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Key points

On 7 March 2024, the Coalition Government introduced a Fast-Track Approvals Bill. Its purpose is to 'provide a streamlined decision-making process to facilitate the delivery of infrastructure and development projects with significant regional or national benefits'.¹

The Bill is a key aspect of the Government's programme for Resource Management Act (RMA) Reform.² It is part of the National and New Zealand First coalition agreement and a key component of the Government's 100-Day Plan.

Fast-tracking of favoured projects by Ministers has downsides and risks. On the other hand, problems with the RMA mean consenting major projects takes far too long and costs far too much. The status quo is undesirable.

Changes could be made to improve the Bill, mitigating its downsides.

Ultimately, resource management legislation should enable the development of infrastructure and other projects, while respecting the property rights of landowners. That would reduce the need for a fast-track approvals regime.

Why Fast-Track?

The key motivation for the Fast-Tracking Bill is to reduce the cost of and time for consenting major infrastructure and development projects. A 2021 report for the Infrastructure Commission³ estimated that current consenting processes for infrastructure projects cost \$1.29 billion per year. This estimate considered only RMA processes. It did not include the costs of other conservation-related legislation. Furthermore, it included only infrastructure projects – it did not include projects such as housing, mining or aquaculture, etc., which fast-tracking will also support.

Current consenting processes are slow – the same report found that it took nearly twice as long to get a resource consent for key projects as it did five years before. Furthermore, regionally or nationally significant projects can be rejected or have costly conditions placed on them due to the RMA, or other conservation-related legislation. Typical grounds for rejection focus on managing adverse effects, such as environmental impact. Often, the consent process does not sufficiently recognise the economic and social benefits of development relative to other considerations.

Legislation to be Included in Fast-Track Approval

The Bill contains separate processes for the following approvals:

- Resource consents, notices of requirement, and certificates of compliance under the RMA.
- Concessions under the Conservation Act.
- Authority to do anything otherwise prohibited under the Wildlife Act.
- Approvals under the Freshwater Fisheries Regulations.

¹ Fast-Track Approvals Bill, Explanatory Note

² Phase 1 being the repeal of the previous Government's Natural and Built Environment Act and Spatial Planning Act and Phase 3 being replacement of the Resource Management Act

³ The Coast of Consenting of Infrastructure Projects in New Zealand, July 2021, Sapere report commissioned by the Infrastructure Commission

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- Concessions and other permits under the Reserves Act.
 - Marine concessions under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act.
 - Crown Minerals Act land access provisions.
 - Aquaculture activity approvals under the Fisheries Act.

It makes sense for a fast-track approvals regime to expedite processes associated with the RMA and other conservation-related legislation that can currently delay and add costs to infrastructure and development projects.

The Bill also changes the Environment Court processes under the Public Works Act to make them work 'more efficiently'.⁴ It will be important that these changes do not adversely impact property rights. Increased compensation payments to incentivise early agreement should also be pursued. Unfortunately, though, the Government has not made changes to the compensation regime.

Process for Fast-Track Approval

Projects will become eligible for fast-track approval in two ways, either:

Track 1: By being listed as a project for direct referral to an expert panel (with these projects to be listed in Schedule 2A of the Bill) or

Track 2: Upon an application, through a referral to an expert panel by joint decision of the Ministers of Infrastructure, Regional Development, and Transport (with these projects to be listed in Schedule 2B of the Bill).

No projects are currently listed in either schedule, but reports suggest that as many as 100 projects might be referred.⁵ Each project will have to be considered by an expert panel. The Government will establish a Fast Track Advisory Group of independent experts to advise Ministers on which projects should be included. The Government has stated that projects will be inserted in the schedules during the select committee process.⁶

Under **Track 2** (Track 1 skips this step), Ministers must seek comments from other Ministers, Māori groups, and local government and then consider projects against eligibility criteria (e.g., they will have significant regional or national benefits).

Having two tracks adds complexity and officials' preference was for Minister referrals only (i.e., Track 2). However, having listed projects automatically referred (i.e., Track 1) provides a quicker pathway for those Track 1 projects.⁷

The Bill's eligibility criteria place a strong emphasis on economic development. However, consideration should be given to adding economic efficiency to eligibility criteria. This is important for getting the best wellbeing gains from scarce resources and would help Ministers and expert panels better define what is in the 'national' and/or 'regional' interest. Rigorous cost benefit analysis would provide an important tool for prioritisation.

Some projects will be ineligible for fast-tracking. These include projects on certain types of land (mainly relating to Treaty Settlements) without permission of landowners; activities prohibited under the RMA relating to occupation of space in the common marine or coastal area, types of activity in the open ocean (e.g., prohibited under international law, decommissioning activities, etc); and activities in national parks, nature reserves, scientific reserves, wilderness areas, wildlife sanctuaries, marine reserves, protected wetlands, and national reserves.⁸

⁴ Media statement Hon Chris Bishop and Hon Shane Jones, 7 March 2024

⁵ For example, 'Fast-track list slowed by lawyers' demands', Newsroom, 5 March 2024

⁶ Ibid

⁷ Supplementary Analysis Report: Fast-track Approvals Bill, Ministry for the Environment

⁸ Fast-track Approvals Bill – Q&A to support introduction

If a project is referred (**under both Track 1 and Track 2**), it will be considered by an expert panel applying relevant consent and permit conditions. The expert panel is required to have knowledge, skills and expertise relevant to environmental law, technical expertise on the activity being considered, and an understanding of the Treaty of Waitangi and te ao Māori and matauranga Māori. However, a missing skill is expertise in economic analysis.

The expert panel will seek comments from other Ministers, Māori groups, local government, and landowners. It will consider the details of the application, and it will pass draft conditions past the applicant and submitters for feedback.

The expert panel will then provide its recommendations to the joint Ministers to either approve the project (with conditions) or decline it. Ministers can refer a project back to a panel if they determine that the recommended conditions are too onerous. They will also be able to ask an applicant to reodge their application.

Given the large number of projects likely to be referred, expert panels will need to be well-resourced by the Environmental Protection Authority (EPA) to process referred projects promptly.

Appeal Rights

Appeals on decisions will be limited to points of law and will be heard by the High Court. Appeals will only be permitted from the applicant, submitters, the Attorney General, or ‘any person who has an interest in the decision greater than that of the general public’.

The Bill does not amend appeal rights to the Environment Court or decisions made about compulsory land acquisition under the Public Works Act.⁹

Points of Criticism

Several criticisms have been made on the Bill:

Previous Fast-Track Processes

Opponents of the Bill have observed that there is already a fast-track process (retained when the previous Government’s Natural and Built Environment Act was repealed in December 2023). They argue that this Bill is therefore unnecessary and goes too far.¹⁰ The Government disagrees, referring to key differences between the Bill and previous fast-track approval regimes:

- It provides for a ‘one-stop shop’ approvals regime, which will expedite approvals under multiple legislation, not just the RMA.
- Its purpose is to facilitate projects with significant regional or national benefits.
- Ministers, rather than expert panels, will decide whether to grant or decline approvals.
- Expert panels will be restricted to providing detailed recommendations to Ministers.
- Expert panels must make recommendations within specified timeframes.

Lack of Consultation

Consultation was severely constrained by the time pressure to get the Bill introduced before the end of the Coalition Government’s first 100 Days (on 8 March), with consultation targeted to certain groups with very tight deadlines for comment. A rushed policy process is not ideal for such a significant issue, running the risk of poorly drafted legislation.

The Select Committee process provides an opportunity for the public to have input and for changes to be made to address any problems with the Bill. The Bill will go through the usual six-month period

⁹ Fast-track Approvals Bill – Q&A to support introduction

¹⁰ Media statement by the Environmental Defence Society (7 March) and Opposition MPs in the First Reading Debate (7 March)

for consideration before being reported back to the House. The Committee has allowed nearly six weeks for submissions to be lodged.

Ministers as Decision-Makers

A strong criticism is that Ministers rather than the expert panels will make the final decisions. Officials observed that this will add a step to decision-making and increase delays and costs as officials analyse and advise Ministers on the expert panel recommendations. There is also an increased risk of judicial review if Ministers' decisions differ from the expert panel's recommendations.¹¹

Ministerial decision-making might also increase uncertainty, including from perceptions that decisions are politicised and influenced by lobbying activity and, potentially, even corrupt practices. This risk is mitigated somewhat by having three Ministers make the decisions rather than a single Minister. It could be further mitigated by disclosure requirements, including requiring Ministers to declare why they have not adopted expert panel recommendations, and requiring them to declare meetings with applicants. Political donations from applicants should also be declared.

Officials preferred having the expert panel as the final decision-maker¹². This approach is also not without risk as much will depend on the views of panel members.

Environmental Impacts

The strongest criticism has been claims that the Fast Track Approvals Bill will harm the environment. Opponents point out that:

- Criteria for eligibility are heavily skewed in favour of economic factors.
- The Minister for the Environment will not be one of the joint Ministers.
- Environmental NGOs will not be among the groups to be consulted.
- Activities will be able to happen on (some) conservation land.
- Appeal rights are limited.
- RMA prohibited activities will not be ineligible.¹³

In response, the Government has stated that, when deciding whether to refer a project, Ministers may consider how it will contribute (negatively or positively) to climate mitigation, adaptation, and resilience to natural hazards. Ministers will also be able to decline an application for referral based on its projected environmental effects.¹⁴

At the expert panel stage, underlying legislation and associated documents (e.g., National Policy Statements, National Environmental Standards, etc) will inform ways in which environmental effects can be managed. However, the purpose of the Bill takes precedence over considerations under other legislation, meaning projects inconsistent with RMA documents will be eligible for approval.

An expert panel will also consider regional and district plans under the RMA when forming their recommendations, allowing panels to consider how effects on specific sites can be avoided or mitigated.

Expert panels will be able to recommend conditions to ensure that environmental effects are managed and could recommend declining an application if appropriate management is not feasible. But Ministers will have the final say.

¹¹ Supplementary Analysis Report: Fast-track Approvals Bill, Ministry for the Environment.

¹² Ibid.

¹³ Media statement by the Environmental Defence Society (7 March) and Opposition MPs in the First Reading Debate (7 March)

¹⁴ Fast-track Approvals Bill – Q&A to support introduction

The Bill protects important conservation values by excluding the most important conservation land (e.g., national parks, wilderness areas, nature reserves, etc.) from fast tracking. It also provides for activities to be undertaken in alternative areas outside conservation land. Ministers and expert panels will also have to consider impacts on threatened, at-risk, or data-deficient species. The Minister of Conservation is included as a decision-maker for activities on conservation land.

The Government has deliberately designed the fast-track approval process to put economic factors ahead of environmental factors. It aimed to significantly reduce delay and costs for approval of infrastructure and other development projects. This is a necessary approach given the problems with the status quo, but there is risk of a sharp pendulum counter-swing should there be a change in government, adding political uncertainty into the mix.

A change that could be made would be to include the Minister for the Environment in the referral and decision-making processes. Curiously, the Bill excludes this Minister, who is responsible for the RMA.

Treaty of Waitangi

Another criticism is that the Bill does not respect the Treaty of Waitangi.¹⁵ The Government responds that the Bill upholds Treaty settlements and other arrangements for Māori rights and interests. It has an over-arching Treaty clause requiring all persons exercising functions to act in a manner consistent with existing Treaty settlements and other arrangements.¹⁶

Officials note that the Bill's protections are not as strong as those in existing legislation.¹⁷ However, as with environmental issues, the current strong protections are a factor in delays and high costs of getting approvals. Furthermore, Iwi and other Māori entities will likely benefit from fast-tracking for projects they wish to pursue.

Local Decision-Making

The Bill provides for councils to be consulted during the referral process and during expert panel considerations. But decisions will be made by Ministers, taking away a current responsibility of councils. Fast-tracking is therefore inconsistent with localism, a concept which parties comprising the Coalition Government have previously expressed support for.

Select Committee Process

After passing its First Reading on 7 March, the Bill was referred to the Environment Select Committee, with a report-back date of 7 September. The Committee has called for submissions, with a closing date of 19 April. This is a typical timeframe for a Bill.

Wider RMA Reform

Looking further ahead, Phase 3 of RMA Reform will be the replacement of the RMA, with new legislation based on the 'enjoyment of property rights'. An RMA that enables infrastructure and other development projects (large and small) and enables day-to-day activity to proceed efficiently without the need for fast-tracking would be ideal. Such legislation would reduce the need for a special fast-track approval process. At the same time, other conservation-related legislation should also be reviewed to ensure that it is also more enabling.

Making it clear that the fast-track approvals legislation would be temporary might be desirable, such as including a 'sunset clause' in the Bill.

¹⁵ Opposition MPs in the First Reading Debate

¹⁶ Fast-track Approvals Bill – Q&A to support introduction

¹⁷ Supplementary Analysis Report: Fast-track Approvals Bill, Ministry for the Environment

Potential Improvements to the Bill

The Bill's fast-track approvals regime should result in reduced time and cost to get infrastructure and other development projects up and running – and this would be a good outcome. However, as noted in this paper, there are downsides, especially around having Ministers as final decision-makers.

Changes could be made to reduce the downsides of the Bill:

- Eligibility criteria for projects should include economic efficiency, with cost benefit analysis used to help prioritise projects for referral and approval.
- Expert panels should include expertise on economic analysis.
- Final decision approval, including the ability to apply conditions, should either be given to the expert panel rather than Ministers, or if Ministers remain decision-makers, disclosure requirements be included covering reasons for declining expert panel recommendations, applicants' meetings with Ministers and any political donations applicants make.
- Include the Minister for the Environment in the decision-making process to ensure environmental considerations are given sufficient weight.
- A sunset clause to make fast-tracking temporary while wider substantial RMA reform (and reviews of other conservation-related legislation) is undertaken.
- The compensation payments under the Public Works Act should be increased to incentivise early agreement with landowners.

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