

Property Council New Zealand

Submission to the Environment Committee on the Fast-track Approvals Bill

19 April 2024

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Submission to the Environment Committee on the Fast-track Approvals Bill.

1. Summary

1.1. Property Council New Zealand (“Property Council”) welcomes the opportunity to provide feedback on the Fast-track Approvals Bill (“the Bill”).

2. Recommendations

2.1. At a high level, we make the following recommendations:

- Amend the joint Ministers’ decision-making process to be more explicit on how they either form an agreement or disagreement;
- Amend Part 2, Subpart 2, Clause 22 – joint Ministers must agree to refer a decision to an expert panel within 30 working days of receiving an application;
- Amend Part 2, Subpart 2, Clause 25 – joint Ministers must decide whether to approve a project referred by the expert panel within three months, with the ability to extend for one extra month if required;
- Extend the lapse date for granted consents from two years to five years;
- Amend the Bill to allow for applicants to show whether they would prefer a hearing (if possible). This could be achieved via a simple tick box exercise when applying for a fast-track approval;
- The Bill should include a sunset clause, given that when a full review and replacement of the RMA is undertaken, this Bill may become redundant;
- Amend the Cabinet Fee Framework to reflect market rate remuneration for expert panel members; and
- Amend Clauses 10 and 14 to allow for rezoning and plan changes.

3. Introduction

3.1. Property Council is the leading not-for-profit advocate for New Zealand’s most significant industry, property. Our organisational purpose is, “Together, shaping cities where communities thrive”.

3.2. The property sector shapes New Zealand’s social, economic and environmental fabric. Property Council advocates for the creation and retention of a well-designed, functional and sustainable built environment. We aim to support the development of a resource planning system that is efficient and effective.

3.3. Property is New Zealand’s largest industry and fastest growing source of employment. There are nearly \$1.6 trillion in property assets nationwide, with property providing a direct contribution to GDP of \$41.2 billion (15 per cent) and employment for around 200,000 New Zealanders every year.

3.4. Property Council is the collective voice of the property industry. We connect over 10,000 property professionals and represent the interests of over 540 member organisations across the private, public and charitable sectors.

4. General Comment

- 4.1. Property Council would like to thank the Ministry for the Environment for engaging with us prior to the release of the Bill and we look forward to further collaboration on the Government's Resource Management Act agenda in the coming years.

5. Purpose of the Bill

- 5.1. We are pleased to see that the purpose statement includes "development projects". This wording allows for the scope of fast-track consenting to be widened to include commercial, industrial or retail development projects, as well as residential.
- 5.2. Property Council's purpose is: *Together, shaping cities where communities thrive*. Thriving communities and regions have access to housing, employment, education, health, transport, retail and community facilities. Many of these places and spaces are designed, developed and managed by our members. Our members are supportive of the Bill which appears to have a more permissive approach for commercial, industrial, and retail development projects with significant regional or national benefits.

6. Joint Ministers decision making

- 6.1. Unlike in the COVID-19 Recovery (Fast Track-Consenting) Act 2020, the joint Ministers will make the final decision on applications for approval under the new Bill. We are pleased to see that all three joint Ministers must agree on approving a fast-track application. This means that there can be appropriate checks and balances of one another when making these assessments.
- 6.2. However, we are concerned that there is no guidance on how and when the joint Ministers must come to a joint decision. Disagreement between the joint Ministers may have an impact on the efficiency of the fast-track process which would be counterintuitive to the intent of the Bill. For example, there is no guidance on what happens if the joint Ministers do not reach a unanimous decision.
- 6.3. It is also concerning that the joint Ministers are not subject to a timeframe in which they must make a decision to accept an application for referral (under Part 2, Subpart 2, Clause 22) or whether to approve the project (under Part 2, Subpart 2, Clause 25). Although Clause 9 includes a duty on those performing functions under the Bill to act promptly in circumstances where no time limit has been set, we are concerned that this does not go far enough. There is nothing of consequence in the Bill that expressly prevents one or more Ministers from prolonging the decision-making process.
- 6.4. We recommend that this decision-making process be made explicit, with Ministerial timeframes required within the Bill. For example, the joint Ministers must agree to refer a decision to an expert panel within 30 working days of receiving the application (Part 2, Subpart 2, Clause 22) and must decide whether to approve a project referred by the expert panel within three months (Part 2, Subpart 2, Clause 25), with the ability to extend for one extra month if required.
- 6.5. Certainty and timeliness are critical factors for the success of the legislation – thus, joint Ministers should have clear timeframes they are required to uphold.

6.6. Suggested legislative changes are underlined below:

22 Decision to accept application for referral

(1) Before deciding to accept an application for referral, the joint Ministers must consider—

- (a) the application; and*
- (b) the report obtained under **section 13**; and*
- (c) any consultation required to be undertaken with relevant Māori groups; and*
- (d) any comments received within the required time frame; and*
- (e) any further information requested and provided under **section 20** within the required time frame.*

(2) In considering the referral application, the joint Ministers must,—

- (a) if a Treaty settlement or related arrangement provides for the consideration of any document, arrangement, or other matter (including any statutory planning document amended as a result of that Treaty settlement or related arrangement), give that document, arrangement, or other matter the same or equivalent effect through the joint Ministers' process and decision making as it would have under the relevant legislation (if relevant); and*
- (b) if a Treaty settlement or related arrangement provides for procedural matters, comply with those requirements (if applicable) and direct the expert panel to comply with those matters (if relevant).*

*(3) If the joint Ministers are satisfied that all or part of a project meets the eligibility criteria in **section 17**, the Ministers may decide—*

- (a) to refer all or part of a project to a panel:*
- (b) to refer the initial stages of a project to the panel while deferring decisions about the project's remaining stages.*

(4) A decision under this section may be made in respect of all or part of the project that is the subject of an application for referral, and the joint Ministers may accept some parts of an application and decline others.

(5) A decision under this section must be made within 30 working days of receiving the application.

25 Panel to report and joint Ministers to decide whether to approve project

(7) After considering the expert panel's report on a referral application for a project, the joint Ministers must within three months –

(a) approve the project and grant the relevant approvals subject to the conditions (if any) specified in the approval; or

(b) decline to approve the project.

(8) The joint Ministers can agree to an extension of one month if a decision cannot be made within the three-month timeframe.

7. Part 2, Clause 16 – Consultation requirements for applicants for approvals

7.1. Part 2, Clause 16 makes it mandatory for resource consent applicants to engage with four different groups before lodging a referral application. One of these groups includes relevant local authorities. Resourcing is a critical issue throughout the fast-track process with local authorities not provided with compensation for time spent assessing fast-track consenting applications. This is an issue that needs to be further investigated.

8. Part 2, Clause 17 – Eligibility criteria for projects that many be referred to panel

8.1. Under Part 2, Clause 17(2)(c), the joint Ministers are required to consider whether referring a project will have an impact on the efficient operation of the fast-track process. While we are pleased that issues such as resourcing have been taken into consideration, we are concerned that this might result in anomalies with the possibility for significant or national projects to be declined, due to timing restraints. We hope that this will not be case, given that the joint Ministers are only needing to “consider” whether a project has an impact on the efficient operation of the fast-track process – in other words, it is not an automatic reason not to refer the project onto the expert panels.

Housing

8.2. In assessing whether a project has a significant regional or national benefit under clause 17(3), joint Ministers may consider if it increases the supply of housing, address housing needs, or contribute to a well-functioning urban environment, (within the meaning of policy 1 of the National Policy Statement on Urban Development 2020). The joint Ministers can also consider whether the project provides an economic benefit. We strongly support these clauses and are pleased to see this has a broad scope as it will assist those developing residential properties to increase New Zealand's housing supply.

8.3. It is important to note that regionally significant projects will be different between regions. We recommend that each region is viewed carefully to ensure residential development projects are progressed across New Zealand, rather than focusing on the larger metropolitan regions.

9. Lapse date for granted consents

9.1. The Bill requires the expert panels to identify a lapse date for granted consents in their recommendation, with it being no later than two years from the date of commencement or from the date on which a designation is included in the district plan.

- 9.2. The COVID-19 Recovery (Fast-track Consenting) Act 2020 had a two-year lapse date for granted consents. However, following advice from the sector this was moved to five years in the Natural and Built Environment Act 2023. The Bill retreats back towards a two-year lapse period.
- 9.3. We are concerned that the two-year lapse period is too short and does not allow for projects to be picked up and progressed when they are viable. This is particularly concerning given that the Bill allows for projects to be piecemeal if required (Part 2, Subpart 2, Clause 2). A piecemeal approach would benefit applicants who have large and complex projects that may take more than a two-year period to complete.
- 9.4. We therefore recommend that the lapse date for granted consents be extended to five years. We also recommend that there should be the option to extend the period after which the consent lapses.

10. Hearings

- 10.1. We are concerned that there is no ability for an applicant to request a decision maker hearing in respect of a consent application. This is an aspect of the COVID-19 Recovery (Fast-track Consenting) Act 2020 which has been carried over to the new Bill. Property Council members have utilised the previous fast-track process and found that attending a hearing would have made the application process more streamlined, given it meant that decision makers and applicants were in one room to work through any issues then and there.
- 10.2. We recommend that the Bill be amended to allow for applicants to request a hearing i.e. this could be achieved via a simple tick box exercise when applying for a fast-track approval.

11. Expert Panels

- 11.1. Property Council supports Part 2 Clause 32 which directs the expert panel to assess an application or notice of requirement for a listed or referred project, and any written comments received on the application or notice, to give weight to certain matters in an order of greatest to lesser. This begins with the most important matter being the purpose of the Bill, followed by provisions within the Resource Management Act 1991 including National Policy Statements (“NPS”) and plans. By listing these matters in a hierarchical order, it reduces the likelihood of the NPS becoming a political football overtime.

Resourcing issues

- 11.2. As part of Property Council’s pre-engagement with Ministry for the Environment, we noted that resourcing across the fast-track process has historically been a significant issue, creating delays for applicants. Volunteering to be on an expert panel can be a significant time commitment, particularly as the timing of the process is outside the panel’s control. Remuneration has also been historically low, which does not incentive volunteers to sit on the panel. It is concerning to see that under the Bill, expert panel members will be paid in accordance with the Government’s Fee Framework, which has not changed from the COVID-19 Recovery (Fast Track-Consenting) Act 2020.
- 11.3. Roughly 40 applications were lodged under the COVID-19 Recovery (Fast Track-Consenting) Act 2020 process at the end of 2023, and it is taking a number of months for expert panels to be appointed for those projects. As a consequence, it is causing delays in appointing expert panels,

which undermines some of the benefit of the fast-track process. There is potential for similar delays under the new Bill if the issue of resourcing is not addressed.

- 11.4. It is also critical to the success of any fast-track process that decisions are legally sound, to prevent litigation down the line. This relies on having good quality volunteers for the expert panels.
- 11.5. We have two suggested options to help resolve this resourcing issue as outlined below – Property Council prefers **Option A**.
- 11.6. Option A: Amend the Cabinet Fees Framework to reflect market rate remuneration for the expert panels. All applicants would be required to pay more which reflects fees closer to market rate for expert panel conveners and expert panel members.
- 11.7. Option B: Amend Schedule 3 expert panel, Clause 8 as per the suggested changes underlined below. This is the trickier option however, given that it would mean that applicants could pick and choose whether they wish to pay market rate on their applications (for example, via a tick box exercise when applying for a fast-track approval). There may be further complexities if the number of applicants outweigh the number of expert panels. For example, there is no prioritisation within the legislation between applicants who are willing to pay market rate and those who are not. There is also no option for panel members to select their project / associated fee. Suggested (option B) legislative changes are underlined below:

8 Remuneration of panel convener and panel members

- (1) *The panel convener and members of the panel are entitled –*
- (a) *To receive remuneration not within **paragraph (c)** for services as the panel convener or a member at a rate and of a kind determined by the Minister in accordance with the fees framework; ~~and or~~*
 - (b) *To receive remuneration not within **paragraph (c)** for services as the panel convener or a member at a rate and of a kind determined by the Minister and in accordance with the applicant's willingness to pay market rate; and*
 - (c) *In accordance with the fees framework to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out their office as the panel convener or as a panel member as if the convener and members were members of a statutory board for the purpose of the Fees and Travelling Allowances Act 1951.*
- (2) *For the purpose of **subclause (1)**, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.*

12. Rezoning and plan changes

- 12.1. Our members are uncertain as to whether the Bill allows for rezoning of land and plan changes. There are transport and infrastructure project examples throughout New Zealand where it is entirely appropriate and necessary to rezone and/or open new land for housing. Modifying the legislation to provide certainty for developers, particularly large-scale or developed developments, will be critical to achieving the desired outcomes.
- 12.2. We recommend the Bill be amended to ensure that any rezoning of land or plan changes sought after are incorporated into the fast-track approval processes. This will create greater clarity for applicants, better encourage housing projects, and improve transparency between the applicant and central government.
- 12.3. We recommend the below amendments are made, to explicitly allow for zoning and plan changes within the Bill.

10 Application of this Part to specified approval processes

(1)(a): a change to a plan, resource consent, notice of requirement, or certificate of compliance 35 under the Resource Management Act 1991.

(2): An applicant must identify in their referral application all of the approvals, consents, authorities, and permissions that are being applied for under the fast-track process.

14 Referral application

What is needed to complete the project

(Add new section after (s) and before (t) as per below)

A description of any changes to the zoning or changes to the relevant local authority plans covering any land on which the project will occur, that the applicant considers are needed to enable the project.

13. Sunset Clause

- 13.1. Property Council recommends including a sunset clause in the Bill, given that when a full review and replacement of the RMA is undertaken, this Bill will be considered redundant.

14. Conclusion

- 14.1. While Property Council broadly supports the Bill, we are concerned that there are provisions within the Bill that may be counterintuitive to its intent. We have made suggestions that we believe will help ensure that the fast-track process lives up to its name, reducing red tape for development across New Zealand.
- 14.2. Property Council members invest, own and develop property across New Zealand. We thank the Environment Committee for the opportunity to submit on the Fast-track Approvals Bill and **wish to appear to speak before the Environment Committee.**
- 14.3. Should you wish to discuss further, please contact Sandamali Ambepitiya, Senior Advocacy Advisor, via email sandamali@propertynz.co.nz or cell 0210459871.

Yours Sincerely,



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