
Covid-19 Recovery (Fast Track Consenting) Bill

Another tool in the Government's armoury towards Covid-19 related economic recovery is a step closer this week with the introduction of the Covid-19 Recovery (Fast-track Consenting) Bill. Styled in part on the recovery legislation we saw after the Canterbury and Kaikōura Earthquakes, the legislation seeks to circumvent the Resource Management Act 1991 in an attempt to speed up the consenting of projects with a view to aiding employment and catalysing economic recovery.

For the 11 "listed projects" contained within the Bill itself, the pathway is relatively clear. These projects are already on the fast track and almost (we think!) assured of consent with the expert consenting panel apparently only having to satisfy itself that the grant of consent or designation is not inconsistent with any national policy statement (including a New Zealand coastal policy statement) or Treaty settlement legislation and then determining what conditions should attach. The expectation in the Bill appears to be that these projects will be consented in short order, subject to the relevant applicant completing the necessary applications. The Bill sets out some reasonably hefty requirements for those applications, but how that will translate into practice remains to be seen.

For roading and rail projects, KiwiRail and NZTA obtain some limited permitted works powers in respect of existing public infrastructure works (subject to specific performance standards included in the Bill), with local councils being given a monitoring role to ensure accountability. By way of an Order in Council on recommendation from the Minister for the Environment, Kōinga Ora, the Ministry of Housing and Urban Development and local authorities may also receive permitted works powers in limited circumstances.

For everyone else, a pathway exists to get on the fast track bandwagon. Provided certain criteria are met, any person can apply to the Minister for the Environment to have a project referred to the expert consenting panel. With a maximum 70 day decision-making timeframe for most projects, no notification requirements, potentially no hearing and no appeals (other than on points of law), it's a handy process if you can get it. Although getting it may well be the trick! The Bill gives the Minister almost complete discretion as to whether to refer a project on to the

consenting panel and this will assist to ward off successful judicial review (although may not stop it as a tactical stall).

Again, however, the Bill provides for a detailed application and assessment of environmental effects to reach that determination, which will have implications for all applicants. While the Bill indicates that an application need only provide a “general level of detail”, working out what the Minister will actually need to see to be convinced of the merit of the application will be critical – particularly given the substantial number of applications that are anticipated and the requirement for the Minister to invite comment on the application from a range of other Ministers.

There is no doubt the legislation is laudable in its attempt to urgently consent projects that can deliver jobs and catalyse the economy. However, in our experience, “fast tracks” are not the panacea they initially appear to be. Our experience acting for the government recovery agencies under the Canterbury Earthquake Recovery Act 2011 and the Greater Christchurch Regeneration Act 2016 is that processes that require Ministerial decisions can be slowed by myriad factors including the wider political environment. Even under the current streamlined plan processes in the Resource Management Act 1991, the Ministerial decision to agree the “fast track” or otherwise has taken, on average, seven months over the six applications so far approved (before the actual process for council or judicial decision-making even starts). In a similar vein, it is our experience that the political goodwill expended on these processes can wane with time and particularly after the first judicial review (especially if the Minister is reprimanded by the Courts).

The legislation is well-constructed and could definitely be a game-changer for many projects, with a resultant stimulus to the economy. The question is whether it will be more successful than its predecessors in actually producing the promised time-savings. Navigating the necessary Ministerial approval processes will require considerable skill and strategic nous. Retaining advisors well-versed in these processes will be critical, particularly in the early stages where all potential applicants are endeavouring to work out what the legislation requires.

If you would like more information on whether your project might be assisted by this new process, please feel free to [contact us](#). We expect demand for the Minister’s attention under this legislation to be high and providing a compelling case early will be a significant advantage.
