

COVID-19 Recovery (Fast Track Consenting) Bill being drafted

Following on from our recent [article](#) on RMA reforms to fast track projects, the Government has today released the Cabinet Paper on the drafting of this new legislation. We take a closer look at the details here.

Starting with an acknowledgement that the RMA does not provide sufficient investment certainty to enable projects to assist during the Covid-19 recovery period, the cabinet paper outlines how Government will create an alternative consenting pathway for 'infrastructure and other development projects'.

This fast track pathway will be available for two years from the date the legislation is to be enacted – likely to be June this year.

The Bill is proposed to have the following very simple purposes:

- urgently promote employment to support the recovery of New Zealand from the economic and social impacts of COVID-19;
- support certainty of ongoing investment across all of New Zealand;
- provide a fast-track resource consent process for a range of differently sized and located projects.

Projects eligible for this fast track consenting and designation route will need to fall within one of the three following categories:

- Category 1 - Specifically listed large scale Waka Kotahi NZTA projects (that the legislation will specifically name and authorise to occur as of right);
- Category 2 – Waka Kotahi NZTA, Kiwirail and local authority led smaller scale projects e.g. maintenance of existing roads, rail corridors and possibly also other similar local infrastructure, which will also occur as of right;

- Category 3 – Public and privately led projects, which are assessed through a two stage process set out below.

To obtain access to Category 3 an application must be made to the Environment Minister which outlines the ways in which the relevant project will meet a number of criteria to be specified in the legislation. The currently proposed criteria are broad, including whether the project will generate employment, increase housing supply, provide infrastructure, assist with waste minimisation, protect heritage and strengthen social and economic resilience, including to climate change risks.

Some likely constraints have been identified in the cabinet paper, including that a proposed project cannot be a prohibited activity in any current planning documents, and applicants with a poor compliance history are unlikely to be successful.

The cabinet paper suggests that the Minister will be looking to spread the benefit of this fast track consenting pathway across all urban areas and regions of NZ, so the benefits will not be concentrated in just one location. There will likely be additional focus on assisting areas that have been most impacted by the Covid-19 downturn.

If the Minister for the Environment accepts that a private or publicly led project meets the necessary criteria, then orders in council will be made to identify it as an 'eligible project'. The eligible project is then referred to an expert advisory panel who will make final decisions on the consents or designations, including determining appropriate conditions to manage environmental effects.

Once accepted as an eligible project, opportunities for public participation will be very limited, although could involve consultation with key entities such as ministerial departments, local authorities, iwi authorities, environmental NGOs and adjacent landowners.

Decision making timeframes for the expert advisory panel will be truncated to define an expectation of final

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decisions issuing just 25 working days (with a maximum of 50 days) from the last date that information is provided by the applicant. Information requirements will be less than under the usual RMA processes, and significantly, any appeals are limited to points of law only to the High Court and Court of Appeal but no further.

Although it is early days in terms of what the final drafting of the Bill will look like, here are some of the key issues and questions we have on the proposal:

- The first category will likely name up to six Waka Kotahi NZTA projects which will be able to proceed as of right. This could be significant if any of the named projects will be of a similar scale to something like NZTA's long running Transmission Gully project.
- There will be little or no public other agency input on, or scrutiny of, any of the Category 1 and 2 projects.
- For Category 3 projects acceptance and referral to the expert advisory panel for consenting is highly discretionary and dependent on the Minister. At present there is little certainty over how the proposed broad criteria will be applied, so the wording in the legislation will be critical and highly scrutinised.
- Projects that the cabinet paper suggests will be more likely to be accepted as eligible projects include:
 - a. Three waters infrastructure;
 - b. Local authority upgrades of community assets and facilities;
 - c. Housing;
 - d. Active transport e.g. walking, cycling;
 - e. Green initiatives – projects with a sustainability and climate change focus.
- The decision making criteria for the advisory panels tasked with consenting eligible projects is potentially very broad, including the difficult task of weighing

the purpose of this new fast tracking legislation alongside Part 2 of the RMA.

- There remains heavy emphasis on infrastructure and other projects (that literally require shovels) rather than a broader review of what kind of infrastructure will serve New Zealand now and into the future, such as considering digital, natural, culture and social infrastructure investments: [The Lever Room: Build Back Better](#)
- Limited appeal rights are helpful for a fast track process, however this can be problematic if the advisory panel imposes conditions which are unrealistic or unworkable.

Next steps

The refined drafting the Bill will be produced before it is introduced to Parliament. Applying powers of urgency, the earliest expected date for commencement of the Bill will be the end of June.

If you are a local authority, you should consider engaging with the Ministry for the Environment on how any planned projects will fit within categories 2 and 3. You might assess how current timings and budgets for existing projects fit within the likely two year timeframe provided for this fast track process.

If you are a private developer, you should be engaging on current projects which could be in a position for making an application to the Minister to access this fast track process by June this year. You need to be considering how these projects might provide economic recovery benefits including potential employment numbers. Green initiatives and positive responses to climate change risks will be received favourably.

Want to know more?

If you have any questions about this proposed Bill, please contact our specialist [environment, planning, and natural resources team](#).