

Update on COVID-19 Recovery (Fast-track Consenting) Bill Cabinet paper

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On Tuesday 11 May the Government released a Cabinet paper (Paper) providing further details on the proposed COVID-19 Recovery (Fast-track Consenting) Bill (Bill). You can read the Paper and the Minister for the Environment's media release [here](#). Below is a summary of the key aspects of the proposal following our recent [legal alert](#).

The Paper outlines the purpose and intent of the Bill and provides further details about the proposed content of the Bill to support New Zealand's economic recovery. The Paper signals an intention to enable:

- The acceleration of a wide variety of projects of different scales around New Zealand to provide certainty of investment and ongoing employment
- New Zealanders' future economic, environmental and social well-being.

Projects anticipated to benefit from the Bill include local government projects to upgrade infrastructure, community facilities and assets, national roading projects, and public and private projects aimed at alleviating housing challenges, encouraging active transport and enhancing the environment. There is also a focus on projects which respond to environmental challenges including climate change.

In summary, the Government is proposing three levels of intervention to temporarily fast-track resource consenting and designation processes:

- A list of specific large-scale Government-led projects in the Bill which could proceed without any further decision or consent. While the details for this group of projects are still to be provided, certain projects in the National Land Transport Programme of Waka Kotahi/New Zealand Transport Agency will likely fall into this category
- A category of central and local government projects that could occur as of right, subject to meeting specified criteria such as capital value thresholds and land tenure requirements. While specific details are not outlined in the Paper, examples of projects that may fall into this category include roading and active transport projects, freshwater projects, maintenance and establishment of public tracks and huts, and water and sewage infrastructure projects. Criteria are still being developed for this category of project
- A fast track process for resource consents and designations for other publicly or privately led projects. The Paper outlines the key details for this process, as summarised below.

The interventions proposed are temporary measures with the legislation self-repealing two years after enactment. Projects approved under the Bill but not yet completed and/or projects which have continuing effects will be protected by Orders in Council which will continue to have force after the Bill itself is repealed.

Fast-track consenting process

The fast-track process is proposed to be a two-stage process:

- Eligibility assessment – projects will need to satisfy eligibility criteria and be approved by the Minister for the Environment and/or the Minister of Conservation for fast-tracking. This will be confirmed by Orders in Council
- Fast-track consent process – eligible projects will then have their resource consent and/or designations applications considered and determined by an Expert Consenting Panel appointed by the Minister.

Eligibility assessment: The proposed eligibility criteria include economic benefits, social and cultural well-being, the timesaving from following the fast-track process and whether the project will result in significant public benefit. There are also criteria which would render a proposal ineligible for fast-tracking. Broadly, projects must not include prohibited activities in a plan or proposed plan or be inconsistent with Treaty obligations. The Minister is proposed to have wide discretion to request more information, approve or decline an application for eligibility and/or approve large-scale projects for fast-tracking in stages.

Fast-track process: The dual aims of the proposed process are a high level of certainty of grant and speed of decision making, while maintaining sound environmental decision making consistent with the principles of the Treaty of Waitangi and existing Treaty Settlement obligations. The proposal is to have reduced information requirements for applications for resource consents and designations than currently required under the Resource Management Act (RMA).

The Expert Consenting Panel, appointed by the Minister in accordance with specific criteria, will be required to make decisions on applications within 25 working days of receiving comments from specified persons. That timeframe can be doubled to 50 working days for large-scale projects. Decisions can also be made in stages for appropriate projects to avoid delays. The Panel can request support from the Environmental Protection Authority and/or the relevant local authority, and the applicant will be responsible for the costs of that support.

The opportunity for public input on proposals is proposed to be limited to comments from specified persons and groups (such as relevant local and iwi authorities, owners and occupiers of the subject or adjacent land, certain Ministers and specified organisations including environmental NGOs and infrastructure industry groups) or other interested persons at the Minister's discretion. Such input is provided for at both stages of the proposed fast-track process but the timeframes for comments will be compressed.

There will be no requirement to hold a hearing. When making a decision, the Expert Panel will be required to have regard to comments from specified persons on the application and apply the relevant RMA provisions and additional criteria proposed in the Bill. The limited circumstances for declining an application will be set out in the Bill, with examples including where an application provides insufficient information, does not promote Part 2, is inconsistent with relevant national direction and Treaty settlement legislation, is contrary to freshwater objectives and policies or has more than minor effects on protected customary rights.

Any appeals are limited to a point of law appeal to the High Court and a further right of appeal only to the Court of Appeal. Limits on who can appeal are also proposed.

In summary, there are strong parallels between the proposed fast-track consent process and the 'one stop shop' processes already provided for in the RMA – namely direct referrals and Boards of Inquiry - including in terms of limited rights of appeal. The key differences are more compressed timeframes, the absence of formal notification procedures, the absence of a requirement for a hearing and limited circumstances for declining an application under the fast-track process.

While the Paper provides useful insight into the direction of the Bill, there are still a number of details to be confirmed. Work is ongoing in some areas, as is consultation and engagement with relevant Ministers, Māori and stakeholders. We will continue to keep you updated on the progress of the Bill and any related proposals.

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