

Short-Form Supplementary Departmental Disclosure Statement

Fast-track Approvals Bill

A short form supplementary disclosure statement for proposed Government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

It provides a limited supplement to the original disclosure statement for the Fast-track Approvals Bill, dated 1 March 2024, which can be found at this link <https://disclosure.legislation.govt.nz/bill/government/2024/31/>

This supplementary disclosure statement was prepared by the Ministry for the Environment (MfE).

MfE certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

5 December 2024

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	-YES
The Bill will provide for notices of appeal to be made by the applicant, any relevant local authority, and the Attorney-General. Any other person will not have an ability to appeal a decision made under the Bill, including those with an interest in the decision greater than that of the general public. The Bill will include a timeframe of 20 working days for filing a judicial review proceeding with the Court.	

Privacy issues

2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?	NO
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Compulsory acquisition of private property

3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?	YES
The Bill will provide for consideration of Notices of Requirement to establish designations. A designation is a pre-requisite for compulsory acquisition under the Public Works Act. A requiring authority must consider acquiring land or leases and compensating the owner or lease if after a specified period, that person or entity wishes to force land acquisition. Nothing in this Bill amends existing Public Works Act provisions.	

Charges in the nature of a tax

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>The Bill as introduced included for some, but not full, cost-recovery for processing applications. The proposed amendments extend the cost-recovery provisions in the Bill to provide a comprehensive approach to recover from users the costs incurred by the Crown and local authorities. The amendments will also provide that regulations may be made to provide for financial contributions to be paid to third parties, particularly Māori groups, to support their ability to respond to invitations to comment on application. These financial contributions would also be recovered from the applicant. This approach will encompass both fees and levies, set through regulations made under the Bill.</p> <p>The fees and levies to be set under this legislation will only be incurred by users for the purpose of recovering the costs incurred by the Crown and other organisations through their statutory role or involvement in the fast-track process. This follows the same 'user pays' principle intended in the Bill as introduced, however, the proposed amendments extend and improve the approach.</p> <p>Cost recovery regulations will be set through an Order in Council process at Executive Council, thereby providing an appropriate level of oversight to ensure the fees and levies are used appropriately.</p>	

Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

8. Do the proposed amendments create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES

Powers to make delegated legislation

9. Do the proposed amendments create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The Bill contains provisions empowering the making of other legislative or disallowable instruments, by Order in Council and include:</p> <ul style="list-style-type: none">a. ability to change the name of the authorised person for a listed project in schedule 2b. ability to amend Schedule 3A (associate panel convener)	
10. Do the proposed amendments create or amend any other powers to make delegated legislation?	YES
<p>A power to make regulations which relate to the setting of charges (both fees and levies) for users of the legislation are proposed. The regulations may also provide for other matters relating to administering cost-recovery.</p> <p>As described above, the regulations are necessary to provide a comprehensive approach to recovering costs incurred by the Crown and organisations with statutory roles under the Bill.</p>	

Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p><u>Crown Minerals Act</u></p> <p>The Bill when introduced provided for Crown Minerals Act 1991 (CMA) land access arrangements. The proposed amendment will add selected CMA permitting as an approval available under the fast-track regime. This amendment widens the range of approvals available under the regime and will ensure the fast-track regime provides more value to the resources sector.</p> <p>The proposed amendments specifies that subsurface Crown-mineral mining activities that do not have an impact on the surface of the land do not require permission from landowners to be eligible for fast-track for all approvals sought under the Bill.</p> <p><u>Electricity projects in high value conservation land</u></p> <p>The proposed amendments to allow applications for some electricity projects in high value conservation areas which were previously ineligible for any fast-track approvals. This includes existing electricity transmission infrastructure (such as upgrades and maintenance), provided the proposal would not materially change the scale or effects of the infrastructure, new electricity transmission infrastructure where that cannot practically or reasonably occur elsewhere; and continued, unchanged operations of existing electricity generation, provided the proposal does not materially change the scale or effects of the infrastructure. There remain exclusions for some of the very highest value conservation areas from new electricity transmission works through fast-track and include nature reserves, wilderness areas, specially protected areas within national parks, and wetlands protected under the Ramsar Convention.</p> <p><u>Appeal Rights</u></p> <p>The proposed amendments include changes to appeal rights and process. It is proposed to remove the ability for any person who has an interest in the decision greater than that of the general public to appeal a decision made under the Bill.</p> <p>This change would mean that appeals can only be made to the High Court on points of law by:</p> <ul style="list-style-type: none"> • the authorised person whose substantive application sought the approval • any relevant local authority • the Attorney-General • any person or group that provided comments in response to an invitation given under this Act. <p>If a person wishes to appeal and apply for judicial review in relation to the same decision, it is proposed that they must lodge the two applications together.</p>	