



**FEEDBACK ON PROPOSED FAST-TRACK CONSENTING BILL, 12 FEBRUARY 2024**

1. Te Kōkiringa Taumata | New Zealand Planning Institute (NZPI) welcomes the opportunity to provide feedback on the proposed fast-track consenting bill, as outlined in the letter from the Minister for RMA Reform dated 31 January 2024.
2. The following table provides feedback from NZPI on each of the aspects of the proposed bill outlined in the Minister’s letter, as well as additional comments at the end of the table.

| Proposals in Minister’s letter   | NZPI Feedback   |
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| <p>A standalone Act for fast-track consenting with its own purpose statement.</p>                                | <p>The purpose of the standalone bill is critically important. NZPI would be concerned if poor environmental outcomes were a consequence of a fast-track process. Economic prosperity is linked to environmental health, and we need to be able to give the environmental impacts of significant proposals due consideration.</p> <p>A problem the new bill is attempting to solve relates to delays and inefficiencies in the process for significant projects. It is possible to provide a more timely and efficient process, without compromising the achievement of good environmental outcomes.</p> <p><u>NZPI recommends that the achievement of outcomes for the benefit of all New Zealanders be the overall aim of the more timely and efficient process, and that this be incorporated within the purpose of the bill.</u> There is a risk that if this overall aim is missing from the purpose, we will have a timely and efficient process that achieves poor environmental outcomes.</p> |
| <p>Prioritisation of locally, regionally and nationally significant infrastructure and development projects.</p> | <p>Prioritisation of significant projects has the potential to be helpful. What qualifies as a significant project needs to be clear. NZPI would be concerned if significant projects were considered in isolation from the broader planning context. There is a high degree of coordination needed across agencies and levels of planning to successfully implement significant projects.</p>  |



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|   | <p><u>NZPI recommends that ‘significant’ project is defined in the legislation and/or qualifying criteria are used to identify significant projects.</u> Without this, there is likely to be debate and litigation over whether a project is significant or not. This would defeat the purpose of the legislation, to provide a timely and efficient process. The clearer the qualifying criteria are, and the less open to interpretation, the more timely and efficient the process will be.</p> <p><u>NZPI recommends the qualifying criteria for ‘significant’ projects be linked to national and regional strategic planning.</u> There needs to be coordination of significant projects and consideration of the impacts of those projects on growth patterns, environmental management, and climate change and natural hazard risk management. If a project is identified in a strategic or spatial plan, it has already been given consideration and been open to public consultation. Issues of equity and due process that arise with a fast-track process are less if a strategic planning process has already been undertaken.</p> <p><u>NZPI recommends there also be a link between eligibility for the fast-track process and outcomes set in national policy statements, regional policy statements, and local plans.</u> For example, if it can be demonstrated that a project is anticipated in existing policies or a plan, then the project will be contributing to the type of future anticipated by the community and should not undermine the planning already undertaken by that community.</p> |
| <p>A process for the responsible minister to refer projects for acceptance into the fast-track process.</p> | <p>Based on our current understanding of the fast-track proposals, the process for referring projects for acceptance is the most critical one in the overall process. This is due to the proposed limited ability of Expert Panels to decline applications. This raises three potential concerns:</p> <ul style="list-style-type: none"><li>- The potential for overreach of ministerial power, which has the potential to threaten the democratic decision-making process and reduce transparency.</li><li>- The potential for poor environmental and long-term economic outcomes if priority is given to short-term economic benefits of one-off development projects over other matters.</li><li>- It is not clear who the responsible minister for the new legislation will be. If the referring minister is also the requiring authority for designation projects applying for the fast-track process, there is a risk of conflict of interest arising.</li></ul>  |



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|   | <p><u>NZPI recommends several options to overcome these issues:</u></p> <ul style="list-style-type: none"> <li>- Have clear and unambiguous criteria for acceptance into the fast-track process. This should include identification in a strategic or spatial plan, or demonstrated consistency with existing plans or community outcomes, as suggested above. It should also include consideration of residual effects, for situations where conditions cannot be used to avoid, remedy or mitigate all adverse effects.</li> <li>- Have a minister who is not also a requiring authority, such as the Minister for the Environment, as the decision-maker on referral.</li> <li>- Include recommendations from the relevant councils in the acceptance consideration and give these recommendations significant weight in the decision-making.</li> <li>- Provide a greater ability for the Expert Panel to decline applications.</li> <li>- Provide for some judicial oversight in the decision-making process, including of referral decisions made by Ministers.</li> </ul> |
| <p>List of projects within the bill that will be first to have their approvals granted.</p> | <p>It is important that due process is followed in identifying the ‘first’ projects. Transparency in how projects included in the bill meet the referral criteria is important. <u>NZPI recommends a report outlining how/why the projects included meet the qualifying criteria be issued alongside the bill.</u></p>   |
| <p>Projects considered by an Expert Panel.</p>  | <p>NZPI supports applications being considered by an expert panel. <u>The bill should include requirements for panel membership.</u> Core panel expertise should include planning, te ao Māori, and specialist engineers.</p>  |
| <p>Expert Panel would have limited ability to decline projects.</p>                         | <p>NZPI is concerned at the risk of poor environmental outcomes if there is no ability to decline applications based on effects on the environment. It is incorrect to assume that conditions are always able to address adverse effects. <u>NZPI recommends that the inability of conditions to manage adverse effects or unacceptable residual effects be included as reasons not to refer projects into the fast-track process.</u> If this consideration is not part of the referral process, it should be included as a reason to be able to decline an application. With a referral decision that is more significant than the substantive decision, there needs to be a high degree of certainty at the referral stage that the project should be granted.</p>  |



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| Expert Panel able to apply necessary conditions to ensure adverse effects of the project are managed.  | NZPI recommends a wide discretion for an Expert Panel to apply conditions of consent. This should include the ability to apply adaptative management conditions where appropriate.   |
| Projects would need to comply with specific protections for Treaty settlements and other Treaty-related arrangements and commitments before they could be referred to the Expert Panel.  | NZPI supports these requirements being part of the referral consideration. However, we note that this is a narrow requirement. <u>NZPI recommends that engagement with Iwi and hapū is a requirement of the referral process.</u>  |
| One-stop shop approval for projects.   | <p>A one stop shop approach should undoubtedly improve the efficiency of the approval process. <u>We recommend that an approval that replaces multiple separate approvals require a holistic consideration that acknowledges economic prosperity is linked to environmental health.</u></p> <p>We note that a one stop shop approach is likely to require changes to other legislation, and care will be needed to ensure the key aspects of the individual approval processes are maintained. There may also need to be education and resourcing to ensure the current siloed approach to approvals is broken down and the new system can work efficiently and effectively.</p> |
| <b>Additional comments</b>   |  |
| <ul style="list-style-type: none"> <li>- Timeframes for the fast-track process need to be reasonable and allow for meaningful public participation to ensure the principles of natural justice are upheld.</li> </ul>  |  |
| <ul style="list-style-type: none"> <li>- There should be a requirement to 'give effect to' the principles of the Treaty of Waitangi in the new legislation.</li> </ul>   |  |
| <ul style="list-style-type: none"> <li>- We support the fast-track process being available for projects on Māori land, subject to the permission of the landowners.</li> </ul>   |  |
| <ul style="list-style-type: none"> <li>- There should be rights of appeal on decision-making, on points of law only, to ensure proper judicial oversight of the process.</li> </ul>  |  |
| <ul style="list-style-type: none"> <li>- The fast-track process should allow and encourage the efficiencies that come from infrastructure services being co-located. For example, allowing multiple applicants for one project (for example, roading and telecommunications).</li> </ul> |  |



- A national spatial plan, or a national database of information for fast-track projects, should be established to support the fast-track process. This would allow key constraints for infrastructure (such as cultural sites or significant wetlands) and opportunities for infrastructure (such as areas suitable for solar and wind farms) to be identified on a national scale, and augmented by regional and local data. Such a database, or national spatial plan, would bring significant efficiency, effectiveness, and transparency to the process.

3. Please get in touch if you would like to discuss any of this feedback in more detail.

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