

COVID-19 Recovery (Fast Track Consenting) Bill introduced to Parliament

We have been following the RMA legislation which provides for fast track consenting and can provide a further update now that the COVID-19 Recovery (Fast Track Consenting) Bill is available.

The purpose of this legislation is to urgently promote employment growth to support New Zealand's recover from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across the country, while continuing to promote the sustainable management of natural and physical resources. This purpose will form the background for any assessment of what projects may be eligible for referral for fast track consenting.

As outlined in our last [article](#) the bill provides for three categories of projects:

- **Category 1:** specifically listed 'shovel ready' projects, a number of which have just been announced by the government
- **Category 2:** maintenance and upgrade works that may be carried out in road and rail corridors by Waka Kotahi NZTA and Kiwirail
- **Category 3:** public and privately led projects which are assessed by the Minister for the Environment for referral onto a fast track consenting process. Any projects which are located in the coastal marine area are assessed for re referral onto a fast track consenting process jointly by the Minister for the Environment and the Minister of Conservation.

We focus here on the key points of the process for category 3 projects seeking referral onto the fast track consenting process.

The fast track consenting bill is designed to be repealed two years from the date of its assent. The Minister(s) will be able to refer projects up until the two year deadline – at this point this means this new fast track consenting process will be available until approximately July 2022. Once a referral is made, orders in council are made under the act which enable consents and designations to be determined beyond that self-repeal date.

In considering whether to refer a project for fast track consenting the Minister(s) must consider:

- economic benefits for communities or industries affected by COVID-19
- the social and cultural wellbeing of current and future generations
- whether the project would likely progress faster by using this process
- whether there is potential for the project to have significant adverse environmental effects
- whether the project may result in a public benefit – these are specified as including
 - generating employment
 - increasing house supply
 - providing infrastructure and increasing productivity
 - improving environmental outcomes, including for freshwater quality
 - minimising waste
 - climate change projects
 - protection of heritage
 - managing natural hazards and strengthening resilience
- and as a last very wide and discretionary catch all - any other matter the Minister considers relevant.

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This purpose of the legislation will also inform the application of these considerations, so we see employment opportunities as a key benefit that will need to be demonstrated in any application seeking referral onto this fast track.

A project is not eligible to be considered for fast tracking if it is for an activity which is prohibited in the local planning documents or a national environmental standard. Nor will any projects be referred if they are on land which has been the subject of a treaty settlement or within a coastal area which is protected by a customary rights recognition.

Once the Minister decides to refer a project it is then passed to an expert consenting panel which may include an Environment Court Judge and other persons with relevant expertise. Where a project requires a designation, then the panel will make a final decision on the designation (as opposed to a recommendation which would usually be the first step of the process for a designation at the initial Council level). Each panel must include a person nominated by the relevant local authorities and one person nominated by the relevant iwi authorities.

Once referred to this panel, the fast track consenting process involves the following steps:

1. The full application for fast track consent is lodged.
2. A tailored further information process commences.
3. No public notification.
4. The panel assigned any fast track project instead invites comments from
 - a. The relevant local authorities
 - b. Iwi authorities, or other relevant treaty settlement entities
 - c. Owners and occupiers of the relevant land, and adjacent land
 - d. A large range of Ministers of the Crown, e.g. Minister for Transport, Minister for Infrastructure, Minister for Education and the Director-General of Conservation
 - e. A number of representative groups including the Employers and Manufacturers Association, the Environmental Defence Society, Infrastructure NZ, NZ Fish and Game, Property Council NZ, NZ Forest and Bird.
 - f. Any other person the panel considers appropriate.
5. Comments must then be provided by those parties within 10 working days.
6. No hearing is necessary, though the panel may elect to hold one.
7. The panel must make its decision within 25 days of the last date it receives comments from the interested parties (number 4 above). There is some scope for this timeframe to be extended by a further 25 days if a large project is being considered. The maximum timeframe for a decision on any fast track project is 50 working days (just under two months).
8. There is very limited opportunity to suspend a fast track consent process, so all ducks need to be in a very tidy row when the application is lodged.
9. There is however scope for staged applications to be made for a larger project to enable works on stage 1 to be commenced as the later stages are refined.
10. The consent applicant is responsible for the costs of the expert consenting panel and the costs of the Environmental Protection Authority in supporting the process. These costs could become sizeable and will need to be allowed for in any overall

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project costings. There is likely to be limited scope to challenge the setting of these fees.

Decisions on fast track applications take account of many of the same planning documents and RMA tests that would be applied in a usual consent process, though in a much more time-efficient manner.

Appeal rights on any decision are limited to a point of law. As we discussed in our last article, this could be difficult if consent conditions are unworkable, however there should be a practical process which can be found to vary anything which gazumps the purpose of encouraging development.

The government is seeking submissions on this bill in a very short timeframe of 4 days. Submissions close on 21 June and the Select Committee is required to report back by 29 June. The Act is proposed to come into force the day after it receives Royal assent.

Further information about how to make a submission on the bill can be found [here](#). MfE's diagrammatic description of the processes in the fast track consenting Bill can be accessed [here](#).

Want to know more?

If you have any questions about the Bill, please contact our specialist [Resource Management Team](#).