



Update on Fast-track Approvals Bill

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With the release of the initial list of 149 projects able to be automatically considered under this Bill, it has become a lot more real and imminent. The Bill has been reported back from the Select Committee, which heard a significant number of submissions. Separately Cabinet had announced a number of changes intended to the Bill which addressed earlier concerns about excessive Ministerial control. The Select Committee report proposes a number of changes to the Bill, but some of the more significant ones had already been signalled by Cabinet. However, there are also proposed changes to timeframes, providing that maintenance or upgrades of existing infrastructure can come within the fast track regime, and for the Infrastructure Minister to seek Minister for the Environment (and other relevant

portfolio ministers) comments on any referral decisions.

Fast Track Advisory Group recommend 342 projects for list

The month after the Bill was introduced to Parliament, Cabinet appointed a Fast Track Independent Advisory Group. It did not make any decisions on granting consents. Its role was simply to independently assess and provide recommendations to Ministers regarding projects considered suitable for consideration under the Fast Track procedure in due course. The Advisory Group included a variety of very experienced professionals from a wide range of disciplines. Of the 384 applications the Advisory Group considered that 342 can provide significant regional or national benefits and recommended that they be listed in Schedules 2A and 2B of the Bill. 42 projects were recommended not to be listed because they would not deliver the required benefits, or they were lacking material information or otherwise ineligible.

It is from this list that Cabinet has agreed that 149 projects will be listed in the Bill in Schedule 2 (there will no longer be separate 2A and 2B lists). The Bill will be returned to the House this year and is intended to be passed into law before the end of 2024. Minister Bishop signalled that Cabinet chose to include only 149 of the 342 “to better reflect the capacity from expert panels to assess and consent these projects”.

New Independent Expert Panels to consider projects

When a project applicant on the list seeks its needed statutory consents, its application will be considered by an Independent Expert Panel, or almost inevitably given the size of the tasks, a number of Panels. These are different to the Advisory Group. The Panels’ role is more like existing consenting bodies such as Council hearings panels or the Environment Court. The Panels will include a former judge, a lawyer or planner (as the chair), a local authority representative, an environmental expert, an expert in Māori development and te ao Māori, and where a treaty settlement requires it, an iwi authority representative. The Panel members have yet to be named, but we might expect that they should have people of serious experience and mana to ensure their decisions are largely accepted.

The Independent Expert Panels will require information from the project applicant,

assess each project and consult with those the Panel sees as directly affected. There is no public consultation or public hearing. The Panels will then decide if the proposal can be approved, and if so, subject to what conditions. The decision is now to be made by the Panels, not the Ministers as earlier proposed. No project is certain of success.

The process bypasses consenting regimes under various acts such as the RMA, Conservation Act, Reserves Act, Fisheries Act, Crown Minerals Act, Public Works Act and a number of others. But special areas such as National Parks, special reserves and wilderness areas and wildlife sanctuaries will continue to be protected.

Bay of Plenty projects on the list

With the issue of a list of projects automatically able to go through the process, it becomes a lot more real. Bay of Plenty has 8 projects in this initial list.

(a) There are infrastructure projects that have been on the books or under consideration for some time. One is Tauranga Port's application to extend the berths at Sulphur Point and the Mount wharves, with associated dredging and reclamation. These applications are part-way through the Environment Court process but there are significant further steps to be undertaken before consent is granted. The Port Company may now decide to follow the new fast track process instead.

(b) A big future project is Stage 2 of the Tauranga Northern Link. Stage 1 is currently being built to Te Puna. Stage 2 will carry it on to Ōmokoroa. It will take traffic off SH2 and speed access to the city and port.

(c) Also listed is the later stages of SH29/29A redevelopment, and the Omanawa Bridge replacement. Currently, the first part of the SH29 redevelopment is underway with a new roundabout at Redwood Lane to give access from both the Tauriko Industrial estate and the up-coming Tauriko West subdivision to the State Highway. The further stage now announced will eventually involve 4-laning a new highway from Tauriko, through the Crossing junction and up to Barkes Corner. It will require a number of flyovers and new road alignments and will be a very major roading project.

(d) There are new housing projects, including 153 ha of rural land at Wairakei South near Papamoa for 2-3000 houses and an industrial area, the first 1250 houses of the proposed new Tauriko West subdivision, and a new 605 house and commercial precinct at Tara Road.

(e) Also on the list are a new wood pellet plant at Kawerau, a Te Rahui landfill site (to accept material from the already-consented Whakatane Boat Harbour project), and a major expansion of the Katikati quarry.

(f) The list includes fast-tracking re-consenting of existing well-established infrastructure soon coming due for re-approval – the Kaimai and Wheao hydro schemes, and re-consenting of the Port Company's harbour dredging programme.

Note, the fact that these projects have made the list does not mean they inevitably will be consented by the Independent Expert Panels, nor that their conditions will be acceptable to the applicant or make the project viable.

Also the fact a project is on the list does not mean it is funded and ready to go. With the private projects such as the housing developments, one might expect that funding is likely to become available if a consent is obtained. But the major public roading projects do not currently have full funding appropriated. Some could be several years away. All this process will do is sort the consenting required, so Government knows what it will have to fund, and whether to proceed and when. But protection of the route for the Te Puna-Ōmokoroa Northern Link Stage 2 extension is already underway. Design and construction tendering processes for the replacement of Omanawa bridge are also in the early stages. However, this project may well be advanced under the RMA rather than the fast-track process. The first two-lane replacement bridge is scheduled for 2026. It is understood that work on the investment case and initial design work for the four-laning of SH29 up to the Crossing is about to commence. Continuing up to Barkes Corner is on the list, but will happen later.

Long way to go yet

This list is early notice from Government of what is going to be on the table. The list is for 149 projects, which will be listed as a schedule to the revised Fast Track Bill. That bill is yet to be finalised and sent back to the House. It will then be passed into

law, and one might expect quite quickly come into effect.

The Independent Expert Panels, when announced, will have a huge task. They will have to set up their processes and staff and arrange a work programme. Many projects on the list are many years into the future and little or no design work will have been done for some. But others, either already part-way on track, or with urgent needs, may well be under consideration by the Panels next year. Some of the BoP projects are likely to be in that category.

There is no doubt that the first projects to be considered by Independent Expert Panels will be watched closely. With new concepts and procedures introduced under the Bill we consider there is a high risk of litigation to test projects where there is very limited public involvement. It remains unclear how the 149 projects will be prioritised and whether they will in fact benefit from a fast-tracked and one-stop-shop process.