5(1) to include reference to the requirements under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.	Yes No Yes No Yes No Yes No Yes No

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	the relevant agencies to advise the Panel convener on Panel composition that includes nominated persons; collective knowledge and expertise; and persons that are available and not conflicted. If this requirement was retained, we would need to build a process (and timeframes) around how the Panel convenor undertakes this consultation. Sch 5 cl 15(2) states that the Panel chair may have a suitable environmental qualification instead of RMA s 39A accreditation. This subclause should be removed – the s 39A accreditation is not a purely environmental qualification, instead it is focused on directing hearings and supporting a decision-making process. It would therefore not be appropriate to substitute this for any other environmental qualification. Sch 9 clause 8 requires a Panel convenor to consider the need for expertise specific to the EEZ. Instead of listing the different types of expertise required for different approvals, we recommend merging Sch 9 cl 8 and Sch 3 cl 7. We also recommend removing Sch 3 cl 7(1)(e) and instead amending Sch 3 cl 7(1)(a) so that Panel members must collectively have expertise relevant to the approvals being considered by the Panel . <i>Requirement to assist the Panel</i> Sch 3 clause 12(2) requires local authorities to assist the Panel if requested – this should be expanded to include all relevant statutory and other bodies and departments. <i>EP composition</i> The Bill needs to clarify that, in relation to EEZ approvals, ‘relevant local authority’ and ‘relevant iwi authority’ includes jurisdictions affected by the application based on the project’s proposed location. This would reflect the approach under the EEZ Act, where relevant local authorities and iwi authorities who may be affected by the application are considered due to cross-boundary effects between the EEZ and coastal marine area. <i>Procedural matters in the context of Treaty settlements and other arrangements</i> Clause 6 requires persons exercising functions under the Bill to do so consistently with, among other matters, customary rights recognised under the Ngā Hapū o Ngāti Porou Act 2019. That Act contains procedural matters that may be relevant to the expert panel and therefore should be included in schedule 3 clause 5(1). Specifically, section 17 of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 provides that NHNP may nominate a member of a board of inquiry, where a matter is within ngā rohe moana o ngā hapū o Ngāti Porou. The panel may need to act consistently with that provision where a matter that may have otherwise proceeded under the RMA instead proceeds under the fast-track process.		
Cost recovery Sch 3 cl 14-15 (BRF-4664)	The Bill includes provisions that allow for the EPA, responsible agency, and other relevant agencies to recover the actual and reasonable costs incurred by undertaking FTA functions. The provisions in Sch 3 cl 14-15 need to be amended to remove the reference to Ministers – this should only apply to the responsible agency, EPA, and relevant agencies/authorities that have a function, duty or power under the Act.	131. Agree to amend Sch 3 cl 14-15 to remove reference to the Minister recovering costs and clarify instead that it is the responsible agency, EPA and other relevant statutory bodies/agencies that may recover costs under these provisions	Yes No
Consultation requirements Sch 4 clause 20-22 (BRF-4664)	Schedule 4 cl 20 currently includes different lists of parties that must be invited to provide written comments on listed projects and referred projects. We recommend changes to reduce duplication and complexity: - The Panel should be required to seek comments from the same parties for both listed and referred projects – the only difference is that for referred applications, the referral decision may specify additional parties, and relevant parties identified in the cl 13 report (if this report is not obtained for listed projects) - Instead of listing parties such as the Director-General of Conservation and Heritage New Zealand Pouhere Taonga individually, the Panel should be required to seek written comments from all relevant statutory or other bodies or departments - New Zealand Infrastructure Commission should be removed from this list – not every project will be infrastructure-related, so we suggest it is best left to the Panel’s discretion (or Ministers in the referral order) to decide whether they should be included in relation to each project - Instead of listing ministerial portfolios, the requirement should be the same as cl 19(1)(b) (“relevant portfolio ministers”) – this will be more durable as ministerial portfolios and responsibilities often change	132. Agree the Panel must seek written comments from the same parties for both listed and referred projects 133. Agree to remove specific reference to the Director-General of Conservation and HNZPT in Sch 4 cl 20, and instead include all relevant statutory or other bodies or departments” 134. Agree to remove the New Zealand Infrastructure Commission from the list of parties the Panel must seek written comments from (making it optional if relevant to the project) 135. Agree to include “relevant portfolio ministers” instead of the list of specified portfolio ministers	Yes No Yes No Yes No Yes No
Hearing and other procedures Sch 4 clauses 25-28 (BRF-4664)	The Bill allows for the Minister to direct a suspension in processing an approval, and enables applicants to request a suspension. If a suspension is granted, notice must be given to relevant parties (including those from whom written comments were sought).	136. Agree that notice of any suspension or resumption of processing of an application should be provided to any relevant statutory or other bodies or departments	Yes No

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	We recommend ensuring notice of any suspension in processing is also provided to the relevant statutory bodies or departments (eg, HNZPT, DOC, and MPI).		

Fast-track joint Ministers meeting

Wednesday 29 May 2024, 6:30pm – 8:00pm

Executive Wing, 6.3

Ministers	Hon Chris Bishop (Chair), Minister Responsible for RMA Reform, Minister for Infrastructure Hon Simeon Brown, Minister of Transport, Hon Tama Potaka, Minister of Conservation Hon Shane Jones, Minister for Oceans and Fisheries, and Minister for Resources
Officials	James Palmer, Secretary for the Environment Nadeine Dommissie, Deputy Secretary (MfE) Jo Gascoigne, MfE Paul Stocks, MBIE Susan Hall, MBIE Amelia Smith, DoC Ruth Isaac, DoC Warren Fraser (Te Arawhiti)

	Item	Lead	Time
1.	Context setting	Hon Chris Bishop	5 mins
- Two briefings have been provided (BRF-4664 and BRF-4752). The decisions contained in these briefings have been combined into a single table and labelled as 'combined decisions table for meeting' to sign off. - Cabinet agreement is required if the Departmental Report recommends any changes to the Select Committee which depart from previously agreed policy decisions. - This meeting should focus on the substantive issues (as indicated in the table); there are a number of minor technical issues I propose Ministers delegate to the Minister for RM Reform to make (in conjunction with the Minister for Conservation where appropriate). Supporting documents: - BRF-4664 and BRF-4572			
2.	Select Committee update	Jo Gascoigne	10 mins
Supporting documents: Appendix 1: Key themes from submissions - MfE and DoC			

3.	Substantive decisions (Table 1)	Hon Chris Bishop	45 mins
- Decisions required in Table 1 reflect themes and matters raised through Select Committee submissions. - Some gaps in policy have been identified which require changes, these are also reflected in Table 1. Supporting documents: - Appendix 2: Table 1 Substantive decisions			
4.	Technical decisions	Hon Chris Bishop	15 mins
- The speed at which the Bill was produced meant large parts of the Bill are not well-aligned. Officials from agencies responsible for different approvals have identified a range of improvements to resolve these issues. These changes align with the Bills overall policy direction. Supporting documents: - Appendix 2: Table 2 technical decisions			
5.	Next steps	Hon Chris Bishop	5 mins
Decisions taken at this meeting will be reflected in a Cabinet paper to be taken by Hon Bishop and Hon Jones. This is intended to go to the Cabinet Economic Policy Committee on 19 June and Cabinet on 24 June under the current timeframes.			

Appendix 1: Key themes from submissions (as summarised by MfE) on Fast-track Approvals Bill (as at 1 May 2024)

Planning, legal and other practitioners Includes Resource Management Law Association, The Law Association, New Zealand Law Society, Te Hunga Rōia Māori o Aotearoa – The Māori Law Society, New Zealand Planning Institute.	In principle, generally support the intent to provide a simplified and comprehensive consenting regime. Concerns include: • The Bill is disproportionately pro-development and needs greater emphasis on environmental considerations. • The degree of discretion joint Ministers will have in the referral and decision-making processes and the concentration of power in the executive is inappropriate. • The lack of opportunities for public involvement in the fast-track process. • The climate impacts of projects and concerns that the legislation may be inconsistent with New Zealand’s international obligations such as the Paris Agreement. • No requirement for persons exercising functions under it to do so in accordance with Te Tiriti o Waitangi principles and obligations. • Bespoke solutions to awarding resource consents does not provide predictability and clarity to applicants of the wider community affected. • Unintended consequences and concerns about interdependencies between infrastructure.
Environmental groups Includes Environmental Defence Society, Forest & Bird, Greenpeace Aotearoa, The Environmental Law Initiative and local conservation groups.	Strongly oppose the Bill, reflecting a fundamental disagreement with the prioritisation of short-term economic gain over communities and ecosystems. Concerns include: • The disregard for existing environmental protections. • The disregard for democratic principles. • The lack of consultation with stakeholders and the lack of opportunities for public involvement in the fast-track process. • The Bill violates the Treaty of Waitangi and is therefore unconstitutional.
Business, development and infrastructure Includes Property Council, property developers, BusinessNZ, Clarus, Civil Contractors New Zealand, Transpower New Zealand Ltd, power companies.	Generally support the Bill, especially property development groups. Their feedback highlights: • Concern about too much consultation and the potential for one minister to hold up the process. • Lack of resourcing for local councils to engage in the process. • Wanting public and private plan changes (including rezoning) to be available. • The need to ensure transparency and legitimacy in ministerial decision-making. • Concern about the lack of notification for infrastructure providers • Insufficient consideration about the overall balancing of the needs for economic development and the sustainability of the environment. • Lack of timeframes for decision-makers • Processes in the Bill being more onerous than existing processes, or it being unclear/complex.
Local government Includes Auckland Council, Christchurch City, Hamilton City, Dunedin City, Bay of Plenty Regional, Greater Wellington Regional, Waikato Regional, Hawke’s Bay Reigonal Councils; Taituarā / LGNZ.	Generally support the enabling of regionally or nationally significant development, including infrastructure, but have significant drafting and implementation concerns. Some oppose the Bill in its current form. • Bill enables economic development at the cost of environmental degradation, and it is unclear how the Bill will support cultural, social and economic priorities for local communities. • Lack of regard for Māori rights and interests, the Treaty of Waitangi and risk of creating new grievances. • Concern that Ministerial decision-making is inappropriate as decisions require technical expertise and local knowledge. • Concern that projects will not be considered within the existing framework of council jurisdictions and responsibilities, reiterating the need for cost recovery in all aspects of local authority involvement. • Need for clear eligibility and acceptance criteria to avoid clogging up the system and get development in the right place. • Concern about the loss of local voice and inadequate public consultation.
Post settlement governance entities, iwi, hapū, and other Māori representative groups 77 submissions including Te Tai Kaha Māori Collective and those using the Freshwater Iwi Leaders’ Group form submission.	Strongly opposed to the Bill. Many groups specified they are not opposed to fast-track consenting generally but are opposed to this particular approval process. • Strong feedback that the lack of a requirement to comply with the principles of the Treaty of Waitangi is unconstitutional, breaches the Treaty, and conflicts with upholding settlements. • Concern about the prioritisation of development over long-term protection of the environment. • Concern at power being concentrated with three Ministers who can override panel recommendations. • Concern at the lack of protection for groups yet to settle their Treaty of Waitangi claims. • Concern at the lack of public scrutiny afforded to the listed projects process and lack of public participation in the referral process. • Concern at the inclusion of prohibited activities and previously declined activities in the eligibility criteria.
Individual submissions	Early analysis suggests most individual submitters oppose the Bill because of environmental, constitutional or Treaty concerns.
Note: This is a preliminary analysis and may not be reflective of individual submissions.	

Appendix 1: Key conservation related themes from submissions (as summarised by DoC) on Fast-track Approvals Bill

<u>General</u> conservation concerns raised by submitters	General conservation related themes that have been reflected in submissions include: • The prevailing development purpose of the Bill and the reduced environmental considerations and safeguards threaten New Zealand’s unique biodiversity. • Mining developments, including deep sea mining are the types of projects submitters are particularly concerned about. • Mining should be excluded from all conservation land (or at minimum, be publicly notified). • Concerns that development may be enabled on national parks and other land on Schedule 4 of the Crown Minerals Act (particularly mining). • Concerns for impacts on biodiversity and threatened species, including taonga species. • The Minister of Conservation should be included in the core group of decision-making Ministers. • Concerns about public access impacts, particularly with regard to hunting and fishing.
<u>Specific</u> conservation concerns raised by submitters	Some submitters (notably environmental organisations, conservation statutory bodies, individuals, local government and Iwi, hapū and other Māori representative groups) have noted specific conservation related issues, including: • The lack of requirement for concessions to be consistent with conservation management strategies and conservation management plans. • Concerns that an important environmental safeguard is removed as concessions can be granted under the Bill even when an application does not comply with the provisions of the Conservation Act, and where the concession is not consistent with the conservation purpose for which the land is held. • Concerns with stewardship land being eligible for fast track, as it is possible for stewardship land to hold significant values similar to those covered by the Fast Track exclusions (e.g. National Parks). Some submitters suggest that stewardship areas should be excluded from the Bill until reviewed and formally classified under the Conservation Act, National Parks Act or Reserves Act. • Some submitters are concerned that fast track projects may be allowed on New Zealand’s UNESCO World Heritage Areas and that these sites will be open to greater levels of development which may be inconsistent with the purpose for which they are designed under the World Hertiage Convention 1972. • Concern about the use of offsetting and compensation and that if this is to be enabled in the Bill, that an effects management hierarchy approach is needed for conservation approvals (e.g. applicants should avoid, remedy, or mitigate adverse effects before resorting to offsetting or compensation). • Concern about extending land exchanges beyond stewardship land. • Concerns with the provision in the Bill that allows the Minister of Conservation to revoke or amend existing conservation covenants and the lack of prioritisation of the original landowner’s intentions in entering into the covenant, or the values that the covenant protects. • Concern the Bill is inconsistent with our international obligations, such as the Convention on Migratory Species of Wild Animals, which New Zealand is signatory to. • Lack of requirement in the Bill to consult with statutory bodies (New Zealand Conservation Authority, New Zealand Conservation Boards, Fish and Game Council New Zealand and New Zealand Game Animal Council) where relevant. • Iwi have raised concerns about how their right to first refusal relates to land exchanges. • Preference from some councils to have council-administered land subject to the Reserves Act not eligible for fast-track. • The need to require written consent from local authorities when a concession is fast tracked on council-administered land. • Support for including conservation approvals in fast-track processes. • Support for the existing conservation land exclusions.



Aide Memoire - Updates to support Ministerial engagement for Fast-track

Date submitted: 7 June 2024

Tracking number: BRF-4874

Security level: In-Confidence

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Actions sought from ministers

<i>Name and position</i>	<i>Action sought</i>
To Hon Chris BISHOP Minister Responsible for RMA Reform	For noting only

Appendices and attachments

1. Public participation options
2. RMA hierarchy within purpose of FTAB Bill
3. Evidence of how the RMA is currently working

Key contacts at Ministry for the Environment

<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Principal Author	Kevin Guerin	s 9(2)(a)	
Responsible Manager			
General Manager	Jo Gascoigne	s 9(2)(a)	✓

Update to support Ministerial engagement for Fast-track

Purpose

1. This aide memoire attaches summary notes on several issues arising from Joint Ministers discussion on the Fast-track Approvals Bill (the Bill) on 29 May 2024 with more detailed advice to Ministers in BRF-4854:
 - i. options for enhanced public participation in fast-track
 - ii. role of RMA hierarchy within the Bill
 - iii. evidence of how the Resource Management Act 1991 (RMA) is currently working.

Signatures



Jo Gascoigne
General Manager
Resource Management System
7 June 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date:

Annex 1: NMS - Consent Approvals	37,996 applications the large majority (95.2%) were granted, while only 0.3% were declined. The remaining 4.4% were either deemed incomplete or withdrawn. The NMS does not provide data on why consents were declined but can provide insights on the types of applications declined and how this compares to previous years.
NMS - Timeframes	the median processing time for new resource consent was 57 days, averaged across all councils and all consent types. 74.6% (28,349) were processed within the statutory timeframe. For comparison, in 2014/15, 96.7% of applications were processed within the statutory timeframes. Land use permits and coastal permits took less time to process than other permits, particularly subdivision, water, and discharge permits.
NMS - Notification	97.6% of consents (36,360) were processed non-notified, 1.5% (546) were limited notified, and 0.9% (352) were publicly notified ¹ . Limited or public notification increased uncertainty and costs for applicants. Data shows that the proportion of consents that have involved a hearing has decreased from 1.5% in 2014/15 to 1.0% in 2022/23
Environment Court - Appeals	0.002% (94) resource consents that were appealed in 2022/2023 - the Environment Court can provide information on the specific cases to provide further insight.
EPA – Fast Track Consenting	Under the Covid-19 Recovery (Fast-track Consenting) Act between 2020 and 2023 there was a total of 136 applications. Of these only 6 applications (4%) were declined. The reasons the applications were declined related to impacts on infrastructure and defence facilities, water quality and ecology, productive land, and compromising the future urban development of land.

Plan-making

1. There are currently over 100 policy statements and plans across New Zealand's 11 regional councils, 61 city or district councils, and six unitary councils.
2. There were 225 ongoing plan-making processes (such as proposed plans, plan changes, etc.) in 2022/23, with 50 being completed. The average cost of completed plan-making processes was \$726,000. The median time taken by councils to complete plan changes over 2022/23 was slightly under one year (compared to the two-year statutory requirement). There were 3,362 appeals on plan-making processes between July 2022 and June 2023, of which 392 (or 11.7%) proceeded to court.
3. The number of council FTEs engaged in plan-making was consistent with previous years, at 450. This contrasts with the number of FTEs involved with consenting, which increased from 918 in 2021/22 to 1,230 in 2022/23.

Question 2: What is not working and what can be done to improve the system?

4. There have been numerous reports and studies prepared over the last few years to assess the current RM system and diagnose key issues with the operational aspects of the system, including: the New Zealand Infrastructure Commission / Te Waihanga²; Resource

¹ Percentages for notification and statutory timeframes are based on consents that were either granted or declined (not withdrawn etc.) and where data on notification and timeliness exists.

² Infrastructure Commission 2020 and 2021: [The cost of consenting infrastructure projects in New Zealand](#) ; and [Unlocking the Value of Data: Managing New Zealand's Interconnected Infrastructure](#)

Management Review Panel (RMRP)³; Productivity Commission⁴; OECD⁵; Parliamentary Commissioner for the Environment (PCE)⁶; New Zealand Institute of Economic Research⁷; Local government through the National Monitoring System⁸; Te Uru Kahika (Regional and Unitary Councils Aotearoa)⁹; PLANZ Consultants¹⁰; Ministry for the Environment analysis papers¹¹.

5. It is widely agreed through these sources that the resource management system is not fit for purpose. While the RMA has delivered for housing, infrastructure, the primary sector and the environment, some of these outcomes have been poor. Some RMA processes can be complex, slow, litigious and costly, and numerous amendments to the RMA over its lifetime have exacerbated this. This has stifled some growth opportunities, and environmental outcomes have declined in some areas.
6. With a view to a more effective and efficient RM system, the evidence shows that the key areas of the system that are not working, are slowing it down and not functioning as intended could be addressed through:
 - i. Focusing on outcomes and solutions rather than adverse effects and prescriptive controls Focusing on outcomes and solutions versus adverse effects and prescription
 - ii. Reducing complexity and constant change and aligning delivery
 - iii. Increasing system participant capability and capacity
 - iv. Leveraging the co-benefits between economic and environmental objectives
 - v. Leveraging data more effectively for continuous improvement

Focusing on outcomes and solutions

7. The resource management system is primarily focused on adverse effects and prescriptive controls, which can create a culture of risk aversion and disproportionately conservative practice and judgments, a tendency towards the status quo, combative behaviour, and defaulting to costly, time-consuming litigation.
8. Some countries have a greater emphasis on overall outcomes and support local, collaborative and innovative solutions to deliver the target outcomes, which reduces risk aversion. This is demonstrated through greater central government leadership, and includes 'front-loading' the system through approaches such as spatial planning, 'measures that matter', and standardisation, so that when you get to the consenting process, the focus is on the higher risk applications and non-standard solutions (i.e., a development in an area where it wasn't envisaged).

³ [New directions for resource management in New Zealand | Ministry for the Environment 2020](#)

⁴ [Productivity Commission | Better urban planning 2017](#)

⁵ OECD, 2024: [Assessing the Economic Impacts of Environmental Policies](#)

⁶ Parliamentary Commissioner for the Environment, 2022: [Environmental reporting, research and investment](#)

⁷ NZIER Resource management workforce forecasting report, 2022 (not publicly available)

⁸ [National monitoring system | Ministry for the Environment](#)

⁹ Central and regional government alignment submission, 2023 (not publicly available)

¹⁰ PLANZ RM Practice Change Review – interviews with different sectors, 2024 (not publicly available)

¹¹ International Review of Planning Frameworks; International RM Comparisons (not publicly available)

1. As an example, spatial planning is a way in which key system participants (such as central and local government, infrastructure providers, stakeholders, industry, iwi/hapū, and communities) can agree on a vision and set an agreed framework for a region, addressing key opportunities (such as infrastructure and environmental protection) and risk mitigation (such as managed retreat and adaptation). This helps identify early on what matters most, and where the key risks are.
9. Councils can then identify what development is low risk, envisaged, and can benefit from reduced consenting requirements – with benefits for industry, councils, and housing and infrastructure for communities. Low-risk applications can move through the system with greater certainty and less inconsistency.

Reducing complexity and constant change and aligning delivery

10. There is consensus that the RM system has become increasingly complex and there has been constant change since its introduction¹². This is best reflected through the lack of consistency across over 150 plans and statements¹³.
11. Recent national direction has assisted to provide direction to the system; however, it remains incomplete and does not sufficiently guide decision-makers how to reconcile conflicts in plans and consenting processes, leading to inconsistent application and interpretation. It can also be viewed as too complex and focused on too many different things to be effectively and easily implemented, as well as demonstrating a lack of integration and cohesiveness across central government agencies in some instances.
12. In the absence of earlier and stronger national direction, councils have interpreted and applied the Act inconsistently, leading to inconsistencies across the country and frustration for developers and infrastructure providers. The split in functions between regional councils and territorial authorities can be blurry, leading to further frustrations for system users. In addition, constant changes add to the workload of practitioners (particularly of council staff) and detract from capacity for other work such as consent processing.
13. There are opportunities across the system such as providing stronger and more integrated national direction, and co-designing new policy with system users to make sure it works on the ground, achieves the intended outcomes, and has 'buy-in' across stakeholders.

Capability and capacity

14. There are shortfalls in capacity and capability across the RM system, particularly for delivery partners and in key professions, such as commissioners and planners¹⁴. There are several aspects to this problem, including the disparity in the size and rating base of councils, a lack of attractiveness and respect for those who work in the system, lack of consistent and regular training and upskilling, and timing, sequencing, and workload issues generated by central government through changes in direction.

¹² There have been 24 amendments to the RMA since 1991 (excluding the New Zealand Coastal Policy Statement), 65 amendments as a result of Treaty Settlement Acts, 13 amendments as a result of associated or location-specific legislation, and 11 regulations

¹³ There are eight national policy statements and 10 national environmental standards in force.

¹⁴ NZIER, 2023

15. There are significant opportunities that could be explored, including data and digital solutions to achieve process efficiencies and reduce capability and capacity pressures, such as use of AI, increased digitisation and standardisation, and automation of parts of the consenting process, as is occurring in other countries¹⁵.
16. Other opportunities could include partnering with professional organisations to deliver training, developing an 'access to experts' framework across councils, and ensuring policy is developed with an implementation lens to recognise and address capacity and capability constraints for implementers, including a strategic approach to timing, staging, and sequencing.

Economic and environmental co-benefits

17. Research by the University of Melbourne (2021) across 22 OECD countries shows that better links between environment and economic objectives deliver better outcomes for both, confirmed by the Australian Government's adoption in 2022 of its *Nature Positive Plan: better for the environment, better for business*¹⁶. Similarly, OECD (2024) recommends the increased use of market-based instruments in environmental policy.
18. Economic approaches such as maximum economic yield show benefits for both the environment and the economy, with data helping everyone involved (from primary producers to scientists) to track performance, refine knowledge over time, and improve processes and approaches in a consistent framework. Approaches such as biodiversity credits and emissions trading are examples of where this approach is being taken in New Zealand, but there are more opportunities that could be explored in the environmental space.

Leveraging data

19. Better data collection and more targeted analysis of key metrics is required to focus on what matters most to support targeted improvement of the RM system and policy. The system has not been designed cohesively to ensure good availability of science, data and biophysical modelling to support adaptive decision-making and continuous improvement, and limited resourcing and relative priorities means that work has been focused on new policy and legislation rather than overseeing and improving the current operative RM system.
20. While there are large quantities of data, its functionality is limited by significant gaps in what is being measured, inconsistent quality and coverage, lack of coordination, and accessibility issues. Data is currently collected by various bodies for different purposes through a variety of formats, resulting in a lack of coherence and a disconnect between local and national objectives.
21. Using the NMS as an example, it is currently not possible to determine why resource consent applications have been declined or publicly-notified or why applications are going over timeframes, or to differentiate between the scale and complexity of consents that are being applied for. Councils often fail to meet monitoring requirements due to other priorities

¹⁵ Fluid Industries, 2024. Integrating Artificial Intelligence in New Zealand's RM System

¹⁶ [Nature Positive Plan: better for the environment, better for business \(dcceew.gov.au\)](https://www.dcceew.gov.au/nature-positive-plan)

or a lack of capacity and the monitoring and evaluation that is undertaken (for instance through housing capacity assessments) is generally not comparable across councils or integrated into wider evaluations of planning frameworks. MfE and therefore Ministers are unable to identify where policy or operational support should focus to enable councils to move in the right direction.

22. Central government has an opportunity to leverage greater value through a strategic and deliberate approach to improving the quality and performance of the system (including targets for housing and infrastructure), through improved use of technology, better coordination, consistent standards, and targeted and staged investment.

Question 3: What is the value of environmental interventions such as the RMA?

23. Economic theory emphasizes managing externalities from development or policy, particularly negative ones like pollution. Regulations like the RMA help minimize these externalities and avoid the 'tragedy of the commons', which leads to adverse economic, social, and environmental outcomes¹⁷.
24. Historical examples show the negative impacts of inadequate environmental regulation. For example, overfishing in open access fisheries like the Atlantic northwest cod fish, which collapsed in 1993 resulting in the loss of 30,000 jobs in Canada alone and is yet to recover¹⁸. Similarly, the "Great Smog" of 1952 in London which killed approximately 4000 people in four days highlighted the issue of unregulated pollution¹⁹.
25. As a result, every developed jurisdiction in the world has a planning or resource management system underpinning their economic and social systems. OECD analysis shows that environmental policies have overall been effective at reducing pollution, while having relatively small effects on economic outcomes such as employment, investment, trade and productivity²⁰.
26. Internationally, one of the most successful interventions has been the Montreal Protocol²¹ which addressed ozone-depleting pollution sources. A review of the global economic benefits of the Protocol demonstrated that economic benefits were expected to exceed costs by some \$224 billion²². This figure reflects the avoided health impacts as well as avoided economic costs associated with reduced UV-B damage to agriculture, forestry and fisheries. Reducing ozone-depleting chemicals has also had climate mitigation co-benefits estimated to be 0.3-0.5°C less warming by 2100²³.
27. In New Zealand, a recent example of negative externalities arising because of resource use was the aftermath of Cyclone Gabrielle in the Gisborne region, where woody debris and sediment caused destructive debris flows and resulted in costly damage to properties, infrastructure and ecosystems. The subsequent inquiry panel report advised that an

¹⁷ Harvard Business School: [Tragedy of the Commons: Examples & Solutions | HBS Online](#)

¹⁸ [Massive collapse of Atlantic cod didn't leave evolutionary scars | Science | AAAS](#)

¹⁹ UK Met Office: [The Great Smog of 1952 - Met Office](#)

²⁰ OECD, 2024: [Assessing the Economic Impacts of Environmental Policies](#)

²¹ The Montreal Protocol was adopted on 16 September 1987

²² [Global Benefits and Costs of the Montreal Protocol | SpringerLink](#)

²³ [Ozone layer recovery is on track, helping avoid global warming by 0.5°C \(unep.org\)](#) (and 10th edition of the Scientific Assessment Panel)

inadequate regulatory regime for forestry, along with limited compliance monitoring, were key contributors²⁴.

28. Air pollution is another example where there are significant negative externalities for human health. A 2019 analysis identified a cost benefit ratio of 8.4:1 for reducing air pollution, with savings of \$820m for updating the National Environmental Standards for Air Quality²⁵. Christchurch provides a specific example, with the Canterbury Air Regional Plan (developed under the RMA) combined with financial incentives like the Healthier Homes program helping make targeted improvements to both environmental and health outcomes.
29. Land use in the Kaipara catchment has led to a sediment load of approximately 700,000 tonnes per year, compared to approximately 120,000 tonnes per year in pre-human times²⁶. This additional sediment load has a range of negative externalities for the environment, people and the economy. For example, Kaipara has the only snapper nursery on the west coast of the north island, New Zealand's second largest snapper fishery. While limits under the Quota Management System helped rebuild the snapper fishery from impacts of overfishing in 1960s and 70s, land use decisions that increase sedimentation and pollution pose risks to snapper stocks²⁷. Recent investment via the Jobs for Nature programme aims to address land-use driven issues like sedimentation and pollution, and the upcoming review of NPS-FM provides an opportunity to complement this investment.

²⁴ environment.govt.nz/assets/Outrage-to-Optimism-CORRECTED-17.05.pdf

²⁵ [Air quality cost-benefit analysis update - Review of NES Air Quality - policy options \(environment.govt.nz\)](#)

²⁶ [kaipara-harbour-sediment-mitigation-study-summary-streamlined-environmental-ltd-30-jan-2018.pdf](#)

²⁷ [Review of sustainability measures for snapper \(SNA 8\) for 2021/22 \(mpi.govt.nz\)](#)

Public participation

1. Of the five main groups of submitters analysed, all raised concern about different aspects of these arrangements. This included:
 - i. landowners and occupiers to be consulted before the first application is made
 - ii. Panel ability to expand consultation based on scale, nature and extent of potential effects
 - iii. stronger provisions to utilise local voice and knowledge
 - iv. public consultation when Crown land and the coastal marine area is involved
 - v. notification to infrastructure providers
 - vi. greater rights to appeal against Ministers decisions.
2. Previous fast-track regimes provide a helpful comparison

	Fast-track Approvals Bill 2024	Natural and Built Environment Act 2023	COVID-19 Recovery Act 2020	National Development Act 1979
Notification	No public notification	No public notification	No public notification	Public notification.
Feedback	Written comments sought from specified parties.	Written comments sought from specified parties.	Written comments sought from specified parties.	Anyone could make submissions.
Hearings	Hearings discretionary	Hearings discretionary	Hearings discretionary	Affected people and representatives of public interest had a right to be heard
Project scope	infrastructure and development projects with significant regional or national benefits	infrastructure and housing	promote employment to support recovery from COVID-19 and support certainty of ongoing investment across New Zealand	very large but narrowly focused projects

3. Increasing opportunities for public involvement provides decision-makers with more information, but it comes at the cost of expediency. The absence of public notification has been a key feature of the NBA and COVID-19 fast-track regimes as it allows expert panels to be more targeted in the way different views are considered on projects. We do not recommend changing this approach.
4. However, public participation can unearth useful information for panels that they may not be aware of by other means. Panels should therefore have a way to access this info where appropriate and without adding undue delay. At present they can Sch. 4 Cl. 20(4) "invite written comments from any other person the panel considers appropriate".
5. To strike an appropriate balance, we provide several options giving the Panel more time to identify the additional parties they consider are appropriate to seek comment from, when they are considering applications. Each application will have different circumstances which determine who the most relevant parties are, and providing

sufficient time for the Panel to receive advice on those circumstances means their process can be better informed. Ministers may wish to adopt this policy change regardless of where responsibility lies for the substantive decision on fast-track applications.

Current provisions in Bill

6. Currently an Expert Panel is:
- i. unable to seek public submissions
 - ii. not required to conduct a hearing
 - iii. required to seek and consider comments from Ministers, local government, Māori groups, landowners and other listed groups
 - iv. able to invite written comments from any person the panel considers appropriate.

Options

7. In terms of social license, transparency and buy-in, there are benefits from providing options for greater public participation in consideration of some, if not all, fast-track projects. Some options are outlined below with the preferred options highlighted.

Level of obligation	Who by	Level of specification on scope, process or timing
A. mandatory	1. Minister or Panel	i. obligation in statute to engage with the public
B. optional	2. Panel at Ministerial direction	ii. Ministerial power in statute to direct Panel on: a. appropriate scope of engagement, up to and including the public b. whether to limit that engagement to written comments
	3. Panel discretion	iii. appropriate scope of engagement, up to and including the public iv. whether to limit that engagement to written comments

8. Making public participation mandatory would be simple to implement, but would extend timelines generally and not necessarily be appropriate for all projects. Making greater public participation optional, on the other hand, could be more appropriate/proportional but would require explicit consideration in each case. If such consideration was by the Minister, this would require information they might not hold and risk greater exposure to legal review of their process. If the consideration was by the Panel, it would require some guidance from the Minister as to expectations and purpose.
9. These risks could be most easily managed by enabling the Minister to direct the expert panel, potentially as part of their terms of reference, to:
- consider whether public participation was appropriate for any given proposal
 - advise what form this should take and how it should occur; eg, to propose the scope of the request and how long should be allowed to receive and consider submissions within their overall timeline for considering each proposal.
10. The Minister's direction could be flexibly designed (eg, including scope and timing expectations) and updated as required to reflect experience. This approach would also fold the participation decision into the existing legislative design.

Annex 2: RMA hierarchy within purpose of FTA Bill

1. The decision table for the joint Ministers meeting included recommendation 33 on changing how the RMA hierarchy would be addressed within the Fast-track Approvals Bill (the Bill). The policy intent, as directed by Ministers, was to give relative weighting to:
 - i. the purpose of the FTA Bill, then
 - ii. the relevant matters in the underlying legislation (in the case of schedule 4, the RMA), based on the model in the HASHA legislation
2. Retaining this role for underlying legislation, subject to the FTA Bill purpose:
 - i. provides clear legislative direction on how an application (listed or referred) is prepared, assessed and decisions made in order
 - ii. while mitigating the risks of legal challenge and uncertainty for applicants that would arise in the absence of such direction or in interpreting brand new direction.
3. The advice around recommendation 33 did not adequately clarify the following points:
 - i. using a version of the RMA hierarchy (with part 2 matters first, and then identifying other relevant provisions) is necessary in order to:
 - a) tie the process outcomes into the RM system and therefore allow the granting of RM consents
 - b) ensure that RMA considerations are explicitly identified as subject to the purpose of the FTA Bill.²⁸
 - ii. the current drafting of clause 32 does not reflect the above policy intent – it lists the relevant RMA provisions and criteria within sub-clauses, but:
 - a) would require that each of those RMA matters is given a different weighting, which was not the policy intent, and would be very unclear in its application as the RMA has its own hierarchy, which could confusion for the Panel as to how these matters would be applied
 - b) because of its detail, gave an impression of a highly prescriptive approach to RMA matters, which was not intended.
4. The proposed drafting change given below, refines the RMA matters and clarifies how they are to be considered, in line with Ministers original decisions and the policy intent, while noting that some flexibility is required to allow for PCO to draft.
5. Delegated Ministers, including yourself, will receive advice on this matter in BRF-4854 which responds to the request from Fast-track joint Ministers for more information to support their decisions on policy and workability changes to the Fast-track Approvals Bill for recommendation to the Environment Committee in the Departmental Report on the Bill

²⁸ It is worth noting that case law over the last 11 years (King Salmon, Davidson, Bunnings) has made it quite clear that decision makers ONLY need to go up to consider Part 2 matters if the plans underneath them are out of date or incomplete. Part 2 matters are not commonly considered.

Previous drafting	Proposed drafting
Agree to amend Sch 4 cl 32 to clarify that the matters the Panel must consider when assessing a consent application or notice of requirement are (with weight given greater to lesser): a) The purpose of the FTA Bill b) The relevant provisions under the RMA: A. The purpose of the RMA B. RMA sections 6-7 C. the provisions of any of the following, if relevant, made under the Resource Management Act 1991: i. a national environmental standard: ii. other regulations: iii. a national policy statement: iv. a New Zealand coastal policy statement: v. a regional policy statement or proposed regional policy statement: vi. a plan or proposed plan; and vii. iwi management plans: D. other relevant provisions of the RMA or any other legislation that direct decision making under the Resource Management Act 1991 (for example, sections 104 to 107 of that Act and the provisions referred to in clauses 31 to 35).	agree to correct this by applying the following weighting when RMA matters are considered (noting that the purpose of the Bill is given the greatest weight, as set out below) a) The purpose of the FTA Bill b) The relevant provisions under the RMA, in particular those that direct decision-making under Parts 6, 8 and 10 of the RMA²⁹, except that: i. where reference is made in those Parts of being subject to Part 2 of the RMA, the consideration shall be given to sections 5 to 7 of the RMA only and shall be subject to subsection (a) above; ii. clauses 33 to 37 of the FTA Bill apply in addition. note clauses 33-37 are intended to identify all relevant provisions in RMA that need to be applied, and officials will review those clauses to ensure this is achieved; and refine them so they are more workable and to avoid duplication note that section 6(h) RMA requires that the management of significant risks from natural hazards be recognised and provided for as a matter of national importance. This will form part of the relevant matters assessed by the Panel on RM approvals under schedule 4 of the Bill, although with a lesser weighting than the Bill's purpose).

6. Cross-references in the drafting to specific RMA provisions do not affect the intended hierarchy, including the priority of the purpose of the FTA Bill, but ensure that it applies across all relevant matters and processes. For example:
- i. sections in footnote cover matters consent authorities must generally consider such as activity types, application types, natural hazards, effects, national standards, plans, conditions, bonds, duration, certificates of compliance
 - ii. clauses 33-37 of the Bill cover process requirements around application processes, consents, designations etc.
7. There is some overlap between the references to Parts 6, 8 and 10 of the RMA and clauses 33 to 37 of the FTA Bill but this has no effect on the process or weighting and would likely require quite complex drafting changes to avoid. PCO may be able to achieve this given enough time.

²⁹ Cross-referenced sections: **Part 6 – Resource Consents:** sections 104, 104A-C, 104G, 105, 106, 107, 107F, 108, 108AA, 108A, 109, 123, 123A, 124, 125, 127, 138, 138A, 139 and 139A. **Part 8 – Designations:** sections 168A, 171 and 172. **Part 10 – Subdivision:** sections 220, 230, 231, 232, 233, 234, 235, 237A and 237B

Annex 3: Evidence of how the RMA is currently working

30. To help understand factors impeding the system, we have analysed evidence to answer:

- i. question 1: How is the RM system currently working?
- ii. question 3: What is the value of environmental interventions such as the RMA?

31. The appendix question covers what is not working and what can be done to improve the system.

Question 1: How is the RM system currently working?

32. To understand how the system is functioning in an operational sense, MfE analyses data provided by councils to develop the annual National Monitoring System (NMS) report³⁰.

Resource consents

33. The recent NMS report laid out a range of insights on the operation of the RMA between July 2022 and June 2023 as follows. A summary of evidence related to resource consents is provided below utilising NMS, Environment Court and Environmental Protection Agency (EPA) data.

NMS - Consent Approvals	37,996 applications the large majority (95.2%) were granted, while only 0.3% were declined. The remaining 4.4% were either deemed incomplete or withdrawn. The NMS does not provide data on why consents were declined but can provide insights on the types of applications declined and how this compares to previous years.
NMS - Timeframes	The median processing time for new resource consent was 57 days, averaged across all councils and all consent types. 74.6% (28,349) were processed within the statutory timeframe. For comparison, in 2014/15, 96.7% of applications were processed within the statutory timeframes. Land use permits and coastal permits took less time to process than other permits, particularly subdivision, water, and discharge permits.
NMS - Notification	97.6% of consents (36,360) were processed non-notified, 1.5% (546) were limited notified, and 0.9% (352) were publicly notified ³¹ . Limited or public notification increased uncertainty and costs for applicants. Data shows that the proportion of consents that have involved a hearing has decreased from 1.5% in 2014/15 to 1.0% in 2022/23
Environment Court - Appeals	0.002% (94) resource consents that were appealed in 2022/2023 - the Environment Court can provide information on the specific cases to provide further insight.
EPA – Fast Track Consenting	Under the Covid-19 Recovery (Fast-track Consenting) Act between 2020 and 2023 there was a total of 136 applications. Of these only 6 applications (4%) were declined. The reasons the applications were declined related to impacts on

³⁰ [National Monitoring System for Resource Management](#)

³¹ Percentages for notification and statutory timeframes are based on consents that were either granted or declined (not withdrawn etc.) and where data on notification and timeliness exists.

	infrastructure and defence facilities, water quality and ecology, productive land, and compromising the future urban development of land.

Plan-making

34. There are currently over 100 policy statements and plans across New Zealand's 11 regional councils, 61 city or district councils, and six unitary councils.
35. There were 225 ongoing plan-making processes (such as proposed plans, plan changes, etc.) in 2022/23, with 50 being completed. The average cost of completed plan-making processes was \$726,000. The median time taken by councils to complete plan changes over 2022/23 was slightly under one year (compared to the two-year statutory requirement). There were 3,362 appeals on plan-making processes between July 2022 and June 2023, of which 392 (or 11.7%) proceeded to court.
36. The number of council FTEs engaged in plan-making was consistent with previous years, at 450. This contrasts with the number of FTEs involved with consenting, which increased from 918 in 2021/22 to 1,230 in 2022/23.

Question 2: What is the value of environmental interventions such as the RMA?

37. Economic theory emphasizes managing externalities from development or policy, particularly negative ones like pollution. Regulations like the RMA help minimize these externalities and avoid the 'tragedy of the commons', which leads to adverse economic, social, and environmental outcomes³².
38. Historical examples show the negative impacts of inadequate environmental regulation. For example, overfishing in open access fisheries like the Atlantic northwest cod fish, which collapsed in 1993 resulting in the loss of 30,000 jobs in Canada alone and is yet to recover³³. Similarly, the "Great Smog" of 1952 in London which killed approximately 4000 people in four days highlighted the issue of unregulated pollution³⁴.
39. As a result, every developed jurisdiction in the world has a planning or resource management system underpinning their economic and social systems. OECD analysis shows that environmental policies have overall been effective at reducing pollution, while having relatively small effects on economic outcomes such as employment, investment, trade and productivity³⁵.
40. Internationally, one of the most successful interventions has been the Montreal Protocol³⁶ which addressed ozone-depleting pollution sources. A review of the global economic benefits of the Protocol demonstrated that economic benefits were expected to exceed costs by some \$224 billion³⁷. This figure reflects the avoided health impacts as well as avoided economic costs associated with reduced UV-B damage to agriculture, forestry and

³² Harvard Business School: [Tragedy of the Commons: Examples & Solutions](#) | HBS Online

³³ [Massive collapse of Atlantic cod didn't leave evolutionary scars](#) | Science | AAAS

³⁴ UK Met Office: [The Great Smog of 1952 - Met Office](#)

³⁵ OECD, 2024: [Assessing the Economic Impacts of Environmental Policies](#)

³⁶ The Montreal Protocol was adopted on 16 September 1987

³⁷ [Global Benefits and Costs of the Montreal Protocol](#) | SpringerLink

fisheries. Reducing ozone-depleting chemicals has also had climate mitigation co-benefits estimated to be 0.3-0.5°C less warming by 2100³⁸.

41. In New Zealand, a recent example of negative externalities arising because of resource use was the aftermath of Cyclone Gabrielle in the Gisborne region, where woody debris and sediment caused destructive debris flows and resulted in costly damage to properties, infrastructure and ecosystems. The subsequent inquiry panel report advised that an inadequate regulatory regime for forestry, along with limited compliance monitoring, were key contributors³⁹.
42. Air pollution is another example where there are significant negative externalities for human health. A 2019 analysis identified a cost benefit ratio of 8.4:1 for reducing air pollution, with savings of \$820m for updating the National Environmental Standards for Air Quality⁴⁰. Christchurch provides a specific example, with the Canterbury Air Regional Plan (developed under the RMA) combined with financial incentives like the Healthier Homes program helping make targeted improvements to both environmental and health outcomes.
43. Land use in the Kaipara catchment has led to a sediment load of approximately 700,000 tonnes per year, compared to approximately 120,000 tonnes per year in pre-human times⁴¹. This additional sediment load has a range of negative externalities for the environment, people and the economy. For example, Kaipara has the only snapper nursery on the west coast of the north island, New Zealand's second largest snapper fishery. While limits under the Quota Management System helped rebuild the snapper fishery from impacts of overfishing in 1960s and 70s, land use decisions that increase sedimentation and pollution pose risks to snapper stocks⁴². Recent investment via the Jobs for Nature programme aims to address land-use driven issues like sedimentation and pollution, and the upcoming review of NPS-FM provides an opportunity to complement this investment.

³⁸ [Ozone layer recovery is on track, helping avoid global warming by 0.5°C \(unep.org\)](#) (and 10th edition of the Scientific Assessment Panel)

³⁹ [environment.govt.nz/assets/Outrage-to-Optimism-CORRECTED-17.05.pdf](#)

⁴⁰ [Air quality cost-benefit analysis update - Review of NES Air Quality - policy options \(environment.govt.nz\)](#)

⁴¹ [kaipara-harbour-sediment-mitigation-study-summary-streamlined-environmental-ltd-30-jan-2018.pdf](#)

⁴² [Review of sustainability measures for snapper \(SNA 8\) for 2021/22 \(mpi.govt.nz\)](#)

Appendix: What is not working and what can be done to improve the system?

1. There have been numerous reports and studies prepared over the last few years to assess the current RM system and diagnose key issues with the operational aspects of the system, including: the New Zealand Infrastructure Commission / Te Waihanga⁴³; Resource Management Review Panel (RMRP)⁴⁴; Productivity Commission⁴⁵; OECD⁴⁶; Parliamentary Commissioner for the Environment (PCE)⁴⁷; New Zealand Institute of Economic Research⁴⁸; Local government through the National Monitoring System⁴⁹; Te Uru Kahika (Regional and Unitary Councils Aotearoa)⁵⁰; PLANZ Consultants⁵¹; Ministry for the Environment analysis papers⁵².
2. It is widely agreed through these sources that the resource management system is not fit for purpose. While the RMA has delivered for housing, infrastructure, the primary sector and the environment, some of these outcomes have been poor and not enough. Some RMA processes can be complex, slow, litigious and costly, and numerous amendments to the RMA over its lifetime have contributed to this. This has stifled some growth opportunities, and environmental outcomes have declined in some areas.
3. With a view to a more effective and efficient RM system, the evidence shows that the key areas of the system that are not working, are slowing it down and not functioning as intended could be addressed through:
 - vi. focusing on outcomes and solutions rather than adverse effects and prescriptive controls
 - vii. reducing complexity and constant change and aligning delivery
 - viii. increasing system participant capability and capacity
 - ix. leveraging the co-benefits between economic and environmental objectives
 - x. leveraging data more effectively for continuous improvement

Focusing on outcomes and solutions

4. The resource management system is primarily focused on adverse effects and prescriptive controls, which can create a culture of risk aversion and disproportionately conservative practice and judgments, a tendency towards the status quo, combative behaviour, and defaulting to costly, time-consuming litigation.
5. Some countries have a greater emphasis on overall outcomes and support local, collaborative and innovative solutions to deliver the target outcomes, which reduces risk

⁴³ Infrastructure Commission 2020 and 2021: [The cost of consenting infrastructure projects in New Zealand](#) ; and [Unlocking the Value of Data: Managing New Zealand's Interconnected Infrastructure](#)

⁴⁴ [New directions for resource management in New Zealand | Ministry for the Environment 2020](#)

⁴⁵ [Productivity Commission | Better urban planning 2017](#)

⁴⁶ OECD, 2024: [Assessing the Economic Impacts of Environmental Policies](#)

⁴⁷ Parliamentary Commissioner for the Environment, 2022: [Environmental reporting, research and investment](#)

⁴⁸ NZIER Resource management workforce forecasting report, 2022 (not publicly available)

⁴⁹ [National monitoring system | Ministry for the Environment](#)

⁵⁰ Central and regional government alignment submission, 2023 (not publicly available)

⁵¹ PLANZ RM Practice Change Review – interviews with different sectors, 2024 (not publicly available)

⁵² International Review of Planning Frameworks; International RM Comparisons (not publicly available)

aversion. This is demonstrated through greater central government leadership and includes 'front-loading' the system through approaches such as spatial planning, 'measures that matter', and standardisation, so that when you get to the consenting process, the focus is on the higher risk applications and non-standard solutions (i.e., a development in an area where it wasn't envisaged).

6. As an example, spatial planning is a way in which key system participants (such as central and local government, infrastructure providers, stakeholders, industry, iwi/hapū, and communities) can agree on a vision and set an agreed framework for a region, addressing key opportunities (such as infrastructure and environmental protection) and risk mitigation (such as managed retreat and adaptation). This helps identify early on what matters most, and where the key risks are.
7. Councils can then identify what development is low risk, envisaged, and can benefit from reduced consenting requirements – with benefits for industry, councils, and housing and infrastructure for communities. Low-risk applications can move through the system with greater certainty and less inconsistency.

Reducing complexity and constant change and aligning delivery

8. There is consensus that the RM system has become increasingly complex and there has been constant change since its introduction⁵³. This is best reflected through the lack of consistency across over 150 plans and statements, at both a national and local level⁵⁴.
9. Recent national direction has assisted to provide direction to the system; however, it remains incomplete and does not sufficiently guide decision-makers how to reconcile conflicts in plans and consenting processes, leading to inconsistent application and interpretation. It can also be viewed as too complex and focused on too many different things to be effectively and easily implemented, as well as demonstrating a lack of integration and cohesiveness across central government agencies in some instances.
10. In the absence of earlier and stronger national direction, councils have interpreted and applied the Act inconsistently, leading to inconsistencies across the country and frustration for developers and infrastructure providers. The split in functions between regional councils and territorial authorities can be blurry, leading to further frustrations for system users. In addition, constant changes add to the workload of practitioners (particularly of council staff) and detract from capacity for other work such as consent processing.
11. There are opportunities across the system such as providing stronger and more integrated national direction, and co-designing new policy with system users to make sure it works on the ground, achieves the intended outcomes, and has 'buy-in' across stakeholders.

⁵³ There have been 24 amendments to the RMA since 1991, 65 amendments as a result of Treaty Settlement Acts, 13 amendments as a result of associated or location-specific legislation, and 11 regulations

⁵⁴ There are eight national policy statements and 10 national environmental standards in force.

Capability and capacity

12. There are shortfalls in capacity and capability across the RM system, particularly for delivery partners and in key professions, such as commissioners and planners⁵⁵. There are several aspects to this problem, including the disparity in the size and rating base of councils, a lack of attractiveness and respect for those who work in the system, lack of consistent and regular training and upskilling, and timing, sequencing, and workload issues generated by central government through changes in direction.
13. There are significant opportunities that could be explored, including data and digital solutions to achieve process efficiencies and reduce capability and capacity pressures, such as use of AI, increased digitisation and standardisation, and automation of parts of the consenting process, as is occurring in other countries⁵⁶.
14. Other opportunities could include partnering with professional organisations to deliver training, developing an 'access to experts' framework across councils, and ensuring policy is developed with an implementation lens to recognise and address capacity and capability constraints for implementers, including a strategic approach to timing, staging, and sequencing.

Economic and environmental co-benefits

15. Research by the University of Melbourne (2021) across 22 OECD countries shows that better links between environment and economic objectives deliver better outcomes for both, confirmed by the Australian Government's adoption in 2022 of its *Nature Positive Plan: better for the environment, better for business*⁵⁷. Similarly, OECD (2024) recommends the increased use of market-based instruments in environmental policy.
16. Economic approaches such as maximum economic yield show benefits for both the environment and the economy, with data helping everyone involved (from primary producers to scientists) to track performance, refine knowledge over time, and improve processes and approaches in a consistent framework. Approaches such as biodiversity credits and emissions trading are examples of where this approach is being taken in New Zealand, but there are more opportunities that could be explored in the environmental space.

Leveraging data

17. Better data collection and more targeted analysis of key metrics is required to focus on what matters most to support targeted improvement of the RM system and policy. The system has not been designed cohesively to ensure good availability of science, data and biophysical modelling to support adaptive decision-making and continuous improvement, and limited resourcing and relative priorities means that work has been focused on new

⁵⁵ NZIER, 2023

⁵⁶ Fluid Industries, 2024. Integrating Artificial Intelligence in New Zealand's RM System

⁵⁷ [Nature Positive Plan: better for the environment, better for business \(dcceew.gov.au\)](https://www.dcceew.gov.au/nature-positive)

policy and legislation rather than overseeing and improving the current operative RM system.

18. While there are large quantities of data, its functionality is limited by significant gaps in what is being measured, inconsistent quality and coverage, lack of coordination, and accessibility issues. Data is currently collected by various bodies for different purposes through a variety of formats, resulting in a lack of coherence and a disconnect between local and national objectives.
19. Using the NMS as an example, it is currently not possible to determine why resource consent applications have been declined or publicly-notified or why they are going over timeframes, or to differentiate between the scale and complexity of consents that are being applied for. Councils often fail to meet monitoring requirements due to other priorities or a lack of capacity and the monitoring and evaluation that is undertaken (for instance through housing capacity assessments) is generally not comparable across councils or integrated into wider evaluations of planning frameworks. MfE and therefore Ministers are unable to identify where policy or operational support should focus to enable councils to move in the right direction.
20. Central government has an opportunity to leverage greater value through a strategic and deliberate approach to improving the quality and performance of the system (including targets for housing and infrastructure), through improved use of technology, better coordination, consistent standards, and targeted and staged investment.



Further information on Fast-track Approvals Bill matters

Date submitted: 10 June 2024

Tracking number: MfE BRF-4854; MBIE 2324-3689

Security level: In-confidence

MfE/MBIE priority: Urgent

Actions sought from Ministers		
<i>Name and position</i>	<i>Action sought</i>	<i>Response by</i>
To Hon Chris BISHOP Minister Responsible for RMA Reform	Agree to the recommendations in this briefing	14 June 2024
To Hon Simeon BROWN Minister of Transport	Agree to the recommendations in this briefing	14 June 2024
To Hon Shane JONES Minister for Regional Development	Agree to the recommendations in this briefing	14 June 2024
To Hon Tama POTAKA Minister of Conservation	Agree to the recommendations in this briefing	14 June 2024

Actions for Minister's office staff
If agreed to, forward this briefing to: Hon Simeon Brown, Minister for Energy, Minister of Local Government Hon Paul Goldsmith, Minister for Arts, Culture and Heritage Hon Tama Potaka, Minister for Māori Crown Relations: Te Arawhiti Hon Penny Simmonds, Minister for the Environment Hon Chris Penk, Minister for Land Information Hon Shane Jones, Minister for Oceans and Fisheries, Minister for Resources Return the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).

Appendices and attachments
- Information on substantive decision-making - Purpose clause, and assessment hierarchy under RMA 1991

Key contacts at Ministry for the Environment			
<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Principal Author	Lisa Johnston		
General Manager	Jo Gascoigne	s 9(2)(a)	☐

Key contacts at Ministry for Business, Innovation and Employment			
<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Principal Author	Francis Van Der Krogt		
Responsible Manager	Susan Hall	s 9(2)(a)	☐

Further information on Fast-track Approvals Bill matters

Purpose

1. On 29 May 2024, Fast-track joint Ministers requested more information to support their decisions on policy and workability changes to the Fast-track Approvals Bill for recommendation to the Environment Committee in the Departmental Report on the Bill.
2. These decisions, alongside those contained in BRF-4664 and BRF-4752, are to be incorporated into a Cabinet paper. Cabinet agreement is required where the departmental report recommends changes to the Environment Committee which depart from previously agreed policy decisions.
3. Matters covered in the attachments to this briefing are:
 - i. Substantive decision-making (**Appendix 1 – decisions required**). This advice consists of the pros and cons of three options: the Expert Panel as the final decision-maker, joint Ministers as the final decision-makers, or a single Minister in concurrence with the appropriate portfolio Minister as the final decision-maker.
 - ii. The purpose clause and the hierarchy of assessment under the Resource Management Act 1991 (**Appendix 2 – decisions required**).
4. Advice regarding Treaty matters is to be provided by Te Arawhiti in a separate briefing.
5. Advice regarding Clause 18 - Ineligible activities in relation to Māori land and linear infrastructure proposals will be provided in a separate briefing in the week of 10 June.

Recommendations

1. **Consider** the recommendations contained in Appendices Yes | No
2. **Note** that Cabinet agreement on changes is required to input into the Departmental Report Noted
3. **Agree** to forward this briefing to Hon Simeon Brown, Minister for Energy, Minister of Local Government, Hon Paul Goldsmith, Minister for Arts, Culture and Heritage, Hon Tama Potaka, Minister for Māori Crown Relations: Te Arawhiti, Hon Penny Simmonds, Minister for the Environment, Hon Chris Penk, Minister for Land Information, Hon Shane Jones, Minister for Oceans and Fisheries, Minister for Resources Yes | No

Next steps

6. These decisions are to be incorporated into a Cabinet paper for approval to input the changes into the Departmental Report. The delivery of the Departmental Report to the Environment Committee is currently scheduled for 5 July 2024.

Signatures



Nadeine Dommissie
Deputy Secretary, Environmental
Management and Adaptation

Ministry for the Environment
10 June 2024



Bruce Parkes
General Manager, Resource Markets

MBIE
10 June 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

Hon Simeon BROWN
Minister of Transport
Date

Hon Shane JONES
Minister for Regional Development
Date

Hon Tama POTAKA
Minister of Conservation
Date

Appendix 1: Substantive decision-making

Joint Ministers requested information regarding substantive decision-making from previous briefings (BRF-4664) to be provided in one table for ease of reading. Ministers also requested information on a third decision-making option where a smaller group of Ministers are the final decision-makers. This is contained in the table below.					
Option	Description	Pros	Cons	Options	Decision
Option 1a: Expert Panel as the final decision-maker (for non-land management approvals) BRF-4664	An option exists to move non-land management decisions from Ministers to the Panel, based on the decision-making settings under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) and the Natural and Built Environment Act 2023 (NBA). A Minister (or Ministers) refer projects to an expert panel based on statutory criteria referral processes, with final substantive decisions resting with the expert panel. The structure of the Expert Panel (the Panel) decision-making process could be duplicated from those previous Acts, with changes to reflect the one-stop nature of this Bill. The panel process as it stands in the Fast-track Approvals Bill would remain, with a change from the Panel providing a recommendation to joint Ministers in their report, to the Panel providing a decision (on non-land management approvals) alongside their report, which is publicly issued (as per the fast-track process under the NBA). To ensure transparency, the Panel could provide a draft report for feedback and comment from Ministers prior to their final decision. Ministers would have no statutory role in final decision-making and there may be a risk of the perception of influence if Ministers are invited to comment on draft reports. There are statutory criteria in the Bill as drafted that the Panels must apply in their decision-making. Most notably, Panels are required to give pre-eminence to the development-focussed purpose statement which provides clear direction on the aim of the legislation (see Appendix 2 below regarding to the purpose clause and assessment hierarchy). If Ministers would like to consider the option of moving final decision-making for non-land management decisions from themselves to panels, there are options to strengthen how the Bill directs Panel decision-making: - ensuring that panels include members with strong credentials in economic sectors linked to projects could help ensure that development benefits are fully recognised. - providing more guidance to panels on the nature or scale of regional and national benefits that the Government is seeking to enable. - allowing panels sufficient time to gather and commission the information they need to assess risks could reduce their inclination to recommend constraining conditions to manage uncertainty.	s 9(2)(h) - Addresses concerns raised in submissions of there being perceived bias or pre-determination, thereby providing greater public confidence in the stability of the legislation, and social license for decisions. - Faster decisions and more certain timeframes because panels are bound by statutory timelines and because the process becomes shorter without the final ministerial stage - An appeal would lie against the decision of the Expert Panel and Ministers would not be required to have an active role at this stage.	- The truncated timeframes may lead to a more conservative approach to conditions placed on some projects, which could result in some projects not progressing even if they are approved. - Removes Ministerial ability to exercise oversight and discretion in respect of the final decision to grant or decline an approval and imposition of conditions.	Agree that Expert Panels make the substantive decision to approve or decline projects on Resource Management Act, Wildlife Act, Freshwater Fisheries Regulations, Heritage NZ Pouhere Tāonga Act, EEZ Act, Public Works Act, and Fisheries Act decisions	Yes / No

Classification

S9(2)(f)(iv)	S9(2)(f)(iv)	S9(2)(f)(iv)	S9(2)(f)(iv)	2. S9(2)(f)(iv)	Yes / No
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	

Option 2: Joint Ministers as the final decision-makers BRF 4664	Ministers responsible for deciding whether a project is to be declined or approved are the Minister for Infrastructure, Minister of Transport, and Minister for Regional Development (“joint Ministers”). There are decision-making roles for other ministers when making the final substantive decision whether to grant or decline approval: - the Minister of Conservation is the sole decision-maker for fast-track concessions - the Minister of Conservation is also one of the joint Ministers for approvals in relation to the Wildlife Act - for Crown Minerals Act (CMA) approvals, the appropriate Minister (which is the Minister charged with administration of the land, for example the Minister of Conservation, or the Minister for Land Information) and for some types of CMA approvals, the Minister responsible for the CMA. Joint Ministers receive the Panel’s report and recommendations. This would be provided to joint Ministers by the responsible agency (in collaboration with relevant portfolio agencies). When ministers are required to make decisions jointly, they must come together to reach agreement on the application – the decision is not a case of ‘majority rules’ and if ministers cannot agree to approve an application, they must decline it. This would mean that, in practice, any issues with specific approvals could be managed either through conditions, or by declining a project in part. In determining a substantive application, the joint Ministers may refer a part or the whole of the panel’s recommendations back to the panel to reconsider, and give the panel any directions the Ministers think appropriate as to the reconsideration of a part or the whole of the recommendations. Joint Ministers must not decide to deviate from a Panel’s recommendations unless they have undertaken analysis of the recommendations and any conditions included in accordance with the relevant assessment criteria. If joint Ministers may: - seek clarification from the panel on any recommendation - commission additional advice - seek further comments from any affected parties s 9(2)(h)	- Perceived ‘safeguard’ for applicants by having Ministers make the final decision - Ministers would be able to make their own determination under the legislation on the balance to be struck between the regional and national benefits of fast-track projects and the application of conditions under the associated legislation (eg, the Resource Management Act 1991) s 9(2)(h) - If Ministers disagree with the recommendations of the panel, they could depart from those recommendations after undertaking analysis of the recommendations and any conditions. S.9(2)(g)(i) (S9(2)(f)(iv))	Note that the risks outlined below, s 9(2)(h) do not address the Crown property issues associated with concessions and other land manager approvals which are already Ministerial decisions under existing legislation. - Increased risk of legal challenge of ministers’ decisions if they deviate from the Panel’s recommendations, and the risk of undermining a project’s social license if the decision is seen to be politically driven. - 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). - There is no statutory timeframe in the Bill for joint Minister’s decision. - Likely to be significant additional non-cost-recoverable costs associated with the additional process step and increased risk of legal challenge should Ministers wish to deviate from the Panel’s recommendations. - Administrative burden on officials and Ministers when advice is provided on the Panel’s report should Ministers wish to deviate from the Panel’s recommendations. - Ministers would be required to have an active role in any appeal of their decision which can be resource intensive on the decision-maker. s 9(2)(h)	3. Agree to retain existing policy settings on ministerial decision-making	Yes / No

	s 9(2)(h)		s 9(2)(h)		
Option 3: A single Minister in concurrence with the appropriate portfolio Minister New option as per Ministers' request.	A single minister (such as the Minister for the Environment) could hold substantive decision-making power alongside the most appropriate portfolio relative to the project eg, a transport project to the Minister of Transport, a resource project to the Minister for Resources, etc. These Ministers would be responsible for consulting with other Ministers where approvals are required across multiple Acts as part of the one-stop-shop. Where the scope of projects is easily defined, the appropriate portfolio Minister can be clearly identified. Where the scope of projects is not easily defined, the lead Minister must choose the most applicable Minister and those who they must consult with. This option would use the Expert Panel as currently set out in the Bill. s 9(2)(f)(iv)	- Increased process efficiency as no consensus between a group of joint Ministers is required - May provide public confidence in decision-making as the designated portfolio Minister will have subject matter expertise, particularly in relation to the national and regional significance of the project. - s 9(2)(f)(iv)	- Possible perception of concentrating executive decision-making further - Relies on efficient internal Ministerial processes to support consultation with other Ministers. - Some projects will be easy to delegate to an appropriate portfolio while others may not be so clear cut. Risk of disagreement amongst Ministers regarding project ownership. - s 9(2)(f)(iv)	4. Agree that a single Minister makes the substantive decision to approve or decline projects in concurrence with the appropriate portfolio Minister 5. Agree that the Minister for the Environment is the lead decision-maker 6. s 9(2)(f)(iv)	Yes / No Yes / No Yes / No

Appendix 2: Purpose clause, and assessment hierarchy under RMA 1991

Ministers previously agreed to weight first the purpose of the FTA Bill, then the relevant matters in the underlying legislation (in the case of schedule 4, the RMA). This was based on the model of section 34 of Housing Accords and Special Housing Areas Act 2013 (HASHAA), where there is a clear hierarchy providing direction to decision-makers (Ministers or Panels depending on separate decisions in Appendix 1). Retaining this limited role for underlying legislation, subject to the FTA Bill purpose: - provides clear legislative direction on how an application (listed or referred) is prepared, assessed and decisions made in order - mitigates the risks of legal challenge and uncertainty for applicants that would arise in the absence of such direction or in interpreting new direction. In the case of the RMA, the Expert Panel would take into account the purpose of the FTA Bill as a primary consideration, and then give lesser weight to other matters (for example, for conditions on resource consents, RMA Part 2, National Direction, Section 104).					
Option	Description	Pros	Cons	Options	Decision
Option 1: Proposal discussed on 29 May	This wording attempted to fix challenges with the current drafting which was based on a listing of relevant provisions. In practice, both the current drafting, and this adjustment to it, appear to: - create additional complexity and risk of litigation - not meet the policy intent - not be fully functional.	No further decisions required if retained.	The current drafting of clause 32 lists relevant RMA provisions and criteria but would require each RMA matter be given a different weighting. This: - was not the policy intent and would create more work for the expert panel. - would undermine the benefits of using existing RMA jurisprudence, likely leading to increased litigation - could also be seen to imply a highly prescriptive and unduly confusing approach for the Panel While a policy aim is to reduce the influence of existing RMA jurisprudence, we consider that this approach to doing so risks elongating timeframes and the pre-eminence of a development focussed purpose clause is sufficient to ensure the intended policy shift.	1. agree to amend Sch 4 cl 32 to clarify that the matters the Panel must consider when assessing a consent application or notice of requirement are (with weight given greater to lesser): - the purpose of the FTA Bill - provisions under the RMA: - the purpose of the RMA - RMA sections 6-7 - the provisions of any of the following, if relevant, made under the Resource Management Act 1991: - a national environmental standard - other regulations - a national policy statement - a New Zealand coastal policy statement - a regional policy statement or proposed regional policy statement - a plan or proposed plan; and - iwi management plans - other relevant provisions of the RMA or any other legislation that direct decision-making under the RMA (for example, sections 104 to 107 of that Act and provisions referred to in clauses 31 to 35).	Yes / No OR PREFERRED OPTION 2 BELOW
Option 2: simpler decision-making that achieves the policy intent PREFERRED	This option narrows RMA matters referred to and clarifies how they are to be considered, in line with policy intent. Cross-references to RMA provisions do not affect the hierarchy, including the priority of FTA Bill purpose, but ensure the hierarchy applies to all relevant matters and processes, eg: - sections in footnote to rec 5(b) cover matters consent authorities must generally consider such as activity types, application types, natural hazards, effects, national standards, plans, conditions, bonds, duration, certificates of compliance (noting that s104 RMA doesn't capture all relevant matters). - clauses 33-37 of the Bill cover process requirements around application processes, consents, designations, including impacts on customary marine titles.	The option clarifies policy intent and ensures panels have unambiguous direction without impacting policy intent. The new proposed drafting would: - specifically identify the relevant RMA provisions that need to apply (not including s.8 of Part 2), and refine the references to the RMA so that it is clear that each matter under the RMA will not be weighed separately. - ensure that RMA considerations are explicitly identified as subject to purpose of FTA Bill.	There is some overlap between the references to Parts 6, 8 and 10 of the RMA and clauses 33 to 37 of the FTA Bill but this has no effect on the process or weighting. Avoiding this overlap is a technical drafting matter so does not require further policy decisions.	2. note assessment of a consent application or notice of requirement will give weight to the following matters, in the order listed: - the purpose of the FTA Bill to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits - considerations under the RMA. 3. note that including relevant considerations from relevant legislation provides additional support in considering proposals and proposing conditions without compromising the policy intent 4. note that within the lesser considerations under (b) the current drafting in Sch 4 cl 32 for RMA matters creates additional complexity and associated legal risk, and is not consistent with the general policy above 5. agree to correct this by applying the following weighting when RMA matters are considered (noting that the purpose of the Bill is given the greatest weight, as set out below) - The purpose of the FTA Bill - The relevant provisions under the RMA, in particular those that direct decision-making under Parts 6, 8 and 10 of the RMA¹, except that:	Noted Noted Noted Yes / No

¹ Cross-referenced sections are **Part 6 – Resource Consents**: 104, 104A-C, 104G, 105, 106, 107, 107F, 108, 108AA, 108A, 109, 123, 123A, 124g, 125, 127, 138, 138A, 139 and 139A, **Part 8 – Designations**: 168A, 171 and 172, **Part 10 – Subdivision**: 220, 230, 231, 232, 233, 234, 235, 237A and 237B

				i. where reference is made in those Parts of being subject to Part 2 of the RMA², the consideration shall be given to sections 5 to 7 of the RMA only and shall be subject to subsection (a) above; i. clauses 33 to 37 of the FTA Bill apply in addition. 6. note clauses 33-37 are intended to identify all relevant provisions in RMA that need to be applied, and officials will review those clauses to ensure this is achieved; and refine them so they are more workable and to avoid duplication 7. note section 6(h) RMA requires the management of significant risks from natural hazards be recognised and provided for as a matter of national importance. This will form part of the relevant matters assessed by the Panel on RM approvals above.	Noted Noted
Other matters not decided on 29 May	We also recommend removing Mana Whakahono ā Rohe and Joint Management Agreements from this specified list, as these are process-driven matters, not decision-making criteria. MWaR and JMA should instead be considered through the development of the cl 13 report and requirements in the Bill to seek written comments from those parties. s.9 (2)g)(i) [REDACTED] [REDACTED] [REDACTED]			8. agree to amend sch 4 cl 33(4) to reflect the weightings provided for in the Ngā hapū o Ngāti Porou Act 2019 and remove references to notices of requirement 9. agree to remove reference to Mana Whakahono ā Rohe and joint management agreements, from the matters to be given weight to and assessed by the expert panel, at clause 32(1)(e)(iv) and (v).	Yes / No Yes / No

² It is worth noting that case law over the last 11 years (King Salmon, Davidson, Bunnings) has made it quite clear that decision-makers ONLY need to go up to consider Part 2 matters if the plans underneath them are out of date or incomplete. Part 2 matters are not commonly considered.



Aide Memoire: Fast-track Approvals Bill - Māori rights and interests

Date submitted: 13 June 2024

Tracking number: BRF-4884/TA 235

Sub Security level: In-confidence

Actions sought from ministers	
Name and position	Action sought
To Hon Chris BISHOP Minister Responsible for RMA Reform To Hon Shane JONES Minister for Regional Development	Forward this aide-memoire to: Hon Tama Potaka, Minister for Māori Crown Relations: Te Arawhiti, Minister of Conservation Hon Simeon Brown, Minister of Transport, Minister for Energy, Minister of Local Government Hon Paul Goldsmith, Minister for Arts, Culture and Heritage Hon Penny Simmonds, Minister for the Environment Hon Chris Penk, Minister for Land Information Hon Shane Jones, Minister for Oceans and Fisheries, Minister for Resources

Appendices and attachments
- Road map of Māori rights and interests in the Fast-track Approvals Bill s 9(2)(h) - Examples of influence Treaty settlements provide for in practice - Customary rights under Takutai Moana legislation and the Fast-track Approvals Bill

Key contacts at Ministry for the Environment			
Position	Name	Cell phone	First contact
Principal Author	Zsafia Hellyer		
Deputy Secretary	Nadeine Dommissse	s 9(2)(a)	☐

Key contacts at Te Arawhiti			
Position	Name	Cell phone	First contact
Principal Author	Samantha Burnard		
Deputy Chief Executive	Warren Fraser	s 9(2)(a)	☐

Aide Memoire: Fast-track Approvals Bill - Māori rights and interests

Purpose

1. On 29 May Joint Ministers met to discuss the Fast-track Approvals Bill (the Bill) and following the meeting sought advice from officials on the impact of provisions related to customary marine title in the Bill. On 31 May the Minister for Regional Development, Hon Shane Jones met with officials from the Ministry for the Environment and Te Arawhiti seeking advice on how provisions related to Māori rights and interests, including Treaty settlements, will operate in practice.
2. This aide memoire addresses both requests and includes:
 - i a road map setting out what the Bill provides for with respect to Māori rights and interests (**Appendix One**);
 - ii s 9(2)(h) [REDACTED]
 - iii a summary of the types of influence Treaty settlements provide for in decision-making related to consenting (**Appendix Three**); and
 - iv a summary of the customary interests recognised through the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (collectively referred to as “MACA” below) (**Appendix Four**).
3. This information is intended to support Ministers’ consideration of the decisions sought in MfE BRF-4854/MBIE 2324-3689, MfE BRF-4890/MBIE-2324-3790 and in TA 2023/204 – 233.

Comparison with other approval processes

4. There are key differences between the Bill and alternative approval processes such as the Resource Management Act 1991 (the RMA) and the Conservation Act 1987 that affect Māori rights and interests, and in particular the level of influence for Māori in the approvals process. s 9(2)(h) [REDACTED]

The purpose of the Bill is paramount

5. The most significant consideration is that the purpose of the Bill, which is to “[facilitate] the delivery of infrastructure and development projects with significant regional or national benefits”, is given primacy over all other matters at all stages in the process, including in:

- i the criteria for Ministers' decision-making on referring an application (clauses 17(2) and 21(1)); and
 - ii the panel's assessment of an application (schedule 3 clause 1(2) and schedule 4 clause 32(1)(a)).
6. s. 9(2)(g)(i)

Provisions specific to Māori rights and interests reflect obligations under other legislation and accepted practice

7. The road-map at **Appendix One** sets out the provisions in the Bill related to Māori rights and interests that place requirements on applicants, Ministers and the panel. As set out further below, officials do not consider those provisions will provide for Māori rights and interests to have a stronger influence in the Bill as opposed to other approval processes.

Overarching obligation to act consistently with Treaty settlements and MACA

8. The overarching obligation under clause 6 to act consistently with Treaty settlements does not prevent the granting of consents for development purposes through the Bill.

[REDACTED] **Appendix Three** provides further detail.

9. In the case of MACA, while customary marine title (CMT) and protected customary rights (PCR) are powerful rights, there are also exemptions such as in relation to 'accommodated infrastructure' that allow developments to proceed despite any CMT or PCRs being in place. **Appendix Four** provides further detail.
10. Both Treaty settlements and MACA provide for Māori groups to have varying degrees of influence on decision-making in resource consent and other approval processes included in the Bill. Acting consistently with Treaty settlements and MACA will therefore mean that, in relevant cases, equivalent levels of influence will need to be provided for relevant groups in decision-making processes under the Bill.
11. However, the Bill does not provide for the mechanisms that already exist in Treaty settlement legislation or MACA to have more influence than they would under other legislation. s.9(2)(g)(i)

Specific steps throughout the process related to Māori rights and interests

12. The Bill provides a number of express obligations to, for example, engage with Māori groups and document their values and interests. This reflects the general process requirements of the Bill's underlying legislation and/or good practice.

13. We do not consider these process requirements provide Māori groups with any greater influence over fast-track proposals, nor do they 'hold up' the overall process which is set by the Bill's specified timeframes.
14. Many of the specific provisions, such as the ineligibility criteria and the requirements on Ministers and the panel to provide for matters required by Treaty settlements, have been included in the Bill to support compliance with the overarching obligations in clause 6 and the Government's commitment to protecting Treaty settlements and other legislative arrangements (CAB-24-Min-0008 refers).
15. Some of them, such as the requirements for the panel to have a member nominated by the relevant iwi authority/authorities and an understanding of the Treaty, tikanga and mātauranga Māori, provide recognition of broader Māori rights and interests outside of clause 6.
16. As part of the select committee process some infrastructure providers have made submissions on how specific provisions related to Māori rights and interests will work in practice, including the ineligibility criteria. Officials have provided separate advice on those submissions and intend to provide further advice (MfE BRF-4890/MBIE 2324-3790 refers).

There is no requirement to consider the principles of the Treaty in the Bill

17. The Bill does not include an overarching clause requiring decision-makers to consider or give weight to the principles of the Treaty.
18. This differs from other legislation included in the Bill and previous fast-track consenting regimes, all of which include explicit provisions requiring decision-makers to consider the Treaty and/or its principles to some degree. Ministers have recently been provided further advice by Te Arawhiti on the drafting of clause 6 (TA 2023/2024 – 233 refers).

Other specific provisions in the Bill support the purpose of the Bill

19. While there are several specific requirements on applicants, Ministers and the panel to support compliance with clause 6, Treaty settlements and other legislative arrangements, they sit in the context of other provisions designed to support the purpose of the legislation. These include, for example:
 - i requirements for consultation to be undertaken in a shorter timeframe than under the RMA and other underlying legislation;
 - ii restricted appeal rights compared to the RMA and other underlying legislation; and
 - iii a presumption that a hearing will not be held, whereas approvals for projects of equivalent significance would in many cases be subject to publicly notified a board of inquiry or Environment Court process under the RMA.
20. The intended effect of these provisions is for approvals under the Bill that support the purpose to proceed more quickly and efficiently than under other legislation, irrespective of the provisions in the Bill that support Māori rights and interests.

21. In some cases, decision-makers may decide that Treaty settlements or related matters do require a particular outcome, but that is a discretion for decision-makers that provides flexibility, not a pre-determined outcome.

Signatures



Nadeine Dommissie
Deputy Secretary, Environmental
Management and Adaption
Ministry for the Environment
13 June 2024



Warren Fraser
Deputy Chief Executive, Strategy & Policy
Office for Māori Crown Relations: Te
Arawhiti
13 June 2024

Hon Chris BISHOP
Minister Responsible for RMA
Reform
Date

Hon Shane JONES
Minister for Regional Development
Date

Road map for Fast-track Approvals Bill – Māori rights and interests

Key

- Requirement related to information
- Requirement related to engagement
- Requirement related to decision-making

Requirements on applicant

- Projects ineligible in certain cases without written permission/authorisation from relevant party (decisions currently being considered, see below)
- Engage with Māori groups
- Include information about engagement and Māori rights and interests in application

Requirements on Ministers

- Invite written comments from Māori groups
- Consider a report on Treaty settlements and other obligations
- Consider documents or provide for procedural matters required by Treaty settlements
- Give notice of decision and relevant information to panel
- Ministers **may** decline to refer if project is not consistent with Treaty settlements and other arrangements

Requirements on applicant

- Applicant must include information about Treaty settlements and other arrangements and any engagement

Requirements on panel

- One panel member appointed by relevant iwi authority/authorities
- Panel must have an understanding of the Treaty, tikanga and mātauranga Māori
- Invite written comments from Māori groups
- Consider the purpose of the Act above all else but also consider parts of underlying legislation eg section 6(e) and 7(a) of RMA, which say decision-makers must “recognise and provide for” and “have regard to” particular Māori rights and interests
- Comply with substantive and procedural obligations in Treaty settlements, the Marine and Coastal Area (Takutai Moana) Act, Mana Whakahono ā Rohe and joint management agreements
- Consult with Minister of Māori Development and Minister for Māori Crown Relations: Te Arawhiti on draft report

Requirements on Ministers

- Give notice of decision to relevant groups

Outstanding decisions under consideration by Ministers:

- Linear infrastructure eligibility criteria (MfE BRF-4890/MBIE 2324-3790)
- Reflecting the Crown’s Treaty of Waitangi/Te Tiriti o Waitangi obligations (TA 2023/2024 – 233)

Overarching requirements

- Persons exercising functions, powers and duties must act in a manner consistent with obligations under existing Treaty settlements and customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019
- Te Ture Whaimana is the primary direction-setting document for the Waikato and Waipā Rivers

Applicants may apply to fast track their project

Fast-track Application

Category B Listed projects

Ministers receive application and seek comments from relevant groups

Comments received

Joint Ministers make decision on referral

No

Applicant can amend application and reapply

Yes

Category A Listed projects

Applicants may lodge applications with Panel

Combined application that clearly identifies the information required for individual approvals (eg, RMA, Conservation)

Combined consultation requirements and hearing procedures

Panel provides draft conditions to relevant groups and invites comments

Panel undertakes assessment and makes recommendation

Combined report, overall assessment and recommendation

of whether approving project is consistent with FTA purpose, with analysis and recommendations relevant to each approval

Approval 1 Recs

Approval 2 Recs

Approval 3 Recs

Ministers to seek further advice, comments, or clarification if Panel recommendation is not agreed

Ministers make the final decision to grant / decline

Approval 1 decision (including conditions)

Approval 2 decision (including conditions)

Approval 3 decision (including conditions)

Combined decision on project, with each approval given under the relevant underlying Legislation

Decision can be appealed to the High Court

Applicant can proceed with approved projects

Appendix Three: Examples of the influence Treaty settlements and other arrangements provide for in practice

1. The way Treaty settlements and other arrangements interact with the RMA and other legislation is complex and context-dependant. The examples below show the types of arrangements that provide post-settlement governance entities (PSGEs) and other entities with influence on how decision-makers exercise their functions, including whether they grant resource consents or other approvals. They are focussed on influence provided in decision-making under the RMA and may differ in other legislation covered in the Bill such as the Conservation Act 1987. How they are applied in the context of the Fast-track Approvals Bill will be dependent on the specific facts of an application.

Direction-setting

2. The Waikato-Tainui Raupatu Claims (Waikato River) Settlements Act 2010 provides that a person carrying out functions under the RMA or other listed legislation that relate to the Waikato River or activities in the catchment that affect the Waikato River must have particular regard to the Te Ture Whaimana, the vision and strategy prepared by the Waikato River Authority (section 17). That Act also provides that Te Ture Whaimana will prevail over any inconsistent provision in a national policy statement, New Zealand coastal policy statement or national planning standard (section 12). In that way, it is the primary direction-setting document for the Waikato River.
3. The Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 provides that a person performing a function under the RMA that relates to the Whanganui River or an activity within its catchment that affects the Whanganui River must have particular regard to Te Heke Ngahuru, the strategy document prepared by the strategy group for Te Awa Tupua (section 37).
4. Similar levels of influence are provided for in the Ngāti Rangi Claims Settlement Act 2019 (section 124), the Ngāti Rangitahi Claims Settlement Act 2022 (section 137), the Ngāti Kuri Claims Settlement Act 2015 (section 75) and others.
5. s 9 (2)(g)(i)

Appointing or recommending decision-makers

6. Many settlements and other arrangements provide for PSGEs to appoint or recommend members to hearing panels deciding whether resource consents should be granted. Examples include the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, which provides that if a Minister refers a matter within ngā rohe moana o ngā hapū o Ngāti Porou to a board of inquiry under the RMA, the Minister must consult ngā hapū o Ngāti Porou on the terms of reference and ask them to nominate an individual to be a member of the board of inquiry (section 17).

7. Similar arrangements are provided for in the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (sections 28 – 29), the Te Rarawa Claims Settlement Act 2015 (section 84) and others.

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

Having specific matters considered by decision-makers

9. Some settlements provide that decision-makers under the RMA and other legislation must consider, to different degrees (eg to recognise and provide for, have particular regard to, or have regard to), particular matters when exercising their functions. For example, section 109 of the Ngāti Rangi Claims Settlement Act 2019 provides that someone exercising a function under the RMA and other legislation that relates to the Whangaehu River or an activity within the Te Waiū-o-Te-Ika catchment that affects the Whangaehu River must recognise and provide for the values set out in section 108 of the Act. Similar arrangements are provided for in the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (section 15).

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

Being informed of resource consent applications

11. Most settlements provide that PSGEs will be informed of resource consent applications in specific areas that are significant to them through statutory acknowledgements. This provides PSGEs both an awareness of relevant applications and gives rise to the opportunity for them to influence whether applications are granted through the submissions process provided for under the RMA and other legislation.

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

Customary rights under Takutai Moana legislation and the Fast Track Approvals Bill

Purpose

1. This primer provides information on how Māori customary interests recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 (the **Takutai Moana Act**) might impact development proposals intended to go through the Fast-track Approvals Bill (**FTAB**) process.
2. The primer also considers the impact of the related Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (**NHoNP Act**). A table summarising the impact of customary rights on new developments can be found at **Appendix One**.
3. This primer responds to Ministers' request for this information, at their meeting on 29 May, prompted by Minister Jones. It is similar to advice provided to Hon Paul Goldsmith as Minister for Treaty of Waitangi Negotiations.

The Takutai Moana Act

4. *Attorney-General v Ngati Apa* [2003] 3 NZLR 643 opened the door to the recognition of customary interests in the marine and coastal area. The unsuccessful Foreshore and Seabed Act 2004, and the subsequent Takutai Moana Act in 2011, sought to provide a consistent and managed way to recognise customary interests while balancing wider public interests.
5. The Takutai Moana Act:
 - confirms no one owns the common marine and coastal area (**CMCA**);
 - protects public rights of access, navigation and fisheries in the CMCA (subject to limited exceptions in relation to wāhi tapu areas);
 - provides a process for Māori customary rights to be recognised if applicant groups meet the statutory tests; and
 - grants successful applicants a bundle of rights reflecting their recognised customary interests, the most significant of which is an RMA "permission right".
6. The RMA permission right allows customary marine title (**CMT**) holders to give consent to resource consents in their CMT area. Some activities are 'accommodated' and they are not subject to the permission right (refer to paras 13-15).
7. However, most relevant to the FTAB process, the permission of the CMT holder must be sought for new public interest type infrastructure proposals or minerals related activities:
 - a. For new public interest infrastructure, (such as offshore farms, new telecommunications infrastructure, roading and bridges, and new port activities) the Minister for Land Information may decide to waive the permission right following a process of discussion with the CMT holder, in which case compensation can be payable. Put another way, in practical terms, the Minister for Land Information may be able to override the permission right but only if the statutory process is followed;

- b. For new minerals activities, if agreement with the CMT rights holder cannot be reached, the matter can be determined by arbitration.

What are the customary rights that can be recognised under the Takutai Moana Act?

8. There are two different types of customary rights that can be recognised under the Takutai Moana Act, customary marine title (**CMT**) and protected customary rights (**PCR**):
 - CMT provides the holder with a bundle of rights including some property and some regulatory rights and is granted to recognise the customary rights of iwi, hapū and whānau in an area; and
 - PCR recognises a particular customary activity that has been undertaken by a group and allows that group to continue to undertake that activity in a specified area (the **PCR Area**) without a resource consent, while providing some ongoing regulatory protection for the activity.
9. The Act explicitly states that CMT and PCR holders are allowed in most cases to derive a commercial benefit from their status.
10. Customary interests can be recognised out to the boundary of the territorial sea – no rights in the Exclusive Economic Zone (**EEZ**) can be recognised under the legislation.
11. CMT and PCR are significant ‘bundles’ of property and regulatory rights that reflect the long-standing customary interests of the relevant group. CMT has some similarities with other bundles of property rights (like freehold title) but is subject to significant limitations and caveats.
12. The right within the CMT bundle of rights that will have the most impact on the fast-track approvals process is the CMT resource management permission right. Unless an activity is “accommodated” under the Act the resource management permission right requires permission from any relevant CMT-holder before an activity requiring a resource consent can progress.
13. Permission is also required before resource consents can be granted for activities that will have a “more than minor” impact on protected activities in a PCR Area.

What public interest activities are ‘accommodated’ notwithstanding the permission right?

14. A CMT rights-holder’s resource management permission right does not apply to resource consent applications which relate to ‘accommodated activities.’
15. The list of accommodated activities is attached at **Appendix Two** and includes those related to existing public interest type infrastructure (‘accommodated infrastructure’) owned or operated by the likes of network utility operators, ports, or electricity generators.
16. Certain aquaculture and minimum impact activities relating to petroleum are also ‘accommodated activities.’

New public-interest infrastructure can be ‘deemed’ as accommodated activities’ by the Minister for Land Information

17. Most relevant for FTAB purposes, new infrastructure proposals in an area where CMT rights have been recognised can become 'deemed accommodated infrastructure' under the process set out in Part 1 of Schedule 2 of the Takutai Moana Act (see **Appendix Three**).
18. The process is open to public authorities or other owners/operators of infrastructure necessary for national or regional social or economic well-being. It involves documentation, engagement with the CMT rights-holder, and negotiation around compensation for waiving the permission right if the CMT rights-holder does not wish to agree to the construction of the proposed infrastructure going ahead. The Minister for Land Information manages the process and makes the ultimate decision which, if the process is followed, may be able to overrule the permission right.
19. Developments like offshore windfarms, new telecommunications infrastructure, roading and bridges, and new port activities are potential candidates for this deeming process.

New minerals related activities can be deemed accommodated activities

20. New minerals related activities under existing privileges can also be deemed as accommodated activities under Part 2 of Schedule 2 to the Takutai Moana Act (see **Appendix Three**). A permit holder can negotiate with the CMT title-holder for an activity agreement or, where agreement cannot be reached, the matter can be settled by arbitration. An arbitrator's award must determine the basis on which the activity is to proceed, on reasonable conditions. Compensation may be payable to the CMT rights-holder.
21. New minerals related activities include those related to:
 - a. prospecting, exploration or mining under a Crown Minerals Act privilege existing prior to recognition of CMT; and
 - b. to privileges in respect of petroleum for which a resource consent is to be sought.

Aquaculture with existing permits do not require right-holder permissions for some changes

22. Those with existing coastal permits for aquaculture do not need to seek rights-holder permission to make changes to their farming activities, provided these don't change the location or size of the coastal space occupied.
23. New aquaculture development would require rights-holder permission.

Wāhi tapu areas and areas under the NHoNP Act have additional limitations on development

Recognised wāhi tapu areas

24. When CMT is granted, applicants can seek to have additional specific protections apply to recognised wāhi tapu areas. These protections are the strongest under the Takutai Moana Act and can include restricting public access and fishing (to a certain extent).
25. Currently no wāhi tapu areas have been recognised under the Takutai Moana Act.

Permissions required in relation to the area protected under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

26. The NHoNP Act requires permission from rights-holders for any new development in protected areas. Unlike the Takutai Moana Act, there is no provision for deeming activities or waiving rights-holder permission.

Where, and how widespread, are customary rights recognised under the Takutai Moana Act or the NHoNP Act?

27. The first significant High Court decisions under the takutai moana legislation are very recent. The High Court has made six decisions recognising CMT to date. CMT has also been recognised for Ngāti Porou by the Crown in relation to part of their rohe moana, covered by the NHoNP Act (refer to map at **Appendix Four** which identifies all areas where CMT decisions have been made).
28. There are active applications for CMT and PCR over the entire New Zealand coastline. It will take some years for all applications to be considered.
29. The Coalition Government has undertaken to amend the test for CMT to make clear Parliament's original intent in light of the judgment of the Court of Appeal in *Edwards*, the leading case. Cabinet will consider these proposals in June 2024.

How are customary rights and the takutai moana legislation currently provided for in the FTAB?

30. Clause 18 of the Bill excludes any proposals from the fast-tracking process if they are within a CMT Area or adversely affect the exercise of a PCR in a PCR Area, and permission hasn't been granted by the rights-holder. This mirrors the permission right in the takutai moana legislation.
31. These exclusions are the same as in the COVID-19 Recovery (Fast-track Consenting) Act 2020 and were reapplied for the drafting of this Bill [MfE BRF-4115, 5 February 2024, refers]. Similar exclusions apply for other Māori interests in land.
32. The equivalents to CMT Areas and PCR Areas recognised under the NHoNP Act areas are not included in clause 18. This appears to be an oversight and should be corrected in the next version of the Bill. However, in any case, the NHoNP Act itself requires right-holder permission to be obtained before resource consents can be sought for activities within areas protected under that Act.
33. As noted above, CMT and PCR can only be awarded within the Territorial Sea limits. Some types of infrastructure developments (e.g., offshore windfarms) are likely to fall outside these areas and be located in the EEZ. However, these proposals might involve auxiliary activities proposed to be located within CMT Areas or which might adversely affect the exercise of a PCR in a PCR Area such as running lines underwater or coastal access for construction and maintenance. Accordingly, those activities might require permission from relevant rights holders.

Appendix One: Summary table of customary rights

	FTAB cl.18	Public-interest Infrastructure	Aquaculture	Mining	Other new developments
In a CMT area	Permission needed	Permission needed OR Deeming process (engagement, compensation, Minister for Land Info decision)	Permission needed OR Only changes that don't impact the size, location of existing farm	Permission needed OR Deeming process (engagement and arbitration), where new activity relates to an existing privilege	Permission needed
In a PCR activity area and more than minor impacts on PCR activity	Permission needed	Permission needed OR Deeming process (engagement, compensation, Minister for Land Info decision)	Permission needed OR Only changes that don't impact the size, location of existing farm	Permission needed OR Deeming process (engagement and arbitration), where new activity relates to an existing privilege	Permission needed
In a <u>NHoNP</u> CMT or PCR area	-	Permission needed	Permission needed	Permission needed	Permission needed
Wāhi Tapu protected area (currently none)	-	May be prohibited by specific protections	May be prohibited by specific protections	May be prohibited by specific protections	May be prohibited by specific protections

Appendix Two: Activities that do not require rights-holder permission under Marine and Coastal Area (Takutai Moana) Act 2011

63 Interpretation

accommodated infrastructure means infrastructure (including structures and associated operations) that is—

- (a) lawfully established; and
- (b) owned, operated, or carried out by 1 or more of the following:
 - (i) the Crown, including a Crown entity;
 - (ii) a local authority or a council-controlled organisation;
 - (iii) a network utility operator (within the meaning of [section 166](#) of the Resource Management Act 1991);
 - (iv) an electricity generator (as defined in [section 2\(1\)](#) of the Electricity Act 1992);
 - (v) a port company (as defined in [section 2\(1\)](#) of the Port Companies Act 1988);
 - (vi) a port operator (as defined in [Part 3A](#) of the Maritime Transport Act 1994);
 - (vii) *[Repealed]*
- (c) reasonably necessary for—
 - (i) the national social or economic well-being; or
 - (ii) the social or economic well-being of the region in which the infrastructure is located

64 Accommodated activities

- (1) An accommodated activity—
 - (a) may be carried out in a part of the common marine and coastal area despite customary marine title being recognised in respect of that part under [subpart 1](#) or [2](#) of Part 4; and
 - (b) is not limited or otherwise affected by the exercise of an RMA permission right or a conservation permission right; but
 - (c) does not limit or otherwise affect the exercise of any other right referred to in [section 62\(1\)](#).
- (2) For the purposes of this subpart, **accommodated activity** means any of the following activities, to the extent that they are within a customary marine title area:
 - (a) an activity authorised under a resource consent, whenever granted, if the application for the consent is first accepted by the consent authority before the effective date;
 - (b) an activity that may be carried out under a resource consent, whenever granted, for a minimum impact activity (as defined in [section 2\(1\)](#) of the Crown Minerals Act 1991) relating to petroleum (as defined in [section 2\(1\)](#) of that Act);
 - (c) accommodated infrastructure;
 - (d) the management activities for which a resource consent is required in relation to—
 - (i) an existing marine reserve;
 - (ii) an existing wildlife sanctuary;
 - (iii) an existing marine mammal sanctuary;
 - (iv) an existing concession;
 - (e) an activity carried out under a coastal permit granted under the [Resource Management Act 1991](#) to permit existing aquaculture activities to continue to be carried out in a specified part of the common marine and coastal area,—
 - (i) regardless of when the application is lodged or whether there is any change in the species farmed or in the method of marine farming; but
 - (ii) provided that there is no increase in the area, or change of location, of the coastal space occupied by the aquaculture activities for which the existing coastal permit was granted;
 - (f) an emergency activity;
 - (g) scientific research or monitoring that is undertaken or funded by—
 - (i) the Crown;
 - (ii) any Crown agent;
 - (iii) the regional council with statutory functions in the region where the research or monitoring is to take place;
 - (h) a deemed accommodated activity.

- (3) Subsection (4) applies if, in relation to whether an activity is an accommodated activity, there is a dispute between—
 - (a) a customary marine title group; and
 - (b) the person who owns, operates, or carries out the activity that is the subject of the dispute.
- (4) Either party to the dispute may refer the dispute to the Minister for Land Information for resolution.
- (5) The decision of the Minister is final.

Deemed accommodated infrastructure

- 1 Prior to an application being lodged under the [Resource Management Act 1991](#) for any resource consents for proposed infrastructure (within the meaning of [section 65\(1\)\(a\)](#)) in a customary marine title area, the proposed infrastructure may become a deemed accommodated activity in accordance with this Part.
Schedule 2 clause 1: amended, on 23 December 2023, by [section 6](#) of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).
- 2 Any person listed in paragraph (b) of the definition of accommodated infrastructure in [section 63](#) may apply to the Minister for Land Information to declare a proposed infrastructure to be a deemed accommodated activity. In this Part, **Minister** means the Minister of Land Information.
- 3 In applying under this Part, the applicant must provide to the Minister the following information:
 - (a) a survey and a plan that—
 - (i) shows the customary marine title area where the proposed infrastructure is to be constructed; and
 - (ii) must meet the requirements of the [Cadastral Survey Act 2002](#) as if it were a cadastral survey within the meaning of that Act; and
 - (b) a detailed description of the proposed infrastructure, including all of the relevant resource consents that will be applied for in support of the proposed infrastructure; and
 - (c) a detailed description of the purpose for which the proposed infrastructure is to be used; and
 - (d) why the applicant considers that the proposed infrastructure complies with [section 65\(1\)\(a\)\(iii\)](#); and
 - (e) an assessment of all practicable alternative locations (within or outside the coastal marine area), and reasons why the proposed infrastructure cannot practicably be constructed in any location outside of the customary marine title area; and
 - (f) a description of the negotiations that have already taken place with the customary marine title group and, on the basis of those negotiations, reasons why the applicant considers it cannot reasonably obtain the permission of that group for the proposed infrastructure.
- 4 Upon receipt of an application under [clause 3](#), the Minister must consider and decide to—
 - (a) make an initial decision on whether there is sufficient information to demonstrate that all of those requirements and criteria have been adequately addressed; or
 - (b) seek more information from the applicant; or
 - (c) decline the application on the basis that—
 - (i) insufficient information has been provided; or
 - (ii) the proposed infrastructure does not meet all or any of the requirements and criteria set out in [clause 3](#).
- 5 For the avoidance of doubt, a decision under [clause 4\(a\)](#) is not a substantive decision of the Minister in favour of the classification of the proposed infrastructure as a deemed accommodated activity. It is merely a decision that there is sufficient information for the Minister to consider the matter further with the relevant customary marine title group.

- 6 After making a decision under [clause 4\(a\)](#) that there is sufficient information (or after receiving further information under [clause 4\(b\)](#)), the Minister must, before determining the application,—
- (a) provide to the customary marine title group a copy of the application and any further information received from the applicant; and
 - (b) invite the customary marine title group to identify appropriate compensation for the removal of its RMA permission right or conservation permission right and any other affected right associated with the customary marine title for the proposed infrastructure, in the event that it does not wish to agree to the construction of the proposed infrastructure going ahead; and
 - (c) negotiate in good faith with the customary marine title group in an attempt to compensate for the waiver of its permission rights with respect to the application.

Schedule 2 clause 6(b): amended, on 23 December 2023, by [section 6](#) of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

- 7 This clause applies if, after a period of 3 months,—
- (a) the customary marine title group fails to respond to any invitation issued under [clause 6](#); or
 - (b) the customary marine title group refuses to negotiate with the Minister; or
 - (c) the Minister and the group do not agree to waive the permission rights.
- 8 If [clause 7](#) applies, the Minister must consider the application and any material provided by the customary marine title group and any other relevant information and make a decision on—
- (a) whether to waive the customary marine title group's permission rights; and
 - (b) whether there are any other affected rights associated with the customary marine title; and
 - (c) what compensation to provide; and
 - (d) whether to classify the matter as a deemed accommodated activity under [section 64](#).
- 9 In making his or her decision under [clause 8](#), the Minister must consider whether the matters set out in [clause 3](#) have been adequately addressed and, without limiting his or her consideration, the Minister may not agree to waive the permission rights if the Minister is satisfied that the information provided under [clause 3\(d\)](#) and [\(e\)](#) does not justify waiver.
- 10 If the customary marine title group agrees to waive the permission rights, or a decision is made by the Minister under [clause 8](#) to waive the permission rights, then the proposed infrastructure will become a deemed accommodated activity, except that—
- (a) the waiver of the RMA permission right will operate only for the particular resource consents applied for with respect to the proposed infrastructure (and only as far as the proposed infrastructure is defined in the *Gazette* notice set out in [clause 11](#)); and
 - (b) the waiver of the permission rights will not otherwise take away the legal effect of the customary marine title order or agreement, except as the customary marine title group expressly agrees otherwise or the Minister decides otherwise; and
 - (c) the waiver of the permission rights will only apply to the activity that is the subject of an application under [clause 3](#) and, unless expressly provided otherwise, it will not prevent the customary marine title group from exercising its permission rights under a customary marine title order or agreement within the same area for any other resource consent application not included in the *Gazette* notice published under [clause 11](#); and
 - (d) the customary marine title order or agreement will still be a relevant matter for the consent authority when considering the resource consents necessary for the deemed accommodated activity under the [Resource Management Act 1991](#).

Schedule 2 clause 10(a): amended, on 23 December 2023, by [section 6](#) of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Schedule 2 clause 10(d): amended, on 23 December 2023, by [section 6](#) of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

- 11 If a proposed infrastructure becomes a deemed accommodated activity under [clause 10](#), the Minister must cause a notice to be published in the *Gazette* giving—
- (a) a description of the deemed accommodated activity, including a detailed description of the proposed infrastructure and all resource consents that will be applied for as part of the proposed infrastructure; and
 - (b) a description of the customary marine title area and rights that are affected; and
 - (c) a description of the purpose for which the infrastructure is to be used.
- 12 The Minister must serve a copy of the *Gazette* notice on the customary marine title group and the relevant regional council.

Part 2

New minerals-related activities

13 Definitions

In this Part,—

activity means any activity—

- (a) that is necessary for, or reasonably related to, prospecting, exploration, mining operations, or mining under either or both of the following:
 - (i) a privilege in respect of petroleum;
 - (ii) a privilege to which [section 84\(1\)](#) applies; and
- (b) that is to commence in a customary marine title area after the effective date; and
- (c) for which a resource consent is to be sought

activity agreement means an agreement of the kind described in [clause 15](#) between the title holder and the permit holder

permit holder means the person seeking the resource consent for the activity.

14 Permit holder may request title holder to negotiate activity agreement

- (1) A permit holder may serve a notice on the relevant customary marine title group stating that the permit holder intends to negotiate an activity agreement with the group.
- (2) A notice served under subclause (1) must specify—
 - (a) the area affected by the proposed activity; and
 - (b) the purpose for which resource consent is to be sought; and
 - (c) the proposed programme of work for the activity, including the type and duration of work to be carried out and the likely adverse effect on the customary marine title area and on the customary marine title group; and
 - (d) the compensation and safeguards against any likely adverse effects proposed; and
 - (e) the type of privilege held by the permit holder.

15 Contents of activity agreement

- (1) An activity agreement may make provision for the following matters:
 - (a) the periods during which the permit holder is to undertake the activity in the customary marine title area;
 - (b) the parts of the customary marine title area on or in which the permit holder may undertake the activity;
 - (c) the kinds of activity that may be undertaken in the customary marine title area;
 - (d) the conditions to be observed by the permit holder in undertaking the activity in the customary marine title area;
 - (e) the action to be taken by the permit holder in order to protect the environment;
 - (f) the compensation to be paid to the customary marine title group as a consequence of the permit holder undertaking the activity in the customary marine title area;
 - (g) the manner of resolving any dispute arising in connection with the activity agreement;
 - (h) any other matters that the parties to the arrangement may agree to include in the activity agreement.
- (2) In considering whether to agree to an activity agreement, the customary marine title group may have regard to any matters it considers relevant.

16 Requests for appointment of arbitrator

- (1) The permit holder may serve a written notice on the customary marine title group requesting the group to agree to the appointment of an arbitrator if—
 - (a) the permit holder and the group are unable to agree on an activity agreement; and
 - (b) a period of at least 60 days has expired since the day on which notice was served under [clause 14\(1\)](#).
- (2) The customary marine title group and the permit holder may agree to the appointment of any person as arbitrator.

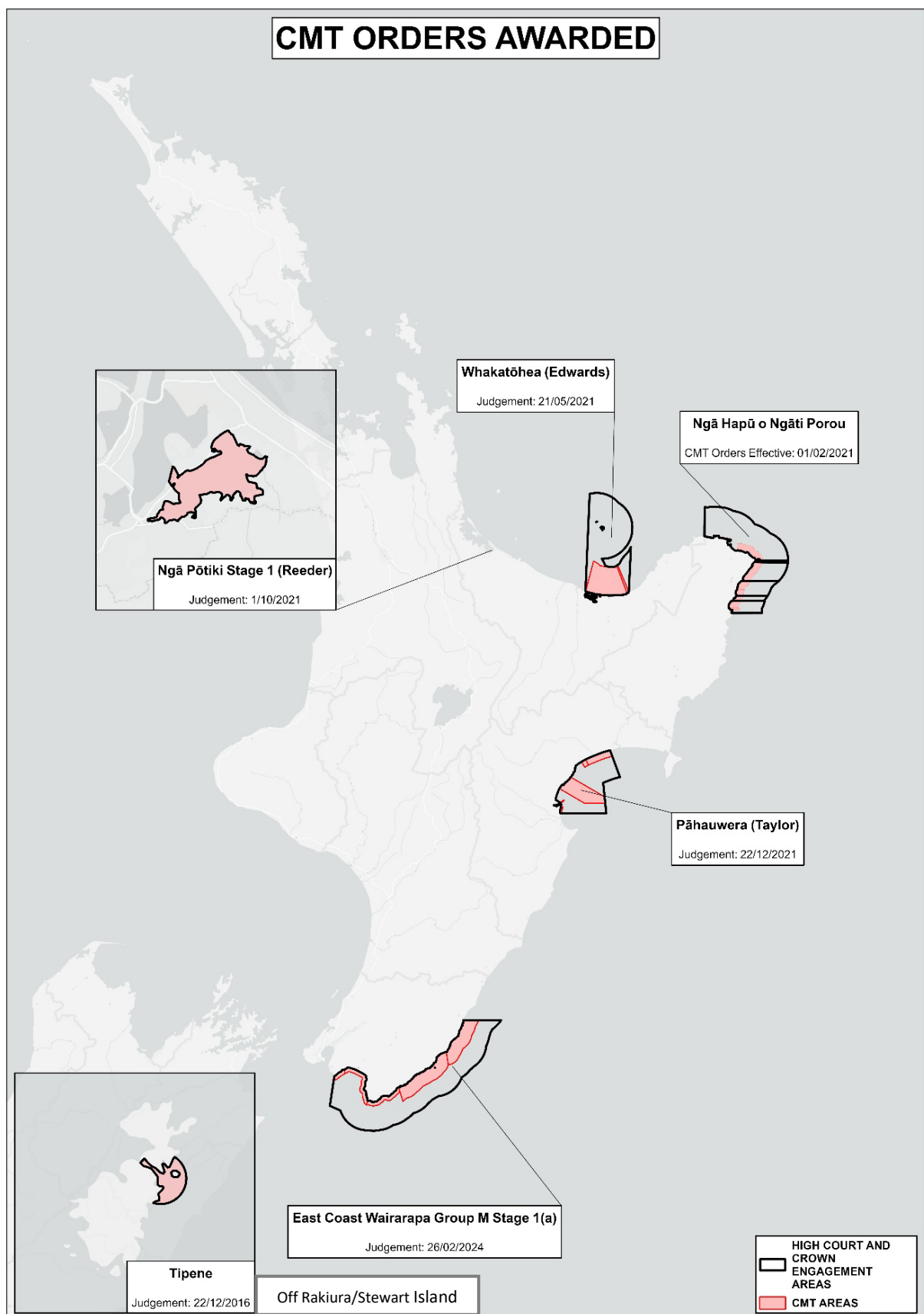
17 Appointment of arbitrator in default of agreement

- (1) The permit holder or the customary marine title group may apply to the chief executive of the department responsible for the administration of the [Crown Minerals Act 1991](#) for the appointment of an arbitrator if—
 - (a) the customary marine title group and the permit holder are unable to agree on the appointment of an arbitrator; and
 - (b) a period of at least 30 days has expired since the day on which notice was served under [clause 16\(1\)](#).
- (2) Every application must be accompanied by any prescribed fee.
- (3) On receipt of an application the chief executive must as soon as practicable appoint an arbitrator.

18 Arbitration

- (1) If an arbitrator is appointed under [clause 16\(2\)](#) or [17\(3\)](#), the arbitrator must conduct an arbitration in accordance with the [Arbitration Act 1996](#), and the provisions of that Act (other than those relating to the appointment of arbitrators) apply to the arbitration as if—
 - (a) this clause were an arbitration agreement; and
 - (b) the matters specified in paragraphs (a) to (g) of [clause 15\(1\)](#) were matters in dispute that the customary marine title group and the permit holder had agreed to submit to arbitration.
- (2) The arbitrator's award must determine the basis on which the activity is to proceed, on reasonable conditions.

Appendix Four: Map of customary marine title held in coastline areas



Briefing: Fast-track Approvals Bill: policy and workability changes for departmental report

Date submitted: 26 June 2024

Tracking number: MfE BRF-4945 / MBIE 2324-3985

Sub Security level: In-Confidence

MfE priority: Urgent

Actions sought from Ministers		
<i>Name and position</i>	<i>Action sought</i>	<i>Response by</i>
To Hon Chris BISHOP Minister Responsible for RMA Reform	Agree to the recommendations in this briefing	1 July 2024
To Hon Simeon BROWN Minister of Transport	Agree to the recommendations in this briefing	1 July 2024
To Hon Shane JONES Minister for Regional Development	Agree to the recommendations in this briefing	1 July 2024
To Hon Tama POTAKA Minister of Conservation	Agree to the recommendations in this briefing	1 July 2024

Actions for Minister's office staff
If agreed to, forward this briefing to: Hon Simeon Brown, Minister for Energy, Minister of Local Government Hon Paul Goldsmith, Minister for Arts, Culture and Heritage Hon Tama Potaka, Minister for Māori Crown Relations: Te Arawhiti Hon Penny Simmonds, Minister for the Environment Hon Chris Penk, Minister for Land Information Hon Shane Jones, Minister for Oceans and Fisheries, Minister for Resources Return the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).

Appendices and attachments

Appendix 1: Draft Cabinet paper: Fast-track Approvals Bill: policy and workability changes for departmental report

Appendix 2: BRF-4890; MBIE 2324-3790: Fast-track Approvals Bill – Māori land and land transport or electricity network infrastructure

Appendix 3: BRF-4779: Approval of Approach - Te Rūnanga o Ngāi Tahu Fast Track-Approvals Bill Provision Request

Appendix 4: TA 2023/2024 – 245: Fast-Track Approvals Bill: Decisions on expertise of Panels; further information on appointment rights to panels arising from Treaty settlements and other arrangements

Appendix 5: TA 2023/2024 – 247: For delegated decision: Fast-Track Approvals Bill: Treaty of Waitangi clause for departmental report

Appendix 6: s 9(2)(h)

Key contacts at Ministry for the Environment

<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Principal Author	Lisa Johnston		
General Manager	Jo Gascoigne	s 9(2)(a)	☐

Key contacts at Ministry for Business, Innovation and Employment

<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Principal Author	Francis Van Der Krogt		
Responsible Manager	Susan Hall	s 9(2)(a)	☐

Fast-track Approvals Bill: policy and workability changes for departmental report

Purpose

1. The attached draft Cabinet paper reflects Ministerial decisions on policy and workability changes to the Fast-track Approvals Bill for recommendation to the Environment Committee in the Departmental Report on the Bill. Cabinet agreement is required where the Departmental Report recommends changes to the Environment Committee which depart from previously agreed policy decisions.
2. At the Fast-track joint Ministers meeting on 19 June 2024, some outstanding decisions were delegated to joint Ministers. These will be reflected in the final Cabinet paper for lodgement and are currently contained in the draft Cabinet paper in square brackets. These are covered in part 1 of this briefing.
3. Te Arawhiti has provided separate advice regarding expertise of panel members and appointment rights to panels arising from Treaty settlements and other arrangements [**Appendix 4**: TA 2023/2024 - 245] and options for a Treaty clause [**Appendix 5**: TA 2023/2024 – 247].
4. Joint Ministers have agreed to take some outstanding decisions directly to Cabinet. These are in the Cabinet paper and highlighted in part 2 of this briefing.
5. The following matters may to be addressed through Amendment Papers to the Bill:
 - 5.1. advice from Land Information New Zealand to the Minister for RMA Reform, the Minister of Transport, and the Minister for Land Information in early July regarding select Public Works Act 1981 matters
 - 5.2. a further change to the Bill relating to mining approvals under the Crown Minerals Act being considered by the Minister for Resources. This needs further policy work and consultation with Māori. Cabinet agreement will be sought for any further policy changes
 - 5.3. other technical or workability changes that may arise

Outstanding decisions delegated for Ministerial agreement

6. There are some outstanding decisions to be made prior to the lodgement of the final version of the attached draft Cabinet paper. These are currently contained in the Cabinet paper in square brackets. These decisions include:
 - 6.1. Removing Mana Whakahono ā Rohe and Joint Management Agreements from the hierarchy of matters the panel must consider
 - 6.2. Reflecting the weighting of the Ngā Hapū o Ngāti Porou Act 2019 (NHNP Act)
 - 6.3. Exclusive Economic Zone assessment criteria

- 6.4. Limiting the right to appeal
- 6.5. Linear infrastructure and identified Māori land (delegated to Ministers Jones, Brown and Potaka) (**Appendix 2**)
- 6.6. Te Rūnanga o Ngāi Tahu specific provisions (outstanding decisions from Ministers Jones, Brown and Potaka) (**Appendix 3**)
- 6.7. Decisions on expertise of Panels (delegated to Ministers Bishop, Jones and Potaka) (**Appendix 4**)
- 6.8. Decisions on options for a Treaty clause (delegated to Ministers Jones and Potaka) (**Appendix 5**) (legal advice in **Appendix 6**)

Mana Whakahono ā Rohe, Joint Management Agreements and Ngā Hapū o Ngāti Porou Act 2019 (NHNP Act)

- 7. We recommend removing Mana Whakahono ā Rohe and Joint Management Agreements from the hierarchy of matters the panel must consider as part of its assessment in schedule 4 clause 32, as these are process-driven matters, not decision-making criteria. MWaR and JMA should instead be considered as part of the development of the clause 13 report and requirements in the Bill to seek written comments from those parties.

Reflecting the weighting of the Ngā Hapū o Ngāti Porou Act 2019 (NHNP Act)

- 8. The Bill is currently not consistent with the requirements of the Ngā Hapū o Ngāti Porou Act 2019 (NHNP Act).
- 9. Specifically, schedule 4 clause 33(4) does not provide for the NHNP Act requirement that in some cases a consent authority must “recognise and provide for” the environmental covenant where an activity is within, adjacent to, or directly affecting a customary marine title area – which is a higher standard than “have regard to”.
- 10. In addition, the NHNP Act does not apply to notices of requirement. Therefore schedule 4 clause 33(4) should be amended to reflect the weightings provided for in the NHNP Act and remove references to notices of requirement.

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ) assessment criteria

- 11. The assessment criteria in schedule 9 cl 9 of the Bill apply relative weightings between certain sections of the EEZ Act and any relevant EEZ policy statements. We consider this creates additional complexity and associated legal risk and is not consistent with the general policy to give relative weighting to (1) the purpose of the FTA Bill, then (2) the relevant matters in the underlying legislation.
- 12. We recommend clarifying Schedule 9 cl 9 so that Expert Panels are required to give weighting to (1) the purpose of the FTA Bill, then (2) the relevant EEZ Act matters. The Expert Panel determine the appropriate consideration and weighting to be applied to the EEZ Act matters in accordance with the EEZ Act and established jurisprudence, subject to the primacy given to the purpose of the FTA Bill.

13. This reflects the same advice and recommendation (rec 32) of the 10 May Briefing, related to the RMA in schedule 4.

s 9(2)(h)

14. s 9(2)(h)

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21. Therefore, we recommend retaining the drafting in the Bill as introduced

Offsetting and mitigation

22. You requested clarification on whether climate mitigation and offsetting are provided for in the Bill. Mitigation and offsetting are required as a matter for assessment and decision-making under schedule 4 clause 36(2), schedule 5 clause 8(2), and schedule 6 clause

¹ *Remediation (NZ) Ltd v Taranaki Regional Council* [2021] NZEnvC 153; *Lindsay v Dunedin City Council* [2013] NZEnvC 8.

² *Lindsay v Dunedin City Council* [2013] NZEnvC 8.

³ *Sandspit Yacht Club Marina Soc Inc v Auckland Council* [2011] NZEnvC 25.

1. These provisions provide for offsets or compensation to address any adverse effects, informed by comments to a panel from invited parties including relevant Ministers. However, these clauses do not specifically use the term 'mitigation', except in schedule 6, clause 1.
23. Ministerial direction is required on whether amendments should be made to the Bill in order to explicitly refer to mitigation.

Linear infrastructure and identified Māori land

24. You have received advice on options to amend the provisions that require written agreement of relevant Māori landowners. Linear infrastructure networks such as roads, rail and transmission networks typically traverse large numbers of properties. Waka Kotahi and Transpower have identified in submissions to the Environment Committee on the Bill that for some of their projects it may be impossible to secure the written agreement of relevant Māori landowners under clause 18 of the Bill prior to the referral stage.
25. This would mean such projects are ineligible to enter the fast-track approvals process. Accordingly, they have sought amendment to the Bill so that projects can proceed through the Fast-track Approvals process without the written agreement of relevant owners of identified Māori land where a project includes activities on such land.
26. Options and the corresponding decisions are contained in BRF-4890; MBIE 2324-3790 at **Appendix 2**. These decisions were **delegated to Ministers Jones, Brown and Potaka on** 19 June. The Ministers confirmed that Option 3B should be drafted into the Cabinet paper. This decision needs to be confirmed through signing of BRF-4890.

Te Rūnanga o Ngāi Tahu specific provisions

27. You have received advice regarding a request from Te Rūnanga o Ngāi Tahu for specific provisions in the Bill they consider are required to uphold the Ngāi Tahu settlement and their rangatiratanga within the Ngāi Tahu takiwā [BRF-4779 refers]. The provisions requested are:
- 27.1. a clause that specifies that Te Rūnanga o Ngāi Tahu are the representative for Ngāi Tahu Whānui within the Ngāi Tahu takiwā (essentially mirroring s15 of Te Runanga o Ngai Tahu Act 1996); and
- 27.2. drafting that would require decision-makers under the Bill to have particular regard to the views of Te Rūnanga o Ngāi Tahu when those views are provided in accordance with the provisions of the Bill.
28. Minister Bishop has signalled his agreement to options contained in BRF-4779 at **Appendix 3**. This advice requires decisions from **Ministers Jones, Brown and Potaka**.

Decisions on expertise of Panels and appointment rights to panels arising from Treaty settlements and other arrangements

29. In terms of collective Panel expertise, the Bill specifies that the existing requirement for the panel to have an understanding of tikanga Māori and mātauranga Māori. Your confirmation is sought to replace this with a requirement for the panel to have an understanding of te ao Māori and Māori development and a requirement for the panel to have expertise in environmental matters is added.

30. In respect of panel appointment related to iwi authorities, Treaty settlements or other arrangements, no changes are required to the existing provisions in the Bill except to reflect the decision made by the Minister for Resource Management Reform in BRF-4664 to include reference to the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 in schedule 3 clause 5.
31. Options and the corresponding decisions are contained in TA 2023/2024 – 245 at **Appendix 4** These decisions were **delegated to Ministers Bishop, Jones and Potaka** on 19 June.

Options in relation to Treaty settlement matters

32. Ministers requested further advice on potential changes to the overarching requirement to act consistently with Treaty settlements and customary rights, which Te Arawhiti provided in TA 2023/2024 – 247 at **Appendix 5**. These decisions were **delegated to Ministers Jones and Potaka** on the 19 June.
33. Ministers Jones and Potaka provided alternative drafting for clauses 6, 7 and 13 of the Bill on 25 June. This drafting indicated that the recommendations provided in TA 2023/2024 – 247 were not agreed, but included further drafting changes which:
- 33.1. significantly reduced the consideration required to be given by persons exercising functions, powers and duties under the Bill (from ‘act consistently with’ to ‘have regard to’), with respect to:
 - 33.1.1. existing Treaty settlements; and
 - 33.1.2. customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA) or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act (NHNP Act); and
 - 33.2. added additional matters which persons exercising functions, powers and duties under the Bill must ‘have regard to’, being ‘the importance of Māori development outcomes’ and ‘Te Ture Whaimana’; and
 - 33.3. altered the ‘Te Ture Whaimana’ clause (7) – removing descriptive elements of the clause which confirm Parliament’s intent with respect to Te Ture Whaimana and reducing the clause to simply cross-reference relevant Treaty settlement legislation;
 - 33.4. amended the requirements for the report on Treaty settlements and other obligations to include remove information relating to the principles and provisions in relevant Treaty settlements (clause 13(2)(c)), recognised negotiation mandates for Treaty settlements (clause 13(2)(d)), applicant groups under MACA (clause 13(2)(f)), iwi or hapū parties to Mana Whakahono ā Rohe and joint management agreements (clause 13(2)(h)) and add a summary of comments from Māori groups relating to the importance of Māori development (to clause 13(2)(k)).
34. The draft Cabinet paper attached to this briefing includes these proposed changes to the Bill.

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

36. s 9(2)(h)

The changes reduce existing protections in the Bill

37. Specifically, the changes:

- 37.1. in respect of clause 6, contemplate decision-makers potentially acting inconsistently with Treaty settlements and customary rights, which could weaken these arrangements and lead to a breach of settlements or relevant statutory obligations;
- 37.2. in respect of clauses 6 and 7, potentially diminish the status of Te Ture Whaimana, which was included in the Bill following engagement with Waikato-Tainui, by requiring decision makers to 'have regard to' it rather than 'have particular regard' to it, which creates an inconsistency in the legal standard required by relevant settlement legislation and the Bill which creates uncertainty;
- 37.3. in respect of clause 13, create inconsistencies with other parts of the Bill that will mean that in some cases Ministers and the panel will not have the benefit of information in the report that is relevant to other requirements under the Bill. For example, the removal of clause 13(2)(f) means Ministers will not have information about applicant groups under MACA, but they will nonetheless be required to engage with those parties under clause 19(1).

Affected groups will not have an opportunity to engage on the changes

- 38. Prior to introduction of the Bill, Ministers made commitments to post-settlement governance entities (PSGEs) and other Māori groups that the select committee process will provide an appropriate avenue for engaging on how the Bill provides for settlements and broader Māori rights and interests are protected. This was noted, for example, in a letter from Minister Bishop to PSGEs and other groups dated 31 January 2024. As set out above the proposed changes risk having a significant impact on Treaty settlements and broader Māori rights and interests, which PSGEs and other Māori groups will not have the opportunity to comment on. This may be considered a breach of the Treaty principle of good faith.
- 39. This risk is increased for groups with whom the Crown has agreed consequential amendments to their settlement legislation through the Bill including Waikato-Tainui, the Waikato River iwi, Te Awa Tupua and Ngāti Rangī.
- 40. We recommend that you engage with PSGEs on these proposed changes.

41. s 9(2)(h)

Further changes will be required through Amendment Papers

42. As stated above, the changes to clause 13 will interact with other parts of the Bill. Further policy work will be required to determine the impact of the decisions noted above on other parts of the Bill.

s 9(2)(h)

43. s 9(2)(h)

Outstanding decision to be taken directly to Cabinet

44. On 19 June 2024, joint Ministers agreed to take the following decision directly to Cabinet. A summary of the policy options for decision are below.

Final substantive decision-making – Crown land

45. The Cabinet paper seeks direction on who makes final land management decisions in respect of concessions, land access arrangements under the Crown Minerals Act 1991 (CMA) and land exchanges (the disposing and acquiring of Crown conservation land). These decisions have implications for how the Crown manages risks as a landowner and manager.
46. There are two options:
- 46.1. option 1: the panel is the final decision-maker on all approvals
 - 46.2. option 2: relevant portfolio Ministers, as in the current drafting of the Bill, retain final decision-making on concessions, CMA access arrangements and land exchanges.
47. The benefit of option 1 is that it creates greater consistency in decision-making processes through consolidating decisions to one decision-maker. The disadvantage is that it creates risk by transferring decision-making to a separate party from the Crown, while the Crown continues to hold liability.
48. The Minister of Conservation would continue to hold statutory responsibility for any ongoing costs and liabilities that may eventuate from a decision made by the panel.
49. If option 1 is adopted, we propose that further decisions on the detail of how this approach is designed and represented in the Bill are delegated to the Minister of Conservation, the Minister for Infrastructure, and the Minister for Regional Development.
50. The benefit of option 2 is that alignment is achieved between decision-making and the holder of risk. The Crown can continue to make decisions in line with the risks it manages on behalf of taxpayers, and there are no risks of a separate party creating financial or

health and safety liabilities. However, there would be less consistency in decision-making processes, because the panel will continue to make decisions on other approvals not related to Crown land.

Decisions already taken reflected in the draft Cabinet paper

51. On 19 June 2024, joint Ministers took a number of decisions which have been reflected in the draft Cabinet paper.

Referral of applications

52. Requiring three Ministers to decide jointly on whether to refer a project to an expert panel may be inefficient and complex. A more efficient process would be to have referral decisions made by only one Minister who would consult as required with other relevant portfolio Ministers. The process steps and obligations that currently apply to the referral decision would apply solely to that Minister.

53. The Cabinet paper proposes the Minister for Infrastructure should be:

53.1. solely responsible for making referral decisions

53.2. required to consult with and take into account comments from relevant portfolio Ministers and the Minister for the Environment on the referral application.

Final substantive decision-making – overall responsibility

54. The Cabinet paper proposes moving responsibility for final substantive decision-making from joint Ministers to the expert panel. This should give the public greater confidence that decision-making is independent and objective and reduce risks associated with Ministerial decision-making. It will also remove an administrative step, including the time and cost, of agencies having to advise Ministers once the panel has made its recommendation.

Direction on setting conditions

55. The Bill includes a statutory timeframe for the panel to deliver its decision. In addition, the Cabinet paper proposes that the Bill clearly prescribes how decisions are made and conditions are set on approvals. This should include ensuring that any conditions are proportionate, and their benefits exceed their costs. Further work is needed to fully determine these requirements and the Cabinet paper seeks agreement to delegate final decisions on this matter to the Ministers for Infrastructure and Regional Development.

Next steps

56. Decisions in this paper and appendices are currently contained in the draft Cabinet paper in square brackets. Once taken, these will be contained in the final Cabinet paper to be lodged.
57. The departmental report will be presented to the Environment Committee on 2 August.

58. The following matters may to be addressed through Amendment Papers to the Bill:

- 58.1. advice from Land Information New Zealand to the Minister for RMA Reform, the Minister of Transport, and the Minister for Land Information in early July regarding select Public Works Act 1981 matters
- 58.2. a further change to the Bill relating to mining approvals under the Crown Minerals Act being considered by the Minister for Resources. This needs further policy work and consultation with Māori. Cabinet agreement will be sought for any further policy changes
- 58.3. other technical or workability changes that may arise.

Recommendations

Decisions for all joint Ministers:

We recommend that you:

1. **note** that outstanding decisions for Ministerial agreement in this briefing are currently contained in the draft Cabinet paper in square brackets

Noted

Mana Whakahono ā Rohe, Joint Management Agreements and Ngā Rohe Moana Hapū o Ngāti Porou Act 2019 (NHNP Act)

2. **agree** to remove reference to Mana Whakahono ā Rohe and joint management agreements from the matters to be given weight to and assessed by the expert panel, at clause 32(1)(e)(iv) and (v).

Yes | No

3. **agree** to amend sch 4 cl 33(4) to reflect the weightings provided for in the NHNP Act and remove references to notices of requirement

Yes | No

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ) assessment criteria

4. **Agree** to amend Schedule 9 cl 9 to clarify what matters the Panel must consider when assessing an EEZ marine consent application are (with weight given greater to lesser):

4.1. the purpose of the FTA Bill

4.2. relevant EEZ Act matters (noting the below list will be weighted as appropriate according to EEZ Act decision-making framework, subject to a)):

4.2.1. the purpose of the EEZ Act

4.2.2. the purpose and principles of the EEZ Act set out in subpart 2 of part 1 of that Act

4.2.3. any relevant policy statements

4.2.4. any relevant provisions of the EEZ Act relating to assessments and the provision of information.

Yes | No

5. **agree** to retain the drafting in the Bill as introduced that enables any person with an interest greater than that of the public to appeal the substantive decision

Yes | No

6. **provide** direction as to whether amendments should be made to the Bill in order to explicitly refer to climate mitigation

Yes | No

7. **note** the Cabinet paper reflects delegated decisions made by Ministers Jones and Potaka to:

7.1. agree to amend the requirement in clause 6 for persons exercising functions, powers and duties to “act in a manner consistent with” with existing Treaty settlements and customary rights to a requirement to “have regard to” existing Treaty settlements, customary rights, the importance of Māori development and Te Ture Whaimana

7.2. agree to remove the inoperative provisions at clauses 7(1) and 7(2) that set out the intention and effect of Te Ture Whaimana

7.3. agree to amend the list of matters for inclusion in the report on Treaty settlements and other obligations that informs Ministers’ and the panel’s consideration of projects, set out at clause 13 by:

7.3.1. including an additional requirement at clause 13(k) for the report to include a summary of comments from Māori groups about the importance of Māori economic development

7.3.2. removing requirements for the report to include relevant principles and provisions in Treaty settlements relating to the project area, including those that relate to the composition of a decision-making body for the purposes of the RMA (clause 13(2)(c))

7.3.3. removing requirements for the report to include any recognised negotiation mandates for, or current negotiations for, Treaty settlements that relate to a particular area (clause 13(2)(d))

7.3.4. removing requirements for the report to include any applicant groups under the Marine and Coastal Area (Takutai Moana) Act 2011 (clause 13(2)(f))

7.3.5. removing requirements for the report to include any relevant iwi or hapū that are parties to any Mana Whakahono ā Rohe or joint management agreement under the RMA in the proposed area of the activity (clause 13(2)(h))

Noted

8. [legally privileged] notes 9(2)(h)

Noted

9. **note** that further policy work is needed to determine how these changes will affect other provisions in the Bill and the Cabinet paper seeks agreement to delegate final decisions regarding the workability of clauses 6 and 13 to the Minister for Infrastructure, the Minister for Regional Development and the Minister for Māori Crown Relations

Noted

10. **note** that outstanding decisions on substantive decision-making matters and Te Rūnanga o Ngāi Tahu specific provisions are to be made directly by Cabinet (unless you confirm your decisions relating to Ngāi Tahu as set out in BRF-4779 before Cabinet)

Noted

11. **Agree** to forward this briefing to Hon Simeon Brown, Minister for Energy, Minister of Local Government, Hon Paul Goldsmith, Minister for Arts, Culture and Heritage, Hon Tama Potaka, Minister for Māori Crown Relations: Te Arawhiti, Hon Penny Simmonds, Minister for the Environment, Hon Chris Penk, Minister for Land Information, Hon Shane Jones, Minister for Oceans and Fisheries, Minister for Resources.

Yes | No

Decisions for Ministers Jones, Brown and Potaka:

Linear infrastructure and identified Māori land

12. **Confirm** your decision relating to linear infrastructure and identified Māori land for BRF-4890 in Appendix 2 **Yes | No**

Te Rūnanga o Ngāi Tahu specific provisions

13. **Take decisions on** the recommendations relating to Te Rūnanga o Ngāi Tahu contained in Appendix 3 - BRF-4779 **Yes | No**

Decisions for Ministers Bishop, Jones and Potaka

Decisions on expertise of Panels

14. **Take decisions on** the recommendations relating to expertise of Panels contained in Appendix 4 – Te Arawhiti briefing 2023/2024-245 **Yes | No**

Signatures



Nadeine Dommissie
Deputy Secretary, Environmental
Management and Adaptation
Ministry for the Environment
26 June 2024



Paul Stocks
Deputy Secretary, Building, Resources and
Markets
MBIE
26 June 2024

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

Hon Simeon BROWN
Minister of Transport
Date

Hon Shane JONES
Minister for Regional Development
Date

Hon Tama POTAKA
Minister of Conservation
Date



Briefing: Fast-track Approvals Bill – Māori land and land transport or electricity network infrastructure

Date submitted: 13 June 2024

Tracking number: BRF-4890; MBIE 2324-3790

Security level: In-Confidence

MfE priority: Urgent

Actions sought from Ministers

<i>Name and position</i>	<i>Action sought</i>	<i>Response by</i>
To Hon Chris BISHOP Minister Responsible for RMA Reform	Agree to the recommendations in this briefing	20 June 2024
To Hon Simeon BROWN Minister of Transport	Agree to the recommendations in this briefing	20 June 2024
To Hon Shane JONES Minister for Regional Development	Agree to the recommendations in this briefing	20 June 2024
To Hon Tama POTAKA Minister of Conservation	Agree to the recommendations in this briefing	20 June 2024

Actions for Minister's office staff

If agreed, forward this briefing to:

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

Hon Paul Goldsmith, Minister for Arts, Culture and Heritage

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

Hon Penny Simmonds, Minister for the Environment

Hon Chris Penk, Minister for Land Information

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

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

Appendices and attachments

Appendix One: Excerpt from Transpower submission on areas currently under investigation for new assets



Key contacts at Ministry for the Environment			
<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Principal Author	Ben White		
General Manager	Jo Gascoigne	s 9(2)(a)	✓

Key contacts at Ministry for Business, Innovation and Employment			
<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
Principal Author	NA		
Responsible Manager	Susan Hall	s 9(2)(a)	✓



Fast-track Approvals Bill – Māori land and land transport or electricity network infrastructure

Key messages

1. Under clause 18(a) of the Fast-track Approvals Bill (the Bill), projects are ineligible for consideration under the fast-track approval process if they would occur on 'identified Māori land' without the agreement of the relevant landowner. Identified Māori land includes various categories of land of significance to Māori, some of which are multiply-owned under Te Ture Whenua Māori Act.
2. The definition of identified Māori land has led to an impression applicants need the approval for the project from each and every landowner. To resolve this, we propose the Bill be amended to clarify that "relevant landowners" of identified Māori land mean variously the trustee, agent or incorporation as appropriate.
3. Identified Māori land is defined in clause 4(1) of the Bill and includes (amongst other categories):
 - i Māori freehold land
 - ii general land owned by Māori that ceased to be Māori freehold land in specified circumstances.
4. .
5. The requirement to obtain written approval from Māori landowners reflects the significance of what remains of Māori land and the difficult history of its alienation, particularly through Crown action. The requirement for Māori landowner permission was included because the Bill does not provide the same level of protection for Māori rights and interests as under previous fast track legislation. Two key differences are that:
 - i the purpose of the Act (Bill) is to facilitate delivery of infrastructure and development projects and is given the strongest weighting in decision making, and
 - ii unlike the COVID-19 Recovery (Fast-track Consenting) Act 2020) and Natural and Built Environment Act 2023, the Bill does not include a comprehensive Treaty clause.
6. A Treaty clause would have applied Treaty principles such as active protection to those making decisions under the Act. Without such a clause the unique cultural, historical, ownership, legal and practical characteristics of identified Māori land may warrant greater protection for this land in the fast-track process.
7. Linear infrastructure networks such as roads, rail and transmission networks typically traverse large numbers of properties. Waka Kotahi and Transpower have identified in submissions to the Environment Committee on the Bill that for some of their projects it may be impossible to secure the written agreement of relevant Māori landowners under clause 18 prior to the referral stage.

- [REDACTED]
8. This would mean such projects are ineligible for the process under the Bill. Accordingly, they have sought amendment to the Bill so that projects can proceed through the Fast-track Approvals process without the written agreement of relevant owners of identified Māori land where a project includes activities on such land.
 9. In the time available it is not possible to assess the extent to which identified Māori land might be encountered in electricity transmission and land transport infrastructure projects that Waka Kotahi and Transpower may want to pursue under the Bill. We are therefore not able to estimate how prevalent this issue may be, however, both indicate it is very likely Māori land in these categories will be encountered in some upcoming projects.
 10. Māori freehold land – by far the largest category of Identified Māori land – covers about 5.5% of all land in New Zealand (approximately 1.456 million hectares), of which 1.26 million hectares (83%) is vested in a management structure. In practice, this means it is frequently possible for developers to negotiate with a trustee, incorporation or potentially an agent in respect of the land.¹
 11. To balance the Act's purpose to enable development of regionally and nationally significant infrastructure, while also providing appropriate protection for Māori land, the key issues are *when* in the process such protections are appropriate and the degree of protection provided.
 12. As currently drafted, and here presented as Option 1, the bill offers protection at the first gate – eligibility for fast track.
 13. s 9(2)(g)(i)
[REDACTED]
 14. Option 2 provides a middle path by proposing amendments to the bill so that referral to a panel without Māori landowner permission is a matter for Ministers' discretion, but landowner permission would be required at the substantive application stage.
 15. The options are:
 - Option 1 - Retaining clause 18(a) as currently drafted.
 - Option 2 – amend the Bill so that Ministers have discretion to refer a land transport network or electricity network infrastructure project to an expert panel without the written agreement of the owners of the two categories of affected identified Māori land listed in paragraph 2 above, but the substantive application to a panel could not

¹ Where there are 10 or more landowners, there is a process by which agents can be appointed by the Māori Land Court under Te Ture Whenua Māori Act.

[REDACTED]

be lodged for the project without having obtained the landowner's written consent to the activity.

- Option 3a – amend the Bill so that Ministers have both discretion to refer land transport network or electricity network infrastructure projects to an expert panel and for the Panel to recommend, and Ministers to ultimately approve projects, without the written agreement of the owners of the two categories of affected identified Māori land listed in paragraph 2 above, and that effects on that land and Māori rights and interests must be considered as part of the requirements at clause 32 of schedule 4 in making the substantive recommendation and decision.
 - Option 3b – the same as option 3a, but with an additional requirement for applicants to provide details of the steps taken to seek written approval from relevant landowners in their substantive application.
16. It is recommended that the amendments to identified Māori land eligibility criteria as proposed in the options above only apply to land transport or electricity network infrastructure projects, that would be defined in the Bill. We recommend the scope of electricity networks projects be limited to electricity network operators with requiring authority status.
17. Waka Kotahi and Transpower have also sought amendments to other parts of clause 18, including the requirement to obtain consent for activities in customary marine title and protected customary rights areas (clauses 18(c) and 18(d) of the Bill). Officials will provide further advice on these provisions in a separate briefing.

Recommendations

We recommend that you:

- a) **note** that under clause 18(a) of the Fast-track Approvals Bill projects are ineligible for referral to an expert panel without written approval of the owners of identified Māori land upon which the project would occur
- b) **note** Waka Kotahi and Transpower have identified this means many land transport or transmission infrastructure projects would be ineligible for the fast-track approvals process because it may not be possible to secure the agreement from the owners of all identified Māori land that such projects often traverse
- c) **note** various submitters support the retention of clause 18(a) without modification, or with modifications that provide further protections for identified Māori land
- d) s 9(2)(g)(i) [REDACTED]
- e) **agree to:**
- i **either: Option 1** – retain the existing wording of clause 18(a) and maintain the requirement that projects that occur on identified Māori land must have the written agreement of all owners before being eligible to apply for referral to an expert panel
 - ii **or: Option 2** amend clause 18(a) so that for land transport and electricity network infrastructure projects on Māori freehold land and general land owned by Māori that ceased to be Māori freehold land in specified circumstances, landowner consent will:

Yes | No

- i. be a discretionary matter at clause 21(2) so that joint Ministers may decline an application for referral where landowner approval has not been obtained after considering the effects on the relevant land, and the impacts on Māori rights and interests in that land; and
- ii. relevant landowners will be included within the parties who may provide comments on a referral application under clause 19(1)
- iii. apply as a mandatory requirement for an application to proceed at substantive decision stage so that the applicant will need to provide evidence of landowner approval in their substantive application

Yes | No

- iii **or: Option 3a** – amend clause 18(a) so that for land transport and electricity network infrastructure projects on Māori freehold land and general land owned by Māori that ceased to be Māori freehold land in specified circumstances:
 - i. landowner consent will be a discretionary matter at clause 21(2) so that joint Ministers may decline an application for referral where landowner approval has not been obtained, after considering the effects on the relevant land, and the impacts on Māori rights and interests in that land
 - ii. relevant landowners will be included within the parties who may provide comments on a referral application under clause 19(1)
 - iii. where written approval has not been obtained, the effects on the relevant land and impacts on Māori rights and interests in that land, will be a matter that must be considered, by the Expert Panel and Ministers at the substantive decision stage.

Yes | No

- iv **or: Option 3b** - include an additional requirement to those set out in option 3a, for the applicant to provide details of the steps taken to seek written approval from relevant landowners in their substantive application.

Yes | No

- f) **Note** the definitions of 'identified Māori land' and 'land returned under a Treaty settlement' in clause 4(1) will be amended as required to give effect to the agreed options and ensure consistency of drafting (as determined by PCO).
- g) **Agree** to add to the interpretation clause 4(1) the following definition of 'relevant landowner' to clarify who can provide written agreement as required under clause 18(a) for different categories of identified Māori land:
 - i in the case of Māori freehold land vested in a trustee or trustees, 'relevant landowner' means the trustee or trustees
 - ii in the case of Māori freehold land held by or vested in a Māori incorporation 'relevant landowner' means the incorporation
 - iii in the case of other Māori freehold land where the legal ownership is held by more than 10 owners, 'relevant landowner' means the owners, or an agent of the owners appointed under Part 10 of Te Ture Whenua Māori Act 1993
 - iv in the case of other Māori freehold land where the legal ownership is held by 10 or fewer owners, 'relevant landowner' means the owners.

Yes | No

h) **Agree** that clause 4(1) be amended to include definitions for 'electricity lines' and 'land transport network structures' as follows:

- i 'electricity lines' means works that are used or intended to be used for the conveyance of electricity delivered by a network utility operator with requiring authority status:
- ii "Land transport network" means any structures such as cycleways, rail, roads and walkways delivered by a network utility operator with requiring authority status.

Yes | No

Signatures



Nadeine Dommissé
Deputy Secretary, Environmental
Management and Adaptation
Ministry for the Environment
11 June 2024



Bruce Parkes
General Manager, Resource Markets
**Ministry for Business, Innovation and
Employment**
11 June 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

Hon Simeon BROWN
Minister of Transport
Date

Hon Shane JONES
Minister for Regional Development
Date

Hon Tama POTAKA
Minister of Conservation
Date

Fast-track Approvals Bill – Māori land and land transport or electricity network infrastructure

Purpose

1. This briefing seeks decisions to address the potential ineligibility of land transport or electricity network infrastructure projects under the Fast-track Approvals Bill stemming from the requirement that the agreement of the owners of identified Māori land upon which a project is located must be obtained before a project can be referred to an expert panel.

Background

Protections for Māori land in the Fast-track Approvals Bill

2. Clause 18(a) of the Fast-track Approvals Bill, states projects are ineligible for consideration under the Fast-track approval process if they occur on “identified Māori land” without the agreement of the relevant landowner. Identified Māori land is defined in clause 4(1) of the Bill and includes (amongst other categories):
 - i Māori freehold land
 - ii general land owned by Māori that ceased to be Māori freehold land in specified circumstances.
3. Projects on non-Māori land can be referred to an expert panel under the Bill and approved by Ministers without the written agreement of the landowners. Importantly their agreement would still need to be secured after the project’s approval to allow works to commence on their property. This could be through a normal private property agreement, or, where appropriate, the land could be compulsorily acquired or acquired by agreement under the Public Works Act (see below). The requirement to obtain written approval from identified Māori landowners was included because the Bill does not provide the same level of protection for Māori rights and interests as under previous fast-track legislation. Two key differences are that:
 - i the purpose of the Bill – to facilitate delivery of infrastructure and development projects – is given the strongest weighting in decision making, meaning without this protection a greater proportion of Māori land is likely to be impacted
 - ii unlike the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) and Natural and Built Environment Act 2023 (NBA), the Bill does not include a Treaty clause.
4. A Treaty clause would have required decision makers to apply Treaty principles such as active protection, and potentially consider the impacts and implications of granting such approvals on Māori land against its owners’ wishes.
5. The protections for identified Māori land reflect this land is a taonga tuku iho (a treasure handed down from generation to generation) that is protected by article 2 of Te Tiriti.

Identified Māori land has unique ownership, legal and practical characteristics, which may warrant greater protections in the fast-track approvals process. There is also a well-documented history of the Crown compulsorily acquiring a disproportionate amount of Māori land for public works that the Waitangi Tribunal has found in many cases was a breach of Te Tiriti.

6. The FTCA and the NBA included ineligibility criteria for properties returned under a Treaty settlement but not categories of Māori land. However, both Acts had strong Treaty clauses, and an overarching requirement to either give effect to or act in a manner consistent with the principles of the Treaty of Waitangi. The strong focus on enabling development in the purpose clause of the FTA Bill, meant officials recommended, and Ministers agreed, additional protections were required for identified Māori land
7. Submissions to the Environment Committee on the Bill from Māori, along with Auckland Council, have supported the retention of clause 18(a).

The problem with clause 18(a) for land transport or electricity network infrastructure projects

8. Land transport or electricity network infrastructure projects – eg, roads, railways, transmission lines – have greater challenges given the range of environments and volume of properties they traverse, often with limited alternatives. Waka Kotahi advises that the challenge with the clause 18(a) requirement to get written agreement of the owners of identified Māori land relates to both the volume of written approvals required and obtaining the approvals from the relevant landowners.
9. They maintain that even if all relevant landowners under clause 18(a) can be identified, it is unlikely they will all provide written approvals prior to either the referral or substantive application stage. This would mean most of their projects are likely to be ineligible to enter the process under the Fast-track Approvals Bill. Waka Kotahi anticipate that some future roading projects will traverse Māori freehold land or general land owned by Māori that was previously Māori freehold land.
10. The Environment Committee invited Waka Kotahi and Transpower to make submissions on the Bill. Their submissions identified the perceived problem with clause 18(a) and proposed amendments to the Bill so that the written agreement of identified Māori landowners was not a requirement for a land transport or electricity infrastructure project to be referred to an expert panel or approved. Transpower's submission notes that for new transmission lines and associated infrastructure, they would seek to avoid identified Māori land through their route selection, but that this may not always be possible. They have investigations underway for new lines and other assets in the areas where they consider there is extensive Māori freehold land (see Appendix 1).
11. These projects are part of the Net Zero Grid Pathways Programme and the Western Bay of Plenty Development Plan. Transpower's submission asserts that "it will be incredibly difficult, if not impossible, to avoid Māori Freehold land... the full constraints imposed by the land captured by clause 18 will likely render our new lines in the Central North Island, Wairakei and Tauranga ineligible from using the fast-track process."
12. In the time available, it is not possible to fully assess the extent to which identified Māori land might be encountered in electricity transmission and land transport infrastructure projects that Waka Kotahi and Transpower may want to pursue under the Bill.

Scope of identified Māori land and identification of this land

13. Waka Kotahi and Transpower are concerned that given the multiple ownership of much Māori land, they would be required to deal with large numbers of owners for individual parcels to secure their agreement; that it would be impractical to achieve this prior to both the referral and substantive application stage under the Fast-track Approvals Bill; and that if agreement is not forthcoming, relevant projects would be ineligible.
14. Te Arawhiti advises that while the identified Māori land definition includes a number of categories, the scale of these is limited. Māori freehold land comprises about 5.5% of all land (approximately 1.456 million hectares) of which 1.26 million hectares (83%) is vested in management structures. The other categories are less extensive.
15. The landowners for each of the categories in this definition are in most cases easily identifiable via an overall administering entity/management structure that can be contacted. Where there are more than 10 multiple owners of Māori freehold land and there is no trust in place, Te Ture Whenua Māori Act provides a process for appointing an agent to represent the landowners (with notice served on the Māori Land Court in the first instance). Waka Kotahi advises this process can be time consuming and can only be initiated by the landowners, and there are some instances where the Māori Land Court cannot find contact information for parcels of Māori land.
16. There are not many parcels in the category of 'general land owned by Māori that was previously Māori freehold land'. This category is limited to two specific circumstances where Māori freehold land ceased to have that status in accordance with either:
 - i an order of the Māori Land Court made on or after 1 July 1993 (these are rare and few in number); or
 - ii Part 1 of the Māori Affairs Amendment Act 1967 (which was only operative from 1968 to 1973).
17. Parcels which were previously Māori freehold land can be identified by referring to records of title and contacting the Māori Land Court (or researching their records). If this land is subsequently on-sold following its status change (as shown on the records of title) engagement may be required directly with the current owner to ascertain if this land is still in Māori ownership. It is anticipated that this scenario would be rare.
18. The problem identified by Waka Kotahi and Transpower of identifying landowners does not arise in the same way in respect of land returned under a Treaty settlement because it is not multiply-owned and the legal owners are easily identified. There are also other categories in the identified Māori land definition that occur in a Treaty settlement context, for which this problem does not arise although obtaining their agreement may be difficult given the significance of this land to the particular iwi.²

² For example, the following categories in the identified Māori land definition: (b) land that forms part of a natural feature that has been declared under an Act to be a legal entity or person (including Te Urewera land within the meaning of section 7 of the Te Urewera Act 2014); and (c) the maunga listed in section 10 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014.

How does landowner consent work generally for fast-track projects?

19. An important consideration in contemplating changes to the ineligibility criteria is that even if a project received all approvals through the Fast-track Approvals Bill, it could not be executed without either the agreement of affected landowners, or some other legal authority. This is the same for non-Māori land under the Bill where landowner consent is not required for Ministers to refer or approve a project.
20. If landowner agreement cannot be secured, the Public Works Act 1981 (PWA) gives the Crown or local authorities power to acquire land from private landowners for public works compulsorily without landowner agreement. Various rights or interests can be obtained in land such as easements or leases, or the land can be purchased.
21. In the last 25 years, the Crown has acquired over 7,500 interests in land under the PWA, over 95% of which were by agreement. In the last five years, there have been 79 compulsory acquisitions, 14 for the Crown (13 for Waka Kotahi, and one for the Ministry of Education) and 65 for local authorities.
22. As noted above, historically the Crown alienated large amounts of Māori land using the PWA. The Waitangi Tribunal has found this to be a breach of Te Tiriti. However, current Crown practice is to not acquire Māori land wherever possible. Since 2015, Crown entities have acquired three parcels of Māori freehold land by agreement under the PWA with their landowners, and one area of general land owned by Māori through compulsory acquisition at the request of its trustee.

Analysis and advice

23. Officials have worked to develop options to address the problem raised in this briefing.
24. The starting point has been the policy intent of the fast-track approvals regime – to facilitate the delivery of significant national and regional infrastructure while providing appropriate protection to Māori rights and interests. The options exist on a spectrum of where within the fast-track process the matter would be relevant, and the degree of protection provided. Retaining clause 18(a) as currently drafted is at one end of that spectrum.
25. As explained above, this issue has been raised in relation to linear infrastructure projects such as roads, rail and transmission networks. We therefore recommend that any change to the clause 18(a) ineligibility requirement for identified Māori land should be restricted to land transport and electricity lines network infrastructure provided by a network utility operator with requiring authority status.
26. Officials consider the practical challenge for network utility operators to get the written agreement of identified Māori land would pose the most significant risk in relation to 'Māori freehold land' and 'general land owned by Māori that was previously Māori freehold land' (clauses 4(1)(a) and (d)). The options to change clause 18(a) are therefore limited to disapplying the requirement to get Māori landowners written agreement only in respect of these two categories of land.

Options in relation to the requirement that identified Māori landowners agree to their land being part of a land transport or electricity network infrastructure project approvals application

Option 1 – retain the requirement that there must be written agreement from identified Māori landowners at referral stage

27. This option would retain the existing wording of clause 18(a). The protections for identified Māori land in the Bill are a result of there being no general Treaty clause. The Environment Committee received some submissions from individuals, approximately 100 submissions from iwi/Māori authorities and organisations, and a submission from Auckland Council that supported retaining the protections in clause 18(a) for identified Māori land.

Option 2 – Ministers can refer a land transport or electricity network infrastructure project to an expert panel for approvals without the written agreement of the owners of Māori freehold land and general land owned by Māori, but agreement would need to be obtained before a substantive application is lodged

28. This option would mean Ministers have a discretion to refer a land transport or electricity network infrastructure project to an expert panel for approvals, without the written agreement of the relevant owners of Māori freehold land and general land owned by Māori. However, their agreement would be a requirement at the substantive approval stage (so that the applicant will need to provide evidence of landowner approval in their substantive application).
29. This would mean that applicants can access the referral pathway without landowner agreement for these two land categories, and the applicant would have more time to secure their agreement. However, the option would not fully resolve the issue if applicants, despite having more time, were unable get the written agreement of these landowners prior to the project getting to the substantive approval stage.
30. Ministers may consider this option proportionate to the scale of the issue, given the total quantum of identified Māori land (including these two land classes) is relatively limited.
31. The Bill contains a range of consultation requirements before a referral decision and joint Ministers are provided with information about this consultation as well as relevant Māori rights and interests, including whether a project affects Māori landholdings.³ The Treaty settlements and other obligations report must also include information on who the relevant Māori groups with interests are, which may include identified Māori landowners.⁴ Ministers must also invite written comments from Māori landowners and others on the referral application.⁵
32. This information will inform the referral decision. The same comments apply to Option 3.

³ See for example clauses 13, 14(3), 16, 19, 22, 23, 24 and 25 of the Fast-track Approvals Bill.

⁴ Clause 13

⁵ Clause 19

[REDACTED]

Option 3 – Ministers can refer land transport or electricity network infrastructure projects to an expert panel for approval, and grant the approvals without the agreement of the owners of Māori freehold land and general land owned by Māori

33. Under this option the written approval of the owners of Māori freehold land and general land owned by Māori would be a discretionary matter to decline both referral, and substantive approval, for land transport or electricity network infrastructure projects. There would be a requirement at clause 32 of schedule 4 in the Bill at the panel and ministerial decision-making stage, to consider the effects of the project on the relevant land, and the effects on Māori rights and interests in that land.
34. As noted above, if Ministers issued all the necessary approvals under the Act for a land transport or electricity network infrastructure project, in the absence of the written agreement of affected identified Māori landowners, a legal authority to undertake the project on the affected parcels would still need to be secured. There is no suggestion that normal land access negotiation processes would not be used in respect of this land or that the fast-track process should overrule these existing property rights. Rather, the issue is one of whether these projects can obtain their environmental approvals through the fast-track process.
35. This Option also means that, if those Māori landowners are concerned about, or oppose the project taking place over their land, they are likely to need to participate or be engaged in both the referral and substantive decision-making processes; and to make comments on the application.
36. As with Option 2, there are consultation requirements before the referral decision, along with the information provided to ministers about this consultation as well as relevant Māori rights and interests, including whether a project affects Māori landholdings, and the Treaty settlements and other obligations report must also include information on who the relevant Māori groups with interests are, which may include identified Māori landowners. Ministers must also invite written comments from Māori landowners and others on the referral application.
37. The benefit of this Option is that it increases the certainty of significant linear infrastructure being able to access the fast-track approvals process.
38. If Ministers prefer this option but are concerned that it provides inadequate protections for the relevant parcels of identified Māori land, an addition to this option is to require an applicant to have sought written approval before their application; and to provide details of the steps taken.

Definition of relevant landowner

39. The issues arising in relation to the requirement for written agreement from identified Māori landowners demonstrated the definition of identified Māori land in the Bill could be improved. In particular by being more specific about who the actual owners are. Importantly this would clarify that for many categories of identified Māori land there are agents or trustees for blocks of identified Māori land and a project applicant would not need to get the written agreement of all individual owners or shareholders.

- [REDACTED]
40. We recommend that the following definitions of ‘relevant landowner’, in relation to Māori freehold land, are added to the Bill’s interpretation clause (4(1)):
- i in the case of Māori freehold land vested in a trustee or trustees, ‘relevant landowners’ means the trustee or trustees
 - ii in the case of Māori freehold land held by or vested in a Māori incorporation, ‘relevant landowners’ means the incorporation
 - iii in the case of other Māori freehold land where the legal ownership is held by more than 10 owners, ‘relevant landowners’ means either the owners, or an agent of the owners appointed under Part 10 of Te Ture Whenua Māori Act 1993
 - iv in the case of other Māori freehold land where the legal ownership is held by 10 or fewer owners, ‘relevant landowners’ means the owners.

Te Tiriti analysis

41. As noted above, the requirement that projects are ineligible for consideration under the Fast-track Approvals Bill if they occur on “identified Māori land” without the agreement of the relevant landowner was included because the Bill includes no general Treaty clause. It was also considered necessary because the purpose of the Act is to facilitate delivery of infrastructure and development projects and is given the strongest weighting in decision making, meaning without this protection more Māori land is likely to be affected.
42. If a general Treaty clause were included it could mean decision makers would have to consider how the exercise of powers under the Bill – eg, approving a project on Māori land without the consent of its owners – could cause the alienation of that land. Ministers have recently been provided further advice regarding the absence of a general Treaty clause [TA 2023/2024 – 233 refers].
43. s 9(2)(g)(i) [REDACTED]
- [REDACTED] The Bill may warrant greater protections for identified Māori land because the purpose of the Bill means facilitating delivery of infrastructure and development projects is weighted above all other matters.
44. Importantly though, if the ineligibility requirement was removed, projects could still not occur on identified Māori land without the owners’ consent. A legal interest in the land – such as the purchase or a lease or easement – would need to be secured. Although such an interest could be compulsorily acquired under the PWA, the Crown’s current practice is to avoid using these powers in relation to Māori land.
45. We do note, however, that submissions from iwi/Māori to the Environment Committee on the Bill supported the retention of clause 18(a).

Other considerations

Consultation and engagement

46. This advice was developed in consultation with the Ministry of Transport, Te Arawhiti and Waka Kotahi. Other agencies were also consulted on the advice including Land Information New Zealand and the Department of Conservation.

Legal issues

47. s 9(2)(h)

48.

49.

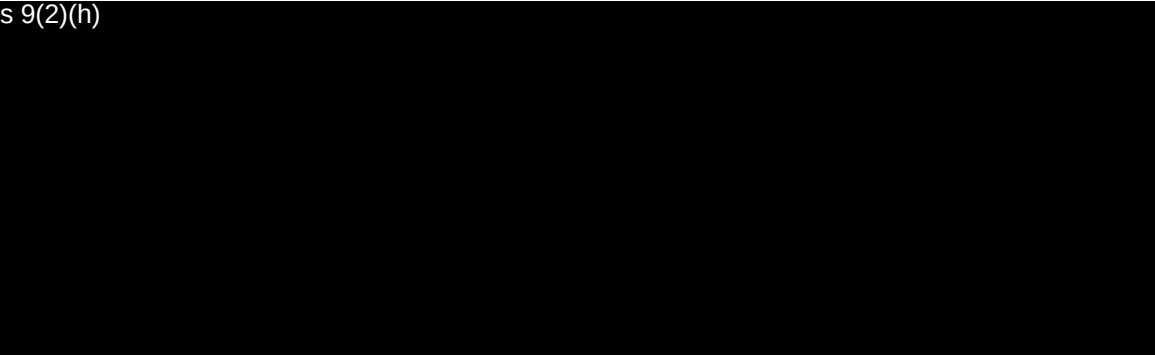
50.

51.

52. s 9(2)(h) [REDACTED]
53. [REDACTED]
54. [REDACTED]
55. [REDACTED]

s 9(2)(h) [REDACTED]

56. s 9(2)(h)



Financial, regulatory and legislative implications

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

Next steps

58. These decisions are to be incorporated into a Cabinet paper for approval to input the changes into the Departmental Report. The delivery of the Departmental Report to the Environment Committee is currently scheduled for 5 July 2024. Officials will provide separate advice on other parts of clause 18, including the requirement to obtain consent for activities in customary marine title and protected customary rights areas (clauses 18(c) and 18(d) of the Bill).

Appendix 1: Excerpt from Transpower submission on areas currently under investigation for new assets

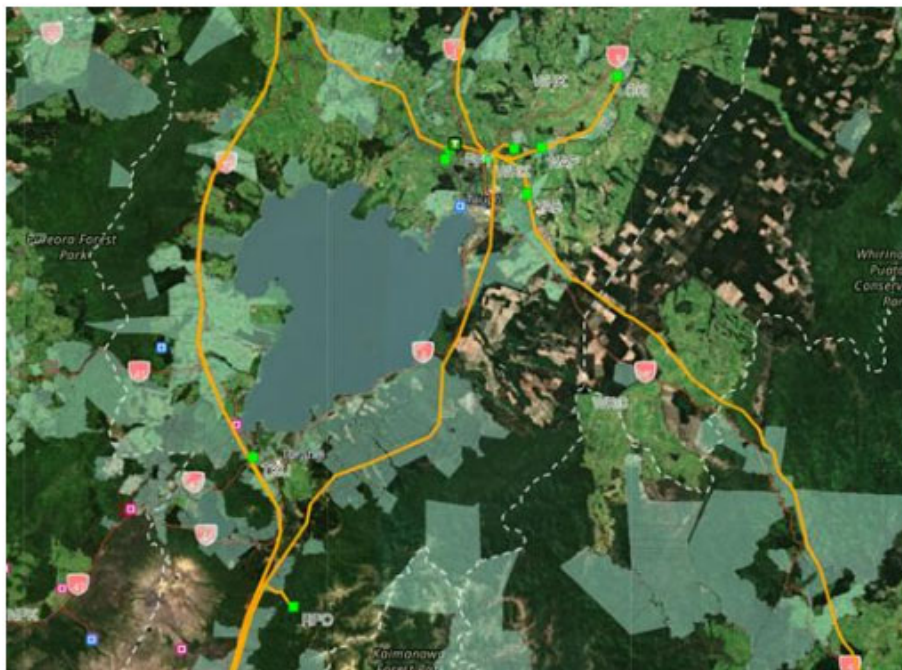


Figure 2: Central Plateau – Māori Freehold Land shown in light green

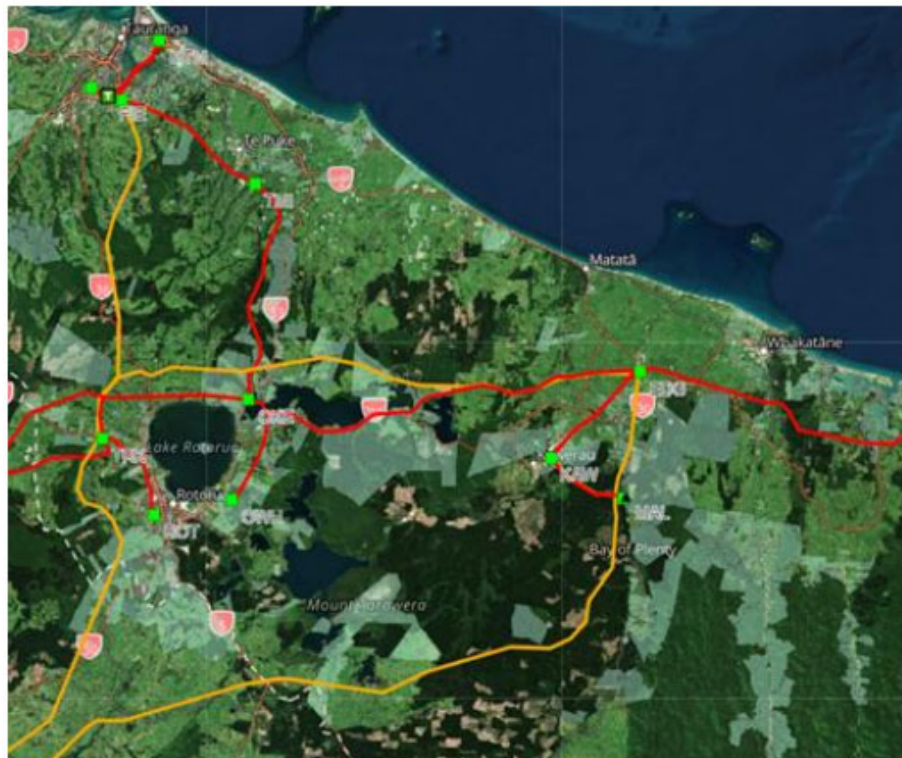


Figure 3: Western Bay of Plenty – Māori Freehold Land shown in light green

Hon Chris Bishop
Minister Responsible for RMA Reform

Hon Shane Jones
Minister for Regional Development

Hon Tama Potaka
Minister for Māori Crown Relations: Te Arawhiti

Fast-Track Approvals Bill: Decisions on expertise of Panels; further information on appointment rights to panels arising from Treaty settlements and other arrangements

Date	24 June 2024	Priority	High
Report No.	2023/2024 – 245	File ref	CMR-03-04

Action sought

Minister Responsible for RMA Reform (Hon Chris Bishop)	Confirm that in respect of collective panel expertise, in addition to other requirements already specified in the bill: a. the existing requirement for the panel to have an understanding of tikanga Māori and mātauranga Māori is replaced with a requirement for the panel to have an understanding of te ao Māori and Māori development; and b. a requirement for the panel to have expertise in environmental matters is added; and
Minister for Regional Development (Hon Shane Jones)	Confirm that, in respect of panel appointment related to iwi authorities, Treaty settlements or other arrangements, no changes are required to the existing provisions in the Bill except to reflect the decision made by the Minister for Resource Management Reform in BRF-4664 to include reference to the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 in schedule 3 clause 5.
Minister for Māori Crown Relations: Te Arawhiti (Hon Tama Potaka)	Note the attached detailed information on appointment rights to panels arising from Treaty settlements and other arrangements.

Contact for phone discussion (if required)

Name	Position	Phone	1 st Contact	2 nd contact
Lil Anderson	Tumu Whakarae, Chief Executive	s 9(2)(a)	✓	
Warren Fraser	Deputy Chief Executive – Strategy, Policy and Legal			✓
Sue van Daatselaar	Director, Strategy and Policy			

Fast-Track Approvals Bill: Decisions on expertise of Panels; further information on appointment rights to panels arising from Treaty settlements and other arrangements

Background

1. On 19 June, you considered decisions regarding what expertise the expert panel is required to have in the Fast-track Approvals Bill (the **Bill**). As part of that discussion, you requested further information on how panel members are appointed.
2. **Appendix 1** outlines how appointment rights to panels arise from Treaty settlements and other arrangements including through Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019; a joint management agreement (**JMA**) between Te Rūnanga o Ngāti Porou and the Gisborne District Council; a JMA between Tūwharetoa Māori Trust Board and the Taupō District Council (**TDC**); and a Mana Whakahono a Rohe agreement between Ngāti Tūrangituku and TDC (**other arrangements**):

The Bill provides for the panel convenor to decide on the composition of the panel

3. The Bill as drafted reflects your earlier decisions that:
 - a. the panel will be comprised of up to four members (schedule 3, clause 3(1)), or more at the discretion of the panel convenor in some cases (schedule 3, clause 3(6));
 - b. those members will be appointed by the panel convenor, who is appointed by the Minister for Infrastructure after consulting with other relevant portfolio Ministers (schedule 3, clause 2);
 - c. the members appointed by the panel convenor will include one person nominated by relevant local authorities and one person nominated by relevant iwi authorities (schedule 3, clause 3(2));
 - d. where either local authorities or iwi authorities nominate more than one person, the panel convenor will decide which nominee is appointed (schedule 3, clause 3(4)); and
 - e. where a Treaty settlement, iwi participation legislation, Mana Whakahono ā Rohe or joint management agreement includes a requirement related to the nomination or appointment of hearing commissioners, that panel convenor must comply with those obligations as if they were the relevant decision-maker, or obtain the agreement of the other party to adopt a modified arrangement. The agreement of the other party may not be unreasonably withheld (schedule 3, clause 5).
4. These provisions reflect equivalent provisions in the COVID-19 Recovery (Fast-track Consenting) Act 2020.
5. On 4 June, the Minister for Resource Management Reform agreed to include the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 in the list of arrangements set out in schedule 3 clause 5 [MfE BRF-4664 refers]. This is consistent with supporting compliance with the overarching requirement in clause 6 for decision-makers to exercise functions, powers and duties consistent with customary rights recognised under that Act (among other matters).

The panel convenor must ensure panel members have specific expertise

6. In appointing the panel, the Bill as drafted requires the panel convenor to ensure that members collectively have knowledge, skills, expertise in or an understanding of:
 - a. the purpose of the Act;
 - b. matters specific to the project, including technical expertise;
 - c. te Tiriti o Waitangi/the Treaty of Waitangi and its principles;
 - d. tikanga Māori and mātauranga Māori; and
 - e. if appropriate, conservation expertise.
7. On 19 June you agreed that the requirement for the panel to have an understanding of tikanga Māori and mātauranga Māori (paragraph 6(c) above) will be replaced with a requirement for the panel to have expertise in te ao Māori and Māori development, as well as environmental matters.

The Bill provides for the panel convenor to accept nominations or make appointments consistent with Treaty settlements and other arrangements

8. On 19 June you also discussed whether it may be appropriate to include a requirement for the panel to have, where required by a Treaty settlement, a suitably qualified legal expert appointed by the relevant iwi authority. Such a requirement is already provided for in the Bill as set out at paragraphs 3(c) and (e) above.
9. For completeness, we note the existing requirement for the panel convenor to appoint a panel member nominated by the relevant iwi authorities applies irrespective of whether a Treaty settlement or other arrangement also includes provisions related to the nomination or appointment of hearing commissioners. Where such a provision exists, it would be for the panel convenor to decide panel membership based on both requirements.
10. As requested on 19 June, detailed information about the requirements related to the nomination or appointment of hearing commissions in Treaty settlements and other arrangements is set out in the attached information brief.

We seek confirmation of your decisions

11. On the basis of what is set out above, we seek your confirmation that:
 - a. in respect of collective panel expertise, in addition to other requirements already specified in the bill:
 - i. the existing requirement for the panel to have an understanding of tikanga Māori and mātauranga Māori is replaced with a requirement for the panel to have an understanding of te ao Māori and Māori development; and
 - ii. a requirement for the panel to have expertise in environmental matters is added.
 - b. in respect of panel appointment related to iwi authorities, Treaty settlements or other arrangements, no changes are required to the existing provisions in the Bill except to reflect the decision made by the Minister for Resource Management Reform in BRF-4664 to include reference to the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 in schedule 3 clause 5.

Consultation

12. This briefing was prepare in conjunction with the Ministry for the Environment.

Recommendations

13. It is recommended that you:

a.	confirm that in respect of collective panel expertise, in addition to other requirements already specified in the Bill:	
i.	the existing requirement for the panel to have an understanding of tikanga Māori and mātauranga Māori is replaced with a requirement for the panel to have an understanding of te ao Māori and Māori development; and	YES / NO
ii.	a requirement for the panel to have expertise in environmental matters is added;	YES / NO
b.	confirm that, in respect of panel appointment related to iwi authorities, Treaty settlements or other arrangements, no changes are required to the existing provisions in the Bill except to reflect the decision made by the Minister for Resource Management Reform in BRF-4664 to include reference to the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 in schedule 3 clause 5; and	YES / NO

- c. **note** the attached detailed information on appointment rights to panels arising from Treaty settlements and other arrangements.



Warren Fraser

Deputy Chief Executive – Strategy, Policy and Legal

NOTED / APPROVED / NOT APPROVED	NOTED / APPROVED / NOT APPROVED
Hon Chris Bishop Minister Responsible for RMA Reform	Hon Shane Jones Minister for Regional Development
Date: / / 2024	Date: / / 2024
NOTED / APPROVED / NOT APPROVED	
Hon Tama Potaka Minister Māori Crown Relations	
Date: / / 2024	

Appendix 1: Appointment rights to panels arising from Treaty settlements and other arrangements

1. An important aspiration for iwi in Treaty settlement negotiations has been to negotiate stronger roles in the Resource Management Act 1991 (RMA) planning and consenting processes. A key driver for this is iwi concerns about inappropriate projects being permitted in sensitive cultural or ecological areas.
2. In general, Treaty settlements have responded to this aspiration by providing opportunities for iwi to participate in planning processes. However, a small number of settlements have also enabled iwi to influence appointments to panels making decisions on consents, or for iwi nominees to participate in decision making on consents. Arrangements created outside settlements have provided similar opportunities. The relevant arrangements are set out in detail in Table 1, with key points summarised below.

Iwi nominees participating in consent decision-making as of right under Treaty settlements (1-2 in Table 1)

3. Only two arrangements established through Treaty settlements provide for iwi nominees to participate in decision-making on consent applications as of right.

Waikato River

4. A council hearing committee on an application for a resource consent related to the Waikato River must have an equal number of members appointed by the Council and the Waikato River Authority (WRA). An independent chairperson must be jointly appointed by the WRA and Council. The board of the WRA is half appointed by the Crown and half appointed by iwi.
5. Where the Minister for the Environment 'calls in' a consent application related to the Waikato River and refers it to a board of inquiry, a minority of the board of inquiry must be WRA nominees. A recent example of this mechanism in action is the 2022 board of inquiry into the Watercare application to take water from the Waikato River for Auckland's municipal supply.

Te Oneroa-a-Tōhe (Ninety Mile Beach)

6. Te Oneroa-a-Tōhe Board (a board composed of council and iwi appointees) maintains a register of commissioners for determining consent applications relating to Te Oneroa-a-Tohe. When the council decides to appoint a panel, the council-appointed members of Te Oneroa-a-Tōhe Board appoint up to half the panel from the register and the chairperson. The iwi-appointed members of the Board appoint the other half of the panel. These provisions do not yet appear to have been used.

Other arrangements which guarantee iwi participation in decision-making (3-6 in Table 1)

7. There are four other arrangements, developed outside the context of Treaty settlements, which ensure iwi nominees can participate in decision-making on consents:
 - a. The Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 enables ngā hapū to appoint a person to a board of inquiry for a proposal of national significance in certain parts of the marine and coastal area on the East Coast of the North Island. These provisions do not yet appear to have been used.

- b. A joint management agreement (JMA) between Te Rūnanga o Ngāti Porou (TRONP) and the Gisborne District Council (GDC) which provides for TRONP and GDC to jointly determine resource consent applications within the Waiapu catchment.
- c. A JMA between Tūwharetoa Māori Trust Board and the Taupō District Council (TDC) to hear resource consent applications on Māori land. This has been in place since 2009.
- d. A Mana Whakahono a Rohe agreement between Ngāti Tūrangitukua and TDC which provides for Ngāti Tūrangitukua to develop a list of hearing commissioners from which TDC must appoint for consents in Tūrangi.

Arrangements providing iwi influence in appointments to panels (7-9 in Table 1)

- 8. There are a further three arrangements established through Treaty settlements that provide opportunities for iwi to influence the appointment of hearings commissioners for consents relating to particular geographic features but do not provide a guarantee that iwi nominees will be appointed. These arrangements typically involve participating post-settlement governance entities (PSGEs) creating registers of suitably qualified hearing commissioners.
- 9. Councils are not required to appoint commissioners from these registers but must consult affected PSGEs or co-governance entities on the appointments. Examples of these arrangements have been created through Te Awa Tupua (Whananganui River Claims Settlement) Act 2017, the Ngāti Rangi Claims Settlement Act 2019 (in relation to the Whangaehu River), and the Ngāti Tūwharetoa Claims Settlement Act 2018 (in relation to Taupō Waters).
- 10. There are also relevant arrangements proposed in relation to Kaipara Harbour agreed through negotiation of the Ngāti Whatua remaining claims. These provide that the Minister for the Environment, when appointing a board of inquiry for a proposal of national significance that relates to Kaipara Moana, will be required to appoint one person recommended by the Kaipara Moana entity (a co-governance body that will be established through the settlement legislation).

There are safeguards to ensure appointments can be made in a timely fashion

- 11. At the meeting on 19 June 2024 Ministers discussed the possibility of disputes between iwi delaying appointment processes.
- 12. The Fast-Track Approvals Bill already includes provisions¹ which manage this risk in relation to nominees from iwi authorities. The panel convenor must appoint someone with suitable expertise to an expert consenting panel if iwi authorities do not put forward a nominee or cannot agree on one.
- 13. This clause is based on a similar section in COVID-19 Recovery (Fast-Track Consenting) Act 2020 (COVID Fast-Track). In a 2022 review of the COVID Fast-Track, Judge Lawrie Newhook – the convenor of panels under that legislation – reported that iwi were not always able to provide suitably qualified nominees and he sometimes had to find suitable members to ensure Treaty and cultural issues were appropriately considered. But the legislation enabled him to make those appointments – and the Bill has taken the same approach.²

¹ Schedule 3, clause 3.

² Judge Lawrie Newhook, 'A Review of the Potential Role of Fast-track Consenting in the future Resource Management System', commissioned by the Ministry for the Environment, 4 May 2022, p.13.

14. There was one instance of litigation in relation to appointments under the COVID Fast-Track but that involved a dispute between an iwi authority and the panel convener rather than a disagreement between iwi. When the matter reached the Court of Appeal, the court held:

An iwi authority does not have a right under the FTCA to have its nominee appointed. The legislation envisages rather that a number of relevant iwi authorities may offer nominations and the convener will choose among the nominees according to their personal attributes and the need for collective expertise. There is no requirement to appoint nominees according to precedence among the iwi authorities who nominate them. That might introduce complexity and delay which is antithetical to the object of the legislation, which envisages that decisions will be made swiftly and with a minimum of process.³

15. The Treaty settlement arrangements described above also include measures to mitigate risk of delay. They generally create collective entities such as the WRA - which have appointment rights – or registers which councils have discretion to appoint from. Disagreements between iwi over appointments are unlikely to slow or disrupt decision making. Te Arawhiti is not aware of disputes creating delays in panels being appointed under the Treaty settlement arrangements described in this briefing.
16. We are also not aware of any of the above Treaty settlement arrangements being triggered by applications under the COVID Fast-Track. If they had been triggered section 5 of schedule 5 of that legislation would have required the panel convenor to comply with the relevant Treaty settlement obligations or to obtain the agreement of the relevant PSGEs to a modified arrangement. The legislation required the relevant PSGEs to not unreasonably withhold their agreement to such modifications. These provisions have been mirrored in clause 5 of schedule 3 of the Bill.
17. The overall pattern therefore is that:
- a. disputes about appointments have not been a significant issue either for panels under the COVID-Fast Track, or for processes under the RMA where iwi have the right to participate in the appointments process; and
 - b. there are measures in place in Treaty settlement legislation and the Bill to help ensure timely appointments can be made.

³ Panel Convener v Ngāti Paoa Trust Board, Court of Appeal, [2023] NZCA 412 at [49].

Table 1: Opportunities for iwi to influence appointments or participate in decision-making on consents

#	Examples	Relevant provisions
Treaty settlements providing rights for iwi nominees to participate in decision-making on consents		
1	Waikato River Authority – a council hearing committee on an application for a resource consent related to the Waikato River must have an equal number of members appointed by the Council and Waikato River Authority (WRA) respectively, and an independent chairperson jointly appointed by the WRA and Council. Note also, where the Minister calls in and refers a consent application to a Board of Inquiry, WRA provides the names of one or more appointees to the Minister (depending on the size of the board) who must then appoint them.	Ss 28-29 Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 S29 Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 S 10 Nga Wai o Maniapoto (Waipa River) Act 2012 28 Hearing committees (1) This section applies if the Council holds a hearing under the RMA on the application. (2) The committee to hear and make a decision on the application must consist of— (a) a number of members appointed by the Council who are RMA decision makers; and (b) the same number of members appointed by the Authority who must be persons whose names are recorded in the register; and (c) an independent chairperson jointly appointed by the Authority and the Council, who must be a Resource Management Act 1991 decision maker. (3) The Authority and the Council must discuss the persons to be appointed to the hearing committee with a view to ensuring that the committee contains members with an appropriate mix of skills, expertise, and experience. 29 Call-ins (1) This section applies if an application is called in and referred to a board of inquiry under Part 6AA of the RMA. (2) As soon as practicable, the Environmental Protection Authority must serve notice on the Authority of the decision to call in the application.

Table 1: Opportunities for iwi to influence appointments or participate in decision-making on consents

#	Examples	Relevant provisions
		(3) As soon as practicable, the Minister must request from the Authority the names of persons for appointment to the board, seeking the name of 1 person if the board is to have 3 appointees and the names of 2 persons if the board is to have 5 appointees. (4) Within 10 business days of receiving the request, the Authority must give the Minister the number of names sought by the Minister, taking the names from the register. (5) The board must consist of— (a) the persons named under subsection (4); and (b) the same number of other persons; and (c) a chairperson appointed under s 149J(3)(b) of the RMA. (6) The Authority and the Minister must discuss the persons to be appointed to the board with a view to ensuring that the board contains members with an appropriate mix of skills, expertise, and experience. (7) Persons appointed under subsection (5) must be treated in the same manner as persons appointed under s 149J of the RMA.

Table 1: Opportunities for iwi to influence appointments or participate in decision-making on consents

#	Examples	Relevant provisions
2	Te Oneroa-a-Tōhe Board (the Co-governance board over Ninety Mile Beach and the adjacent coastal marine area maintains a register of commissioners and is involved in appointing hearing panels.	E.g. S 84 Te Rarawa Claims Settlement Act 2015 S 84 Procedure for appointing hearing panel (1) If a Council intends to appoint a panel to hear and determine a resource consent application that relates to the Te Oneroa-a-Tohe management area, the Council concerned must give notice in writing to the Board of that intention. (2) Not later than 15 working days after the notice is received, the members of the Board appointed by the iwi appointers under section 79 or 80 must appoint up to half of the members of the panel from the list of commissioners compiled under section 83. (3) The members of the Board appointed by the Council to which the resource consent application is made must appoint— (a) up to half of the members of the panel from the list of commissioners compiled under section 83; and (b) 1 of the commissioners appointed to the panel to be the chairperson of the panel. (4) The Board may, by notice in writing to the Council concerned, waive its rights to make appointments under subsection (2) or (3). (5) If the members of the Board appointed by the iwi appointers have not appointed commissioners as required by subsection (2), the Council concerned must, from the same list of commissioners, appoint commissioners who would otherwise have been appointed under subsection (2).

Table 1: Opportunities for iwi to influence appointments or participate in decision-making on consents

#	Examples	Relevant provisions
Other arrangements providing rights for iwi nominees to participate in decision-making on consents		
3	Ngā Hapū o Ngāti Porou Act - enables NHNP to appoint a person to a Board of Inquiry for a proposal of national significance in ngā rohe moana.	S17 Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 17 Boards of inquiry into matters of national significance (1) This section applies if— (a) a Minister or Ministers make a direction under section 142(2)(a) or 147(1)(a) of the RMA to refer a matter to a board of inquiry; and (b) the matter is within ngā rohe moana o ngā hapū o Ngāti Porou. (2) The Minister or Ministers who make the direction must,— (a) as soon as practicable after making the direction, give ngā hapū o Ngāti Porou a copy of the direction; and (b) consult ngā hapū o Ngāti Porou on the terms of reference (if any) for the board of inquiry; and (c) ask ngā hapū o Ngāti Porou to nominate an individual (who need not be a member of ngā hapū o Ngāti Porou) to be a member of the board of inquiry; and (d) appoint the nominated individual (as one of the 3 to 5 members appointed under section 149J(3)(a) of the RMA). (3) Any individual nominated to be a member of the board of inquiry must be nominated within a time specified by the Minister or Ministers (which must be at least 10 working days after ngā hapū o Ngāti Porou is asked to nominate an individual).

Table 1: Opportunities for iwi to influence appointments or participate in decision-making on consents

#	Examples	Relevant provisions
4	Te Runanganui o Ngāti Porou JMA provides for joint decision making between Ngāti Porou and the Council on notified resource consent applications under s104 RMA within the Waiapu Catchment.	Clause 14 of the Te Runanganui o Ngāti Porou joint management agreement provides: Decision-making 14. The Council and Te Runanganui will make the following decisions jointly in accordance with this JMA: a) Decisions on notified resource consent applications under section 104 of the RMA within the Waiapu Catchment; b) Decisions on RMA planning documents under clause 10(1) of Schedule 1 of the RMA that affect the Waiapu catchment, including the Waiapu Catchment Plan; and c) Decisions on private plan changes under clause 10(1) of Schedule 1 of the RMA that affect the Waiapu catchment.
5	JMA between Tūwharetoa Māori Trust Board and the Taupō District Council (TDC) to hear resource consent applications on Māori land	Clause 7 of the joint management agreement provides: Once an applicant has decided to opt in to the joint management process under section 6 of this agreement, the applicant is deemed to agree to have this heard by a joint panel of commissioners to attend to the Council hearing of the application, Taupo District Council and the Tūwharetoa Māori Trust will then select two commissioners each, The chosen commissioners shall then meet and identify an additional member for the panel and to identify the chairperson for that panel. If consensus is not reached on this matter the standard Taupō District Council list of independent commissioners will be used for selection purposes and the fifth person will be appointed by Council officers as panel member and chairperson.

Table 1: Opportunities for iwi to influence appointments or participate in decision-making on consents

#	Examples	Relevant provisions
6	A Mana Whakahono a Rohe agreement between Ngāti Tūrangitukua and TDC which provides for Ngāti Tūrangitukua to develop a list of hearing commissioners from which TDC must appoint for consents in Turangi	Clause 13 of the Mana Whakahono a Rohe provides: When a hearing is required the resource consents manager and/or the policy manager will contact Ngāti Tūrangitukua to discuss the commissioners to be approached for the proposed hearing from the Tūrangi list as follows: a. Council staff will ask Ngāti Tūrangitukua to appoint a commissioner, with an understanding of tikanga Māori, from the Tūrangi list, for the hearings panel; b. Council staff will appoint a commissioner from the non-tikanga technical skills list; and c. Council staff and Ngāti Tūrangitukua will, together, appoint the chair from the list of approved chairs. If Ngāti Tūrangitukua and Council cannot agree on the person to be appointed as the chair then Council will select the chair from the list of approved chairs

Table 1: Opportunities for iwi to influence appointments or participate in decision-making on consents

#	Examples	Relevant provisions
Treaty settlements providing opportunities for iwi to influence appointments to panels		
7	Iwi with interests in the Whanganui River are involved in developing the Te Awa Tupua register .	<u>S 61 Te Awa Tupua (Whanganui River Claims Settlement) Act 2017</u> 61 Te Awa Tupua register (1) A register of hearing commissioners, to be called the Te Awa Tupua register, must be developed and agreed, in consultation with iwi with interests in the Whanganui River, by— (a) Te Pou Tupua; and (b) the Secretary for the Environment; and (c) the Director-General; and (d) the relevant local authorities. (2) The purpose of the register is to provide a register of persons qualified to hear and determine applications under the Resource Management Act 1991 for resource consents— (a) relating to the Whanganui River: (b) for activities in the Whanganui River catchment that affect the Whanganui River. (3) Te Pou Tupua must maintain the Te Awa Tupua register. (4) In this section, section 62, and Schedule 6, hearing commissioner means a person accredited under section 39A of the Resource Management Act 1991 to act as a hearing commissioner.
8	Te Kōpua Kānapanapa may develop and maintain a register of hearing	<u>Ngāti Tūwharetoa Claims Settlement Act 2018</u> 185 Register of hearing commissioners

Table 1: Opportunities for iwi to influence appointments or participate in decision-making on consents

#	Examples	Relevant provisions
	commissioners relating to the Taupo Catchment. (Te Kōpua Kānapanapa is a joint committee established by s171 Ngāti Tūwharetoa Claims Settlement Act 2018.)	(1) Te Kōpua Kānapanapa may develop and maintain a register of hearing commissioners to hear and determine applications to which this subpart applies. (2) If Te Kōpua Kānapanapa develops a register, it must ensure that the register includes persons with skills, knowledge, and experience across a range of disciplines, including knowledge of tikanga and knowledge of the Taupo Catchment. 186 Appointment of hearing commissioners by relevant authority (1) The relevant authority must, on receipt of an application to which this subpart applies, inform Te Kōpua Kānapanapa of the application. (2) If the relevant authority decides, in accordance with the RMA, to appoint hearing commissioners to hear the application, the Authority— (a) must have particular regard to any register developed under section 185; and (b) may appoint 1 or more hearing commissioners listed on the register; and (c) must be guided by the need for the hearing commissioner to have the appropriate skills, knowledge, and experience, including an appropriate knowledge of tikanga; and (d) must be guided, if more than 1 hearing commissioner is appointed, by the need for the hearing panel to have an appropriate range of skills, knowledge, and experience; and (e) must, if the relevant authority is a Minister appointing a board of inquiry under Part 6AA of the Resource Management Act 1991, comply with the requirements of sections 149J and 149K of that Act.
9	Ngā Wai Tōtā, relevant government departments and agencies, and relevant local authorities must agree on a register	<u>Ngāti Rangī Claims Settlement Act 2019</u> S126 Te Waiū-o-Te-Ika catchment register

Table 1: Opportunities for iwi to influence appointments or participate in decision-making on consents

#	Examples	Relevant provisions
	of hearing commissioners for applications relating to the Whangaehu River.	(1) A register of hearing commissioners, to be called the Te Waiū-o-Te-Ika catchment register, must be developed and agreed by— (a) Ngā Wai Tōtā; and (b) relevant government departments and agencies; and (c) relevant local authorities. (2) The development of the register must be undertaken in consultation with the governance entities of Ngā Iwi o Te Waiū-o-Te-Ika (or the representative entities if in any case a governance entity has not been established). (3) The purpose of the register is to provide a register of persons qualified to hear and determine relevant applications under the Resource Management Act 1991 for resource consents (see clause 2 of Schedule 8). (4) Ngā Wai Tōtā must maintain and review the Te Waiū-o-Te-Ika catchment register at regular intervals to ensure it is fit for the purpose described in subsection (3). (5) In this section, section 127, and Schedule 8, hearing commissioner means a person accredited under section 39A of the Resource Management Act 1991 to act as a hearing commissioner. 127 Persons who may be included on Te Waiū-o-Te-Ika catchment register (1) An iwi or a group of iwi of Ngā Iwi o Te Waiū-o-Te-Ika may nominate hearing commissioners to be included on the Te Waiū-o-Te-Ika catchment register. (2) The Te Waiū-o-Te-Ika catchment register must include persons who have— (a) skills, knowledge, and experience in a range of disciplines, including the kawa, tikanga, and ritenga of Ngā Iwi o Te Waiū-o-Te-Ika; and (b) knowledge of the Te Waiū-o-Te-Ika catchment; and (c) an understanding of Te Mana Tupua and Ngā Toka Tupua, and their legal effect.

Hon Shane Jones
Minister of Resources

Hon Tama Potaka
Minister for Māori Crown Relations: Te Arawhiti

For delegated decision: Fast-Track Approvals Bill: Treaty of Waitangi clause for departmental report

Date	24 June 2024	Priority	High
Report No.	2023/2024 – 247	File ref	CMR-03-04

Action sought

Minister for Regional Development
(Hon Shane Jones)

Note Appendix 1 to this brief BRF-4884/TA 235 of 13 June *Aide Memoire: Fast-track Approvals Bill – Māori rights and interests*

Minister for Māori Crown Relations: Te Arawhiti
(Hon Tama Potaka)

Note Appendix 2 to this brief *Fast-track infrastructure scenarios under takutai moana legislation*

Indicate your decisions at Appendix 3 to this brief *Fast-Track Delegated Ministers' decisions for Treaty of Waitangi Clause*

Contact for phone discussion (if required)

Name	Position	Phone	1 st Contact	2 nd contact
Lil Anderson	Tumu Whakarae, Chief Executive	s 9(2)(a)	✓	
Warren Fraser	Deputy Chief Executive – Strategy, Policy and Legal			✓
Sue van Daatselaar	Director, Strategy and Policy			

For delegated decision: Fast-Track Approvals Bill: Treaty of Waitangi clause for departmental report

Background

1. On 19 June, Ministers were satisfied with material they were provided with regarding the impact of Treaty settlements and Takutai Moana recognition rights in the Fast-Track legislation (BRF-4884/TA 235 report refers – repeated here as **Appendix 1** to this brief) but sought advice on how potential fast-track projects along the New Zealand coastline might practically play out in relation to the Marine and Coastal Area (Takutai Moana) Act 2011 (the **Takutai Moana Act**). **Appendix 2** to this brief responds to that request by outlining practical examples of the process as it relates to fast-track.
2. Final decisions relating to whether the Treaty of Waitangi clause is further strengthened in response to overwhelming feedback during the submissions process on the Fast-Track Approvals Bill were delegated to you. Those decisions and the supporting text are attached at **Appendix 3**.

Consultation

3. The Ministry for the Environment was consulted in the preparation of this briefing.

Recommendations

4. It is recommended that you:
 - a. **note** Appendix 1 to this brief BRF-4884/TA 235 of 13 June *Aide Memoire: Fast-track Approvals Bill – Māori rights and interests*;
 - b. **note** Appendix 2 to this brief *Fast-track infrastructure scenarios under takutai moana legislation*; and
 - c. **indicate** your decisions at Appendix 3 to this brief *Fast-Track Delegated Ministers' decisions for Treaty of Waitangi Clause*



Warren Fraser

Deputy Chief Executive – Strategy, Policy and Legal

NOTED / APPROVED / NOT APPROVED	NOTED / APPROVED / NOT APPROVED
 Hon Shane Jones Minister for Regional Economic Development	 Hon Tama Potaka Minister Māori Crown Relations
Date: / / 2024	Date: / / 2024

Appendix 1: BRF-4884/TA 235 *Aide Memoire: Fast-track Approvals Bill – Māori rights and interests* (13 June 2024)

Appendix 2: Fast-track infrastructure project scenarios under the Takutai Moana Act

1. The Takutai Moana Act recognises rights in two ways:
 - a. Customary marine title (**CMT**) - a broad bundle of rights over an area of coastline;¹
 - b. Protected customary rights (**PCRs**) - rights relating to a certain customary activity in a specified area.²
2. Both include a broad ability to withhold permission for activities requiring resource consents in the relevant area. Rights-holders can be compensated in exchange for granting permission, although there is an exception to this for public-interest infrastructure (though an engagement process is required, including consideration of compensation).
3. Under the current draft Bill, projects in CMT and PCR areas require permission from rights-holders before they are eligible for fast-tracking (refer to **Map 1** which identifies all areas where CMT decisions have been made). The following scenarios assume permission has not been granted by the CMT or PCR rights holder.

Scenario 1: New public-interest infrastructure development in a CMT or PCR area, without permission from rights-holder (e.g., offshore windfarm within 12 nautical miles, or new port)

4. To be eligible for this process, the development would be deemed to be essential for regional or national social or economic wellbeing and owned by a public entity or utilities provider.
5. The development applicant would apply to the Minister for Land Information (the **Minister**) to declare that the windfarm or new port should be a deemed accommodated activity.
5. The application would be required to include certain information, for example:
 - a. why the proposed project could only be located in the area subject to CMT (or PCR) and not somewhere else; and
 - b. what reasonable steps the applicant had made to get permission from the CMT holder.
6. The Minister would then decide whether the applicant had met the threshold and information provision tests, and either:
 - a. decline if those tests were NOT met (e.g., if the Minister considered that the applicant had not provided enough information about its negotiations with the CMT holder); OR
 - b. decide to ask the applicant for more information; OR
 - c. decide that there was sufficient information to move to negotiations with the CMT holder.
7. If satisfied there was sufficient information to proceed the Minister would negotiate in good faith with the CMT holder for up to three months about appropriate compensation for waiving their permission-right.

¹ Refer S 62 of the Takutai Moana Act - Includes: RMA permission right, conservation permission right, right to protect wāhi tapu and wāhi tapu areas, rights in relation to marine mammal watching permits and processes relating to a NZ coastal policy statement, prima facie ownership of newly found taonga tūturu, ownership of certain minerals, and the right to create a planning document.

² Refer SS 51(1) of the Takutai Moana Act - PCR is a right exercised since 1840 that continues to be exercised in a particular part of the common marine and coastal area in accordance with tikanga by the applicant group, and is not extinguished as a matter of law.

8. If the Minister and CMT holder could not agree, the Minister would have the power to waive the CMT holder's consent with likely payment of compensation.
9. The Takutai Moana Act is silent on who pays the compensation, so any compensation level would need to be checked with the applicant (but the applicant's comfort level is not determinative of what is appropriate compensation).
10. The key to deemed accommodated infrastructure is that the Crown acts in accordance with legal tests, acts in good faith throughout, and on assumption that some compensation will be payable as would be the case for any holder of affected property rights.

Scenario 2: Offshore windfarm beyond 12 nautical miles

11. There can be no CMT or PCR rights beyond 12 nautical miles, therefore no rights-holder permission would be needed for development beyond 12 nautical miles out to sea.
12. However, any supporting infrastructure (e.g., cabling) or construction activity that would happen within a CMT or PCR area closer to shore would need to follow the same deemed accommodated infrastructure process set out in Scenario 1 if permission was not granted.

Scenario 3: New non-public interest development in a CMT or PCR area, without permission from rights-holder

13. Any development not owned by a public entity or a utility provider, or that is not essential for social or economic wellbeing, cannot progress without rights-holder permission.

Scenario 4: Operations of an existing port within a CMT or PCR area

14. Operations and maintenance on existing infrastructure do not require rights-holder permission.

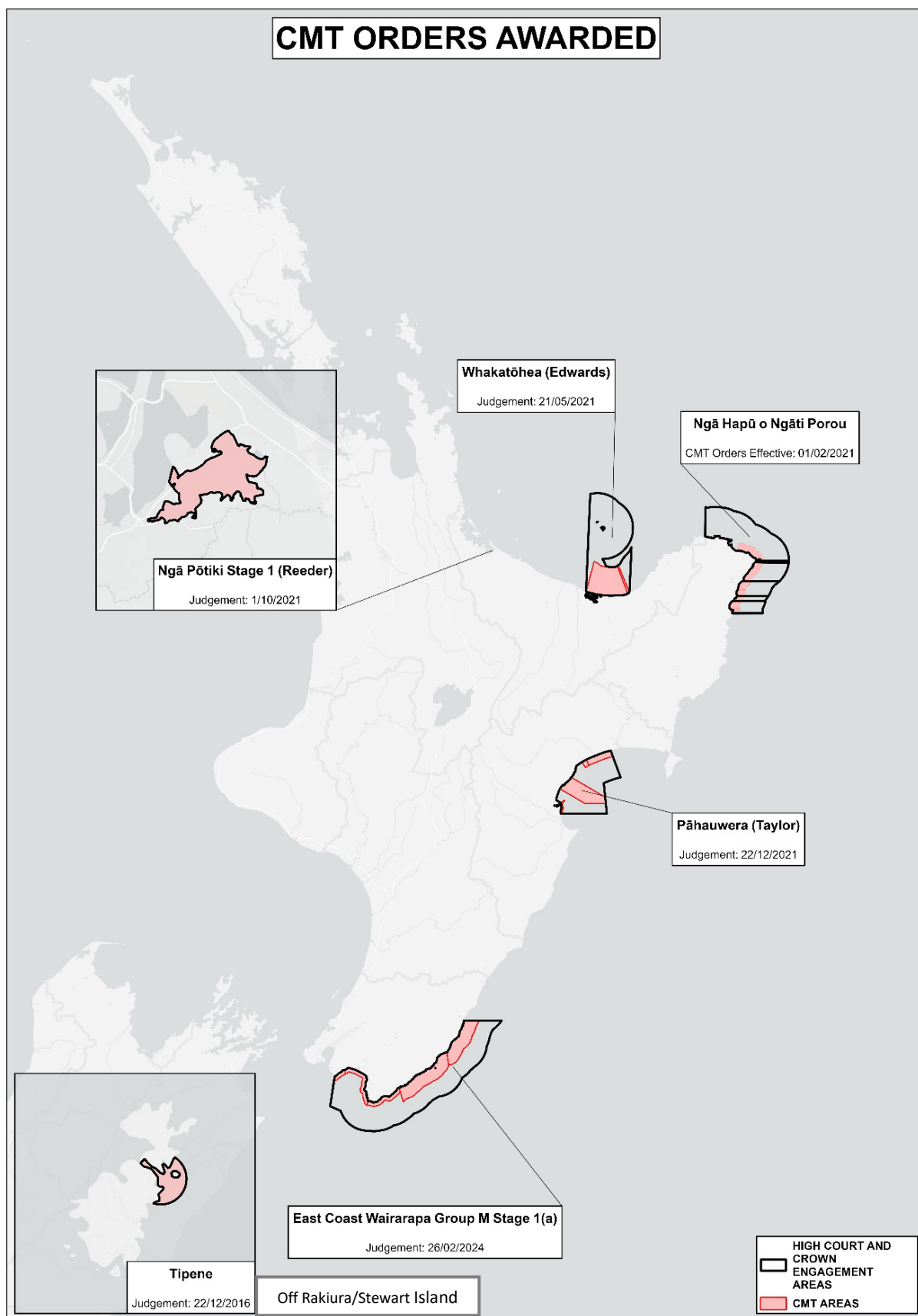
Scenario 5: Expansion of existing port within a CMT or PCR area

15. An expansion proposal has to go through the same deemed accommodated infrastructure process as set out Scenario 1 if permission is not granted.

Scenario 6: Any new developments in areas protected under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

16. The Act is different from other CMT rights processes. Ngā Hapū o Ngāti Porou permission is required for any new development in the protected areas. There is no deeming process to waive this permission-right, even for public-interest infrastructure.
17. The map at **Map 2** identifies the marine areas of Ngā Hapū o Ngāti Porou.

Map 1: Customary marine title held in coastline areas



Map 2: Ngā rohe moana o ngā hapū o Ngāti Porou



Appendix 3: Fast-Track Delegated Ministers' decisions for Treaty of Waitangi Clause

Issue	Background and advice	Recommendations	Decision	
			Minister for Māori Crown Relations	Minister for Resources
Treaty of Waitangi	Clause 6 of the Bill currently provides: Obligation relating to Treaty settlements and recognised customary rights All persons exercising functions, powers, and duties under this Act must act in a manner that is consistent with: (a) the obligations arising under existing Treaty settlements; and (b) customary rights recognised under— (i) the Marine and Coastal Area (Takutai Moana) Act 2011; and (ii) the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019. A major theme of submissions is the lack of broader provisions referencing the Crown’s Treaty obligations to iwi and hapū without settlements. The 29 May meeting of Fast-Track Ministers did not agree either of the two options presented there for how this can be addressed, instead commissioning Te Arawhiti to provide a third option that would address submitters’ principal concern without raising further risks of procedural delays or legal disputes that could frustrate the purpose of the Bill.³ We think the best way to achieve those objectives is to insert into clause 6: • a chapeau reference to the Treaty of Waitangi; and • a second procedural requirement for persons exercising functions, powers and duties under the Act to consider two matters, drawn from existing legislation, that	1. Note that the 29 May meeting of Fast-Track Ministers did not agree to: a. Option 1 - to require persons exercising functions, powers, and duties under the legislation to act consistently with the principles of the Treaty – which would be consistent with the COVID-19 Recovery (Fast-Track Consenting) Act 2020 and respond directly to submissions; or b. Option 2 – to require persons exercising functions, powers, and duties under the legislation to apply the Treaty provisions in underlying legislation where relevant. 2. Agree to amend clause 6 of the Bill, with final drafting to be determined by the Parliamentary Counsel Office, to also recognise the Crown’s responsibilities under the Treaty of Waitangi by requiring persons exercising functions, powers, and duties under the legislation to, while seeking to achieve the purpose of the Bill: a. [New] consider— i. the relationship of iwi and hapū and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga; and ii. the significance of Māori land as recognised under Te Ture Whenua Māori Act 1993; and b. act in a manner that is consistent with— i. the obligations arising under existing Treaty settlements; and ii. customary rights recognised under— 1. the Marine and Coastal Area (Takutai Moana) Act 2011: 2. the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019. 3. Agree to define “existing Treaty settlements” in clause 6 to make it clear that the clause applies to Treaty settlements that exist at the time functions, powers and duties are exercised, rather than settlements that exist at the time the fast-track legislation is enacted. 4. Note Ministers requested separate advice on whether final decisions should sit with expert panels or an expanded group of joint Ministers and that decision-point provides an additional opportunity to respond to concerns raised by iwi/Māori.	YES / NO YES / NO YES / NO	YES / NO

³ Te Arawhiti was also commissioned to provide information on how the Takutai Moana legislation – paragraph (b) of clause 6 above – is expected to play out in the FTAB context. A specific briefing will be provided separately.

	encapsulate Treaty protections due to iwi, hapū and Māori regardless of settlement status. The chapeau reference would have no operative effect. But it would be significant in responding to submitters by acknowledging explicitly the Crown's Treaty responsibilities - not just its Treaty settlement responsibilities - and thus including in the scope of the provision iwi and hapū who are yet to settle. The additional procedural requirement then seeks to capture the key Treaty responsibilities relevant to fast-track consenting. Our proposal draws on select provisions from other legislation relating to Māori rights and interests – specifically s2(2) of Te Ture Whenua Māori Act 1993 (TTWMA) and s6(e) of the Resource Management Act 1991 (RMA). Both those provisions have been in effect for more than 30 years and have the benefit of familiarity and guidance from established case law. Section 2(2) and the preamble to TTWMA recognises Māori land as a taonga tuku iho and cites the principles of both retention and development of Māori land. Section 6(e) of the RMA provides a broader recognition of the relationship Māori have with ancestral lands and waters, wāhi tapu and other taonga. There is already an obligation for panels to consider this provision when deciding on projects, but as currently drafted the obligation applies only to panels and only to RMA approvals (clause 32 of Schedule 4). Our proposal would extend the obligation to Ministers and other 'one-stop shop' approvals under the Act. These are procedurally focused obligations that can be met by demonstrating there has been engagement in order to understand potential implications for Māori. Sometimes this might be reflected in consent conditions. However the obligation in the RMA is 'recognise and provide for', which is stronger than the		

	‘consider’ recommended for the Bill in this briefing. The obligation on persons exercising functions, powers and duties under the Act would be “to consider” those matters. Framed this way the obligation is largely procedural for decision-makers rather than substantive. Though, of course, Māori interests will still need to be considered and weighed carefully. Even with such a weighting, where Māori interests are significant they could still influence any legal proceedings, as is already the case with the clause 6 drafting.⁴ At the 29 May meeting Ministers directed that the purpose of the Bill should take precedence over the Treaty clause. It is a basic principle of statutory interpretation that a statute should be interpreted to give effect to its purpose, but Ministers may wish the clause to make this explicit. In relation to the word “existing” in clause 6, we understand the policy intention is to include Treaty settlements that exist at the time functions, powers and duties are exercised, rather than settlements that exist at the time the legislation is enacted. At the 29 May meeting Ministers did not agree with officials’ recommendation to remove the word “existing” from clause 6 as a partial response to concerns regarding the rights of iwi yet to settle historical Treaty claims. Ministers preferred to define the word existing in the Bill to make it clear that it refers to Treaty settlements existing at the time the powers and duties are exercised, rather than settlements that exist at the time the fast-track legislation is enacted. Beyond the decisions proposed here, one of the most common suggestions in submissions from iwi/Māori and others is to shift final decisions to expert panels. This would provide stronger protection for rights and interests, including for groups without			

⁴ In its 2021 *Trans Tasman Resources* judgment the Supreme Court indicated that, tightly construed Treaty clauses may still be broadly interpreted depending on the nature of the relevant Māori interests. See *Trans-Tasman Resources Limited v The Taranaki-Whanganui Conservation Board* - [2021] NZSC 127 at [8].

	settlements. Ministers have requested further advice on who makes substantive decisions.			



Cabinet

Minute of Decision

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A Permanent Fast-track Consenting Regime for Regional and National Projects of Significance

Portfolio RMA Reform

On 23 January 2024, Cabinet:

- 1 **noted** the Minister Responsible for RMA Reform intends to take a phased approach to reform of the resource management system:
 - 1.1 Phase one: repeal the Natural and Built Environment Act (NBA) and Spatial Planning Act (SPA) (now complete);
 - 1.2 Phase two: introduce a permanent fast-track one-stop-shop consenting regime within the first 100 days, make targeted legislative changes to the Resource Management Act 1991 (RMA) by late 2024, develop new, or amend existing, national direction under the RMA, and the Going for Housing Growth work package;
 - 1.3 Phase three: replace the current RMA with new resource management legislation based on the enjoyment of property rights, while ensuring good environmental outcomes;
- 2 **noted** the proposal to introduce a bill within the government's first 100 days in office to establish a fast-track one-stop-shop consenting regime is part of the National/New Zealand First Coalition Agreement;
- 3 **agreed** that the fast-track legislation would repeal the NBA fast-track consenting process (with appropriate transitional arrangements to provide for live applications), which was retained as an interim measure while a permanent fast-track consenting regime was developed;
- 4 **noted** that the other phase two amendments to the RMA are intended to be introduced by April 2024, and a bid will be submitted for the 2024 Legislation Programme for a category 3 priority (to be passed by the end of 2024) for these;

Delegated decisions

- 5 **authorised** the following Ministers (“delegated Ministers”) to jointly make further detailed decisions as set out in Appendix 2, attached to the submission under CAB-24-SUB-0008, and issue drafting instructions to the Parliamentary Counsel Office, to enable the bill which establishes a permanent fast-track consenting regime (the bill) to be drafted for introduction by 7 March 2024:
- 5.1 Minister Responsible for RMA Reform;
 - 5.2 Minister of Housing;
 - 5.3 Minister for Infrastructure;
 - 5.4 Minister of Transport;
 - 5.5 Minister for Energy;
 - 5.6 Minister of Local Government;
 - 5.7 Minister of Justice;
 - 5.8 Minister of Conservation;
 - 5.9 Minister for Māori Crown Relations: Te Arawhiti;
 - 5.10 Minister for Regional Development;
 - 5.11 Minister for Oceans and Fisheries;
 - 5.12 Minister for Resources;
 - 5.13 Minister for the Environment;
- 6 **agreed** that delegated Ministers will consult with other Ministers on matters that are relevant to their portfolios;

Scope, purpose of the Act and Treaty clause

- 7 **agreed** that the fast-track consenting regime will be provided for in standalone legislation (rather than an amendment to existing legislation);
- 8 **agreed** that the fast-track pathway can be used for resource consents, notices of requirement, or certificates of compliance under the RMA;
- 9 **agreed** that the fast-track regime will also be a ‘one-stop-shop’ for approvals under other legislation in addition to the RMA;
- 10 **noted** the purpose of the legislation be aimed at 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;
- 11 **agreed** that agencies will refine the purpose clause and seek final approval on it from delegated Ministers;

- 12 **agreed** that further decisions about the Treaty clause and national policy statements, and their interaction with Part 2 of the RMA will be made by delegated Ministers;

Eligibility for fast-track process and applications

- 13 **agreed** that a broad range of projects can access the fast-track process if they would provide significant local, regional, or national benefits;
- 14 **agreed** that the legislation will set out clear eligibility for the pathway, including by clarifying ‘local, regional, and nationally significant benefits’;
- 15 **agreed** that decisions about criteria for determining whether a project would have significant local, regional, or national benefits and other eligibility criteria will be made by delegated Ministers;
- 16 **agreed** that delegated Ministers will look closely at the issue of standing, in terms of which parties have appeal rights, and for what;

Listed projects

- 17 **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 (EP);
- 18 **agreed** that listed projects should be subject to the same criteria in the legislation;
- 19 **noted** that Cabinet will have a chance to consider the proposed listed projects as part of the package that will be included in the Cabinet paper that the Minister for RMA Reform brings to the Cabinet Legislation Committee, which seeks approval to introduce the bill;

Referral to the Expert Panel

- 20 **agreed** that 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”);
- 21 **agreed** that the joint Ministers will determine whether an application should be referred (in part or in full) to an EP;
- 22 **noted** that the joint Ministers will provide Cabinet with details of projects they intend to refer to an EP for awareness and information;
- 23 **agreed** that the joint Ministers may decline an application after seeking input from relevant parties, if satisfied that the project does not meet the eligibility criteria;
- 24 **agreed** that the joint Ministers must consult with other relevant portfolio ministers, local authorities, and iwi, including Post-Settlement Governance Entities, as part of the initial assessment of projects;

Decision-making by Expert Panels

- 25 **agreed** that EPs will make decisions on applications, including consent conditions and designations under the RMA and under other legislation to reflect the ‘one-stop-shop’ nature of the regime;
- 26 **agreed** that a very high threshold must be met for an EP to refer a project back to joint Ministers in the event that conditions cannot be agreed;;

- 27 **agreed** that an EP must make decisions on applications within timeframes specified in the legislation;
- 28 **agreed** that decisions about appeals will be made by delegated Ministers;
- 29 **agreed** 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 an EP;
- 30 **agreed** that further decisions about notification and hearing procedures and timeframes will be made by delegated Ministers;
- 31 **agreed** that panels must invite submissions from relevant persons or groups, which will be determined by delegated Ministers;

Expert Panels: composition and operation

- 32 **agreed** that the Minister for Infrastructure appoint a Panel Convenor;
- 33 **agreed** that the Panel Convenor will be tasked with appointing EP members, in consultation with the Minister;
- 34 **agreed** that further decisions about panel composition and operation will be made by delegated Ministers;

Upholding Treaty settlements

- 35 **agreed** that the legislation will include 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;

Implementation

- 36 **agreed** that the agency/agencies responsible for the operation of the fast-track consenting regime will be determined by delegated Ministers;
- 37 **agreed** that the agency/agencies who will support the process by ensuring applications have the required information and providing secretariat services to the EP will be determined by delegated Ministers;
- 38 **agreed** that the agency/agencies responsible for the operation of the fast-track consenting regime will engage with the New Zealand Transport Agency to identify any barriers to proposed projects;
- 39 **noted** that funding will be sought for the responsible agency/agencies to deliver the fast-track consenting regime through Budget 2024 as part of the invited Resource Management bid;
- 40 **agreed** that if the funding for the fast-track consenting component is not provided through Budget 2024, all costs associated with the regime will be met from existing baselines;
- 41 **directed** officials to report back to the Minister of Finance on the costs for the responsible agency/agencies to deliver the fast-track consenting regime before consultation on the final Cabinet approval takes place;

Engagement

- 42 **agreed** that targeted engagement with groups representing local government, infrastructure, development and environment interests, and Māori, will be undertaken to inform the design of the regime and the development of the bill;
- 43 **agreed** that officials will work with relevant Post-Settlement Governance Entities and other relevant entities to ensure any impacts on Treaty of Waitangi Settlements and other legislative arrangements are addressed appropriately;

Legislative Process

- 44 **noted** that the Minister Responsible for RMA Reform intends to bring the bill and accompanying legislation paper to Cabinet on 4 March 2024, seeking approval to introduce on 7 March 2024;
- 45 **authorised** the Minister Responsible for RMA Reform to issue drafting instructions for a bill to give effect to the decisions in the paper under CAB-24-SUB-0008;
- 46 **authorised** the Minister Responsible for RMA Reform to take decisions on minor or technical matters, in line with the decisions taken in the submission under CAB-24-SUB-0008;
- 47 **noted** that a bid will be submitted for the 2024 Legislation Programme for a category 3 priority for the bill (to be passed by the end of 2024), with the intention of introducing it by 7 March 2024.

Rachel Hayward
Secretary of the Cabinet



Cabinet

Summary

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A Permanent Fast-track Consenting Regime for Regional and National Projects of Significance

Portfolio RMA Reform

Purpose This paper seeks agreement to policy decisions to provide for a permanent fast-track one stop shop consenting regime that will provide a more efficient pathway for consenting significant infrastructure and development projects.

Previous Decisions On 4 December 2023, Cabinet agreed to repeal the Natural and Built Environment Act (NBA) and Spatial Planning Act (SPA) before Christmas [CAB-23-MIN-0473].

Proposal The Minister is taking a phased approach to reform of the resource management system, with the next phase being introducing a permanent fast-track 'one stop shop' consenting regime, and then the replacement of the RMA.

The fast-track pathway is proposed to be used for resource consents, notices of requirement, or certificates of compliance under the RMA, and will also be a 'one-stop shop' for approvals under other legislation in addition to the RMA.

The bill which establishes a permanent fast-track consenting regime (the bill) will be aimed at 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. Delegated Ministers (listed in **recommendation 5**) will take final decisions on the purpose clause, and the Treaty clause and interaction.

Applications for fast-track consenting will be assessed against a set of criteria by the Minister for Infrastructure (with assistance from relevant agencies), to determine their benefits for our economy and environment. The assessment will ensure protections for Treaty of Waitangi settlements and other legislative arrangements, such as the Marine and Coastal Area (Takutai Moana) Act 2011.

The Minister for Infrastructure would then decide whether to refer the project to an Expert Panel, which would make decisions on applications, including consent conditions and designations under the RMA (and other relevant legislation) to reflect the 'one-stop-shop' nature of the regime, within timeframes specified in the legislation. An EP may decline projects if a very high threshold is met.

The Minister for Infrastructure will appoint a Panel Convenor, who will be

tasked with appointing EP members, in consultation with the Minister. Further decisions about panel composition and operation will be made by delegated Ministers.

Impact Analysis	A Regulatory Impact Statement was unable to be prepared due to time constraints. Supplementary analysis will be provided with the Cabinet paper that the Minister intends to bring back in March.
Financial Implications	Funding to deliver the administration of the fast-track consenting regime will be considered through Budget 2024. If funding is not provided through Budget 2024, all costs associated with the regime will be met from existing baselines
Legislative Implications	The bill is intended to be passed by 7 March 2024.
Timing Matters	The Minister intends to seek Cabinet approval on 4 March 2024 to introduce the bill by 7 March 2024.
Communications	The Minister intends to make an announcement, following Cabinet approval to introduce the bill.
Consultation	Paper prepared by MfE (RMA Reform). MCH, MBIE (Building and Construction, Commerce and Consumer Affairs, Economic Development, Energy, Infrastructure, Regional Development, Resources), DoC, Corrections, Defence, MoE, the Treasury (Finance, Infrastructure, Regulation), LINZ, DIA (Local Government), TPK, DPMC (Prime Minister), Transport, MPI (Agriculture, Oceans and Fisheries), Te Arawhiti, MHUD, and PSC were consulted. The Minister indicates that the Cabinet, and the Minister for the Environment, Minister for Land Information, and the Minister of Commerce and Consumer Affairs and Minister for Small Business and Manufacturing was consulted.

The Minister Responsible for RMA Reform recommends that Cabinet:

- 1 note the Minister Responsible for RMA Reform intends to take a phased approach to reform of the resource management system:
 - 1.1 Phase one: repeal the Natural and Built Environment Act (NBA) and Spatial Planning Act (SPA) (now complete);
 - 1.2 Phase two: introduce a permanent fast-track one stop shop consenting regime within the first 100 days, make targeted legislative changes to the Resource Management Act 1991 (RMA) by late 2024, develop new, or amend existing, national direction under the RMA, and the Going for Housing Growth work package;
 - 1.3 Phase three: replace the current RMA with new resource management legislation based on the enjoyment of property rights, while ensuring good environmental outcomes;

- 2 note the proposal to introduce a bill within the government's first 100 days in office to establish a fast-track one-stop-shop consenting regime is part of the National/New Zealand First Coalition Agreement;
- 3 agree that the fast-track legislation would repeal the NBA fast-track consenting process (with appropriate transitional arrangements to provide for live applications), which was retained as an interim measure while a permanent fast-track consenting regime was developed;
- 4 note that the other phase two amendments to the RMA are intended to be introduced by April 2024, and a bid will be submitted for the 2024 Legislation Programme for a category 3 priority (to be passed by the end of 2024) for these;

Delegated decisions

- 5 authorise the following Ministers ("delegated Ministers") to jointly make further detailed decisions as set out in Appendix 2, attached to the submission under CAB-24-SUB-0008, and issue drafting instructions to the Parliamentary Counsel Office, to enable the bill which establishes a permanent fast-track consenting regime (the bill) to be drafted for introduction by 7 March 2024:
 - 5.1 Minister Responsible for RMA Reform;
 - 5.2 Minister of Housing;
 - 5.3 Minister for Infrastructure;
 - 5.4 Minister of Transport;
 - 5.5 Minister for Energy;
 - 5.6 Minister of Local Government;
 - 5.7 Minister of Conservation;
 - 5.8 Minister for Māori Crown Relations: Te Arawhiti;
 - 5.9 Minister for Regional Development;
 - 5.10 Minister for Oceans and Fisheries;
 - 5.11 Minister for Resources;
 - 5.12 Minister for the Environment;
- 6 agree that delegated Ministers will consult with other Ministers on matters that are relevant to their portfolios;

Scope, purpose of the Act and Treaty clause

- 7 agree that the fast-track consenting regime will be provided for in standalone legislation (rather than an amendment to existing legislation);
- 8 agree that the fast-track pathway can be used for resource consents, notices of requirement, or certificates of compliance under the RMA;

- 9 agree that the fast-track regime will also be a ‘one-stop shop’ for approvals under other legislation in addition to the RMA;
- 10 note the purpose of the legislation be aimed at 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;
- 11 agree that agencies will refine the purpose clause and seek final approval on it from delegated Ministers;
- 12 agree that further decisions about the Treaty clause and interaction with Part 2 of the RMA will be made by delegated Ministers;

Eligibility for fast-track process and applications

- 13 agree that a broad range of projects can access the fast-track process if they would provide significant local, regional, or national benefits;
- 14 agree that the legislation will set out clear eligibility for the pathway, including by clarifying ‘local, regional, and nationally significant benefits’;
- 15 agree that decisions about criteria for determining whether a project would have significant local, regional, or national benefits and other eligibility criteria will be made under delegation;

Listed projects

- 16 agree that, in addition to the standard application process, the bill will contain a list of individual projects to be automatically provided to the Minister for Infrastructure for referral assessment;
- 17 agree that listed projects should be subject to the same criteria in the legislation;
- 18 note that Cabinet will have a chance to consider the proposed listed projects as part of the package that will be included in the Cabinet paper that the Minister for RMA Reform brings to the Cabinet Legislation Committee, which seeks approval to introduce the bill;

Referral to the Expert Panel

- 19 agree that the Minister responsible for making referral decisions under the bill will be the Minister for Infrastructure (“the Minister”);
- 20 agree that the Minister will determine whether an application should be referred (in part or in full) to an Expert Panel (EP);
- 21 note that the Minister will provide Cabinet with details of projects they intend to refer to an EP for awareness and information;
- 22 agree that the Minister may decline an application after seeking input from relevant parties, if satisfied that the project does not meet the eligibility criteria;
- 23 agree that the Minister must consult with other relevant portfolio ministers, local authorities, and iwi, including Post-Settlement Governance Entities, as part of the initial assessment of projects;

Decision-making by Expert Panels

- 24 agree that EPs will make decisions on applications, including consent conditions and designations under the RMA and under other legislation to reflect the 'one-stop-shop' nature of the regime;
- 25 agree that a very high threshold must be met for an EP to decline projects referred by the Minister;
- 26 agree that an EP must make decisions on applications within timeframes specified in the legislation;
- 27 agree that decisions about appeals will be made by delegated Ministers;
- 28 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 an EP;
- 29 agree that further decisions about notification and hearing procedures and timeframes will be made under delegated authority;
- 30 agree that panels must invite submissions from relevant persons or groups, which will be determined by delegated Ministers;

Expert Panels: composition and operation

- 31 agree that the Minister appoint a Panel Convenor;
- 32 agree that the Panel Convenor will be tasked with appointing EP members, in consultation with the Minister;
- 33 agree that further decisions about panel composition and operation will be made by delegated Ministers;

Upholding Treaty settlements

- 34 agree that the legislation will include 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;

Implementation

- 35 agree that the agency/agencies responsible for the operation of the fast-track consenting regime will be determined by delegated Ministers;
- 36 agree that the agency/agencies who will support the process by ensuring applications have the required information and providing secretariat services to the EP will be determined by delegated Ministers;
- 37 note that funding to deliver the administration of the fast-track consenting regime will be considered through Budget 2024;
- 38 agree that if the funding for the fast-track consenting component is not provided through Budget 2024, all costs associated with the regime will be met from existing baselines;

Engagement

- 39 agree that targeted engagement with groups representing local government, infrastructure, development and environment interests, and Māori, will be undertaken to inform the design of the regime and the development of the bill;
- 40 agree that officials will work with relevant Post-Settlement Governance Entities and other relevant entities to ensure any impacts on Treaty of Waitangi Settlements and other legislative arrangements are addressed appropriately;

Legislative Process

- 41 note that the Minister Responsible for RMA Reform intends to bring the bill and accompanying legislation paper to Cabinet on 4 March 2024, seeking approval to introduce on 7 March 2024;
- 42 authorise the Minister Responsible for RMA Reform to issue drafting instructions for a bill to give effect to the decisions in the paper under CAB-24-SUB-0008;
- 43 authorise the Minister Responsible for RMA Reform to take decisions on minor or technical matters, in line with the decisions taken in the submission under CAB-24-SUB-0008;
- 44 note that a bid will be submitted for the 2024 Legislation Programme for a category 3 priority for the bill (to be passed by the end of 2024), with the intention of introducing it by 7 March 2024.

Jenny Vickers
for Secretary of the Cabinet

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The Cabinet
Minister for the Environment
Minister for Land Information
Minister of Commerce and Consumer Affairs

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Office of the Minister Responsible for RMA Reform

Chair, Cabinet

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

Proposal

- 1 It takes too long and costs too much to obtain consent and approvals for infrastructure and other projects that will grow the economy and raise New Zealand's living standards. These delays and costs are stifling productivity and economic growth.
- 2 This paper seeks agreement to:
 - 2.1 key policy decisions to provide for a permanent fast-track one stop shop consenting regime that will provide a more efficient pathway for consenting significant infrastructure and development projects;
 - 2.2 issue drafting instructions to the Parliamentary Council Office (PCO) to enable a bill to be introduced within the first 100 days in office (by 7 March 2024).

Relation to government priorities

- 3 I propose to introduce a bill on 7 March 2024 to establish a permanent fast-track consenting regime in accordance with the National/NZ First Coalition Agreement which provides that:

The Parties commit to establish a fast-track one-stop-shop consenting and permitting process for regional and national projects of significance. The process will include a referral by Ministers for suitable projects. A bill to introduce this process and make other essential statutory amendments will have its first reading as part of the government's 100-day plan.

Executive Summary

- 4 Consenting of major projects costs too much and takes too long - the Infrastructure Commission/Te Waihangā estimates that current consenting processes cost infrastructure projects \$1.3 billion every year, and the time taken to get a resource consent for key projects has nearly doubled within a recent five-year period.¹ This situation is stifling economic growth and improvements for the environment and the community.
- 5 This paper starts the delivery of our commitment to introduce a permanent fast-track one-stop-shop consenting regime to enable projects that have significant local, regional, or national benefits to get off the ground sooner and promote cost efficiency. Fast-track consenting is a key element of the second phase of our resource management reform programme.

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

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- 6 I propose to advance a bill based on previous fast-track consenting regimes, but with important differences to enable projects that have significant local, regional, or national benefits to be consented more quickly and more efficiently. The bill will also set out a 'one-stop shop' process for approvals under a range of legislation.
- 7 I propose standalone legislation with a clear purpose focused on enabling faster development of projects that will bring significant benefits to New Zealand and its regions.
- 8 Applications for fast-track consenting will be assessed against a set of criteria by the Minister for Infrastructure as responsible Minister (with assistance from relevant agencies), to determine their benefits for our economy and environment. The assessment will ensure 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 made under the Resource Management Act 1991 (RMA).
- 9 The Minister for Infrastructure would then decide whether to refer the project to an Expert Panel (EP). The EP would then apply any necessary conditions to ensure a project meets environmental and other outcomes. The EP will have only a very limited ability to decline a project once it has been referred. The aim of the new fast-track regime is for appropriate and relevant consent conditions to be imposed; but not for projects to be turned down.
- 10 The bill will contain a list of projects that will be assessed in parallel to the development of the bill and provided to the Minister for referral assessment almost immediately upon enactment.
- 11 I seek Cabinet approval to issue drafting instructions to PCO in a staged manner, based on the key elements of the regime set out in this paper and on further detailed decisions which I propose are delegated to the following ministers (in consultation with other ministers on matters that are relevant to their portfolios):
 - a. Minister Responsible for RMA Reform
 - b. Minister of Housing
 - c. Minister for Infrastructure
 - d. Minister of Transport
 - e. Minister for Energy
 - f. Minister of Local Government
 - g. Minister of Conservation
 - h. Minister for Māori Crown Relations: Te Arawhiti
 - i. Minister for Regional Development
 - j. Minister for Oceans and Fisheries
 - k. Minister for Resources

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I. Minister for the Environment

- 12 I propose to return to Cabinet on 4 March 2024 seeking approval of those further decisions and introduction of the bill by 7 March 2024 (within 100 days of taking office).

Background*Three phases of reform*

- 13 I am taking a phased approach to reform the resource management system in New Zealand [CAB-23-MIN-0473 refers]:
- a. Phase one: repeal the Natural and Built Environment Act (NBA) and Spatial Planning Act (SPA) (now complete).
 - b. Phase two: introduce a fast-track consenting regime within the first 100 days, make other and further targeted legislative changes to the RMA in 2024 to streamline and simplify its operations, develop new, or amend existing, national direction under the RMA, and implement the Going for Housing Growth work package.
 - c. Phase three: replace the current RMA with new resource management legislation based on the enjoyment of property rights, while ensuring good environmental outcomes.
- 14 This paper deals with introducing a permanent fast-track one-stop-shop consenting regime to enable projects with significant local, regional, or national benefits to be consented faster and more cost effectively. This process will replace the NBA fast-track consenting process (with appropriate transitional arrangements to provide for live applications), which was retained as an interim measure while a permanent fast-track consenting regime is developed.
- 15 Phase two will also see other improvements to the resource management system to progress our manifesto and coalition agreement objectives to reduce the regulatory burden on the primary sector and to unlock investment and growth in infrastructure, renewable energy, housing, and business development.
- 16 When I sought Cabinet agreement to repeal the NBA and SPA, I noted that the bill to establish a fast-track regime would also make a small number of amendments to the RMA. I am now proposing that these amendments should be progressed through a separate RMA amendment bill to be introduced by April 2024. This is because the new fast-track consenting regime will involve standalone legislation. I will come back to Cabinet on this in the coming weeks.

Previous fast-track regimes provide a model

- 17 The new legislation will be built off two previous fast-track consenting regimes; that under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA), and the fast-track consenting provisions we have temporarily preserved from the now repealed NBA.
- 18 There will be some differences from previous fast-track processes to better reflect the Government's focus on enabling projects with significant local, regional, or national

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benefits. The key elements of the permanent regime I propose to introduce are set out below.

Key elements of a permanent fast-track consenting regime

- 19 My proposals for the key elements of the new legislation are outlined in Appendix 1 and include the following design features:
 - a. standalone legislation (rather than an amendment to existing legislation), with its own statutory purpose
 - b. a 'one-stop shop' for approvals under other legislation in addition to consents, notices of requirement and certificates of compliance under the RMA
 - c. eligibility criteria that enable a broad range of activities and are based on an assessment of whether the project would result in significant local, regional, or national benefits
 - d. ministerial decisions to refer projects to an EP and
 - e. a requirement for the EP to finalise consents within a legislated timeframe.
- 20 Each of these elements will require further detailed decisions, some of which are significant. I propose Cabinet delegates authority to ministers (listed in paragraph 11) to make further policy decisions in line with the recommendations in this paper. This will allow drafting instructions to be issued to PCO as decisions are made, while ensuring relevant ministers have input into development of the regime.
- 21 A non-exhaustive list of aspects that will require further decisions is provided in Appendix 2. If these delegations are authorised, I will report back to Cabinet on delegated decisions made alongside the LEG package seeking approval to introduce the bill.
- 22 Some of the proposals present potential legal risks that will have to be considered by delegated ministers when making detailed decisions. I will report back to Cabinet on the legal risks when I seek introduction of the bill.

Treaty of Waitangi considerations

- 23 The Coalition Government has committed to upholding redress in Treaty of Waitangi settlements. There are now over 75 individual Treaty settlements, as well as the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, that interface with the RMA, including consenting.
- 24 The Crown has an obligation to uphold Treaty settlements and nothing in this legislation will cut across this. Specific provisions will be included in the legislation to protect Treaty settlements and other arrangements.
- 25 The Crown already has a large amount of information about the range of Māori concerns and views on resource management and fast-track consenting processes, and there will be opportunities over the coming months to engage with Māori on the proposed fast-track consenting regime.

IN CONFIDENCE**Further consideration by Cabinet**

- 26 I will take the bill and accompanying LEG paper to Cabinet on 4 March 2024 seeking approval to introduce on 7 March 2024 (within our first 100 days in office). The LEG paper will outline the policy decisions delegated ministers have made to develop the bill.
- 27 The bill will then proceed through the House, including a select committee process of between 4-6 months.

Implementation

- 28 The agency/agencies responsible for the operation of the fast-track consenting regime will be determined by delegated ministers.
- 29 Delegated ministers will also decide the agency or agencies that will support the process by ensuring applications have the required information and providing secretariat services to the EP.

Cost-of-living Implications

- 30 The proposals in this paper aim to reduce costs of significant infrastructure and development projects and contribute to their faster delivery. Improving how and when New Zealand delivers the infrastructure and other development it needs is expected to positively impact our economic efficiency, the affordability of our housing and the functioning of our transport corridors. These benefits may flow through to reduced costs for families and households.

Financial Implications

- 31 All work to develop the fast-track regime and associated legislation will be funded out of existing agency baselines. The operation of a fast-track consenting regime will entail expenditure for the Crown. I will seek operational funding in Budget 2024 for the administration of this regime.

Legislative Implications

- 32 This paper seeks approval to issue drafting instructions for a bill to be introduced on 7 March 2024. I propose the bill has a priority Category 3 rating – a priority to be passed by the end of 2024. The proposed fast-track consenting legislation will bind the Crown.

Impact Analysis*Regulatory Impact Statement*

- 33 Cabinet's impact analysis requirements apply to the proposals in this 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.
- 34 The Treasury and MfE have agreed that supplementary analysis will be provided when legislation is considered by Cabinet in March 2024.

IN CONFIDENCE*Climate Implications of Policy Assessment*

- 35 A Climate Implications of Policy Assessment (CIPA)² is not required for the proposal to draft a fast-track consenting bill.

Population Implications

- 36 Faster and more cost-effective consenting of major projects will benefit all New Zealanders. By enabling housing projects to access the regime I anticipate positive impacts on housing affordability, which may flow through to people experiencing housing pressures who are disproportionately young, Māori or Pasifika.

Human Rights

- 37 Consistency with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 will be assessed through delegated and further Cabinet decisions.

Use of external resources

- 38 No external resources were used in the preparation of this paper.

Consultation

- 39 The following agencies were provided with a short period to review the content of this paper: Department of Prime Minister and Cabinet; the Treasury; Ministry of Housing and Urban Development; Department of Internal Affairs; Ministry of Transport; Department of Conservation; Te Puni Kōiri; Office for Māori Crown Relations: Te Arawhiti; Ministry for Primary Industries; Ministry for Culture and Heritage; Ministry of Business, Innovation and Employment; Ministry of Health; Department of Corrections; Public Service Commission; Land Information New Zealand; Department of Education; New Zealand Defence Force; New Zealand Transport Agency; and New Zealand Infrastructure Commission Te Waihangā.
- 40 Officials will undertake targeted engagement with local government, and infrastructure, development and environment interests. Officials will also work with the relevant Post Settlement Governance Entity (PSGE)s and other relevant entities to ensure any impacts on Treaty settlements and other legislative arrangements are addressed appropriately.
- 41 Given the timeframes, engagement on the proposals in this paper has been limited. The select committee process will provide an opportunity for broader public input on the fast-track consenting regime.

Communications

- 42 Following Cabinet approval to introduce the bill, I intend to make an announcement to that effect and invite the public to consider making a submission once the bill has been referred to the select committee.

² A CIPA is required for proposals that will decrease greenhouse gas emissions as a key policy objective, or which are likely to have a direct emission impact at or above 0.5 million tonnes CO₂-e within the first 10 years of the proposal period.

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Proactive Release

- 43 As soon as practicable after decisions being confirmed by Cabinet and public announcements made, I intend to proactively release this paper, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

I recommend that Cabinet:

- 1 Note I intend to take a phased approach to reform of the resource management system:
 - 1.1 Phase one: repeal the Natural and Built Environment Act (NBA) and Spatial Planning Act (SPA) (now complete).
 - 1.2 Phase two: introduce a permanent fast-track one stop shop consenting regime within the first 100 days, make targeted legislative changes to the Resource Management Act 1991 (RMA) by late 2024, develop new, or amend existing, national direction under the RMA, and the Going for Housing Growth work package.
 - 1.3 Phase three: replace the current RMA with new resource management legislation based on the enjoyment of property rights, while ensuring good environmental outcomes.
- 2 Note the proposal to introduce a bill within our first 100 days in office to establish a fast-track one-stop-shop consenting regime is part of the National/NZ First Coalition Agreement.
- 3 Agree that the fast-track legislation would repeal the NBA fast-track consenting process (with appropriate transitional arrangements to provide for live applications), which was retained as an interim measure while a permanent fast-track consenting regime was developed.
- 4 Agree to introduce, by April 2024, other phase two amendments to the RMA as a Category 3 – a priority to be passed by the end of 2024.

Delegated decisions

- 5 Agree to delegate the ability to jointly make further detailed decisions as set out in Appendix 2, and issue drafting instructions to PCO, to the following ministers to enable the bill to be drafted for introduction by 7 March 2024:
 - 5.1 Minister Responsible for RMA Reform
 - 5.2 Minister of Housing
 - 5.3 Minister for Infrastructure
 - 5.4 Minister of Transport
 - 5.5 Minister for Energy
 - 5.6 Minister of Local Government

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- 5.7 Minister of Conservation
 - 5.8 Minister for Māori Crown Relations: Te Arawhiti
 - 5.9 Minister for Regional Development
 - 5.10 Minister for Oceans and Fisheries
 - 5.11 Minister for Resources
 - 5.12 Minister for the Environment
- 6 Agree that delegated ministers will consult with other ministers on matters that are relevant to their portfolios.

Scope, purpose of the Act and Treaty clause

- 7 Agree that the fast-track consenting regime will be provided for in standalone legislation (rather than an amendment to existing legislation).
- 8 Agree that the fast-track pathway can be used for resource consents, notices of requirement, or certificates of compliance under the RMA.
- 9 Agree that the fast-track regime will also be a 'one-stop shop' for approvals under other legislation in addition to the RMA.
- 10 Note the purpose of the legislation be aimed at 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.
- 11 Agree that agencies will refine the purpose clause and seek final approval on it from delegated Ministers.
- 12 Agree that further decisions about the Treaty clause and interaction with Part 2 of the RMA will be made by delegated ministers.

Eligibility for fast-track process and applications

- 13 Agree that a broad range of projects can access the fast-track process if they would provide significant local, regional, or national benefits.
- 14 Agree that the legislation will set out clear eligibility for the pathway, including by clarifying 'local, regional and nationally significant benefits'.
- 15 Agree that decisions about criteria for determining whether a project would have significant local, regional, or national benefits and other eligibility criteria will be made under delegation.

Listed projects

- 16 Agree that, in addition to the standard application process, the bill will contain a list of individual projects to be automatically provided to the Minister for referral assessment.
- 17 Agree that listed projects should be subject to the same criteria in the legislation.

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- 18 Note that Cabinet will have a chance to consider the proposed listed projects on 4 March 2024 as part of the LEG package seeking approval to introduce the bill.

Referral to the Expert Panel

- 19 Agree that the Minister responsible for making referral decisions under the bill will be the Minister for Infrastructure.
- 20 Agree that the Minister will determine whether an application should be referred (in part or in full) to the EP.
- 21 Note that the Minister will provide Cabinet with details of projects they intend to refer to an expert consenting panel for awareness and information.
- 22 Agree that the responsible Minister may decline an application after seeking input from relevant parties, if satisfied that the project does not meet the eligibility criteria.
- 23 Agree that the Minister must consult with other relevant portfolio ministers, local authorities and iwi including Post-Settlement Governance Entities as part of the initial assessment of projects.

Decision-making by Expert Panels

- 24 Agree that the EP will make decisions on applications, including consent conditions and designations under the RMA and under other legislation to reflect the 'one-stop-shop' nature of the regime.
- 25 Agree that a very high threshold must be met for the EP to decline projects referred by the Minister.
- 26 Agree that the EP must make decisions on applications within timeframes specified in the legislation.
- 27 Agree that decisions about appeals will be made by delegated ministers.
- 28 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 EP.
- 29 Agree that further decisions about notification and hearing procedures and timeframes will be made under delegated authority.
- 30 Agree that panels must invite submissions from relevant persons or groups, which will be determined by delegated ministers.

Expert Panels: composition and operation

- 31 Agree that the Minister for Infrastructure appoints a Panel Convenor.
- 32 Agree that the Panel Convenor will be tasked with appointing EP members, in consultation with the Minister.
- 33 Agree that further decisions about panel composition and operation will be made by delegated ministers.

IN CONFIDENCE*Upholding Treaty settlements*

- 34 Agree that the legislation will include 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.

Implementation

- 35 Agree that the agency/agencies responsible for the operation of the fast-track consenting regime will be determined by delegated ministers.
- 36 Agree that the agency/agencies who will support the process by ensuring applications have the required information and providing secretariat services to the EP will be determined by delegated ministers.
- 37 Note that funding to deliver the administration of fast-track consenting regime will be considered through Budget 2024.
- 38 Agree that if the funding for the fast-track consenting component is not provided through Budget 2024, all costs associated with the regime will be met from existing baselines.

Engagement

- 39 Agree that targeted engagement with groups representing local government, infrastructure, development and environment interests, and Māori will be undertaken to inform the design of the regime and the development of the bill.
- 40 Agree that officials will work with relevant Post-Settlement Governance Entities and other relevant entities to ensure any impacts on Treaty Settlements and other legislative arrangements are addressed appropriately.

Legislative Process

- 41 Note that I will take the bill and accompanying LEG paper back to Cabinet on 4 March 2024, seeking approval to introduce on 7 March 2024.
- 42 Authorise the Minister Responsible for RMA Reform to issue drafting instructions for a bill to give effect to the proposals in this paper and further delegated decisions.
- 43 Agree the bill will be introduced by 7 March 2024 with a priority Category 3 rating – a priority to be passed by the end of 2024.

Authorised for lodgement

Hon Chris Bishop

Minister Responsible for RMA Reform

IN C O N F I D E N C E

Appendix 1 – Key elements of a permanent fast-track consenting regime and targeted amendments to the RMA

Standalone legislation

- 1 I propose establishing the new, permanent fast-track consenting regime through a standalone Act rather than an amendment to existing legislation.
- 2 Like the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA), the new legislation would largely mirror aspects of the Resource Management Act 1991 (RMA)'s basic architecture, with some departures aimed at better enabling speedy development. The key differences between the RMA and the new legislation would include:
 - a. the ministerial decision to refer a project to an EP (no equivalent step in the RMA), and
 - b. once referred, the role of consent authority is played by the EP (rather than local government as under the RMA).

Scope, purpose of the Act and Treaty clause

- 3 I propose that the new legislation be standalone and have its own statutory purpose aimed at enabling fast-track consenting for projects with significant local, regional, or national benefits. This is important to help direct projects into the regime and determine whether they are suitable for fast-tracking.
- 4 The fast-track pathway can be used for resource consents, notices of requirement, or certificates of compliance, approvals required for projects under the RMA. I propose that the fast-track regime will be a 'one-stop shop' for approvals under other legislation in addition to the RMA, and that decisions about other approvals to be included in the regime will be made by delegated ministers.
- 5 The scope of the proposed purpose is still being worked through and final wording will be subject to PCO drafting advice and delegated ministers' decisions. However, I propose that the purpose of the new legislation (subject to enabling the PCO to retain drafting discretion) be aimed at 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.
- 6 The Treaty of Waitangi clause for the new legislation requires further consideration. I have directed officials to provide further advice on this and propose this decision be made by delegated ministers (see Appendix 2).

Eligibility to use fast-track process

- 7 The fast-track process would be open to a broad range of activities (including infrastructure, housing, resource extraction, aquaculture and other developments). I also propose that the legislation clearly sets out any ineligible activities, to provide as much certainty as possible to system users.
- 8 Projects may apply to use the regime. If the application is complete and demonstrates that the proposed activity is eligible, the Minister will then determine whether to refer

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the project to an EP. I propose that detailed decisions on process and information requirements for applications be made through delegation.

Listed projects

- 9 The legislation will contain a list of projects to be automatically referred to the Minister for assessment upon enactment. The legislation will require these projects to be considered by the Minister within a specified timeframe against the criteria in the bill.
- 10 This will help ensure that implementation of the new Act can begin as soon as possible. Cabinet will have a chance to consider the proposed listed projects on 4 March 2024 as part of the LEG package seeking approval to introduce the bill.

Referral to the Expert Panel

- 11 The decision whether to refer the project to an EP will be made by the responsible Minister. I propose the responsible Minister will be the Minister for Infrastructure.
- 12 The Minister will provide Cabinet with details of projects they intend to refer to an expert consenting panel for awareness and information.
- 13 The Minister's decision to refer a project or not will be subject to the purpose of the new legislation. I propose that the legislation include a set of appropriate criteria to help guide the Minister's decision. The Minister will be able to decline to refer projects to the EP if they do not meet the criteria. The decision to refer a project to an EP is an important one to get right, as there will be limited ability to decline a project once it has been referred.
- 14 The scope and wording of the criteria is still being worked through, but I consider they should include assessment of whether the project would result in significant local, regional, or national or benefits, as well as protections for Treaty of Waitangi settlements and rights provided under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, the Marine and Coastal Area (Takutai Moana) Act 2011, Mana Whakahono ā Rohe, and joint management agreements. The criteria will recognise that 'significant' may differ based on location and development type (e.g., housing developments where this is location dependent).
- 15 As part of the assessment process, the Minister will be mandated to consult with other relevant portfolio ministers, local authorities and iwi including PSGEs.
- 16 I propose that detailed decisions about the Ministerial decision-making process (including criteria, consultation requirements and a significant local, regional, or national benefit threshold test) be made under delegation.

Decision-making by Expert Panels

- 17 Once a project has been referred by the Minister, an EP will be established to consider the application and finalise consents within a specified timeframe.
- 18 To provide certainty for system users, there should be a strong presumption that projects referred to an EP will be approved. However, EP may decline projects if a very high threshold is met. EPs will also be able to issue conditions under the relevant underlying legislation (eg, consent conditions under the RMA).

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- 19 There are several ways in which the legislation can support a strong presumption of approval once referred, including not enabling panels to decline the consents (except in limited circumstances), or drafting the legislation so that panels place greater weight on the benefits than is currently the case under the RMA. I propose that ministers with delegated authority will consider these mechanisms, including the legal risks, and report back to Cabinet.
- 20 I propose that the legislation provide timeframes in which the EP must make its decision. These timeframes will be set to ensure decisions on consents are made efficiently while ensuring adequate protections are put in place.

Expert Panels: composition and operation

- 21 I propose that the Minister for Infrastructure would appoint the Panel Convenor, who would appoint EP members, in consultation with the Minister.
- 22 I propose that the agency/agencies who will support the process by ensuring applications have the required information and providing secretariat services to the EP will be determined by delegated ministers. Further decisions about panel composition and operation will be made by delegated ministers.

Targeted amendments to the RMA

- 23 Cabinet has agreed to amend the RMA to clarify that resource consent applicants do not need to demonstrate that their proposed activity adheres to the Te Mana o te Wai obligations in the National Policy Statement for Freshwater Management 2020 [CAB-23-MIN-0486 refers]. Cabinet previously agreed to make these amendments as part of the Fast-track Consenting (FTC) bill.
- 24 The Minister of Oceans and Fisheries and I have also agreed to amend the RMA to extend marine farm consents.
- 25 I propose progressing this as separate legislation to the FTC bill as it could mean these changes are enacted sooner. I am seeking Cabinet approval for this and to introduce a separate Bill shortly after the introduction of the FTC bill.

IN C O N F I D E N C E

Appendix 2: Further decisions to be made under delegation

The table below sets out a non-exhaustive list of policy areas for which further decisions will be needed to finalise the proposed fast-track consenting regime.

Policy area requiring delegated decision-making	
Legislative scope and purpose	the spatial extent of the fast-track bill (eg, whether it extends beyond the coastal marine area, as is the case for the FTCA and NBA fast-track regimes)
	the legislative purpose and interaction with Part 2 RMA and other legislation underlying approvals to be included in the bill
	the Treaty of Waitangi clause for the bill
	the way in which decisions are made and the role of the purpose of the Act in this decision-making
	the status/role of the approvals (eg, consents in the resource management system), and how the Act links to the relevant provisions of the underlying legislation (eg, RMA consenting provisions)
	other approvals and changes needed to other legislation to enable the fast-track process to be a one-stop shop
Application	the information requirements for the applicant at both the referral stage and the application stage to the EP
Ministerial referral	the ministerial assessment process, including criteria for determining whether a project would have significant local, regional, or national benefits.
	details of circumstances in which projects could be deemed ineligible
Expert Panel (EP)	EP decision-making and processes, including: • panel appointment process • panel membership and expertise requirements • requirement to invite submissions from relevant persons or groups • notification and hearing procedures, including whether the EP can hold a hearing or decide 'on the papers' • timeframes for process steps, including the timeframe in which the EP must make its decisions • roles, functions and powers of the EP • the panel's discretion to decline an application

IN C O N F I D E N C E

Policy area requiring delegated decision-making	
	application of RMA and other relevant procedural provisions
Other matters	specified timeframes for process steps (eg, timeframes for applications to be processed, for listed projects to be referred to the Minister, and for the EP to make decisions
	how Treaty settlements will be upheld, including a Section 17 FTCA/clause 18(7) NBA equivalent which has the role of assisting the decision makers as to impact of the proposed referred activities on any relevant settlements
	appeals
	if and how the cost of taking a consent/designation through the fast-track process is recovered



Cabinet

Minute of Decision

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Fast-track Approvals Bill: Policy and Workability Changes for Departmental Report

Portfolios **RMA Reform / Regional Development**

On 29 July 2024, Cabinet:

- 1 **noted** that following Cabinet agreement to final policy decisions, the Fast-track Approvals Bill (the Bill) was introduced to the House and referred to the Environment Committee (the Committee) on 7 March 2024;
- 2 **noted** that following public submissions on the Bill, approval is sought for changes to the Bill that depart from previously agreed policy decisions made by Cabinet or delegated Ministers;
- 3 **noted** that, if approved, these changes will be recommended to the Committee in the departmental report;
- 4 **noted** that the Committee is due to report back to Parliament in October 2024 and the intention is to pass the Bill by the end of the year;
- 5 **noted** that a process to identify and assess projects for listing in the Bill is running in parallel to the select committee process and Cabinet agreement will be sought to the projects to list in the Bill;

Policy changes

Decision-making arrangements

- 6 **noted** that requiring Ministers to decide jointly on whether to refer a project to an expert panel is likely to be inefficient and complex;
- 7 **agreed** that the Minister for Infrastructure should be solely responsible for making decisions on whether to refer a fast-track application to an expert panel;
- 8 **agreed** that the Minister for Infrastructure should be required to:
 - 8.1 follow the process steps that currently apply in the Bill to the referral decision;
 - 8.2 consult with and take into account comments from relevant portfolio Ministers and the Minister for the Environment on the referral application;

9 **agreed** that final substantive decision-making on fast-track approvals moves from joint
Ministers to the expert panel;

10 s 9(2)(f)(iv)

11

12

agreed that the Bill should clearly set out the requirements for how decisions are made and conditions are set on approvals, including ensuring that conditions are proportionate, and their benefits exceed their costs;

13

noted that further policy work is needed to determine the specific requirements that should apply to decision-makers when deciding and setting conditions on approvals;

14

authorised the Minister for Infrastructure and the Minister for Regional Development to make final decisions on the criteria used to make decisions, and how the Bill requires decision-makers to set conditions on approvals;

15

agreed that:

15.1 each panel should collectively include expertise in environmental matters;

15.2 the current requirement for the panel to have an understanding of tikanga Māori and mātauranga Māori is replaced with a requirement to have an expert suitably qualified in te ao Māori and Māori development;

16

agreed that:

16.1 the general ability for iwi authorities to nominate a member of the panel is removed from the Bill;

16.2 the existing protections for Treaty of Waitangi settlements and other arrangements that provide for requirements related to the appointment of hearing commissioners is retained in the Bill;

Purpose clause and decision-making process

17

noted the importance of a clear decision-making process for the panel in giving primacy to the purpose of the Bill and considering approvals under existing legislation;

18

agreed that the Bill should set out a decision-making process and approach that requires the panel to:

18.1 give greatest weight to the purpose of the Bill;

18.2 consider factors under existing legislation for each relevant approval sought (assessment criteria under relevant existing legislation are set out in Schedules 4-12 of the Bill);

18.3 issue a single set of decisions covering all of the approvals sought for the project;

- 19 **noted** that the declining of one approval for any project does not impact the decision on other approvals, as approvals are addressed separately, and the applicant can decide next steps on any that are declined;
- 20 **noted** that if some approvals go through other decision-makers, these would not be part of the panel's set of decisions;
- 21 **authorised** the Minister for Infrastructure and the Minister for Regional Development to make decisions on additional technical matters related to decisions already made on the decision-making process;

Ineligible activities

- 22 **agreed** that the Bill will require applicants to include information on their project's prior consideration by approving authorities, including the courts;
- 23 **agreed** that activities prohibited under the Exclusive Economic Zone Act 2012, in accordance with New Zealand's international commitments, are ineligible activities in relation to the Exclusive Economic Zone and the coastal marine area;
- 24 **agreed** that the Minister for Infrastructure can refer a land transport or electricity network infrastructure project, provided by a network utility operator with requiring authority status under the Resource Management Act 1991, to a panel for approval and grant the approval, without the written agreement of the owners of Māori freehold land and general land owned by Māori that was previously Māori freehold land, noting that project approval does not constitute approval of land acquisition;
- 25 **agreed** that:
- 25.1 the Minister for Infrastructure will have discretion under clause 21(2) of the Bill to decline an application for referral after considering the effects on the relevant land, and the impacts on Māori rights and interests in that land;
 - 25.2 relevant landowners of Māori freehold land and general land owned by Māori are included within the parties who may provide comments on a referral application under clause 19(1) of the Bill;
 - 25.3 where written agreement has not been obtained, the panel must consider the effects on the relevant land and impacts on Māori rights and interests in that land at the substantive decision stage;
 - 25.4 the applicant will be required to provide details of the steps taken to seek written approval from relevant landowners of Māori freehold land and general land owned by Māori in their substantive application;

Public participation and timeframes for providing comments

- 26 **agreed** that the panel convenor can set an appropriate timeframe for the panel to provide its decision where the default timeframe is likely to be insufficient based on the complexity of the project and matters relevant to the approvals sought;
- 27 **agreed** that the timeframes for specified parties to provide written comments on the referral and panel stages is extended from 10 to 20 working days;
- 28 **agreed** that the timeframe for the panel to send out an application for comment is extended from 5 to 10 working days;

- 29 **agreed** that the targeted consultation process for aquaculture decisions is extended to 20 working days;
- 30 **agreed** that the timeframe for the Environmental Protection Authority's completeness check is extended to 15 working days;

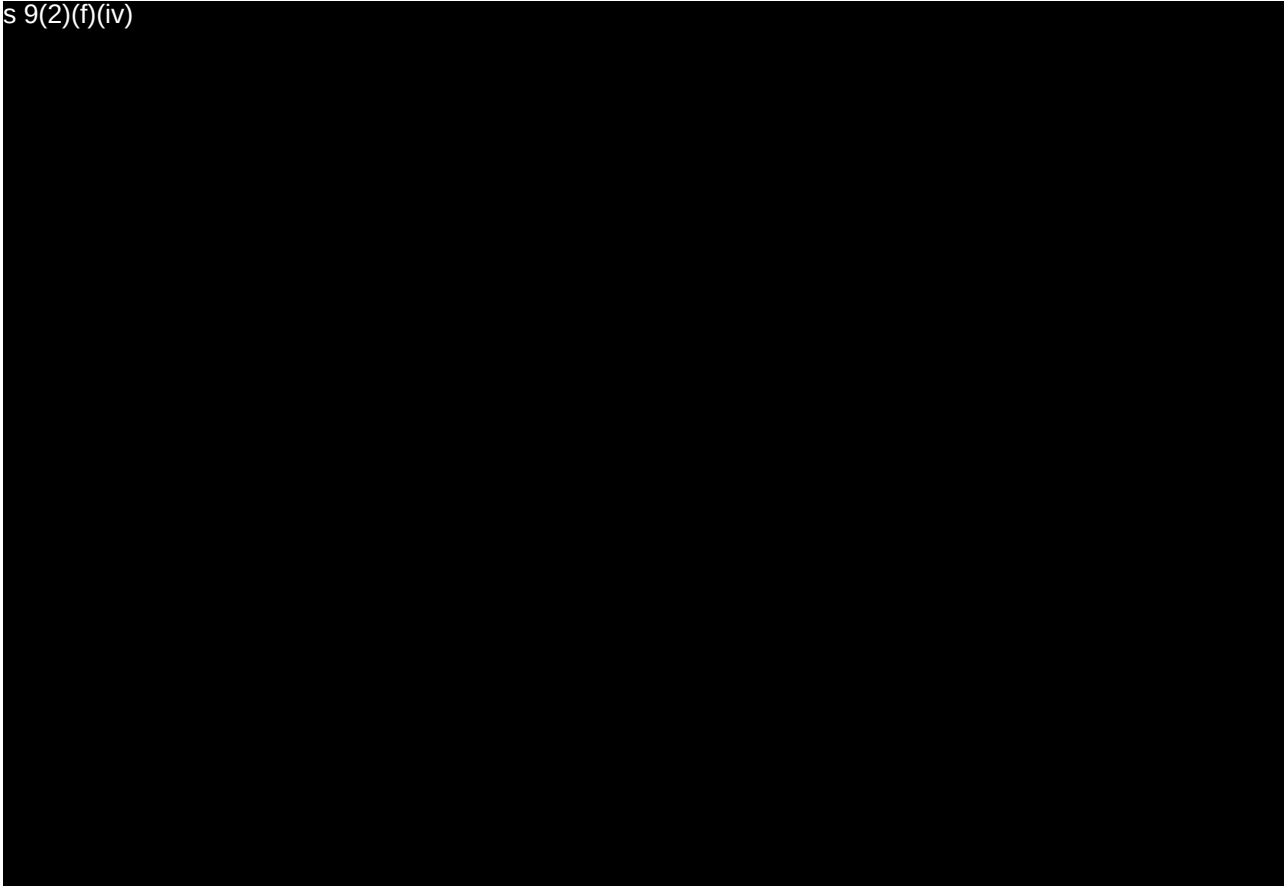
Treaty of Waitangi matters

- 31 **agreed** to define "existing Treaty of Waitangi settlements" in clause 6 of the Bill to make it clear that the clause applies to Treaty settlements that exist when functions, powers and duties are exercised, rather than settlements that exist when the fast-track legislation is enacted;

Electricity generation and transmission activities and infrastructure

- 32 **agreed** that the Departmental Report will note that amending the ineligibility provisions to allow applications for some electricity generation and transmission activities on high value conservation land would help to maintain and enhance New Zealand's electricity generation and transmission capacity, and that such amendments may be sought through an amendment paper;

33 s 9(2)(f)(iv)



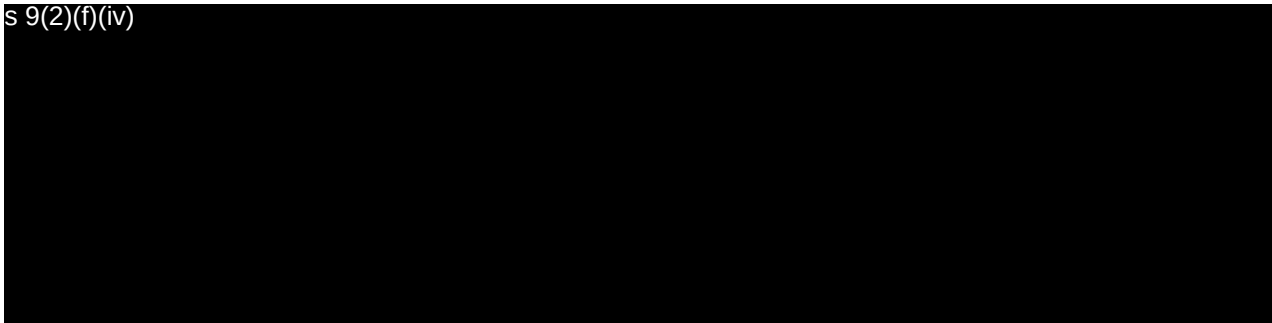
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36

Other policy matters being considered for inclusion in the Bill

37 s 9(2)(f)(iv)



38 **noted** that:

- 38.1 making further significant or complex changes to the Bill beyond the departmental report may put at risk the ability to pass the Bill in 2024;
- 38.2 where further changes are considered practicable, relevant portfolio Ministers will seek Cabinet agreement and changes will be made through amendment papers during the Committee of the Whole House stage;

Workability changes

- 39 **noted** that officials have identified a substantial number of changes needed to improve the workability of the Bill, which are within the scope of previous policy decisions by delegated Ministers and Cabinet and do not change the overall policy intent of the Bill;
- 40 **agreed** that the changes to improve the workability of the Bill as set out in Appendix 3 attached to the submission under CAB-24-SUB-0272 will be recommended to the Committee in the departmental report;
- 41 **noted** that officials have identified a range of minor or technical changes to improve the clarity and workability of the Bill, which will be addressed in the departmental report;

Delegated authority for further technical or workability changes

- 42 **noted** that, as further work is done on the Bill at the committee stage, officials may identify additional necessary technical or workability changes;
- 43 **authorised** the Minister Responsible for RMA Reform and the Minister for Regional Development, in consultation with other relevant Ministers as necessary, to take decisions on further technical or workability changes to give effect to the policy decisions under CAB-24-MIN-0272.

Rachel Hayward
Secretary of the Cabinet

Secretary's note: This revised minute records a technical correction to the decision in paragraph 24.



Cabinet

Summary

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Fast-track Approvals Bill: Policy and Workability Changes for Departmental Report

Portfolios RMA Reform / Regional Development

Purpose This paper seeks agreement to decision-making arrangements and process matters, policy, and workability changes to the Fast-track Approvals Bill (the Bill), to address matters raised in submissions and by officials.

Previous Decisions In March 2024, Cabinet agreed to introduce the Bill [CAB-24-MIN-0066].

Proposal As Ministers deciding jointly on whether to refer a project to an expert panel is likely to be inefficient and complex, agreement is sought for the Minister for Infrastructure to be solely responsible for making decisions on whether to refer a fast-track application to an expert panel. This would involve consulting with, and taking into account, comments from relevant portfolio Ministers and the Minister for the Environment on the referral application. Final substantive decision-making will move from joint Ministers to the expert panel.

s 9(2)(f)(iv)

Authorisation is also sought for the Minister for Infrastructure and the Minister for Regional Development to decide the criteria used to make decisions, and how the Bill requires decision-makers to set conditions on approvals.

In respect of the expert panel, agreement is sought to retain the requirement that each panel should include expertise in environmental matters, but remove the general ability for iwi authorities to nominate a member of the panel. The existing protections for Treaty of Waitangi settlements will be retained.

For public participation, agreement is sought to extend the timeframes for: parties to provide written comments during the referral and panel stages, the panel to send out an application for comment, the targeted consultation process for aquaculture decisions, and for the Environmental Protection Authority's completeness check.

Ministers are considering further policy changes for potential inclusion in the Bill, including in relation to the issuing of some mining permits, and applications for electricity generation and transmission activities on high-value conservation land.

Impact Analysis	An updated Supplementary Analysis Report is attached as Appendix 4 .
Financial Implications	None from this paper.
Legislative Implications	These changes will be made through the departmental report on the Bill.
Timing Matters	The departmental report is due to be delivered to the Environmental Committee on 2 August 2024. The process and timeframes for the Bill are summarised in Appendix 1 .
Communications	Ministers intend to announce proposals when the departmental report is presented.
Consultation	Paper prepared by MfE (RMA Reform) and MBIE (Regional Development). MCH, DOC, MBIE (Economic Development, Energy, Resources), LINZ, Treasury, Te Arawhiti, and MPI (Oceans and Fisheries) were consulted. Crown Law, PCO, DPMC and Te Arawhiti were informed. The Minister indicates that the Minister of Finance, Minister for Energy and Minister of Transport, Minister for Emergency Management and Recovery, Minister of Agriculture, Minister of Conservation and Minister for Māori Crown Relations: Te Arawhiti, Minister of Climate Change, Minister for Regional Development, Minister for the Environment, Minister for Land Information, Associate Minister for the Environment, and the Parliamentary Under-Secretary to the Minister for Infrastructure were consulted. The Minister also indicates that all Government parties were consulted.

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

- 1 note that following Cabinet agreement to final policy decisions, the Fast-track Approvals Bill (the Bill) was introduced to the House and referred to the Environment Committee (the Committee) on 7 March 2024;
- 2 note that following public submissions on the Bill, approval is sought for changes to the Bill that depart from previously agreed policy decisions made by Cabinet or delegated Ministers;
- 3 note that, if approved, these changes will be recommended to the Committee in the departmental report;
- 4 note that the Committee is due to report back to Parliament in October 2024 and the intention is to pass the Bill by the end of the year;

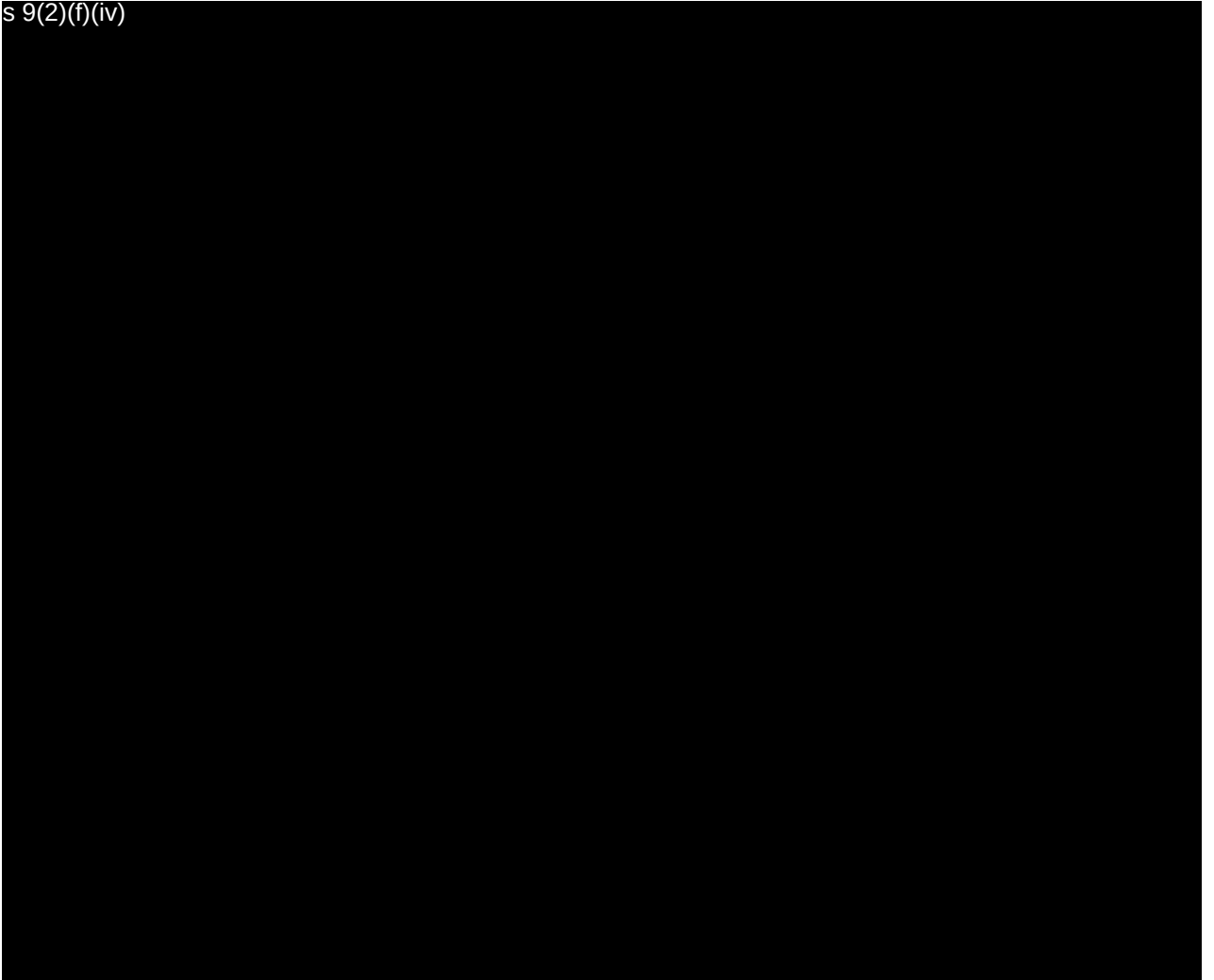
- 5 note that a process to identify and assess projects for listing in the Bill is running in parallel to the select committee process and Cabinet agreement will be sought to the projects to list in the Bill;

Policy changes

Decision-making arrangements

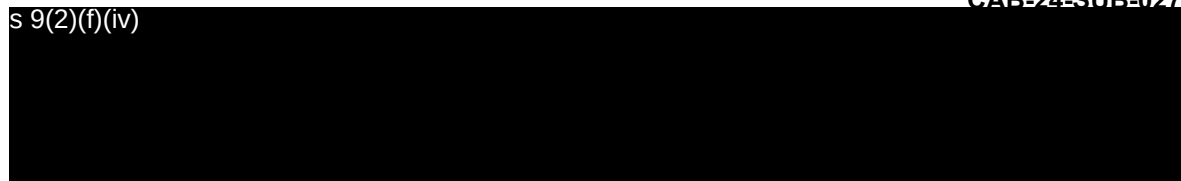
- 6 note that requiring Ministers to decide jointly on whether to refer a project to an expert panel is likely to be inefficient and complex;
- 7 agree that the Minister for Infrastructure should be solely responsible for making decisions on whether to refer a fast-track application to an expert panel;
- 8 agree that the Minister for Infrastructure should be required to:
- 8.1 follow the process steps that currently apply in the Bill to the referral decision;
 - 8.2 consult with and take into account comments from relevant portfolio Ministers and the Minister for the Environment on the referral application;
- 9 agree that final substantive decision-making on fast-track approvals moves from joint Ministers to the expert panel;

10 s 9(2)(f)(iv)



11

s 9(2)(f)(iv)



- 12 agree that the Bill should clearly set out the requirements for how decisions are made and conditions are set on approvals, including ensuring that conditions are proportionate, and their benefits exceed their costs;
- 13 note that further policy work is needed to determine the specific requirements that should apply to decision-makers when deciding and setting conditions on approvals;
- 14 authorise the Minister for Infrastructure and the Minister for Regional Development to make final decisions on the criteria used to make decisions, and how the Bill requires decision-makers to set conditions on approvals;
- 15 agree that:
 - 15.1 each panel should collectively include expertise in environmental matters;
 - 15.2 the current requirement for the panel to have an understanding of tikanga Māori and mātauranga Māori is replaced with a requirement to have an expert suitably qualified in te ao Māori and Māori development;
- 16 agree that:
 - 16.1 the general ability for iwi authorities to nominate a member of the panel is removed from the Bill;
 - 16.2 the existing protections for Treaty of Waitangi settlements and other arrangements that provide for requirements related to the appointment of hearing commissioners is retained in the Bill;

Purpose clause and decision-making process

- 17 note the importance of a clear decision-making process for the panel in giving primacy to the purpose of the Bill and considering approvals under existing legislation;
- 18 agree that the Bill should set out a decision-making process and approach that requires the panel to:
 - 18.1 give greatest weight to the purpose of the Bill;
 - 18.2 consider factors under existing legislation for each relevant approval sought (assessment criteria under relevant existing legislation are set out in Schedules 4-12 of the Bill);
 - 18.3 issue a single set of decisions covering all of the approvals sought for the project;
- 19 note that the declining of one approval for any project does not impact the decision on other approvals, as approvals are addressed separately, and the applicant can decide next steps on any that are declined;
- 20 note that if some approvals go through other decision-makers, these would not be part of the panel's set of decisions;

- 21 authorise the Minister for Infrastructure and the Minister for Regional Development to make decisions on additional technical matters related to decisions already made on the decision-making process;

Ineligible activities

- 22 agree that the Bill requires applicants to include information on their projects prior to consideration by approving authorities, including the courts;
- 23 agree that activities prohibited under the Exclusive Economic Zone Act 2012, in accordance with New Zealand's international commitments, are ineligible activities in relation to the Exclusive Economic Zone and the coastal marine area;
- 24 agree that the Minister for Infrastructure can refer a land transport or electricity network infrastructure project, provided by a network utility operator with requiring authority status under the Resource Management Act 1991 (RMA), to a panel for approval and grant the approval, without the written agreement of the owners of Māori freehold land and general land owned by Māori that was previously Māori freehold land;
- 25 agree that:
- 25.1 the Minister for Infrastructure will have discretion under clause 21(2) of the Bill to decline an application for referral after considering the effects on the relevant land, and the impacts on Māori rights and interests in that land;
 - 25.2 relevant landowners of Māori freehold land and general land owned by Māori are included within the parties who may provide comments on a referral application under clause 19(1) of the Bill;
 - 25.3 where written agreement has not been obtained, the panel must consider the effects on the relevant land and impacts on Māori rights and interests in that land at the substantive decision stage;
 - 25.4 the applicant will be required to provide details of the steps taken to seek written approval from relevant landowners of Māori freehold land and general land owned by Māori in their substantive application;

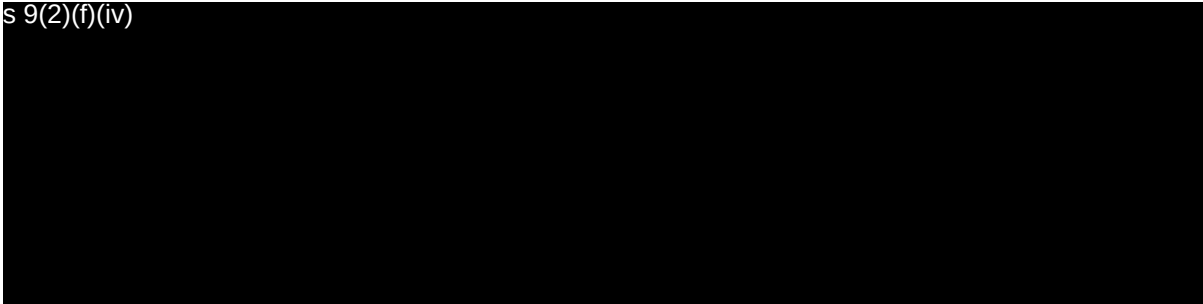
Public participation and timeframes for providing comments

- 26 agree that the panel convenor can set an appropriate timeframe for the panel to provide its decision where the default timeframe is likely to be insufficient based on the complexity of the project and matters relevant to the approvals sought;
- 27 agree that the timeframes for specified parties to provide written comments on the referral and panel stages is extended from 10 to 20 working days;
- 28 agree that the timeframe for the panel to send out an application for comment is extended from 5 to 10 working days;
- 29 agree that the targeted consultation process for aquaculture decisions is extended to 20 working days;
- 30 agree that the timeframe for the Environmental Protection Authority's completeness check is extended to 15 working days;

Treaty of Waitangi matters

- 31 agree to define “existing Treaty of Waitangi settlements” in clause 6 of the Bill to make it clear that the clause applies to Treaty settlements that exist when functions, powers and duties are exercised, rather than settlements that exist when the fast-track legislation is enacted;

Other policy matters being considered for inclusion in the Bill

- 32 s 9(2)(f)(iv)
- 

- 33 note that:

- 33.1 making further significant or complex changes to the Bill beyond the departmental report may put at risk the ability to pass the Bill in 2024;
- 33.2 where further changes are considered practicable, relevant portfolio Ministers will seek Cabinet agreement and changes will be made through amendment papers during the Committee of the Whole House stage;

Workability changes

- 34 note that officials have identified a substantial number of changes needed to improve the workability of the Bill, which are within the scope of previous policy decisions by delegated Ministers and Cabinet and do not change the overall policy intent of the Bill;
- 35 agree that the changes to improve the workability of the Bill as set out in Appendix 3, attached to the submission under CAB-24-SUB-0272, will be recommended to the Committee in the departmental report;
- 36 note that officials have identified a range of minor or technical changes to improve the clarity and workability of the Bill, which will be addressed in the departmental report;

Delegated authority for further technical or workability changes

- 37 note that, as further work is done on the Bill at the committee stage, officials may identify additional necessary technical or workability changes;
- 38 authorise the Minister Responsible for RMA Reform and the Minister for Regional Development, in consultation with other relevant Ministers as necessary, to take decisions on further technical or workability changes to give effect to the policy decisions under CAB-24-MIN-0272.

Jenny Vickers
for Secretary of the Cabinet

Hard-copy distribution: (see over)

Hard-copy distribution:

The Cabinet

Minister for the Environment

Minister for Land Information

Associate Minister for the Environment

Parliamentary Under-Secretary to the Minister for Infrastructure

In confidence

Office of the Minister Responsible for RMA Reform

Office of the Minister for Regional Development

Cabinet Business Committee

Fast-track Approvals Bill: policy and workability changes for departmental report

Proposal

- 1 This paper seeks agreement to policy and workability changes to the Fast-track Approvals Bill (the Bill) for recommendation to the Environment Committee (the Committee) in the departmental report on the Bill. Changes address matters raised in submissions and workability issues identified by officials.

Relation to government priorities

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

Executive Summary

- 3 On 7 March 2024, the Bill was introduced to the House and referred to the Committee. Over 26,000 submissions were received on the Bill.¹ Officials are analysing submissions and preparing the departmental report, which is due to be delivered to the Committee on 2 August 2024.

- 4 We are seeking agreement to several policy changes to the Bill that will support our objectives for the legislation, while addressing some of the principal concerns and suggested improvements raised in submissions. If approved, these changes will be recommended by officials in the departmental report. The most significant relate to:

- 4.1 changing referral decision-making and final substantive decision-making arrangements
- 4.2 clarifying the overall decision-making process and hierarchy in the Bill
- 4.3 extending various timeframes for comment at the referral and panel stages

- 5 s 9(2)(f)(iv) [Redacted]

- 6 s 9 (2)(f)(iv) [Redacted]

¹ Two petitions represented nearly 29,000 individuals, meaning the total number of individuals and organisations who had something to say was approximately 54,000.

- 7 We propose making a substantial number of changes to improve the workability of the Bill. These changes are within the scope of previous policy decisions made by Cabinet and delegated Ministers and will remove barriers and avoid delays when the fast-track process is implemented.
- 8 As further work is done on the Bill at the select committee stage, officials may identify additional necessary technical or workability changes to give effect to policy. We seek agreement to delegate authority to the Minister Responsible for RMA Reform and the Minister for Regional Development, in consultation with other Ministers as necessary, to make any further technical or workability changes.

Background

- 9 Consenting major infrastructure and other projects in New Zealand takes too long, costs too much, and places insufficient value on the economic and social benefits of development relative to other considerations. 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.
- 10 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. We are committed to introducing a permanent fast-track one-stop-shop approvals regime to enable projects that have significant regional, or national benefits to get off the ground sooner and promote cost efficiency. Fast-track approvals is a key element of the second phase of our resource management reform programme.
- 11 On 4 March 2024, Cabinet agreed to the decisions made by delegated Ministers for the design of the Bill and approved the Bill for introduction [CAB-24-MIN-0066]. The Bill was introduced to the House on 7 March 2024. It was referred to the Committee for consideration, and public submissions were sought.
- 12 Officials are analysing submissions and preparing the departmental report with recommendations to the Committee, which is anticipated to report back to the House in October 2024. The departmental report is due to be delivered to the Committee on 2 August 2024. We are seeking Cabinet agreement where the departmental report recommends changes to the Committee which depart from previously agreed policy decisions.
- 13 This paper does not consider listed projects. The Bill did not include any listed projects when introduced. A process to identify and assess projects for listing is being run parallel to the select committee process and Cabinet agreed that projects will be added to the bill via an Amendment paper [CAB-24-Min-0066]. A future Cabinet paper will seek agreement to the projects to list in the Bill.

Matters raised in submissions

- 14 Over 26,000 submissions were received on the Bill. There was support for the principle of having a fast-track process to make it easier to build important infrastructure or projects with significant public benefit. However, the majority of those who submitted

on the Bill raised significant concerns with it. Almost all submitters recommended changes to reduce risk or improve processes and outcomes.

- 15 The most significant concerns raised by submitters relate to the decision-making roles and powers of Ministers (including the perception of undue influence), the prioritisation of development over environmental protections and the risk of irreversible environmental harm, compliance with the Treaty of Waitangi, the ability of the public to be involved in fast-track processes, and the risk of not upholding international obligations or agreements.

Proposed policy changes

- 16 We have been clear we are open to making sensible changes to the Bill, but that the core of the legislation will not change. It must provide a one-stop shop, so all consents and permits are considered together, and provide a fast-track so approvals speed up.
- 17 We do not propose changing the purpose of the legislation, the types of projects that have access to the fast-track process, or the primary weighting of the Bill relative to other legislation in decision-making.
- 18 We think the changes proposed will support our objectives for the legislation, while addressing some of the concerns and suggested improvements raised in submissions. If approved, officials will recommended these to the Committee in the departmental report.
- 19 An updated fast-track approvals diagram is attached in **Appendix 1** that reflects the changes proposed in this paper.

Decision-making arrangements

- 20 In response to submissions and further advice from officials we propose making changes to both the referral and substantive decision-making roles in the Bill.

Referral of applications

- 21 Requiring three Ministers to decide jointly on whether to refer a project to an expert panel may be inefficient and complex. A more efficient process would be to have referral decisions made by only one Minister who would consult as required with other relevant portfolio Ministers. The process steps and obligations that currently apply to the referral decision would apply solely to that Minister.
- 22 We propose the Minister for Infrastructure should be:
- 22.1 solely responsible for making referral decisions
- 22.2 required to consult with and take into account comments from relevant portfolio Ministers and the Minister for the Environment on the referral application.
- 23 The Minister Responsible for RMA Reform will direct the Ministry for the Environment, as the responsible agency supporting the referral minister, to work with the Public Service Commission to ensure the referral process is workable and efficient.

Final substantive decision-making – overall responsibility

- 24 We propose moving responsibility for final substantive decision-making from joint Ministers to the expert panel. This should give the public greater confidence that decision-making is independent and objective and reduce risks associated with Ministerial decision-making. It will also remove an administrative step, including the time and cost of agencies having to advise Ministers once the panel has made its recommendation.

s 9(2)(f)(iv)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

s 9(2)(f)(iv)

Government	Percentage
Current government	85%
Previous government	15%

Direction on decisions and setting conditions

38 The Bill includes a statutory timeframe of 25-days for the panel to deliver its decision. In addition, we propose the Bill clearly prescribes how decisions are made and conditions are set on approvals. This should include ensuring that any conditions are

proportionate, and their benefits exceed their costs. Further work is needed to fully determine these requirements, including the criteria used to make decisions, and we seek Cabinet's agreement to delegate final decisions on this matter to the Ministers for Infrastructure and Regional Development.

Panel expertise and iwi authority appointments

- 39 The members of the panel must have the collective knowledge and experience needed for matters specific to a project or, if appropriate, conservation expertise. While this provides flexibility, submitters were concerned that panels could lack environmental management expertise.
- 40 We propose that each panel should collectively include expertise in environmental matters. We also propose replacing the current requirement for the panel to have an understanding of tikanga Māori and mātauranga Māori with a requirement to have an expert suitably qualified in te ao Māori and Māori development. This would more closely align with the development-focused purpose of the Bill.
- 41 The Bill provides for relevant iwi authorities to nominate a member of the panel, which currently applies irrespective of Treaty settlements. It also includes a separate requirement for the panel convenor to comply with any Treaty settlement, iwi participation legislation, Mana Whakahono ā Rohe or joint management agreement that includes a requirement related to the nomination or appointment of hearing commissioners.
- 42 To clarify the process and avoid potential overlaps between these provisions, we propose removing the general ability for iwi authorities to nominate a member of the expert panel, and only enabling iwi authorities to nominate a member where this is specifically provided for in a relevant Treaty settlement or other arrangement. Relevant settlements or arrangements will be identified before a project is referred as part of the report on Treaty settlements and other obligations, prepared by the responsible agency, which the Minister will then provide to the panel if they decide to refer a project.
- 43 This change could be viewed by Māori as reducing their ability to influence or have a role in decision making on fast-track applications and raise concerns about inappropriate projects being permitted in sensitive cultural or ecological areas. We note that other provisions of the Bill, including the report produced under clause 13 and the requirement to act consistently with the obligations in Treaty settlements in clause 6, will continue to provide protections for Māori interests in relation to fast-track projects.

Purpose clause and decision-making process

- 44 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. It is important there is a clear decision-making process for the panel in giving primacy to the purpose of the Bill and considering approvals under existing legislation. To support this, we propose the Bill sets out a decision-making process and approach as follows. When the panel considers an application, they must:
- 44.1 give greatest weight to the purpose of the Bill
- 44.2 consider factors under existing legislation for each relevant approval sought (assessment criteria under relevant existing legislation are set out in Schedules 4 – 12 of the Bill).

- 45 Subsequently, after considering the factors above in relation to each approval sought, the panel will make a single set of decisions on the overall project.
- 46 We also note that:
- 46.1 the declining of one approval for any project does not impact the decision on other approvals - approvals are addressed separately and the applicant can decide next steps on any that are declined
- 46.2 if some approvals go through other decision makers, these would not be part of the panel's set of decisions.
- 47 Officials will continue to work with Parliamentary Counsel Office and the Crown Law Office to address any legal risks, make sure the policy intent is clearly reflected in the revised drafting of the Bill, and that the drafting will work in practice. This may require further advice to be provided to Ministers and we propose that further decisions are delegated to the Ministers for Infrastructure and Regional Development.
- 48 If agreed by the Committee, Ministers will receive drafting of these clauses in the revision-tracked version of the Bill when reported back by the Committee. If any further substantive policy decisions are required on this issue, we will seek further decisions from Cabinet. Any subsequent changes will need to be made through amendment papers.

Prohibited and ineligible activities

- 49 Many submitters recommended that activities prohibited under the Resource Management Act 1991 (RMA) or previously declined should be ineligible for fast-tracking. The design of the fast-track regime intentionally allows for a wide range of projects to be considered and we do not propose changing this.
- 50 However, we do propose that the Bill requires applicants to include information on their project's prior consideration by approving authorities, including the courts. This information will then be considered by the Minister for Infrastructure when deciding whether to refer the application to an expert panel.
- 51 The Bill provides that any prohibited activity under the Exclusive Economic Zone Act 2012 (EEZ) is ineligible for fast-track. This ensures that activities prohibited through international agreements cannot receive approvals under the fast-track regime in the EEZ, such as the dumping of radioactive, toxic, and hazardous waste.
- 52 The Bill does not currently prohibit the granting of approvals for such activities in the coastal marine area. To correct this, we propose that activities prohibited under the EEZ, in accordance with NZ's international commitments, are also ineligible activities in the coastal marine area.
- 53 Clause 18(a) of the Bill makes a project ineligible for fast-tracking if it includes an activity that would occur on identified Māori land or land returned under a Treaty settlement and where written agreement has not been obtained by the relevant landowners. The definition of identified Māori land in the Bill is broad and land transport network or electricity network infrastructure projects can cross many land parcels. It may not be possible to obtain the required written agreement of some owners of identified Māori land, specifically Māori freehold land and general land owned by Māori, to support the referral stage of the process. This would prevent these projects accessing fast-track for consent approvals.

- 54 For large complex projects, such as a new transmission line, Transpower have advised that they would not expect to have even a majority of landowners agreement before lodging resource consents and it is only once consents are received that landowners are prepared to engage once the certainty over route and the actual impacts on landowners is more certain.
- 55 To address this issue, we propose that the Minister for Infrastructure can refer a land transport or electricity network infrastructure project to an expert panel for approval, without the written agreement of the owners of Māori freehold land and general land owned by Māori that was previously Māori freehold land. This would be restricted to land transport and electricity lines network infrastructure provided by a network utility operator with requiring authority status under the RMA.
- 56 The Bill currently contains a range of consultation requirements before a referral decision is made. Ministers are provided with information about this consultation as well as relevant Māori rights and interests, including affected Māori landholdings. In addition, we propose that:
- 56.1 the referral Minister will have discretion under clause 21(2) to decline an application for referral where landowner approval has not been obtained after considering the effects on the relevant land, and the impacts on Māori rights and interests in that land
 - 56.2 affected landowners are included in the parties who may provide comments on a referral application under clause 19(1)
 - 56.3 where written agreement has not been obtained, the panel must consider the effects on the relevant land and impacts on Māori rights and interests in that land at the substantive decision stage
 - 56.4 the applicant is required to set out the steps taken to seek written approval from relevant landowners in their substantive application.
- 57 The Bill also does not change any of the procedural protections in relation to acquisition of land under the Public Works 1981 (PWA) itself.

58 s 9 (2)(h)

[REDACTED]

Public participation and timeframes for providing comments

- 59 A range of comments and suggestions were made on the public participation arrangements in the Bill. Consistent with previous fast-track regimes, the Bill does not allow for public notification. Instead, comment is sought from specified parties and any

other person the panel considers appropriate. This allows a more targeted approach in the way different views are considered on projects. We do not recommend changing this approach.

60 There were also concerns that timeframes at the referral and panel stages were insufficient for parties to provide substantive advice and the panel to make a decision. We consider that some timeframes can be extended without greatly impacting on the overall speed of the fast-track process.

61 We propose:

61.1 enabling the panel convenor to set an appropriate timeframe for the panel to make its decision where the default is likely to be insufficient based on the complexity of the project and matters relevant to the approvals sought

61.2 extending the timeframes for specified parties to provide written comments on the referral and panel stages from 10 to 20 working days (clause 19(5) and schedule 4, clause 21(1))

61.3 extending the timeframe for the panel to send out an application for comment from 5 to 10 working days (schedule 4, clause 20(2))

61.4 extending the targeted consultation process for aquaculture decisions to 20 working days (schedule 12, clause 5)

61.5 extending the timeframe for the Environmental Protection Authority's (EPA) completeness check of consent applications to 15 working days (schedule 4, clause 5).

Treaty of Waitangi matters

62 The Government has committed to protecting Treaty settlements, and this is reflected in an overarching obligation in clause 6 of the Bill. There are also specific provisions to protect Treaty settlements throughout the Bill.

63 We propose the Bill defines "existing Treaty settlements" in clause 6 to make it clear that the clause applies to Treaty settlements that exist at the time functions, powers and duties in the legislation are exercised, rather than settlements that exist at the time the fast-track legislation is enacted.

Further policy matters under consideration

s 9(2)(f)(iv)

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s 9(2)(f)(iv)

s 9(2)(f)(iv)

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s 9(2)(f)(iv)

s 9(2)(f)(iv)

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s 9(2)(f)(iv)

s 9(2)(f)(iv)

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s 9(2)(f)(iv)

Process for considering further changes

- 68 More work is needed to understand the scale of these matters and the extent of amendments required to address them. We are focused on passing the Bill this year and further significant or complex amendments may put that timeframe at risk. The ability to make changes will be dependent on resolving outstanding policy issues and ensuring changes align with the rest of the Bill, obtaining policy approvals from Ministers and Cabinet by the end of August, and the capacity of the Parliamentary Counsel Office to draft the necessary amendments within the time available.
- 69 Where further changes are considered practicable in the time available, relevant portfolio ministers will seek policy agreement from Cabinet and changes will be made through amendment papers during the Committee of the Whole House stage.

Workability changes

- 70 Officials have identified a substantial number of changes needed to improve the alignment and workability of the Bill. These changes are within the scope of previous policy decisions made by Cabinet and delegated Ministers [CAB-24-MIN-0008 and CAB-24-MIN-0066] and will remove barriers and avoid delays when the fast-track process is implemented.
- 71 The most substantive changes proposed are to clarify:
- 71.1 provisions that were intended to apply generally across all approvals and processes in the Bill, but have been only reflected in some schedules (particularly schedule 4)
 - 71.2 timeframes and information requirements for referral, assessment and decision-making where multiple approvals are involved

- 71.3 the processing of referral applications, including from whom Ministers must seek written comments, the obligation to consult with Māori groups, and the provision of advice relating to Treaty settlements and other obligations
 - 71.4 the process for conservation approvals, including requiring input from relevant statutory bodies, cost recovery arrangements, setting conditions on concessions and CMA approvals, land exchange processes, and consideration of international conservation agreements
 - 71.5 the process for aquaculture decisions, including pre-request aquaculture agreements, application notification and recommendation requirements, commencement of coastal permits for aquaculture, and aquaculture agreements and compensation declarations
 - 71.6 a range of panel process matters, including composition, reporting timeframes, information, consultation and consideration requirements
 - 71.7 machinery of government and judicial matters, including requiring the publishing of applications and reports and the scope of appeals that can be taken to the High Court on points of law.
- 72 We seek agreement to these proposed workability changes, which are further outlined in **Appendix 3**. These changes will be addressed in the departmental report alongside other minor technical fixes.

Delegating further technical and workability changes to the Bill

- 73 As further work is done on the Bill at the select committee stage, officials may identify additional necessary technical or workability changes. We propose that Cabinet delegate decision making on any further technical or workability changes to give effect to policy decisions to the Minister Responsible for RMA Reform and the Minister for Regional Development in consultation with other relevant Ministers as necessary.

Cost-of-living Implications

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

Financial Implications

- 75 All work to develop the fast-track regime and associated legislation has been funded from existing agency baselines. ^{s 9(2)(f)(iv)} [REDACTED]
[REDACTED] Costs to operate the regime will be cost recovered and/or met from existing agency baselines. Work is ongoing on the cost-recovery mechanisms for the fast-track regime to ensure that costs appropriately fall on the applicant. ^{s 9(2)(f)(iv)} [REDACTED]
[REDACTED].

Legislative Implications

- 76 The proposals in this paper will inform the Select Committee process through the departmental report for the Bill.

Impact Analysis

Regulatory Impact Statement

- 77 The Ministry for the Environment provided a supplementary analysis report (SAR) when the Bill was considered for introduction by Cabinet in March 2024.
- 78 The SAR has been updated to reflect the further policy decisions on the Bill in this paper. In addition, the Department of Conservation has provided an addendum with analysis on conservation approvals and land decisions contained in the fast-track regime, but which was not analysed in the original SAR. The updated SAR is attached at **Appendix 4**.

Climate Implications of Policy Assessment

- 79 The Ministry for the Environment Climate Implications of Policy Assessment (CIPA) team was consulted. The team identified that:
- CIPA requirements do not apply to this proposal as it does not directly affect emissions
 - expediting infrastructure and development through fast-track approvals could lead to significant indirect emissions impact
 - some fast-track projects could contribute to reducing emissions, such as renewable energy projects.

Population Implications

- 80 No population implications have been identified relating to this content.

Human Rights

- 81 A human rights report was not prepared for this briefing. The policy changes proposed in this paper are not expected to alter the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993 compliance report provided by the Ministry of Justice on the Bill for introduction.

Use of External Resources

- 82 External resources were used to help process submissions from individuals and form submissions to the Committee. Officials analysed substantive submissions to provide advice to the Committee and inform this paper.

Consultation

- 83 This paper was developed by the Ministry for the Environment in conjunction with the Ministry for Business, Innovation and Employment. The following agencies, who are also advisors to the Committee, were consulted on the paper: Land Information New Zealand, the Department of Conservation, the Ministry for Primary Industries and the Ministry for Culture and Heritage. The Treasury, the Ministry for Transport and Te Arawhiti are not advisors to the Committee but have helped in the design of policy in the Bill and in the proposed changes. The Department of Prime Minister and Cabinet was informed of the content of this paper.

Communications

- 84 Ministers seek authority to make announcements regarding the proposals in this Cabinet paper when the departmental report is presented to the Committee. There is high public interest in the Bill and a high degree of interest in possible changes to the Bill.

Proactive Release

- 85 We intend to release this paper proactively after the Committee reports back on the Bill and releases the departmental report, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

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

- 1 **note** that following Cabinet agreement to final policy decisions, the Fast-track Approvals Bill (the Bill) was introduced to the House and referred to the Environment Committee (the Committee) on 7 March 2024
- 2 **note** that following public submissions on the Bill, approval is sought for changes to the Bill that depart from previously agreed policy decisions made by Cabinet or delegated Ministers
- 3 **note** that, if approved, these changes will be recommended to the Committee in the departmental report
- 4 **note** that Committee is due to report back to Parliament in October and the intention is to pass the Bill by the end of the year
- 5 **note** that a process to identify and assess projects for listing in the Bill is running in parallel to the select committee process and Cabinet agreement will be sought to the projects to list in the Bill

Policy changes

Decision making arrangements

- 6 **note** that requiring Ministers to decide jointly on whether to refer a project to an expert panel is likely to be inefficient and complex
- 7 **agree** that the Minister for Infrastructure should be solely responsible for making decisions on whether to refer a fast-track application to an expert panel
- 8 **agree** that the Minister for Infrastructure should be required to:
 - 8.1 follow the process steps that currently apply in the Bill to the referral decision
 - 8.2 consult with and take into account comments from relevant portfolio Ministers and the Minister for the Environment on the referral application

- 16 **agree** that:
- 16.1 the general ability for iwi authorities to nominate a member of the panel is removed from the Bill
 - 16.2 the existing protections for Treaty settlements and other arrangements that provide for requirements related to the appointment of hearing commissioners is retained in the Bill

Purpose clause and decision-making process

- 17 **note** the importance of a clear decision-making process for the panel in giving primacy to the purpose of the Bill and considering approvals under existing legislation
- 18 **agree** that the Bill should set out a decision-making process and approach that requires the panel to:
- 18.1 give greatest weight to the purpose of the Bill
 - 18.2 consider factors under existing legislation for each relevant approval sought (assessment criteria under relevant existing legislation are set out in Schedules 4-12 of the Bill)
 - 18.3 issue a single set of decisions covering all of the approvals sought for the project
- 19 **note** that the declining of one approval for any project does not impact the decision on other approvals - approvals are addressed separately - and the applicant can decide next steps on any that are declined
- 20 **note** that if some approvals go through other decision makers, these would not be part of the panel's set of decisions
- 21 **agree** to delegate authority to the Minister for Infrastructure and the Minister for Regional Development to make decisions on additional technical matters related to decisions already made on the decision-making process

Ineligible activities

- 22 **agree** that the Bill requires applicants to include information on their projects prior to consideration by approving authorities, including the courts
- 23 **agree** that activities prohibited under the Exclusive Economic Zone (EEZ) Act 2012, in accordance with New Zealand's international commitments, are ineligible activities in relation to the Exclusive Economic Zone and the coastal marine area
- 24 **agree** that the Minister for Infrastructure can refer a land transport or electricity network infrastructure project, provided by a network utility operator with requiring authority status under the RMA, to a panel for approval and grant the approval, without the written agreement of the owners of Māori freehold land and general land owned by Māori that was previously Māori freehold land.

25 **agree** that:

- 25.1 the Minister will have discretion under clause 21(2) to decline an application for referral after considering the effects on the relevant land, and the impacts on Māori rights and interests in that land
- 25.2 relevant landowners of Māori freehold land and general land owned by Māori are included within the parties who may provide comments on a referral application under clause 19(1)
- 25.3 where written agreement has not been obtained, the panel must consider the effects on the relevant land and impacts on Māori rights and interests in that land at the substantive decision stage
- 25.4 the applicant will be required to provide details of the steps taken to seek written approval from relevant landowners of Māori freehold land and general land owned by Māori in their substantive application

Public participation and timeframes for providing comments

- 26 **agree** that the panel convenor can set an appropriate timeframe for the panel to provide its decision where the default timeframe is likely to be insufficient based on the complexity of the project and matters relevant to the approvals sought
- 27 **agree** that the timeframes for specified parties to provide written comments on the referral and panel stages is extended from 10 to 20 working days
- 28 **agree** that the timeframe for the panel to send out an application for comment is extended from 5 to 10 working days
- 29 **agree** that the targeted consultation process for aquaculture decisions is extended to 20 working days
- 30 **agree** that the timeframe for the Environmental Protection Authority's completeness check is extended to 15 working days

Treaty of Waitangi matters

- 31 **agree** to define "existing Treaty settlements" in clause 6 to make it clear that the clause applies to Treaty settlements that exist when functions, powers and duties are exercised, rather than settlements that exist when the fast-track legislation is enacted

Other policy matters being considered for inclusion in the Bill

- 32 s 9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

33 **note** that:

- 33.1 making further significant or complex changes to the Bill beyond the departmental report may put at risk the ability to pass the Bill this year
- 33.2 where further changes are considered practicable, relevant portfolio Ministers will seek Cabinet agreement and changes will be made through amendment papers during the Committee of the Whole House stage

Workability changes

- 34 **note** that officials have identified a substantial number of changes needed to improve the workability of the Bill which are within the scope of previous policy decisions by delegated Ministers and Cabinet and do not change the overall policy intent of the Bill
- 35 **agree** that the changes to improve the workability of the Bill as set out in **Appendix 3** will be recommended to the Committee in the departmental report
- 36 **note** officials have identified a range of minor or technical changes to improve the clarity and workability of the Bill which will be addressed in the departmental report

Delegated authority for further technical or workability changes

- 37 **note** that, as further work is done on the Bill at the committee stage, officials may identify additional necessary technical or workability changes
- 38 **agree** to delegate decision making on further technical or workability changes to give effect to policy decisions to the Minister Responsible for RMA Reform and the Minister for Regional Development in consultation with other relevant Ministers as necessary.

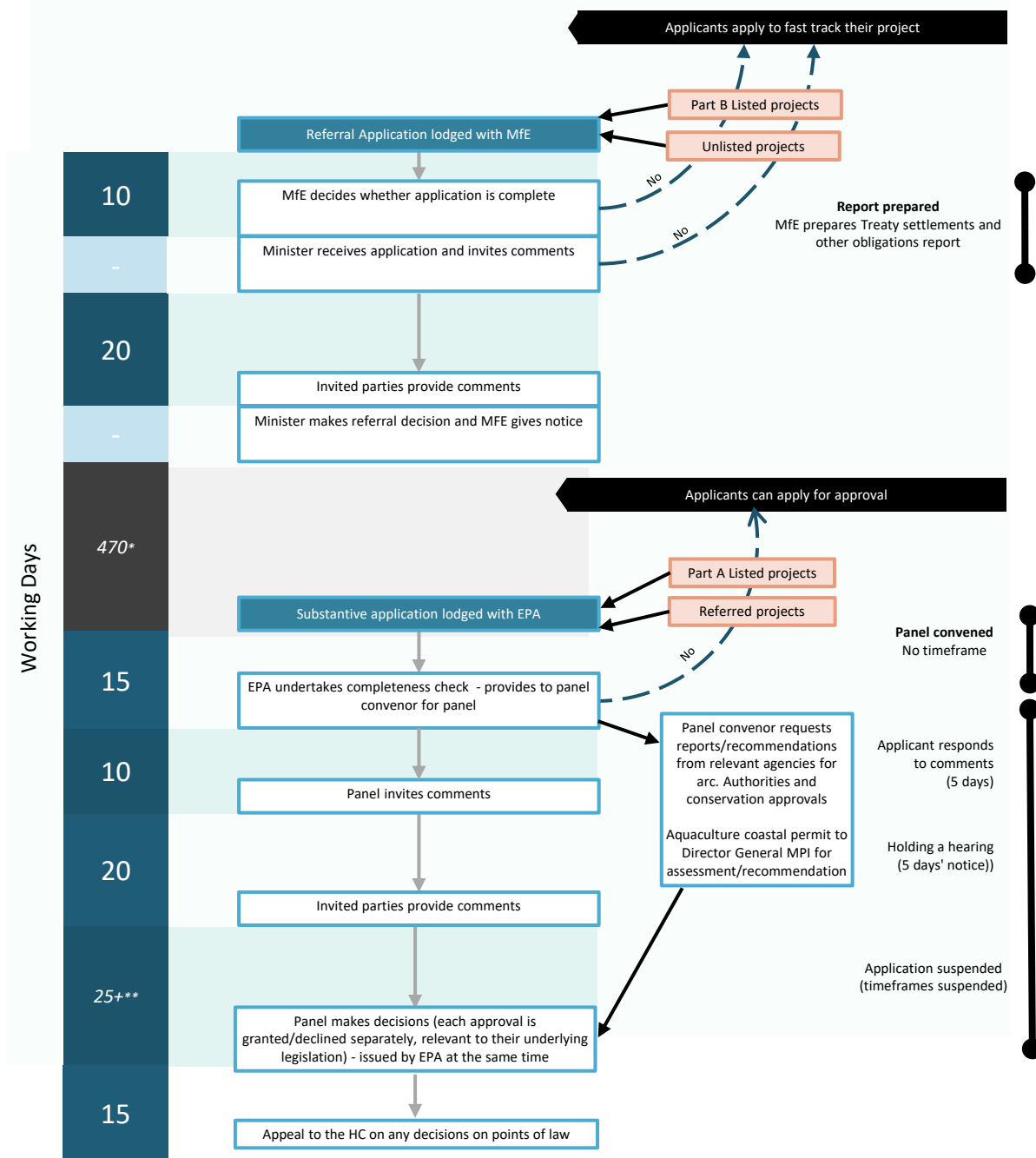
Authorised for lodgement

Hon Chris Bishop
Minister Responsible for RMA Reform

Hon Shane Jones
Minister for Regional Development

Appendix 1: Fast-track Approvals Bill Process and Timeframes

Appendix 1: Fast-track Approvals Bill Process & Timeframes



* The timeframe for an authorised person to lodge a substantive application for a **referred project** is 2 years by default, or as determined in the referral decision. The Bill doesn't set a timeframe for Part A listed projects.

** The timeframe for the panel to issue its decisions is 25 days by default but can be extended if necessary.

Appendix 3: Substantive workability changes proposed for inclusion in the Fast-track Approvals Bill departmental report

Appendix 3—Substantive workability changes proposed for inclusion in the Fast-track Approvals Bill departmental report

Process step	Issue	Proposed Change
Schedule 10 – Process under Crown Minerals Act	Currently Schedule 4 of the Crown Minerals Act 1991 (CMA) is used as a proxy for lands and waters that are ineligible for referral to the fast-track process. This is confusing for those interpreting the Bill. The Bill should have its own list of lands and waters that are ineligible for referral to the fast-track process and a mechanism to enable new high value protected areas to be added to the list of ineligible areas through Order in Council. For example, should the Hauraki Marine Protection Bill pass, the new marine protection tools will be added to Schedule 4 of the CMA and should also be added to the list of ineligible activities for the Bill.	• Include in the Bill a Schedule of ineligible lands and waters for non-mining activities. • Enable new high value protected areas to be added to the Schedule of ineligible lands and waters through Order in Council on the recommendation of the Minister of Conservation.
Processing of referral application Clauses 13, 19, 20	<i>Who the referral Minister must seek written comments from</i> The Bill requires consultation with other relevant portfolio Ministers on referral applications. It is not necessary (and risks introducing complexity) to also require written comment from agencies. Schedule 5 cl 11 and Schedule 9 cl 5 should therefore be removed. The referral minister should be able to request further information from the relevant statutory and other bodies and departments, in addition to the applicant and relevant local authorities. Clause 19(2) requires consultation with a specified list of Māori groups on referral applications and seek written comment from the groups in clause 19(1). There is an overlap and an error as the groups referred to in these clauses are inconsistent.	• Remove Schedule 5 cl 11 and Schedule 9 cl 5 (so written comments are not required to be sought at referral stage from agencies). • Include Schedule 5 cl 12 (which allows a request for further information from the relevant statutory and other bodies and departments) in cl 20(1) so that it applies generally and not just in relation to Conservation and Reserves Act approvals. • Require the responsible agency to provide the referral Minister with the list of parties that the Minister must invite written comments from in clause 19(1). • Delete clause 19(2) and, in clause 19(1), require the referral Minister to invite written comments from the parties identified in clause 13(2).
Treaty settlements and other obligations report Clause 13	As drafted, there is a risk the clause 13 report will not have sufficient input from relevant agencies to ensure a full informed referral decision.	• Amend clause 13(2)(b) so that the clause 13 report will be prepared by the responsible agency in consultation with relevant statutory bodies and include information about Treaty settlements that relate to any land, species or other resources within the relevant project area and information relevant to Minister's obligations under clause 22(2).
Substantive application for RMA approvals Schedule 4	Schedule 4 cl 17, specifies the scope of information required to be in an application using Resource Management Act 1991 (RMA) language. To reflect the wider range of approvals that can be sought through the fast-track process, the requirements for information should be framed in terms of the scale and significance of the matters being assessed for the approvals being sought. A substantive application is lodged with the Environmental Protection Authority (EPA), which provides secretariat support to the Expert Panel. There is currently no requirement for the EPA to consult with other agencies to determine completeness. Information requirements for applicants for conservation approvals are not currently provided for in the Bill.	• Amend Schedule 4 cl 17 so that the scope of information required in an application should be in sufficient detail to correspond to the type of approval sought, and the scale and significance of the matters being assessed. • Specify that the EPA undertakes the completeness check of a substantive application, in consultation with the relevant statutory or other bodies or departments. • Include information requirements for conservation approvals, land exchanges and covenants that reflect the information requested by the Department of Conservation (DOC) to process those approvals under existing processes.
Panel Assessment	The assessment criteria in the Bill for RMA applications applies relative weightings to sections 5 to 7 of the RMA, including relative weightings between national direction and other RMA provisions. Similarly, the assessment criteria in schedule 9 cl 9 apply relative weightings to between certain sections of the EEZ Act and with any relevant EEZ policy statements. This creates additional complexity and is not consistent with the general policy to give weighting to (1) the purpose of the FTA Bill, then (2) the relevant matters in the underlying legislation. The Bill is currently not consistent with the requirements of the Ngā Hapū o Ngāti Porou Act 2019 (NHNP Act) and therefore the requirements at clause 6. Specifically, Schedule 4 cl 33(4) of the Bill does not provide for the NHNP Act requirement that in some cases a consent	• Amend Schedule 4 cl 32 to clarify that the matters the Panel must consider when assessing a RMA consent application or notice of requirement are (with weight given greater to lesser): a. The purpose of the Bill b. The relevant provisions under the RMA, in particular those that direct decision-making under Parts 6, 8 and 10 of the RMA, except that: i. where reference is made in those Parts of being subject to Part 2 of the RMA, the consideration shall be given to sections 5 to 7 of the RMA only and shall be subject to subsection (a) above

Process step	Issue	Proposed Change
	authority must “recognise and provide for” the environmental covenant where an activity is within, adjacent to, or directly affecting a customary marine title area – which is a higher standard than “have regard to”. In addition, the NHNP Act does not apply to notices of requirement.	ii. clauses 33 to 37 of the FTA Bill apply in addition. - Amend Schedule 9 cl 9 to clarify what matters the Panel must consider when assessing an EEZ marine consent application are (with weight given greater to lesser): a. the purpose of the FTA Bill b. relevant EEZ Act matters (noting the below list will be weighted as appropriate according to EEZ Act decision-making framework, subject to a)): i. the purpose of the EEZ Act ii. the purpose and principles of the EEZ Act set out in subpart 2 of part 1 of that Act iii. any relevant policy statements iv. any relevant provisions of the EEZ Act relating to assessments and the provision of information. - Amend Schedule 4 cl 33(4) to reflect the weightings provided for in the Ngā hapū o Ngāti Porou Act 2019 and remove references to notices of requirement.
Conditions Sch 4 clause 38(1)-(3) and (5)	The Bill provides for Panels to recommend conditions it considers appropriate. The Bill does not currently provide for the ability to set conditions on concessions although this was intended as part of previous policy decisions. Concessions require conditions associated with fees, bonds, restoration etc.	Clarify that an Expert Panel may recommend that a fast-track concession be subject to conditions in accordance with sections 17X, 17Y, and 17Z of the Conservation Act.
Listed projects – additional requirements for Panel stage for Part A listed projects.	Part A listed projects do not go through the referral stage – they may apply directly to the EPA for consideration by an Expert Panel. In respect of Schedule 2A listed projects, there is a requirement for the panel to use the clause 13 report to determine who it engages with, but as drafted, the Bill has no provision for the preparation of a clause 13 report (given this happens at referral stage, which listed projects bypass). This is an oversight.	- Require the Panel convenor to seek a clause 13 report from the responsible agency as soon as practicable after received a complete application for a Part A listed project from the EPA. - Require the responsible agency to provide a clause 13 report within 10 working days from a request from the EPA. - Do not require the clause 13 report in relation to Part A projects to comply with the requirements of clause 13(2)(k), as there will be no written comments from the referral stage. - Require substantive applications for Part A listed projects to comply with the same requirements as referred projects set out in clauses 14 and 16.

Process step	Issue	Proposed Change
Timeframes for Panel's report and recommendations	<i>Timeframes for agencies to provide advice</i> The Bill contains provisions requiring agencies to provide advice or reports to inform decision-making. So relevant statutory bodies/agencies have enough time to prepare this advice, the Panel convenor should forward the application to the relevant statutory body/agency as soon as practicable after they receive the application from the EPA. This will allow those statutory bodies/agencies to begin preparing the advice while the Panel is being stood up. For clarity and timeliness the advice should be provided to the EPA by the end of the 10-working day timeframe that begins when a Panel calls for written comments from specified parties, and that the advice must be provided to the members of the Panel, applicant, and every person or group that provided comments (in accordance with Schedule 4 cl 28(4)-(6)).	- Where an approval requires expert advice to be sought from the relevant statutory body/agency, require the Panel convenor to seek that advice as soon as practicable after they receive the application from the EPA. - Require that expert advice from a relevant statutory body/agency must be provided by the end of the 10-working day timeframe that begins when a Panel is established and calls for written comments from specified parties. - Amend Schedule 6, cl 1(3) to clarify that the report the panel must request from the Director General of Conservation reports on risks to protected wildlife and matters set out in cl 1(2). - Require the EPA to provide advice from agencies in accordance with Schedule 4 cl 28(4)-(6). - Amend Schedule 5 cl 6(2)-(3) so that the report on the land concerned should instead be a pre-application requirement for the applicant under cl 16 (ie, the applicant must seek the report from DOC), so that the report can inform referral decision and the time required to prepare it does not delay the process. - Clarify that the report must include an assessment of the matters in Schedule 5 cl 6(1)(b) - Enable the provision of a report for this purpose to be cost recoverable by DOC. - Require DOC to provide an updated report on the land concerned (including broader advice on conservation matters) at the substantive application stage.
Application of Part 10 of Te Ture Whenua Māori Act 1993 (TTWMA) to the Bill	The Bill contains clauses requiring owners of Māori land to be invited by the referral minister to provide written comments on a referral application or by the panel for a listed or referred project. To ensure the process is timely and efficient, there are timeframes associated with these provisions. If the Bill does not have an express provision to the contrary, the timings for owners of Māori freehold land (that is owned by more than 10 persons and not vested in a trust or trustees) to respond will be subject to Part 10 of Te Ture Whenua Māori Act 1993 (TTWMA). The timings and processes under Part 10 can take a few months to run and could frustrate the operation of the Bill in terms of timely processes. Section 353 of the RMA limits the timings under Part 10, TTWMA to a maximum extension of 20 working days from the usual notice period. Due to the one-stop-shop nature of the Bill, a 40-day extension is realistic.	Include a provision similar to s353 of the RMA in the Bill so that Part 10 of TTWMA shall apply except in relation to where the Minister or panel are seeking written comments, where in no case shall the period be able to be extended by more than 40 working days unless otherwise provided by the Minister or panel.
Treaty Settlements	There are some oversights in the Bill as drafted relating to Treaty settlements. Amendments are needed to: - give effect to Section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act, which declares that certain claims by Māori in respect of non-commercial fishing give rise to ongoing Treaty obligation on the Crown. - include protection against activities that have a more than minor adverse effect on the rights of customary fishers in areas they have been granted as reserves for their use and management (mātaitai⁵ reserves, taiāpure⁶ and areas managed through bylaws that give effect to treaty settlements). - align clauses requiring consideration of, engagement with, or notification for these above customary fisheries rights holders.	- Include reference in the definition of “Treaty Settlement Act” to “regulations and bylaws that give effect to s10 of that Act under Part 9 of the Fisheries Act 1996”. - Include, in the cl 18 ineligibility criteria, an activity that would occur in a gazetted mātaitai reserve or taiāpure, or an area managed through bylaws delivered through regulations under Part 9 of the Fisheries Act 1996, that would have more than minor adverse effect on the use and management of that mātaitai reserve, taiāpure, or area managed through bylaws and has not been agreed to by the relevant mana whenua. - Include references to account for mātaitai reserves, taiāpure, or areas managed through bylaws established under Part 9 of the Fisheries Act 1996 where relevant including clauses 3, 13(2), 14, 16, 19, 21, 24 and schedule 4 clause 12, 20, 32, 33, 35 and 37.
Responsible agency	The Bill identifies the Ministry for Business, Innovation and Employment (MBIE) and the Ministry for the Environment (MfE) as responsible agencies, which was agreed by delegated Ministers to be a “placeholder”. Having two responsible agencies is complicated and unnecessary as the responsible agency is required to work in consultation with other relevant agencies.	- Amend the definition of responsible agency in clause 4 so that MfE is the responsible agency in the Bill. If the Panel is not the final decision-maker on all approvals: - Clarify that DOC is the responsible agency in relation to fast-track concessions

Process step	Issue	Proposed Change
		Clarify that DOC and MBIE are the responsible agencies in relation to Crown Minerals Act access arrangements.
Application of certain clauses to courts	The Chief Justice raised an issue around the application of clauses 6 (Obligations relating to Treaty settlements and recognised customary rights) and 31 (regulations) in the Bill to the courts. There was no policy intent to include courts within the scope of these clauses.	Clarify that clauses 6 and 31 do not apply to courts or procedural and administrative matters concerning courts.
Transparency	The New Zealand Law Society recommend including safeguards to “ensure the powers under this legislation are appropriately exercised, and there are mechanisms in place to increase transparency and accountability about the assessment and consideration of applications, and to promote public confidence in the decision-making processes.”	Require the Panel’s report and decision to be published on the EPA’s internet site.
Cost Recovery	Schedule 12 clause 14 provides that the Chief Executive of MPI may recover costs from applicants for aquaculture decisions. Further analysis indicates that it would be preferable to use the existing cost recovery regulations under the Fisheries Act (Schedule 2 of the Fisheries (Commercial Fishing) Regulations 2001, with necessary modifications to provide for the aquaculture decision process related to coastal permit applications for aquaculture activities progressed under the Bill.	- Amend Schedule 2, of the Fisheries (Commercial Fishing) Regulations 2001 so that it provides for cost recovery for the aquaculture decision process related to coastal permit applications for aquaculture activities progressed under the fast-track Approvals. - Remove Schedule 12, clause 14.
Input from relevant statutory bodies	The Bill has no requirement to consult with statutory bodies (New Zealand Conservation Authority (NZCA), Conservation boards, Fish and Game Council New Zealand, and New Zealand Game Animal Council), which have statutory responsibilities for their areas and represent conservation, hunting and fishing interests. Submitters recommended that the Bill include a requirement to invite written comments from these statutory bodies on referral and substantive applications for fast-track projects. None of these bodies have existing direct responsibilities related to approvals in the Bill except for the NZCA; under section 18A of the National Parks Act 1980 the Minister of Conservation is required to consult the NZCA in respect of any notice requesting a mining access arrangement for a national park.	- Require the New Zealand Conservation Authority to be invited to comment on the substantive applications for projects that include access arrangements in a national park. - Include the New Zealand Conservation Authority, relevant conservation boards, Fish and Game Council New Zealand, and New Zealand Game Animal Council to the list of those invited to comment on substantive fast-track applications.
Process for conditions on concessions and Crown Minerals Act approvals Schedule 5 and Schedule 10	Concessions and CMA access arrangements include conditions to avoid or reduce adverse effects and non-environmental conditions such as contract term, fees, fee dispute resolution process, and health and safety requirements as well as conditions related to environmental effects.	Require DOC to provide a report to the Panel providing advice on concession / access arrangements and the conditions the concession should cover.
Concessions on reserves owned by local authorities	There is inconsistency in the Bill around how reserves owned by local authorities and other non-Crown reserves are handled. Reserves owned by local authorities are eligible for Fast-Track. Local authorities will bear the costs and risks associated with use of their reserve, which means they should have decision-making power over the concession. To be consistent, written permission of the local authority reserve owner should be required for the project to be eligible for fast-track, as is the case with other non-Crown reserves.	- Include a new ineligibility criterion in the Bill that a project cannot be referred to fast-track without the written consent of the local authority if a local authority-owned reserve is part of the project area. - Specify that the local authority may not unreasonably withhold their agreement

Process step	Issue	Proposed Change
Report for Crown Minerals Act approvals	Concession decisions require a land report to be provided to Ministers by DOC to inform their consideration of administration arrangements over the land and any existing arrangements (formal or informal) over public conservation land affected by fast-track applications. The land report informs Ministers' referral and final decisions. Crown Minerals Act land access arrangements are very similar to concession arrangements so decisions should be informed by the same level of information.	Specify that the decision-makers consideration of Crown Minerals Act access arrangements as part of the fast-track referral and the Panel's recommendation report is informed by a land report from DOC (in consultation with the land administrator where this is not DOC).
CONSERVATION RELATED MATTERS		
Inclusion of conservation covenants Schedule 5, Part 4	To prevent delays and reduce barriers to approval, landowner permission should be obtained before applying for fast-track referral. A project that proposes changes to a covenant but does not yet have landowner approval should be ineligible for fast-tracking. The decision-maker should be provided with a report from DOC to inform their decision-making.	- Require written landowner consent for the substantive application stage. - Clarify that DOC provides a report to the decision-maker to inform the final/substantive decision-making on changes to covenants.
Land Exchange Eligibility	<i>Eligible land</i> Clarification and correction are required. The Bill's description of lands that are eligible for an exchange is unclear and not aligned with Ministers' previous decisions on the eligibility of Schedule 4 land. Ministers previously agreed to allow exchanges under fast-track but noted that exchanges "would not be considered for any land listed in Schedule 4 of the Crown Minerals Act 1991 as Ministers have agreed that no projects involving such land are eligible for fast-track – this ensures the integrity of the most highly protected classifications of public conservation land (PCL)." However, the broad eligibility criteria for the Bill have since developed further. Land eligible for an exchange should be consistent with the broader ineligibility criteria of the Bill. This means that exchange could not be requested on - Schedule 4 land except on the Coromandel specific areas (items 12 and 13), or - national reserves. Consistent with policy decisions, exchanges should also only be possible for land owned by the Crown and managed or administered by DOC under the Conservation Act or Reserves Act.	- Clarify, for the avoidance of doubt, that an exchange can only be provided in the Bill for Crown owned land managed by DOC under the Conservation Act or administered by DOC under the Reserves Act - Clarify, for the avoidance of doubt, that exchanges cannot be requested on land that is listed in the ineligibility criteria of the Bill (clause 18): - Land listed in items 1-11 and 14 of Schedule 4 of the Crown Minerals Act (ie, exchanges could be requested for the Coromandel land listed in items 12 and 13). - National reserves.
	<i>Rights of first refusal and gift-backs</i> Conservation land is often subject to terms and conditions related to its use. If it is no longer required or being used for conservation purposes it can be subject to rights of first refusal in Treaty settlements or gift-backs to those that originally provided the land to DOC. This significantly complicates an exchange process ^{s 9(2)(h)}. Te Rūnanga o Ngāi Tahu has submitted that any land exchange should not breach or circumvent the right of first refusal mechanism. It should be clarified that where an exchange would trigger a right of first refusal or gift-back requirement, it is not able to progress. Otherwise, it could be interpreted as diminishing settlement redress or the circumstances in which the land was provided.	Clarify, for the avoidance of doubt, that land cannot be exchanged where the exchange would trigger a right of first refusal or a gift-back unless agreed in writing by the giftee or holder of the right of first refusal.
Land Exchange	The Bill requires applicants to identify the land to be offered when proposing an exchange. So that the Panel can consider a project as a whole, (including whether an exchange is likely versus whether a concession is required) the net conservation benefit assessment would go	Specify that an in-principle decision on land exchanges is made after the project is referred but before the Panel considers the substantive application.

Process step	Issue	Proposed Change
Alignment with the broader fast-track process	into the front-end of the process and an in-principle decision on any land exchange made after referral but before a Panel is convened to consider the substantive application. Further administrative steps would follow that.	Have the formal administrative and procedural steps of the exchange follow the in-principle decision.
Land Exchange Public Comment	Land exchanges are significantly different to other approvals in the Bill, as this process involves a land transaction rather than just permission to use land. There is strong public interest in land exchanges as they can involve significant changes to public land and how it may be used or accessed by the public indefinitely, but there is no provision for any public notification or comment in the Bill. To avoid the perception that decision making affecting public land is being done secretly and still facilitate timely processing, the land exchange process should provide for written comments from a limited range of people. Those invited should include: - affected unsettled iwi as the ownership and management arrangements of conservation land are often the subject of Treaty settlement negotiations, and - those already provided with the opportunity to comment on applications under the Bill.	- Require written comments from the people and groups who are listed in the Bill as being able to comment during the Panel process, with a timeframe consistent with the timeframes for comment in the Bill. - Include unsettled iwi groups to the list of those who is invited to comment on land exchanges.
Consideration of international conservation agreements	Some submitters raised concerns that the Bill is inconsistent with New Zealand's international obligations, such as the Convention on Migratory Species of Wild Animals. They flag a particular concern for endangered migratory species on Appendix 1 of the Convention and have concerns that the wide discretion under the Bill could include killing or disturbance that may cause further decline of the species and reputational risk for New Zealand. The Bill is likely to allow impacts on wildlife that would not have occurred under the existing system. This is consistent with Government objectives to enable more development. However, DOC has identified a gap in the Bill regarding those migratory species that: - are protected by the Wildlife Act, and - do not get assessed under the New Zealand Threat Classification System because they spend part of their lifecycle elsewhere, and - are considered threatened or endangered under international agreements that New Zealand is signatory to (such as the Convention on Migratory Species of Wild Animals). These species are not given a threat status under the New Zealand Threat Classification System, so will not qualify for the provision in the Bill that requires "taking into account" impacts on them. To address the gap and prevent reputational harm, an explicit provision should be added for wildlife approvals in the Bill requiring consideration of species that are the subject of international agreements.	For wildlife approvals, include a provision in the Bill to take into account species that are the subject of international conservation agreements.
AQUACULTURE RELATED MATTERS		
Pre-request aquaculture agreement	Delegated ministers previously agreed that pre-request aquaculture agreements must be lodged with the Chief Executive of MPI before the Panel requests the Chief Executive to provide a recommendation on an aquaculture decision. It would be more efficient if the pre-request aquaculture agreement is instead required to be lodged with the Chief Executive of MPI before the application is lodged with the EPA. Subsequent amendments are required to s186ZM of the Fisheries Act.	- Require that any pre-request aquaculture agreement (if an agreement is sought) for a coastal permit application involving aquaculture activities must be lodged with the Chief Executive of MPI before the application is lodged with the EPA. - Amend the Fisheries Act so that the pre-request aquaculture agreement process in section 186ZM includes appropriate reference to the consent applications lodged under the Bill. 96. - Remove Schedule 12, clause 3 and Schedule 4, subclause 26(5), and make consequential modifications to Schedule 4, subclauses 26(6) and 27(1).
Chief Executive of MPI making recommendation on aquaculture decision	The Chief Executive of MPI will make a recommendation on an aquaculture decision to the panel. Who will make the aquaculture decision at the same time as making a decision on the consent . As the aquaculture decision process is informed by the proposed consent conditions for the marine farm, the Chief Executive of MPI will be required to provide the recommendation on	- Specify that the Chief Executive of MPI is required to make a recommendation on an aquaculture decision (in accordance with the criteria in Part 9A of the Fisheries Act and the purpose of the Bill) to the panel within 5 working days after receiving the draft conditions of consent from the panel. - Amend the Fisheries Act 1996 to include a new subpart in Part 9A that provides for the aquaculture decision process related to coastal permit applications for aquaculture activities progressed under

Process step	Issue	Proposed Change
	the aquaculture decision to the panel 5 working days after receiving the draft consent conditions from the panel. This process will include the ability for the Chief Executive of MPI to seek information or consult certain persons for the purposes of making aquaculture decision, which must occur in parallel with the Panel seeking written comments on the application. To ensure the aquaculture decision process under the Bill is workable, a new subpart in Part 9A of the Fisheries Act prescribing the process will be required, rather than depending on Schedule 12, clause 4. For the aquaculture decision process to effectively occur it will require necessary connections with the parallel Panel process to consider the coastal permit application, including: - the Panel must inform the Chief Executive of MPI at least 1 working day prior to seeking written comments on the application so that the parallel consultation process can efficiently occur - the Chief Executive of MPI must provide to the Panel copies of any submissions received during the consultation process undertaken under Part 9A of the Fisheries Act	the Bill, and that these amendments are based on Subpart 1 of Part 9A with necessary modifications. - Require the Chief Executive of MPI to provide to the Panel copies of any submissions received during the consultation process undertaken under Part 9A of the Fisheries Act. - Require the Panel to inform the Chief Executive of MPI that the Panel is seeking written comments at least 1 working day prior to seeking written comments on the application. - Remove Schedule 4, clause 29 and Schedule 12, clauses 4, 5, 6, 7.
Notification of application to Chief Executive of MPI	It would streamline the process if the EPA (rather than the Panel later) provides an application for a coastal permit for aquaculture activities to the Chief Executive of MPI and requests a recommendation on the aquaculture decision when it provides the application to the Panel. To facilitate orderly and timely evaluation, the EPA should specify the order in which applications were received if it is providing two or more requests to the Chief Executive of MPI at the same time. Only applications for new aquaculture activities or applications for certain existing aquaculture activities¹ will require an aquaculture decision.	- Specify that when an application for a coastal permit for aquaculture activities is received the EPA must, once it is satisfied that the application complies with the relevant requirements, provide the application to the Chief Executive of MPI and request a recommendation on an aquaculture decision. - Specify that the EPA is not required to follow the steps in the above recommendation if the application for a coastal permit is by a person who already holds a coastal permit to occupy the same space in a common marine and coastal area for aquaculture activities, unless a previous aquaculture decision in relation to that area included a condition under section 186H(3) of the Fisheries Act 1996. - Specify that if the EPA is sending two or more requests to make a recommendation on an aquaculture decision—the EPA must indicate the order in which the applications were received. - Remove Schedule 4, clause 18 and Schedule 12, clause 2.
Panel makes an aquaculture decision	For workability a new subpart in Part 9A of the Fisheries Act prescribing the process will be required, rather than depending on Schedule 12, clause 4 (which applies, with necessary modifications, the existing subpart in Part 9A relating to aquaculture decisions for consent applications processed under the RMA). The panel need to make aquaculture decisions in line with the technical criteria in Part 9A of the Fisheries Act and the purpose of the Bill.	- Amend the Fisheries Act 1996 to include a new subpart in Part 9A that provides for the aquaculture decision process related to coastal permit applications for aquaculture activities progressed under the Bill, and that these amendments are based on Subpart 1 of Part 9A with necessary modifications to reflect that the panel will make the aquaculture decision, and that the decision can differ from the recommendation made by the Chief Executive of MPI. - Remove Schedule 12 clauses 9 and 10.
Commencement of coastal permits for aquaculture activities granted under the Bill	Some amendments are needed to the Bill and the RMA to align and to clarify when coastal permits for aquaculture activities can commence following an aquaculture decision. A correction and tidy up deletion is also required.	- Amend Schedule 12 to: - require the panel where they make a determination, to note any consent conditions they identified when making the aquaculture decision that may not be changed or cancelled unless a further aquaculture decision is made - require the panel, where they make a reservation in relation to recreational fishing or customary fishing or commercial fishing involving stocks or species not subject to the quota management system, to not grant the coastal permit with respect to the areas affected by the reservation and ensure these are removed from the coastal permit before a decision is notified. - require the panel, where they make a reservation in relation to commercial fishing involving stocks or species subject to the quota management system, to include consent conditions on

¹ where a previous aquaculture decision in relation to that area included a condition under section 186H(3) of the Fisheries Act.

Process step	Issue	Proposed Change
		the coastal permit showing the areas affected by the reservation and notify the applicant that the coastal permit will not commence in the area affected by the reservation unless: - an aquaculture agreement is registered in accordance with the Fisheries Act; or - a compensation declaration has been registered under the Fisheries Act. - Amend Schedule 12, clause 13 to require that coastal permits for aquaculture activities granted under the Bill commence in accordance with s116A of the RMA. - Amend s116A of the RMA to enable coastal permits for aquaculture activities granted under the Bill to commence in the same way any other resource consents granted under the Bill would commence, except where the panel have made a reservation in relation to commercial fishing involving stocks or species subject to the quota management system, in which case s116A(5) must enable consent authorities to amend coastal permits to remove areas affected by a reservation if an aquaculture agreement or compensation declaration has been registered under the Fisheries Act. - Remove Schedule 4, subclauses 41(4) and 45(4).
Aquaculture agreements and compensation declarations	Where a reservation is made in relation to commercial fishing involving Quota Management System stock, the Fisheries Act enables aquaculture agreements and compensation declarations to be used for the coastal permit for aquaculture activities to commence. Amendments should be made to Subpart 4 of Part 9A of the Fisheries Act so that the aquaculture agreement, compensation declaration, and memorial provisions include appropriate reference to the aquaculture decision process related to coastal permit applications for aquaculture activities progressed under the Bill. Parallel amendments to the Fisheries (Aquaculture Compensation Methodology) Regulations 2012 will also be required.	- Amend Subpart 4 of Part 9A of the Fisheries Act and the Fisheries (Aquaculture Compensation Methodology) Regulations 2012 so that the aquaculture agreement, compensation declaration, and memorial provisions includes appropriate reference to the aquaculture decision process related to coastal permit applications for aquaculture activities progressed under the Bill. - Remove Schedule 12, clauses 11 and 12 of the Bill.
Appeals and judicial review	The Bill should be simplified so appeals and judicial review of an aquaculture decision are made through the single process prescribed in the Bill. Currently under the Fisheries Act the Chief Executive of MPI's aquaculture decision (for coastal permits granted under the RMA) cannot be appealed but can be judicially reviewed. As the aquaculture decision and consent application decision will be made in parallel under the Bill, it would be simpler and less costly for any appeals and judicial review of the aquaculture decision to be made through a single process under the Bill (alongside any other relevant approvals such as the consent) rather than separately.	Amend so that appeal and judicial review of an aquaculture decision are made through a single process under the Bill (alongside any other relevant approvals such as the consent application), rather than separately.
ADDITIONAL MATTERS		
Eligible activities to continue to deliver existing activities	Reconsenting is a significant issue for large infrastructure. The Bill provides a streamlined decision-making process to facilitate the delivery of infrastructure and development projects but doesn't explicitly state in cl 17(3) that existing activities can apply for a new consent to be continued. The Bill has been designed to specifically consider the continuing delivery of existing infrastructure, including reconsenting aquaculture projects (Schedule 4 cl 4). The existing policy is intended to be maintained, but an amendment is needed at cl 17(3)(b).	Amend cl 17(3)(b) to explicitly include the continuing delivery of existing infrastructure.
Lapse period Schedule 4 cl 39(8) and (9)	The Bill includes a lapse period for resource consents and designations of two years. This is too short for large projects that may need to secure financing and make other preparations before "giving effect", and not aligned with other statutes, including the RMA. The default lapse period should be five years and Expert Panels should be able to specify an appropriate lapse period for approvals on a case-by-case basis.	- Set the default lapse period at five years. - Enable the Expert Panel to recommend and the decision to include a suitable lapse period.
Scope of appeals Clause 26 Schedule 7, cl 15	The Bill currently provides that appeals to the High Court against the final decision on a question of law, applies to all approvals in the Bill (clause 26) Schedule 7 cl 15 of the Bill, applies cl 26, with all necessary modifications. The Bill also applies relevant Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act (NHNPA) 2019 provisions	Clarify that clause 26 of the Bill, restricting appeals only to the High Court on points of law, applies to all approvals in the Bill (including heritage approvals).

Process step	Issue	Proposed Change
	in the fast-track process. Section 32 of the NHNPA requires the Environment Court to have regard to the environmental covenant on appeals for archaeological authorities. The Bill as currently drafted, doesn't contemplate appeals to the Environment Court. Clause 26 of the Bill restricting appeals of the final decision, to the High Court on points of law only, should apply to all approvals in the Bill (including heritage approvals).	
Referral application Clauses 10, 14, 15, 16	The referral application is intended to provide sufficient information to understand: • The scope of the project and an overview of the different approvals required for it • How the project aligns with the eligibility and ineligibility criteria • Whether the applicant has complied with pre-application consultation requirements and identified the persons likely to be affected by the project. The applicant should be required to engage with all relevant agencies, not just those that administer legislation (for example, the Ministry for Culture and Heritage administers the Heritage New Zealand Pouhere Taonga Act 2014, but it is Heritage New Zealand Pouhere Taonga who would be responsible for advising on applications).	• Include relevant statutory and other bodies and departments in the pre-application requirements

Appendix 4: Updated Supplementary Analysis Report: Fast-track Approvals Bill (Updated 24 July 2024)

2024 Cover note

Updated Supplementary Analysis Report: Fast-track Approvals Bill (Updated 24 July 2024)

Why is this Supplementary Analysis Report being updated?

This Supplementary Analysis Report was originally prepared to support the introduction of the Fast-track Approvals Bill (the Bill) on 7 March 2024. Decisions to support the introduction were taken by Cabinet on 4 March 2024 [CAB-24-MIN-0666 refers].

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

How has the report been updated?

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

A new section has been included in Section 2 called 'Section 2: New matters which are directly related to further decision-making on points raised in submissions and workability issues' which includes additional matters from the Department of Conservation. This section is identified by a blue dashed border. This section also provides an overview of the amendments sought in response to submissions received with regards to Te Ao Māori policy positions, and how these changes impact on the options assessment previously provided.

The Supplementary Analysis Report was originally prepared in a short timeframe, and there are minor typos or mistakes in the phrasing of sentences which are now obvious. However, polishing the report is not the focus of this update, and these have largely been left as originally published. The focus is on the matters which are important to inform the new decisions made in CAB-431.

What new information is relied on to inform this updated Report?

Over 26,000 submissions were received on the Bill. There was some support for the principle of having a fast-track process to make it easier to build important infrastructure or projects with significant public benefit. However, the majority of those who submitted on the Bill raised significant concerns with it. Almost all submitters recommended changes to reduce risk or improve processes and outcomes.

The Environment Committee has authorised the Ministry for the Environment to continue to engage with Post Settlement Governance Entities (PSGE) and other groups, with oversight of the Committee reported monthly.

This update does not include consideration of including the listed projects in the Bill. A process to identify and assess projects for listing is being run parallel to the select committee process and Cabinet agreed that projects will be added to the Bill via an

Amendment paper [CAB-24-Min-0066]. A future Cabinet paper will seek agreement to the projects to list in the Bill.

Supplementary Analysis Report: Fast-track Approvals Bill (Updated 24 July 2024)

Coversheet

Purpose of Document	
Decision sought:	<i>Analysis produced to support the introduction of the Fast-track Approvals Bill</i>
Advising agencies:	<i>Ministry for the Environment</i>
Proposing Ministers:	<i>Minister Responsible for RMA Reform and Minister for Regional Development</i>
Date finalised:	<i>Thursday 29 February 2024</i>
Date updated:	<i>Wednesday 24 July 2024</i>
Problem Definition	
The processes for seeking approvals for major projects in New Zealand are slow, costly and complex. The approval processes place insufficient value on the positive economic and social benefits of development. The result is excess cost and a stifling of development. The Infrastructure Commission/Te Waihanga estimates that current consenting processes cost infrastructure projects \$1.29 billion every year, and the time taken to get a resource consent for key projects has nearly doubled within a recent five-year period. The Government has made the decision to take a phased approach to reform of the resource management system: a. Phase one: repeal the Natural and Built Environment Act (NBA) and Spatial Planning Act (SPA) (now complete). b. Phase two: introduce a fast-track consenting regime within the first 100 days; make targeted legislative changes to the Resource Management Act 1991 (RMA) by late 2024; develop new, or amend existing, national direction under the RMA; and the Going for Housing Growth work package. c. Phase three: replace the current RMA with new resource management legislation based on the enjoyment of property rights, while ensuring good environmental outcomes. The focus of this Supplementary Analysis Report (SAR) concerns phase two, the introduction of a fast-track consenting regime (“fast-track regime”) for significant infrastructure and development projects. The problem definition is wider than resource consenting under the RMA alone. Developers may also need approvals under the Conservation Act 1987, Wildlife Act 1953, Reserves Act 1977, Freshwater Fisheries Regulations 1983, Heritage Pouhere Taonga Act 2014, Exclusive Economic Zone Act 2012, Crown Minerals Act 1991 and the Public Works Act 1981. When all these pieces of legislation are taken collectively, there is a barrier to progressing major development projects due to the inconsistent information requirements,	

variable timeframes and different decision-making processes which apply under these different statutes.

Allowing the status quo to persist risks not being able to sufficiently provide for the increased housing and infrastructure development necessary to support our growing population, as well as support New Zealand to meet its climate targets and transition away from fossil fuels.

Executive Summary

Cabinet has agreed to introduce a fast-track regime

On 23 January 2024, Cabinet agreed to progress a one-stop-shop fast-track consenting regime [refer CAB-24-MIN-0008]. This decision reflects the coalition agreement commitment made between the National Party and the New Zealand First Party, which requires a Fast-Track consenting Bill to be introduced in the Government's first 100 days in office. Cabinet delegated further policy decisions to a select group of Ministers.

... for cheaper and quicker approvals outcomes

In line with the aims of the Government's overall response to the Sapere report commissioned by Infrastructure Commission/Te Waihanga, the broad objectives of the fast-track regime are to ensure more rapid and less costly consenting processes for major projects, ensure simpler and less burdensome application processes, across several regulatory systems, to provide an increase in favourable decisions for major projects that have regionally or nationally significant benefits, and to uphold all existing Treaty settlements and other legislative arrangements. This is expected to benefit both major project developers and wider communities by reducing the infrastructure deficit and contributing to more affordable quality housing.

The fast-track regime aims to improve the approvals process for major projects and to reduce inefficiency costs and risks.

There are two broad problems which the fast-track regime aims to address, both arising from the complexity of the existing approvals processes:

1. The time and costs associated with the existing processes are delaying approvals being granted creating a barrier for major projects to proceed.
2. The approval processes place insufficient value on the positive economic and social benefits of development.

These two issues give rise to a number of additional related problems, as described in detail in this Supplementary Analysis Report.

Agencies recommend that a standalone fast-track regime is needed to respond to these challenges.

While the analysis shows a clear preference for a standalone Fast-track Bill for Resource Management Act and other legislative approvals, some of the policy design choices present a risk to system coherence.

However, we still anticipate overall benefits to our communities from enabling major projects to progress quicker.

Limitations and Constraints on Analysis

Our focus is on the details of the fast-track system

On 23 January 2024, Cabinet agreed to progress a one-stop-shop fast-track consenting regime [refer CAB-24-MIN-0008]. This decision reflects the coalition agreement commitment made between the National Party and the New Zealand First Party, which requires a Fast-Track consenting Bill to be introduced in the Government's first 100 days in office. Cabinet delegated further policy decisions to a select group of Ministers.

In this SAR, we are only focused on the detailed requirements to be included in the new fast-track consenting regime agreed by Cabinet that this Bill seeks to deliver.

The proposals for the fast-track regime have been developed at the same time as other RMA amendments

The policy proposals that shape the fast-track regime are limited to the scope of this change agreed by Cabinet, which does not consider other wider aspects of the resource management system. This minimises the interaction between the change that a fast-track regime would bring and also the significant number of other resource management policy proposals which are being developed concurrently or in quick succession (RMA changes to Te Mana o te Wai, National Policy Statement for Freshwater Management, National Policy Statement for Highly Productive Land etc). Officials are unable to undertake a system-wide analysis that incorporates all the linkages for all the proposed amendments, how they work together and what the cumulative impacts of all these amendments will be. For example, the changes to the way that decisions are made through implementing a fast-track regime is compounded by the changes made to the NPS-FM on the removal of the hierarchy of Te Mana o te Wai for consent decisions.

As the wider resource management system evolves to reflect all these amendments, subsequent decisions will need to consider the impacts on the policy decisions that have been made previously. **As the fast-track regime is one of the first policy changes to be made, this will impact on the upcoming amendments proposed.**

The new fast-track regime will interact with existing Resource Management and other approval processes. The design of the fast-track process seeks to manage these interactions. For example, a Fast-track Bill may establish a hierarchy between the different considerations that decision-makers under the new Bill will apply (such as giving precedence to the purpose of the Fast-track Bill), and the new Act will coordinate the granting of approvals under a range of regulatory regimes through the one-stop-shop.

Because the fast-track was designed ahead of the wider resource management reform programme, there is a risk that this further reform will mean that aspects of the Fast-track Bill no longer interact smoothly with the wider approvals system. This may necessitate later amendments to the Fast-track Bill.

Some of the costs and benefits involved are difficult to quantify

Some of the options discussed in this SAR will impose costs and/or benefits on a range of actors including the Crown, local government, iwi/Māori, the development community, the general public, or future generations. While we can anticipate where these costs and benefits will fall, their monetary value is difficult to quantify in the time we have available to complete this analysis.

Evidence of the specific problems identified have been informed by the Sapere report commissioned by Infrastructure Commission/Te Waihanga

Most of the problems identified in this SAR have been informed by the Sapere report commissioned by Infrastructure Commission/Te Waihanga on the cost of consenting infrastructure projects in New Zealand. This study was comprehensive and included an international benchmarking assessment across Australia, EU/UK, and North America (including Canada). This provides a good evidence base for the analysis set out in this SAR, however, the report was limited to the development of infrastructure projects and only focused on RMA matters, and not wider legislation. It did not cover the full range of projects (housing, mining, aquaculture etc) that this fast-track regime is anticipated to support.

There has been limited analysis on the inclusion of non-RMA legislation

Due to time constraints, there has been very limited analysis on the problem definition associated with conservation, heritage and public works legislation. ~~No analysis has been provided by the Department of Conservation for the SAR on the conservation approvals contained in the fast-track regime.~~

While there appears to be general consensus among infrastructure providers and developers that multiple approvals processes can be costly and time-consuming, the challenges/barriers posed specifically by conservation and heritage approvals are not well understood. There may be negative impacts on conservation land and wildlife outcomes which have not been quantified.

There has been limited analysis on the proposed changes to non-RMA legislation designed to enable more development, including the impacts of enabling greater development on public conservation land. This creates significant risks for achieving the Government's wider objectives. For instance, there will be impacts on the conservation values of public conservation land. The potential benefits to development and the impacts upon conservation are not well understood. Many issues in the public works legislation involve balancing competing interests between delivering public infrastructure and private property rights, which need further exploration.

There has been limited analysis on the problem definition associated with the public works legislation. Any issues in the public works legislation involves balancing competing interests between delivering public infrastructure and private property rights which requires careful consideration.

The changes proposed to the Fisheries Act were a late addition to the Fast-track Bill and have not been considered further in the SAR due to the time available for analysis.

Limited data and evidence available to assess policy proposals

Cabinet direction [refer CAB-24-MIN-0008] narrowed the scope of proposals to only policy options that achieve the direction for a one-stop shop. The one-stop shop allows for RMA approvals to be obtained as well as other relevant permits through the same process. We have limited our SAR to only those options.

Ideally, we would have undertaken an analysis looking at the wider scope of options, impacts and spill-over effects of the policy. Additional estimates would have been sourced on how many consents we are expecting this to apply to and determining with more clarity what the efficiency gain would be. The number of applications received under the previous

Covid 19 fast-track legislation and the NBA fast-track provisions have been used as guidance on the eligibility settings and the corresponding consent numbers.

Consultation and analysis challenges

Our consultation and analysis have been done in a compressed timeframe. This short timeframe has resulted in processes that would ordinarily occur consecutively to occur concurrently. For example, ordinarily a complete set of policy decisions would be made prior to drafting being initiated.

Note that no consultation prior to the introduction of the Bill has occurred on policy proposals for including non-RMA legislation.

Agencies have worked constructively to prioritise collaboration on the fast-track policy proposals, but the limited timeframe has resulted in reduced consultation timeframes from best practice for delegated decision briefings and for Cabinet papers. The reduction in consultation timeframes has been mitigated by collaboration at officials' level for this work programme, but remains a limitation.

The Minister Responsible for RMA Reform initiated engagement with local government, iwi groups including Post Settlement Governance Entities (PSGEs) and sector stakeholders through a letter sent on 31 January 2024. The letters included an offer of engagement for feedback to inform the development of the fast-track regime by 12 February 2024. The relatively tight timeframe together with the complexity of the policy proposals for the fast-track regime means that some interested parties have not had sufficient time to make comprehensive submissions. To manage this, we proactively reached out to PSGEs and priority stakeholders including key sector representative groups, local government, iwi and pan-iwi groups.

Materials and collateral to support engagement were limited as policy decisions were developed concurrently with the stakeholder engagement period due to the time constraints. Additionally, the testing of policy proposals relied heavily on the experiences under previous fast-track regimes as detailed policy proposals largely were not available for testing during the engagement period. Feedback from our engagement has emphasised that the tight timeframes and lack of opportunity to garner views on specific policy proposals (as they were being concurrently developed) has impacted the ability to provide comment. The analysis therefore is unable to be as detailed or thorough in relation to the consulted criterion for SAR as would usually be expected for a Bill of this significance.

Cabinet agreed to include protections for Treaty settlements and other legislative arrangements in the Fast-track Bill. Time constraints on the development of the fast-track regime has prior to introduction of the Bill limited the level of engagement possible with PSGEs and other relevant groups on how best to uphold their arrangements in the fast-track regime.

Knowing all that, this impact analysis is done with the following assumptions:

- The number of applications received will be similar, although slightly higher than previous fast-track regimes, as the previous fast-track regimes developed were narrower in scope.
- The cost and time implications identified in the Sapere report commissioned by Infrastructure Commission/Te Waihangā will continue at the same rate as previously monitored. This does not take into account the likelihood of increased

severe weather events due to climate change and the impact this might have on the anticipated future cost and time of consenting infrastructure and development projects.

Responsible Manager(s) for 4 March 2024 lodgement

Jo Gascoigne

General Manager - Resource Management System

Ministry for the Environment



01/03/24

Quality Assurance

Reviewing Agency:	Ministry for the Environment
Panel Assessment & Comment:	The requirement for quality assurance of regulatory impact statements (RIS) has been suspended for decisions relating to 100 Day Plan proposals taken within the 100 Days. However, the Ministry for the Environment notes that the SAR has been internally peer reviewed and considers that it is fit-for-purpose to inform Cabinet's consideration, given the time constraints.

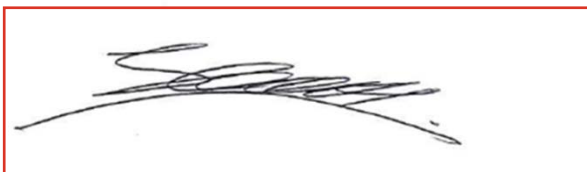
Responsible Manager(s) for 24 July 2024 lodgement

Jo Gascoigne

General Manager - Resource Management System

Ministry for the Environment

24/07/24



Quality Assurance

Reviewing Agency:	Ministry for the Environment
Panel Assessment & Comment:	The requirement for quality assurance of regulatory impact statements (RIS) was suspended for decisions relating to 100 Day Plan proposals taken within the 100 Days. As this is a continuation of policy that had previously been exempt, the Ministry for the Environment has agreed with the Ministry for Regulation that the updated SAR be internally peer reviewed by the Ministry for the Environment. The Ministry for the Environment

considers that the updated SAR is fit-for-purpose to inform Cabinet's consideration.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. Major project developers in New Zealand are required to obtain a suite of official approvals (such as permits and consents) before they can commit to delivering their projects.
2. Establishing the fast-track regime forms part of the National Party's coalition agreement with the New Zealand First, and the Coalition Government's plan for its first 100 days in office.
3. In pursuing this policy, the Coalition Government has committed to upholding redress in Treaty of Waitangi settlements. There are now over 75 individual Treaty settlements, as well as the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, that interface with the Resource Management Act 1991 (RMA), including consenting.

Resource Management Act

4. The requirements in the RMA have a significant impact on the development community. The RMA is New Zealand's main law governing how people interact with natural resources. As well as managing air, soil, freshwater and the coastal marine area, the RMA regulates land use and the provision of infrastructure, which are integral components of our resource management (RM) system. People can use natural resources if doing so is permitted under the RMA or allowed by a resource consent.
5. The RMA is widely recognised as having failed in its effectiveness (by allowing continued environmental deterioration) and in its efficiency (through a slow, costly and complex consenting process), leading to inefficient barriers to development as well as poor environmental outcomes.
6. The failings of the RMA are one driver of New Zealand's large and growing infrastructure deficit, and our lack of sufficient, affordable quality housing. The RMA is a poor foundation for mitigating and adapting to climate change. These problems are likely to grow without intervention.
7. The status quo does not provide a resource management system (broadly defined) that helps to unblock a pipeline of investment in:
 - Housing
 - Transport
 - Primary sector production
 - Resource extraction
 - Communications
 - Energy
 - Aquaculture
8. These major projects that offer regionally or nationally significant benefits would likely produce a flow of economic and social benefits (such as to remediate the infrastructure deficit, raise incomes and enhance resilience) which are challenging or unable to be realised within the current legislative settings.

9. Without this fast-track pathway for providing approvals for major projects, New Zealand's economy will not receive the same level of growth and support, and our living standards will not be raised to the same extent.
10. The Government has signalled its intent to take a phased approach to reform of the resource management system:
 - a. Phase one: repeal the Natural and Built Environment Act 2023 (NBA) and Spatial Planning Act 2023 (SPA) (now complete).
 - b. Phase two: introduce a fast-track consenting regime within the first 100 days; make targeted legislative changes to the RMA by late 2024; develop new, or amend existing, national direction under the RMA; and the Going for Housing Growth work package.
 - c. Phase three: replace the current RMA with new resource management legislation based on the enjoyment of property rights, while ensuring good environmental outcomes.
11. This Supplementary Analysis Report concerns phase two, the introduction of a fast-track approvals regime ("fast-track regime") for significant infrastructure and development projects.

Conservation Legislation

12. Approvals to be included in the Fast-track Bill include those under:
 - a. The Wildlife Act
 - b. Freshwater Fisheries Regulations
 - c. The Conservation Act
 - d. The Reserves Act
 - e. The Crown Minerals Act
13. These are different to Resource Management Act approvals. Some of this legislation regulates activity interacting with wildlife/species across the country, irrespective of land tenure (eg, the Wildlife Act, Freshwater Fisheries Regulations). Under this legislation, approvals are required to minimise the impacts on wildlife and protected species.
14. Other legislation regulates activity solely on public conservation land, which is about a third of New Zealand (eg, the Conservation Act). The key consideration when approving activities under this legislation is the purpose for which the land is held, which is mostly set aside for protection purposes.
15. In addition, legislation governing activity on public conservation land deals with the Crown's risks and obligations as a landowner (ie, it is more than a framework solely for dealing with impacts on conservation). Issuing a concession under the Conservation Act, for example, confers a property right to an individual (eg, in the form of a licence or a lease) to undertake an activity, and deals with associated matters such as the Crown's health and safety responsibilities, rental fees, and similar terms and conditions.
16. Under the status quo:
 - a. Off public conservation land, approvals would continue to be required for significant activities because activities can interact with wildlife and protected

species. This includes the relevant approvals under the Wildlife Act, and any approvals applied under the Freshwater Fisheries Regulations. These would continue to need to be obtained separately to any other necessary approvals, such as those under the RMA. It is possible that there are some overlaps with approvals under the RMA: the extent of any overlaps or duplication is unclear.

The Freshwater Fisheries Regulations within scope of the Fast-track Approvals Bill relate to discretionary powers exercised normally by the Director-General of Conservation. As these powers are discretionary, under the status quo, they would continue to be applied as needed.

- b. On public conservation land, concession approvals for significant projects would still be required to undertake an activity. The fundamental purpose of public conservation land – and the purpose of associated legislation – is conservation protection. The framework differs to the RMA (which applies off public conservation land) and the bar is intentionally higher for development activities to occur. Under the status quo, activities could occur on public conservation land if they meet the requirements set out in the legislation. The legislative framework would continue to apply to ensure risk to the Crown as land manager is managed.

Other Legislation

17. Approvals to be included in the Fast-track Bill include those under:
 - a. The Public Works Act
 - b. The Fisheries Act
 - c. The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act
18. The Public Works Act: The overarching concern of delivery agencies is the time it takes for the PWA to be applied when infrastructure proposals require private land. PWA land acquisition processes are considered to be slow and complex and a barrier to the delivery of infrastructure, especially when delivering at pace.
19. As the Public Works Act balances competing interests between delivering public infrastructure and private property rights, it's crucial to ensure any changes do not impact protected rights such as property rights.
20. The Fisheries Act: The undue adverse effects test (UAE) is an existing test that the Ministry for Primary Industries (MPI) is required to undertake to assess the effects of a proposed marine farm area on fishing. MPI undertakes this test on request from a regional council after a new marine farm resource consent application has been approved. The test is not required when an existing marine farm has its consent renewed. This currently is an additional step which could be undertaken more efficiently concurrently with other approvals assessments.
21. The EEZ Act is the main regulatory tool for managing activities (excluding fishing and shipping) in the area beyond the 12 nautical mile limit (in the Exclusive Economic Zone and extended continental shelf). EEZ Act consenting has been included as the projects in the EEZ tend to be of significant scale and face the similar types of challenges as those which the fast-track consenting regime is aiming to address. It will also aid consistency in the regimes across all marine zones.

What is the policy problem or opportunity?

Resource Management Act

22. The three-phase reform programme recognises the complexity and long-term nature of reforming the system, and the desire to make rapid progress on the most pressing infrastructure and development projects.
23. To make rapid progress, there are ~~three~~ two specific problems to be addressed:
 - slow and costly decision-making, and
 - regionally or nationally significant projects that have the potential to bring positive public benefits are turned down due to an undervaluing of economic and social benefits of development, relative to other considerations.

Slow and costly decision-making

24. The Infrastructure Commission/Te Waihangā estimates that current consenting processes cost infrastructure projects \$1.29 billion every year, and the time taken to get a resource consent for key projects has nearly doubled within a recent five-year period.¹ These delays and high costs suggest waste and inefficiency, and a delay in the flow of benefits to the environment and the community. This analysis focused on the direct costs to consent infrastructure projects under the RMA and does not include the costs of wider approvals needed to progress these developments.
25. Slow processes are particularly problematic when urgent responses are called for. New Zealand has faced several big shocks that require a quick planning response for economic recovery: The existing system has struggled to respond to big shocks, which has meant legislation to enable fast-tracking of development has been necessary, such as the recovery-related legislation for the Christchurch and Kaikoura earthquakes, and the COVID-19 pandemic. These pieces of legislation have directly enabled infrastructure projects that would otherwise not have occurred through the standard RMA process.

Insufficient value placed on the economic and social benefits of development relative to other considerations.

26. Ensuring a flow of benefits from development will require more than increased efficiency and quicker processes. Decision-makers also need to give more weight to the benefits of development and not be held back by out-of-date national direction or regional/district planning provisions.
27. An example of an out-of-date regional plan is the Southland Regional Coastal Plan, which was originally notified in 1997, and is still the operative direction for the Southland coastal environment. Environment Southland acknowledges on its website that the plan needs updating and is out-of-step with current legislation and policy as well as suffering from a number of drafting issues common to first generation regional plans. Another example is the Clutha District Plan which was notified in 1995 and is still operative.
28. The existing system focusses on managing the adverse environmental effects of development, with less concern for positive outcomes such as increasing housing

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

supply, raising incomes through economic development, or switching to renewable energy.

29. The RM system focuses on managing adverse effects but does not sufficiently recognise the benefits associated with an activity, such as improvements in the state of the natural environment or for economic, social or cultural wellbeing. Rather, resources must be “sustained,” life-supporting capacity “safeguarded” and adverse effects “avoided, remedied and mitigated.”
30. There is a lack of future focus and a bias towards the status quo. This does not recognise that our society, including how and where we live, is dynamic and constantly evolving, or the need to adapt to the effects of climate change. This is because of an emphasis on avoiding or remedying adverse “effects”, the protection of existing use rights and a focus on preserving amenity for current landowners.

Other Legislation

31. Other legislative approvals considered in this SAR are:
 - a. a concession under the Conservation Act 1987:
 - b. an approval under the Wildlife Act 1953:
 - c. an approval under the Freshwater Fisheries Regulations 1983:
 - d. a concession and other permissions under the Reserves Act 1977:
 - e. an archaeological authority under the Heritage New Zealand Pouhere Taonga (HNZPT) Act 2014:
 - f. marine consents under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act):
 - g. Crown Minerals Act 1991 (section 61 land access provisions):
 - h. an authority under the Public Works Act 1981 to take or deal with land:
 - i. aquaculture decisions under the Fisheries Act 1996:
32. Infrastructure providers have voiced frustrations with the need to obtain multiple approvals through multiple different processes, governed by different pieces of legislation.
33. Including other legislation within the Fast-track Approvals Bill provides an opportunity to streamline this process for developers of significant projects, making it cheaper and easier. This includes streamlining information requirements, decision timeframes, and the number of decision-makers.
34. The challenges/barriers to achieving more development posed specifically by conservation and heritage approvals are not well understood.
35. The proposed changes to conservation legislation are designed to reduce the protections afforded to in-scope public conservation land, and wildlife/species that are off public conservation land. This is anticipated to contribute to the policy goal of increasing the number of projects gaining approval and able to be built. However, there will also be negative impacts for other government objectives, including impacts and risks to conservation objectives and the purpose for which non-excluded conservation land is held.

What objectives are sought in relation to the policy problem?

36. There are four objectives in relation to the policy problem:
- more rapid and less costly consenting processes for major projects
 - simpler and less burdensome application processes, across several regulatory systems
 - an increase in favourable decisions for major projects that have regionally or nationally significant benefits
 - uphold all Treaty settlement and other arrangement² obligations
37. In designing a policy intervention, officials are mindful of the Coalition Government's commitment to upholding redress in Treaty of Waitangi settlements, and to managing adverse impacts on the environment.
38. A faster, cheaper, simpler system that places more value on development can be expected to help remove barriers to the delivery of major projects but may be insufficient. Other factors, beyond the scope of this policy intervention, are also important. These include the availability of investment funding (whether private or public), and if there is consumer demand present such as demand for renewable energy.

² Cabinet agreed that, in addition to Treaty settlements, other legislative arrangements would be upheld including those 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

Section 2: Deciding upon an option to address the policy problem

Focus of this regulatory impact assessment

39. This SAR discusses options for what a fast-track system could provide for, considers key policy matters which reflect the proposed architecture of the Bill and assesses whether there are any risks of unintended consequences involved with the preferred options. The aim of the analysis is to recognise high-level costs and benefits, and does not monetise the costs or benefits due to the timeframe constraints preparing this SAR.

What criteria will be used to compare options to the status quo?

40. We have used the following criteria to compare the different options. The criteria are weighted equally.
- a. **Expediency** (Objective 1) – the ability of the option to achieve the outcome sought in the quickest timeframe available.
 - b. **Reduce cost and provide savings** (Objective 1) - the potential of the option to reduce costs and provide savings on infrastructure developers, local communities, and future generations.
 - c. **Simplicity** (Objective 2) – the ability of the option to reduce bureaucracy needed to support decision-making and minimise the number of decisions needed to achieve an outcome.
 - d. **Certainty** (Objective 2) - the ability of the option to provide major projects with confidence that approvals will be granted and the development can proceed, that they have sufficient assurance to rely on to receive funding and financing support.
 - e. **Effectiveness** (Objective 3) – the ability of the option to prevent major projects from being delayed by rules and broader policy objectives set by resource management national direction, regional/district planning provisions, conservation statutory documents (eg, conservation management strategies/plans), and the purpose for which conservation land is held.
 - f. **Uphold Crown obligations under Te Tiriti o Waitangi** (Objective 4) – the ability of the option to honour the Treaty and uphold Treaty settlements and other arrangements.
 - g. **Manage Risks** – the potential of the option to result in unintended consequences.

What scope will options be considered within?

41. The proposal to introduce a new standalone fast-track regime is part of the National – New Zealand First Coalition Agreement. We have included the assessment of one other regulatory option in this SAR as well as the status quo.
42. Reduced timeframes limited our ability to assess the feasibility of a broader range of options, including non-regulatory options. A non-regulatory approach to the problem could involve the provision of guidance material for applicants and local government to make application requirements clearer, as well as increasing support and resources for local government to enable decisions to be made quicker.
43. We did not undertake analysis on an option of not providing a fast-track pathway to progress development projects quicker as this does not align with the Government's objectives.

What options are being considered?

Broad options for developing a Fast-track system:

44. Three broad options for developing a fast-track system have been identified:
- Option A:** Maintaining the status quo/counterfactual.
 - Option B:** Standalone new fast-track legislation.
 - Option C:** Amend the RMA to provide for a new fast-track system to be included.

Option A – Status Quo / Counterfactual

45. The status quo provides for an RMA consenting regime, and approval regimes under the Conservation Act, Wildlife Act, Reserves Act, Freshwater Fisheries Regulations, Crown Minerals Act, Heritage Act, EEZ Act and the Public Works Act. Each of these pieces of legislation have been specifically developed to achieve their relevant purposes through balancing socio-economic outcomes and the protections necessary to safeguard against adverse or unforeseen events. In the case of legislation governing public conservation land, it has a very deliberate skew towards conservation given the very particular purpose for which the land is held.
46. Treaty settlements and other arrangements provide for PSGEs and other Māori representative groups to have varying degrees of influence on decisions made under the RMA and other legislation governing the approval regimes noted above. These arrangements are significant and many of them alter the standard approval processes. All Treaty settlements were made in the context of the relevant governing legislation and each statutory approval regime has its own specific provisions for Māori interests, Treaty clauses, and each regime has been modified by Treaty settlements in different ways.
47. The status quo includes the saved fast-track provisions under the Natural and Built Environment Act 2023 (NBA) which was repealed on 19 December 2023. These saved provisions were intended to be a short-term solution while a new permanent regime was developed. With the repeal of the majority of this legislation, the remaining fast-track provisions do not have the comprehensive provisions which sit around the regime and are likely to have gaps that would be identified if the fast-track provisions were retained in perpetuity in this format.

Option B – Standalone new fast-track legislation (Option in the Bill)

48. This option establishes a new piece of standalone fast-track legislation that provides for a one-stop shop for many of the approvals necessary to progress major infrastructure and development projects. These approvals include those obtained through the Conservation Act, Wildlife Act, Reserves Act, Freshwater Fisheries Regulations, Crown Minerals Act, Heritage Act, EEZ Act and the Public Works Act.
49. This legislation is designed to interface with the RMA and other one-stop-shop statutes where necessary to encompass provisions on compliance, monitoring and enforcement as well as administrative functions. This new legislation would enable faster applications processes, lower application costs and increased certainty for development projects that they are likely to be approved.

50. Under this option, processes will be simplified for applicants. Applicants would be required to submit the relevant application and information through a single process, and public notification/hearings processes under existing legislation will be removed. The legislation will prescribe shortened timeframes for decisions to be made. An independent Expert Panel will make recommendations to decision-making Ministers, after referral. Decision-making Ministers would make final decisions on all approvals. The Minister of Conservation would remain the responsible Minister for all concession approvals on public conservation land, to ensure continued management of the Crown's obligations as a land manager.
51. This option also involves changes to ensure more projects are approved than under the status quo. This includes that approvals must meet the purpose of the Fast-track Approvals Bill, relevant statutory documents will apply in a less directive manner (national policy statements, conservation management strategies/plans, etc), and impacts on wildlife are changed to narrow the focus to taking account of impacts on threatened, data deficient, and at-risk species. The requirement for decision-makers to reject an application for a concession on conservation land if the activity can take place in another location off conservation land will also be removed.
52. The Bill will also allow for the swapping of conservation land where the exchange results in a net conservation benefit, and for conservation covenants to be amended or revoked with the agreement of the landowner and the Minister of Conservation or covenanting agency.
53. Those changes would allow for more development to take place on public conservation land. To protect New Zealand's most precious places, conservation land listed on Schedule 4 of the Crown Minerals Act will not be eligible for Fast-track consenting or land exchange. This includes National Parks, Nature Reserves, Wilderness Areas, Ecological Areas and others.

Option C – Amend the RMA to provide a fast-track pathway

54. Amend the RMA to include a fast-track pathway, using the architecture similar to the fast-track pathway in the NBA. This option would be limited to RMA approvals only but could also include linkages or connections to other statutes in appropriate locations.
55. This option would result in Part 2 of the RMA – including the purpose and Treaty provisions – setting the framework that the fast-track system would operate within. Embedding a fast-track process within the RMA would provide greater legal certainty that the extensive jurisprudence of the RMA would apply to the fast-track process.
56. The one-stop-shop is not included in this option. More time would be required to develop the linkages between the various statutes and deal with the potential conflicts between their purposes (eg, the Conservation Act) and the development enabling purpose of the proposed Fast-track Approvals Act (Option B). A one-stop-shop based in the RMA with linkages into other relevant legislation could be developed in the future.

How do the options compare to the status quo/counterfactual?

	Option A – Status Quo / Counterfactual	Option B – Standalone Fast-track Bill	Option C – Amend the RMA
Expediency	0 The time taken to get a resource consent under the status quo for key projects has nearly doubled within a recent five-year period and can be expected to increase further.	++ The timeframes provided in the legislation will provide certainty of quicker processing times for applications (an RMA processing time of notified consents with no hearing is 60 working days and this could be reduced to 55 days under the fast-track regime proposed) . Additionally, a targeted purpose statement provides clarity to applicants on what is required, which will enable applications to be more targeted in their information requirements which, in turn will save time in processing.	+ It is likely that the timeframes provided in this legislation would be designed to provide certainty of quicker processing times for applications.
Reduced Cost	0 The Infrastructure Commission/Te Waihanga estimates that current consenting processes cost infrastructure projects \$1.29 billion every year.	++ Reduced costs as the information requirements and timeframes are streamlined because there is no requirement on the expert panel to notify or hold a hearing.	- Although quicker timeframes might provide some reduction over time it is likely that costs of consent would continue to rise as there would still be requirements to notify or hold a hearing.
Simplicity	0 The status quo is highly prescriptive with regards to information requirements for applications and for making decisions which limits the flexibility of decision-makers to focus on the criteria that matter in relation to the application.	++ Enable a broad range of activities to receive approvals across more than just the RMA. This one-stop-shop approach will make the application process much more efficient to progress major development projects which often require approvals under multiple pieces of legislation.	+ This option would enable less complexity for the RMA, but does not provide for one-stop shop approvals.
Certainty	0	++	0

	Due to the number of approvals needed for a major project to progress, development can be held back from proceeding due to a singular approval.	The high bar for an application to be declined provides increased certainty that projects will go ahead when they have been referred.	Due to the number of approvals needed for a major project to progress, certainty that a development can proceed is limited to the receipt of the last approval.
Effectiveness	0 The RMA requires that all planning documents will be reviewed after 10 years although this is rarely achievable due to capacity constraints in the planning system. As a result, there are a number of outdated planning provisions which cause uncertainty and limit progressive decision-making. This can be expected to increase/remain a problem under the status quo.	+ Direction from national direction and regional/district plan provisions would still apply where relevant and consistent with the purpose of this legislation.	- The policy cycle anticipates that all planning documents will be reviewed after 10 years although this is rarely achievable due to capacity constraints in the planning system. As a result, there are a number of outdated planning provisions which cause uncertainty and limit the ability of progressive decision-making.
Treaty	0 It is unlikely that there would be any significant deterioration or improvement against this criterion under the status quo/counterfactual.	- The Government has committed to upholding Treaty settlements and other arrangements. There is provision for an overarching clause requiring consistency with Treaty settlements and some specific process steps for protecting key elements of upholding Treaty settlements. If these provisions work as intended, this will likely uphold Treaty settlements and maintain the level of redress provided in those settlements. There is therefore likely to be neither an improvement or deterioration from the status quo. Whilst the impacts on Treaty	+ The RMA contains provisions and processes that provide for Māori interests and any system embedded into the RMA would benefit from these existing protections and processes. Treaty settlements that were developed under the RMA system and reference the RMA would be more straightforward to uphold under this option.

		settlements are likely to be neutral, the net impacts are likely to be negative for broader Māori rights and interests, that will likely outweigh any benefits for Māori developmental interests.	
Manage Risks	0 Impacts on the environment, conservation values, and public conservation land continue to be managed under existing legislation. However, this option presents a risk that the infrastructure deficit in New Zealand will continue to grow.	- This option presents a risk to system coherence by introducing a new regime with different legislative settings and with potentially unclear links to existing processes and decision-making. This option also presents a risk to the environment and to sustainable management of resources if the legislation is enabled to sidestep existing environmental protections agreed through RMA Plans. There will also be greater impacts on wildlife and protected species. More development will occur on public conservation land, with associated reductions in conservation values.	0 This option presents a risk that the amendments to the RMA would not be sufficient to address the barriers of approvals needed under multiple pieces of legislation.
Overall assessment	-	++	+

Example key for qualitative judgements:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

What is the chosen option?

57. The chosen option is B – a standalone fast-track piece of legislation. This option best aligns with the criteria, and the policy objectives.
58. This option enables major projects to apply for all the approvals that they need in one place, to streamline and simplify the application process and reduce bureaucracy around decision-making.
59. Below are six key policy matters that have fundamentally shaped the structure of the Fast-track Bill. The rationale for choosing these six matters is that they are the most influential matters and have the most significant impact on the design of the Bill.
60. The analysis focuses on determining the options for each of the matters, and identifying the costs and benefits based on the criteria above to ascertain a preferred option for each matter.
61. Further analysis is also provided with regards to matters which have informed approvals under the Public Works Act.
62. We acknowledge that there are many further details which are important for how this Bill will operate. These include the amendments to other relevant existing legislation, which will have further assessment completed as part of the post-implementation assessment.

Key policy matters which have shaped the architecture of the bill:

63. Seven ~~Six~~ key policy matters which shape the architecture of the proposed fast-track system have been identified:
 - a. **Matter 1:** Who is the substantive decision-maker for approvals.
 - b. **Matter 2:** What is the purpose of the legislation.
 - c. **Matter 3:** What is the weighting attributed to the fast-track purpose in comparison to other relevant existing legislation.
 - d. **Matter 4:** Should RMA prohibited activities be ineligible for this fast-track regime.
 - e. **Matter 5:** What approvals are appropriate to provide for through this legislation.
 - f. **Matter 6:** How projects enter the fast-track process.
 - g. **Matter 7:** Accommodating natural justice requirements under the PWA

Matter 1: Who is the substantive decision-maker for approvals.

Option A – Expert Panels are the decision-maker (Preferred)

64. This option puts the legal risk of decision-making onto the expert panel (rather than the relevant Ministers).
65. Note that for concessions on public conservation land, this option would include decision-making which entails transferring property rights and decisions concerning the Crown's obligations as a land manager (health and safety, setting rental fees, etc).
66. The expert panel will need to provide substantial and robust reasoning and rationale to ensure transparency and consistency on decisions made.
67. This option provides for the expert panel to determine the appropriate conditions to apply to ensure adverse effects of the project are managed. Setting conditions requires

expert knowledge which does not reside with Ministers or officials, which expert panels are best placed to provide.

68. This option includes the ability of the relevant Ministers to re-refer a decision with increased direction to the expert panel if a substantive decision is made which the Minister disagrees with. This would not alter the substantive decision made by the expert panel but enables a second review to be made after the first substantive decision is made, if the relevant Minister considers that further information is relevant and may change the outcome.

Option B – Ministers are the decision-maker (Option in the Bill)

69. This option puts the legal risk of decision-making onto the relevant Ministers (rather than the expert panel). There will still be an expert panel, who will provide a recommendation to the Minister to support their decision-making.
70. Ministers making decisions will need to provide substantial and robust reasoning and rationale to ensure transparency and consistency on decisions made. This rationale will need to include reference to the expert panel's recommendatory report and additional comments from relevant Ministers where decisions deviate.
71. As the expert panel is the point in the process where submissions can be received and differing views identified and weighed, there may be natural justice issues if the relevant Minister makes a decision which deviates from the expert panel recommendation without seeking views of affected parties.

How do the options compare to each other?

	Option A – Expert Panels make decisions	Option B – Relevant Ministers make decisions
Expediency	++ This option has fewer steps needed for a substantive decision to be reached. This is likely to lead to quicker processing timeframes.	- This option has an additional step for decision-making as the relevant Minister will need to write their report following receipt of the recommending report from the expert panel
Reduce Cost	+ This option may have increased time for the expert panel (which have a higher charge out rate than cost recovery from Ministers or officials time), particularly to progress any appeals or reviews lodged against the substantive decision, which will have additional costs which fall to the applicant. However, this option also has one less step for decision-making which is likely to reduce application processing costs overall.	- There is likely to be additional costs to the Crown of the further analysis required of officials to support Ministers to make their final decision. The costs of this additional decision-making step will be passed onto applicants via cost recovery, although the full costs are unlikely to be met this way. As a result, the Crown will bear some of this cost burden. This cost burden on the Crown would increase in the case of an appeal.
Simplicity	+ This option would not add an additional step to decision-making.	- This option would add an additional step to decision-making.
Certainty	+	0

	The level of uncertainty is likely to be lower with an expert panel as the decision-maker, as there is a smaller chance of outlier decisions.	The level of uncertainty is likely to be higher with this option, as there is an additional step with the recommendation from an expert panel prior to the final decision from the Minister. Additionally, there is a perceived risk that the decision-making becomes potentially political, and an increased likelihood of judicial review and/or appeal of the decision due to this perceived risk.
Effectiveness	0 This option would apply the same weighting to RMA national direction and Regional/District planning provisions as provided for in the legislation.	0 This option would apply the same weighting to RMA national direction and Regional/District planning provisions as provided for in the legislation.
Treaty	+ 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. This option would be able to accommodate these existing Treaty settlement arrangements.	-- 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. Ministers would need to include relevant iwi or hapū in decision-making on applications where these Treaty settlements apply to uphold these Treaty settlements.
Manage Risks	- This option has reduced legal risk on the substantive decision. However, outsourcing the Crown's management of costs and liabilities upon public conservation land will create significant moral hazard risks, with significant cost, health, and safety implications.	- This option has increased legal risk of judicial review on the decisions made by Ministers, particularly if they differ in their final decision from the recommendation of the expert panel.
Overall assessment	Preferred option	Option in the Bill

Matter 2: What is the purpose of the legislation

Option A – Purpose focused on facilitating project delivery (Option in the Bill)

72. This option focuses the purpose on facilitating the delivery of infrastructure and development projects with significant regional or national benefits.

73. This option does not include reference to sustainable management or environmental protections in the purpose, although these matters will still be relevant when setting conditions and for the expert panel consideration of an application on its merits.

Option B – Purpose focused on project delivery as a primary consideration, while still providing for sustainable management as a secondary consideration (Preferred)

74. This option focuses the purpose on facilitating the delivery of infrastructure and development projects with significant regional or national benefits and, to a lesser extent, taking into account the sustainable management of natural and physical resources for current and future generations.
75. This option sets out a clear hierarchy of obligations in the purpose, which uses consistent language to the RMA purpose statement.
76. This option seeks to apply sustainable management to other legislative approvals, where its application is untested.
77. Other options which do not provide for project delivery as the primary focus of the purpose of this legislation have been discounted, as this would not align with the intent of this legislation as scoped by Cabinet.

How do the options compare to each other?

	Option A – Focused on project delivery	Option B – Primary focus on project delivery but also secondary focus on sustainable management
Expediency	++ This would reduce complexity for decision-makers by not requiring consideration of sustainable management or environmental protections at the referral stage	- This would include additional matters which would need to be considered relative to the primary focus. This would likely take more time than Option A.
Reduce Cost	0 By providing a simplified streamlined purpose, environmental costs and impacts on sustainable management are likely to not be considered until the expert panel stage, rather than at the referral stage of the application process. Consequently, applications may be progressed that have not comprehensively provided the information that an expert panel may require, resulting in further time and cost at the expert panel stage to work through any further information needed.	+ This option has increased clarity on the information that an application would need to prepare with regards to environmental costs and impacts on sustainable management. This enables applicants to prepare this information at the same time as they collate the other information that they are required to provide for the referral application.
Simplicity	- This option has less matters to consider at the referral stage and will focus the legislation on project delivery. However, this option will likely have lower	+ This option balances two matters, and therefore adds complexity. However, greater operational efficiency is gained by providing transparency up front at

	operational efficiency as it does not clearly articulate the anticipated information requirements necessary for the merits-based assessment at the expert panel stage.	the referral stage on the likely information requirements.
Certainty	++ This option does not seek to apply sustainable management to other legislative approvals, where its application is untested.	- This option seeks to apply sustainable management to other legislative approvals, where its application is untested. The uncertainty of how this would be applied in the context of other approvals adds complexity to anticipated decision outcomes.
Effectiveness	- The streamlined purpose would enable a clear lens to be applied to existing national direction and regional/district plan provisions. While this may result in receiving decisions quicker on major projects, it is unlikely to be effective at ensuring the projects that are granted offer the socio-economic benefits that communities expect from these major projects.	0 Including a secondary focus of sustainable management could place more weight on the secondary purpose than intended as the secondary purpose better aligns with the RMA purpose which would make connection to out-of-date direction more likely to occur. This could be managed, and the unanticipated weighting addressed through the release of guidance materials.
Treaty	- Enabling infrastructure and other projects could support Māori development interests but as this option does not provide any direction for sustainable management, this option has risk of increasing environmental degradation and reduced protection of Māori environmental interests in taonga.	+ Enabling infrastructure and other projects could support Māori development interests and with the additional support for sustainable management, this option has reduced risk of environmental degradation and some protection of Māori environmental interests in taonga.
Manage Risks	There will be greater impacts on wildlife and protected species. More development will occur on public conservation land, with associated reductions in conservation values.	Recognition of wider values will limit associated wider impacts to some degree. However, there will be greater impacts on wildlife and protected species compared to the status quo. Applying an RM-style purpose to public conservation land would mean that more development will occur on public conservation land, with associated reductions in conservation values.
Overall assessment	Option in the Bill	Preferred option

Matter 3: What is the weighting attributed to the fast-track purpose in comparison to other relevant existing legislation

Option A – Provide a hierarchy which includes the purpose of the bill ahead of other relevant legislation obligations (Option in the Bill)

78. This option provides a hierarchy which would direct decision-makers on the weighting to attribute to matters when in conflict. This option provides for the purpose of the Fast-track Bill to be the most important consideration when making decisions, followed by considerations under other relevant existing legislation.
79. When considering an application, the expert panel would take into account the following matters, giving weight to them (greater to lesser) in the order listed:
 - a. the purpose of the Fast-track Bill (including reasons why the Joint Ministers referred the application):
 - b. considerations under relevant existing legislation:
80. The Bill will also set out how the expert panel assessment applies the hierarchy under the relevant legislation. For example, for approvals under the RMA, giving weight to the following considerations (greater to lesser) in the order listed:
 - a. the matters in section 5 of the RMA and the purposes of the Conservation Act, Wildlife Act, Heritage Act, EEZ Act, Reserves Act, Crown Minerals Act and Public Works Act as relevant:
 - b. the matters in section 6 of the RMA:
 - c. the matters in section 7 of the RMA:
 - d. any relevant national direction, operative and proposed plans or policy statements, or iwi management plans under the RMA and any relevant conservation management plan and conservation strategy made under the Conservation Act 1987.
81. This option would result in the possibility for decisions made under this Fast-track Approvals Bill to reach different decisions, than would have been reached under the existing relevant legislation.

Option B – Weighting of other relevant legislation obligations equally with the fast-track purpose (Preferred)

82. This option provides for the obligations in existing relevant legislation (ie, the legislation relevant to approvals covered by the one-stop shop) to continue to have the same level of direction on decision-making that they currently hold.
83. The purpose of the Fast-track Bill would be just another component to consider when making decisions, but does not override the current weight afforded to the existing relevant legislation.
84. For example, applications for fast-track that seek approvals under the RMA would continue to apply RMA Part 2 matters, RMA national direction, operative and proposed plans/policy statements under the RMA and relevant assessment clauses of the RMA to the same level of direction in decision-making as they currently have for applications processed under the RMA.

85. Under this option, decisions that would have been made on merits under existing relevant legislation would continue to be made (ie, this results in the same or similar decision outcomes, just occurring faster).

How do the options compare to each other?

	Option A – Hierarchy provided with primacy given to fast-track purpose	Option B – Weighting of other relevant legislation obligations equally to the fast-track purpose
Expediency	0 This option would not provide any time savings as the matters relevant to the decision will still need to be considered, regardless of the weighting which is applied to them.	0 This option would not provide any time savings as the matters relevant to the decision will still need to be considered, regardless of the weighting which is applied to them.
Reduce Cost	- By providing clear hierarchy for decision-making, it is likely that application costs and information requirements will be targeted towards this hierarchy, with the focus of the application on the matters of most importance to decision-making. This cost saving is likely to be limited as all the same matters are still required to be considered, it is only the weighting which varies. The risk is increased environmental costs for future generations as the mitigations and protections in the other legislation have been given less weight in the decision-making process.	+ Application costs are likely to be slightly higher as they will need to include assessment against the matters currently assessed for approvals in other relevant legislation and the new Fast-track Bill purpose. This higher cost is likely to be limited as all the same matters are still required to be considered, it is only the weighting which varies. However, costs imposed on future generations are reduced as the mitigations and protections in other legislation retain their previous weighting.
Simplicity	+ This option would likely reduce operational requirements as the purpose is focused on project delivery and has a higher weighting in the hierarchy than other existing direction for decision-making.	- This option would likely have higher operational requirements as there is likely to be conflicting priorities under the Fast-track Bill purpose and other existing direction for decision-making.
Certainty	+ This option provides a clear focus of the legislation through promoting the Fast-track Bill purpose above other existing direction for decision-making. This is likely to provide certainty for projects that are consistent with this purpose for project delivery that they are likely to go ahead.	0 This option adds uncertainty to decision-making through introducing new decision-making criteria (ie, Fast-track Bill purpose) without clearly articulating how this new criterion fits in with existing direction for decision-making. This uncertainty could be mitigated with guidance material.
Effectiveness	0 This option would not provide any time savings as the matters relevant to the decision will still need to be considered,	0 This option would not provide any time savings as the matters relevant to the decision will still need to be

	regardless of the weighting which is applied to them.	considered, regardless of the weighting which is applied to them.
Treaty	- This option would diminish the protections in other existing legislation which provide for Māori interests and Treaty protections. Whilst there are protections included in the standalone fast-track legislation, these do not replicate or provide equivalence for the protections in the existing legislation (such as Part 2 of the RMA or s4 of the Conservation Act).	+ This option would maintain the weighting of protections for Māori interests and Treaty clauses that are in the existing legislation.
Manage Risks	- This option risks diminishing the mitigations and protections in other existing legislation which provide for better environmental outcomes to be achieved. This option also undermines local voice regarding the anticipated development and use of resources in their region.	++ This option better upholds the established environmental protections in existing legislation, and better reflects the local voice which has contributed to the development of national direction and regional/district plans.
Overall assessment	Option in the Bill	Preferred option

Matter 4: Should RMA prohibited activities be ineligible for this fast-track regime.

Option A – Prohibited activities are not ineligible, but joint Ministers may consider prohibited activity status as part of their referral decision (Option in the Bill)

86. There are a range of six activity classes under the RMA: permitted, controlled, restricted discretionary, discretionary, non-complying and prohibited.
87. 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.
88. This option enables prohibited activities under the RMA to apply for approvals through the fast-track process, but does not guarantee that they will be referred by a relevant Minister as they have discretion to consider the prohibited activity status as part of their referral decision.
89. Prohibited activities under the EEZ Act will still remain ineligible for applications to the fast-track process as these prohibited activities relate to international obligations, and removal of this prohibited activity status may result in New Zealand breaching international obligations.

Option B – Retains prohibited activities as ineligible for referral into the fast-track process. (Preferred)

90. There are a range of six activity classes under the RMA: permitted, controlled, restricted discretionary, discretionary, non-complying and prohibited.
91. This option would enable the first five activity classes under the RMA to apply, but would retain the prohibited activity status as ineligible.
92. As a result, no application could be accepted which contained an approval for a prohibited activity, and there would be no ability for Ministers to have discretion to accept an application which contains a prohibited activity approval.
93. This option is consistent with the approach taken for the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTAA).

How do the options compare to each other?

	Option A – RMA prohibited activities not ineligible	Option B – RMA prohibited activities are ineligible
Expediency	- This option may take longer as there is increased Minister discretion on the appropriateness to accept applications which contain activities prohibited under the RMA.	+ This option has no discretion for Ministers to assess the appropriateness of referring applications which contain activities prohibited under the RMA. As there is no discretion, this option would be faster.
Reduce Cost	-- This option would likely add cost to the consenting process, as it will take time to assess the appropriateness of referring an application containing an activity prohibited under the RMA, which will then be subject to judicial review which may add further time and cost. Additionally, prohibited activities have a high test under the RMA for this categorisation so are likely to have proven costs which a contrary to Part 2 of the RMA.	- As activities would remain prohibited, this option does not add any extra costs beyond what is currently provided for in the RMA, although overall it may result in a project being substantially changed or restricting the ability of the project to proceed due to a prohibited activity status.
Simplicity	- This option would add an additional step to decision-making on referral.	+ This option would not add an additional step to decision-making on referral.
Certainty	- This option decreases certainty for those applying for a prohibited activity, as the ability to apply or not is at the discretion of the relevant Minister.	+ This option offers increased certainty as the ability to apply or not is established by the ineligibility criteria.
Effectiveness	+	-

	This option would enable discretion for the relevant Minister to determine the appropriateness of proceeding with a prohibited activity and may better facilitate a major project if the previous delay was because they are not able to identify another way of achieving the same outcome without a prohibited activity.	This option would limit the ability of major projects with prohibited activities under the RMA from using this process. This may delay a major project if they are not able to identify another way of achieving the same outcome without a prohibited activity.
Treaty	- There may be conflicts that arise between the prohibited activity and a Treaty settlement (particularly those that provide for a specific function in plan making). Resolving any conflict would be at the discretion of the relevant Minister making the referral decision. It would be more difficult to honour the Treaty and uphold Treaty settlements and other arrangements under this option.	0 This option would not provide any additional impacts on the Treaty or Treaty settlements and other arrangements.
Manage Risks	-- 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 is to protect the operation of the airport). This option could enable local voice to be diminished as it overrules decisions made by communities through existing national direction and regional/district plan provisions about prohibited activities.	+ This option has no additional risks as it retains the status quo for prohibited activities under the RMA.
Overall assessment	Option in the Bill	Preferred option

Matter 5: What approvals are appropriate to provide for through this legislation.

Option A – Provide for RMA approvals to be granted through this legislation, but include connections to other relevant approval processes to streamline information requirements, timelines and decision-making

94. This option provides a pathway for a major project to receive RMA approvals for a resource consent, certificate of compliance or a designation.

95. This option does not include approvals under other existing relevant legislation which a major project may need approval under, including the Conservation Act, Wildlife Act, Reserves Act, Freshwater Fisheries Regulations, Heritage Act, EEZ Act, and the Crown Minerals Act.
96. However, this option does streamline the approvals by aligning information requirements, timeframes and consistent decision-making. While this option does not change who the respective decision-maker is for approvals under other legislation, it provides links in the legislation to streamline the processes of receiving approvals.
97. This linking process would be similar to how the Building Act and the RMA currently interface with regards to resource consent decisions, with provisions in both statutes which connect relevant decision-making points and establish clear timelines for how the interface operates.

Option B – Provide for this legislation to grant approvals for RMA and other one-stop-shop approvals (Option in the Bill and Preferred)

98. This option provides for one application to be lodged, and for that application to be considered by one decision-making body, and for that body to provide approvals under all the other existing relevant legislation provided in the one-stop shop.
99. The way other one-stop shop legislative direction guiding decision-making is weighted in relation to the fast-track processes is set out in Issue 3 above.
100. The composition of the expert panel will be appropriate to provide the skills and knowledge needed to assess the merits of an application and make a robust recommendation to decision-makers for all of the approvals that are included in the application.
101. The ‘bundling’ of consents and permissions ensures that all the information the expert panel needs to make a recommendation is in place.

How do the options compare to each other?

	Option A – RMA approvals only but links to approval processes under other relevant legislation	Option B – provide one-stop shop approvals through this legislation
Expediency	- While this option would align timeframes for decision-making, a delay for one approval may delay approvals for the project as a whole without the oversight that a collective decision-maker would be able to provide to weight the significance of that one approval in the bigger picture to enable the project to go ahead.	++ This option would provide for one decision-maker for all the approvals needed which would enable a more comprehensive approach to decision-making and ensure that one approval couldn't be delayed holding up the whole project, unless it was important from a big picture perspective of the assessment for the project.
Reduce Cost	-- This option would likely have higher application costs, as all the decision-makers for all the approvals would need to assess the project as it relates to their	+ This option would have reduced costs as one decision-maker diminishes the duplication of work assessing the application seeking approvals.

	component. This causes a double up of work that needs to be cost recovered.	
Simplicity	+ This option has more moving parts, but it does also have the least change from the existing decision-making processes which are well established, and the current respective decision-makers are clear on what is expected from them which makes the decision-making processes efficient. The efficiency gained by retaining the existing systems is only a saving in the short term as over time the new decision-makers will also be equally proficient at the decision-making processes.	++ This option would streamline the decision-making process and minimise the number of steps needed to reach decisions.
Certainty	-- This option has reduced certainty as multiple decision-makers will inherently have slightly different considerations when making decisions.	+ This option has increased certainty as all the decisions needed will be under the fast-track legislation which enabled a consistent approach to be taken for all approvals.
Effectiveness	- While the fast-track provisions would provide direction to the respective decision-makers on the hierarchy for weighting decision-making tools, the established ways of working would be hard to adjust causing tension if there were any ambiguity identified in the legislative direction.	++ This option is likely to best enable decision-makers to consider the appropriateness of outdated national direction or planning provisions.
Treaty	- This option would likely have negative impacts on honouring the Treaty and upholding Treaty settlements as the equivalent protections for Māori interests to those under the RMA or other one-stop shop approval legislation wouldn't be provided for.	-- This option would likely have significantly negative impacts on honouring the Treaty and upholding Treaty settlements, as the impacts noted for Option A would be exacerbated by including one-stop shop approvals through this legislation.
Manage Risks	++ This option requires less time for drafting the legislation, which reduces risk that the legislation can be completed within the requested timeframes.	-- There has been very limited analysis of including conservation approvals. Inclusion will have impacts on wildlife and conservation land. These impacts have not been quantified. This option requires more comprehensive drafting which takes longer, and there is a risk that it will not be able to be completed to the quality desired within the timeframes available.

Overall assessment	Option not recommended	Preferred and Option in the Bill

Matter 6: How projects enter the fast-track process

Option A – Only projects referred by the relevant Minister access the fast-track process (Preferred)

102. This option would enable only one pathway for a project to enter into the fast-track process. They apply and are referred by a relevant Minister.
103. This option does not provide for listing projects in the legislation.

Option B – Both projects listed in the legislation, and projects referred by a relevant Minister, enter the fast-track process (Option in the Bill)

104. This option provides two pathways for projects to enter into the fast-track process. They can either be listed in the legislation or can be referred by a relevant Minister.
105. Listed projects may be broken down into two categories:
- a. List A projects, which likely meet all information requirements for a referral process,
 - b. List B projects, which are likely to meet the purpose of the legislation but on which there is not sufficient information to determine that they meet all eligibility requirements.
106. In this option, only List A projects are automatically referred to an expert panel for an assessment on their merits. List B projects will still need to be referred by a relevant Minister in accordance with that established pathway.
107. Note the listed projects proposed will be included in the List A and List B schedules at a later stage of the legislative process and will not be included in the Bill for introduction. We will be establishing a process whereby an independent panel will assess and make recommendations on what projects to include in the schedule.
108. The option to provide for new projects to be listed in the legislation after enactment through an Order in Council has been considered and rejected, as the Order in Council process is more complex than a referral from a relevant Minister and did not incur any further benefit.

How do the options compare to each other?

	Option A – One pathway only, just Minister referrals	Option B – Two pathways, listed projects and Minister referrals
Expediency	- In this option, projects which could be referred to an expert panel immediately after enactment, must go through the referral process first	+ This option provides a quick pathway for automatic referral to an expert panel for projects which are ready for referral. This enables these projects (Category A listed projects) to progress faster as they will be able to jump

		ahead and not get held-up by the referral stage. Category B listed projects will still need to go through the referral process before going to the Expert Panel
Reduce Cost	0 Applicants must meet all information requirements, and provide relevant evidence that their project is eligible to the fast-track process.	0 Project owners will have to provide all necessary information and assessment to inform the expert panel's recommendation on their projects. This will likely incur similar costs as referred projects. Projects owners will however not be subject to any consenting fee. This cost is likely insignificant compared with the costs of performing impact assessments and meeting all information requirements.
Simplicity	+ The referral process is a fairly straightforward step, which does not require public consultation.	- This option adds complexity, as it includes another pathway to enter into the fast-track process.
Certainty	0 Applicants will have certainty over whether their project aligns with the purpose of the fast-track process and is eligible once they have been referred to an expert panel. This also applies to projects which could be referred to an expert panel immediately after enactment.	0 After enactment, owners of Category A listed projects have certainty that their projects can be consented through the fast-track process. The significance of Category B listed projects gives them some assurance that their projects will likely be referred to an expert panel by the Minister when they apply for referral.
Effectiveness	0 This option would apply the same weighting to RMA national direction and regional/district planning provisions as provided for in the legislation.	0 This option would apply the same weighting to RMA national direction and regional/district planning provisions as provided for in the legislation.
Treaty	0 This option is unlikely to have any significant positives or negatives against this criterion as the impact of applications on Treaty settlements and other arrangements would be considered, when the relevant Minister assesses the project for referral.	-- Listing projects without any engagement with affected iwi and hapū could breach general obligations on the Crown to protect Māori rights and interests and could breach specific obligations Treaty settlements, other arrangements and relationship agreements.
Manage Risks	0	--

	This option has less transparency on examples of projects that are anticipated to meet the purpose of the legislation.	It is anticipated that additional listed projects will be nominated through submissions received by select committee which adds complication to the select committee process and adds risks to the transparency of Bill development.
Overall assessment	Preferred option	Option in the Bill

Key policy matters which have informed the Public Works Act approvals provided for in the bill:

Matter 7: Accommodating natural justice requirements under the Public Works Act 1981

~~109. Note that, due to time constraints, there are other key policy issues that this analysis does not cover. This includes, but is not limited to, substantive policy changes to individual pieces of legislation, as they apply in the fast track process. This includes changes to the decision-making criteria across the legislation. For instance, changes to the Wildlife Act to limit the considerations of the decision maker solely to threatened, at risk, and 'data deficient' species.~~

~~*Matter 7: Accommodating natural justice requirements under the Public Works Act 1981 (PWA) (Preferred and to be progressed in parallel to the Bill)*~~

110. The land acquisition process under the PWA seeks to balance the property rights of private landowners with the Crown's ability to enable public works to go ahead.
111. Currently the Crown, or a local authority as defined under the PWA must ensure it negotiates with landowners in good faith by giving them sufficient information and time to negotiate, and landowners have the right to raise objections to the Environment Court if the Crown or local authority moves to compulsorily acquire their land for a public work.
112. Any new process must not unduly restrict or remove private property rights and must accommodate natural justice requirements arising from section 27 of the New Zealand Bill of Rights Act 1990.

Option A – Progress legislative and operational changes

113. Under this option, legislative and operational changes would be progressed to create end-to-end efficiencies in the PWA land acquisition, including for fast-track and other land acquisition. The following areas could be included:
 - a. Review compensation payments (section 72E) as a way of incentivising early agreement
 - b. Exploration of legislative and process changes to incentivise landowners to reach a timely agreement to sell.
 - c. Streamline the processes for giving the Notice of Desire to Acquire Land (section 18) and Notice of Intention to Take Land (section 23).

- d. Explore options to streamline access to PWA for network utility providers.
- e. Examine current practices, standards, resourcing and delegations for routine decisions to identify further efficiencies.

Option B – Streamlining Environment Court processes (Option in the Bill and Preferred)

- 114. The RMA process considers alternative sites for projects, whereas the PWA objections process focuses on alternatives in relation to the specific land that is subject to the objection.
- 115. This option would streamline the considerations that are heard during Environment Court processes. This would reduce duplication as the Environment Court would not need to consider alternative sites, routes or methods of undertaking a work if this has been considered as part of a joint determination by Ministers in the fast-track process.
- 116. It is recommended that the Court retain the ability to consider material new evidence if it were specific to the land being taken. Landowners may raise specific issues with their properties in a PWA objection that were not considered during the fast-track process, and the Court would require discretion in such cases.
- 117. The Environment Court could still consider matters relating to alternative routes for non-fast-track projects.
- 118. Option B could progress in parallel to option A.

Option C – Process for land acquisition as part of the FTA

- 119. This option would expand the role of the Expert Panel from being a consenting body to allow it to also have a hearing process to hear objections to compulsory land acquisitions. The Expert Panel would make a recommendation to the Minister for Land Information or local authority. The process would need to be carefully worked through to ensure that natural justice is maintained.
- 120. Consideration of objections by the expert panel would replace objections to the Environment Court under the PWA. All other aspects of the current PWA acquisition process, including statutory timeframes, would remain unchanged.
- 121. Option C could progress in parallel to option A.

How do the options compare to each other?

	Option A – Progress legislative and operational changes	Option B – Streamlining Environmental Court processes	Option C – Process for land acquisition as part of the FTA

Expediency	++ End-to-end efficiencies are expected across the whole PWA land acquisition process. This would retain the existing statutory timeframes for land acquisition by agreement.	+ PWA objections would be heard in parallel to the FTA process. This avoids the potential for the FTA process to be slowed down by PWA objections. This approach may save time during the Court's deliberations on a PWA objection; however, the Environment Court process does not have specified timelines. Time savings will only occur in FTA land acquisitions, and only if there is an objection. This would retain the existing statutory timeframes and processes for land acquisition by agreement.	++ There will be a limited time period for the expert panel to hear objections to compulsory acquisition. Time savings will only occur in FTA land acquisitions, and only if there is an objection. This would retain the existing statutory timeframes and processes for land acquisition by agreement.
Reduce Cost	+ Efficiencies in the PWA land acquisition process could reduce costs.	+ This would reduce costs for infrastructure agencies as there will be less administrative burden to provide information.	++ This would reduce costs as having a single decision-maker lessens the duplication of work and shorter timeframes.
Simplicity	+ This would provide an opportunity to simplify and modernise the land acquisition process in the PWA.	+ This would reduce duplication between the RMA and PWA objections process.	0 Deliver administrative efficiencies, as one body would hold a hearing into objections to compulsory acquisition in parallel to considering consents. However, this will considerably add to the expert panel's responsibilities and workload.

Certainty	0 To allow for natural justice, an objections process is needed. Applicants will not be guaranteed the proposed development project can proceed.	0 To allow for natural justice, an objections process is needed. Applicants will not be guaranteed the proposed development project can proceed.	0 To allow for natural justice, an objections process is needed. Applicants will not be guaranteed the proposed development project can proceed.
Effectiveness	++ Provides an opportunity to make the PWA land acquisition process more efficient and effective.	++ Ensures duplicative processes are removed.	++ Ensures process is streamlined to only be one panel.
Treaty	0 Further Treaty analysis will be required depending on the changes.	~~0~~ ~~As land~~ Land returned under a Treaty settlement and <u>most</u> identified Māori land cannot be included in a fast-track application without the landowners approval. <u>Where identified Māori land is included, this may undermine the rights and interests of those landowners., there is not anticipated to be any significant positive or negative impacts.</u>	~~0~~ ~~As land~~ Land returned under a Treaty settlement and <u>most</u> identified Māori land cannot be included in a fast-track application without the landowners approval. <u>Where identified Māori land is included, this may undermine the rights and interests of those landowners, there is not anticipated to be any significant positive or negative impacts</u>
Manage Risks	- Process efficiencies are an opportunity to improve the land acquisition process without negatively impacting property rights.	- This option may carry fewer risks than other options owing to its limited scope, and maintenance of clear separation between the PWA land acquisition and RMA consenting regimes.	-- As the PWA objections process relates to private property rights and natural justice, Courts are likely to scrutinise these processes very closely if given the opportunity on appeal or through judicial review.
Overall assessment	Preferred and option to be progressed in parallel.	Preferred and option in the Bill.	This option is not recommended as further work would be required.

What combinations of options are likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

122. The key policy matters which shape the Bill are:
- a. **Matter 1:** The substantive decision-maker for approvals will be the relevant Ministers.
 - b. **Matter 2:** The purpose of the legislation will be focused on project delivery only.
 - c. **Matter 3:** The weighting attributed to the fast-track purpose in comparison to other relevant existing legislation will be determined by a hierarchy provided in the Bill with primacy given to the fast-track purpose.
 - d. **Matter 4:** The activities that are ineligible for lodging an application do not include prohibited activities.
 - e. **Matter 5:** The approvals which are appropriate to provide for through this legislation are approvals in the Resource Management Act, Conservation Act, Wildlife Act, Reserves Act, Freshwater fisheries regulations, Heritage Act, EEZ Act, Crown Minerals Act, and the Public Works Act.
 - f. **Matter 6:** Both projects listed in the legislation, and projects referred by a relevant Minister, enter the fast-track process.
 - g. **Matter 7:** Progress legislative and operational changes and streamline Environmental Court processes.
123. While the analysis shows a clear preference for a standalone Fast-track Bill for RMA and other approvals, some of the policy design choices present a risk to system coherence by introducing a new regime with different settings and potentially unclear links to existing processes and decision-making.
124. There is also a risk arising from these policy design choices to the natural environment and to the sustainable management of resources if this legislation is enabled to sidestep existing environmental protections as agreed by central government and communities through RMA Plans.
125. Overall, the analysis in the Treaty Impact Assessment prior to introduction of the Bill suggests there is likely to be some benefit to Māori developmental interests which would have some positive Treaty impacts. However, the key decisions made on the Fast-track Bill are likely to have negative Treaty impacts for broader Māori rights and interests, that will likely outweigh the positives. The Treaty Impact Assessment prepared prior to introduction of the Bill, and a new Treaty Impact Assessment addressing the impact of further policy positions are attached to this SAR.
126. There is provision for an overarching clause requiring consistency with Treaty settlements and some specific process steps for protecting key elements of upholding Treaty settlements. If these provisions work as intended, this will likely uphold Treaty settlements and maintain the level of redress provided in those settlements.
127. The fast-track system is a top-down decision-making process which does not always sit comfortably with the bottom-up decision-making processes that are commonplace within te ao Māori.

Climate implications policy assessment (CIPA)

128. The Ministry for the Environment (MfE) Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as there is no direct impact on emissions.
129. The CIPA team however notes that expediting infrastructure and development through fast-track approvals could lead to significant indirect emissions impact through increased construction activity. We also note that some fast-track projects could contribute to reducing emissions, such as renewable energy projects.
130. Individual projects undergoing the fast-tracking approvals process may undergo an emissions impact assessment, although this is at the Ministers discretion.

What are the marginal costs and benefits of the proposed Fast-track package identified above?

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Project developers (public and private)	Project developers will face costs to participate in the fast-track regime. These costs may be higher than the costs they currently face under non-fast-track processes.	Low	High – previous fast-track processes have been more costly (though the benefits of early decisions, and more certainty of approval outweigh these costs)
Central government departments (as regulators)	Government departments will face new costs to administer the referral stage of the fast-track process, including providing advice on the suitability of referring projects.	Low	High – we know there will be new costs because agencies do not currently perform these functions.
Environmental Protection Agency (EPA)	The EPA will face the cost of supporting expert panels considering fast-track applications.	Medium	High – we know the EPA will support panels and they will face costs, as they do currently to administer FTAA applications.
Local Govt	Reduced influence over significant developments	High	High – projects may well have

	within their jurisdictions since fast-track decision-making is centralised.		adverse local impacts alongside regional and national benefits.
Consumers / general public as part of current generation	The reduced weight placed on RMA national direction, and operative/proposed regional/district plans for decision-making will undermine local voice about anticipated development and use of resources in their region.	Medium	High – Many people have participated in the development of RMA national direction, and operative/ proposed regional/ district plans through the public submissions processes.
Consumers / general public as part of future generation	This proposal may have negative impacts on the use of resources for future generations because it could enable stored energy/carbon to be utilised now, but may also alleviate challenges such as constraints to housing, transport, climate adaptation and associated costs to these constraints. It will also limit their choices when impacts are irreversible	Medium	Low – Predicting future trends is inherently risky, particularly over a long time horizon.
Workers	-	-	-
Iwi/Māori	Iwi/Māori will face costs to participate in the fast-track regime. This participation could include iwi/Māori as applicants, as parties being asked to provide comments, or costs arising from the nature of specific projects that may negatively impact Māori interests. There are also the opportunity costs associated with the tight timeframes to provide comment, where iwi/Māori have to either forgo being able to comment on their interests or to forgo the other matters they had	Medium	High – Many projects are likely to engage iwi interests, and participation in consent processes can be costly (eg, legal fees).

	resourced in order to prioritise responding.		
Non-monetised costs		Medium	High
Additional benefits of the preferred option compared to taking no action			
Project developers (public and private)	Developers will enjoy the benefits of more rapid decision-making, straightforward application processes, and a greater likelihood of receiving approval than otherwise.	High	High – the previous fast-track regime received high uptake.
Government departments (as regulators)	-	-	-
Environmental Protection Agency	-	-	-
Local Government	Reduced costs from processing RMA applications [unless this is a revenue stream that subsidises other aspects of council operations].	Low – only a small number of projects will be diverted from local consideration, and those costs would have been diverted onto the applicants to an extent	High
Consumers / general public	Benefits from the amenities provided by specific projects – transport, housing, energy for example.	Medium – simpler approvals unlock a key part of the development pipeline, but other factors remain essential, such as finance.	High
Workers	Continuing and one-off employment opportunities.	Low – employment opportunities may only affect a small group, may be overstated, may benefit new migrants, and may be temporary (during start-up phases)	High
Iwi/Māori	Opportunities to access a quicker process for progressing Māori developmental interests either directly or in partnership with other developers. Benefits from the amenities provided by	Medium – As above for amenity and employment benefits. Many iwi have developmental aspirations that could benefit from a fast-track process.	High

	specific projects – transport, housing, energy for example. Continuing and one-off employment opportunities.	However, some iwi (particularly non-settled iwi) may not have the upfront resources to lead projects through the process.	
Non-monetised benefits		Medium	High

Section 2: New matters which are directly related to further decision-making on points raised in submissions and workability issues

The SAR was published on 7 March 2024 to provide the impact assessment for the Fast-track Approvals Bill (the Bill) introduction to the House. Broadly, the scope of the legislation that the impact assessment previously considered remains unchanged, with the key matters raised through submissions reflecting the key policy design choices considered in the impact assessment on 7 March 2024. There are few substantive additional matters raised in submissions which go beyond what was initially considered for the impact assessment on 7 March 2024. These additional matters primarily relate to the feedback provided from a Te Ao Māori lens.

The information now available to us, from what was available on 7 March 2024, is the information provided through written submissions received on the Bill³ and the oral submissions from the public presented to the Environment Committee.

The submissions received provide substantive consideration of the key design policy choices in the Bill with a high number of unique and detailed submissions. The most significant concerns raised by submitters relate to the decision-making roles and powers of Ministers (including the perception of undue influence), the prioritisation of development over environmental protections and the risk of irreversible environmental harm, compliance with the Treaty of Waitangi, the ability of the public to be involved in fast-track processes, and the risk of not upholding international obligations or agreements.

Changes to Te Ao Māori policy position

The Treaty Impact Assessment (TIA) for further policy decisions is attached to this SAR.

Matter 7 relates to options for accommodating natural justice requirements under the PWA. There are changes to the Treaty analysis for Matter 7 Options B and C, the streamlining of Environmental Court processes (Option B) and the process for including land acquisition as part of the FTA (Option C). These changes reflect further policy positions related to enabling land transport or electricity network infrastructure projects to be referred and/or approved without approval from owners of Māori land or general land owned by Māori that was previously Māori freehold land.

While this change results in the evaluation of this Treaty criterion changing from 0 to – in both Option B and Option C, this does not alter the preferred options for Matter 7. Option B remains the preferred option and the option reflected in the Bill.

Analysis of further Conservation approvals matters

Matter 1 further analysis for public conservation land

1. Matter 1 relates to who is the substantive decision-maker for approvals. Option A seeks that the Expert Panel make the substantive decision on an application, and Option B seeks that Ministers make the substantive decision.
2. Officials consider it is important that Ministers retain decision-making power over conservation approvals affecting public conservation land (PCL). If the expert panel were the decision-maker about PCL, this would enable the expert panel as a third party to make decisions that have implications for the Crown's responsibilities as a land

³ Approximately 26,000 submissions have been received, following the call for submissions from the Environment Committee on 8 March 2024.

manager – this creates significant risks for the Crown, in particular the Department of Conservation, in terms of financial liability, and health and safety.

3. While the Option A remains the preferred option for Matter 1, officials agree that for concessions and access arrangements on PCL, it is appropriate for the Minister for Conservation to retain the ability to make substantive decisions.

What public conservation land is within the scope for fast-track approvals

All of these options include both activities on PCL and also access arrangements over PCL under the Crown Minerals Act.

Option A – Applications cannot be made through the fast-track process for approvals on any public conservation land (preferred option)

1. This option would exclude conservation approvals for activities on PCL from the fast-track process. For developers it would represent the status quo where they would need to apply for approvals under existing conservation legislation and policy settings.
2. Approximately 30% of New Zealand's land area is public conservation land, which provides significant conservation values (for example, as habitat for the estimated 80,000 native species of animals, plants and fungi), as well as economic value. In 2019, tourism on public conservation land and waters provided an economic value of \$4.1 billion nationally, accounting for 21% of the tourism industry. Healthy natural systems also provide resilience to extreme weather events through climate and water cycle regulation, flood protection, and soil stabilisation, and are therefore critical for communities and economic activities such as agriculture. Internationally, we have committed to protecting 30% of land and water by the year 2030.

Option B – Applications cannot be made through the fast-track for approvals on public conservation land with the highest levels of protection

3. This option would allow a fast-track applicant to seek a concession (which would cover concessions under the Conservation Act and similar Reserves Act approvals) or access arrangement under section 61 of the Crown Minerals Act. However, projects relating to conservation land listed in 1-11 and 14 of Schedule 4 of the Crown Minerals Act would be ineligible. Projects relating to land held as a national reserve would also be ineligible. There is also the option to exclude ecological areas – these are of similar values to scientific reserves, which are listed in Schedule 4 of the Crown Minerals Act.
4. This excluded land represents the most precious conservation land across the conservation estate, and includes National Parks, Wilderness Areas, Nature Reserves, and similarly classified areas.
5. Applications for approvals for in-scope conservation land would be subject to the same timeframes as RMA approvals as part of the fast-track process.
6. Applications would be considered under the fast-track regime, rather than the usual legislation, so different considerations and less restrictions would apply. The key changes to policy settings include:
 - the purposes of the Conservation Act, Reserves Act and Crown Minerals Act being subservient to the purpose of the Fast-track Approvals Bill;
 - the ability to consider Conservation General Policy and statutory conservation management planning documents (rather than requiring that these are complied with); and

- maintaining a requirement for the panel to consider declining a concession application if the activity could reasonably take place off PCL, but creating discretion for the final decision to be made by the decision-making Ministers.

Option C – Applications can be made through the fast-track for approvals on all public conservation land

7. This option is the same as Option B, but without any restrictions on high-value PCL and reserves. This would mean that a fast-track project could apply for a concession or access arrangement on land that is listed in 1-11 and 14 of Schedule 4 of the Crown Minerals Act or held as a national reserve.

How do the options compare to each other?

	Option A – No public conservation land or local authority reserve	Option B – No high protection public conservation land or local authority reserve	Option C – Any public conservation land including local authority reserve
Expediency	0 Status quo – normal timeframes for conservation approvals and CMA access would apply. These can be longer than two years for major development projects.	++ Seeking approval to undertake activities on PCL is likely to be significantly faster through the FTC timeframes for major development projects	++ Seeking approval to undertake activities on PCL is likely to be significantly faster through the FTC timeframes for major development projects
Cost	0 The usual costs of seeking an approval through conservation legislation would apply	- May increase the cost of applications, as changes to policy will require new assessments of the effects of activities and development of conditions where activities aren't consented under status quo settings.	-- The same likely increase in costs as Option B, but greater as more land is in scope and the cost of meeting remedial conditions is likely to be greater in areas with higher conservation value.
Complexity	0 Status quo – applicants would need to seek relevant conservation approvals as individual processes.	+ Inclusion in the 'one stop shop' means a separate process does not need to be followed for conservation approvals	+ Inclusion in the 'one stop shop' means a separate process does not need to be followed for conservation approvals
Certainty	0 Status quo – Current policy direction would apply	0 In the short-medium term, changes to the policy parameters and associated discretionary decisions that must be made will be new and untested, with possible	0 In the short-medium term, changes to the policy parameters and associated discretionary decisions that must be made will be new and untested, with possible

		legal challenge. Over time, however, this is expected to provide more certainty in favour of development.	legal challenge. Over time, however, this is expected to provide more certainty in favour of development.
Effectiveness	0 Status quo - Applicants would still be able to seek approval to operate on PCL, but the approval settings would not be as enabling.	++ More development could be approved on PCL as provisions that must be complied with in standard processes are only required to (or may) be considered.	++ The same enablement as Option B, but on a greater scale as it would apply to more land and to the land with protection that otherwise is most valued for conservation.
Treaty	0 No change as the status quo would apply	-- Could diminish the Crown's ability to honour the Treaty and uphold settlements by placing the Conservation Act (and therefore section 4) below the purpose of the Fast-track Bill. Tighter timeframes could make informed decision-making challenging.	-- The same impacts as Option B, but on a greater scale as more land is included.
Risks	0 Status quo - Any risks would be managed through the existing concessions and s 61 access arrangements regimes	-- The purpose and provisions of the Fast-track regime will remove or diminish existing conservation safeguards and lead to a reduction in conservation values on PCL.	-- The risks to conservation values in Option B are amplified by the inclusion of PCL with the highest conservation value. In the case of land classifications like wilderness areas and nature reserves, the lack of human development is central to the purpose for which the land is held.
Overall assessment	Preferred option	Option in Bill	We strongly advise against this option due to the risks to land with the highest conservation value.

Whether public conservation land can be acquired for development

Option A – Some conservation land can be acquired through existing exchange and disposal mechanisms (status quo)

8. This option is the status quo. Currently, developers can acquire conservation land via disposal or exchange through either the Conservation Act (for stewardship land only) or Reserves Act. Conservation land can also be acquired under the Public Works Act, if the buyer is a Crown agency or territorial authority.
9. A reserve can be exchanged for land that has the same values and is given the same classification (eg, scenic reserve to scenic reserve). Reserve land can be sold if reserve classification is no longer suitable (for example, where the reserve's conservation values have been destroyed by a severe weather event). Where a reserve is sold, or money is paid during an exchange to approximate a similar value, proceeds must be spent for reserve purposes. This can include the acquisition of new reserve land and spending on the management of existing reserves.
10. Under Chapter 6 of the Conservation General Policy, disposals and exchanges of stewardship areas and reserves administered by DOC are possible subject to the restriction that land can be disposed of only if it is of "low or no" conservation value.

Option B – Enable public conservation land to be exchanged where a net conservation benefit can be demonstrated (Preferred)

11. This option would allow developers to request that the Minister consider exchanging PCL with alternative land that would then become PCL. The Minister of Conservation must be satisfied that an exchange will result in a net conservation benefit in order to approve the transaction. This is similar to how exchanges can occur under the status quo. Through this option, conservation values would be protected in a similar way to the status quo, while potentially allowing for development in the area with the lowest conservation value.
12. If included as part of the fast-track regime, the Minister must consider (but is not bound by) Chapter 6 of the Conservation General Policy which sets considerations and restrictions on exchanges. Land with conservation value can be traded, so long as the Minister is satisfied that the trade will result in greater conservation value being protected on PCL overall.
13. Applicants would identify the land to be offered and to be received when proposing an exchange, and a purchase agreement sought by the developer with the landowner. DOC would then prepare an assessment of conservation values for both the Crown's land and the land being offered in return. The report would assess:
 - a. the conservation values present, including how threatened or abundant they are, to support the Minister's weighting of the conservation values.
 - b. any financial implications for the Crown from the exchange; and
 - c. whether the exchange would be practical from an ongoing management perspective (eg, avoiding enclaves of private land within conservation areas)

Option C – Enable the disposal of public conservation land with compensation to replace conservation values lost

14. Under this option, a fast-track developer could request that the Minister consider allowing them to purchase conservation land. The Crown would sell the land to the fast-track project developer and ringfence the funding to be used for conservation purposes. Essentially, the Minister would need to determine the amount of money

required to invest in new conservation benefits so that the transaction ensures a net conservation benefit.

15. The value of the land purchase would be determined by the cost of ensuring the replacement of conservation value elsewhere. This could be through the acquisition of new land to be protected as PCL or through the improvement of conservation values elsewhere on PCL.
16. Under this option, the Minister must consider (but not be bound by) Chapter 6 of the Conservation General Policy which sets considerations and restrictions on disposals. Land with conservation value can be sold, so long as the Minister is satisfied that the funds money received will ensure conservation values are provided for elsewhere to a level that is sufficient for there to be a net conservation benefit.

How do the options compare to each other?

	Option A – Status quo	Option B – Enable exchange of PCL	Option C – Enable disposal of PCL
Expediency	0 Land exchanges are uncommon and can occur only for reserves and stewardship land.	- It would be procedurally difficult to align the timing of an exchange with the expedited timeframes of the Fast-Track process. However, DOC would anticipate discussions between DOC and developers on potential swaps prior to a Fast-Track application being submitted.	- Disposal can likely be actioned more quickly than an exchange, although determining the monetary equivalent value can take time and be challenging for conservation values.
Cost	0 The 'bar' is set quite high for land swaps and disposals, and so they are very rarely pursued. As a result of such options not being used, any associated costs are low.	+ Developer application costs will increase, as new land is found and assessed. Overall developer costs will decrease (ie, a developer will pursue a land swap when it makes financial sense to do so). DOC's assessment of the conservation values of land would be cost recoverable.	- Ultimate cost to developers would depend on the pricing policy adopted by Government. Payment reflective of conservation values may differ from underlying land value, leading to unintended market distortions and incentives to pursue development on PCL. There will be additional Government costs, including taking on the liability to spend the money to re-acquire lost conservation values.
Complexity	0	++	++

	No change as the status quo will apply.	This option will be more complex. It will also require the developer to identify and acquire alternative land.	More complex, including developing appropriate conservation value and pricing methodologies.
Certainty	0 No change as the status quo would apply.	+	+
		Provides greater certainty as development on land acquired would not be subject to concession or s 61 Crown Minerals Act requirements	Provides greater certainty as development on land acquired would not be subject to concession or s 61 Crown Minerals Act requirements
Effectiveness	0 The status quo allows for exchanges of stewardship land and several types of reserve, where there is a net conservation benefit for land managed by DOC.	++	-
		Allows development to occur. Allows for overall integrity of PCL to be maintained.	Allows more development to occur. Significant risk of distorting market, depending on land valuation policies.
Treaty	0 Many Treaty settlements provide iwi rights of first refusal (RFR) whenever the Crown parts with land. These may be triggered by exchanges in some instances.	--	-
		Risk that land with significant cultural values could be exchanged (however, land with significant cultural values could also be acquired). Risks that land within the rohe of one iwi is exchanged for land within the rohe of another, which could affect what land may be available for future Treaty settlements. Some exchanges may trigger RFR.	This option would likely trigger RFR in areas where Treaty settlements have been reached (eg, most PCL in the South Island), although whether or not iwi could buy the land in question would depend on their being able to meet similar terms and conditions to the developer.
Risks	0 Currently there is a high bar for land swaps and disposals on public conservation land, and they are uncommon.	0	--
		Public conservation land integrity and conservation values are maintained, although this may not be on a like-for-like basis (eg, forest area may be able to be exchanged for wetland area).	Crown takes on significant liability. Disposing of land with conservation value for cash will result in an immediate reduction in conservation value. Conservation value will only be regained to 'equivalence' in time,

			once the money has been spent to yield benefits. Any risks to a new project during that time are owned by the Crown (eg, severe weather event upon a newly-planted forest). Methodology untested.
Overall assessment		Recommended option. Option in Bill	This option is not recommended. The complexity and risks require a clearer cost benefit analysis and policy assessment. Likely to result in the loss of PCL and conservation values over time.

Interaction between Fast-track approvals and conservation covenants

Option A – Covenanted land is ineligible for Fast-track approvals (Preferred)

17. The Reserves Act allows for private land and Crown lease land to be protected through a covenant between a landowner and the Minister. Local authorities, or any other body approved by the Minister, can also enter into Reserves Act covenants with landowners. The Conservation Act provides similar covenanting powers between the Minister of Conservation and landowners. Upon being protected by a covenant, the land is then permanently subject to relevant sections of the Reserves Act or Conservation Act, as well as the terms of the covenant itself. Reserves and Conservation Act covenants can be extinguished through the agreement of both parties to the covenant. This is typically only lawful where the values that the covenant was established to protect no longer exist (for example, where they have been destroyed through a severe weather event).
18. Activities that would damage the values protected by the covenant are typically prohibited by default and can only be consented to by the Minister of Conservation if consistent with the objectives of the covenant (eg, allowing vegetation to be cut for a walking track through covenanted bush).
19. This option seeks to retain the status quo, limiting the ability to extinguish the agreement for the conservation covenant with mutual agreement, only where the values that the covenant were established to protect no longer exist.

Option B – Covenants can be amended or revoked through the fast-track process

20. It is likely that fast-track activities would generally be incompatible with conservation covenants. This means that if a developer sought to do construction work or similar on covenanted land, they would need to seek agreement from both parties to the covenant (such as the Minister of Conservation, the local authority, or relevant body) for the covenant to be amended or revoked.
21. This option proposes that covenants could be amended or revoked only where the covenant is between the landowner and the Minister of Conservation, rather than also including covenants with others such as local authorities. This is because it would be significantly more complex for the Minister of Conservation to override decisions made by local authorities or other bodies enabled to enter into conservation covenants.

22. The process for amending or revoking a covenant could include consideration of the purpose of the Fast-track Bill, the purpose of the covenant and the conservation values of the land, and taking into account whether the amendment or revocation would compromise values of regional, national or international significance.

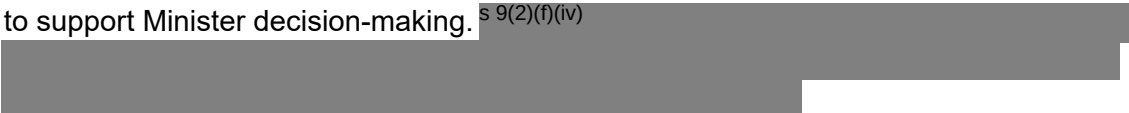
How do the options compare to each other?

	Option A – Covenanted land is ineligible for fast-track	Option B – Covenants can be amended/revoked through fast-track
Expediency	0 Status quo – the bar to revoke or amend a covenant is high	 + This option enables covenants to be considered through the fast-track process and aligned on timeframes
Cost	0 The usual cost of seeking to amend or revoke a covenant remain the same as the status quo	0 Unlikely to affect the cost of an application
Complexity	0 Status quo – applicants would need to seek covenant amendment/revocation approvals through normal processes.	 + Inclusion in the ‘one stop shop’ means it can be aligned with the fast-track process
Certainty	0 Status quo – Current policy direction would apply	 - Where a conservation covenant applies, there is still not certainty as to whether a covenant will be upheld, amended or revoked.
Effectiveness	0 Status quo - Applicants would still be able to seek approval to operate on covenanted land, but it is unlikely that the covenant would be amended or revoked	 + More development could be approved on previously covenanted land, as the Minister of Conservation would take into account the purpose of the fast-track system as well as the conservation values and the purpose of the covenant.
Treaty	0 No change as the status quo would apply	 - If a covenant has been established to protect a taonga species, the Crown may have active protection obligations under s 4 of the Conservation Act.
Risks	0 Status quo - Any risks would be managed through the existing covenants regime	 - Enabling the Minister to consider the purpose of the fast-track regime alongside the requirement to consider the purpose of the covenant and the conservation values may in practice diminish the level of protection on covenanted land. It would also undermine

		the longevity and certainty that a covenant is designed to protect.
Overall assessment	Preferred option	Option in Bill

Section 3: Delivering an option

How will the new arrangements be implemented?

23. The COVID-19 Recovery (Fast-track Consenting) Act 2020 has been repealed from 8 July 2023, although savings remain while lodged applications are progressed. However, no new applications are able to be lodged under the COVID-19 Recovery (Fast-track Consenting) Act 2020.
24. The Natural and Built Environment Act 2023 has been repealed from 23 December 2023, although savings remain for the fast-track provisions of this legislation. The repeal of these fast-track provisions is included in this new Fast-track Bill, although savings will remain for lodged applications to be progressed, but no new applications will be able to be lodged following commencement of the new fast-track system.
25. The new fast-track system will be implemented to enable any new applications to be received from commencement, which will be 1 day following royal assent.
26. The new system will be implemented across New Zealand as a whole (not sequentially), with the new regulation making power enabled from the date of commencement. There is no requirement for the new regulation making powers to be implemented, but it is anticipated that work will progress on this following commencement of the new fast-track system.
27. It is anticipated that over time, further approvals under other pieces of legislation may be investigated for inclusion in the one-stop shop and amendments made where this change is appropriate.
28. The Environmental Protection Authority (EPA) will be enabled to provide advice and secretariat support to the convenor of the Expert Panel. The EPA will also provide advice and secretariat support to members of the Panel when carrying out their functions and duties.
29. The EPA will need appropriate funding to carry out these new functions and duties. Funding will also be needed for the responsible agencies to administer this legislation, to support Minister decision-making. ^{s 9(2)(f)(iv)}

30. It is anticipated that the number of policy officials required to support the fast-track process will include a team of staff in the primary agency (a core team of approximately 5-6 permanent officials), as well as smaller teams in other agencies including Department of Conservation (DOC) and the EPA (of approximately 3-4 permanent officials). The skills and expertise of officials are anticipated to be financial, communications, RMA planning and project management, and Treaty assessment specialists. A policy principal in the primary agency will also be needed for approximately 0.5 FTE to support on briefings and advice to Ministers.
31. The workload for agencies is likely to be variable depending on the lodgement of applications and the receipt of recommendations from the expert panel. Agencies may need to surge staff to support the core team during key periods. It is estimated that key periods will be at the end of the calendar year and the end of the financial year.

How will the new arrangements be monitored, evaluated, and reviewed?

32. Cabinet agreed [CAB-23-MIN-0468] that although RISs (or in this case SARs) are still required for new policy proposals put forward as part of the 100-days work programme, there is no need for formal quality assurance of the RIS. Treasury has advised that for agencies that do not have time to prepare comprehensive impact analyses the focus should be on cost-benefit analysis and implementation issues, however, post-implementation assessments are required after legislation enactment. As a result, a post-implementation assessment will be undertaken jointly by MfE and Ministry for Business, Innovation and Employment (MBIE) one year after enactment of the legislation.
33. This post-implementation assessment should provide approach assurance from MfE and MBIE that on-going system performance monitoring establishes appropriate system indicators which are integrated into the regulatory stewardship obligations of these agencies. These system indicators are not intended to measure every aspect of the fast-track legislation but should enable the performance of the legislation to be traced in a tangible way.
34. Some initial system indicators to be collected quarterly for this interim period prior to the post-implementation report are:
 - a. the total number of applications
 - b. the total number of applications declined by a responsible Minister
 - c. the total number of applications which a responsible Minister decided not to refer to an Expert Panel
 - d. the total number of applications received which were not considered by a responsible Minister as they triggered the ineligibility criteria
 - e. the total number of applications which exceeded the timeframes in the legislation for processing
 - f. the total number of applications which were received without approvals from parties identified in the application as affected, including relevant iwi and hapū groups
 - g. the total number of applications which had their processing paused to enable additional information on the application to be prepared and provided to the relevant authorities
 - h. the number of Expert Panels that have been established to hear applications under this legislation
 - i. the number and extent of enforcement action taken on any consent conditions granted under this legislation
 - j. the gross cost to the crown of operating the fast-track system and the net cost to the crown of operating the fast-track system (after taking revenue from application sponsors into account).
35. For this interim period, we propose that the initial system indicators and overall performance of the fast-track legislation will be jointly monitored by the Chief Executives of MfE and MBIE, with support from DOC. This provides accountability but leaves complete discretion to the relevant Ministries for the monitoring approach.

36. For this interim period, the environmental impacts arising from the implementation of the fast-track legislation will be monitored through the established environmental monitoring programmes which both MfE and DOC undertake to measure baseline environmental outcomes. This monitoring will likely only show trends although more direct monitoring will be established through the post-implementation assessment.
37. These proposed initial system indicators are not intended to measure any spill over impacts on the existing (non fast-track) consenting process. Further consideration of any spill over impacts will be provided with the on-going system performance monitoring provided in the post-implementation assessment along with tools to measure the effectiveness of the fast-track process.
38. The approach to provide discretion for joint monitoring in the interim period prior to the development of the post-implementation assessment report will enable more time to ensure the final monitoring approach identifies how we measure if the system is effective or efficient.

Appendix One: Treaty Impact Analysis for CAB-431 Fast-track Approvals Bill: policy and workability changes for departmental report

Overview

1. This Treaty Impact Analysis (TIA) sets out in detail an analysis of the Treaty impacts (positive and negative) of key decisions sought in 'Fast-track Approvals Bill: policy and workability changes for departmental report' (CAB-431) related to changes proposed to Fast-track Approvals (the Bill) after introduction of the Bill.
2. This TIA does not repeat or substitute the TIA appended to the Supplementary Analysis Report prepared to support the introduction of the Bill, which notes potential benefits to Māori development interests and broader socio-economic benefits of the Bill as a whole, which would have some positive Treaty impacts.⁴
3. It also does not analyse submissions received on the Bill, which will be summarised in the Departmental Report to the select committee. However, it is important that submissions from Māori groups on the Bill generally supported a more efficient approvals regime but noted concerns about some aspects of the Bill. These concerns will be more fully set out in the Ministry for the Environment's departmental report to the select committee. Officials have provided separate advice to Ministers related to submissions concerning the absence of references in the Bill to the Treaty of Waitangi/te Tiriti o Waitangi and/or its principles. Given decisions related to that matter are not sought in CAB-431, it is outside the scope of this TIA.
4. To the extent that key decisions sought in CAB-431 respond to submitters' concerns, engagement on the proposals has occurred by the legislature via select committee process. Parallel engagement has also occurred by the executive with permission from the select committee, with those Māori groups who sought engagement with officials or Ministers. In addition to responding to submissions, changes to the Bill are also sought on a range of policy matters to better meet the policy intent of the Bill. No engagement with Māori groups has occurred in respect of those decisions and they are subject to final agreement by Cabinet. We anticipate some Māori groups will consider the level of engagement does not meet obligations under Treaty settlements or the Treaty due to the impact of the decisions on Māori rights and interests.
5. The decisions sought in CAB-431 particularly relevant to Māori rights and interests and the Crown's obligations under the Treaty relate to:
 - a. ineligibility provisions in respect of land transport or electricity network infrastructure projects on Māori freehold land and general land owned by Māori;
 - b. timeframes for consultation with Māori groups on applications under consideration by Ministers or the panel;
 - c. the definition of "existing" Treaty settlements where that term is used in the Bill; and
 - d. panel expertise and appointment requirements.

⁴ That TIA can be found on the Ministry for the Environment website here: [Supplementary Analysis Report: Treaty Impact Analysis for the Fast-Track Approvals Bill | Ministry for the Environment](#)

6. Decisions sought in CAB-431 related to the panel making final substantive decisions on applications are also relevant to a number of submissions received from Māori groups on the Bill. Those decisions are addressed in the Supplementary Analysis Report (SAR) under “Matter 1” and are not addressed separately in this TIA.
7. 9(2)(f)(iv) 
8. It is important to note the matters set out in this TIA are addressed individually but form part of the fast-track process as a whole. The Treaty impacts of the process will depend on how the Bill is implemented by decision-makers and how its provisions are interpreted by the courts. The impacts outlined below may be altered if future policy or legislative changes are made through Amendment Papers or other vehicles.

Ineligibility provisions

9. The Bill as introduced states a project must not include an activity on identified Māori land that has not been agreed to in writing by the relevant landowner (clause 18(a)). CAB-431 seeks agreement for amendments to enable land transport or electricity network infrastructure projects to be referred or approved without the written agreement of the owners of Māori freehold land and general land owned by Māori that was formerly Māori freehold land – categories of land currently included in the definition of identified Māori land.⁵ These are also specific categories of land with a particular status and protections under Te Ture Whenua Māori Act 1991. The change would mean the ineligibility criteria would no longer apply to those categories of land. Instead, Ministers and the panel will be required to consider the effects of a project on the relevant land, and the impacts on Māori rights and interests in that land. The applicant will also be required to provide details of steps taken to seek approval from the relevant landowners.
10. Importantly, even if the relevant approvals were obtained under the Bill (Act), the agreement of the relevant landowner would still need to be secured to allow works to commence on their property, as it would for any privately owned property. This could be through a normal private property agreement. However, the land may also be compulsorily acquired under the Public Works Act.
11. The policy rationale for the change is to better meet the policy intent of enabling development for the benefit of all New Zealanders including Māori. However, the change would mean owners of Māori freehold land and general land owned by Māori will have less influence and control in respect of these categories of land than the Bill currently provides. As such, it provides less protection for those categories of land. Instead of being an ineligibility criterion, it allows for projects to be referred or approved on those categories of land owned by Māori, without their consent, at the discretion of Ministers or the panel. The connection between Māori and their ancestral lands is acknowledged in section 6(e) of the Resource Management Act 1991. Māori land is a taonga tuku iho (a treasure handed down from generation to generation) as recognised in section 2(2) of the Te Ture Whenua Māori Act 1993, which notes “it is desirable...to promote the retention of that land in the hands of its owners” and is protected by article 2 of Te Tiriti.

⁵ The definition of identified Māori land, at section 4(1) of the Bill, also includes other land significant to Māori such as reserves managed under a Treaty settlement by a post-settlement governance entity and certain categories of land vested in the Māori trustee.

The change may therefore be considered contrary to the Crown's duty to actively protect Māori rights and interests, and in particular Māori land, under Te Tiriti.

12. The policy requirement for Ministers and the panel to consider Māori rights and interests in the land may incentivise applicants to also consider those interests and go some way to protecting and providing for those interests. This could include Māori interests in development and enabling projects of regional or national significance. However, it is not yet clear how this would be provided for as part of the decision-making criteria, and how it would be balanced against other considerations when determining an application for approval. In any event, it will not provide the same level of protection as being part of the ineligibility criterion, and this may undermine the right to rangatiratanga and be considered not to meet the Crown's duty of active protection, guaranteed by article 2 of Te Tiriti.

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

14. There has been no engagement with Māori on the proposed change. Māori groups who submitted on the existing provisions in the Bill which included these categories of land as being ineligible without landowner permission, supported this inclusion.

Timeframes for consultation

15. The Bill as introduced provides 10 days for consultation with Māori groups and others to occur before Joint Ministers make a referral decision and when the panel is considering an application. CAB-431 seeks agreement for the timeframes to be extended to 20 days.
16. The extension of the timeframes is positive from a Treaty perspective. Submissions from Māori groups and others regarding timeframes for consultation generally stated the timeframes in the Bill were too short to provide a meaningful opportunity to consider applications and provide comments. The longer timeframe will provide a better opportunity for Māori groups to participate in the process under the Bill and ensure their views and information about their interests are communicated to decision-makers. While it may be considered by some to still be insufficient, the increase will better support the Crown in fulfilling its duties related to the Treaty principle of active protection and consultation under the Treaty principle of partnership.

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

The definition of “existing” Treaty of Waitangi settlements

17. The Bill as introduced provides that persons exercising functions, powers, and duties under the Act must act in a manner consistent with obligations arising under existing Treaty settlements (clause 6). CAB-431 seeks agreement to define “existing Treaty settlements” to make it clear the clause applies to Treaty settlements that exist when functions, powers and duties are exercised, rather than settlements that exist when the legislation is enacted.
18. This change is positive from a Treaty perspective. Submissions from Māori groups noted concern that the use of the word “existing” in clause 6 may prejudice Treaty settlements reached in the future. The proposed definition of the word “existing” ensures that protections for Treaty settlements apply equally, regardless of when they are agreed. This will support integrity of the Treaty principle of the redress and the durability of settlements.

Panel expertise and appointment requirements

Expertise

19. The Bill as introduced provides that the panel must collectively have an understanding of te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and an understanding of tikanga Māori and mātauranga Māori (schedule 3, clause 7(1)(c) and (d)). It does not require the panel to have expertise in environmental matters. CAB-431 seeks agreement for the panel to collectively include expertise in environmental matters, and for the current requirement for the panel to have an understanding of tikanga Māori and mātauranga Māori to be replaced with a requirement to have an expert suitably qualified in te ao Māori and Māori development.
20. The additional requirement for the panel to have expertise in environmental matters is positive from a Treaty perspective. Submissions from Māori groups on the Bill emphasised the importance of te taiao within te ao Māori and concern around the lack of environmental protections in the Bill. As stated in the TIA prepared prior to introduction of the Bill, Māori have significant interests regarding the use and development of the environment and natural resources, which the Crown has obligations to provide for and protect. These include development interests and recognition of the Treaty principle of the ‘right to development’.⁷ Requiring the panel to have expertise in environmental matters, combined with the recommendation in CAB-431 for substantive decision-making to shift from joint Ministers to the panel, will better provide for environmental matters to be considered as part of decision-making under the Bill.
21. There has been no engagement with Māori groups on the proposed change from requiring the panel expertise to include tikanga Māori and mātauranga Māori to te ao Māori and Māori development. In the absence of engagement, Crown officials are not well placed to assess whether the change is positive or negative from a Treaty perspective in the context of the Bill as a whole. Officials expect opinions will vary given it will be subject to the panel convenor’s interpretation whether expertise in te ao Māori and Māori development includes an understanding of tikanga Māori and mātauranga Māori.

⁷ The Treaty principle of the right to development means that “Māori had the right to develop as a people and to develop their properties”, pg.50. Waitangi Tribunal. 2012. *The Stage 1 report on the National Freshwater and Geothermal Resources Claim (Wai 2358)*.

Appointments

22. The Bill as introduced provides that the membership of a panel must include one person nominated by the relevant iwi authorities irrespective of Treaty settlements (schedule 3, clause 5). CAB-431 seeks agreement to remove the general ability for iwi authorities to nominate a member of the panel, but retain the existing protections for Treaty settlements and other arrangements that provide for requirements related to the appointment of hearing commissioners in schedule 3 clause 5.
23. While there are still requirements throughout the decision-making process for engagement with Māori groups by the applicant, Ministers and the panel, this change represents a weakening of protections for Māori rights and interests derived from the Te Tiriti in the Bill because:
 - a. the requirement for the panel to include a member nominated by an iwi authority was a mechanism in the Bill to provide directly for Māori to participate in decision-making outside of any arrangement provided for in a Treaty settlement or other arrangement,
 - b. although there are other mechanisms for Māori influence and participation in the process such as consultation and panel expertise requirements, those requirements operate at a different level of decision-making;
 - c. it means that Māori participation in decision-making is not provided for, except to the extent that may be required by the panel expertise provision (depending on how it is interpreted and applied) and the few Treaty settlements and other arrangements that include provisions related to the appointment of hearing commissioners;⁸ and
 - d. requirements for fast-track consenting panels to include a member nominated by the relevant iwi authorities were a feature of both the Covid-19 Recovery (Fast-track Consenting) Act 2020 and the Natural and Built Environment Act 2023.
24. Projects are likely to have considerable impacts on land, the environment and natural resources, which Māori have well-established rights and interests in. The absence of such a requirement in this Bill may be considered inconsistent with the Treaty principle of partnership and the guarantee of rangatiratanga under article 2 of Te Tiriti.
25. There has been no engagement with Māori on the proposed change.

⁸ There are nine Treaty settlements and related arrangements that include provisions related to the appointment of hearing commissioners.

Appendix 3 - Treaty Impact Analysis: Fast Track Consenting Bill – briefing 2

PART 1

Overview

This Treaty Impact Analysis (TIA) analyses the Treaty impacts of decisions sought in Fast-track legislation delegated decisions Paper #2 [MFE BRF-4203] and updates analysis provided with BRF 1 and The Fast Track Consenting Bill (FTC Bill) (the Bill). The Fast Track Consenting (FTC) regime has the potential to affect Māori rights and interests and could have significant Treaty impacts, some positive and some negative.

1. This TIA follows the structure of the decisions sought in the decisions table appended to BRF-4203. The decisions table includes summary statements from this analysis in relation to each decision. These are set out in boxes below.
2. Cabinet agreed that the FTC BILL will “include 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 refers].
3. Treaty settlements and other arrangements provide post-settlement governance entities (PSGEs) and other Māori representative groups with various influence on decisions made under the Resource Management Act 1991 (RMA) and approvals under other legislation proposed for inclusion in the Bill. s 9(2)(g)(i) [REDACTED] The more the FTC Bill departs from existing legislation, the more protections the legislation will require to ensure Treaty settlements and other arrangements are upheld.
4. Māori rights and interests in relation to the natural environment as guaranteed under the Treaty have been widely recognised, including in resource management legislation such as Part 2 of the RMA, section 4 of the Conservation Act, and upheld by the courts. Māori rights and interests will be impacted by the FTC Bill.
5. Policy development and engagement on the policy proposals was not complete at the time of preparing this paper. Due to tight timeframes, policy uncertainty and the very limited engagement with Treaty partners on the specific policy proposals, this TIA is not as rigorous as would be expected for policy with this significance for Māori groups with guaranteed rights and interests.

PART 2

BRF-4203 TIA points for key decisions (Table A)

Expert Panel Assessment and Decision Making

Expert Panel Assessment and Decision-Making This summary content is in Table A

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

Equivalent provisions to those in Part 2 could be included in the FTC bill to mitigate this risk. The same applies to section 4 of the Conservation Act (Treaty Principles) and the Treaty/Māori provisions in other one stop shop statutes.

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.

The decisions sought below (refers to Table A) regarding Treaty settlements / arrangements and Māori rights and interests will determine the extent to which those matters are provided for in substantive decision making, regardless of where substantive decision-making sits

Decision-Making

The decisions sought below (refers to Table A) 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. s 9(2)(g)(i)

The Role of Ministers and EPs for Referred Projects

From a Treaty impacts perspective, whether the ability to grant or decline to grant a consent application sits with a Minister or with the EP for a project is not a key concern.

The difference between the EP and Minister's ability to receive and consider advice, and the timing and ability to engage with Māori will be important to identifying potential Treaty issues and solutions. We think it likely the EP will be in a better position to engage than the Minister.

Circumstances in which EPs decline consent applications

The ability to decline an application and the circumstances under which an application can be declined is a key decision point and will be highly impactful for Māori. Where a project was determined to be fundamentally inconsistent with the principles of the Treaty or Treaty settlements to the point that no conditions could rectify this inconsistency, then this would have significant Treaty impacts and should be grounds for declining a consent application.

In many circumstances, through contextual engagement with Māori at place it would be possible to develop consent conditions to sufficiently ensure consistency with Treaty principles and Treaty settlements. This would be restricted by any limitations or timeframes put on the engagement and assessment processes^[14].

Purpose

Purpose – This boxed summary content is in Table A

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.(refers to Table A)

Purpose statements serve distinct functions in different legislation. In some cases, a purpose statement will describe the legal effect or mechanisms of an Act, while in others it will influence how an Act is interpreted and implemented by setting out the broad policy rationale, context, or objectives that an Act will achieve. Most purpose clauses combine elements of both types^[1].

The purpose option being recommended for this Bill sets out the policy rationale to an extent and can be expected to influence how the Bill will be interpreted and implemented. This is important for understanding the influence the purpose will have on the functions and powers within the Bill and therefore the potential Treaty impacts associated with those functions and powers.

Iwi/hapū/Māori have a broad range of economic, environmental, cultural, and social interests at local, regional and national levels. Depending on the circumstances, these interests may variously align with and support a given project or not. Iwi/hapū/Māori may be applicants under the Bill. There may be some iwi/hapū/Māori groups that support a project and others that oppose it. This means the Treaty and Māori rights and interests aspects of the legislation, and the purpose of the legislation, are multi-faceted and both the developmental and environmental protection aspects of Māori interests should be able to be considered and provided for.

[REDACTED]

The recommended purpose of the Bill intends to enable infrastructure and development projects and could support Māori development interests in the same way it supports the development interests of the public generally^[2]. The inclusion of the promotion of “sustainable management of natural and ¹physical resources for current and future generations” in the purpose provides some protection for Māori environmental obligations in relation to taonga^[3]. The proposal to make ‘sustainable management’ in terms of the RMA subservient to the development imperative establishes a hierarchy that may be more likely to undermine Māori rights and interests than to provide development opportunities for Māori. The very limited engagement with Māori in the policy design phase means it is difficult to gauge that impact.

Ineligible Activities and Prohibited Activities

Ineligible Activities and Prohibited Activities – this Summary content is in Table A

s 9(2)(g)(i)

[REDACTED] 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, s 9(2)(g)(i)

[REDACTED] This risk can be somewhat mitigated by: the inclusion of protections for Treaty settlements and providing joint Ministers the discretion to decline to refer an application on the basis that it includes a prohibited activity.

Eligibility criteria

The recommended option would make an application or activity meeting one or more of the following conditions ineligible for fast-tracking:

The mandatory eligibility criteria (‘must’ list) some procedural considerations. One of note in relation to Treaty impacts is the criterion that an application has sufficient information to inform the Minister’s referral decision. This could (and should) include sufficient information to enable a Minister to assess whether the application would be inconsistent with the principles of the Treaty or with Treaty settlements.

When the referring Minister is considering a project, the discretionary eligibility criteria are therefore able to support the case for referral of projects that may support Māori interests. In relation to the discretionary eligibility criteria (‘may’ list), as noted earlier, iwi, hapū and Māori have a broad range of economic, environmental, cultural and social interests at local, regional and national levels. These include development interests and there is a principle of the Treaty that is the ‘right to development’^[10]. Māori owned or led primary industry projects would support the right to development (particularly for underutilised land) as the Māori economy is heavily involved in primary industries. Increasing housing supply would also benefit Māori (both generally and also specifically if for example there are Māori housing and development projects referred).

[REDACTED]

Further, Māori have significant interests in climate change mitigation and adaptation activities and some iwi and hapū have supported applications under the Covid-19 Fast Track Consenting Act on the basis that the projects would reduce emissions^[11]. Māori land is disproportionately in natural hazard risk areas, so projects that address these issues would benefit Māori. Also, Māori environmental protection rights and interests may be provided for with projects which address significant environmental issues.

Conversely, the discretionary eligibility criteria are quite open-ended and could be applied to virtually any significant infrastructure, developmental or environmental project. This could include projects that may have Treaty impacts, such as a development that could have significant adverse effects on environmental taonga. This is partially mitigated by the ineligibility criteria which would exclude a number of situations where Treaty issues may arise, and mitigated to an extent by the discretionary eligibility criteria being only matters that the Minister 'may' consider. Nonetheless, given the broad nature of the eligibility criteria, this therefore puts a lot of onus on the Minister's discretion. Officials' Treaty advice to the Minister in relation to a specific project is also critical.

Ineligible Activities

It is proposed projects would be ineligible if: the permission of the landowner(s) has not been obtained; they are proposed to occur on land returned under a Treaty settlement or identified Māori land provides protection for any negative Treaty impacts associated with projects occurring on this land, while still enabling the owners to give permission for projects that would benefit them or that they might otherwise support.

Māori land under Te Ture Whenua Māori Act 1993 has different rules and restrictions applying to it which justifies a separate approach in relation to this land. For two categories of Māori land (Māori customary land or land set apart as a Māori reservation), a project must not include an activity that would occur on this land at all. This is because the owners do not have capacity under that land tenure system to give permission. Instead, if an activity needs to take place on land with one of those statuses then the first step is to get a Māori Land Court order to change the status of the land so the owners have capacity to agree (possibly as framed in s.17 of the Urban Development Act 2020).

s 9(2)(g)(i)

[REDACTED]

Using a definition based on an existing definition of Māori land, based on section 11 of the Infrastructure Funding and Financing Act 2020, would provide consistency and alignment between the treatment of Māori land across related legislation. Also including a category of general land owned by Māori that was previously Māori freehold land would address a definitional discrepancy that would otherwise exclude a similar category of Māori land from protection. This could be added to the definition along the lines of:

Upholding Treaty settlements/specified arrangements

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

[REDACTED]

[REDACTED]

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.

s 9(2)(g)(i)

[REDACTED]

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.

[REDACTED]

Listed Projects

Listed Projects - Treaty Impact Assessment summary for Listed Projects in Table A

Projects in Category B will come under the Treaty provisions discussed above (in Table A) for decisions by Ministers and the EP. For category A this will apply to the process after referral only.

Ministers have agreed there will be 2 categories of listed projects.

Category A including projects that will be automatically referred to an expert panel, and

Category B including projects that do not meet all required information for a referral decision, but their significance is recognised in the Act for future referral and EP decisions and processes.

s 9(2)(g)(i)

Listing projects carries a strong presumption that the application will be granted except in limited circumstances. The proposal has efficiency and certainty benefits (including for Māori development projects) but also carries risks including in relation to Treaty impacts unless the EP can decline to grant consent to applications in situations where Treaty issues are identified that cannot be addressed by conditions.

The application of Treaty principles depends on the circumstances, and retaining flexibility is vital. ^[15] This means that until the EP process, and engagement with Māori on the project, occurs it cannot be fully known what the best ways to achieve consistency with the Treaty principles are.

s 9(2)(g)(i)

Additionally, there has been very limited engagement with Māori groups on the projects to be listed.

s 9(2)(g)(i)

Tribunal has noted that engaging on every matter in which Māori have some residual interest would be “unduly burdensome on Māori”^[16] the Tribunal has also said that “the Crown must carefully consider and inform itself of the impact its laws and policies may have on Māori individuals and groups ... proceeding with law and policy without consulting Māori can only be treaty-consistent in exceptional circumstances, such as when delays might cause prejudice”^[17].

Given many of the listed projects are likely to benefit from being considered on a faster and more permissive consenting track, but unlikely to be prejudiced from going through standard consenting processes, s 9(2)(g)(i)

Further, “the obligations of partnership included the duty to consult Māori on matters of importance to them, and to obtain their full, free, prior and informed consent to anything which altered their possession of the land, resources, and taonga guaranteed to them in article 2”^[18].

^[1] Legislation Design and Advisory Committee. Supplementary material: Designing purpose provisions and statements of principle. <https://www.ldac.org.nz/guidelines/supplementary-materials/designing-purpose-provisions-and-statements-of-principle/>

^[2] There is a Treaty principle of the ‘right to development’ that the Waitangi Tribunal has found to mean that Māori have “the right to develop as a people and to develop their properties” pg.50. Waitangi Tribunal. 2012. *The Stage 1 report on the National Freshwater and Geothermal Resources Claim (Wai 2358)*.

^[3] There is a Treaty principle of ‘active protection’ that includes “that Treaty obligations included a duty of active protection of taonga”, pg.37, *Bleakley v Environmental Risk Management Authority [2001] NZHC 436 at [76]*

^[4] For example, some land that became part of the Tongariro National Park was initially taken from Māori for defence purposes, under the Public Works Act 1928, and then incorporated into the park without consultation with Ngāti Tūwharetoa or any attempt to offer the lands back to them, breaching the Treaty principle of good faith. (See Waitangi Tribunal, 2013. *Te Kāhui Maunga: The National Park District Inquiry Report*, Vol. 1 (Wai 1130).

^[5] Pg.18, Williams, J. 2013. *Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern NZ Law*.

^[6] This principle, in this context, relates to “that Treaty obligations included a duty of active protection of taonga”, pg.37, *Bleakley v Environmental Risk Management Authority [2001] NZHC 436 at [76]*

^[7] Pg. 109, Waitangi Tribunal. 2011. *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity (Wai 262)*.

^[8] The Treaty principle of mutual recognition and respect requires that “each party must recognise and respect the values, laws, and institutions of the other”, pg. 85, Waitangi Tribunal, 2022. *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry (Wai 1040)*.

^[9] Pg. 115, Waitangi Tribunal. 2011. *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity (Wai 262)*.

^[10] The Treaty principle of the right to development means that “Māori had the right to develop as a people and to develop their properties”, pg.50. Waitangi Tribunal. 2012. *The Stage 1 report on the National Freshwater and Geothermal Resources Claim (Wai 2358)*.

^[11] For example, some of the hapū who were consulted as part of the Kapuni Green Hydrogen Project application were supportive of the application as it would reduce emissions and provide for renewable energy generation.

s 9(2)(g)(i)

[14] For example, some of the feedback from Māori on the Covid Fast Track consenting regime was that the 10-day timeframe, cost and capacity limitations restricted the ability of mana whenua to prepare quality Cultural Impact Assessments. Source: Martin Jenkins. 2022. *Fast Track Consenting Process – Summary of Stakeholder Feedback*

[15] *The Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council*. [2020] NZEnvC 180 at [94]

[16] Pg.681. Waitangi Tribunal. 2011. *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Vol. 2 (Wai 262)*.

[17] Pg.58. Waitangi Tribunal. 2022. *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry (Wai 1040)*

[18] pgs. 16-17. Waitangi Tribunal. 2019. *The Stage 2 report on the National Freshwater and Geothermal Resources Claim (Wai 2358)*.

Fast-track Approval Bill Minister meeting

Minute of decisions and actions

Wednesday 29 May 2024, 6:30pm – 8pm

Executive Wing, 6.3

Ministers	Hon Chris Bishop (Chair), Minister Responsible for RMA Reform, Minister of Housing, and Minister for Infrastructure Hon Simeon Brown, Minister for Energy, Minister of Local Government, and Minister of Transport, Hon Tama Potaka, Minister of Conservation and Minister for Māori Crown Relations: Te Arawhiti Hon Shane Jones, Minister for Oceans and Fisheries, Minister for Regional Development, and Minister for Resources
Officials	James Palmer, Secretary for the Environment Lil Anderson, Chief Executive (Te Arawhiti) Nadeine Dommissie, Deputy Secretary (MfE) Paul Stocks, Deputy Secretary (MBIE) Ruth Isaac, Deputy Secretary (DOC) Warren Fraser, Deputy Secretary (Te Arawhiti) Julie Collins, Deputy Secretary (MPI) Paul Alexander, Director (Te Waihanga/The Infrastructure Commission) Agency Officials

Purpose of the meeting
- The purpose of the meeting was to seek agreement from joint ministers on the policy proposals to inform the Cabinet paper seeking agreement to the Departmental Report for the Fast-track Approvals Bill - Appendix 2: Fast-track Joint Minsters Meeting Pack – Combined Decisions Table
Record of decisions:
Substantive decision-making - Joint Ministers did not take decisions on the final decision-makers under the Fast-track Approvals Bill and proposed to discuss this further across Ministers - Requested further advice that summarises options, including the option for the Minister for the Environment to take the decision with the relevant portfolio Minister - Noted that Panel decision-making would require further consideration of the criteria used to make decisions

4. Recognition of the 'one stop shop' nature of the decisions, and the need to consider the Minister of Conservation making decisions at the same time with the same information
5. Recommendations 1 to 12, 60 – 63, 66-68 were not decided by Ministers.

Ineligible activities (clause 18)

6. Recommendations 13 and 14 were both not agreed
7. Discussion recognised the intent of the Bill to allow for activities to come into the process, and if the proposed activity is egregious then the decision-maker will take that into account
8. Recommendation 15 was not agreed
9. Discussion recognised that the Bill already included a broad statement that allows consideration to be given to a number of matters
10. Recommendation 16 was agreed
11. Recommendations 17 to 21 were not decided and officials proposed to provide further advice. Further advice was agreed to
12. It was clarified that these recommendations applied to land that had been transferred back, and not land that had been commercially acquired
13. As part of the further advice it was requested that this include a deep dive on Takutai Moana Orders to under the relationship between customary marine title and impacts on infrastructure. Te Arawhiti was directed to provide this advice

Schedule 10 – Process under Crown Minerals Act

14. Recommendations 22 and 23 were agreed

Processing of referral application

15. Recommendations 24 – 28 were agreed

Schedule 4

16. Recommendations 29 to 32 were agreed
17. Noted the need to ensure the legislative design does not depart from the one stop shop
18. Query here whether the RMA needed to have its own schedule in the FTA Bill. Officials confirmed the intent is to extensively redraft the Bill

Panel Assessment

19. Recommendations 33, 34 and 35 were not decided
20. Discussion centred around the primacy of the purpose of the FTA Bill, whether the Expert Panel needs an anchor/framework to consider environmental considerations and whether what was being proposed would elevate the RMA in decision-making
21. Requested a two pager setting out how the Panel is to apply conditions to projects (what is in the existing FTA Bill vs what is being proposed here)
22. Recommendation 36 was agreed

Listed projects

23. Recommendations 37 – 40 were agreed

Timeframes

- 24. Recommendations 41 – 46 were agreed
- 25. Recommendations 47 – 48 were agreed
- 26. Recommendation 49 was agreed

Treaty of Waitangi and settlements

- 27. Recommendation 50 was not agreed.
- 28. Note it was clarified in the meeting that 'existing' means at the time the power is exercised, and it was directed that this should be defined in the FTA Bill
- 29. Te Arawhiti will put forward further advice regarding a Treaty clause. This was noted.
- 30. Recommendations 51 and 52 were not decided
- 31. Recommendation 53 was noted
- 32. Recommendation 54 was agreed, and amended to read 'no case shall the period be able to be extended by more than 40 working days unless otherwise provided by the joint Ministers or panel'.
- 33. Recommendation 55 was agreed
- 34. Recommendation 56 was agreed, but noted that this would need to align with recommendations 17-21 so this will need to be relooked at
- 35. Recommendation 57 was agreed

Responsible agency

- 36. Recommendation 58 was agreed
- 37. Recommendation 59 was not agreed

Application to the courts/OIA/transparency

- 38. Recommendation 64 was agreed
- 39. Recommendation 65 was not agreed
- 40. Recommendation 69 was agreed
- 41. Recommendation 70 was agreed that Minister for RMA Reform would have further delegation to make decisions on additional technical matters or matters of minor policy clarification

Referral application for EEZ

- 42. Recommendation 117 was not agreed.

Delegation of further decisions

- 43. Agreed that recommendations 71 to 93 were delegated to Minister Jones and Minister Potaka
- 44. Agreed that recommendations 94 to 116 were delegated to Minister Jones and Minister Potaka
- 45. Agreed that recommendations 118 to 136 were delegated to Minister Bishop

9am Tuesday 18 June 2024

Executive Wing, 6.3

Ministers Hon Chris Bishop (Chair), Minister Responsible for RMA Reform, Minister for Infrastructure
 Hon Shane Jones, Minister for Oceans and Fisheries, and Minister for Resources

Context	
- There are a number of outstanding decisions required if policy shifts are to be recommended in the Fast-track Approvals Bill Departmental Report. - These decisions will be reflected in a Cabinet paper. Cabinet agreement is required if the Departmental Report recommends any changes to the Select Committee which depart from previously agreed policy decisions. - Fast-track Ministers requested more advice and information on the following outstanding decision areas: - Substantive decision-making and related issues - Assessment hierarchy under RMA 1991 - Treaty clause - Clause 18a – Māori land and land transport or electricity network infrastructure	
1. Substantive decision-making	
Matters for decision: Table 1 – final decision-maker: - Expert Panel as the final decision-maker (for non-land management approvals) - Minister of Conservation as final decision-maker for land management approvals - Joint Ministers as the final decision-makers - A single Minister in concurrence with the appropriate portfolio Minister Table 2 – Related issues: - Add environmental expert to the expert panel, replacing current requirement to have someone with an understanding of tikanga Māori and mātauranga Māori - Increase the ability for the public to submit to expert panels on relevant projects - Require regard to previous decisions relating to an application when making decisions on referral Supporting documents: - Appendix 1: Substantive decision-making and related issues	
2. Assessment hierarchy under RMA 1991	

Matters for decision:

- Wording change in for current consent assessment criteria
- Simpler decision making that achieves the policy intent
- Mana Whakahono ā Rohe and Joint Management Agreements

Supporting documents:

- Appendix 2: Assessment hierarchy under RMA 1991

3. Treaty clause

Matters for decision:

- Options to address concerns raised in submissions regarding a Treaty clause

Supporting documents:

- Appendix 3: Te Arawhiti briefing 2023/2024 – 233
- Appendix 4: MfE/Te Arawhiti BRF-4884

4. Clause 18a - Māori land and land transport or electricity network infrastructure

Matters for decision:

- Retain the requirement that there must be written agreement from identified Māori landowners at referral stage
- Ministers can refer a land transport or electricity network infrastructure project to an expert panel for approvals without the written agreement of the owners of Māori freehold land and general land owned by Māori
- Ministers can refer land transport or electricity network infrastructure projects to an expert panel for approval, and grant the approvals without the agreement of the owners of Māori freehold land and general land owned by Māori

Supporting documents:

- Appendix 4: MfE/Te Arawhiti BRF-4884
- Appendix 5: MfE/MBIE briefing BRF-4890/MBIE 2324-3790

Appendix 1: Substantive decision-making and related issues

Table 2: related issues

Please note: • advancing any of these options would complicate both the drafting and operation of the legislation and likely require further consequential decisions • the purpose of the FTA Bill will be a consideration in all decisions under the FTA Bill regardless of decisions made on these options • there has not been time to work through these options with all agencies responsible for relevant legislation.					
Option	Description	Pros	Cons	Recommendation	Decision
Add environmental expert to the expert panel, replacing current requirement to have someone with an understanding of tikanga Māori and mātauranga Māori.	The fast-track system under the Natural and Built Environment Act (NBA), which remains in force as an interim measure, states that the members of a panel must collectively have: • knowledge, skills, and expertise relevant to resource management issues; • technical expertise relevant to the activity that is being considered; • an understanding of te Tiriti o Waitangi and its principles, tikanga Māori, and mātauranga Māori.	• This would address concerns from submitters regarding the lack of expertise in this area.	• This could likely be achieved under the existing drafting which: ○ requires that a panel have the collective knowledge and experience needed for matters specific to a project or, if appropriate, conservation expertise ○ allows for additional members to cover circumstances unique to a district or region or the nature and scale of the application • This option would: ○ deprive panels of expertise making it difficult to assess cl 13 reports and other information and comply with the obligations in cl 6 relating to Treaty settlements and customary rights ○ increase concerns from submitters who have: ▪ have expressed support for the requirement related to the panel’s understanding of tikanga and mātauranga Māori ▪ sought stronger consideration of the Treaty, treaty principles, tikanga Māori and mātauranga Māori ○ need clarity on what was meant by environmental matters.	1. note that a collective approach to panel expertise is already available in the legislation	Noted
				2. agree to: a. require inclusion of an expert in relevant environmental matters on the expert panel b. remove the requirement for someone with an understanding of tikanga Māori and mātauranga Māori OR	Yes / No
				3. agree that each Panel should <u>collectively</u> include expertise in environmental matters as well as tikanga Māori and mātauranga Māori, using the model in Sch.10 Part 2 s.48 of the NBEA	Yes / No
Increase the ability for the public to submit to expert panels on relevant projects.	• At present in the NBA, Panels can [Sch. 4 Cl. 20(4)] “invite written comments from any other person the panel considers	• All major groups of submitters on the Bill raised concerns about scope for public engagement.	• Additional drafting time would likely be required, eg, to work through how public engagement on proposals across relevant	OR	Yes / No
				4. agree to retain the status quo drafting and address this matter through the approach to Panel appointments	
				1. note that panels can already invite written comments from any	Noted

	appropriate” but this does not explicitly mandate public engagement. - This is similar to previous regimes: - Under the covid fast-track regime public or limited notification was not allowed but a panel could invite comments from any other person the panel considers appropriate. - The current interim fast-track regime under the NBA provides that a panel may invite submissions from any other person or group who the panel considers represents a relevant aspect of the public interest or to whom the panel considers the activity is relevant, after taking into account. - There are options to enable or require: - the Minister to: - consider engagement before referral - direct the panel on whether and how to engage with the public - the panel itself to consider whether and how to engage with the public. - None of these options are the same as public notification requirements (noting only 2% of resource consents are publicly notified) but would involve further enabling panels to access public input where appropriate	- This could be addressed by: - enabling but not requiring public participation, and; - providing specific Ministerial direction.	legislation differed from public notification under the RMA to minimise legal risk of importing jurisprudence - Real risk of slowing down the expert panels or opening up legal risk of review of the engagement decision. - The risk of slowing down the process is greatest with a general requirement to engage. - The risk of legal challenge is greatest if Panels make decisions without specific guidance but exists in all options for additional public engagement.	other person the panel considers appropriate 2. agree to require Panels to invite comments from members of the public likely to be affected by a proposal OR 3. agree that each Panel may consider the need for, and scope of, public participation OR 4. agree that Ministers may direct Panels a. on how to consider the need for, and scope of, public participation b. both in general and for specific applications OR 5. agree to retain the status quo drafting which allows Panels to invite comments as appropriate	Yes / No Yes / No Yes / No Yes / No
Require regard to previous decisions relating to an application when making decisions on referral	Would enable Ministers to obtain information on the previous decisions of the Courts, consent authorities or other relevant decision makers and enable the ability to decline to refer the application to the Panel in the event that they are adverse.	Partially responds to a major concern of submitters wanting applications that were previously declined to be ineligible.	- Creates another explicit statutory ground upon which Ministers can decide to decline or refer, noting that: - there are already a number of decline criteria so the risk would be marginal - any additional risk would depend on how this requirement was set. - May imply that Ministers should abide by previous judgements, or give reasons for not abiding by them. In this context, it is worth noting that previous decisions were not subject to the purpose of the Fast-track Approvals Bill.	5. agree to require applications to include information on the project's prior consideration by approving authorities, including the courts OR 6. agree that previous decisions relating to the project under the RMA or other relevant legislation should be a discretionary ground for declining referral to an expert panel 7. OR	Yes / No Yes / No

				8. agree to retain the status quo drafting which doesn't reference previous decisions	Yes / No

Fast-track Approval Bill Minister meeting

Minute of decisions and actions

Wednesday 19 June 2024, 7:30pm – 9pm

Executive Wing, 6.3

Ministers	Hon Chris Bishop (Chair), Minister Responsible for RMA Reform, Minister of Housing, and Minister for Infrastructure Hon Simeon Brown, Minister for Energy, Minister of Local Government, and Minister of Transport, Hon Tama Potaka, Minister of Conservation and Minister for Māori Crown Relations: Te Arawhiti Hon Shane Jones, Minister for Oceans and Fisheries, Minister for Regional Development, and Minister for Resources Hon Chris Penk, Minister for Building and Construction
Officials	James Palmer, Secretary for the Environment Lil Anderson, Chief Executive (Te Arawhiti) Nadeine Dommissie, Deputy Secretary (MfE) Paul Stocks, Deputy Secretary (MBIE) Ruth Isaac, Deputy Secretary (DOC) Warren Fraser, Deputy Secretary (Te Arawhiti) Julie Collins, Deputy Secretary (MPI) Barbara Tebbs, Director (Te Waihangā/The Infrastructure Commission) Agency Officials

Purpose of the meeting

- The purpose of the meeting was to take outstanding decisions required to be recommended in the Fast-track Approvals Bill Departmental Report. These decisions will be reflected in a Cabinet paper. Cabinet agreement is required if the Departmental Report recommends any changes to the Select Committee which depart from previously agreed policy decisions. Indicative next steps are attached. Fast-track Ministers were provided with more advice and information on the following outstanding decision areas:
 - Decision-making and related issues
 - Assessment hierarchy under RMA 1991
 - Treaty clause
 - Clause 18a – Māori land and land transport or electricity network infrastructure

Record of decisions: Decision-making and related issues

Referral decision - agreed that instead of joint Ministers, referral decisions shall be made solely by the Minister for Infrastructure, who shall consult with and take into account comments from relevant portfolio Ministers and the Minister for the Environment.

Substantive decision

- Agreed that Expert Panels make the substantive decision to approve or decline projects for non-land management approvals (e.g Resource Management Act, Wildlife Act, Freshwater Fisheries Regulations, Heritage NZ Pouhere Tāonga Act, EEZ Act, Public Works Act, and Fisheries Act) decisions.
- Agreed this decision would apply with the appropriate tests for the application of conditions by the Panel (ie, the legislation to be sufficiently clear about the requirements here).
- Agreed to delegate to the Ministers for Infrastructure and Regional Development drafting authority on:
 - requirements that would apply to panel decisions
 - a proportionate approach to setting conditions on approvals
 - how best to provide that the benefits of applying conditions exceed their costs

• s 9(2)(f)(iv)

- Agreed that the Cabinet needed to set out pros/cons and legal considerations of each option.

Environmental expert to the Panel

- Noted that a collective approach to panel expertise is already available in the legislation
- Agreed that each Panel should collectively include expertise in environmental matters as well as an expert suitably qualified in te ao Māori and Māori development, using the model in Sch.10 Part 2 s.48 of the NBEA
- Directed MfE to provide advice on approach to Treaty Settlements that require a suitably qualified expert to be appointed by a relevant iwi authority
- Directed Te Arawhiti to provide wording of relevant Treaty settlements and examples of where they have been applied

Increase the ability for the public to submit to the Panel

- Noted that the Panels can already invite written comments from any other person the Panel considers appropriate
- Agreed to retain the status quo drafting which allows Panels to invite comments as appropriate

Regard to previous decisions

- Agreed to require applications to include information on the project's prior consideration by approving authorities, including the courts

Record of decision: Purpose clause and assessment hierarchy

s 9(2)(h)

s 9(2)(h)

- noted that Ministers Bishop and Jones will receive drafting of these clauses in the RT version as reported back by select committee
- noted assessment of a consent application or notice of requirement will give weight to the following matters, in the order listed:
 - the purpose of the FTA Bill to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits
 - considerations under the RMA.
- noted that including relevant considerations from relevant legislation provides additional support in considering proposals and proposing conditions without compromising the policy intent
- noted that within the lesser considerations under (b) the current drafting in Sch 4 cl 32 for RMA matters creates additional complexity and associated legal risk, and is not consistent with the general policy above
- agreed to correct this by applying the following weighting when RMA matters are considered (noting that the purpose of the Bill is given the greatest weight, as set out below)
 - the purpose of the FTA Bill
 - the relevant provisions under the RMA, in particular those that direct decision-making under Parts 6, 8 and 10 of the RMA, except that:
 - where reference is made in those Parts of being subject to Part 2 of the RMA2, the consideration shall be given to sections 5 to 7 of the RMA only and shall be subject to subsection (a) above
 - clauses 33 to 37 of the FTA Bill apply in addition.
- noted clauses 33-37 are intended to identify all relevant provisions in RMA that need to be applied, and officials will review those clauses to ensure this is achieved; and refine them so they are more workable and to avoid duplication
- noted section 6(h) RMA requires the management of significant risks from natural hazards be recognised and provided for as a matter of national importance. This will form part of the relevant matters assessed by the Panel on RM approvals above.
- Officials to add recommendations regarding Ngā hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management agreements to the Cabinet paper for consideration.

Other

Treaty clause

- Agreed that Minister Jones and Potaka would take the decision, on behalf of the Fast-track Ministers, and report back to Minister Bishop by 24 June.

s 9(2)(f)(iv)

- s 9(2)(f)(iv)

Offsetting and mitigation of effects

- Directed MfE to provide advice on offsetting and mitigation and whether these are allowed in the Bill.

Linear infrastructure

- Agreed that Minister Brown, Jones and Potaka would take a decision, on behalf of the Fast-track Ministers, and report back to Minister Bishop by 24 June.

s 9(2)(f)(iv)

- s 9(2)(f)(iv)

Technical/workability delegation

- Agreed to delegate to Ministers Bishop and Jones to make further technical/workability changes to give effect to policy.

Indicative next steps for Fast-track Approvals Bill and Projects

Date	Activity
14/06/2024	Final Select Committee oral hearings (now completed)
24/06/2024	Draft Cabinet paper: Policy decisions to inform Departmental Report submitted to Minister's Office for consultation
4/07/2024	CAB-431 lodged for Cabinet
8/07/2024	CAB-431 to CBC
30/07/2024	FTA Departmental Report to Ministers for noting
2/08/2024	Departmental Report provided to Select Committee
2/08/2024	Listed Projects: FTA Advisory Group final report to Ministers
16/08/2024 (TBC)	Listed Projects: Ministerial decisions on Listed Projects
29/08/2024 KEY MILESTONE	Further decisions to inform Amendment papers (TBC but likely to include): • Public Works Act • Crown Minerals Act • Listed Projects • minor policy refinements and technical changes
12/09/2024	Lodge FTA Bill and Projects Cabinet papers for approval to draft Amendment Papers
18/09/2024	ECO
23/09/2024	Cabinet PCO starts drafting Amendment Papers
14/10/2024 KEY MILESTONE	PCO draft Amendment Papers to Ministers
18/10/2024	Select Committee report back (with RT version of Bill)
Week of 4 November KEY MILESTONE	First opportunity for Second Reading
7/11/2024	LEG considers Amendment Papers
11/11/2024	Cabinet Approval of Amendment Papers
Week of 11/11/2024 KEY MILESTONE	First opportunity for Committee stages
November KEY MILESTONE	Fast-track Approvals Bill enacted

Record of decisions and actions

Meeting Fast-track Ministers meeting

Date Monday 19 August 2024

Time 20.00 - 21.00

Location Online

Ministers Hon Chris Bishop (Chair), Minister Responsible for RMA Reform, Minister of Housing, and Minister for Infrastructure
Hon Simeon Brown, Minister for Energy, Minister of Local Government, and Minister of Transport,
Hon Tama Potaka, Minister of Conservation and Minister for Māori Crown Relations: Te Arawhiti
Hon Shane Jones, Minister for Oceans and Fisheries, Minister for Regional Development, and Minister for Resources

Officials Agency Officials

Record of decisions:

Part B – Purpose clause and conditions

1. **agreed** to change the purpose of the Bill to “The purpose of this Act is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.
2. **noted** that the way that the criteria applied by the Panel is framed, with the highest weighting for the FTA Bill purpose, is intended to provide clear legislative direction on how decisions are made and to set a high bar for decline.
3. **Did not agree** that the expert panel must explicitly consider the project already has been determined to have significant regional or national benefits (due to its listing or referral decision), and only take a different view based on significant new information. *Officials will advise if it needs to be revisited.*
4. **noted** that condition-setting by a panel is part of the same overall decision-making framework where the purpose of the Bill has greater weight than other considerations and conditions do not impede project delivery. Noting that conditions might still make a project not viable in rare circumstances.
5. **agreed** that specific provisions be included in the Bill to require that, for all approvals where conditions apply and such requirements are workable, that conditions be proportionate and meet a cost-benefit test.
6. Noted that further advice on the ‘high bar’ for decline is to be provided by officials by 6 September

Part C – Prioritisation and allocation

7. **noted** that existing legislation currently directs the order in which applications for competing activities and allocation of resources are considered in various ways (prioritisation), including applying a ‘first in, first-served’ approach (meaning that the first to file a complete application

takes priority), resource limits through statutory plans, and in some cases tenders to use space or resources

8. **noted** the fast-track approvals system provides a separate approval pathway that allows applications for approvals not previously able to be applied for and is likely to lead to competing applications for the same limited resources and incompatible applications for overlapping space
9. **noted** that there are some areas where it is unclear how the fast-track approach as designed will work in practice or interact with existing resource prioritisation and allocation systems
10. **noted** the Fast-track Approvals Bill (the Bill) is currently largely silent or unclear on:
 - a. how competing applications to limited resources are prioritised in terms of the order in which they are assessed, including between different fast-track applications and between fast-track applications and applications made under the parent legislation
 - b. whether approvals under the fast-track regime will be able to exceed current resource allocation limits, and if so, how any impacts on existing resource users are managed
 - c. whether applications for renewing existing approvals under any regime will be assessed ahead of applications for new activities using the same resource under the fast-track process or any other regime
 - d. whether and how projects may be prioritised in terms of being referred to an expert panel – this is an issue for both listed and referred projects
11. **noted** that the Bill is not explicit on the approach to be used to determine the order by which applications for new activities are assessed under the fast-track system and this may result in uncertainty and challenge
12. **noted** that the Bill currently does not require approvals allocating limited resources to accord with existing allocation frameworks and limits and approvals that breach current allocation limits could be granted under the fast-track system
13. **noted** that officials are working to identify additional mechanisms for the Bill to enable the Minister to prioritise panel consideration of urgent projects and can provide further advice on these ahead of being included in the Cabinet paper proposing content for the amendment paper
14. **noted** that officials are working to identify additional mechanisms for the Bill to better manage competing applications and can provide further advice on these ahead of being included in the Cabinet paper proposing content for the amendment paper
15. Officials have noted that Ministers are wanting the ability to override existing allocations where needed. It is assumed this means that first in first serve applies unless Ministers say otherwise. Ministers did not agree to the recommendations in this section and have asked for advice on prioritisation and reallocation of existing permits.

Part D – listed projects

16. **agreed** to meet and determine which projects will be included in Schedule 2, following receipt of the officials report on 22 August

17. **noted** the current structure and makeup of the Expert Panels has a system capacity restriction. This is a high risk if not addressed and a large volume of projects are listed in Schedule 2 Part A

Out of Scope

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Part G – land management approvals

27. **agreed** to delegate decisions to Hon Jones and Hon Potaka

Part H – leases and rights of first refusal

28. **agreed** to delegate decisions to Hon Jones and Hon Potaka

Ministers received the following papers for the meeting:

- Fast-track Approvals Bill Amendment Papers Agenda
- Paper A - Amended Paper processes
- Paper B - BRF-5172
- Paper C - BRF-5155
- Paper E – BRF-5101
- Paper G – DOC 24-M-0098

Fast-track Listed Project Minister meeting

Record of meeting

Monday 26 August 2024, 6pm – 6.30pm

Executive Wing, 6.3

Ministers	Hon Chris Bishop (Chair), Minister Responsible for RMA Reform, Minister of Housing, and Minister for Infrastructure Hon Simeon Brown, Minister for Energy, Minister of Local Government, and Minister of Transport Hon Shane Jones, Minister for Oceans and Fisheries, Minister for Regional Development, and Minister for Resources
Officials	Nadeine Dommissie, Deputy Secretary (MfE) Paul Stocks, Deputy Secretary (MBIE) Julie Collins, Deputy Secretary (MPI) Paul Alexander, Te Waihanga/The Infrastructure Commission Rebecca Beales, Principal Advisor, Ministry of Transport Ilana Miller, Programme Director (MfE) Abby Cheeseman, Policy Director (MBIE) Agency Officials

Record of the meeting

- Ministers directed officials to provide further advice on the legislation having flexibility to enable standing panels, including sector based panels.
- Ministers directed officials to provide further advice on a gateway in the legislation to triage the most ready projects by sector.
- The Lead Portfolio Minister is delegated to come back with recommendations for projects in each sector, having considered the project advisory report and officials advice:
 - Minister Bishop – Housing and Infrastructure
 - Minister Jones – Aquaculture, Mining, Quarrying, Forestry, Water Storage
 - Minister Brown – Transport and Energy
- Note that ministers may wish to discuss particular proposals with the Minister of Māori Crown Relations, Hon Tama Potaka
- Note – Ministers were clear that it is a user pays system, remuneration should not be a barrier for getting suitably qualified people as part of the panel

- Ministers received the following papers ahead of the meeting:
 - BRF-5178
 - Annex 1.2 – A3
 - Annex 2 – Collated feedback from agencies
 - Annex 3 – MfE Treaty Impact Analysis
 - Annex 4 – draft Cabinet paper.

Record of decisions and actions

Meeting	Fast-track Ministers meeting
Date	Tuesday 10 September 2024
Time	19.45-20.00
Location	6.3EW
Ministers	Hon Chris Bishop (Chair), Minister Responsible for RMA Reform, Minister of Housing, and Minister for Infrastructure Hon Tama Potaka, Minister of Conservation and Minister for Māori Crown Relations: Te Arawhiti Hon Shane Jones, Minister for Oceans and Fisheries, Minister for Regional Development, and Minister for Resources
Apologies	Hon Simeon Brown, Minister for Energy, Minister of Local Government, and Minister of Transport
Officials	Agency Officials s 9(2)(h) (for Part A only)

Record of discussion and decisions:

s 9(2)(h)

Part B – Listed Projects

6. Officials noted amendments were being proposed to enable flexibility to establish standing panels such as sector specific or region specific, and changes were being proposed to allow panels to consider multiple projects concurrently.
7. Ministers noted the importance of supporting timely implementation of the legislation, including the establishment of expert panels.
8. Ministers discussed and made the decision that Schedule 2B would be removed from the Bill. This is because many schedule 2B projects (as recommended by the Advisory Group) are not yet ready to apply for approvals and there would not be significant benefits to including projects

on Schedule 2B and there is a risk that including projects in schedule 2B could discourage other applicants who are more ready to lodge their applications from applying.

9. Ministers were delegated decisions within their portfolio responsibilities and it was noted that advice had been provided from officials as previously circulated.
10. A collated list of all projects would be provided back to MfE officials to include in the draft Cabinet paper ahead of Ministerial consultation.

Materials provided for the meeting:

- Agenda
- s 9(2)(h)
- s 9(2)(h)