

Legislative Statement for Fast-Track Approvals Bill

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

The Bill is to be introduced under urgency on 7 March 2024.

Introduction

1. The Fast-Track Approvals Bill (“the Bill”) delivers on the coalition government’s 100-day plan commitment to introduce a fast-track one-stop-shop consenting regime. The Bill aims to enable faster approval of infrastructure and other projects that have significant regional or national benefits.
2. Consenting major infrastructure and other projects in New Zealand takes too long, costs too much and places insufficient value on the economic and social benefits of development relative to other considerations. The Bill contains measures that address these challenges.

Key Provisions of the Fast-Track Approvals Bill

3. The Bill is standalone legislation with a statutory purpose focused on providing a fast-track decision-making process to facilitate the delivery of infrastructure and development projects with significant regional or national benefits. A broad range of projects will be able to access the fast-track process including infrastructure, housing, resource extraction, aquaculture and other developments, provided they meet the eligibility criteria in the Bill.
4. The fast-track process consolidates and speeds up multiple consenting and permissions processes under a range of legislation that are typically required for large and / or complex projects. The consents / permissions included are:
 - resource consents, notices of requirement, alterations to designations and certificates of compliance under the Resource Management Act 1991 (RMA)
 - marine consents under the Exclusive Economic Zone and Continental Shelf (Environment Effects) Act 2012 (EEZ Act)
 - section 61 land access arrangements under the Crown Minerals Act 1991
 - applications for archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014
 - concessions and other permissions under the Conservation Act 1987 and Reserves Act 1977
 - approvals under the Wildlife Act 1953
 - approvals under the Freshwater Fisheries Regulations 1983
 - undue adverse effects test under the Fisheries Act 1996.
 - Streamlined Environment Court process under the Public Works Act 1981 processes.

5. Projects can access the fast-track process through two pathways, either by the applicant applying to joint Ministers¹ to refer an application to an expert panel, or through inclusion in the schedules of the Bill (“listed projects”). The Bill contains two categories of projects (Schedule 2, Part A and Part B):

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

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

- 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

Fast-track referral process

7. Joint Ministers will decide whether to refer a fast-track application to an expert panel.
8. To aid the joint Ministers’ referral decision, projects will be assessed against a set of criteria designed to help determine whether projects are consistent with the purpose of

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

the Act (ie, will provide significant regional or national benefits). When assessing projects, the joint Ministers must consult with relevant portfolio ministers, local authorities, agencies or statutory bodies, Treaty settlement / related entities and other identified Māori groups with interests.

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

The expert panel

10. The role of the expert panel is to consider the project in detail and prepare a report and recommendations setting out whether, in the panel's view, the project should be approved or declined, with any conditions the panel considers appropriate to manage adverse effects.
11. The purpose of the Bill will take primacy in the panel's assessment of an application, with normal considerations under existing legislation informing the assessment but having lesser weight.
12. The panel must report back to joint Ministers within 6 months of referral.
13. A panel convenor will be appointed by the Minister for Infrastructure to appoint members of expert panels. The panel convenor will be a former (including retired) Environment or High Court Judge. Panels will be chaired by either the panel convenor or a suitably qualified person, determined by the panel convenor in consultation with the Minister.
14. Panels will be unable to seek wide input from the public on the project, instead they will be required to obtain written comments from a limited range of affected parties, including:
 - any group joint Ministers sought comment from at the referral stage
 - relevant portfolio ministers
 - relevant local authorities
 - landowners and occupiers on and adjacent to the site
 - requiring authorities that have a designation on or adjacent to the site
 - any other person the expert panel considers appropriate.
15. It is not mandatory for a panel to hold hearings as part of this process, although a panel has the discretion to do so to assist their assessment.

Treaty settlements

16. Protections have been drafted into the Bill to help ensure Treaty settlements and other specified arrangements are upheld throughout the fast-track process, including:
 - a general requirement for all persons exercising functions under the Bill to act in a manner that is consistent with Treaty of Waitangi settlements, customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

- an ability for joint Ministers to decline to refer an application to the expert panel if they consider it is inconsistent with a Treaty settlement / specified arrangement
- the panel must comply (as if it were a local authority) with any Treaty settlement or specified arrangement that imposes an obligation on a local authority
- if a Treaty settlement or specified arrangement includes procedural matters relating to the appointment of a decision-making body for hearings, the panel must comply with those arrangements or obtain agreement from the relevant entity to adopt a modified arrangement
- where a Treaty settlement / specified arrangement provides for the consideration of a document (including statutory planning documents) where relevant, it must be given the same or equivalent effect.

Decision-making

17. The purpose and provisions of the Bill will take primacy over other legislation in decision making. This means that approvals can be granted despite other legislation not allowing them, such as, projects that are prohibited activities or those which are inconsistent with RMA National Direction. This approach is intended to ensure key infrastructure and other development projects with significant benefits for communities are not declined where the benefit of approving the project outweighs any issue identified.
18. The expert panel will provide a report and recommendations to joint Ministers, who will then make the substantive decision on the application and any conditions required. Concessions under the Conservation Act 1987 will be decided by the Minister of Conservation. Existing ministerial decision-making under the Crown Minerals Act is retained.
19. Before making the substantive decision to amend or reject the expert panel's recommendations, joint Ministers will undertake an analysis of those recommendations. Ministers will also have the power to refer the application back to the applicant to amend the application or refer the application back to the expert panel for the panel's reconsideration of conditions.
20. When making a decision that departs from the panel's recommendations, joint Ministers must only consider relevant matters within the legislation. Joint Ministers may also seek clarification from the expert panel, commission additional advice and seek further comments from affected parties to inform their consideration.

Implementation

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

Judicial review and appeals

22. The Bill does not limit the right for any person to file a judicial review to the High Court for statutory decisions that will be taken under the Fast-Track Approvals Act.
23. Appeals on Ministerial decisions may be taken to the High Court on points of law only. After a High Court determination, no appeal may be made to the Court of Appeal, but a party may apply to the Supreme Court for leave to bring an appeal.