Taituarā
Local Government Professionals Aotearoa

Ko Tātou LGNZ.

Joint submission of Taituarā — Local Government Professionals Aotearoa and LGNZ to the Environment Select Committee on the Fast-Track Approvals Bill

April 2024

SUBMISSION TO THE ENVIRONMENT SELECT COMMITTEE ON THE FAST-TRACK APPROVALS BILL

Who is Taituarā?

Taituarā — Local Government Professionals Aotearoa ('Taituarā') is Aotearoa New Zealand's leading membership network for professionals working in, and for, local government. We have a thriving membership base of over 1,000 members drawn from local authority Chief Executives, managers, and staff across all 78 local authorities.

Taituarā strengthens the local government sector as a whole by using our members' insight and experience to influence the public policy debate and to ensure the technical, practical, and administrative implications of legislation will work 'on the ground' – as effectively and efficiently as possible.

We are. LGNZ.

Local Government New Zealand (LGNZ) provides the vision and voice for local democracy in Aotearoa, in pursuit of the most active and inclusive local democracy in the world. LGNZ supports and advocates for our member councils across New Zealand, ensuring the needs and priorities of their communities are heard at the highest levels of central government. We also promote the good governance of councils and communities, as well as providing business support, advice, and training to our members.

Why we are submitting

Thank you for the opportunity to submit on the Fast-track Approvals Bill (FTA).

Local government is a critical partner in the delivery of the resource management system and infrastructure. Most obviously the FTA affects local government's roles and

responsibilities for consenting and planning under the RMA, as well as its monitoring, compliance, and enforcement functions. It will also affect its democratic role and the services, infrastructure and assets councils provide and own on behalf of communities. And it will likely affect future investment priorities.

Taituarā and LGNZ understand the drivers behind the FTA and the needs it is trying to address.

Taituarā and LGNZ have emphasised across many submissions to this committee the importance of addressing the shortcomings of the Resource Management Act 1991 (RMA), including the lack of integrated national direction, the interconnectedness between council's RMA roles and its wider functions, and the need to establish a resource management system that is fit for the future, has bi-partisan support, and has the social licence to operate.

Arguably a future resource management system would not need this bespoke fast-track process for approving infrastructure and development of national and regional significance because a mechanism or the system settings for it would be built in.

But Taituarā and LGNZ acknowledge that the current system settings and alignments are not right – yet. **Therefore, noting our proposed improvements, we accept the need for an alternative tool to streamline infrastructure planning processes.**

Local government and communities stand to benefit from expedited decision making, and the delivery of nationally and regionally significant projects that have positive net benefits. We therefore want to ensure the proposed arrangements, as a potential building block for a future system, work for the long-term benefit of the people and communities central and local government both serve.

While we make some points of general principle, primarily we are submitting to ensure the Bill is implementable, achieves its purpose and avoids unintended consequences.

The Select Committee needs to address or at least carefully consider –

- the range of projects that could be eligible for fast-tracking and multi-approvals
- information requirements at the right point in the decision-making process
- transparency
- thresholds and criteria for decision making
- conditions for consents
- cost recovery and funding
- timeframes
- capability and capacity
- integration

before the FTA comes into effect if there is to be quality and timely decision making, that justifies the removal of the public's right to participate, in the future.

In preparing this submission Taituarā and LGNZ have utilised the expertise of a group of experienced local government practitioners who have dealt with Fast-track / alternative consenting under the COVID legislation, as well as other alternative consenting arrangements. We have drawn on the governance and professional know-how of councils through LGNZ sector hui, the members of the Taituarā Resource Management Reform Reference Group, Te Uru Kahika, and our partner New Zealand Planning Institute (NZPI).

Where relevant, we cross reference to submissions others have made and our support for specific points.

Given the timeframes involved and the complexity of the Bill we have not provided a clause-by-clause analysis. We know others will.

We acknowledge that individual councils will make their own submissions and will raise specific points that are important to their communities and situation, including their partnerships with Māori groups with rights and interests.

Summary of critical recommendations

Clearer eligibility, acceptance, criteria, and tests are key	• The system needs to deliver quality decisions efficiently – getting the right information early, avoiding clogging up the system, getting development in the right place, and meeting the needs of New Zealanders. • To ensure regionally and nationally significant projects and infrastructure progress, including the enabling infrastructure to support it, so it delivers anticipated benefits, council plans must be considered. • Tests are therefore critical and should be robust.
Transparency	• If the public is removed from processes, and investment certainty is wanted, then decision making must be transparent and information should be published. Merits based appeals should be included where Expert Panel recommendations are overridden.
Sustainable development is the goal	• Clarify that significant regional and national benefits are long term net benefits (across social, economic, environmental, and cultural domains) in the public interest. • Include sustainable management as an outcome.
Council as the voice of community	• Need longer timeframes for councils to provide feedback, guarantees that comments will have influence, and more touch points in the system to ensure community voice is represented and their long-term needs are met.
Cost recovery and	• For all aspects of local authority involvement – from pre-application to consequential plan changes and everything in between –

funding	including non-RMA advice. It will save time, increase capacity, and ensure decision-makers have access to the technical skills they need. • Appropriate funding tools to be used – Development Contributions, Financial Contributions, Development Agreements, and long-term sustainable funding.
Treaty of Waitangi	• Include a general effect clause agreed with Māori groups.

Purpose of the Bill – clause 3

1. The purpose of the Bill is to '*provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits'*[1].

2. The streamlined decision-making process includes multi-approvals under nine different regimes including the Reserves Act and Public Works Act – for projects that are likely to be large scale, complex and 'significant'.

Accept the need for the Bill – but call for changes being made

3. We accept that improved decision-making timeframes, particularly for nationally and regionally significant infrastructure[2], and think a "one stop shop" approach encompassing approvals beyond just the RMA could potentially improve our existing statutory processes and lead to better decision-making in the public interest. But there are several changes we would like to see to ensure the outcomes are achieved and there are no long-term negative unintended consequences.

Alignment with Environmental Sustainability for enduring Economic Outcomes

4. The Government intends to ensure New Zealand's economy can move forward so that more infrastructure and other much needed development is delivered quickly, without excessive costs and delays, and provides increased investment certainty.

5. The Bill enables a wide range of projects, from those supporting mitigating climate change to mining and petroleum development activities. It specifically provides for projects that will deliver significant economic benefits. Non-

[1] Clause 3
[2] There is a lack of evidence in the SAR for other proposals.

complying and prohibited activities are eligible – projects can have more than minor environmental effects and be contrary to the objectives of the relevant plan or proposed plan. Consideration of approvals under the other regulatory regimes – with very different purposes – are all subject to the Bill's overriding purpose – which may be difficult to reconcile.

6. The inclusion of controversial projects – some of which have been the subject of complex decisions under other legislation – points to an elevation of economic interest[3] over the environment. We are concerned that a sole focus on the economic imperative forgets environmental sustainability as the foundation on which enduring economic outcomes depend.

Development for long term benefit

7. Development enabled by this legislation must support New Zealand's communities to navigate the critical transitions (Navigating Critical 21st Century Transitions)[4] - climate resilience, low emissions, low waste, interconnected communities, learning communities - and not lock us into suboptimal / maladaptive solutions for short term gain. Development needs to be sustainable in the long-term if we are to have a viable economy.

8. Development and pursuit of significant regional and national benefits should be in the public interest.

9. We therefore recommend that the Bill aligns with the sustainable management approach in the RMA. There is precedent for this from the COVID-19 Recovery (Fast-track Consenting) Act 2020 (COVID FTC) legislation. An alternative would be the sustainable development approach taken in the Local Government Act 2002 (LGA).

10. Alignment with the purpose of the RMA would enable future plan changes and ongoing compliance and monitoring, including consent renewals, to be delivered more efficiently and in an integrated fashion. It also accords with the Government's stated objectives for RMA reform. In addition, or as an alternative, environmental considerations should be included in the eligibility criteria and be a matter for mandatory consideration (clause 17).

[3] Supplementary Analysis Report - 'some regionally or nationally significant projects with the potential to bring positive public benefits' have been turned down.
[4] for low waste, climate resilience, low emissions, learning empowered and connected communities.

Multi-approvals are new, untested and we rely on processes from another context

11. A range of procedural or administrative provisions from the COVID-19 Recovery (Fast-track Consenting) Act 2020 (COVID FTC) and the Natural and Built Environment Act (NBA) fast-track process are incorporated in the Bill. They should be considered in the context for which they were intended.

12. Providing multi-approvals under a range of legislation – including powerful tools such as the Public Works Act – is novel. The impact of the inclusion of such a wide range of legislation has not been fully assessed. Carrying procedural and administrative provisions over to a vastly different new regime requires analysis of the effectiveness of provisions in the new context. For the COVID FTC regime, the legislation was intended to be in force for two years. Any shortcomings associated with that legislation had a guaranteed end point.

Quality regulation requires evidence, monitoring and review

13. The timeframes within which this Bill was introduced are understood, and despite best efforts this has impacted on the amount of evidence that has been provided to support most aspects of the Bill – including the range of eligible activities, as well as some anomalies between the schedules. This causes uncertainty about how the process will work in practice.

14. With the future review of National Direction and new replacement Act(s) to be introduced into the House in 2025 the Committee should consider whether it would be better to limit the Fast-track process to nationally and regionally significant infrastructure and potentially enable other projects to become eligible once the system has been proven to work. In tandem we recommend the Committee consider whether there should be a sunset clause for the Bill tied in with proposed timeframes for reform. Fast-tracking, if needed in future, could be merged into a new resource management regime.

15. At the very least a monitoring and review clause should be included to ensure the performance of the legislation and the performance of the projects within it is regularly reviewed and reported on so improvements can be made. A range of options exist, including an independent agency such as the Parliamentary Commissioner for the Environment, the Office of the Auditor General, or a Select Committee of Parliament.

16. Monitoring and review processes should require local authorities and central government to work together to assess the impact, which is particularly important given the potential impacts on local government functions.

Recommendations to the Committee

1. Clarify that significant regional and national benefits are long term benefits (across social, economic, environmental, and cultural domains) in the public interest.
2. Align the FTA purpose to sustainable management purpose (RMA) – an alternative could be sustainable development (LGA).
3. Include – as a minimum – environmental safeguards in the Bill, e.g. environmental considerations have more weight in the referral decision-making considerations (clause 17 of the Bill); ineligibility of projects that have a significant adverse environmental impact (clause 18), applications include how environmental impacts are proposed to be managed.
4. Limit the Fast Track Approvals path to infrastructure projects that are in the public interest given the existing experience of these under the COVID FTC. Include other projects once the legislation is proven to work. If this is not accepted, make sure the legislation is explicit regarding eligibility, acceptance, and approval criteria for projects.
5. Include a sunset clause considering further RMA and National Direction reform.

a. If this is not accepted, include an (annual independent) monitoring and review clause to ensure the legislation is performing and improvements can be made. A Select Committee could potentially fulfil this oversight role.

b. Monitoring and review processes should also focus on whether the projects are progressing / being delivered as anticipated and achieving the benefits. The OAG would be a potential check and balance.

6. Central and local government work closely together on implementation of the Fast-track – including monitoring – and the design of the new resource management system, drawing on our respective strengths and expertise.

Making the boat go faster – quality, time and cost

17. While we support improved decision-making timeframes, we think too much emphasis on achieving speed through limited timeframes risks undermining quality decision making.

18. Processing timeframes are impacted by the complexity of an application, the quality of information provided with it, the willingness of an applicant to provide further information, the resources - including expertise - available to assess the information, the existing body of knowledge around specific activities, particularly if they are novel or – currently – prohibited, suitable conditions, rights of objection, review, and appeal, and engagement commitments.

19. Based on our members' experience under previous fast-track regimes, we know that simply legislating for faster decisions is unlikely on its own to result in faster decisions, decisions that are robust, or in development proceeding at pace.

20. For some of the housing, transport, aquaculture, and geothermal energy projects that have been consented through the COVID FTC and other 'fast-track' and call-in processes, they have actually taken longer to gain a consent than equivalent projects have taken through ordinary RMA consenting processes. Examples of efficient processing under standard RMA consenting, using specialist council planning and scientific expertise, include the Ōpōtiki Harbour Project, the Tauranga Eastern Link, and a variety of geothermal projects in the Waikato.

21. Projects of scale and significance are likely to be complex. Multi-approvals for these activities – given this is novel territory – done too quickly increases the risk of poor decisions, delay at later points in the development process, and ultimately failure to achieve the outcomes envisaged by the project.

22. Timeframes will also be affected by the number of applications that are being dealt with at any one time – by a local authority and across the system. Clear eligibility, acceptance, and approval criteria are therefore critical to a streamlined approach.

Quality information at the front end

23. We think the FTA regime is unlikely to change the quantity or quality of information required to reach a robust decision on an application although it may shift the points in the process at which it is required. If social, cultural, economic, and environmental tests – are not applied at the front end of the process through eligibility criteria, acceptance criteria and community engagement, we think it likely those tests will be applied at the end of the process through judicial review.

24. The threat of judicial review introduces the potential for delay, costs, and investment uncertainty. We therefore make several suggestions that aim to get the application right first time.

Timeframe for providing comments on Referred Projects

25. Clause 19 provides that 'specified persons and entities' and those 'invited' to comment on referred projects will have 10 working days to provide those comments back to the Minister.

26. We think this is an unrealistic timeframe given the likely complexity of projects involving multiple approvals and an array of expertise. Local authorities and Māori groups with rights and interests have obligations within and to their own communities and organisations. They need time for meaningful internal discussions and the ability to take expert advice themselves to fulfil those obligations and respond accordingly.[5]

27. Decision makers need to recognise the huge value that carefully thought through inputs from communities and their representative organisations add to a project. Local communities and local authorities hold important information about their communities and environment that is not always obvious or available to remote experts. Neither are communities always willing to part with the cultural knowledge they hold within the terms or in the timeframes provided to them by applicants and their agents. If comments are to inform robust decision making, the comments themselves must be robust and tested by those making them. We therefore think that a longer period of time to comment will improve decision-making.

28. We also observe that increasing the period for comment could be offset by imposing time limits for Ministers to refer a project to a Panel and make decisions after receiving Panel recommendations (which is currently not specified).

Recommendations to the Committee

7. Increase the time for specified persons and entities (and invited parties) to comment on FTA projects from 10 to at least 20 working days, preferably 30.
8. Consider imposing time limits for Ministers to refer a project to a Panel and make decisions after receiving Panel recommendations to offset any increase in the timeframe for specified persons, entities, and invited parties to comment on FTA projects.
9. Consider using a form of discounting of fees where Ministerial decision making is beyond the time limit.
10. Provide the ability for those commenting to seek additional time where the application involves multiple approvals and areas of expertise – with no reasonable request to be denied.

[5] For example, alongside the specific responsibilities under the RMA – local authorities still have an overarching duty to promote sustainable management of natural and physical resources – and under the LGA they exist to enable democratic local decision-making and action by, and on behalf of, communities and to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

Influence of Comments on Fast Track Project Decisions

29. We support all opportunities for engagement and to provide comment at different points in the FTA process, but it is not clear how the comments provided by 'specified persons and entities' (and others invited to comment) will influence decisions or conditions. Since the comments do not have the status of a submission and there are no associated merits appeals, we want to ensure the comments have weight.

30. While there are references to 'must consider', there does not appear to be a compulsion in the legislation for decision makers to address or analyse the comments they receive except for a 'consultation requirement' in respect of Treaty Settlements and customary title/rights.

31. We think providing a right for communities of interest to participate without making it clear how they can influence outcomes will be perceived as tokenism and as such is likely to be a disincentive to participation. The rationale for calling for additional comments should also promote trust in government.

Recommendations to the Committee

11. Legislation is explicit regarding how decision-making Ministers and the Expert Panel must consider comments received from 'specified persons and entities' and those 'invited' to comment.
12. Summary of comments and recommendations and their influence, including any conditions of approval to address matters raised in the comments, is prepared, and made public.
13. Make it explicit that comments are to be considered by the Expert Panel in formulating conditions of approval.
14. Ministers must provide a rationale for inviting comments other than from 'specified persons and entities' to ensure transparency and good governance are upheld.

Applicant pre-application consultation obligations

32. Clause 16 sets out consultation requirements for approvals prior to an applicant lodging an application.

33. The applicant is required to engage with –
    - relevant iwi, hapū, and Treaty settlement entities:
    - any relevant groups with applications for customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011:
    - if relevant, ngā hapū o Ngāti Porou:

- relevant local authorities.

34. This clause requires third parties to engage with an applicant. We are supportive of mandatory pre-application engagement with local authorities. Good applicants do this anyway. We further support the requirement in clause 16(2) that an applicant must explain how this engagement has informed their application.

35. The relevant local authorities will not be limited to just the local authorities where the development is occurring but should also include local authorities that will be impacted by the development. For example, a housing development, aquaculture, or energy project in one district could affect not only that district council, but also a neighbouring council and its infrastructure, as well as the regional council.

36. While three opportunities to engage with the FTA process might appear a lot, pre-application engagement provides a forum for prospective applicants to gather information on specific matters relevant to their development. It also provides for local authorities to raise issues and opportunities that the applicant can then consider in building their application.

37. Such issues might include other developments – including infrastructure – that are occurring, opportunities for collaboration that reduce costs and maximize value, the availability and capacity of bulk infrastructure, vesting requirements, relevant local knowledge, the latest data and evidence about natural hazards, modelling and so on. It would also provide an opportunity to identify communities of interest, and community interests and needs.

38. It should assist the applicant to prepare a quality application and draft conditions that will work on the ground avoiding compliance and enforcement issues. It should also avoid development projects being held up because of difficulties servicing the development.

39. We also support pre-application engagement with Māori groups. We recognise that where an applicant and well supported Māori groups opt to work together in the pre-application phase (without undue time pressure), this can lead to good outcomes for both.

40. We think however as drafted this clause imposes a condition on an applicant that they cannot meet if the third party does not wish to engage or lacks the resources to engage, even if their time and sharing of their expertise is

recoverable. For that reason, we do not think third party engagement with Māori groups should be a determinant of whether an application can be lodged.

41. Such a high stakes obligation may also cause friction between an applicant and a Māori group if that group is unwilling or unable to engage on a project.

42. Whether pre application engagement remains as a requirement in the legislation or is softened to require applicants to offer to engage, a mechanism for Local Authorities and Māori groups to cost recover is necessary. This would recognise these engagements enable applicants to make informed decisions prior to lodging applications for approval.

43. The terms 'consultation' and 'engagement' should not be used interchangeably. Consultation is a point on the engagement spectrum (refer to Te Arawhiti engagement guidance) that involves specific actions. We think the legislation should be clear about the engagement requirement.

44. The applicant could of course be one of the 'third parties'.

Recommendations to the Committee

15. Retain the pre-application requirement to engage with local authorities (clause16).
16. Clarify that 'relevant local authorities' includes all local authorities that may be impacted by the development not just the local authority in which the development occurs.
17. Specify what the engagement duty being imposed on the applicant entails (i.e. does it mean consultation as in the clause heading or engagement as in the body of the clause) so it is clear for the purpose of lodging an application, whether that duty has been met and the application can be lodged.
18. Require in clause 16(2) that the applicant supplies evidence that 'reasonable steps to engage were undertaken' or similar.
19. Require the applicant to demonstrate <u>how</u> any pre-application comments have been addressed in the application.
20. Include a cost recovery mechanism for the listed groups obliged to engage with the applicant.
21. For the avoidance of doubt the Bill should be explicit that pre-application costs are still recoverable if the EPA returns a consent application under clause 6 of Schedule 4 of the Bill.
22. Consider the legal ability to require engagement on a proposal that is yet to attain the status of a formal application and identify an alternative pathway for the applicant should a third party not wish to engage at the pre application stage.

Cost recovery for Local Authorities – and the funding side

Cost recovery for consenting

46. A major flaw with the COVID fast track regime is there was no way for councils to recover any costs associated with their roles.

47. We strongly support cost recovery for local authorities. By enabling local authorities to engage in all aspects of the process, time will be saved, and development will be more likely to proceed. Cost recovery can address some of the capacity issues that councils will face.

48. As an overarching principle cost recovery should reflect the private / public benefits of a project. Ratepayers should not be subsidising private / 'national' benefits, particularly where the value of that benefit is not captured by the council and passed onto ratepayers. We note that a fuller range of funding tools may be available or made easier to use in future.

49. We note the inclusion of cost-recovery provisions for local roles in Schedule 3, clause 14. It is unclear whether these provisions apply to pre-application engagement required in clause 16. They should. [As we say in the pre-applications section, the applicant directly benefits from the expertise, knowledge, and experience of the local authority.]

50. It is also important that local and regional councils responsible for compliance and enforcement of an approval and its conditions, can recover the costs associated with those functions. Addressing consistency with the administration of council district and regional plans is also necessary.

51. It is important that all reasonable costs are recoverable from day one of the legislation taking effect. Currently this is the day it receives Royal Assent. A lead in time to prepare appropriate fees and charges is required, or the fees must be set in the legislation, and transitional arrangements should be available to ensure reasonable costs can be recovered for all aspects of local authority involvement under the legislation.

52. There must also be a mechanism to collect the relevant fees and charges and to pursue any debts that are owed.

53. We note that the costs under the COVID legislation for the Expert Panel members did not reflect true market costs and hindered participation of suitably

qualified people – this is a problem for the speed of process and potential quality of decision making under it.

54. Fees and charges set should be commensurate with the skills and experience that will be required to make recommendations on some of the most significant and complex projects in Aotearoa New Zealand, especially under a multi-approval process. The same can be said for the professional expertise of those advising the Expert Panel, including council staff.

Value capture, development contributions, financial contribution, and the rest

46. Approval does not guarantee that development will follow. Other factors including the availability of infrastructure (and its ongoing cost) to serve development are not addressed by the granting of approval. The $1 Billion infrastructure deficit for the fast-tracked Drury applications on future urban zoned land – that were subsequently withdrawn – is a case in point. Many greenfield proposals under the Housing Accords and Special Housing Areas Act 2013 have also not been constructed.

47. Providing growth related infrastructure without sufficient third-party funding being secured risks the burden falling on the ratepayer, and potential consequential effects for other council infrastructure such as deferred renewals and upgrades to meet legislative standards.

48. The FTA does not appear to refer to development contributions. This must be an oversight. The FTA provides for activities that would often attract a development contribution charge under a Development Contributions Policy. These policies are set under the Local Government Act and charging the costs of growth sends clear signals to developers and the growth community about the true costs of growth to the council, costs that are reflected over time in the value of the land. Sophisticated policies look at both the development type and location and send the right economic signals regarding the costs if they wish to develop out of sequence with council projections and plans. Sending the right signals will be extremely difficult to get right if development can, under the FTA, go anywhere.

49. In addition to development contributions financial contributions may also be payable – these apply to those responsible for creating adverse effects to meet the costs of environmental protection measures.

50. Another option that is used is the developer agreement – this is done as part of the consenting process / prior to land use rights being conferred. It has the

potential to capture value, for example when an approval takes rurally zoned land and up zones it to urban – creating value.

51. We think funding and financing of council infrastructure and services must be addressed urgently – otherwise local government will be unduly criticised, and ratepayers will be left to pick up the bill.

52. Alongside progressing fast-track legislation there is a need for a conversation around 'city deals', value capture, revenue sharing (including a portion of GST), congestion charging and long-term sustainable funding and financing for local government.

Recommendations to the Committee

Cost recovery

23. Ensure local government involvement in all aspects of the Fast Track Process - including Ministerial processes, membership or advice to Expert Panels, draft conditions, condition writing, changes to conditions of consent, participation in judicial reviews and appeals, and compliance, monitoring, review, and enforcement functions - is cost recoverable.
24. Retain the cost-recovery provisions for local authority roles in Schedule 3, clause 14 and provide for cost recovery for pre-application engagement with councils - whether this is mandatory or not - and interactions with the Ministers and Expert Panel whether this is mandatory or not.
25. Include a cost recovery mechanism for local authorities to address consistency with the administration of their district and regional plans.
26. Include a mechanism to collect debts owed.
27. Include for the avoidance of doubt that pre-application costs are still recoverable if the EPA returns a consent application under clause 6 of Schedule 4 of the Bill.
28. Providing time for local authorities to prepare and adopt relevant fees and charges ahead of commencement – e.g. delaying the commencement date. Make it explicit – as an interim measure – that any existing s36 charges for matters to do with RMA consenting apply with any necessary modifications.
29. Removing the ability for an applicant to object to a fee or estimate (on the basis that a caveat already exists – that only reasonable costs can be recovered – and the process is designed to avoid delay).

Funding

30. Provision is made in the FTA to enable Local Government Act Development Contributions provisions and Council Development Contribution Policies to apply as if the consent was granted under the RMA.
31. The Expert Panel should be able to require developer agreements as a condition of consent – their development must involve all relevant local authorities and their CCOs.
32. Alongside progressing fast-track legislation is tied to the need for a conversation around 'city deals', value capture, revenue sharing (including a portion of GST), congestion charging and long-term sustainable funding and financing for local government.

Designations

61. We see value in a streamlined assessment of applications for critical infrastructure and local government were generally supportive of the route protection provisions in the repealed NBA. However, the lack of public scrutiny in relation to designations that the combination of RMA and FTA powers results in needs to be examined further.

62. The power of a requiring authority under the RMA is immense. The FTA process will remove the ability for local government to appeal Notices of Requirement except on points of law – this effectively removes the public voice from the decision-making process.

63. We note the Ministers can choose the route or site regardless of whether the applicant wants that route or site. We assume that the route chosen will be the best one to achieve a sustainable development.

Recommendations to the Committee

33. Support introducing a multi-stage fast track approval process.
34. Reinstate merits appeals for local government on FTA designations.
35. Serving notice on the Chief Executive Officer of all relevant local authorities – including those local authorities that are affected – and relevant Council Controlled Organisations.
36. Note there needs to be a better understanding of the interactions with land acquisition under the PWA - particularly the application of FTA legislation to the s26 PWA 'proclamation to take or deal with land' given there is an exception to granting this approval under the FTA legislation.

Infrastructure and Assets

Infrastructure

64. Infrastructure such as three waters or major road networks are needed to support most development projects. Councils currently plan for known or planned growth. New fast-tracked projects are likely to necessitate or pull forward the need for new water allocation and discharge consents. They may also necessitate transport upgrades – including roads, intersections, pavements, wharves etc.

65. The Select Committee needs to understand the financial costs of fast-tracking infrastructure and development projects in hazard areas including areas subject to climate change and who those costs will fall to – including future generations.

66. If infrastructure subject to service level agreements under the Local Government Act is built or increased in areas subject to sea level rise or weather-related changes in hydrology, then it is important the infrastructure is resilient to projected changes over the next 100 years, and financial implications for infrastructure providers is factored into the assessment process.

67. We note that development occurring in one district or city can have spillover effects in neighbouring districts and potentially across regional council boundaries. All authorities and CCOs – and other utility providers – that could be affected need to be involved.

68. We are also concerned that inappropriate new development, development that does not have a functional need to be there, will occur in areas that should be avoided due to natural hazard risks, locking society into long term costs.

69. To address these issues, there is a need for the bill to require greater regard be given to local government planning documents and processes throughout all stages of the fast-track approvals process.

Vesting

70. Consents often contain conditions that relate to the vesting of infrastructure in councils. We are concerned there will be a burden on local government resulting from the handover of assets associated with ill-conceived housing or other developments that have not been the subject of usual local government quality control exercised at the RMA section 224 subdivision stage.

71. Local government needs to be satisfied that assets vested with them are fit for purpose, meet whole of lifecycle sustainability criteria, enable councils to deliver ancillary services (such as waste collection on roads that are vested), do not place an undue cost burden on current or future generations (for their maintenance, renewal, and eventual replacement), and have been appropriately certified.

72. The cost to local authorities associated with managing and maintaining received assets will be higher where the quality, including the resilience, of the asset is lower. We are concerned the focus on speed in the FTA might be at the expense of quality outcomes in the future.

73. There is no obligation for a local authority to take on third party infrastructure it does not want, and this must remain.

Recommendations to the Committee

37. All relevant authorities – those impacted by the development as well as those where the development is located need to be involved.
38. Require greater regard be given to local government planning documents and processes throughout all stages of the fast-track approvals process.
39. Vested Assets - Modification to the Bill at Schedule 4 (clause 37) to reflect case law: consent conditions cannot bind a third party and no conditions can compel a local authority or Council-Controlled Organisation to accept any asset.
40. Specifying the quality control and certification mechanisms for assets being vested/transferred.
41. Exclude i.e. make ineligible, new development and infrastructure that does not have a functional need to be there from areas at risk from natural hazards and climate change to avoid long term negative costs.
42. Ensure whole of life costs are part of the Economic Assessment.

Reserves

74. Councils administer numerous parcels of land that are subject to the Reserves Act. Reserves are held for a variety of purposes – ecological, recreational, scenic, future road, on behalf of the community. It is not clear whether Council reserves are included in Schedule 5.

75. Some reserve land is more appropriate than other reserve land for the granting of easements, leases, licences and permits, access, encroachments etc. Some activities are more compatible than others – floodable areas in parks, pipes in the road corridor etc. Some activities are temporary, and others are permanent.

76. Reserve land may be covered by a Reserve Management Plan. Councils must work with their communities to develop these Plans and consult them on changes – publicly notify changes. There may also be obligations to tangata whenua.

77. There is some concern that conservation values will be undermined, and incompatible / exclusionary use will occur without public engagement and therefore there would be no social licence for change. This would be exacerbated if there was no opportunity for the community to participate in the approval of a designation or consents through the Fast-track process. To some extent engagement could be done up-front by the applicant / council with interested parties identified as part of the Pre-application Consultation.

78. If Local Government reserves are intended to be included, the protections and compensation for these be clearly included, particularly if there is an option for land swaps or compensation in land.

Recommendations to the Committee

43. Clarify the position of Council-administered land subject to the Reserves Act. The preference is that this land is not included in the Bill.
44. If Council-administered Reserves are included in the FTA then the protections and compensation for this need also to be included – as per Crown Land – particularly if there is an option for a land swap or compensation in land.
45. Clarify that a council can charge a market rate for third party use of the land or the acquisition of any interest in it i.e. a rate based on its highest and best use.

Executive Decision Making and Transparency

Ministers as decision makers

79. The key difference between the FTA Bill and the NBA and Covid FTC legislation is the decision-making powers sit with Ministers and not an Expert Panel. Ministers decide whether a project will be listed and referred to an Expert Panel. Ministers make final decisions on all fast-track applications – including conditions that they can ask the Expert Panel to reconsider.

80. We recommend that decisions should sit with Expert Panels. Applications, decisions, and conditions for large scale significant projects are likely to be extremely complex – and there are likely to be many applications under this Bill as it is currently drafted. Expert Panels, properly comprised, with adequate time, information, good processes, and clear and certain tests to apply, should have the expertise to deal with referred applications in the way Parliament intends.

81. Removing an additional layer of decision-making by Ministers could also speed up the process – noting there are no timeframes applied to Ministerial decision-making. We also think continuity, impartiality, and long-term consistency of decision making are better protected. To avoid undermining public trust and confidence in government, any real, or perceived bias or potential for pressure on Ministers from sector groups or development interests should be avoided. This can most effectively be achieved by removing Ministers from the decision-making process, which ultimately protects them and the Government.

82. There is a risk to the Government if a project Ministers approve is subject to a successful judicial review. This could reduce public and proponent certainty and trust – which could in turn reduce the probability of investment in future projects and undermine investment certainty. While the Bill seeks to limit the opportunities for challenge, where decisions are – or are perceived to be – politically motivated rather than evidence based, the likelihood of challenge is high.

83. The willingness to invest in projects is at risk if decisions are not technically and legally robust and if there is no continuity and consistency from one political cycle to the next. When discretion increases certainty decreases and vice versa. The Bill as proposed introduces a high degree of discretion, particularly given the broad criteria and range of projects that could be included in the fast-track process under the proposed Bill. [We address this further under the section on Significance.]

84. We heard in the House that conditions will be referred back to the Expert Panel where Ministers believe they are too onerous but heard nothing on referral back where the conditions are too lenient or unable to ensure an outcome under subordinate legislation including the RMA.

85. Given the earlier points we made that environmental sustainability is a necessary foundation for long term economic outcomes the Minister for the Environment should be included as one of the joint Ministers.

Transparency

86. If certainty for the public and developers is a goal for Ministers, as we believe it should be, the rationale for the Ministers' listing, referring and approving projects should be clear and public. As should decisions to refer conditions back to the Expert Panel.

87. Transparency is particularly important given the focus of the Bill is on enabling development with a strong presumption referred projects will not be declined, and a constrained role for the Expert Panel. If the public (except identified groups) is excluded from engaging in decisions around which major projects can proceed and how, there must be other opportunities to test how decisions are made. We note that this is the only avenue for civic - environmental and social - groups to test policy.

88. Transparency is important for the public and project proponents in establishing consistent expectations regarding resource use and protection especially in the absence of judicial environmental precedents, established grounds for review, and for maintaining confidence and trust in the government and its agents.

Decision makers should stand behind their decisions – appeals

89. Given the power conferred on the Executive by the FTA we think if it remains as drafted the Crown should be the respondent for appeals. It is manifestly unjust for councils – and for that matter applicants – to have to shoulder the burden of appeals, when they did not make the final decision, are the 'consent authority' in name only, have had limited time and opportunity to input, and may disagree with the Ministerial decision.

90. We draw the Committee's attention to the High Court appeal decision on Te Ariki Tahi Sugarloaf, a referred project under the COVID-19 Recovery (Fast-track Consenting) legislation. While the Company is seeking costs from the appellant, as the appeal was unsuccessful, the amount they are likely to receive will be pitiful compared to the costs created for the Company and the Council.

91. We also note the case between Auckland Council appellant and Matvin Group Limited (first respondent) Maraetai Land Development Limited (second respondent) CIV-2023-404-835 [2023] NZHC 2481 – where Auckland Council was the successful appellant.

92. In a 'normal' situation a council would have had to defend the appeal – as the consent authority. It therefore has an elevated interest in ensuring that the decision and conditions are robust and implementable.

93. While the Bill seeks to remove the specific section 104D considerations that led to the appeals above the principle remains. The decision maker should stand behind their decisions when an appeal occurs.

94. Where the Ministers approve a project against the Expert Panel's advice, there is an argument that the decision should be subject to merits-based appeals – in the same way a council's decision to ignore an Independent Hearings Commissioner's advice would be.

Recommendations to the Committee

46. Placing decision-making power with the Expert Panel – to speed up the process, increase investment certainty, as well as proponent and public confidence and trust.
47. If Ministerial decision making remains, include the Minister for the Environment, as one of the decision-making Ministers.
48. Ensure Ministers, Independent / Expert Panel members — declare conflicts of interest and these are publicly reported.
49. Provide that the decision maker and quasi consent authority for the approval of Fast-track applications and listed projects – currently the Ministers – is/are the respondent for any appeals (and judicial reviews).
50. Making the criteria for referral by Ministers back to an Expert Panel explicit in the legislation.
51. Require an evidentiary basis for Ministers to overturn Expert Panel recommendations.
52. Provide merit–based appeals – at least for local government – if Ministers overturn Expert Panel recommendations.
53. Require in the legislation the proactive release of the advice officials provide to Ministers.
54. State in the legislation, where and when the public can access the referral decisions, substantive decisions, and the underlying information.

Category A projects and Method for Adding

95. Legislation will contain a schedule of projects ('listed projects') to be automatically referred to an Expert Panel.

96. We understand listed projects for initial inclusion in the Bill are to be proposed through the Departmental Report to the Environment Committee and/or an Amendment Paper when the Bill has returned to the House. On an ongoing basis, we understand an Expert Independent Advisory Panel supported by an 'officials' secretariat will consider nominations and make recommendations to Ministers on which projects to include in Schedule 2 (although this process is not yet enshrined in the legislation).

97. The power to determine, without public input, which projects should be listed in the legislation with the presumption they will be approved is an immense power that we think, when combined with the truncated public process for developing the Bill and the absence of a Regulatory Impact Statement, has implications for the democratic process.

98. Given the current eligibility, acceptance and referral criteria are very loose, almost anything might qualify for the list.

99. As a matter of principle, importing projects onto the Schedule that have been through public scrutiny under legislation with a different purpose to the FTA legislation establishes a flawed starting point for listing and should not be relied upon to argue that a project has already had the necessary public exposure. For activities prohibited in District and Regional Plans, which have had no exposure to scrutiny at all, the listing process without public notification is not appropriate.

100. Pragmatically, we appreciate that the legislation is designed to achieve a presumption in favour of at least some of the above activities occurring[6] and therefore appearing on the list. We therefore emphasise again that environmental assessment criteria, the impacts on local authority infrastructure and assets, and the effects of natural hazards and climate change on the project, need to be equal to rather than subordinate to meeting the purpose of the legislation.

[6] SAR, projects turned down had the potential for economic benefits.

101. With the public excluded from this process, adequate time, and opportunity for relevant local authority (including Council Controlled Organisations) input must be allowed, and comments must carry weight if local authorities are to act as the voice of the communities they serve.

102. The criteria for listing projects should be included in the Bill and should at least mirror the enhanced eligibility, acceptance, and decision-making criteria we call for in this submission. The need to ensure these projects provide the net benefits envisaged by the almost guaranteed approval is also critical, as is the need to consider a monitoring and review clause within the Bill. To avoid any suggestions of bias, it is assumed that normal conventions around declaring conflicts of interest are intended.

Recommendations to the Committee

55. Public notification of projects proposed for inclusion in Schedule 2 regardless of their notification history. If this is not acceptable,
a. then relevant local authorities (including relevant CCOs) must be consulted on projects that are proposed for inclusion in Schedule 2, given adequate time to input, and their feedback must be taken into account
b. then full merits-based appeals should be allowed.
56. Environmental assessment criteria, the availability of and impacts on local authority infrastructure and assets, and the effects of natural hazards and climate change on the project, are equal to rather than subordinate to meeting the purpose of the legislation.
57. Include criteria for listing Category A and B projects in legislation.
58. Evidence is produced to show that the criteria for acceptance and referral – including the enhancements the Committee recommends – have been adequately considered for listed projects.

Category B Listed Project and Property Rights

103. Having partially conceived approved projects sit on the shelf for an unspecified number of years while the environment around them changes may create inequitable rights in property, raise the expectations of project proponents, cause conflict between Category A and B FTA projects, and RMA plans, designations and consents, and result in calls for compensation where a hierarchy of rights and obligations is not clearly established.

104. We think the shelf life of Category B projects (shovel worthy) should be carefully considered in the context of the rights they reserve, and therefore prevent other

projects (FTA or RMA) from taking up. We want to understand the market mechanisms proposed to mitigate this risk and the expectation the project proponent can have that a listed project will proceed.

105. Category B listed projects might also mirror the problems highlighted through the early RMA designations process where a designation applied indefinitely to land amounted to land-banking by Requiring Authorities, sometimes with an opportunity cost to landowners and other more worthy or 'ready' projects.

106. We note that Category B projects might also need to be prioritised within the fast-track process based on other FTA listed and approved projects too.

Recommendations to the Committee

53. Determine a shelf life for Category B listed projects.
54. Include criteria for considering the interaction between FTA listed projects and RMA designations and consents.
55. Consider sequencing of applications.

Eligibility, Acceptance and Significance

Activities Prohibited under District and Regional Plans (Clause 17(5))

107. Prohibited status has been subject to public scrutiny and ad hoc changes risk long term negative impacts. In general, areas that are prohibited should remain that way unless a plan change has occurred, if one is possible, and thorough consideration has been given.

108. At a minimum it will be important to retain prohibited activity status in relation to natural hazard areas – which by their very nature are high risk and where dispensations could lead to serious, dangerous situations both in the short and long term.

109. An exception might be for a situation where there is a significant risk to life or property and no other feasible options.

110. We note and support the point made by Thames Coromandel District Council – about the interplay between clause 17(5) of the FTA and section 87B(2) of the RMA, which requires that prospecting, exploring, or mining for Crown-owned minerals in the internal waters of the Coromandel Peninsula must be treated as a prohibited activity. We anticipate that there will be other areas of coastline that

communities will not anticipate mining to occur within that should also be protected, and other anomalies with prohibited activities.

111. We are also concerned it is not compulsory for FTAs to be assessed against RMA National Direction, which (in most cases) is developed with strong local government – and community – input. While not all our concerns, and the concerns of councils, have been addressed satisfactorily in the development of National Direction, it is concerning that it can be set aside, given regional and district plans are based on it.

112. We note that while the Government has signalled targeted changes to National Direction, a longer-term integrated process for developing and amending RMA national direction and a new resource management regime are on the horizon.

Recommendations to the Committee

Prohibited activities

64. Make prohibited activities ineligible as a matter of principle.
If that is not accepted –

a. Retain prohibited activity status in relation to natural hazard areas – the avoid means avoid test - *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency*.

b. That the Bill contains a presumption that prohibited activities should not occur unless there is no other option and there is a significant benefit – such as mitigating a risk to life.

c. Amend clause 18 to specifically address the inconsistencies with prohibitions in other legislation e.g. internal waters of the Coromandel Peninsula (Submission Point one **TCDC submission**).

65. Make it compulsory to consider existing National Direction.

More appropriate legislative pathway – reason to reject

114. We agree decision makers should be able to decline to refer a project or decline to approve a development project on the basis the project would more appropriately be considered by following another legislative pathway.

For example, it will be important to defer to the RMA plan change process where there is –

- sufficient capacity already provided elsewhere.

- the infrastructure to support development (usually determined through structure plans and the public or private plan change process under the RMA) is not in place.
- approval of a project would commit a local authority to providing and maintaining unplanned unbudgeted infrastructure to service greenfield developments. This may also be the case where infill or brownfields development places a greater burden on existing services, for example an industrial development in a commercial zone.

Offshore Aquaculture and Energy Generation

115. We are concerned that large offshore aquaculture and energy generation projects will have local implications where onshore infrastructure is needed to support the offshore operations. We think the public in general and the communities receiving that onshore infrastructure need an opportunity to comment on it.

116. We also think criteria is needed to ensure that local communities who must host this infrastructure should also see the benefits of it. Threats to wildlife and fisheries must be a key consideration and the ability for the public and interest groups to comment must be protected.

117. Councils should have a role in assisting the administering body to determine whether the application is complete.

Recommendations to the Committee

66. Retain 17(2)(a), (b), (c) as reasons to reject an application.
67. Include explicit tests regarding acceptance and approval criteria for projects including greenfield and brownfield development that are not the subject of an existing Council Plan Change or Structure plan are included in the FTA. E.g.

a. Include in sections 14 and 17 criteria that ensure any project has fully addressed infrastructure capacity, expansion and integration issues including funding.
b. Include in section 14 a requirement that utilities and legal requirements – e.g. under the Water Services Act 2021 for drinking water suppliers – is required information.
c. Provide a role for local authorities to comment on the completeness of an application, working with the EPA.

68. Require the location of onshore infrastructure to service offshore infrastructure and development projects – i.e. transmission lines / ports / depots etc are identified at the initial application stage for all offshore projects. Ensure the Impact on Customary Marine Title holders is identified up front.
69. Require draft conditions to be included as part of the application.

70. Require a comprehensive Schedule 4 Assessment of Environmental Effects as part of an application to Ministers for referral of a project to the Expert Panel – if this is not accepted the application must include information on how environmental effects are proposed to be managed.
71. Requiring a Cultural Impact Assessment as a mandatory requirement to be lodged with applications – especially if there is no Treaty clause inserted in the Bill.
72. Including Social Impact Assessment as a mandatory requirement to be lodged with an application for offshore projects.
73. Noting the need for a streamlined parallel RMA process for local authority promulgated plan changes that address rezoning of land subject to non-complying subdivision and housing development.

Significance as the determinant of Ministerial referral to Expert Panels

118. Ministers can refer applications to Expert Panels for projects (across a range of regulatory systems) that are regionally and nationally significant.

119. We think the legislation needs to be clear regarding which projects are eligible to apply for referral. We saw with the Covid Fast Track process that most applications could be accepted. As drafted, the Bill attracts all-comers, and we are concerned to ensure that the FTA process remains efficient and does not bypass local decision making without strong and valid reasons.

120. To achieve this, we think regional and national significance tests **must** conclude that environmental issues and infrastructure issues are consistent with local and regional planning documents including Spatial Strategies, Long Term Plans, Local Government 30-year Infrastructure Strategies and the underpinning asset management plans. Projects must also support climate change mitigation, adaptation, and resilience.

121. We think careful consideration of how housing developments meet significance criteria is required. For example, Auckland would likely generate an overwhelming number of housing development applications that the FTA system would struggle to administer, and Auckland Council would not have the capacity to provide feedback within the required timeframes.

Benefits

122. Whole of life costs must be part of the assessment and the Bill should include tests to ensure we are achieving maximum long-term public value and not private benefit.

123. We note that traditional Cost Benefit Analysis – with high discount rates, status quo bias, undervaluing of non-market goods – is likely to be inadequate for long-term investments and transformational change.

Recommendations to the Committee

Significance

74. Ensure only projects that provide truly significant public or strategic net benefit – e.g. large infrastructure applications can proceed under the FTA regime. Include infrastructure projects that enables this investment, and those that increase resilience.
75. Developing clear criteria that establishes significance, including for housing developments.
76. For regionally significant infrastructure consider starting with common definitions such as those for Regionally Significant Infrastructure found in Regional Plans.
77. Define 'housing development' – if retirement villages are to be included then specify how these can meet the test of significance.
78. Specify Future Development Strategies (where they exist) and Housing and Business Assessments as information the Panel and Ministers **must** consider in determining significance in a region (this is currently a discretionary consideration under Schedule 4 – strategic documents).
79. Make it compulsory for decision makers to consider climate adaptation, natural hazards, greenhouse gas emissions, Spatial Strategies, Infrastructure Strategies, Long Term Plans and Asset Management Plans in determining significance.
80. Clarify that benefits include direct and indirect costs and impacts across the lifecycle of the development or infrastructure.
81. Note that Traditional Cost Benefit Analysis is likely to be inadequate for long-term investments, transformational change, and the valuation of non-market goods. Consider specifying alternative / complementary assessment tools should be used by applicants and the Expert Panel.

Getting Conditions Right – a longer timeframe is needed

124. Under the Bill, Expert Panels must recommend conditions (if any) within a maximum 6-month timeframe.

125. Conditions of approval are an important part of decision making and the substantive decision needs to be made in light of the effectiveness of the conditions to be imposed. Conditions should inform the decision rather than respond to it – which is an issue when there is a presumption that the development will be approved.

126. Getting conditions right has been problematic under the COVID legislation. For local authorities, picking up the conditions of approval from a third-party decision maker has led to implementation issues with some conditions proving unworkable on the ground.

127. Management plans are often used to address effects but often lack sufficient detail and are not robust enough to implement, leading to further work by councils around suitable conditions and the associated time and financial cost of changes to conditions of consent.

128. Ultimately, conditions will need to be certain and enforceable. We therefore support pre-application discussions between applicants and councils, and councils must be involved in discussions with Expert Panels, in the formulation of workable conditions of approval.

129. To avoid inconsistency and delay – particularly when multiple approvals are sought – these discussions would be held with all interested and involved parties, including the relevant local authority(ies) present. This suggests that a form of caucusing, workshop or well organised hearing for multiple approvals is desirable and could save time for applicants.

130. We think that local authorities should have the opportunity to provide comments to the Panel on the final draft of conditions, i.e. the ones they propose to send to Ministers, given they will need to enforce them, and they are likely to affect local infrastructure. Particularly if a commercial agreement has been developed as part of a condition of consent, or vesting arrangements are included.

131. We assume that Ministers will refer conditions that are too lenient or unable to ensure an outcome under subordinate legislation including the RMA back to the

Panel as well as those they think too onerous. We think there should be a clear responsibility to do this if Ministers retain this power.

Recommendations to the Committee

82. Provide a longer timeframe for the Panel report – consider 40 days.
83. Include a requirement in the legislation that the Expert Panel must discuss draft final conditions with all relevant local authorities prior to making recommendations to Ministers.
84. Include a requirement for draft conditions to be provided with referral applications.
85. Require caucusing (or similar) of conditions with all interested and involved parties.
86. Consider the value of holding hearings where a major project would benefit from an organised and robust exchange of information and ideas - consider the time savings well organised early hearings could deliver.
87. Consider mandatory hearings for multi-approvals.
88. Consider removing the ability of Ministers to refer conditions back to the Panel. If the ability to refer conditions back to the Expert Panel remains, consider including a 'for the avoidance of doubt' statement in the Bill that Ministers can and should refer conditions back to the Expert Panel where the conditions are too lenient or unable to ensure an outcome under subordinate legislation. (Links to our request for merits-based appeals).

Absence of Te Tiriti o Waitangi[7] clause

132. Taituarā and LGNZ strongly recommend that the Committee works with Māori groups who hold rights and interests on the shape of the final legislation and a general effect clause.

133. Māori rights and interests guaranteed by Te Tiriti o Waitangi (The Treaty of Waitangi) are far broader than upholding Treaty Settlements (and other arrangements) and protecting customary title and rights. The guarantees extend to protecting the right for Māori groups on an ongoing basis to influence policy and legislation and to specific protections for taonga, kaitiakitanga and rangatiratanga.

[7] Related clause 6, 13 and 19

134. The FTA does not acknowledge or provide for these wider Māori rights and interests and does not include a Tiriti o Waitangi clause. Rights guaranteed by the Treaty are so strongly interwoven with environmental use, development, and protection – that this seems counterintuitive.

135. There is concern that the absence of a Treaty clause in this Bill could undermine existing council relationships. From what we have heard from those that have a genuine relationship this seems unlikely as the desire to work closely is strong. Many local authorities have long established working relationships with Māori groups including iwi and hapū, in plan development, consenting and monitoring and value the expert local and regional knowledge those groups (often at their own expense) bring to the table.

136. There are other relationships with Māori groups, both statutory and non-statutory, linked to and beyond the RMA plan development and consenting realm – for example for council decision-making, long term planning, including infrastructure development, spatial planning, economic development, and delivering housing. And local government itself has responsibilities under Settlement legislation, which need to be upheld.[i]

137. Local government has heard from Māori groups about their concerns around the absence of a Treaty clause in this powerful Bill. It has also had conversations about the (sustainable) development opportunities the Bill provides, all against the backdrop of the signalled review of Treaty clauses and Waitangi Tribunal Kaupapa claims.

138. We have considered the impacts the Bill might have and think as a matter of principle a Treaty clause should be included in this legislation as part of a positive framework for decision-making. We also ask the Committee to consider how Waitangi Tribunal findings might be useful for decision making.

Recommendations to the Committee

89. Include a general effect clause in relation to Te Tiriti o Waitangi – agreed with Māori groups.
90. Retain upholding Treaty Settlements (and other arrangements) and protecting customary title and rights; clarify clauses around modifications and what they mean for local government Settlement obligations.
91. Provide sufficient time in the legislation to ensure that Māori groups, Ministers, and Government departments with responsibilities for Māori rights and interests, can all participate equally in the decision-making process.

Composition and Appointment of Expert Panel

139. Expert Panels will be made up of a range of experts with experience on matters including infrastructure, economic development, environment, conservation, Treaty of Waitangi, and local government (Schedule 2, clause 3 and clause 11).

140. We conditionally support the rationalisation of decision making across a range of approvals but note the range of expertise that will be required within the Panel to make recommendations and develop conditions. We think it will be important that the pool of experts and technical advisors to the Panel include people with expertise in environmental / resource management planning as well as local government strategic, infrastructure and financial planning. Appropriate funding and financing of local government infrastructure and services, as well as science, data and evidence and relevant planning matters must be included in decision making.

141. We support the inclusion of representatives from the relevant local authorities and Māori groups with rights and interests in the subject rohe, on the Panel. Some of our members have found having a representative to be very useful under predecessor legislation. Local authorities should however be able to choose not to take up this option. With potentially more than one local authority affected, and a range of issues that are likely to arise under complex significant projects, the limit of four Panel members seems overly optimistic.

142. We specifically support the Submission of Te Uru Kahika on the scientific, modelling, data and evidence skills that will be needed on the Expert Panel and within the technical advisors supporting it.

Recommendations to the Committee

92. Clarify that more than four members can be appointed to the Expert Panel to ensure it has the right mix of skills and representation from relevant local authorities – should they want it.
93. Develop a register of experts able to provide technical advice or take up appointments to the Expert Panel - Include people with local government expertise across the range of functions local government performs e.g. strategic, corporate, and environmental planning, funding, and financing, science, data, and evidence on the register and as advisors to the Expert Panel.
94. Retain the ability for local authorities to appoint one member of the Expert Panel but enable flexibility if a local authority chooses not to.

95. Support the Submission of Te Uru Kahika on the scientific, modelling, data and evidence skills that will be needed on the Expert Panel and within the technical advisors supporting it.

Avoiding Ad hoc Decision making / Alignment of National Direction

143. It would be preferrable to avoid ad hoc decision making.

144. We think aligned national direction, which could be represented spatially, that worked with regional and sub-regional spatial planning – and its underlying data and evidence – would be a strong factor in achieving integrated, efficient, and robust decisions on nationally and regionally significant infrastructure and development proposals.

145. It would highlight constraints and opportunities – including those an FTC approval provided - offer greater investment certainty, better co-ordinate planning and funding agencies, enable optimised external investment, increase, and sustain productivity and enable us to collectively address the big challenges. Regional, sub-regional and future development strategies have already done much of the work around critical issues such as climate resilience, reducing greenhouse gas emissions, natural hazard risk, housing affordability and supply, barriers to equal social and economic participation, place making, biodiversity and ecosystem services, and making the best use of existing infrastructure to improve value for money.

146. We note the Government's intention to develop a 30-year infrastructure plan and transport strategy. These will help. There also needs to be alignment with other Government strategies, policies, and plans – including those for waste, and conservation.

Recommendations to the Committee

96. Recommend the 30-year Infrastructure Plan is developed as soon as practicable and integrates with Local Government 30-year infrastructure strategies, Long Term Plans, and their underlying Asset Management plans. This will help prioritise infrastructure and development projects for the FTC as well as respond to approvals and align investment.
97. Recommend that Integrated National Direction and a National Spatial Strategy that identifies critical constraints and opportunities is developed with local government as soon as possible to guide strategic decision-making on nationally and regionally significant projects.

Integration of Legislation

Recommendations to the Committee

98. Making clear how the FTA legislation will integrate with other legislation.
a. What trumps what – and how things work together – e.g. Treaty clauses, Plans
b. How the FTA interacts with Specified Development Projects
c. How the FTA works with Ministerial call-in for national projects
d. Interactions with land acquisition under the PWA
e. Bill of Rights Act

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