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## Fast-track Approvals Bill introduced

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The Fast-track Approvals Bill (*FTA Bill*) - Government's key legislative mechanism for accelerating the delivery of nationally or regionally significant infrastructure and development projects - was introduced to Parliament last week and is now open for public submissions until Friday 19 April.

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The "bones" of the new approval process as set out in the FTA Bill are broadly similar to the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**COVID Act**), which was responsible for the consenting of some 66+ projects generating nearly 60,000 full time equivalent jobs across New Zealand over its four-year life-span. The COVID Act process also provided the template for the fast-track process within the Natural and Built Environment Act 2023, which has survived repeal of that Act, albeit only for the time being.

Given the similarities between the processes, in this update we have focused on some notable departures from the COVID Act process (as currently drafted, but subject to the Select Committee submission process still to come) below:

1. **Pathways (or "tracks")** – As with the COVID Act, projects must first be recognised or approved as qualifying projects in order to access the fast-track consenting process. The ultimate decision-making authority for that qualifying stage lies with the "joint Ministers", generally being the Ministers for Infrastructure, Transport, and Regional Development.

A project can qualify for referral to the fast-track process via the following pathways:

(a) The "open" pathway. Anyone may apply to the joint Ministers for a project to be referred, subject to a number of criteria that a project must meet to be considered for referral (discussed further below).

(b) The "listed" pathway. This pathway (which is actually two pathways) is intended to create what Minister Bishop has described as a "pipeline of projects" whereby the fast-track process is made available projects which "may not be economic right now", but will realise significant national or regional benefits if and when they become viable for delivery.

The "pipeline" is divided into two categories:

(i) "Schedule 2, Part A listed projects". These projects do not need an application for referral. The relevant "authorised person" (to be noted within Schedule 2, Part A) may simply issue a request to the EPA that all or part of those projects are referred for fast-track consenting. The EPA cannot decline that request.

(ii) "Schedule 2, Part B listed referred projects". These projects are considered to have "nationally or regionally significant benefits" and may be referred directly to the fast-track

process by joint Ministers in accordance with the process set

out in the FTA Bill.

These Schedules will be populated prior to enactment of the Bill and will be selected by Cabinet on the recommendation of a Fast Track Advisory Group. There will be an opportunity to apply to the Group for admission of a project to that Schedule, subject to meeting certain criteria which will be published in the coming weeks.

**2. Decision-makers** – The FTA Bill significantly expands the decision-making power of Ministers. Of particular note, expert consenting panels will no longer have the final say over the grant of consent for referred projects; that responsibility now sits with the joint Ministers, with expert consenting panels reduced to a recommending role on the application for the approval (including any conditions). Importantly, unlike the timeframes in place for expert consenting panel decisions, there are no statutory timeframes for Ministerial decisions, which (in our experience of the referral phase of the COVID Act) can lead to a bottleneck in the process. There is, of course, a broader question as to the appropriateness (or otherwise) of Ministers having the final say on consenting decisions, even if the scope for “deviating” from an expert panel’s recommendations is limited. We expect that question will be the subject of detailed submissions during the Select Committee process.

**3. Decision-making framework** – The purpose of the FTA Bill is significantly more expansive, and pro-development, than prior fast-track regimes. The intent is to deliver a fast-track process to “facilitate the delivery of infrastructure and development projects with significant national or regional benefits”.

Considerations relevant to determining what constitutes “significant national or regional benefits” include whether the project:

- (a) has been identified as a priority project in a central or local government or sector plan or strategy;
- (b) will deliver regionally or nationally significant infrastructure or whether it will increase the supply of housing, address housing needs, or contribute to a well-functioning urban environment;
- (c) will support primary industries or the development of natural resources, including minerals and petroleum;
- (d) will support climate change mitigation or adaptation, resilience and recovery from natural hazards; and/or
- (e) will address significant environmental issues.

Unlike the COVID Act, the FTA Bill establishes a clear hierarchy of decision-making criteria, starting with the purpose of the FTA Bill. That is followed by sections 5 – 7 of the RMA (with section 8, which requires decision-makers to have regard to the principles of Te Tiriti, notably absent), followed in turn by the RMA’s hierarchy of planning documents. The requirement to separately consider those matters is somewhat at odds with the now well-established approach of effectively relying on the way in which those documents have implemented Part 2, unless there is some suggestion that the documents have not appropriately incorporated Part 2 outcomes.

One of the most controversial aspects of the FTA Bill is the absence of any reference to the principles of Te Tiriti. This is a significant departure from the approach taken in environmental legislation for the past 30 years, and is a major step change from the COVID Act and the now-repealed Natural and Built Environment Act 2023. Again, we anticipate this will be the subject of extensive submissions (both in support and opposition) during the Select Committee process.

**4. Removing RMA constraints** – Section 104D of the RMA (commonly referred to as the “gateway test”) will not apply to the assessment of resource consents under the FTA Bill. Notably – unlike the COVID Act – a project will not be ineligible for utilising the fast-track process on the basis that it includes an activity that is prohibited under the RMA and resource consent may be granted under the FTA Bill for prohibited activities or activities which are inconsistent with national directions. This represents a strong commitment from Central Government to substantially reduce perceived planning constraints on development and infrastructure projects of scale.

**5. Approvals** – Like the COVID Act, resource consent applications and notices of requirement may

both be considered under the FTA Bill. (Plan changes are not available for fast-tracking.) Changes in conditions to consents granted under the FTA Bill will still need to be processed under the RMA – somewhat incongruously to the “pipeline of projects” notion. The FTA Bill has, however, extended the type of approvals which may be sought through the fast-track process to include approvals, licences, permissions, clearances and other authorities under the Heritage New Zealand Pouhere Taonga Act 2014, the Crown Minerals Act 1991, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, the Conservation Act 1987, the Reserves Act 1977, the Fisheries Act 1996 and the Wildlife Act 1953.

No changes have been made to the land acquisition process under the Public Works Act 1981, except to allow (but not require) the Environment Court, when hearing an objection to a proposal to take land, to accept a determination made under the fast-track process relating to the adequacy of consideration given to “alternative sites, routes, or methods of undertaking the work”. This is a relatively insignificant change and, for various reasons, may have limited benefit. We understand, from public statements made by Ministers, that more changes to the Public Works Act 1981 may be coming.

If you would like to know more about the Bill or require assistance in lodging a submission, please contact [Francelle Lupis](#) or [Rachel Murdoch](#) from our Resource Management team.

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