Fast-track Approvals Bill – Q&A to support introduction

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Why is this Bill needed and how is this Bill more enabling than the previous fast-track processes?

Consenting major projects costs too much and takes too long – the Infrastructure Commission 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 nearly doubled in a recent five-year period.[1]

This Bill provides a more enabling process than previous fast-track processes as it:

- is a one-stop shop approvals regime, which can provide approvals required under multiple legislation (eg, RMA, Conservation Act and Heritage Act). The previous process only included RMA approvals
- Ministers, rather than Expert Panels, will decide whether to grant or decline approvals. Expert Panels will still be involved and provide detailed recommendations to Ministers
- requires panels to make recommendations within specified timeframes (eg, 25 days after comments are received or in the timeframes specified by Ministers)
- requires Expert Panels to make a decision within 6 months of an application being fast-tracked
- has a purpose focused on facilitating projects with significant regional or national benefits

The Bill carries over procedural and administrative matters that worked well for the COVID-19 fast-track process.

How can a project be fast-tracked and how will the process work?

Any person or organisation can apply to have their project fast-tracked. A broad range of activities will have access to the fast-track process, including infrastructure, renewable energy, housing and mining.

There are two ways a project can access the fast-track process:

- Track 1: By being listed in the Bill. The projects that will be Schedule 2A of the Bill will go straight to the Expert Panel (EP). For more detail see “how will projects be added to the Bill” below.
- Track 2: By applying to Ministers to access the fast-track process. Ministers will determine whether a project should be fast tracked. Projects listed in

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

Schedule 2B will be considered under Track 2 and are deemed to be regionally or nationally significant.

The referral stage (applies to Track 2 as Track 1 skips this step)

- Step 1: person applies to have their project fast-tracked.
- Step 2: Ministers receive application and seek comments from certain groups (including other Ministers, Māori groups, local government)
- Step 3: Ministers consider the project against the eligibility criteria (eg, does it have significant regional and national benefits) and any comments received and decide whether to fast-track the project.

Once the Ministers approve an application for fast-tracking it will go to an EP.

Ministers must decline certain projects. (see “some projects cannot access the fast-track process” below) and will have broad scope to decline projects.

Expert Panel (EP) stage (applies to both Track 1 and 2 projects)

- Step 4: EP receives application and seeks comments from certain groups (other Ministers, Māori groups, local government, landowners).
- Step 5: EP considers the detail of the application and passes draft conditions past the applicant and submitters for feedback.
- Step 6: EP provides its recommendation to Ministers.

Final decision stage (applies to both Track 1 and 2 projects)

- Ministers determine whether to grant or decline the approval/s after considering EP recommendation. Ministers can also ask the panel to reconsider the conditions or ask the applicant to relodge their application.

The Ministers making decisions at the referral and ministerial decision stages are the Ministers of/for Infrastructure, Regional Development, Transport. The exceptions to this are:

- The Minister of Conservation is included at both the referral and final decision stage if a Wildlife approval is needed
- The Minister of Conversation is the sole decision-maker on concessions and Crown Mineral Act approvals at the final decision stage.

What approvals are included in the one-stop-shop?

Applicants will be able to apply for approvals under the following legislation:

- a resource consent, notice of requirement, alteration to a designation, or certificate of compliance under the Resource Management Act 1991 (RMA)
- an approval under the Wildlife Act 1953
- a concession under the Conservation Act 1987
- a concession or other permission under the Reserves Act 1977
- an approval under the Freshwater Fisheries Regulations 1983
- a section 61 land access arrangement under the Crown Minerals Act 1991

- an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014
- a marine consent under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
- Streamlined Environment Court processes under the Public Works Act 1981
- aquaculture decisions under the Fisheries Act 1996

How will listed projects be added to the Bill?

The Bill, as introduced, does not include any listed projects.

Design of a process for people to nominate projects for inclusion in the legislation either to be automatically referred to the EP (Track 1), or for referral by Ministers (Track 2), is under way. This will be announced in the coming weeks.

An independent advisory group will assess projects that have been nominated and recommend to Ministers which projects to include in the Bill. This group will comprise people who represent a range of expertise and experience on matters such as infrastructure, economic development, environment, conservation and local government.

Next steps for this process will be announced shortly after the Bill is introduced. Listed projects will likely be added through the Committee of the Whole House phase]

Some projects cannot access the fast-track process

The Bill clearly states certain projects or projects in certain areas that will not be able to be fast-tracked. These projects fall into the following main categories:

- Projects occurring on certain types of land (mostly relating to Treaty Settlements and other arrangements) without the permission of landowners.
- Certain types of activities prohibited under the RMA that relate to the occupation of space in the common marine and coastal area.
- Certain types of activities in the open ocean: activities prohibited under international law, decommissioning activities, and until permitting legislation is put in place – offshore wind.
- Activities in the following conservation areas: national parks, nature reserves, scientific reserves, wilderness areas, wildlife sanctuaries, marine reserves, RAMSAR (protected wetlands) sites, and national reserves.

A detailed list of projects ineligible for fast-track is given in attachment 1.

Who will be able to provide input into the fast-track process?

There is no requirement for decision-makers to seek comment from the public or hold a hearing.

Applicants will be required to engage with relevant local authorities and Māori groups prior to lodging a referral application. They must provide a record of engagement and how it has informed the project.

At the referral stage, Ministers will be required to seek comments from relevant ministers, local authorities, Treaty settlement / related entities, and other identified Māori groups with interests.

EP will be required to seek comment from relevant ministers, local authorities, Treaty settlement / related entities, and other identified Māori groups with interests, landowners and requiring authorities.

Can decisions be appealed?

Appeals on Ministers' decisions will be limited to points of law only to the High Court. Only certain groups, including the applicant, submitters, Attorney-General, and any person who has an interest in the decision that is greater than that of the general public can appeal.

The Bill does not limit the right of judicial review.

The Bill does not amend appeal rights to Environment Court decisions made in relation to compulsory land acquisition under the Public Works Act 1981.

How will environmental and other protections be considered?

Referral stage

When deciding whether to refer a project Ministers may consider how it will contribute to (in a negative and positive way) climate mitigation, adaptation and resilience to natural hazards. Ministers may also decline an application for referral on the basis it has adverse environmental effects.

Expert Panel Stage

The EP will use the underlying legislation and associated documents (eg, national direction, regional plans) to inform how environmental effects can be managed.

However, the purpose of the Bill takes precedence over considerations under other legislation. This means that projects that are inconsistent with RMA national direction will be able to be approved under this Bill.

Documents outlining how environmental effects will be managed in an area (eg, Regional and District Plans) will be considered by an EP when forming their recommendations. This means EPs will consider how effects on specific sites (eg, wahi tapu, heritage sites, sensitive environmental areas) can be avoided or mitigated through conditions.

Expert Panels may recommend that conditions be set to ensure environmental effects are managed. They may recommend declining an application if the effects cannot be appropriately managed.

Conservation safeguards

The Bill protects important conservation values by excluding the most important conservation land (eg national parks, wilderness areas, and nature reserves); from the fast-track process, providing for an ability to consider if an activity could reasonably be undertaken in another area outside of conservation lands, and requiring Ministers and Panels to take into account any impact on threatened, at-risk or data-deficient species.

What protections does the Bill provide for Treaty settlements, other arrangements and Māori rights and interests?

The Government stated that the Bill would uphold Treaty settlements and other arrangements[2].

The Bill has an overarching Treaty clause requiring all persons exercising functions to act in a manner that is consistent with existing Treaty of Waitangi settlements and other arrangements.

The Bill provides a number of protections for Treaty settlements, other arrangements and Māori rights and interests, including those outlined below.

Referral stage

- Ministers may decline to refer an application if referral would be inconsistent with a Treaty settlement.
- Ministers must seek and consider comments from relevant Māori groups.
- Ministers are required to consider the following when making a referral decision:
    - information on Treaty settlement / related matters, and the interests of iwi and hapū
    - a report on Treaty settlement and other obligations (which is written in consultation with the Ministers for Māori Development and Māori Crown Relations: Te Arawhiti)

Expert Panel stage

- EP must seek and consider comments from relevant Māori groups.
- EP must consult with the Ministers of Māori Development and Māori Crown Relations: Te Arawhiti when preparing recommendations for Ministers.
- EP have specific requirements in terms of membership and expertise that ensure relevant Treaty of Waitangi / settlement expertise is present.

Final decision stage

- Ministers must consider whether an application is consistent with Treaty settlements and other arrangements for the final grant/decline decision.

[2] Other arrangements refers to arrangements made under the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, and joint management agreements and mana whakahono ā rohe agreed under the RMA.

All stages

- Ministers and the EP are required to give the same considerations to documents specified in settlements/arrangements as they would under normal processes
- Ministers and the EP are required to follow any procedural matters stated in settlements/arrangements
- The Bill contains a specific clause confirming the role of Te Ture Whaimana as the primary direction setting for the Waikato River, in accordance with the Waikato River Authority Vision and Strategy.

What engagement has been done during the policy development on the Bill?

The Select Committee process is an opportunity for people and groups to have further input into the Bill.

The Minister Responsible for RMA Reform sent letters inviting local government, Post-Settlement Governance Entities (PSGEs), pan-Māori groups, and development and environment interests (including ENGOs) to meet with officials to discuss the policy proposals and provide feedback.

Following the letters, meetings and online discussions were held. Written feedback was also received.

Ministers Bishop and Potaka met with the National Iwi Chairs Forum (NICF)'s Pou Taiao grouping of Iwi Chairs and the Te Tai Kaha Collective.

Engagement with Māori

Letters were sent to 130 Māori groups, including pan-Māori groups and PSGEs. Subsequently officials met with 47 PSGEs and with technical advisors to the National Iwi Chairs Forum and the Te Tai Kaha Collective (a pan-Māori advisory group comprising the New Zealand Māori Council, the Federation of Māori Authorities and Ngā Kaiārahi o te Mana o te Wai Māori) to discuss the proposals.

Detailed list of activities ineligible for fast-track

- activities occurring on land returned under a Treaty settlement, or Identified Māori Land, without written agreement from the relevant landowner
- activities occurring on Māori customary land, or land set apart as Māori reservation under Part 17 of Te Ture Whenua Māori Act 1993
- activities occurring in a customary marine or protected customary rights area without written agreement from the rights holder/group
- activities occurring within an aquaculture settlement area without the required authorisation
- activities that would be prevented under section 165J, 165M, 165Q, 165ZC, or 165ZDB of the RMA (which deal with occupation of space in the common marine and coastal area).

- for project in the open ocean, activities prohibited under international law, decommissioning activities, and until permitting legislation is put in place – offshore wind
- activities that require permissions on national reserves held under the Reserves Act 1977
- an activity on land listed under clause 1 to 12 or 14 of Schedule 4 of the Crown Minerals Act 1991