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New Zealand Parliament

Dear Sir/Madam

Waikato Regional Council Submission on the Fast-track Approvals Bill

Thank you for the opportunity to submit on the proposed Fast-track Approvals Bill. Please find attached the Waikato Regional Council's (the council's) submission regarding the Bill. The submission was signed out under delegated authority by the Chair of the Submissions Subcommittee and the Director of Science, Policy and Information on 18 April 2024.

Should you have any queries regarding the content of this document please contact Hannah Craven, Senior Policy Advisor, Strategic and Spatial Planning Team directly on (07) 8592831 or by email hannah.craven@waikatoregion.govt.nz.

Regards,

Tracey May
Director Science, Policy and Information

Submission from Waikato Regional Council on the Fast-track Approvals Bill

Introduction

1. We appreciate the opportunity to make a submission on the Fast-track Approvals Bill (the Bill).

2. Waikato Regional Council (the council) recognises that regional councils are required to play a significant role in providing expert advice on fast-track applications and have experience doing so under the Covid-19 Recovery (Fast-track Consenting) Act 2020.

3. Given the Bill significantly reduces the council's responsibility in exercising our own plans and policies developed in conjunction with, and funded entirely by our communities, we consider the voices of local authorities should be strongly considered in the development of this Bill.

4. We support the intention to provide a simplified consenting pathway for significant projects, and appreciate the benefits in terms of economic productivity, however we do submit that it is imperative that the legislation enables the council to continue to meet its obligations in terms of serving its community and protecting the environment. We support a fast-track process which ensures the right projects are enabled in the right places and in a manner that does not create unintended consequences of legacy impact for our ratepayers and communities.

5. The Bill largely follows the process of previous fast-track legislation and while there are benefits to the council in reducing the responsibilities and tasks of consenting staff, our submission is looking to safeguard against unintended consequences and unfunded mandates that may result for our region.

6. The council's submission sets out a number of concerns with the Bill, and recommendations to improve workability, clarity and certainty for those using and providing input to the process, particularly relating to:
    - The overall purpose and process;
    - The decision-making powers;
    - The decision-making criteria and eligibility of projects; and
    - Cost recovery for local authorities.

7. We appreciate that the intent of the Bill is to enable a swifter, more frictionless process for project applications. Our submission, we hope, assists in identifying where improvements can be made that ensure that both efficiency of process and management of the impacts can occur.

8. Specific key examples where we consider the Bill needs strengthening relate to:
    - Geothermal management;
    - Climate change and natural hazards;
    - Council assets, infrastructure and servicing; and
    - Allocation of resources.

9. Additional comments and recommendations on specific sections and clauses of the Bill are set out in a table beginning on page 10 of this submission.

10. We look forward to any future consultation process on fast-track consenting and would welcome the opportunity to comment on any issues explored during the Select Committee process.

11. The council does wish to make an oral submission and present its views to the committee.

Overall comments on purpose and process

We recommend the Bill includes a sunset clause to make the fast-track process temporary while wider resource management reform is undertaken.

The council would support a rebalancing of the purpose of the Bill to reflect a need to fast-track the approvals process for significant projects and also to provide for the impacts of proposals to be managed.

We recommend that the list of projects to either be fast-tracked or referred to be fast-tracked in Schedule 2 of the Bill is released for public feedback for a confined time period (of up to 10 days inviting comment from interested parties) run during the Select Committee process.

We seek extensions of the timeframes in the Bill for local authority comment to ensure local voice is considered, and that reasonable safeguards, contingency measures, and consent conditions are included.

We oppose the limitations on appeal rights for decisions made under the Bill.

12. While we are not opposed to a fast-track approvals process, as we do believe that system improvements should always be investigated, we consider the current Bill presents an opportunity to improve the previous fast-track process in the Covid-19 Fast-track legislation and align with any proposed changes to the RMA through the government's resource management reform. We recommend the Bill includes a sunset clause to make the fast-track process temporary while wider resource management reform, including consideration of spatial planning, is undertaken. The success of any long-term fast-track process is dependent on clear spatial planning to show where infrastructure is needed and should go.

13. The council recognises a key difference in the Bill from previous fast-track legislation, in that it prioritises economic development and growth over other matters, including environmental concerns, rather than simply seeking to streamline the approvals process.

14. We consider the Bill's purpose statement has a narrow focus and given it prevails over all other considerations in decision-making under the Bill, it is vital that the purpose acknowledges the importance of maintaining long-term natural resource sustainability alongside progressing development in the short-term.

15. By enabling projects to be considered through a process which goes against protections agreed through the democratically consultative process of RMA policy and plans, the Bill presents risk to the environment and sustainable management of resources, and to the quality of life that communities have stated that they want for their cities, districts, and regions.

16. We are concerned about the lack of public consultation enabled in the Bill, particularly given there is no opportunity for the public to comment on the list of eligible projects in Schedule 2 through this current consultation. Given the projects under the Bill will have national or regional significance, we believe that the public should have the right to input, in a managed form, into the consideration of projects. We strongly recommend that Schedule 2 is opened for public feedback through the Select Committee process to better inform decision-making on projects. We suggest a brief time period to invite comments would be beneficial, (of up to 10 days) particularly for building awareness of projects and social license for applicants.

17. A recurring theme of our submission is the inadequacy of time periods set for important aspects of councils' participation in the process. From our experience under previous fast-track regimes, local

authorities are severely time-constrained when it comes to their role in providing comments on applications and consent conditions. Given the exclusion of the public from the process, local authorities' role is an essential component of the process which ensure that matters of importance to local communities are brought into consideration.

18. Local authorities hold specialist expertise in the advice they can provide to applicants and the expert panel to ensure that the correct activities are applied for and that any resulting consents are robust. While we appreciate that the legislation is concerned with fast-tracking approvals, this should not be at the expense of input by parties (including local authorities) to ensure that reasonable safeguards, contingency measures, and consent conditions are put in place. Ultimately our communities will look to us to uphold policy and planning documents that they have been instrument in influencing, and that they have 100% funded.

19. Considering the short time frames in the Bill, the high number of projects that are expected to be referred, and our experiences under the previous fast track process, we consider it is highly likely that the expert panel and joint Ministers will come under extreme pressure and be rushed to make decisions. In turn, the potential adverse impacts of a project may not be fully addressed, and decisions made are likely to be subject to appeal and review. We strongly recommend that parties that are engaged with are given at least 20 working days to provide comments at all stages in the process.

20. The council is challenged by the limited rights of appeal in the Bill. The inability to challenge a proposal on its merits removes one of the fundamental checks and balances of resource management decision-making in New Zealand. Significant ratepayer investment has been made over the years in planning documents which are a reflection of what our communities want for their natural and physical resources. The fast-track process proposed may enable outcomes that contradict what communities have stridently requested of councils and so there should be greater rights of appeal than the Bill currently provides, in the very least enabling councils to appeal on behalf of their communities.

Cost recovery for local authorities

The cost-recovery provisions in the Bill need to be extended to:

- Include all reasonable costs incurred by councils in participating in fast-track processes.
- Enable costs to be recovered via the EPA, not the applicant directly.

21. The council strongly supports provision in the legislation for cost recovery for councils involved in fast-track processes, as these costs should not fall to ratepayers. However, we think the current cost recovery provisions are not adequate and need to be expanded.

22. The scope of cost recovery provisions are currently limited to compliance with Schedules 3 and 4 of the Bill. This needs to be extended to include all reasonable costs incurred by local authorities in participating in fast-track processes, which includes the following additional mandated responsibilities:
    - Any pre-lodgement consultation with the applicant, including that required under clause 16;
    - Any comments provided to the joint ministers at their invitation on the referral application under clause 19;
    - Any comments required by the joint ministers under clause 20;
    - Any comments provided to the joint ministers at their invitation under clause 25;
    - Any comments provided on the application to the expert panel at their invitation under clause 20, Schedule 4;
    - Preparation of evidence and being heard if a hearing is held under clause 24, Schedule 4;
    - Any provision of further information to the Panel under clause 28, Schedule 4; and
    - Providing comments on the conditions to the expert panel at their invitation under clause 38, Schedule 4.

23. We expect that the bulk of councils' time and costs incurred through fast-track processes will fall under one of the roles outlined above, particularly providing comments on the application to the joint ministers and the expert panel, and comments on the conditions.

24. We also seek additional cost-recovery provision in the Bill to ensure that applicants for regional consents are not impacted if councils are unable to meet RMA statutory deadlines as a result of participating in time-bound fast-track approvals processes. This may be similar to RMA section 36AA which provides for local authority discounting.

25. We recommend inclusion of an indemnity type clause to provide local authorities an avenue of protection from downstream impacts on ratepayers for decisions made under the Bill; decisions that have been outside of local authorities' control. Any unintended legacy impacts of decisions made under the FTA process may not be apparent for a number of years, and council believes that any unforeseen future costs of decisions should not be carried by the region's ratepayers.

26. Additionally, the council seeks that clause 14, Schedule 4 be amended to enable councils' cost recovery to be via the EPA rather than the applicant directly. The Bill's current wording requires a local authority to recover costs from the applicant, which does not consider:
    - If an applicant refuses to, or cannot, pay. Under the current wording, this would technically make the local authority in breach of the law.
    - Instances where the costs associated with cost-recovery exceed the costs actually incurred through the fast-track process. Whether to seek the recovery of costs should be a discretion left to the local authority (as it is under the RMA).

27. Requiring cost-recovery to be via the EPA, as the administrator of fast-track processes, would provide better transparency and oversight to ensure costs are actual and reasonable and able to be recovered.

28. We also note that the issues with the cost-recovery provisions extend to iwi and hapū, particularly those who are not part of a settlement agreement. Without appropriate mechanisms, there are limited opportunities for iwi and hapū to participate due to resource constraints.

Decision-making powers

The council recommends that final decisions on approvals, including the setting of consent conditions, should be made by the expert panel, noting this has worked well in the previous fast track consent process.

If Ministers are to remain the sole decision-makers, we suggest that the Bill should at least require the Ministers to prepare disclosure statements and include the Minister for the Environment as a joint Minister.

The council also seeks:

- Certainty that comments provided by local authorities will be effectively considered, and where any recommendations are discounted or dismissed, reasons for doing so are provided; and
- Expert panels be required to include expertise on resource management and economic analysis.

29. The council considers the decision-making process within the Bill places unprecedented powers in the hands of a few specific Ministers. Ministers or their ministries may not have the expertise to properly consider the wide range of relevant matters that factor into a consent or approval decision. Ministerial

reliance on the recommendations of the expert panel will be critical in getting this part of the new framework working well.

30. It is our view that the role of a government minister is to be ministerial, to have a strong advocacy position aligned with their party and their portfolio, to form relationships with interested parties and to broker proposals. The powers under this Bill create potential for placing Ministers in positions where they may not have sufficient technical expertise to make decisions, and therefore, increased incidence of judicial review, therefore being counterintuitive to a fast-track process. Particularly where Crown projects are referred to the fast-track process, there is an obvious conflict of interest for the joint ministers. The Bill would benefit from additional safeguards to protect those exercising their Ministerial decision-making powers.

31. Exacerbating these risks, the Bill lacks strong statutory criteria to guide the joint ministers' decisions, or requirements to document reasoning for decisions made. We recommend that final decisions on approvals, including the setting of consent conditions, should be made by the expert panel.

32. If ministers are to remain the sole decision-makers, we suggest that the Bill should at least require the joint ministers to prepare disclosure statements which detail any reasons for declining expert panel recommendations and set out any relationships between joint ministers and the applicant, including any meetings had and political donations made.

33. Additionally, if ministers are to retain decision-making powers, we recommend that the Minister for the Environment is included as a joint minister to ensure environmental considerations are represented in decision-making.

34. We also recommend that, where possible it is considered that a local constituent MP, or alternatively, the Mayor or Chair of the relevant local authority, may be included in decision making to ensure an appropriate level of community representation and strengthen the central and local government relationship.

35. We also have the following concerns regarding the decision-making powers and requirements for expert panels under the Bill:
    - There is no certainty in the Bill that comments provided by local authorities will be effectively considered. A feedback loop to communities is required to ensure that the local expertise and time spent by those invited to provide comments will be considered and weighted appropriately.
    - We consider expert panels should be required to include expertise on economic analysis, given the high weight of economic considerations in decision-making under the Bill. If a project is to progress through the fast-track process on the basis of the strength of its economic merits, then this needs to be tested at the outset and it becomes imperative that a panel member has the appropriate expertise to do so.
    - For reasons outlined throughout this submission, we also consider expert panels should be required to include expertise on resource management.

Decision making criteria and eligibility of projects

The council strongly recommends that clause 17 of the Bill is strengthened, to ensure a more balanced consideration of economic and environmental matters, and recommends, at a minimum, that the ministers must consider the matters listed in clause 17(3). We seek for clause 17(5) to be deleted and for prohibited activities (in a resource management planning document) to be listed as ineligible activities under clause 18.

36. We acknowledge that the decision-making criteria are clearly weighted towards development and not environmental protection or sustainable resource use. Issues such as the impacts of climate and natural hazards, are secondary to economic concerns. This will have significant implications for potential future users of natural resources and may cause significant unintended consequences, some of which will be economic, if they are not sufficiently considered at the inception of projects.

37. The council recommends that clause 17 is strengthened, to ensure a more balanced consideration of economic and environmental matters, and recommends, at a minimum, that the ministers must consider the matters listed in clause 17(3).

38. For example, housing projects considered for referral have the potential to undermine spatial and infrastructure planning work done by councils to give effect to the National Policy Statement on Urban Development 2020 (NPS-UD). Whether a project is consistent with local or regional planning documents, including spatial and infrastructure strategies, is listed last in matters ministers may consider in determining whether a project has significant regional or national benefits. Approval of a project which is inconsistent with a spatial strategy likely means that there is not the supporting infrastructure or services required to support the project or that there are significant constraints on the land that are known to the local authorities of the area. An improvement could be to clarify that housing developments can be considered regionally significant if they are linked to a Future Development Strategy (FDS) under the NPS-UD, or an equivalent growth strategy prepared and consulted on by local authorities who are not required to prepare an FDS.

39. We consider there is an oversight in the Bill which prioritises projects which would have significant regional or national benefits. There is no guidance on how these economic benefits are assessed and no mention of costs or *net* benefits. We recommend an additional criterion of economic efficiency, with cost-benefit analysis used to prioritise projects, given it is likely that there will be a significant number of projects seeking referral.

40. The council considers that clause 17(5) should be deleted. Activities which are prohibited are categorised as such for a reason and it is an inappropriate overreach of ministerial power to make a decision which ignores this when they lack the relevant expertise and understanding of why it is prohibited. The inclusion of prohibited activities in RMA planning documents has not been done lightly, and these activities are heavily tested through consultation and formal submission processes. These activities, and similarly, district plan zones, are reflective of what communities have collectively agreed that they do not want to see in their back yards. To enable approval of prohibited activities and overriding of district plan zoning would be a pseudo-plan change, and undermines ratepayer investment, community feedback, and the work done by councils in preparing RMA plans through the Schedule 1 process, which includes public consultation, hearings, and often appeals. Clause 18 should be amended to clarify that prohibited activities and projects which override zoning under RMA plans are ineligible for fast-track referral.

Other key concerns

<u>Geothermal management</u>

Given the complexity and uniqueness of the geothermal resource, and expertise required to manage it, the council strongly recommends geothermal projects are excluded from the fast-track process and listed as ineligible under clause 18.

We reiterate our recommendation to amend clause 17(3) so that the joint ministers *must* consider the listed matters, specifically whether the project is consistent with local or regional planning documents, including spatial strategies.

41. The council has significant concerns relating to geothermal resource management within the fast-track process. Geothermal management is highly specialised and requires complex assessment from experts to protect the irreplaceable taonga; it does not lend itself to a simplified consenting regime that may be appropriate for other energy resources.

42. The Waikato Regional Policy Statement and Regional Plan already efficiently manage and protect geothermal systems. Geothermal developments in the Waikato region are required to follow a staged approach which minimises irreversible adverse environmental effects and accommodates the needs of existing users and potential needs of future generations. Consent processing time for geothermal projects is generally under one year, with the longest in the Waikato region having taken 14 months.

43. The duration of resource consents for geothermal projects tends to be 35 years, with the lifetime of a geothermal project extending beyond this where reconsenting allows. As such, any geothermal consent must be robust enough to withstand any changes to the regulatory environment or else face being a stranded asset. Given the high upfront capital costs of geothermal projects, this presents a significant risk for investors.

44. Therefore, it is vital that geothermal management processes enable adequate time for input and review by geothermal and cultural experts and do not undermine the gains made in sustainable geothermal resource management.

45. Given the complexity and uniqueness, we consider geothermal projects are unlikely to meet the criteria under clause 17, particularly:

    b) Whether access to the fast-track process will enable the project to be processed in a more timely and cost-efficient way than under normal processes; and
    c) The impact referring this project will have on the efficient operation of the fast-track process.

46. In its current form, the Bill is unlikely to capture the full extent of potential adverse effects of a geothermal project, due to:
    - Inconsistency with geothermal policy in the Waikato Regional Plan;
    - Insufficient processing timeframes causing rushed decision-making;
    - Decision-making powers being held by the joint ministers with a lack of expertise on geothermal matters;
    - Limited opportunities and timeframes for consultation with stakeholders; and
    - Limited extent of stakeholders invited to provide comments.

47. An additional issue is the reduced lapse time for consents under the Bill; two years is insufficient for geothermal projects given the time required to bring them online once a consent is granted. Financing decisions for geothermal projects are often subject to a consent application being approved, and construction may take a few years.

48. Figure 1 below shows the consent processing and post-consent timeframes for large-scale geothermal projects and demonstrates the efficiencies of the existing consenting process for geothermal.

49. To address these concerns, at a minimum, the council seeks amendment to clause 17(3) so that the joint ministers *must* consider the listed matters, specifically whether the project is consistent with local or regional planning documents, including spatial strategies.

50. We also strongly recommend geothermal projects are listed as ineligible under clause 18 of the Bill, therefore ensuring consistent management of geothermal resources under the existing RMA process and the decision-making powers remaining with the local authorities who have expertise on geothermal matters.

Station/unit no.		Ownership	Size (MW)	Date lodged	Date decision served	Consent processing time	Known to be exercised from	Time taken from consent	Consent expiry
Wairakei A	GeoFutures	Contact Energy	127	17/12/2021	08/12/2022	11 months, 21 days *delays due to Covid -19	Not yet exercised		21/01/2058
Wairakei			5						
Poihipi			50						
Te Mihi			166						
Te Huka unit 1		Contact Energy	26	19/02/2010	10/12/2010	9 months, 21 days	12/10/2021	10 years, 10 months	10/12/2045
Te Huka unit 2									
Tauhara			174	19/02/2010	10/12/2010	9 months, 21 days	Under construction. Due for completion in 2024	13 years +	
Te Huka unit 3			50	07/03/2022	05/08/2022	4 months, 29 days *delays due to Covid -19	Under construction. Due for completion in 2024.	2 years +	
Ohaaki		Contact Energy	53	12/04/2013	01/11/2013	6 months, 20 days	12/10/2021	7 years, 11 months	26/11/2048
Mokai		Tūaropaki power company (Tūaropaki Trust and Mercury Energy)	113	07/12/2022	Non-notified decision made on 06/03/2024	1 year, 4 months *Holds: From 23/12/2022 To 28/03/2023 Reason: Commission Report From 28/03/2023, To 18/01/2024 Reason: S.92(1) Information Request			Expected expiry 2059 (granted duration expected to be 35 years)
Rotokawa		Mercury & Rotokawa Joint Venture (RJV)	34	14/11/2016	20/06/2018	1 year, 7 months *subject to objection/appeal	Not yet exercised		30/09/2053
Nga Awa Purua		Mercury & RJV	140						
Nga Tamariki		Mercury & RJV	85	06/11/2009	11/05/2010	6 months, 5 days	23/01/2013	2 years, 8 months	31/08/2045
Ngatamariki OEC5 expansion			37	27/06/2022	26/06/2023	11 months, 30 days *delays due to Covid -19	Under construction.	9 months +	25/06/2058

Figure 1: Large-scale geothermal development consents – consent processing times and post-consent timeframes

Climate change and natural hazards

The council considers the Bill needs to better take account of potential climate change and natural hazard implications of projects, including by:

- Considering the financial and social (short-term and long-term) consequences of decisions made which are subject to risk;
- Requiring applicants to provide technical assessment, such as flood modelling;
- Considering existing local adaptation planning and pathways.

51. The council has significant concerns about the liability implications of infrastructure or developments which are fast-tracked in locations subject to climate change and/or natural hazard impacts. Given the challenges New Zealand is facing around environmental degradation, climate change and emergency preparedness, the Bill should require consideration of climate change and natural hazards in referral decision making, specifically factoring in:
    - The projected lifetime for a project and financial consequences of level of service commitments for infrastructure providers e.g. the cost of maintaining and upgrading flood protection works in the context of sea level rise and more extreme weather events. In some cases, if approvals are granted, national funding may be required to maintain the infrastructure;
    - Acceptable, tolerable and intolerable levels of risk, including residual risk;
    - The additional resources that will be required for emergency preparedness; and
    - The potential need for temporary evacuation or permanent retreat.

52. In its current form, the Bill risks emulating the Housing Accords and Special Housing Areas Act 2013 and approving urban development projects on subsiding peat, flood prone areas, or other areas which will be expensive to defend from climate futures. Failure to plan and prioritise spatially will risk maladaptation to a changing climate and investment in assets that could become stranded with climate retreat. Local authorities are already funded to provide robust and consistent natural hazard identification and can provide useful information in this process.

53. Even if climate change and natural hazards are considered in the fast-track process, the Bill's timeframes do not allow for adequate technical assessment such as flood modelling. The Bill should require applicants to provide modelling which takes into account high range climate change projections and baseline modelling to understand sensitivity and the potential for increasing impacts. In the absence of a National Policy Statement on Natural Hazards, interim guidance should be available on the standards of modelling required.

54. The Bill should also require consideration of existing local adaptation planning and pathways when referring and approving projects.

55. A sound legislative framework that prevents this scenario arising in the first place is a far more effective and sound approach than managing the dire consequences for people, life and property afterwards. The financial burden of emergency preparedness and managing retreat and loss of homes should not fall on ratepayers.

56. We recommend strengthening of section 17(3) of the Bill, particularly to require consideration of 17(3)(g) and (h), whether the project will support climate change mitigation, including the reduction or removal of greenhouse gas emissions, and adaptation, resilience, and recovery from natural hazards.

Council assets, infrastructure and servicing

The council strongly seeks that the Bill requires consideration of a project's potential impacts on council assets such as drainage and flood protection schemes. Additionally, we seek that any upgrades to these schemes required following approvals under the Bill are funded by the applicant.

57. We have significant concerns about the implications of the fast-track process on the council's own assets. In regard to our drainage schemes, the council provides a relatively low level of service that is suitable for rural and pastoral land use only. The schemes are not suitable for servicing urban land use. The territorial authorities in the region are responsible for assessing and implementing any necessary infrastructure solutions to enable any proposed land use change within council administered rural land drainage areas. However, there is not always adequate provision, and new developments often end up needing a higher level of service than can be funded.

58. We also have flood protection schemes in vulnerable areas, particularly across Thames-Coromandel and Hauraki. These schemes and networks are an important part of spatial planning and cannot be overlooked by this Bill. Piecemeal carving up of the network changes the hydraulics of a catchment and may require service upgrades to be provided (and funded) by scheme beneficiaries, commonly our targeted ratepayers. As such, it is vital that councils are involved in any approval processes for projects which may impact existing council assets.

59. Any upgrades required from projects approved by the fast-track process should be covered by the applicant.

Allocation of resources

We recommend water allocation and potential for over-allocation of resources are included as specific considerations under clause 17.

60. In the Waikato region the Waikato Regional Council, Taupo District Council, the Crown, and local iwi have jointly invested approximately $80million to address Lake Taupo restoration. In 2003, Waikato

Regional Council released 'Protecting Lake Taupo', the overall strategy guiding action to protect the lake. Subsequent to this, new Waikato Regional Plan rules were developed to cap the amount of nitrogen leaching from the land, with a public fund (administered by the Lake Taupō Protection Trust) established to assist in achieving the required reduction of nitrogen. The aim to reduce nitrogen levels by 20% has been achieved, however there is a need to remain constantly vigilant. The Taupo catchment has an intricate Nitrogen allocation/trading framework. Decisions that are made contrary to the existing regional plan provisions will create significant issues for all who operate within the catchment. Any decisions that are proposed to be enabled by the proposed Bill must not impact the work that has been undertaken in the catchment, nor should they override the Lake Taupo provisions of the Operative Regional Plan.

61. It is also unclear how water allocation will be considered in the fast-track process. As it stands, the Bill could enable consenting of water takes contrary to RMA case law which has established that where there are applications for water which cumulatively would exceed allocation limits of the water body (as set in the relevant Regional Plan), then the applications must be processed in strict order of priority (based on when the lodged application is fully complete). The "first in first served" approach is based on fairness and natural justice. The Bill currently does not require consideration of water allocation and therefore may lead to the grant of approvals for water takes which "jump the queue" and may lead to legal challenge. We recommend that proposals which would result in the overallocation of water are listed as ineligible in section 18. Alternatively, at a minimum, water allocation should be added as a specific consideration under section 17.

Additional specific comments on the Bill

Submission point	Clause	Comments and recommendations to improve FTA Bill workability, clarity and certainty
62.	4 – Interpretation	We recommend part (b) of the definition of 'Treaty settlement Act' includes the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.
63.		We seek clarification on whether 'eligible activity' is the same as 'eligible project' (as referred to in sections 14 and 17) and recommend alignment of terminology.
64.	7 Te Ture Whaimana	We support inclusion of Te Ture Whaimana in the Bill however consider the section should be explicit that any decisions made under the Bill shall not be inconsistent with Te Ture Whaimana.
65.	10 – Application of the Part to specified approval processes	We note there is a risk associated with fast-tracking approvals for aquaculture projects, in that the fast-track process is unlikely to enable full technical consideration of the impacts of aquaculture projects. If the Government's proposal to extend existing marine farm consent durations by an additional 25 years is passed, this risk becomes more significant, further emphasising a need to ensure projects are thoroughly assessed. Long consenting terms are unresponsive to environmental changes and variations of public values and needs over time, which are unlikely to be fully considered in a fast-track timeframe. We recommend that consent duration of aquaculture projects which are referred is considered in the process.
66.		We recommend that section 10(5) is amended as follows: "… any specific approval referred to in subsection (1) that is included in the approval under this Act must be treated as if it were granted, issued, or entered into in accordance with the legislation that establishes or provides for it, <u>except as otherwise provided in this Act</u>."
67.	13 - Ministers must consider Treaty settlements and other obligations report	We recommend amendment to 13(2)(c) to refer to Te Ture Whaimana o Te Awa o Waikato (Vision & Strategy)(Te Ture Whaimana): "the relevant principles and provisions in those Treaty settlements, including those that relate to the composition of a decision-making body for the purposes of the Resource Management Act 1991<u>, and including those that relate to Te Ture Whaimana o Te Awa o Waikato for relevant locations</u>:"
68.	14 - Referral application	Section 14(1) which refers to 'the responsible agency' is inconsistent with section 12(1) which refers to the joint Ministers in relation to applying for fast-track. We recommend this is clarified.

Submission point	Clause	Comments and recommendations to improve FTA Bill workability, clarity and certainty
69.		We recommend that section 14(3)(b) requires an application to explicitly state when public conservation land may be affected by the project, rather than simply identifying it on a map.
70.		A project should consider climate resilience and responsiveness, greenhouse gases and natural hazards not just in terms of the impacts they may have on a project, but also how the project itself may affect them. Projects should not contribute to exacerbating of the effects of climate change nor should increase the likelihood or scale of impact of natural hazards. We recommend that section 14(3)(v) should be expanded on as follows: "(va) a description of how the project will contribute to the exacerbation of climate impacts, the discharge of greenhouse gases, and the known risk, and scale of impacts likely to result from natural hazards."
71.		We support section 14(3)(w).
72.		Applicants should also be required to provide information on the capacity of existing infrastructure in the proposal area and also whether there are any council-owned (territorial authority and regional council) assets which may be affected, as well as the potential impact of the proposal on existing levels of service and any financial costs that may be required to upgrade infrastructure (noting all such costs should be met by the applicant).
73.	16 - Consultation requirements for applicants for approvals	While we support the requirement for an applicant to engage with local and iwi authorities ahead of lodging a referral application, we have the following concerns: • The section should identify a purpose for the engagement and/or minimum requirements for engagement with the relevant entities, including minimum information to be provided by the applicant. • The section sets no timeframes for engagement. We recommend parties that are engaged with are given 20 working days to provide a response to the applicant. • There are no cost-recovery provisions for local and iwi authorities who are engaged with. • The applicant should be required to provide a record of engagement and responses of parties that are engaged with to the Ministers. • It is unclear why this section uses the term 'engagement' instead of 'consultation' which is used elsewhere in the Bill.
74.	17 - Eligibility criteria for projects that may be referred to panel	Section 17(2) includes cost efficiency as a consideration for fast-track approvals but we note concern about the intent of this, and who the cost efficiencies are for the benefit of. We infer that the section is considering whether the process is time and cost efficient for the applicant rather than the usual consenting authority. Any cost efficiencies

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		of the fast-track process should not be obtained by redirecting costs of the process to other parties. Clear and direct cost recovery mechanisms for local authorities are required to explicitly determine the actual costs associated with the fast-track process. In short, any unintended costs should not be absorbed by ratepayers.
75.	18 - Ineligible projects	It is unclear why section 18(d)(i) refers to 'more than minor adverse effects' when none of the other ineligibility criteria do. We recommend deleting this wording as it is subjective and ambiguous for decision makers. We submit that removing this reference will assist in achieving the purpose of the Bill.
76.		We recommend addition of a new ineligibility criterion: "(m) an activity that occurs in a World Heritage Area or a RAMSAR site."
77.	19 - Process after joint Ministers receive application	It is unclear whether section 19(1) is referring to the ministers' decision to decline to refer an application or their decision on the substantive application for the project. We recommend this is clarified.
78.		We consider 10 working days is insufficient to provide written comment on an application, given applications generally include large technical documents. We recommend this is amended to 20 working days.
79.	21 - Decision to decline application for referral	It is unclear whether a project must meet all of the criteria under section 17. We recommend this is clarified.
80.		We seek reference in section 21(2)(a) to Te Ture Whaimana.
81.		We recommend an addition to section 21(2) to allow projects to be declined if there are significant risks to people or property from natural hazard risk, or if the proposed activity will increase the magnitude of impact from natural hazards.
82.		For the sake of transparency and accountability, we strongly recommend that the minister is required to document the decision made and the reasons for it. This also applies to section 22.
83.		As a consequential amendment, we recommend deletion of section 21(2)(f) provided our recommendation to make prohibited activities ineligible under section 18 is accepted.

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84.	22 - Decision to accept application for referral	We recommend amendment to section 22(1)(c) to require consideration of engagement undertaken under section 16.
85.		It is unclear what a 'related arrangement' is under section 22(2). We recommend this is defined or amended to be more precise. We expect Te Ture Whaimana would be included.
86.	24 - Notice of joint Ministers' decision on referral application	We recommend the section (and/or section 25) specifies a timeframe within which notice should be given following the joint Ministers' decision. We also recommend that the relevant local authorities should be informed if a project has been referred under section 24(2), and, if relevant, provided reasons why the advice of local authorities was discounted or dismissed.
87.	25 - Panel to report and joint Ministers to decide whether to approve project	We recommend that ministers must be required to specify their reasons when deciding to deviate from a panel's recommendations, and that in all instances these reasons are publicly disclosed.
88.		It is clear from the title and content of this section that it applies to the substantive decision on an application, however, section 25(7) refers to a "referral application". We recommend this be clarified and/or amended.
89.	29 - Responsible agency may provide information for purposes of this Act	It is unclear whether section 29(4)(e) intends to capture the Local Government Meetings and Official Information Act (LGOIMA) 1987. We recommend this is clarified.
90.	Sch 3 Clause 1 - Function of expert panel	We recommend clause 1(3) is amended to require a panel to recommend declining an approval if mandatory requirements are not met, given that 'mandatory' indicates they cannot be disregarded.
91.	Sch 3 Clause 3 – Membership of panels	It is unclear how it is determined whether the panel meets the requirements and has 'collective knowledge and experience'.
92.	Sch 3 Clause 5 - Conduct of hearings and other procedural matters in context of Treaty settlements	We support this clause which preserves bespoke procedural arrangements (including appointment of persons to hearings) as per treaty settlement legislation or joint management agreements with iwi.
93.		We consider clauses 10(3) and (4) may be limiting and recommend amendment as follows:

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	Sch 3 Clause 10 - Procedures of panel	"A panel may, at any time, seek advice from any person including, without limitation, planning, technical or legal advice including from a department of State, Crown entity, or relevant local authority, as it thinks appropriate."
94.		We recommend clarification of clause 10(6) in terms of what records are required to the kept.
95.	Sch 4 Clause 4 - Applications for approvals while existing consents continue in force	We consider there may be unintended consequences of this clause as it enables projects consented under the RMA to apply to replace existing consents (at any time before they expire) with approvals under the Bill. This appears to enable any currently consented project – most likely following a public process and rigorous consideration of potential adverse effects - to seek to obtain "softer" consents than they already hold. There is no requirement in the Bill to require panels to give any weight to, or even consider, existing consent conditions which apply. These could include crucial conditions agreed to by the consent holder relating to, for example, the staged development of the project, monitoring of environmental effects or the review of conditions. We strongly oppose this clause. We also recommend clause 4(b)(2) is amended to clarify that consents cannot continue to be exercised after their expiry if a referral or approval under this Bill is declined.
96.	Sch 4 Clause 5 - EPA to refer consent applications and notices of requirement to panel	We recommend that applications under the Bill should be subject to the consultation requirements under section 62A of the Marine and Coastal Area (Takutai Moana) Act 2011.
97.	Sch 4 Clause 10 - Confidential information	We seek clarification on councils' statutory obligations if iwi disagree with the disclosure of confidential information under clause 10(b).
98.	Sch 4 Clause 12 - Information required in consent applications	It is unclear why section 8 of the RMA has been omitted from clause 12(1)(g)(i) and we recommend it should also be referred to.
99.		An assessment against Te Ture Whaimana should be required for projects which are located within the are covered by Te Ture Whaimana. We recommend Te Ture Whaimana is added to clause 12(2).
100.	Sch 4 Clause 13 - Information required to assess environmental effects	Clause 13 should address potential adverse effects which arise in the event of project failure and/or abandonment. We recommend wording as follows:

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		"(i) The risk of environmental harm in the event of project failure (whether as a result of company liquidation, project abandonment or any other reason) and the measures, including potentially the provision of bonds, to avoid, remedy or mitigate those risks"
101.	Sch 4 Clause 17 - Scope of information required	We are concerned with the reference to 'management plans' in clause 17(2), given such plans can significantly vary in terms of purpose, content and effectiveness. Without statutory constraints on management plans or criteria for ensuring their effectiveness, the clause enables applicants to avoid adequate identification, quantification and management of adverse effects. We recommend amendment as follows: "Subclause (1) applies, taking into account any proposal by a consent applicant or requiring authority to manage the adverse effects of an activity through conditions, including conditions requiring actions that avoid, remedy, mitigate or offset the adverse effects of activities."
102.	Sch 4 Clause 20 - Public and limited notification not permitted	We strongly seek provision for cost recovery for local authorities in this clause.
103.		In addition to the persons listed, written comments should also be sought from applicants under the Marine and Coastal Area (Takutai Moana) Act 2011 for customary marine title.
104.	Sch 4 Clause 21 - General provisions relating to invitations given under clause 20(2)	We consider the time period for local authorities to provide comment on applications is far too short, particularly given that public consultation is not enabled through this process, and local authorities have a duty to represent their communities. Application documents are likely to be substantial and complex and therefore require review and comment by multiple Council staff. An expectation to do so in any reasonable way within 10 working days is unrealistic. We strongly recommend increasing the time for comments to 20 working days.
105.		Clause 21(6) refers to the panel's 'decision'. Should the decision-making powers remain with the Ministers, this should be amended.
106.	Sch 4 Clause 24 - Procedure if hearing is held	It is unclear whether all parties listed in 24(1)(a-c) must be invited to be heard. We recommend all parties should be invited, and seek clarification on this.

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107.		Clause 24(4) provides 5 working days' notice of a hearing. This is insufficient time to arrange representation and prepare evidence for a hearing and we strongly request this be amended to 15 working days.
108.		It is unclear whether clause 24(15) intends to exclude public access to 'in person' hearings. We oppose any exclusion of the public's rights to attend consent hearings.
109.	Sch 4 Clause 28 - Further information	We consider 10 working days is insufficient for local authorities to provide further information on a matter, given that the scope and nature of further information requests tend to be significant and complex. We recommend this is amended so that the period for providing further information be determined by the EPA on a case-by-case basis, or alternatively increased to 20 working days.
110.		We seek for cost-recovery to be provided for in this clause, as in clause 9(5).
111.	Sch 4 Clause 32 - Panel considers applications and notices of requirement for listed and referred projects	It is unclear why section 8 of the RMA has been omitted from clause 32(1) and we recommend it should also be referred to.
112.		We recommend for consistency that the reference to 'the vision and strategy' under clause 32(3) is amended to refer to 'Te Ture Whaimana'.
113.	Sch 4 Clause 36 - Consideration of notices of requirement for listed projects and referred projects	It is unclear why whether adequate consideration has been given to alternative sites is only a relevant consideration for designations for listed projects and referred projects. We consider there are likely to be other projects where this is an appropriate consideration.
114.	Sch 4 Clause 37 – Conditions applying to resource consents	We recommend a clause be inserted in the Bill which ensures that any conditions imposed in relation to a project are clearly linked to the legislation under which they are imposed, particularly in cases were multiple approvals are granted for the same project. Without explicit clarification, there is a risk to the efficiency of implementation of approvals if it is unclear to regulators which conditions apply to which jurisdiction.
115.	Sch 4 Clause 38 - Panel to provide copies of draft conditions	We recommend that all persons who are invited to comment on an application under clause 20 are invited to provide comment on the proposed conditions, regardless of whether they responded to the invitation under clause 20.

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116.		We seek for cost-recovery to be provided for in this clause.
117.		We recommend that a time period is specified for comments to be received on the proposed conditions, and that this should be a sufficient length to ensure a robust and considered response. Local authorities, particularly, can provide specialised input into condition drafting which is especially important given local authorities are then required to monitor and enforce compliance with conditions. Lack of input by a local authority may mean non-compliance and/or a need to apply for RMA s127 changes to conditions of consents. It is also important that conditions are formatted in such a way that they work in the local authority's administrative system. We have had a suite of consents granted via the Covid-19 Fast Track legislation that do not fit easily in our administrative system due to district and regional conditions being combined in schedules.
118.	Sch 4 Clause 39 - Panel to make recommendation	For the sake of certainty and consistency with the equivalent provision in the RMA, we recommend amendment to require any lapse date applied for under the Bill to be specified in the consent itself.
119.	Sch 4 Clause 40 - Ministerial decision	We recommend that the Bill specifies a timeframe for the ministers' decision on applications.

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