

21 June 2020

Environment Select Committee
Parliament Buildings
Wellington

Email: en@parliament.govt.nz

COVID-19 Recovery (Fast-track Consenting) Bill

1. Recommendations

1.1 Property Council New Zealand (“Property Council”) recommends the following:

- Amend clause 21 to incorporate a timeframe in which the Minister must invite and receive written comments from the relevant local authorities and Ministers;
- Amend clause 17 to incorporate a timeframe in which the Minister must obtain a report on the application from the Office for Māori Crown Relations;
- Amend clause 23(g) wording to provide clarity that the Minister can make recommendations until the 2-year deadline as per the explanatory note;
- Delete clause 24(2)(f) or the incorporation of the word “faster” to allow for the Minister to set faster timeframes than those specified in clause 35 of Schedule 6.

1.2 Property Council supports the following:

- The Panel process overall;
- The purpose and functions of the expert consenting panel; and
- The incorporation of Property Council New Zealand as a key stakeholder the panel must invite to consult or make comments on referred projects.

2. Introduction

2.1 Property Council’s purpose is “Together, shaping cities where communities thrive”. We believe in the creation and retention of well-designed, functional and sustainable built environments which contribute to New Zealand’s overall prosperity. We support legislation that provides a framework to enhance economic growth, development, liveability and growing communities.

2.2 Property is currently New Zealand’s largest industry with a direct contribution to GDP of \$29.8 billion (13 per cent). The property sector is a foundation of New Zealand’s economy and caters for growth by developing, building and owning all types of property.

2.3 Property Council is the leading not-for-profit advocate for New Zealand’s largest industry - property. Connecting people from throughout the country and across all property disciplines is what makes our organisation unique.

NATIONAL OFFICE

Foyer Level
51 Shortland Street
PO Box 1033
Auckland 1140

P +64 9 373 3086
F +64 9 379 0781
E enquiries@propertynz.co.nz
propertynz.co.nz

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- 2.4 We connect over 10,000 property professionals, championing the interests of over 560 member companies who have a collective \$50 billion investment in New Zealand property. Our membership is broad and includes companies that undertake large-scale residential and commercial development projects, including large commercial buildings, industrial parks and retail precincts where people live, work, shop and play across New Zealand.
- 2.5 This submission responds to the [COVID-19 Recovery \(Fast-track Consenting\) Bill](#) (“the Bill”). Comments are provided on those issues that are relevant to Property Council and its members.

3. Overview

- 3.1 We support the purpose of the Bill to promote employment growth and provide certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.
- 3.2 There are a few tweaks to the Bill that could be made to ensure greater certainty in terms of the timeframe and the decision-making process for listed and referred projects. These are outlined in our submission below.
- 3.3 The Bill, or the need for a fast-track consenting bill, highlights the shortfalls with the current resource management system. This will be the fourth legislative change in 13 years to fast track measures in response to an emergency.
- 3.4 New Zealand Infrastructure Commission (Infracom) has recommended a long-term solution that an overarching legislation with fast tracking provisions could be developed and implemented by declaration of an emergency.¹ We would agree that there is mandate for this type of overarching emergency legislation and would support this being developed and introduced.

4. Process after Minister receives application should incorporate a timeframe for Ministerial decision (clauses 21 and 17)

- 4.1 Clauses 10(1) and (2) establish the procedural principles to act promptly in circumstances where no time limit has been set. Although this is admirable, the lack of timeframes for the Minister to undertake targeted consultation with relevant local authorities and appropriate ministerial colleagues (clause 21) raises concern.
- 4.2 The purpose of the Bill is to ensure greater certainty in terms of the timeframe and decision-making process for listed and referred projects. Central and local government should not be exempt. We recommend introducing a timeframe somewhere between 20 and 40 days in which the Minister is required to consult with relevant authorities and obtain and consider a report by the Office for Māori Crown Relations – Te Arawhiti on Treaty settlement obligations and interests under the Marine and Coastal Area (Takutai Moana) Act 2011. This would see amendments being made to clauses 21 and 17 to incorporate a timeframe.

¹ https://www.linkedin.com/posts/infracomnz_government-reveals-bill-fast-tracking-infrastructure-activity-6678173497031831552-YKZN/



4.3 The introduction of a timeframe at the central and local government level (prior to the panel process) would provide applicants and projects with more certainty as to the overall timeframe expected. This would also increase the quality of applicants for referred projects in terms of expected start and end dates of a project and provide more certainty on the employment side of things.

5. Decision to decline application for referral should be clear that the Minister can make recommendation up until the 2-year deadline (clause 23)

5.1 Clause 23(5)(g) states that a Minister could decline an application if “there is insufficient time for the application to be referred and considered before this Act is repealed.” This is contrary to the explanatory note on page 2 which states: “The Minister will still be able to recommend an Order in Council to the Governor-General to confirm eligible projects up until the 2-year deadline.” We recommend for consistency purposes, the clause 23(5)(g) be amended to include the words “by the Minister” as per below to provide more clarity that aligns with the explanatory note.

“there is insufficient time for the application to be considered by the Minister and referred ~~and considered~~ before this Act is repealed.”

5.2 The incorporation of the words “by the Minister” allows for the Minister to recommend projects up until the 2-year deadline and the panel process can occur until all recommended Minister projects are completed, as per clause 1(4) in Schedule 1.

6. Ministers decision to accept application for referral should not extend to setting specific timeframes that differ from those within clause 35 of Schedule 6 (clause 24)

6.1 Clause 35(3) of Schedule 6 allows the panel to extend the period for issuing its final decision by up to a further 25 working days if the scale of the project prevents the panel to complete its decision. This would see the Panel process ranging from 45 days to 70 days total. It is important to note that this timeframe does not include any time that a consent application or notice of requirement was suspended by notice of the applicant or requiring authorities. Thus, in theory, the panel’s timeframe could be longer than the proposed 45-70 days.

6.2 Clause 24(2)(f) provides the Minister with powers to set specific timeframes for the panel to process a resource consent, outside of what is already proposed under clause 35 of Schedule 6. The incorporation of this clause will create uncertainty as it allows for the Minister to extend the proposed legislative timeframe.

6.3 The purpose of the Bill is to ensure greater certainty in terms of the timeframe and decision-making process for listed and referred projects. Clause 24(2)(f) opens the floodgates for the panel’s decision-making timeframe, directly contradicting with the purpose of the Bill. We recommend the deletion of clause 24(2)(f) or the incorporation of the word “faster” to allow for the Minister to set faster timeframes than those specified in clause 35 of Schedule 6. We would not want the Minister to set slower timeframes than those already specified as the legislation’s intent is to fast-track consents.

7. Purpose and functions of expert consenting panels (Schedule 5)

7.1 We support the purpose and functions of an expert consenting panel. Namely, to make decisions on consent applications for listed and referred projects. The proposal to have up to four persons appointed is an appropriate number to undertake the decision-making process.

8. Applications and decision makers for listed and referred projects (Schedule 6)

8.1 We support the proposal that the panel must invite comments for a referred project, on a consent application or notice of requirement from the specified persons or groups set out in clause 17 of Schedule 6. We are pleased to see that Property Council New Zealand alongside our Resource Reform New Zealand partners (Business New Zealand, Infrastructure New Zealand, Environmental Defence Society and EMA Northern) are included in this stakeholder list.

8.2 We thank the Government for this opportunity as we have the expertise and knowledge of the development sector and we look forward to contributing to this space.

9. Power to decline consent applications or cancel notice of requirement for listed projects (Schedule 6)

9.1 Clause 32 (Schedule 6) sets out the two criteria in which the panel can decline a consent application or cancel a notice of requirement for listed projects. Namely, if there is inconsistency with any National Policy Statement or relevant Treaty settlement.

9.2 The Bill is unclear on how (particularly if there is minor inconsistency with a National Policy Statement) to balance the list of factors the panel can consider when making a decision (which incorporate things such as; generating employment, and increasing house supply through to mitigating climate change and strengthening environmental, economic and social resilience). Consequently, there is potential risk of judicial review of decisions. Providing additional guidance through the legislation to the panel in terms of weighting could reduce this risk.

10. Conclusion

10.1 Property Council strongly supports the Bill's intention to fast-track consenting and designation processes for infrastructure and development projects. We also support the Bill enabling work on existing infrastructure to occur without the need for a resource consent. The Bill will provide the infrastructure and development sectors with greater certainty as to the process and timeframes of accelerating projects under this legislation.

10.2 Although we are supportive of the Bill, minor improvements could be made to the Bill to provide greater certainty. We recommend:

- Similar to the Panel's process, the Ministerial decision-making process should specify a timeframe in which a decision is to be made;
- Provide greater clarity that the Minister has decision-making powers up until the two-year deadline; and

- Remove the Ministers powers to set a specific timeframe for the Panel's decision-making process that differs from that set out within the Bill.

10.3 Any further queries do not hesitate to contact Katherine Wilson, Senior Advocacy Advisor, via email: katherine@propertynz.co.nz or cell: 027 8708 150.

Yours sincerely,



Leonie Freeman
Chief Executive.