

Fast Track Approvals Bill 2024 – The spicy bits

Bridget Irving, Hannah Perkin

Introduction

The Fast-Track Approvals Bill 2024 (Bill) passed its first reading on Thursday 7 March 2024. The Bill aims to provide a streamlined decision-making process to facilitate the delivery of infrastructure and development projects with significant regional or national benefits. It provides a unique opportunity for projects to obtain a suite of approvals under 9 different pieces of legislation within 6 months. For obvious reasons this holds considerable attraction for developers.

The Bill borrows heavily from the Covid 19 Fast Track and the Natural and Built Environments Act 2023 Fast track processes but there are some significant and at times surprising new features. These include:

- The ultimate decision-making authority sits with the Ministers of Infrastructure, Transport and Regional Development.
- Consent can be obtained for activities prohibited under the Resource Management Act 1991 (RMA).¹
- Part of the criteria for the Joint Ministers to consider is the impact the project will have on the efficient operation of the fast-track process itself.²
- Granted consents or designations have a lapse date of 2 years.
- Appealing the Joint Ministers decision to the High Court is allowed, but appealing the High Court's decision to the Court of Appeal is not.³

Ministers as the Ultimate Decision Makers

Ultimate decision-making power on regulatory processes sitting with elected politicians is a significant departure from the status quo. It is an element of the Bill that is likely to receive significant attention and criticism from some quarters. It is unclear why it is necessary, given the possibility of limiting the scope of the decision-making power of the expert panel as was the case under the Covid Fast Track. There will no doubt be allegations levelled about the risk this poses to New Zealand's reputation of high transparency in decision making.

It is also interesting that the Minister for the Environment is not involved in these decisions. This indicates a clear prioritisation of progressing approvals and facilitating development, which is the purpose of the legislation.

Eligible Activities

The Bill enables applications for activities prohibited under the RMA. We suspect this is intended to address issues created by recent regulations, such as draining of Wetlands under National Environmental Standard for Freshwater Regulations 2020. Issues associated with identifying wetlands under those regulations have caused headaches for many large developments. The proposal to allow consents for prohibited activities is a work around for the limited number of projects that will gain access to the fast track while broader changes to the RMA framework are worked on. It is a bold move, one that is likely to result in concerns being raised about the possibility of an application for nuclear energy as an example (despite how unlikely that might be in practice).

Eligibility Criteria

When the activity is being assessed, clause 17 requires the joint Ministers to consider the following criteria:

- a. referring the project is consistent with the purpose of the Bill,
- b. will access to fast-track process enable the project to be processed in a more timely and cost-efficient way than under normal processes.
- c. impact of referring this project on the efficient operation of the fast-track process.
- d. whether the project will have significant regional or national benefit.
- e. whether the application contains sufficient information to inform the referral decision.⁴

The Joint Ministers must decline an application if referring the project to the Panel is inconsistent with the purpose of the Bill, the project does not meet the criteria in clause 17, or the project is ineligible. The Bill gives the joint Ministers discretion to decline an application for any relevant reason, even if they are satisfied the application meets the eligibility criteria.⁵

It is interesting that the Joint Ministers must consider the impact of referring this project on the efficient operation of the fast-track process itself. This appears to contemplate the need to manage the flow of applications to ensure the 'responsible agency' has the capacity to process them. This makes practical sense, but the challenge is that this opens the door to perception of favoritism as between different projects.

Lapse Date for Granted Consents

The Bill requires the Panel to identify a lapse date for granted consents in their recommendation. The date specified by the panel must not be later than 2 years from the date of commencement or from the date on which a designation is included in the district plan.⁶

This suggests the Bill operates on a 'use it or lose it' basis, similar to the Covid Fast Track. However, this 2-year lapse period is inconsistent with the Government's rhetoric about creating a pipeline of projects that can be picked up and progressed when they are viable. Two years is unlikely to be long enough in a number of circumstances. Developers should therefore be "shovel ready".

Appealing Fast-Track Decisions

The Bill limits the rights of appeal to points of law to the High Court only. It also limits appeals from the High Court to the Court of Appeal, requiring parties to immediately seek leave to appeal to the Supreme Court. The intent here is obvious, give parties serious pause for thought regarding their appeal options and if they do proceed reduce the number of stops.

What's Next?

The Bill is currently with the Environment Select Committee for review. Submissions on the Bill are now open, and they close on 19 April 2024. If you would like to discuss any matters in this article, the fast-track process, or want to make a submission, please contact our Resource Management team.

1 Clause 17(5).

2 Clause 17(2)(c).

3 Clause 26.

4 Clause 17(2).

5 Clause 21.

6 Schedule 4 clause 39(9).