New Zealand Law Society
Te Kāhui Ture o Aotearoa

Fast-track Approvals Bill

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

18 April 2024

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Fast-track Approvals Bill (**Bill**).

1.2 This submission has been prepared with input from the Law Society's Environmental Law Committee, Climate Change Law Committee, and Public Law Committee.[1]

1.3 This submission is structured as follows:

(a) Sections 2 and 3 discuss how aspects of the Bill, and the proposed Fast-track Approvals (**FTA**) framework appear to be inconsistent with fundamental constitutional principles and good regulatory practice.

(b) Sections 4 to 6 identify some issues arising from the interrelationship between the FTA framework and other existing legal frameworks and obligations.

(c) The Appendix contains further suggestions to improve more discrete aspects of the Bill.

1.4 We recommend the Select Committee give careful consideration to whether the proposed FTA framework is a necessary, proportionate and appropriate means of meeting the policy objective of the Bill. If the Bill is to proceed, we encourage the Select Committee to adopt the recommendations set out in this submission, which we believe would address some of the primary issues in the Bill.

1.5 The Law Society **wishes to be heard** in relation to this submission.

2 Consistency with fundamental constitutional principles and good regulatory practice

2.1 The Bill provides for a 'one stop shop' framework which would allow approvals to be obtained under the Resource Management Act 1991 (**RMA**), as well as other legislation,[2] through a single FTA process.[3] It allows approvals to be granted in relation to activities currently expressly prohibited under the RMA and the Wildlife Act 1953.

2.2 Significant powers are concentrated in the Minister for Infrastructure, the Minister of Transport, and the Minister for Regional Development (**Joint Ministers**) throughout the FTA process.[4] For example, the Bill:

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1 See the Law Society's website for more information about these committees: https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/.

2 The Wildlife Act 1953, the Conservation Act 1987, the Reserves Act 1977, the Freshwater Fisheries Regulations 1983, the Heritage New Zealand Pouhere Taonga Act 2014, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act), the Crown Minerals Act 1991, the Public Works Act 1981, and the Fisheries Act 1996.

3 Ministry for the Environment *Supplementary Analysis Report: Fast-track Approvals Bill*, page 4.

4 In some circumstances, these powers are also jointly vested in the Minister for Conservation (where the exercise of those powers relate to an application for an approval to do anything otherwise prohibited by the Wildlife Act 1953) and the Minister of Energy and Resources (where the exercise of those powers relate to an application for an approval under the Crown Minerals Act 1991). We note the Minister for the Environment (as the Minister responsible for the RMA) does not come within this definition.

(a) Empowers the Minister for Infrastructure to appoint the convener of the expert panel (**Panel**) which will consider and make recommendations on whether the Joint Ministers should approve or decline projects under the FTA process.[5]

(b) Gives the Joint Ministers a broad discretion to refer projects to a Panel.[6] One consequence of referral is that once a project is referred to a Panel, members of the public (other than certain specified groups)[7] will not have any opportunity to be consulted on the potential impacts of a project, or to provide feedback to the Panel.

(c) Empowers the Joint Ministers to remove the Panel convener at any time for 'just cause',[8] have input into the appointment of Panel members,[9] and determine the fees for the Panel members.[10]

(d) Allows the Joint Ministers to refer the Panel's recommendations back to the Panel for reconsideration.[11]

(e) Requires the Joint Ministers to consider the Panel's non-binding recommendations, and decide whether to decline the project, or to approve the project (and grant any relevant approvals).[12] In making those decisions, the Joint Ministers may deviate from a Panel's recommendation if they undertake an analysis of the Panel's recommendations and any conditions in accordance with relevant assessment criteria.[13]

2.3 When applications are assessed under the FTA process, Panel members are required to give more weight to the purpose of the Bill,[14] than considerations under other relevant legislation. For RMA consent applications, this includes the purpose of the RMA, the matters of national importance listed in the RMA, or any national direction made under the RMA.[15]

2.4 It is also worth noting that the Bill does not provide for any requirement to promote the sustainable management of natural and physical resources.[16]

2.5 As a result, the FTA framework creates a framework whereby:

(a) Members of the executive branch control both which applications are referred to a Panel, and the outcome of the substantive application.

5 Sch 3 of the Bill.
6 Cl 22.
7 See, for example: Sch 4, cl 20(3) and Sch 9, cl 9(c).
8 Sch 3, cl 9(3) states that "just cause includes misconduct, inability to perform the functions of office, neglect of duty, and breach of duty (depending on the seriousness of the breach)".
9 Sch 3, clauses 4 and 6.
10 Sch 3, cl 8.
11 Cl 25(5).
12 Cl 25(7).
13 Cl 25(4).
14 Sch 3, cl 1.
15 Sch 4, cl 32(1).
16 This is a requirement under the (now repealed) COVID-19 Recovery (Fast-track Consenting) Act 2020. We understand some parts of this Bill are modelled on that Act.

(b) Those same individuals either control or have influence over the appointment, removal, and remuneration of Panel members.

(c) The recommendations of the expert Panel can be disregarded (following analysis), and Ministers may make decisions that circumvent the protections and safeguards against environmental harm embedded within other existing legislative frameworks.

(d) There is limited scope for democratic involvement through this process, in respect of projects that are, by their very definition, of significance to the public.

2.6 This framework appears to be inconsistent with fundamental constitutional principles,[17] and Government expectations for good regulatory practice,[18] because it:

(a) Limits the right to the observance of the principles of natural justice, which is a right protected by section 27 of the New Zealand Bill of Rights Act 1990 (**Bill of Rights**), as discussed in section 3 of this submission. Additionally, and importantly, this risks flawed decision-making, where the decision-makers have not received or robustly tested all relevant evidence.

(b) Creates an approvals process which conflicts with, and circumvents the protections put in place by, other existing legislation under which approvals would otherwise be granted.

(c) Raises concerns with overall legislative coherence, which could present a risk to general system coherence.[19]

(d) May not enable New Zealand to meet its international obligations (for example, obligations under the Paris Agreement to reduce greenhouse gas emissions by 50 per cent below 2005 levels by 2030), as discussed in section 5 of this submission.

(e) Grants broad powers to the Joint Ministers by enabling them to refer projects to the FTA process, and to then make decisions to approve or decline those very same projects. This appears to be wider than necessary to achieve the policy objective of the Bill (which is to provide a "fast-track decision-making process to facilitate the delivery of infrastructure and development projects with significant regional or national benefits"),[20] and does not appear to have a direct connection to that objective.[21]

(f) Creates a potential for decision-making that is not objective or independent (by enabling the Joint Ministers to make decisions about applications which were referred to the FTA process by those same Ministers, as noted below), and creates a risk that that the Joint Ministers will be (or have already been) subjected to lobbying or other attempts to influence their decision making. Combined with the effects of (b) and (e), above, the framework may not meet the

17 See Legislation Design and Advisory Committee *Legislation Guidelines* (2021), chapter 4.
18 Government of New Zealand *Government Expectations for Good Regulatory Practice* (2017).
19 Ministry for the Environment *Supplementary Analysis Report: Fast-track Approvals Bill* pages 3 - 4 and 38.
20 Clause 3 and Explanatory Note of the Bill.
21 See Legislation Design and Advisory Committee *Legislation Guidelines* (2021) at 18.4

requirement for decision-makers to be independent of the parties whose interests are affected.[22]

(g) Does not allow for the fair and equitable treatment of all parties regulated under this Bill, because there is no requirement for the Joint Ministers to complete relevant steps in the FTA process within the short timeframes which are imposed on the other parties involved in the FTA process (as discussed at [3.8 – 3.16] below).

2.7 The Legislation Design and Advisory Committee (**LDAC**) has also cautioned against legislating bespoke solutions to award resource consents or other outcomes for planning related matters, in preference to the relevant applicant making applications under existing legislation.[23] The LDAC believes the public interest is usually best served by legislation which sets general rules and processes, as such rules and processes provide the most predictability and clarity to those to whom they apply, and to the wider community affected.[24]

2.8 As the LDAC notes:[25]

> Enacting bespoke legislation which supersedes general rules and processes carries a number of risks:
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> - Bespoke legislation can increase the complexity in the law, which increases the risk of error and unintended consequences and makes it more difficult for the public to know what law applies to their situation.
> - Legislating for particular circumstances risks undermining democratic values and the legitimacy of Parliament and, in some cases, may be seen as biasing the system towards interests that are well-funded or well-connected and able to lobby for their interests.
> - Too many bespoke solutions may undermine the confidence and certainty in the general system, and may incrementally shift the overall balancing of rights and responsibilities under that general system.

2.9 We agree there should be a strong underlying public policy rationale, and exceptional circumstances which justify bespoke legislation solutions.[26] This is particularly important where the bespoke legislation seeks to bypass or limit existing consultation requirements, participatory rights in consenting processes, and appeal rights (as proposed in the Bill).

2.10 We have discussed some of these concerns in more detail below, and in the attached Appendix.

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22 Legislation Design and Advisory Committee *Legislation Guidelines* (2021) at 18.6.

23 Legislation Design and Advisory Committee *Annual Report of the Legislation Design and Advisory Committee for the year ended 30 June 2018* (2018) at pages 10-12.

24 Legislation Design and Advisory Committee *Annual Report of the Legislation Design and Advisory Committee for the year ended 30 June 2018* (2018) at page 11.

25 Legislation Design and Advisory Committee *Annual Report of the Legislation Design and Advisory Committee for the year ended 30 June 2018* (2018) at page 11.

26 Legislation Design and Advisory Committee *Annual Report of the Legislation Design and Advisory Committee for the year ended 30 June 2018* (2018) at page 12.

3 Limits on natural justice rights

3.1 As mentioned above, the Bill gives the Joint Ministers a broad discretion to refer projects to a Panel, and to subsequently make decisions to approve or decline those very projects. In doing so, the Joint Ministers can disregard a Panel's recommendations to approve or decline a project. It is unclear why it is necessary to grant these powers to the Joint Ministers, as the Bill already makes significant changes to existing statutory tests, and:

(a) Enables consents and approvals to be granted for projects and activities which would otherwise be prohibited, or declined, under existing legislation; and

(b) Requires Panels to give greater weight to the objectives and purposes of this legislation when assessing applications for resource consents.[27]

3.2 These concerns are compounded by the fact that the proposed FTA framework limits the right to natural justice by:

(a) Requiring feedback on proposals within very short timeframes;

(b) Limiting the information available to decision-makers;

(c) Providing for a limited appeals process; and

(d) Creating a potential for decision-making that is not independent or objective, by enabling the Joint Ministers to make decisions about applications which were referred to the FTA process by those same Ministers.

3.3 Together, these features of the FTA framework could have significant adverse impacts on the quality of information presented to decision-makers, and as a result, the quality of the decisions themselves. This could increase the risk of protracted litigation, which could slow or stall the progress of projects altogether, counter to the intent of the Bill.

3.4 We discuss these concerns in more detail below, and make recommendations which could address some of those concerns.

Limited notification and consultation opportunities

3.5 Even though the FTA process allows approvals and consents to be granted for projects which will deliver "regionally or nationally significant infrastructure",[28] the Bill only requires limited consultation and engagement throughout the FTA process. For example:

(a) It requires applicants to consult certain individuals, groups and entities the applicant considers are likely to be affected by the project.[29] It does not require wider public consultation about a proposed application or project.

(b) Other than the mandatory consultees set out in cl 16(1), applicants are able to select who is consulted, and required to include only a summary of any consultation they have undertaken in their referral application, alongside a statement explaining how that consultation has informed the proposed project.[30]

27 Sch 4, cl 32(1).
28 Cl 17(3)(b).
29 Cl 14(3)(h) and 16.
30 Cl 14(3)(i) and

There is no requirement for the Panel to identify other affected parties, or to be provided with the actual responses received during consultation. They will instead effectively be reliant on the applicant's decision as to who is consulted, and the applicant's 'interpretation' and summary of those responses, meaning, in relation to the consultation that is reported to the Panel, there is a potential for some points to be 'lost in translation', or worse, misrepresented.

(c) For Part B listed projects, the Joint Ministers must consult, and invite written comments from certain specified groups.[31] Again, there is no requirement for the Joint Ministers to undertake wider public consultation.

(d) In relation to applications for resource consents, the Bill expressly prohibits a Panel from giving public or limited notification of a consent application or notice of requirement. Further, the Bill only requires a Panel to consult specified groups and individuals, and there is no requirement to consult the public.[32] While the Panel does have the power to invite comments from "any other person the Panel considers appropriate",[33] given the context and purpose of the Bill such a power is likely to be limited to specific identifiable person(s) rather than the local community or public at large. There is also no requirement for the Panel to hold hearings, and no person has a right to be heard by a Panel.[34] Where a Panel opts to hold a hearing, it can only hear from a prescribed group of individuals.[35]

3.6 Wider public and stakeholder consultation could offer various benefits for applicants and decision-makers who are involved in the FTA process. It could:[36]

(a) Increase transparency and the legitimacy of the FTA process;

(b) Improve the quality of decisions by ensuring the Joint Ministers and Panel members are able to consider the perspectives of all those who are likely to be affected by a proposed project;

(c) Promote public understanding and acceptance of the decisions made by Joint Ministers, and improve public confidence in the FTA process; and

(d) Consequently, reduce the risk of appeals and judicial review (which could otherwise work against the objectives of the Bill).

3.7 Projects which will deliver "regionally or nationally significant infrastructure" could directly and indirectly impact on a very wide group of individuals, as well as on members of the public. There is also likely to be a strong public interest in decisions to authorise activities which are currently prohibited, or would constitute an offence, under existing legislation (such as the Wildlife Act 1953). Projects of such significance will often have impacts of corresponding significance for affected parties and the wider public. Rather than limiting consultation, such projects would appear to warrant *greater* consultation. The Select Committee could consider if there is merit in extending the consultation

31 Cl 19.
32 Sch 4, cl 20(1).
33 Sch 4, clauses 20(4) and 20(6).
34 Sch 4, cl 23.
35 Sch 4, cl 24.
36 Legislation Design and Advisory Committee *Legislation Guidelines* (2021), chapter 19.

requirements in the Bill to the wider public, or to anyone who is likely to be directly or indirectly impacted by a proposed project. We also encourage the Select Committee to consider the recommendations set out in the Appendix, which relate to the provisions discussed at [3.5] above.

Short timeframes

3.8 The proposed timeframes for providing feedback and input throughout the FTA process are similar to – and at some stages, shorter than – the consultation timeframes built into the fast-track consenting process provided for in the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**COVID-19 fast-track consenting process**). This is despite the Bill allowing applicants to seek consents and approvals under a broader range of enactments for regionally and nationally significant infrastructure and development projects which may be more complex and technical than the projects which could be approved under the COVID-19 fast-track consenting process. It is worth noting that the Joint Ministers are not subject to similar timeframes.[37]

3.9 In our view, the proposed timeframes are too short, and may not allow for meaningful engagement and input into the FTA process.[38] This is particularly likely to be the case where:

(a) Applications are accompanied by a large volume of supporting documents which must be read and understood to properly understand the impacts of a project;

(b) Applicants need more time to respond to issues raised by submitters (noting that, for large infrastructure projects, this may require the redesign or reassessment of elements of the application);

(c) Panels are comprised of a similar number of individuals as the present COVID-19 fast-track consenting process (i.e., up to four members),[39] who may not be familiar with all of the legislation governing approvals, authorities and concessions which are able to be sought via the FTA process;

(d) There are difficulties in arranging expert support for the Panel or for persons providing comment within the short time periods proposed in the Bill; and

(e) Those experts also have limited time to prepare and peer review reports.

3.10 Rushed or summary responses are likely to be of limited use to the Panel, and to the Joint Ministers, and may undermine the reasons for the Panel requesting expert advice or offering parties the opportunity to comment. We therefore suggest providing for longer timeframes to allow for more meaningful consideration, input, and engagement, as discussed below.

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37 See, for example, Sch 4, cl 40, which imposes no timeframes on joint Ministers to make final decisions under cl 25.

38 This is also acknowledged in the Ministry of Justice's advice regarding the consistency of the Bill with the Bill of Rights (at page 2).

39 Sch3 cl 3(1).

Providing comments on referral applications (clause 19(5))

3.11 The proposed 10-working-day timeframe is too short, given it may be the only opportunity that a person may have to comment on potential adverse impacts of a project and any conditions which may be needed to mitigate those impacts. Such timeframes are also likely to be problematic for iwi authorities and councils who may need time to carry out their own consultation and authorisation processes prior to providing comment. We recommend extending this timeframe to 20 working days.

Providing comments to the Panel about applications for resource consents (Schedule 4, clause 21)

3.12 This 10-working-day timeframe (particularly when considered alongside the limitation on extensions in subclause (7)) is unrealistic, given the extent and complexity of the materials which must be considered and addressed in any written feedback. We also recommend extending this timeframe to 20 working days.

3.13 It may also be appropriate to invite comments from the parties specified in Schedule 4, clause 21, at an earlier stage in the FTA process (for example, when a referral application is approved, or when a Panel is appointed). The Panel could then invite comments from any other party once the application is referred to the Panel.

Responding to comments about applications for resource consents (Schedule 4, clause 22)

3.14 Clauses 21(5) and 22 of Schedule 4 require the Environmental Protection Authority (**EPA**) to forward copies of any comments received under clause 21 to the applicant or requiring authority. The applicant or requiring authority must then respond to those comments no later than 5 working days after the comments are provided to the EPA. Five working days seems unreasonable, given the applicant or requiring authority will likely need to seek advice from legal and expert technical experts and prepare a detailed response.

3.15 It also appears this timeframe would apply in circumstances where the EPA fails to promptly pass on any comments to the applicant or requiring authority. This would unfairly impact applicants and requiring authorities, who then have fewer than 5 working days to consider and respond to any comments. It is also likely that the applicant or requiring authority will want to consider any comments as a whole, before preparing a response. Therefore, we suggest including a requirement for the EPA to forward all comments to the applicant or requiring authority within a specified date, then requiring a response from the applicant or requiring authority within 10 working days from that date.

3.16 While we have only raised concerns about some of the timeframes provided in the Bill, we urge the Select Committee to review all timeframes specified in the Bill to ensure they are appropriate in the circumstances, and allow for meaningful input and engagement, and proper consideration of the impacts of the applications which will be considered via the FTA process. It is important to undertake such an exercise, as the timeframes in the Bill are linked to one another, and impact on other stages of the FTA process. Any changes to the timeframes should also be factored into the timeframe imposed on the

Panel to issue their decisions, with proportionate extensions made to that date as well. In the context of large projects (and in particular, those with construction periods of one or more years, which in the past have required 2-4 years to obtain consents), increasing the timeframe for the fast track consenting process by 2-4 months would facilitate a materially more robust and fair decision making process, while adding negligible additional time to the consenting process (i.e., by any measure, the process would remain a 'fast track' consent).

Limited appeals process

3.17 While decisions of Joint Ministers (to grant or decline approvals under the FTA process) can be appealed to the High Court, the Bill only permits a limited and specified group of people to appeal those decisions, and only on questions of law.[40] The High Court's determinations cannot then be appealed directly to the Court of Appeal. Instead, parties are required to apply to the Supreme Court for leave to bring an appeal directly to the Supreme Court. The Supreme Court can then determine whether to hear the appeal, to remit the appeal to the Court of Appeal, or to refuse to give leave altogether. Appeals remitted to the Court of Appeal cannot then be appealed to the Supreme Court.[41]

3.18 This process limits the right to natural justice, and the right of access to the courts, by reducing the scope of appeal to questions of law, and restricting the rights of affected parties to have the facts and merits of a decision examined in the High Court.[42] In doing so, it excludes examination of whether a decision-maker erred in reaching certain conclusions about the facts relevant to a decision, and effectively makes the appeal process similar to judicial review (which is already available under the Bill).

3.19 The Legislation Guidelines recommend that first appeals should generally include a right of appeal on the facts. [43] If appeals are to be limited to questions of law, the reasons for this should be made clear, and include careful consideration of the purpose of the appeal, the competence of the appellate body, and the appropriate balance between finality, accurate fact-finding and correct interpretation of the law.[44]

3.20 As the Departmental Disclosure Statement (**DDS**) notes:[45]

> "the ability of the courts to review the legality of government action or to settle disputes is a key constitutional protection. Appeal and review rights and procedures allow for scrutiny and correction of specific decisions of first instance decision-makers, and also help to maintain a high standard of public administration and public confidence in the legal system."

3.21 The Select Committee should therefore consider whether it would be appropriate to allow merits-based appeals, particularly given the Bill and proposed framework provide limited opportunities for public engagement and input (which would otherwise have

40 Cl 26(1).
41 Clauses 26(2)-(5).
42 It is worth noting that these limitations are not considered in the Ministry of Justice's advice regarding the consistency of the Bill with the Bill of Rights.
43 Legislation Design and Advisory Committee *Legislation Guidelines* (2021) at 28.5.
44 Legislation Design and Advisory Committee *Legislation Guidelines* (2021) at 28.5.
45 At page 11.

allowed for factual matters to be tested during the FTA process itself), and given neither the Panel nor the Ministers are required to be qualified lawyers or have had legal training.

3.22 We appreciate that this limited appeals process may be intended to enable decisions regarding significant infrastructure and building projects to be made quickly, and without the costs of litigation arising from decisions to approve or decline projects.[46] However, these risks must be balanced against the need to ensure consistency with the Bill of Rights, and to ensure that an appeal can be conducted fairly, and in accordance with the principles of natural justice.[47] From a practical perspective, limited appeal rights may also be counterproductive if concerned persons bring judicial review proceedings, in order to challenge various aspects of the decision-making process.

Other safeguards

3.23 The FTA framework should also include additional safeguards which better protect the rights of individuals who are likely to be affected by the decisions made by the Joint Ministers.[48] These safeguards should seek to ensure the powers under this legislation are appropriately exercised, and there are mechanisms in place to increase transparency and accountability about the assessment and consideration of applications, and to promote public confidence in the decision-making processes.

3.24 These safeguards could include the following:

(a) **Allocation of Ministerial portfolios**: it is possible for some, or all of the Ministerial portfolios of the Joint Ministers to be held by a single individual. If this were to occur, the Joint Ministers' broad powers would be concentrated on a single individual who holds all the relevant Ministerial portfolios. We recommend there be a requirement for the relevant portfolios to be held by at least three separate persons appointed as Ministers at all times.

(b) **Requirement to record considerations**: the Bill could be amended to include a requirement to record in writing any consideration of:

(i) the reports obtained under clause 13(1);

(ii) the applications considered under clause 17;

(iii) the applications declined under clause 21;

(iv) the applications accepted under clause 22; and

(v) the Panel's report, under clause 25(7).

(c) **Select committee scrutiny of projects**: we recommend pausing progress of the Bill, and referring Schedule 2 of the Bill back to a Select Committee, once it is fully populated. This would allow for Parliamentary and public scrutiny (and

46 Departmental Disclosure Statement, page 11.
47 Legislation Design and Advisory Committee *Legislation Guidelines* (2021) at 28.7.
48 Legislation Design and Advisory Committee *Legislation Guidelines* (2021) at 18.6.

submissions) of the projects proposed for listing and their respective information requirements.[49]

(d) **Responsibility for approving or declining projects**: it would be more appropriate for the powers to refer applications to the Panel (under clause 22(3)), and to approve projects (under clause 25(7)), to be vested with different individuals or bodies. For example, the Bill could empower the Joint Ministers to refer applications to the Panel, and authorise the Minister for the Environment, or the Panel itself, to subsequently approve or decline a project.[50] This could help address any concerns regarding actual or perceived conflicts of interest, and enhance public confidence in decisions to approve or decline projects.

(e) **Clear criteria for departing from the Panel's recommendations**: the referral of applications to a Panel allows for independent expert scrutiny of those applications, and the potential impacts certain projects may have on the environment. The ability to deviate from a Panel's recommendations therefore has the potential to undermine the independent scrutiny of applications by experts, and diminish public confidence in the decision-making process. The Bill should provide clear criteria for when it is appropriate to deviate from a Panel's recommendations. It may be appropriate to limit this criteria, for example, to circumstances where:

(i) A Panel is unable to reach a unanimous decision;

(ii) The Joint Ministers disagree with a Panel on a question of law (mirroring the proposed grounds on which an appeal can be brought under clause 26(1));

(iii) If the Bill is amended to allow merits-based appeals (as discussed at [3.17 – 3.22] above, circumstances where the Joint Ministers disagree with a Panel about the merits of a recommendation); and

(iv) Where the Joint Ministers have good reasons to deviate from a Panel's recommendations (including significant matters of national importance).

(f) **Written reasons**: we also suggest including a requirement for the Joint Ministers to provide written reasons for deviating from a Panel's recommendations, in order to improve the transparency of the decision-making process.

4 References to The Treaty / Te Tiriti

4.1 We note that the Bill does not include any requirement to take into account or act in a manner consistent with the principles of the Treaty of Waitangi and only contains references to "Treaty settlements". In this regard, the Bill differs from the COVID-19 Recovery (Fast-track Consenting) Act 2020 (which required decision-makers to act consistently with Treaty principles), the (now repealed) Natural and Built Environment

49 Sch 4, cl 3 of the Bill suggests that "information requirements" could also be added to Sch 2.

50 We note that the power to determine consent applications under the COVID-19 Recovery (Fast-track Consenting) Act 2020 were vested in the expert consenting panel, rather than the Minister (see Sch 5 of that Act).

Act 2023 (which required decision makers to give effect to the principles of "Te Tiriti"), and the RMA (which requires the principles to be taken into account).

4.2 We acknowledge this is likely an intentional policy decision. We also note that intended work on legislative references to the principles of the Treaty and any legislative response, has not yet been undertaken or opened for public scrutiny. Neither Parliament nor the public have yet made the decision to remove or replace such references.

4.3 In excluding such a requirement, it is important to acknowledge that there are a number of iwi who have not yet settled, and are likely to be impacted by projects approved under the FTA framework. The Select Committee should carefully consider whether their rights and interests will continue to be recognised and upheld in the absence of an express requirement to consider or act consistently with the principles of the Treaty.[51] This is particularly important, as the Supplementary Analysis Report suggests the Bill:[52]

(a) Will likely have negative impacts on broader Māori rights and interests, which will likely outweigh any benefits for Māori developmental interests; and

(b) Will only uphold Treaty settlements, and maintain the level of redress provided in those settlements, if the proposed clauses requiring consistency with Treaty settlements work as intended.

5 Impacts of projects on the climate

5.1 We understand the Ministry for the Environment's Climate Implications of Policy Assessment (**CIPA**) team has confirmed the CIPA requirements set out in *Cabinet Office Circular CO (20) 3: Climate Implications of Policy Assessment Requirements* do not apply to the proposals in this Bill, as they do not have a direct impact on emissions.[53]

5.2 However, we agree expediting infrastructure and development through fast-track approvals could lead to "significant indirect emissions impact through increased construction activity".[54] Nevertheless, the Bill:

(a) Does not impose any obligation on applicants or the Joint Ministers to undertake an assessment of the climate implications of each project that is to be referred to a Panel;[55]

(b) Does not require the Joint Ministers to seek comments from the Minister of Climate Change before deciding to refer an application to a Panel; and

(c) Enables the Joint Ministers to approve projects which could increase greenhouse gas emissions, or negatively impact New Zealand's ability to achieve its target

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51 The Supplementary Analysis Report for the Bill suggests the FTA regime may only seek to uphold "all existing treaty settlements" (see: *Supplementary Analysis Report: Fast-track Approvals Bill* at page 2).

52 *Supplementary Analysis Report: Fast-track Approvals Bill* at pages 18 and 38.

53 Ministry for the Environment *Supplementary Analysis Report: Fast-track Approvals Bill*, paragraph 128.

54 Ministry for the Environment *Supplementary Analysis Report: Fast-track Approvals Bill*, paragraph 129.

55 We acknowledge that clause 17 of the Bill gives the Joint Ministers the discretion to consider whether a particular project will support climate change mitigation, including the reduction or removal of greenhouse gas emissions. However, this does not appear to be a strict requirement.

under the Paris Agreement to reduce greenhouse gas emissions by 50 per cent below 2005 levels by 2030.

5.3 We query whether this is the intention of the Bill, and whether the Bill has the potential to lead to inconsistencies with New Zealand's international obligations under the Paris Agreement, the United Nations Framework Convention on Climate Change, the Protocol to the United Nations Framework Convention on Climate Change, and the Climate Change Response Act 2002.

5.4 While the Bill has the potential to streamline approvals processes and improve efficiency, these benefits should not displace existing processes for climate change mitigation. We therefore invite the select committee to consider whether it would be appropriate to:

(a) Amend clause 14 of the Bill to provide that referral applications must include information about whether a project:

(i) Will contribute to New Zealand's greenhouse gas emissions, and if so, an estimation of what those contributions are likely to be (similar to the information typically included in a CIPA disclosure sheet);

(ii) Is consistent with the relevant requirements in New Zealand's first emissions reduction plan, and New Zealand's first national adaptation plan; and

(iii) Is consistent with relevant climate mitigation or adaptation provisions in regional land transport plans and regional policies.

(b) Add a new, separate clause in Part 2 of the Bill, after clause 13, to require the joint Ministers to obtain and consider a report assessing the greenhouse gas emissions of the project, in a similar manner to the consideration of the effects on Treaty settlements provided by clause 13. An example could be:

> "(1) Before deciding to refer a project to an expert panel, the joint Ministers must obtain and consider a report from the responsible agency on the application for referral that is prepared in accordance with this section.
>
> (2) The report must include the below matters:
>
> > (a) disclosure of the details of the particular greenhouse gases and sources of greenhouse gas emissions as identified, defined, and included in New Zealand's Greenhouse Gas Inventory;
> >
> > (b) direct emission impacts from the implementation of the project, including but not limited to embodied emissions, operational emissions, and rebound emissions;
> >
> > (c) consideration of indirect impacts may also be identified and estimated where possible;
> >
> > (d) a disclosure sheet identifying the cumulative emission impacts of the project in tonnes of carbon dioxide

> equivalent for each identified budget period set by the Climate Change Response Act 2002, as well as a total figure;
>
> (e) a quality assurance statement from the providing agency.
>
> (3) Where the report records concerns regarding greenhouse gas emissions the Minister for Climate Change becomes one of the joint Ministers to determine referral of the project."

We acknowledge there is presently no requirement in existing legislation to obtain such advice. However, it would be helpful to include this additional step in the FTA process in order to assist the Joint Ministers in deciding whether it is appropriate to refer a project to a Panel (particularly where the project offers significant regional or national benefits, or seeks to deliver regionally or nationally significant infrastructure).

6 The relationship with the RMA

6.1 Resource consents are granted under the RMA with the intention they shall achieve "sustainable management of natural and physical resources".[56] This Bill does not include a similar reference to (or any requirement to achieve) sustainable management. As a result, the proposed FTA framework creates a risk to the sustainable management of resources by circumventing existing environmental protections in RMA plans.[57]

6.2 We acknowledge that the Joint Ministers must consider whether a project will address "significant environmental issues".[58] However, the Bill does not define this term, nor does it provide any guidance as to what those issues might be, or how those issues should be addressed. As a result, the Bill effectively creates a second, parallel process for sustainable management and development (based on the criteria set out in clause 17).

6.3 We query whether this is in fact the intention of the Bill, and if so, whether this intention should be more clearly signalled.

7 Careful consideration of the proposed framework needed

7.1 In light of the concerns discussed above, we encourage the Select Committee to carefully consider whether the proposed FTA process is in fact an appropriate and effective means of meeting the policy objective of the Bill (which is to "provide a streamlined decision-making process to facilitate the delivery of infrastructure and development projects with significant regional or national benefits"). This is particularly important here, given:

(a) the ability of the Bill to significantly broaden the types of projects which can proceed under this framework; and

(b) the Bill was introduced and referred to Select Committee without any public consultation prior to its introduction (i.e., during the policy design & development stage).

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56 RMA, s 5(2).
57 *Supplementary Analysis Report: Fast-track Approvals Bill* at page 38.
58 Cl 17(3)(i).

7.2 If the Bill is to proceed, we urge the Select Committee to consider the recommendations set out in this submission (and the attached Appendix).

Frazer Barton
President

Appendix: further suggestions to improve the Bill

Clause	Comments
Part 1 – Preliminary provisions	
3	Clause 3 states the purpose of this legislation is "to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits". The absence of any qualification to this purpose means the limited provisions in the Bill which enable certain applications to be rejected are, by definition, contrary to the statutory purpose. We suggest inserting a qualification which recognises and acknowledges the circumstances in which the Joint Ministers can decline applications, for example, by clause 3 so it refers to "the delivery of *certain* infrastructure and development projects". We also suggest inserting a definition of the term "significant regional or national benefit" into clause 4 of the Bill.
4(1)	While the proposed definition of "approval" includes a range of instruments, it does not describe the essential character of what an approval is. Therefore, it could be argued this definition does not encompass other Ministerial 'approvals' apparently intended to be included under the Bill (for example, any concessions, authorisations of land exchanges, and revocations of conservation covenants, which are referenced in Schedule 5 of the Bill, and are not expressly included in the definition of "approval"). We suggest inserting the following text into the definition of "approval": "**approval** *means the exercise of a discretion conferred by statute required for a Part A listed project, a Part B listed project or a referred project to proceed, and* includes a resource consent, notice of requirement, certificate of compliance, licence, permission, clearance, or other authority". See also the comment below about clause 10(2) of the Bill.
4(1)	The definition of "identified Māori land", and the wording of clauses 18(a) and (b) (which refer to certain activities on Māori land), are similar to the provisions relating to "protected Māori land" in section 11 of the Infrastructure Funding and Financing Act 2020 (**IFFA**). Some practitioners have noted that the definition used in the IFFA has, in some

	circumstances, led to practical difficulties in identifying protected Māori land, and consequently slowed the progress of levy orders made under the IIFA. There must be adequate resources to support those who need to search Māori land records, and to assist in identifying Māori land. A single search function for searching through all Māori land records could also be helpful.
4(1)	This clause defines "panel" as "an expert panel that is appointed in accordance with, and that complies with, Schedule 3". However, the terms "panel" and "expert panel" are used interchangeably throughout the Bill. As "panel" is the defined term, it would be appropriate to use that term throughout the Bill for better clarity and consistency. The reference to "complying with" Schedule 3 is unusual and should be deleted. If a panel were to not comply with a provision in Schedule 3, such as by inadvertently failing to comply with clause 5(1), this would mean it was not a panel for the purposes of the legislation. We also recommend inserting a brief clause (perhaps, before clause 25) which cross-references Schedule 3. This would assist in understanding the mechanics of the formation and operation of the Panels, and improve the clarity and accessibility of the Bill. If this recommendation is accepted, the proposed definition of "panel" in clause 4(1) should also be updated to refer to this new clause.
4(1)	Clause 11 of the Bill states that a panel may be appointed to consider Part A listed projects, Part B listed referred projects, and any other project or part of a project referred to a panel by the joint Minsters (defined in that clause as a "referred project"). We suggest including this definition (or a reference to this definition) in clause 4(1), in order to improve the clarity of the Bill. We note that "Part A listed projects" and "Part B listed referred projects" are already defined in clause 4(1).
4(1)	The Bill does not include a definition of "relevant iwi authorities". It could be helpful to provide a definition, particularly if there is to be early service on relevant iwi authorities. We note that "iwi authority" is defined in the RMA, but do not believe that definition is sufficiently clear for the purposes of this Bill.

4(1)	We recommend defining the term "resource consent", so it includes applications made under section 127 of the RMA to change or cancel consent conditions (similar to how the proposed definition of "notice of requirement" expressly refers to designation changes). See also the comment below about clause 10(1) of the Bill.
7	Clause 7 records the status of Te Ture Whaimana generally, but not its status in the implementation of the Bill. If it is to remain the primary direction-setting document for the Waikato and Waipā River catchments (as currently noted in clause 7), we suggest incorporating a similar provision in clause 6 (which sets out the obligations relating to Treaty settlements and recognised customary rights), and requiring any actions taken under this legislation to be consistent with Te Ture Whaimana.
9(1)	We suggest amending this clause to require "all *reasonably* practicable" steps to be taken.
Part 2 – Fast-track approval process for eligible projects	
10(1)	We recommend inserting a new clause 10(1)(j), in order to clarify that variations to consents could also be obtained via the FTA process: *"(j) any variation of an approval listed under (a)-(i) above"* See also the comment above about clause 4(1) of the Bill.
10(2)	It is suggested that clause 10(2) refer to "approvals", rather than "consents, authorities, and permissions" for consistency with subclause (1), and in order to avoid any suggestion that subclause (2) relates to a different set of instruments from those in subclause (1).
10(2)	The requirement to identify "all of the consents, authorities, and permissions that are being applied for under the fast-track process" could be unduly onerous on applicants. The Bill must allow for flexibility in the FTA process, and enable any ancillary approvals needed for a project to also be granted via the FTA process. We therefore recommend amending

	this clause to refer to require applicants to only identify "all of the *relevant types of approvals that are being sought* under the fast-track process".
11 and Sch 3	The Bill does not include any specific provisions about the timing of the appointment of Panel conveners and members. However, it appears Panel conveners would need to be appointed: a) *after* the Minister for Infrastructure consults the other relevant portfolio Ministers about the appointment of a Panel convener (as required under Schedule 3, clause 2), and b) *before* a referral application reaches the steps in the FTA process contemplated in clause 24 of the Bill – i.e., before the responsible agency is required to notify the Panel convener of a decision to accept a referral application (under subclause (2)), and before the Minister for Infrastructure is required to provide relevant information to the Panel convener (under subclause (4)). We acknowledge this omission may be intentional (and necessary, for example, where there are difficulties in finding suitable appointees). However, it would be useful to insert a provision (perhaps between clauses 23 and 24 of the Bill), to clarify the stage at which the Panel conveners and members must be appointed. This provision need not specify a timeframe for making such appointments (and, as a result, there would not be any need to find and appoint qualified and suitable candidates within a limited period of time).
11, and Part 2 of the Bill	The Bill allows the FTA process to be used for projects which fall into three categories: a) Projects listed in Part A of Schedule 2 of the Bill ("Part A listed projects"); b) Projects listed in Part B of Schedule 2 ("Part B listed referred projects"); and c) Projects which are not listed in Schedule 2 of the Bill ("referred projects"). It is unclear which clauses in Part 2, subparts 1 and 2, would apply to the projects in each category. Therefore, it may be helpful to provide for a separate application and referral processes for each of these three categories.
12(2)	This clause could be better worded as follows:

	"However, for a Part A listed project, the authorised person must lodge the application with the EPA (rather than apply to the Ministers) ~~*for assessment by an expert panel*~~ and the EPA must refer the project to a panel to be assigned by the panel convener."
13(2)(k)	We suggest splitting this clause into two separate clauses, in order to more clearly distinguish the requirement to include a summary of the comments and information provided by Māori groups to the Joint Ministers, from the requirement to include the responsible agency's advice on whether the referral application should be accepted. We also suggest amending this clause to include reasonable timeframes for those Māori groups to provide comments and information to the Joint Ministers.
13(2)	Given the status of Te Ture Whaimana (recognised in clause 7), it may also be appropriate for reports prepared under clause 13 to include information about Te Ture Whaimana.
14(2) and 14(3)	These clauses require referral applications to include only a "general level of detail" about the different approvals needed for a project, and "a general assessment" of the project in relation to national policy statements and national environmental standards. These terms create vague obligations for applicants, and fail to set clear minimum standards about the information which must be included in a referral application. We suggest amending this clause to set clearer expectations for applicants, and to facilitate a more robust and informed decision-making process under clause 17 of the Bill.
14(3)(f)	On its face, this subclause does not appear to require consideration of the New Zealand Coastal Policy Statement (because national policy statements are defined with reference to section 52 of the RMA). This appears to be an anomaly, and we query whether this omission is intentional.
14(3)(h) and 14(3)(k)	The groups listed in clause 14(3)(k) are already listed in in clause 14(3)(h). Therefore, we suggest deleting clause 14(3)(k).
14(3)(u)	This clause suggests applications can be made under the FTA framework, even where applications have already been lodged under the RMA for the same, or a similar project. It would be helpful to explicitly clarify whether this is indeed

	the case, and if so, whether projects would become ineligible for the FTA process after applications have progressed past a certain point in the standard RMA process, or after decisions regarding those applications have been made under the standard RMA process.
16	Despite the heading of this clause referring to "consultation requirements", subclauses (1) and (2) only require the applicant to undertake "engagement". If consultation is in fact intended, it would be clearer to use that term in the body of this clause (noting there is clear caselaw guidance as to the meaning of the term (see *Wellington International Airport Ltd v Air New Zealand Ltd* [1993] 1 NZLR 671, as described by Asher J in *Diagnostic Medlab Ltd v Auckland District Health Board* [2007] 2 NZLR 832). If the reference to "engagement" is to be retained, the heading of clause 16, and the wording of clause 14(3)(i) should also refer to "engagement" rather than "consultation" for consistency.
17(2)	The Bill does not require there to be a 'net' benefit of the project after consideration of all the factors, rather simply that there be a 'significant' local or national benefit. The risk with such a proposal is that even short term economic benefits of a project may sway the decision making process, even if the project overall results in a net negative balance to the project for the region/country. We invite the select committee to consider whether it would be appropriate to require projects to have a net benefit in order to become eligible for the FTA process.
17(2)	It appears anomalous that the Bill does not expressly give the Joint Ministers the discretion to reject an application on the basis of the nature and scale of its environmental effects. We recommend this be a mandatory consideration.
17(3)	This clause, together with the purpose clause (clause 3), and the absence of a definition of "infrastructure" in the Bill, creates the impression that any project which meets the eligibility criteria in the Bill could be considered under the FTA process. Therefore, it would be helpful to include a definition of "infrastructure" in order to refine the scope of the Bill and the FTA process. This definition could be modelled on the definition provided in section 2(1) of the RMA. We acknowledge that clause 4(2) of the Bill states that terms which are not defined in the Bill are to be as defined in the RMA, but greater transparency in the drafting of clause 17 would improve the clarity of the scope of the FTA process, and the types of projects which could be considered under the FTA process.

	It may also be helpful to explain what constitutes "regionally or nationally significant infrastructure".
17(3)(j)	Under this clause, the Joint Ministers may consider local and regional planning documents, but not national direction instruments (other than the National Policy Statement on Urban Development 2020). This appears anomalous, and we query whether this is intentional.
19	The Bill should be amended to include a requirement for referral applications to be published in the *New Zealand Gazette*, or on a public website. This would give the parties who may be invited to provide comments under clauses 19(1) and 19(4), and the parties who must be consulted under clause 19(2), advance notice about referral applications which are relevant to them, and increase the time available to them for providing comments and feedback. Alternatively, if it is not appropriate to make a referral application publicly available at the stage in the FTA process contemplated in clause 19, the notice requirement could be built into clause 24.
19(5)	The proposed 10-working day timeframe is too short, given that may be the only opportunity to comment on potential adverse impacts of a project, and any conditions which may be needed to mitigate those impacts. We recommend extending this timeframe to at least 20 working days.
21(1)(c)	This clause contains a minor typographical error – it should refer to "an", rather than "and".
21(2)(c)	This clause gives the Joint Ministers the discretion to reject applications for projects which have significant adverse effects on the environment. However, the drafting of this clause (and in particular, the use of the word "may" in clause 21(2)) suggests the Joint Ministers can also approve applications for projects which have significant adverse on the environment. We query whether this is the intention of this clause, and if so, we recommend amending the clause to more clearly reflect this intention. The current drafting is otherwise likely to invite judicial review proceedings relating to the exercise of that discretion (which would then extend the time for obtaining an approval under the FTA process). We also note that regionally or nationally significant projects are likely to have some (potentially significant) adverse effects on the environment. Therefore, it would be helpful to refine this clause, for example, by referring to "significant

	adverse effects on the environment, which cannot appropriately be addressed by any conditions which can be imposed on a consent or approval" (or similar).
21(2)(g) and 21(6)	This clause states the Minister can decline a referral application even if it meets the eligibility criteria for "any other relevant reason". It is unclear what these other relevant reasons are. We suggest clearly and expressly setting out any reasons for declining such applications, in order to improve the clarity and certainty of the law, and for consistency with the rule of law, and natural justice requirements. We also note that clause 21(6) appears to simply to repeat the statement in clause 21(2)(g), and can deleted from the Bill (as it does not provide a further discretion to decline a referral application).
21	The Bill does not require the Joint Ministers to record their reasons for declining a referral application. This could increase the likelihood of those decisions being challenged through judicial review (which would then prolong the process for obtaining an approval under the FTA process, and work against the objectives of the Bill). We recommend amending the Bill to require the Joint Ministers to provide reasons for declining referral applications under clause 21.
24(3)(d)	This clause erroneously refers to the need to "specify the deadline for lodging any approval" for an activity. Presumably, this clause should read: "specify the deadline for lodging any *application for* approval"
25	The Bill should set out what happens in the event a Panel is unable to reach a unanimous decision regarding its recommendations. In such circumstances, there should be a requirement for both the majority and minority positions of Panel members to be set out in the report prepared under clause 25, along with the reasons for their differing views.
25(3)	This clause gives the Minister for Māori Crown Relations: Te Arawhiti, and the Minister for Māori Development, 5 working days to comment on a Panel's draft report. It is unlikely that this timeframe allows for proper scrutiny and consideration of the report. We suggest extending this timeframe to at least 10 working days.
25(4)	This clause empowers the Joint Ministers to deviate from a Panel's recommendations in certain circumstances. We recommend:

	a) amending the Bill to provide clear criteria for when it would be appropriate to deviate from a Panel's recommendations (as discussed in paragraph 3.24(e) of the main body of this submission); b) including a requirement for the Joint Ministers to provide written reasons for deviating from a Panel's recommendations (also discussed at paragraph 3.24(f)); and c) defining the term "relevant assessment criteria" (which presumably refers to the criteria set out in the various Schedules).
25(6)(b) and (c)	This clause provides that the Joint Ministers may commission additional advice, and seek further comment. However, it does not state: a) Whether Panel members will have the opportunity to consider those comments and advice, and revise their recommendations in light of any new information; and b) Whether the Joint Ministers can then consider any advice or comments they receive under this clause before they make a decision under subclause (7). We suggest amending this clause to clarify these points. We also recommend building in adequate safeguards to guide the commissioning of such further information so that the role and purpose of the Panel is not undermined, and natural justice rights are upheld. Against this background, it would also be appropriate to reorder the subclauses in clause 25 as follows, to improve the clarity of the decision-making process: subclause (1), subclause (2), subclause (3), subclause (6), subclause (5) (expanded to also refer back information under (6)(b) and (c)), subclause (7), subclause (4), subclause (8) and subclause (9).
25(7)	We recommend amending this clause to include a requirement for the Joint Ministers to give public notice of any decision to approve or decline a project within a certain number of working days of the decision (for example, 5).
25(8)	This notification requirement is too limited, given the parties who are allowed to appeal a decision under clause 26(1). All the parties listed in clause 26(1) should also be notified of any decisions made under clause 25(7).

27	We suggest extending the timeframe for filing a notice of appeal, in order to reduce the risk of holding appeals being filed in the short timeframe proposed in the Bill (and the risk of related judicial review proceedings being filed thereafter).
30	The Bill would read more logically if this clause was inserted immediately after clause 25. We also note the description of the Schedules in clause 30 appears to be incomplete, as Schedules 5 to 10 also set out the processes for Ministerial decisions. We suggest amending this clause to reflect the (broader) scope of the Schedules.
Schedule 3	
Sch 3, cl 1(2)	This subclause requires clarification. If the intention is for the purpose of this legislation to have greater weight than any considerations in other legislation, it should express this more clearly (perhaps by changing the wording from "greater or lesser" to "greater *to* lesser").
Sch3, cl 1(3)	This subclause states that a Panel may recommend declining an approval if any "mandatory requirements" that relate to the activity concerned cannot be met. We recommend clarifying what these mandatory requirements are (including by providing cross-references to other clauses in the Bill which specify such requirements).
Sch 3, cl 2(5)	This clause suggests the Panel's role is confined to making recommendations about matters relating to the RMA. However, the remainder of the Bill (and clause 11 in particular) requires Panel members to consider every aspect of a project that is referred to them, and to make recommendations regarding all consents, approvals and authorities required for that project. For clarity and consistency with the remaining provisions of the Bill, we recommend amending this clause to reflect that broader role, rather than the more discrete aspects of that role which relate to RMA matters.
Sch 3, cl 3(1)	The Bill allows "up to 4 persons" to be appointed as members of a Panel. This requirement may give rise to circumstances where Panel members are unable to reach a majority decision about the recommendations relating to a particular project. This could be avoided by requiring Panels to be composed of an odd number of members.

Sch 3, cl 3 & 4	The Bill provides for a Panel to be chaired by a suitably qualified lawyer, *or* a planner with experience in relevant law. Clause 7 provides for the skills and experience that must then be collectively held by the members of the Panel, but does not explicitly require a member with legal expertise. Given the lack of merit appeals, and the various legislative frameworks under which approvals can be sought under the Bill, this is undesirable. We recommend clause 7 is amended to include reference to legal experience, so as to ensure this expertise is provided for where a Panel is chaired by a planner.
Schedule 4	
Sch 4, cl 1 and 3(1)	Clause 1 of Schedule 4 states that Schedule 4 sets out the processes for considering and deciding applications for approvals which would otherwise be decided under the RMA. This clause is inconsistent with clause 3(1) of Schedule 4, which suggests applications can also be made for consents which would otherwise be decided in accordance with the Acts listed in clause 10 of the Bill. As Schedule 4 does not set out the processes for deciding applications for approvals under other legislation, we suggest amending clause 3(1) of Schedule 4 to only reference the RMA.
Sch 4, cl 3(c)	This clause contains what appears to be an erroneous reference to Schedule 3 (which sets out the rules regarding the appointment and the operation of Panels, and rather than any restrictions, obligations or information requirements relating to referred projects). We therefore suggest deleting the reference to Schedule 3.
Sch 4, clauses 9 and 10	It is unclear how these clauses interact with the disclosure requirements and the withholding grounds in the Official Information Act 1982 (**OIA**) and the Local Government Official Information and Meetings Act 1987 (**LGOIMA**). We suggest clarifying the relationship between this legislation, and the OIA and the LGOIMA. This clause is also problematic for other reasons: a) It effectively places a greater restriction on local authorities sharing information with the EPA than with the general public (because a request for information under the LGOIMA can only be declined if it meets one of the withholding grounds in the LGOIMA, and the public interest does not outweigh the need to withhold that information. While both the OIA and LGOIMA can protect information subject to an obligation of confidentiality,

	the nature of the projects to which the Bill applies and the limited opportunity for public involvement are likely, in many cases, to increase the public interest in release of information). b) It does not address how confidentiality can be maintained once information is provided to the EPA. Where a local authority reaches agreement with iwi or hapū to share information on a limited basis (or subject to other conditions), those conditions cannot then be enforced if the EPA receives a request for that information under the OIA. In such circumstances, the EPA would need to consider the request in accordance with the withholding grounds in the OIA, and determine whether it would be in the public interest to make that information available to the requestor (as noted above, it will likely be argued that it is in the public interest to disclose information about the delivery of regionally or nationally significant infrastructure, or about projects which have significant regional or national benefits, and have been referred to the FTA process by the Joint Ministers under the broad discretion granted to them under the Bill).
Sch 4, cl 20	This clause allows Panels to seek feedback from Heritage New Zealand Pouhere Taonga, and the New Zealand Infrastructure Commission/Te Waihanga, on referred projects, but not listed projects. The Bill – and related policy documents – do not explain why feedback about listed projects cannot also be sought from those agencies. We suggest clarifying this point, and making necessary amendments to clause 20 if this is due to a drafting error.
Sch 4, cl 20(2)	This clause refers to the role of the "responsible agency" in determining whether a consent application meets the eligibility criteria in clause 17 of the Bill, and in referring a consent application to a Panel. However, clause 22 of the Bill suggests the Joint Ministers are responsible for referring consent applications to a Panel (unless the application relates to a Part A listed project, which would need to be referred directly to a Panel by the EPA, as required under clause 12(2) of the Bill). We therefore suggest amending this clause to clarify the roles and responsibilities of the Joint Ministers, the responsible agencies, and the EPA at this step in the FTA process.
Sch 4, cl 21(1)	For the reasons in paragraphs 3.12 and 3.13 of the main body of this submission, we recommend extending this timeframe to at least 20 working days. We also recommend inviting comments from the parties specified in this clause at an earlier stage in the FTA process.

Sch 4, cl 22	For the reasons in paragraphs 3.14 and 3.15 of the main body of this submission, we suggest including a requirement for the EPA to forward all comments to the applicant or requiring authority within a specified timeframe, then requiring a response from the applicant or requiring authority within 10 working days from that date.
Sch 4, cl 24	While this clause provides a detailed framework for Panel hearings, the very short timeframes in Schedule 4 (and other provisions in the Bill) are likely to adversely impact the ability to hold fair hearings. These concerns are discussed in more detail in paragraphs 3.8 to 3.16 of the main body of this submission. If the timeframes in the Bill are not adjusted as recommendations in this submission, then we suggest deleting the provision for Panel hearings – this may then free up the time that might otherwise be taken up with hearings, and allow that time to be reallocated to prior steps in the FTA process.
Sch 4, cl 32(1)(e)	We suggest including a definition of "national direction" to improve the clarity of the Bill and the FTA process, as it is unclear whether the definitions in sections 46A or 80B of the RMA would apply in this context.
Sch 4, cl 35	If an activity is controlled activity or a restricted discretionary activity, then it is not clear whether the purpose of the Bill should be taken into consideration. The interrelationship of this clause and clause 32 should be clarified.
Sch 4, cl 35(5)	This clause states that section 104D of the RMA (which allows resource consents to be granted for non-complying activities only in certain limited circumstances) does not apply to a Panel's consideration of a resource consent for a referred project. There does not appear to be any rationale for exempting referred projects from this section 104D requirement, while section 104D must still be considered for listed projects. We therefore suggest deleting subclause (5), or amending subclause (5) to exempt all applications from section 104D of the RMA for consistency.
Sch 4, cl 39(7)	This clause could be amended to more clearly indicate that the "Panel's recommendation" refers to the recommendation to grant or refuse a resource consent.
Sch 4, cl 39(9)	This clause states that resource consents obtained under the FTA process would lapse after 2 years (similar to the lapse period for resource consents granted under the COVID-19 Recovery (Fast-track Consenting) Act 2020). Some practitioners have noted this 2-year lapse period has caused problems for large-scale projects which typically take longer to complete, and therefore require resource consents to be in effect over a longer term. For these reasons, the

	lapse period for resource consents granted under the Natural and Built Environment Act 2023 (and subsequently, the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023) was extended to 5 years. For similar reasons, we invite the select committee to consider whether the Joint Ministers should be able to grant consents for a longer period (and up to a maximum period of 5 years) in circumstances where the applicant can demonstrate the complexity of the project warrants it.
Sch 4, cl 40(1)	We suggest amending this clause to require the Joint Ministers to make a final decision "as soon as practicable". This change would align this clause with the objective of the Bill to provide a fast-track decision-making process.
Sch 4, cl 41(1)	This clause should clearly state who is required to serve this notice on behalf of the Joint Ministers.
Schedule 6	
Sch 6, cl 1(2)	The select committee should consider whether the Minister for Conservation should be granted the authority to make independent decisions under the Wildlife Act 1953, similar to the provisions in Schedule 5 (which set out the processes for obtaining concessions and approvals under the Conservation Act 1987 and the Reserves Act 1977). Clause 1(2)(a) of Schedule 6 requires that the joint Ministers or the Panel must "take into account the purpose of the Wildlife Act 1953 when assessing the wildlife effects of a project". This could cause confusion as there is no purpose clause in the Wildlife Act, and the long title of the Act only relates to procedural rather than substantive matters capable of being operationalised by a decision maker. Clause 1(2)(b) also lacks clarity. We suggest amending the subsection to read "take into account the risks to wildlife".
Sch 6, cl 1(3)	It is unclear whether the Director-General of Conservation is required to provide the report referenced in this clause within a certain timeframe. We suggest clarifying this in the Bill.
Schedule 7	

Sch 7, cl 7(2)(c)	We suggest amending this clause to also require applications to include proof of consent from any easement holder, in circumstances where the works are to occur within an easement corridor, and the easement allows that easement holder full rights of access.
Schedule 12	
Sch 12, cl 13	Clause 13 of schedule 12 of the Bill erroneously refers to section 116A of the Fisheries Act 1996. This clause should instead refer to section 116A of the RMA.
Other	
Schedules 5-11	We note that Schedules 5 to 11 do not consistently and comprehensively provide for the processes for obtaining non-RMA approvals under the FTA process. For example, Schedule 5 (which sets out the process for obtaining an authority to anything otherwise prohibited under the Wildlife Act 1953) and Schedule 6 (which sets out the processes for obtaining concessions and approvals under the Conservation Act 1987 and the Reserves Act 1977) do not provide timeframes for completing certain steps in the FTA process, or expressly confirm whether the appeal rights in clause 26 of the Bill apply to decisions regarding those authorities, concessions and approvals. We recommend consistently setting out any relevant timeframes, consultation and notification requirements, appeal rights, and other rights and obligations which would apply to each step of the FTA process in each of the Schedules, in order to improve the clarity of the Bill.