

The Māori Trustee submission on the Fast Track Approvals Bill

April 2024

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Committee Secretariat
Environment Committee
Parliament Buildings
Wellington
Aotearoa New Zealand

Tēnā koe

Fast Track Approvals Bill

Background on the Māori Trustee and the Office of the Māori Trustee

1. The Māori Trustee is established by the Māori Trustee Act 1953 as a corporation sole; that is the functions, roles and responsibilities of the Māori Trustee are held and vested in an individual statutory officer from time to time holding the office of the Māori Trustee. The current Māori Trustee, Dr Charlotte Severne, was appointed for a three-year term in September 2018 and was re-appointed for a five-year term in October 2021.
2. Te Tumu Paeroa is the Office of the Māori Trustee, comprising employees who support the Māori Trustee to carry out her statutory and other legal functions, roles and responsibilities. The Māori Trustee is partly funded by Crown funding through Vote Māori Development. The Māori Trustee's independence from the Crown is entrenched in its Act. The Māori Trustee does not have an overseeing governance board.
3. The primary role of the Māori Trustee is to accept and carry out appointments as trustee or agent to administer Māori freehold land on behalf of its landowners, providing accurate and timely administration and management of whenua and other client assets in compliance with the principles and obligations of trusteeship and agency, and in accordance with the Māori Trustee Act 1953, Trusts Act 2019, Te Ture Whenua Māori Act 1993 and other legislation. A primary objective of the Māori Trustee, is to protect, utilise and grow the assets of Māori landowners.
4. The Māori Trustee administers, as trustee or agent, nearly 82,000 hectares of Māori freehold land, as well as general land and other interests and investments, on behalf of approximately 100,000 individual Māori landowners. The Māori Trustee is the largest single administrator of Māori land providing land administration and professional trustee and agency services to one third of all Māori land trusts (over 1,700 trusts), as well as targeted development and sector-specific expertise. The organisation is also involved in the management of a number of Māori enterprises and development projects.

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5. Given the sheer scale and varied nature of the land assets within this portfolio, the views of the Māori Trustee may not always be shared by all owners of the whenua she administers.

Position

6. The Māori Trustee appreciates the intent behind the proposed Fast-track Approvals Bill (the Bill), which aims to provide a streamlined process for major projects of national and regional significance that require multiple regulatory approvals. However, the Māori Trustee has concerns regarding:
 - a. the unintended consequences Schedule 2A listed projects could have on Māori freehold land and its owners;
 - b. the lack of environmental protections provided for in the Bill;
 - c. the lack of adequate consideration of the potential impacts that projects could have on climate change;
 - d. the decision-making powers not being entrusted to the expert panel who have the requisite technical expertise; and
 - e. the failure of the bill to provide representation for stakeholders capable of advocating on behalf of the environment as well as the short timeframe to provide written comments on likely complex and substantive projects.
7. Whilst the Māori Trustee can see merit in various aspects of the Bill, she **cannot support** it in its current form.

Our concerns

Schedule 2A Listed Projects

8. The Māori Trustee considers that the listing of major projects in the Bill¹ has the potential to have a significant impact on the lands she administers. The Māori Trustee understands that major projects listed under Schedule 2A will bypass the referral process and go directly to an expert panel. This could have unintended consequences for Māori freehold land and its owners. Specifically, it risks subverting the protections provided under s 18² of the Bill for identified Māori land that ensures applicants must seek the consent of landowners to undertake major projects on their whenua. The Māori Trustee considers that in all cases express consent of Māori landowners should be obtained for projects on Māori land.
9. Furthermore, no listed projects have been included in the Bill as introduced. Instead, the Government intends to insert the projects into Schedule 2A via an Amendment Paper once the

¹ Fast-track Approvals Bill, Schedule 2, Part A.

² **Section 18 Ineligible projects.** A project must not include any of the following activities: (a) an activity that – (i) would occur on land returned under a Treaty settlement or on identified Māori land;



Bill returns to the House, after the Select Committee process.³ The Māori Trustee notes that the Government has established a non-statutory Fast Track Advisory Group who have been tasked to evaluate listed project applications and provide recommendations to Ministers on what projects should be listed in the Bill.⁴ The composition of this advisory group was not made available to the public until 10/04/2024 and it is our understanding that there is no opportunity for the public to engage in the advisory group's process.

10. The Māori Trustee is therefore concerned that our ability to provide meaningful feedback and undertake an analysis of the listed projects potential impacts on Māori freehold land is absent in this submission process. This is highly unsatisfactory, particularly as projects on land administered by the Māori Trustee would otherwise require express agreement of the Māori Trustee.
11. The Māori Trustee also notes that in their Supplementary Analysis Report, the Ministry for the Environment (MfE) recommended that projects should only be able to access the fast-track process through applying to, and being referred by, a relevant Minister.⁵ This recommendation would not provide for projects to be listed in legislation.
12. The Māori Trustee agrees with MfE's position that all projects should be required to go through a referral process. However, if the Bill was to retain listed projects, it is imperative that a provision is included to ensure that Schedule 2A projects cannot breach the ineligible project criteria⁶ of the Bill.
13. For the avoidance of doubt, the Māori Trustee does not oppose the ability for identified Māori land to be included in major projects of national or regional significance. However, all projects (listed or otherwise) that include identified Māori land should always require the consent of their Māori landowners.

Environment

14. The Māori Trustee is concerned that this Bill fails to strike an appropriate balance between environmental and economic values. Instead, the Bill seems to place undue emphasis on economic interests at the expense of existing environmental protections and concerns.
15. The Māori Trustee understands that one of the perceived problems that this Government wants to address, within this Bill, is to rebalance matters for consideration in the fast-track approvals assessment process.⁷ Specifically, the Bill establishes a hierarchy of matters that the Expert Panel must consider (in greater to lesser value) when making recommendations to Ministers on project applications⁸. In doing so, the hierarchy places a disproportionate emphasis on economic

³ <https://www.beehive.govt.nz/release/project-applications-fast-track-open-today>

⁴ <https://www.beehive.govt.nz/release/new-fast-track-projects-advisory-group-named>

⁵ Supplementary Analysis Report, p.32 [sar-mfe-ftab-mar24.pdf \(treasury.govt.nz\)](#)

⁶ Fast-track approvals Bill, Section 18.

⁷ "The approval processes place insufficient value on the positive economic and social benefits of development" Supplementary Analysis Report, p.2 [sar-mfe-ftab-mar24.pdf \(treasury.govt.nz\)](#)

⁸ Fast-track approvals Bill, Schedule 4, clause 32.



interests through prioritising the purpose of the Bill⁹ above all other considerations, including the Resource Management Act 1991. This is inappropriate and threatens to erode the environmental safeguards that have been publicly and legally affirmed over the last four decades.

16. The Bill, in its current format, could therefore be considered as inconsistent with a Māori worldview - where prioritising the health and wellbeing of our natural resources is considered paramount. It is imperative that an appropriate balance is struck to ensure our natural environment continues to survive and thrive amidst development efforts.
17. The Māori Trustee is a strong advocate for the principle that environmental protection and sustainable development are not mutually exclusive kaupapa. However, finding appropriate solutions requires collaboration with all stakeholders and a willingness to accept compromise that is not at the expense of the environment. Our natural resources are stressed and now is not the time to decrease protective measures that safeguard their existence.
18. The Māori Trustee's preference is for this Bill to undergo significant revision to find a more appropriate balance between economic and environmental values. If that is not going to happen, then the Māori Trustee says that at least some of her environmental concerns should and can be addressed as follows:
 - a. The purpose of the bill should be amended to have consideration for the sustainable management of the natural environment.

3 Purpose

The purpose of this Act is to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits, *while continuing to promote the sustainable management of natural and physical resources.*

- b. In making recommendations to Ministers, the Expert Panel should be required to have regard to all matters and legislative obligations relevant to an application. All references to hierarchal considerations within the Bill¹⁰ should be removed and replaced with the requirement that the Expert Panel 'must have regard to' to listed matters.

32 Panel considers applications and notices of requirement for listed and referred projects

(1) The expert panel must assess an application or notice of requirement for a listed or referred project, and any written comments received on the application or notice,

⁹ " The purpose of this Act is to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits." Supplementary Analysis Report, p.3 [sar-mfe-ftab-mar24.pdf \(treasury.govt.nz\)](#)

¹⁰ Including but not limited to:

Fast-track approvals Bill, Schedule 3, Clause 1

Fast-track approvals Bill, Schedule 4, Clause 32

Fast track approvals Bill, Schedule 9, Clause 9



having regard ~~giving weight~~ to the following matters, if relevant, ~~in the order listed (greater to lesser):~~

- (a) the purpose of this Act; and
 - (b) the purpose of the Resource Management Act 1991 set out in section 5 of that Act; and
 - (c) the matters for consideration in section 6 of the Resource Management Act 1991; and
 - (d) the matters for consideration in section 7 of the Resource Management Act 1991; and
 - (e) the provisions of any of the following, if relevant, made under the Resource Management Act 1991:
 - (i) any national direction;
 - (ii) operative and proposed policy statements and plans;
 - (iii) iwi management plans;
 - (iv) Mana Whakahono ā Rohe;
 - (v) joint management agreements; and
 - (f) the relevant provisions of the Resource Management Act 1991 or any other legislation that direct decision making under the Resource Management Act 1991 (see, for example, sections 104 to 107 of that Act and the provisions referred to in **clauses 31 to 35**).
- c. The Minister for the Environment should have a more substantive role in the decision-making process and be named in the Bill as a joint Minister.
- d. An approval to do anything otherwise prohibited under Resource Management Act should make a project ineligible under s18 of the Bill. This is consistent with criteria under previous fast-track legislation¹¹ and upholds the democratic decisions made at both a national and local level.

18 Ineligible projects

A project must not include any of the following activities:

(a) an activity that is described as a prohibited activity in the Resource Management Act 1991, regulations made under that Act (including a national environmental standard), or a plan or proposed plan:

¹¹ [COVID-19 Recovery \(Fast-track Consenting\) Act 2020 No 35 \(as at 08 July 2023\), Public Act – New Zealand Legislation](#), Section 18.



Climate Change

19. The Māori Trustee is concerned that the Bill does not adequately consider the potential impacts that projects could have on climate change. Given that sectors with significant emissions can gain project approvals through this process, it is imperative that appropriate measures are put in place to ensure New Zealand can uphold both our national and international climate change obligations. The Māori Trustee therefore considers that provision should be made within the Bill to ensure that all projects must align with any mechanisms produced under the Climate Change Response Act 2002 – including emission reductions plans, targets and budgets.

Decision-making powers

20. The Māori Trustee considers that decision-making powers should be entrusted to the Expert Panel, comprised of individuals with the requisite technical expertise, rather than vested in Ministers¹². This will ensure a more informed, transparent and balanced approach to decision-making. This approach will also provide protection to Ministers from potential legal risks and conflicts of interests as well as act as a safeguard against environmental harm. Furthermore, removing the need for an additional procedural step will ensure expedient decision-making, a central tenet of this Bill's intent.

21. While the Māori Trustee advocates for decision-making powers to be entrusted to the Expert Panel, if this option is not embraced, she proposes the following matters need to be addressed in the Bill:

- a. The Minister for the Environment should be included in the definition of '**joint Ministers**'. If this amendment (alongside our amendment suggested in paragraph 15(d) of this submission) is not accepted, the Minister for the Environment should, at a minimum, be required to act jointly with those other Ministers in relation to any approval to do anything otherwise prohibited by the Resource Management Act 1991.

joint Ministers –

- (a) means the Minister for Infrastructure, Minister of Transport, ~~and~~ Minister for Regional Development *and Minister for the Environment*, acting jointly; and
- (b) in relation to an approval to do anything otherwise prohibited by the Wildlife Act 1953, includes the Minister of Conservation acting jointly with those other Ministers; and
- (c) *in relation to an approval to do anything otherwise prohibited by the Resource Management Act 1991, includes the Minister for the Environment, acting jointly with those other Ministers; and*

¹² The Māori Trustee notes that this was also the preferred option recommended in MfE's Supplementary Analysis Report. Supplementary Analysis Report, pp. 20-22 [sar-mfe-ftab-mar24.pdf \(treasury.govt.nz\)](#)



(d) in relation to an approval under the Crown Minerals Act 1991, includes the Minister responsible for that Act or the appropriate Minister (within the meaning of that Act) acting jointly with those other Ministers.

- b. The scope for Ministers to be able to request an Expert Panel to reconsider their recommendations, under s 25, should be narrowed to only instances where new information is made available. This is consistent with the explanatory note that accompanied the Fast-track Approvals Bill.¹³ Furthermore, an express requirement for Ministers to make their analysis under subclause (4) and their rationale under (the amended) subclause (5) publicly available should be included. These minor amendments may alleviate public concerns around selective reconsideration, political influence, undue pressure on expert panels, lack of transparency and project-specific bias.

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

(1) The panel must prepare a report with recommendations on the substantive application referred to it under this Act and provide the report to the joint Ministers.

(2) In preparing the report, the panel must consult the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development.

(3) Those Ministers must be allowed 5 working days to comment on the draft report, its assessment of the project in relation the relevant Treaty settlement, and any conditions relevant to that assessment, before the report is provided to the joint Ministers for their final decision.

(4) Joint Ministers must not decide to deviate from a Panel's recommendations unless they have undertaken analysis of the recommendations and any conditions included in accordance with the relevant assessment criteria.

(5) In determining a substantive application, the joint Ministers may, *if relevant information not available to the panel has since become available*, refer a part or the whole of the panel's recommendations back to the panel to reconsider ~~and give the panel any directions the Ministers think appropriate as to the reconsideration of a part or the whole of the recommendations.~~

(6) The relevant information referred in the preceding subclause must be published on an Internet site maintained by the responsible agency and be made available free of charge to the public by the responsible agency upon request,

~~(7)-(6)~~ The Ministers may –

- (a) seek clarification from the panel on any recommendation;
- (b) commission additional advice;
- (c) seek further comments from any affected parties.

¹³ "They [Ministers] may also direct an EP [Expert Panel] to reconsider conditions if new information is made available" [Fast-track Approvals Bill 31-1 \(2024\), Government Bill Contents – New Zealand Legislation, p. 2](#)



~~(8)-(7)~~ After considering the expert panel's report on a referral application for a project, the joint Ministers must –

- (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.

~~(9)-(8)~~ The responsible agency must notify the applicant of the joint Ministers' decision, including (if applicable) the reasons for declining approval.

~~(10)-(9)~~ An applicant whose application for approval is declined may reapply to the Ministers by lodging a fresh referral application with the responsible agency.

Invitations for Written Comments

22. The Māori Trustee considers that this Bill fails to provide appropriate opportunities for stakeholders who are capable of representing environmental interests to advocate for the environment. This is highly inappropriate given the potential for significant environmental degradation that could result from the enactment of this Bill.
23. The Māori Trustee therefore considers that the following additional parties should be listed in the Bill¹⁴ to ensure the environment, who lacks a voice in this legislative process, can be advocated for:
 - a. The Minister for the Environment;
 - b. The Parliamentary Commissioner for the Environment; and
 - c. Environmental Non-Government Organisations (e.g. Environment Defence Society, Forest and Bird etc...) who have an interest in a project application that is greater than that of the general public.
24. The Māori Trustee is also concerned about the short timeframe (10 working days) given to parties to provide written comment on major projects that are of national or regional significance. Considering that multiple applications are likely to be assessed concurrently, it is imperative that affected parties are given an appropriate amount of time to provide meaningful feedback on these substantive projects. The Māori Trustee therefore considers that the Bill¹⁵ should be amended, to allow specified parties, 20 working days to provide written comments on project applications.

In closing

¹⁴ Fast-track Approvals Bill, Section 19 and Schedule 4, clause 20.

¹⁵ Fast-track Approvals Bill, Section 19(5) and Schedule 4, clause 21(1)



25. The Māori Trustee thanks the Environment Select Committee for the opportunity to submit.
26. The Māori Trustee would welcome the opportunity to discuss her submission during the Select Committee hearing process.

Ngā manaakitanga,

Greg Shaw
Deputy Māori Trustee