Te Ohu Kaimoana draft response to the Government's Fast-track Approvals Bill - April 2024

Te Ohu Kaimoana

Contents

We are Te Ohu Kaimoana

1. Te Ohu Kai Moana was established to protect and enhance the Māori Fisheries Settlement and Te Tiriti. The Māori Fisheries Settlement, the Maori Fisheries Act 2004 and the Māori Commercial Aquaculture Claims Settlement Act 2004 (**MCACSA**) are expressions of the Crown's legal obligation to uphold Te Tiriti, particularly the guarantee that Māori would maintain tino rangatiratanga over our fisheries resources.

2. The Te Ohu Kaimoana Kāhui structure is below as figure 1. All entities under the group were established pursuant to the Māori fisheries settlement (commercial and non-commercial).

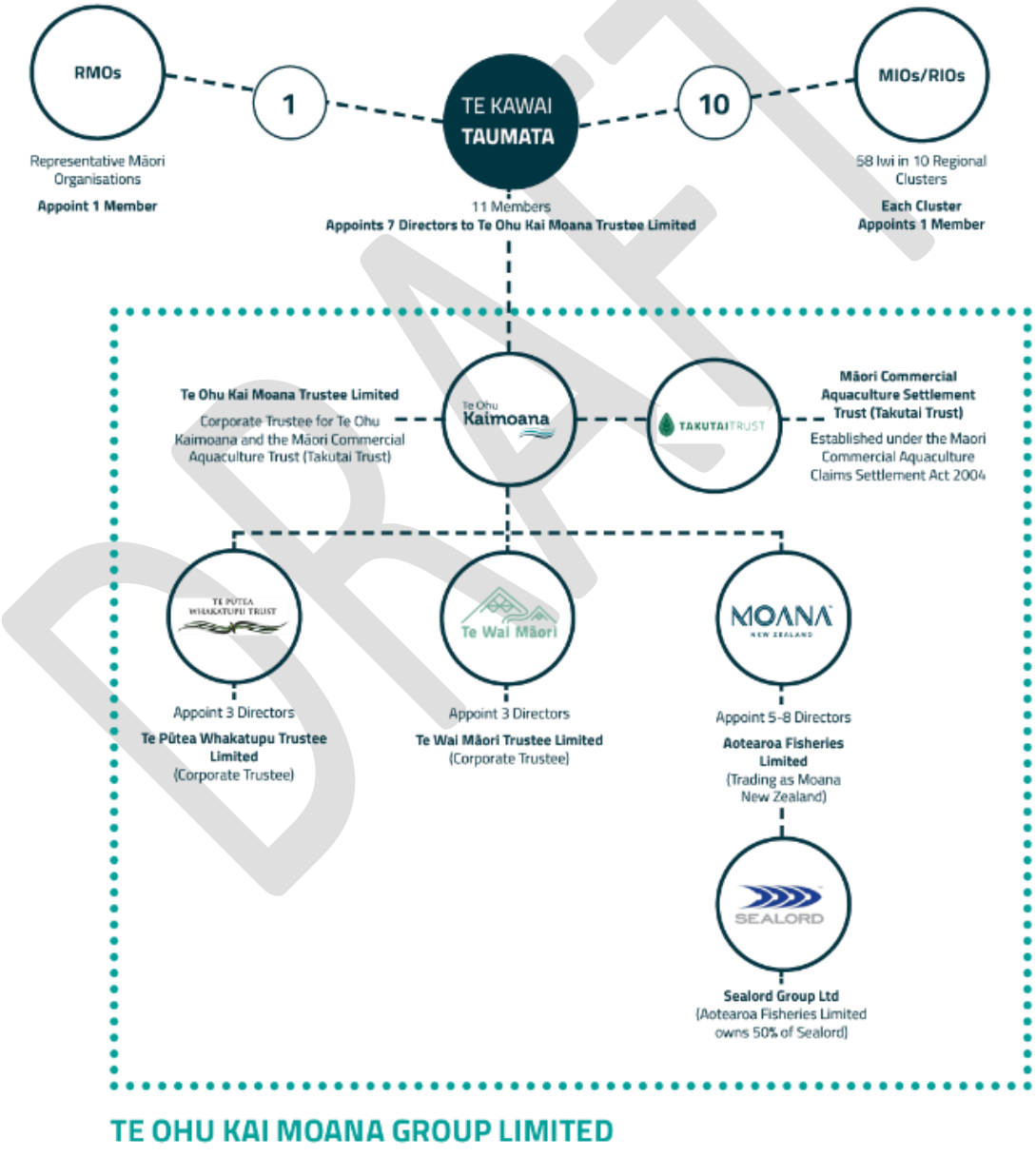

Figure 1: Te Ohu Kaimoana Kāhui structure

3. The purpose of Te Ohu Kai Moana is to "advance the interests of iwi, individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to:

    a) Ultimately benefit the members of Iwi and Māori generally.

    b) Further the agreements made in the Fisheries Deed of Settlement.

    c) Assist the Crown to discharge its obligations under the Fisheries Deed of Settlement and the Treaty of Waitangi.

    d) Contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Fisheries Deed of Settlement."[1]

4. The Māori Aquaculture Settlement Trust (**Takutai Trust**), an entity within the Te Ohu Kaimoana kāhui, was established to assist the Crown and iwi to reach agreement on the amount of aquaculture settlement assets and enable these to be provided to iwi at a regional level to satisfy the Crown's obligations under MCACSA. As part of this, the Trust receives and holds settlement assets from the Crown, assists iwi in regions to reach agreement on the allocation of the settlement assets, before finally transferring the assets to iwi in accordance with the allocation agreement.

5. We work on behalf of 58 Mandated Iwi Organisations (**MIOs**), Recognised Iwi Organisations (**RIOs**) and Iwi Aquaculture Organisations (**IAOs**) who in turn represent iwi throughout Aotearoa. Our work on behalf of Iwi is not only to protect their rights and interests but to enable them to progress their aspirations within the moana.

[1] Section 32 of the Maori Fisheries Act 2004

Te Ohu Kaimoana's interest in the Fast-track Approvals Bill

6. Our interest in the Fast-track Approvals Bill (**FTAB**) arises from our responsibility to protect the rights and interests of iwi in fisheries and aquaculture, in a manner that furthers the agreements in the Fisheries Deed of Settlement (**Deed**) and assists the Crown to discharge its obligations under the Deed and Te Tiriti o Waitangi / Treaty of Waitangi (**Te Tiriti**). Te Tiriti guaranteed Māori tino rangatiratanga over their taonga, including fisheries. Tino rangatiratanga is Māori acting with authority and independence over their own affairs. It is practiced through living according to tikanga and mātauranga Māori, and striving wherever possible to ensure that the homes, land, and resources (including fisheries) guaranteed to Māori under Te Tiriti are protected for the use and enjoyment of future generations. This view endures today and is embodied within our framework and guiding principle Te Hā o Tangaroa kia ora ai tāua.

7. 'Te Hā o Tangaroa kia ora ai tāua' expresses the special relationship that iwi, hapū and whānau have with the aquatic environment, including speaking to the interdependent relationship with Tangaroa to ensure their health and well-being. This expression underpins our purpose, policy principles and leads our kōrero to ensure the sustainability of Tangaroa's kete for today and our mokopuna yet to come.[2] It is important that the Government understands the continuing importance of Tangaroa and recognises the tuhonotanga that Māori hold as his uri. In a contemporary context, the Māori Fisheries and Aquaculture Settlements are expressions of this interdependent relationship.

8. Iwi/ hapū rights are an extension of their kaitiaki responsibility, a responsibility to use the resources in a way that provides for social, cultural and economic well-being, and in a way that is not to the detriment of Tangaroa or other children of Tangaroa. It speaks to striking an appropriate balance between people and those we share the environment with. Management and protection of fisheries, freshwater and marine aquaculture resources are some elements of this reciprocal relationship.

9. For Te Ohu Kaimoana, our key concern for the FTAB is to ensure that the proposed process protects and upholds the commitments made by the Crown to Iwi in the Māori Fisheries and Aquaculture Settlements, as well as the over-arching commitments set out in Te Tiriti.

[2] Further information on Te Hā o Tangaroa kia ora ai tāua can be found at Appendix 2.

Response to the Fast-track Approvals Bill

10. This document provides Te Ohu Kaimoana's response to the FTAB, which was introduced to Parliament on the 7 March 2024.

11. Our approach to this response is derived from the context of Te Ohu Kaimoana's role in the Māori Fisheries Settlement[3].

12. To support this response, we also wish to present our views kanohi ki te kanohi to the Environment Select Committee.

13. Our response is structured in the following way:
    a. Upholding Te Tiriti and Treaty Settlements – the Crown has a duty to uphold the Māori Fisheries Settlement.
        - Te Tiriti and its principles.
        - Issues relating to the Māori Commercial Aquaculture Claims Settlement Act and the Fisheries Deed of Settlement.
        - Māori Commercial Aquaculture Claims Settlement Act
        - Fisheries Settlement – the potential impacts on settlement quota.
    b. The potential impacts on aquaculture development.
    c. The Proposed Fast-track process – Limitations on Engagement and a Role for Te Ohu Kaimoana.
        - The Proposed Fast-track process.
        - Limitations on Engagement.
        - A role for Te Ohu Kaimoana.
    d. Drafting Amendments Required to Provide for the Māori Fisheries Settlement, including a clause-by-clause analysis in Table 1 (Appendix One).
    e. Concluding Remarks.

14. We have had an opportunity to review draft responses from the New Zealand Rock Lobster Industry Council and Pāua Industry Council and the Environmental Defence Society and have referred to parts of these responses and submissions throughout.

15. We do not intend for our response to conflict with, or override, any response provided independently by Iwi, through their MIOs and IAOs or Asset Holding Companies (**AHCs**), which are statutorily recognised entities with responsibility for Fisheries and Aquaculture Treaty Settlement assets on behalf of their iwi members. Our responsibilities as the trustee of the two settlements referred to above are separate and distinct but complementary to those of iwi and hapū who hold mana whenua and mana moana and are beneficiaries of those settlements through those statutorily recognised entities.

[3] The full framework of deeds and legislation to give effect to the agreements between the Crown and Māori in the Fisheries Settlement involves: the (now repealed) Maori Fisheries Act 1989, the 1992 Fisheries Deed of Settlement, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (which also includes the customary fisheries management regulations given effect through Part 9 of the Fisheries Act 1996), the Maori Fisheries Act 2004, and the Maori Commercial Aquaculture Claims Settlement Act 2004.

Upholding Te Tiriti and Treaty Settlements – the Crown has a Duty to Uphold the Māori Fisheries Settlement

16. Any new legislation brought in front of Parliament must uphold all existing Treaty settlements. We hold this expectation most especially for the Māori Fisheries Settlements but note that this should also be applicable to any and all treaty obligations expected of the Crown.

17. In this section, we address in further detail the critical impact we foresee the FTAB potentially imposing on Crown treaty obligations to Iwi Māori.

Te Tiriti and its principles

18. First, we can't see any reference within the FTAB to Te Tiriti and its principles. As a result of this, those specific ministers who have the power and ability to approve resource consent applications under the FTAB can do so without consideration or acknowledgment of Te Tiriti and its principles.

19. What we can see is that the FTAB includes an obligation on all persons exercising functions, powers, and duties to act in a manner that is consistent with:

    a. the obligations arising under existing Treaty Settlements; and

    b. customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Hapū o Ngāti Porou Act 2019.

20. Clause 6 is not protective of the rights and interests of iwi and hapū beyond settlements as it specifically only covers existing settlements. This is a concern for groups who are yet to settle as they have no protections under the proposed FTAB. This isn't consistent with the Crown's obligation to actively protect the Māori Fisheries Settlement.

Recommendations

21. We recommend that clause 6 is amended and the word <u>existing</u> is removed from the Clause 6(a). This will ensure that future treaty settlements are protected under the FTAB.

Issues relating to the Māori Commercial Aquaculture Claims Settlement Act and the Fisheries Deed of Settlement

Treaty Settlements

22. Clause 6 of the FTAB provides: All persons exercising functions, powers, and duties under this Act must act in a manner that is consistent with the obligations arising under existing Treaty settlements.

23. The definition of Treaty settlements includes the Māori Commercial Aquaculture Claims Settlement Act 2004 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. Thus, on the face of clause 6 the Māori Fisheries Settlement are preserved. However, under the FTAB the Aquaculture and Fisheries settlement, Te Ohu Kaimoana, MIOs and IAOs are reliant on persons (such as the ministers or panels) firstly accepting that there is an inconsistency with obligations arising under

the Settlement Acts and secondly, exercising their powers under the FTAB in a certain way to remove that inconsistency. The absence of the ability to meaningfully participate in the decision-making process exacerbates this reliance.

Schedule 2 projects

24. Clause 18 provides a mechanism for listed projects to automatically proceed to consideration by an expert panel, without the need for a statutory assessment as to whether the project is appropriate for fast-tracking in the first place.

25. These listed projects will proceed to panel consideration even if they would otherwise have been ineligible for fast-track. For example, it is possible that projects listed in schedule 2, that are incompatible with aquaculture activities or are indeed for aquaculture activities undertaken by persons who do not hold an authorisation, could be allowed even though it occurs within an Aquaculture Settlement Area (**ASA**).

26. The list in clause 18 also includes other very significant prohibitions, that a schedule 2 projects could bypass. This raises concerns for Te Ohu Kaimoana as we are not privy to the potential projects listed in schedule 2 which could have detrimental consequences for both the Aquaculture Settlement and the Fisheries Settlement.

Recommendations

27. It is noted that the projects listed in Schedule 2, do not have to achieve the eligibility criteria set out in clause 17. There is no reasoning as to why these projects are exempt from following due process to determine whether they are appropriate to be going through fast-track. We are concerned with this lack of process, as detailed above, and thus recommend that the listed projects are removed from the FTAB altogether. The removal of listed projects would relieve multiple concerns surrounding the FTAB, including the potential for projects that are in breach of our Settlements, from going ahead. This recommendation is in line with what the Ministry for the Environment (**MFE**) recommended in their Supplementary Analysis Report (**SAR**)[4].

28. Alternatively, should listed projects remain within the FTAB, we recommend that it is amended to require all projects, including both those listed in the legislation and those that are referred, are subject to eligibility criteria consideration.

Māori Commercial Aquaculture Claims Settlement Act

Gazetting space for Settlement purposes.

29. Clause 18(e) of the FTAB provides that a project must not include an aquaculture activity or other incompatible activity that would occur within an ASA declared under section 12 of the MCACSA 2004 or identified within an individual iwi settlement unless the applicant holds the relevant authorisation under that Act or the relevant Treaty settlement Act.

30. However, this clause does not preserve the right in section 165E (2) of the Resource Management Act 1991 (**RMA**) for the trustee and iwi in the region to be consulted in respect of

[4] Ministry for the Environment Supplementary Analysis Report: Fast Track Approvals Bill (2024)

activities in an ASA where that activity is thought to be compatible with aquaculture activities.

31. This omission to section 165E of the RMA has most likely been made to streamline the process by eliminating the need for consultation and thereby make it easier to obtain coastal permits for "compatible" activities in ASAs. The omission from clause 18(e) of the requirement that the trustee and iwi in the region be consulted is an erosion of the protection currently available under section 165E. This may present risks for the security of ASAs including making it easier for other groups to undertake "compatible" activities in ASAs.

32. Under the FTAB it will be the Ministers who will determine if an activity in an ASA is compatible with aquaculture activities. There is no guidance within the FTAB as to what a compatible activity is, or the criteria to be applied in determining that question. In the absence of consultation with the relevant iwi, evidence of incompatibility may never be properly identified.

33. The current prohibition in clause 18(e) will only render an application ineligible if it is for aquaculture activities or activities incompatible with aquaculture within a settlement area.

New Space

34. A critical component of preserving the Aquaculture Settlement is ensuring the FTAB preserves the requirements set out in sections 8-18 of the MCACSA, that the Crown provide for, and transfer to the Takutai Trust, settlement assets that are representative of 20% of new space.

35. The definition of "new space" means space that, "… first becomes subject to a coastal permit to occupy the space for the purpose of aquaculture activities that has commenced under section 116A of the Resource Management Act 1991", thus linking the coastal permit approved under the FTAB and commencement under section 116A RMA to the Aquaculture Settlement.

36. That requires a clear statement that any coastal permit approved under the FTAB for the purpose of aquaculture activities is deemed to be "new space" for the purposes of the MCACSA. All resource consents granted under the FTAB will have the same force and effect for its duration and, according to its terms and conditions, as if it were granted under the RMA.

Regional Agreement

37. As previously noted, all functions, powers, and duties acted on under the FTAB must be consistent with obligations arising under existing Treaty settlements. However, the FTAB is silent on future regional agreements that arise from the MCACSA. There are further new space regional aquaculture agreements being negotiated now that address the same issues as amendments being considered to existing regional agreements. It makes no sense to apply different rules simply because of timing. It is imperative that future regional agreements are explicitly included within the definition of Treaty Settlements, to ensure they are given the appropriate protections under the FTAB.

Recommendations

38. In the interest of transparency, we recommend that there is clear guidance within the FTAB as to what a 'compatible' activity is, or the criteria to be applied in determining that question. It is important that the FTAB provides a level of transparency around how this is determined. Under the

existing legislation, the relevant iwi is engaged to help determine whether a project is incompatible with aquaculture development. Therefore, if this engagement is being removed for alleged compatible activities, at minimum we require some clarity around how this is determined within the FTAB and be provided with an opportunity to contribute to the design of the relevant definition and / or clause.

39. We recommend that a clear statement is included in schedule 4, clause 45, subsection 4, that any coastal permit approved for the purpose of aquaculture activities under the FTAB is deemed to be "new space" for the purposes of the MCACSA.

40. In order to remove all doubt regarding whether future regional agreements or other agreements, that arise from the MCACSA, are covered by the definition of 'Treaty settlements' we recommend that clause 6 is amended to read:

Section 6: Obligation relating to Treaty settlements and recognised customary rights
All persons exercising functions, powers, and duties under this Act must act in a manner that is consistent with—

a. the obligations arising under existing Treaty settlements; and

b. customary rights recognised under—

i. *the Marine and Coastal Area (Takutai Moana) Act 2011*

ii. *the NHNP Act.*

c. Regional agreements and other agreements that arise from the Māori Commercial Aquaculture Claims Settlement Act 2004.

Fisheries Settlement – the potential impacts on settlement quota

Settlement Quota

41. A key feature of the Fisheries settlement is the allocation of settlement quota to MIOs (or Te Ohu Kaimoana holding on trust pending transfer), specifically 10% of quota shares for all fish species that were in the QMS as at 1989 and 20% of quota shares for all new fish species introduced into the QMS after that date. Some of these quota shares include fish species that are:

a. deepwater stocks commercially fished in New Zealand's Exclusive Economic Zone (**EEZ**) (between 12 and 200 nautical miles offshore); and

b. inshore stocks commercially fished in New Zealand's coastal marine area (approximately 12 nautical miles offshore).

42. Quota shares generate an annual catch entitlement (**ACE**) which is based on the proportional number of shares owned in each stock as a proportion of the TACC. The annual total allowable catch (**TAC**) and TACC is determined based on scientific information that seeks to maintain the

stock at a level that can produce the maximum sustainable yield. This means the TAC and TACC can be increased or decreased depending on how healthy and productive that fishery is at the time.

43. Under the FTAB applicants can apply for a coastal permit to undertake activities in the coastal marine area and marine consents to undertake activities in the EEZ. The proposed activities envisioned under the FTAB such as seabed mining, offshore energy projects and aquaculture developments could have significant impacts on fishing, fisheries resources, fish habitats and marine environments in the coastal marine area and the EEZ. This will likely have flow on effects on the ability and costs of fishing on, ACE and quota holders to catch the TAC, TACC in the deepwater and inshore stocks in the relevant quota management areas (**QMA**) including Te Ohu Kaimoana and relevant MIOs.

44. The specific impact on the TAC, TACC and therefore Te Ohu Kaimoana and relevant MIO's as quota holders will need to be assessed on a case-by-case basis depending on the location and terms of the proposed project. For instance, if an application for a coastal permit or marine consent created fishing exclusion zones in a certain QMA, the relevant MIOs, will require the appropriate opportunity to accurately assess the impacts to their commercial fishing rights and interests arising from their share of deepwater and inshore quota stocks in that QMA. It may have the effect of restricting or displacing fishing activity in that QMA. Currently, the relevant Treaty settlement entities only have 10 working days to provide written comments to the expert panel on a proposed application. We recommend extending this to 20 working days.

45. We note the proposed Fisheries Act matters were a late addition to the FTAB and there is no analysis of these matters or impacts on the Fisheries Settlement in the SAR prepared by MFE and no regulatory impact statements that interrogate the impact on quota holders generally which reflects the urgency at which the FTAB was drafted. This is poor and unacceptable (but not surprising) given the FTAB purports to uphold Treaty settlements.

Recommendations

46. We recommend extending the period Treaty settlement entities can provide written comments to expert panels on relevant proposed projects to 20 working days by amending schedule 4, clause 21 as follows:

"... (which must be 20 working days after the date on which the invitation is given under clause 20(2))."

Preservation of UAE testing

47. Under schedule 12 the panel must request the Chief Executive (**CE**) for MPI to make a recommendation (rather than a binding decision under the usual process in the Fisheries Act 1996) on the "aquaculture decision" to be made. The aquaculture decision is a decision in relation to a coastal permit, on whether or not an aquaculture project will have an undue adverse effect (**UAE**) on commercial, recreational or customary fishing. The decision is either a:

    1. determination that the aquaculture project will not have a UAE on fishing; or

2. reservation that the aquaculture project will have a UAE on fishing.

48. If the decision is a reservation in relation to commercial fishing of quota management stock, aquaculture can still proceed in the area if the developer provides to each affected quota owner, compensation for the loss of value of the owner's affected quota through a negotiated agreement or as determined by an independent arbitrator.

49. We note this provision for compensation is only in relation to unduly affected commercial fishing and does not include unduly affected customary or recreational fishing.

50. Despite schedule 12 only applying to applications for coastal permits in respect of aquaculture activities, clause 7 of schedule 12 also requires the expert panel to include the recommendation of the CE when making their recommendation on a marine consent for aquaculture activities. Marine consents are granted under schedule 9 in relation to the EEZ. We recommend whether or not the aquaculture decision is intended to extend to marine consents under the EEZ (schedule 9) is clarified.

51. As provided above, the Māori fisheries settlement includes commercial stocks fished in the EEZ. In this regard, extending the aquaculture decision to the EEZ to safeguard those commercial fishing rights and interests would be consistent with upholding the settlement. We recommend a similar regime is extended to any proposed projects in the coastal marine area and the EEZ that have an undue adverse effect on Māori customary commercial and non-commercial fishing rights and interests. As it currently stands the aquaculture decision applies only to applications in the coastal marine area for aquaculture activities. This would go some way to upholding the Māori fisheries settlement. Te Ohu Kaimoana and MIOs would welcome the invitation to co-design this with officials.

52. We note that the decision as to whether there are UAE on fishing under section 186E of the Fisheries Act 1996, passes to the same decision maker who will decide whether to approve the underlying coastal permit. This in turn, creates a substantial risk that once a decision is made to approve the coastal permit, the UAE test will simply follow the same outcome to avoid cognitive dissonance for the decision makers. We also note the CE of MPI regularly makes the aquaculture decisions, has certain expertise and access to relevant resourcing and is familiar with the intersection of the Māori Fisheries Settlement. For these reasons, we recommend the aquaculture decision by the CE of MPI should be binding, rather than a recommendation to the expert panel and joint Ministers.

Recommendations

53. We recommend the select committee clarifies whether or not the aquaculture decision is intended to extend into the decision-making process for marine consents for the purpose of aquaculture activities in the EEZ. If so the scope of schedule 12 should be amended accordingly.

54. We recommend a similar regime to the 'aquaculture decision' is implemented that encompasses any proposed projects in the coastal marine area and the EEZ and analyses whether it may have

an undue adverse effect on Māori customary commercial and non-commercial fishing rights and interests. Te Ohu Kaimoana and MIOs should be invited to codesign this with officials.

55. We recommend the aquaculture decision by the CE of MPI should be binding rather than a recommendation to the expert panel or joint Ministers. The relevant negotiation, compensation and arbitrations clauses should follow this decision (see schedule 12, cl 11 – Fisheries Act 1996, s 186ZN – 186ZR).

56. Alternatively, if the aquaculture decision remains a recommendation to the expert panel and joint Ministers, and the CE decision is a reservation, to deviate from this decision, we recommend that the joint Ministers must provide analysis which clearly demonstrates the proposed project will be of more benefit than the fishing rights and interests that are being displaced.

57. If the CE decision is a reservation, regardless of whether it is binding or a recommendation, subpart 4 of Part 9A of the Fisheries Act 1996 should automatically apply.

Customary non-commercial fishing

58. The Crown agreed as part of the Fisheries Settlement to make regulations that recognise and provide for Māori (non-commercial) customary fishing. The Fisheries (Kaimoana Customary Fishing) Regulations 1998 (**Regulations**) are some of these regulations.

59. We are concerned that the FTAB cuts across and has had little regard to customary non-commercial fishing rights or the Regulations which exist and are currently in practice. There does not seem to be any cross-reference to the Regulations or relevant Fisheries Act clauses in schedule 12. There is no evidence of any consideration of how customary (non-commercial) fishing rights will be actively protected when considering relevant proposed applications. This is deeply concerning for Te Ohu Kaimoana, our MIOs and their whānau who rely on the moana as their pātaka or mahinga kai.

60. The Crown is required to actively protect the exercise of Māori customary non-commercial fishing rights. We note the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 specifically records that Māori non-commercial fishing rights continue to be subject to the principles of the Treaty of Waitangi.

61. We foresee the potential for future scenarios such as the creation of no fishing zones or the approval of proposed projects that create significant adverse environmental effects which in turn will affect where customary non-commercial fishing can take place. In order to actively protect Māori customary non-commercial fishing rights, the relevant decision makers must, where Māori customary non-commercial fishing rights are unduly affected, only approve a proposed project with the approval of the relevant hapū or iwi with mana moana at place. Practically, the applicant should provide ample opportunity to co-design any solutions with the relevant hapū or iwi at place. This may include the imposition of conditions to prevent potential negative impacts or looking at alternative locations for the proposed project.

Recommendations

62. We recommend proposed projects that unduly affect Māori non-commercial customary fishing rights should not be approved without the approval of the relevant hapū and iwi with mana moana at place.

The Potential Impacts on Aquaculture Development

Race for space

63. Although we appreciate the mechanisms within the FTAB that will enable aquaculture development, we have concerns that the FTAB could create a 'race for space'. There are only so many sites within the coastal marine area that are suitable for aquaculture development. Many sites are restricted by regional coastal plans, environmental conditions, or competing interests such as shipping lanes. Therefore, should aquaculture development become more readily achievable in Aotearoa, the increase in demand to occupy the suitable space, will cause a race for aquaculture development space in the coastal marine area.

64. The 'race for space' creates a scenario where iwi may be deprived of an opportunity to develop the best available space. In order for the Crown to meet their obligations under the MCACSA, the Crown must preserve suitable space for aquaculture development to be undertaken. The intent of the settlement is to support iwi aquaculture aspirations and for Māori to be aquaculture industry leaders.

National Environmental Standards for Marine Aquaculture

65. Although the FTAB takes a streamlined approach to resource consenting, the process the expert panel goes through in schedule 4 to consider resource consenting is not significantly different to the status quo. For aquaculture developments, this means upholding the National Environmental Standards for Marine Aquaculture (**NESMA**)[5]. We are supportive of this approach as It is vital, not only to ensuring the appropriate environmental protections are upheld, but also, the prosperity of the moana and future of these aquaculture enterprises.

66. Although we are supportive of this approach, we are acutely aware that under the FTAB, as it currently stands, joint ministers can essentially choose to disregard whether an aquaculture development meets the NESMA and approve a resource consent on the basis it aligns with the purpose of the FTAB. This is alarming as the NESMA are in place for a multitude of reasons, including to ensure a development is viable well into the future. The trouble with approving aquaculture developments that do not achieve the NESMA is that they run the risk of not succeeding long term. This in turn would not achieve the purpose of the FTAB.

67. The SAR that was provided by MFE, recommended that the FTAB weighted other relevant legislation obligations equally with the purpose. The SAR identified that weighting decisions based on the purpose over weighting them equally on their merits would not expedite the resource consenting process any further as "matters relevant to the decision will still need to be considered,

[5] Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020

regardless of the weighting which is applied to them"[6]. Thus, we believe it is important within aquaculture developments, where the viability of long-term success is dependent on environmental factors, that ministers should reconsider the weighting that is given to the purpose over the appropriate environmental testing and the NESMA under the FTAB.

Aquaculture Development in the EEZ

68. The function of the MCACSA, in it current form, limits aquaculture development within regional council boundaries. Regional council boundaries extend into the Territorial sea, out to 12 nautical miles. The introduction of the FTAB, highlights this issue as it increases the interest in open ocean aquaculture in the E**EZ**. When the MCACSA was developed, the government of the day noted that "where aquaculture goes, the settlement goes". However, at the time it was not envisaged that aquaculture development would enter the EEZ. However, the FTAB has highlighted that this may be possible. If this is the case, there needs to be some kind of consideration of Māori aquaculture rights and interests in the EEZ. The FTAB opens up the potential risk for factors that were not considered at the time of our settlement legislation, so now we want to know how the government will address these important issues. This bill cannot sit in silo from our settlement legislation.

Recommendations

69. Te Ohu Kaimoana support the enablement of aquaculture development in Aotearoa, but to we need to see a commitment from the Crown that it will create suitable ASAs to enable future development in line with MCACSA. Specifically, there needs to be a process developed that requires suitable ASAs are identified and preserved to ensure that aquaculture development does not supersede the capacity for aquaculture development. This will ensure we do not reach a point in time where there is more aquaculture development then potential settlement space, which would be in breech of the Crowns settlement obligations.

70. Environmental testing and regulations such as the NESMA are important mechanisms in place to determine the suitability of the site for an aquaculture development. It is not in the applicants, nor the ministers, best interest to overlook the results of this testing. Therefore, we support the recommendation made by MFE that the other relevant legislation obligations are equally weighted against the purpose of the FTAB.

71. As noted above, we have identified that with the FTAB making aquaculture development in the EEZ more prevalent, this exposes issues within the MCACSA. We recommend that aquaculture settlement in the EEZ needs to be resolved prior to any applications being progressed for open ocean aquaculture under the FTAB.

[6] Ministry for the Environment Supplementary Analysis Report: Fast Track Approvals Bill (2024) at 25-26.

The Proposed Fast-track Process, Limitations of Engagement and a Role for Te Ohu Kaimoana

The Proposed Fast-track Process

Purpose of the FTAB and the manner in which it is used.

72. The purpose is set out at clause 3 of the FTAB and provides:

    a. The purpose of this Act is to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits.[7]

73. Within schedule 4, clause 32 of the FTAB, with regard to applications that would otherwise be applying for a resource consent or notice of requirement under the RMA, the panel is instructed to assess a listed or referred project, and any written comments received on the application or notice, giving weight to a number of listed matters, in the order the matters are listed. The purpose of the FTAB appears as the first matter in the list, meaning the development purpose must always be given the greatest weight.

74. This means that considerations around environmental protections under the RMA, any national direction, operative and proposed policy statements and plan, iwi management plans, Mana Whakahono ā Rohe and joint management agreements will always be second order considerations behind the purpose of facilitating development which is, as drafted, the paramount consideration. This does not allow for robust decision making as the panel is required to essentially support every project on the basis they meet the purpose of the act, regardless of the environmental implications they may have.

Ministerial Powers

75. One key difference between the FTAB and the previous COVID19 Recovery (Fast-track Consenting) Act 2020 (**COVID19 Act**), is the overriding powers that ministers hold. Under the COVID19 Act the onus was on the expert panel to determine whether a project proceeded through the fast-track process. However, under the proposed FTAB, the onus of this decision is on joint ministers. The role of the expert panel is to provide advice to ministers regarding the potential implications of the project and to recommend conditions that should be applied to the resource consent. The joint Ministers can deviate from the expert panels recommendation after they have undertaken their own analysis of the recommendations and any conditions in accordance with the relevant assessment criteria. There is no transparency around what that analysis must involve.

76. Additionally, the FTAB bypasses independent decision-making of regional councils, the EPA and other public agencies as well as independent expert panels by empowering the joint Ministers to determine what projects enter into the fast-track approvals process and effectively trump any

[7] Fast-Track Approvals Bill 2024, clause 3

assessment by the expert panel that is contrary to their desire to approve a project.

77. There is a very low bar to enter the fast-track approval process. If a project will have significant regional or national benefits including supporting primary industries like aquaculture, deliver significant economic benefits or support development of natural resources, including minerals and petroleum, it will be able to enter the fast-track approval process.

78. There is next to no criteria for declining to refer a project into the fast-track approval process. Joint Ministers must decline referral only if satisfied the project is inconsistent with the broad purpose of the Act, doesn't meet the wide eligibility criteria or includes an ineligible activity.

79. There are no criteria for the joint Ministers where they must decline to approve a project. This means that the joint Ministers can approve a project that has significant adverse effects on the environment or is inconsistent with the Māori Aquaculture and Fisheries Settlement (although this would be contrary to clause 6).

80. Overall, it appears that entry into the fast-track approval process and ultimate approval is purely a political decision by the joint Ministers who can override independent expert panel advice. This is an excessive use of ministerial powers and constitutionally questionable.

Economic growth analysis

81. As discussed above, the purpose of the FTAB is focused on the "delivery of infrastructure and development projects with significant regional or national benefits"[8]. From the outset, it has been made clear that the FTAB is economic focused, not environmentally focused, as the Hon Chris Bishop put it, "this Bill is about bypassing all environmental regulations to allow for economic growth".[9]Thus, we would expect that should the FTAB be focused on economic growth, then the criteria for a project being referred should include an economic analysis of the project and the predicted economic benefits that it will have for the economy.

82. In its current state, the FTAB only requires that joint ministers must consider whether the project would have significant regional or national benefits, including the consideration of whether it will deliver significant economic benefits. The applicant is only required to give an explanation of how its project meets the eligibility criteria. There are no qualifications to this explanation, whether it has to include particular economic analysis or consider other economic interests. Currently the joint ministers may consider this when making their decision on whether a project can be fast tracked. The joint Ministers should be empowered to decline an application if it does not create significant economic benefits, having regard to other displaced economic benefits.

Prohibited activities

83. Prior to the first reading of the FTAB, the SAR was provided to ministers. The purpose of the SAR was to provide advice to ministers on the potential implications of including different clauses. The

[8] Fast-Track Approvals Bill 2024, clause 3
[9] (7 March 2024) Parliamentary question time (Chris Bishop).

SAR warned officials not to allow resource consents for 'prohibited activities' to be fast-tracked. By definition, a prohibited activity is an activity that may not proceed under any circumstances. This advice was not adhered to, the FTAB states that "a project is not ineligible just because the project includes an activity that is a prohibited activity under the RMA".[10]

84. The SAR detailed that "Prohibited activities often have significant environmental or human health effects (e.g., discharge of raw wastewater to rivers, the burning of hazardous substances and associated discharge of contaminants to air). Many prohibited activities are also there to protect existing significant infrastructure". Similarly, to the Environmental Defence Society, whose submission states that "the provision in the FTAB for these activities is an explicit invitation for developers to lobby Ministers to refer projects to fast-track where central government itself, or councils (following consultation with communities and scrutiny by the Courts), have explicitly banned that activity. There are relatively few prohibited RMA activities, and the rationale for overriding them is unclear".[11] We are also unclear on the purpose behind allowing prohibited activities within the FTAB which put both environmental and human health at risk.

Recommendations

85. In its current form, the FTAB requires the expert panel to measure both listed and referred projects for resource consents against the matters listed in schedule 4, clause 32[12]. It requires that the panel give greater weighting to the purpose of the FTAB over the other matters listed. This does not allow for robust decision making as the panel is essentially mandated to approve all listed and referred projects on the basis that the achieve the purpose of the FTAB, regardless of the environmental implications they may have. We recommend that instead of ranking matters in order of priority, there is no ranking at all, to allow for a balancing of those factors listed in clause 32. This is also consistent with the SAR. We recommend this same approach is taken for each schedule, that is equal weighting to all relevant matters for each approval regime.

86. We recommend that the final decision approval should be by the expert panel. Allowing decisions on potentially environmentally damaging projects to be made by ministers, who have little expertise on the matter is inapt.

87. Additionally, we recommend that the FTAB is amended to include a list of reasons why joint ministers "must decline" a project. This will relieve concerns that ministers may approve a project that has significant adverse effects on the environment or is inconsistent with the Māori Fisheries Settlement. At the bare minimum, we require that the must decline list includes that a project must be declined, if it is inconsistent with any Treaty Settlement, this is consistent with Section 6.

88. The criteria for a project being referred should include an economic analysis of the project which demonstrates how it will have significant economic benefit for the country, more so than any potential economic benefits that the proposed project might be displacing. We recommend a paragraph should be inserted in the list at clause 21(1) that requires joint ministers to decline an

[10] Fast-track Approvals Bill 2024 (31-1), clause 17(5).
[11] Environmental Defence Society submission on the Fast-track Approvals Bill pg.7
[12] Fast-Track Approvals Bill 2024, schedule 4, clause 32

application for referral if the proposed project will not result in significant economic benefits having regard to the economic benefits the proposed project may be displacing.

89. The FTAB should be amended to remove clause 17(5) and insert 'prohibited activities under the RMA' under clause 18 ineligible projects.

Limitations of Engagement

Relevant iwi authority

90. The FTAB provides for "relevant iwi" to be consulted about applications for referral[13] and when the expert panel is considering its recommendations on an application.[14] It also requires the applicant to engage with such iwi before submitting an application.[15] The terms relevant iwi and relevant iwi authority are not defined in the FTAB.

91. In the previous COVID19 Recovery (Fast-track Consenting) Act 2020 (COVID19 FTC), relevant iwi authority was defined as "an iwi authority whose area of interest includes, overlaps with, or is immediately adjacent to the area in which the work will occur; and in relation to listed projects and referred projects and in the rest of this Act, means an iwi authority whose area of interest includes the area in which a project will occur".

92. This definition, albeit better than no definition, left room for interpretation by applicants. It was noted that during the previous COVID19 FTC process that applicants had approached the wrong iwi authorities on multiple occasions, meaning that nominations from inappropriate iwi authorities sat on the expert panels. This is a major concern as only the correct iwi authority can determine the potential consequences on their rohe. Thus, an alternative definition should be sought, that clearly sets out how to ensure the appropriate iwi authority is engaged.

Engagement time constraints

93. The process that applies under the FTAB significantly curtails the ability of iwi to meaningfully engage with applications for approval. In particular we have identified that:

    a) Iwi will only have 10 working days to provide written comments on an application for referral to a panel; [16]

    b) Iwi will also only have 10 working days to provide written comment on an application that is being considered by a panel; [17]

    c) There is no requirement to hold a hearing; [18]

    d) While there is power to hold a hearing, hearings are likely to be very rare in practice given the timeframes that panels are operating under (25 working days from the date of referral

[13] Fast-Track Approvals Bill 2024, clause 19(1) & (5).
[14] Fast-Track Approvals Bill 2024, schedule 4, clause 20(3)(b) and (c) and 20(5)(b) and (c) and schedule 9, clause 9(1).
[15] Fast-Track Approvals Bill 2024, clause 16(1).
[16] Fast-Track Approvals Bill 2024, clause 19(5).
[17] Fast-Track Approvals Bill 2024, schedule 4, clause 21(1) and schedule 9, clause 9(1).
[18] Fast-Track Approvals Bill 2024, schedule 4, clause 23.

to provide a report to the ministers, with an ability to extend this period by another 25 days);[19]

e) The ministers who make the ultimate decision on whether to accept or reject the application are not required to undertake any consultation; [20]

f) Any person consulted by the Chief Executive under the Fisheries Act 1996 in respect of the making of an aquaculture decision must have their comments to the Chief Executive within 10 days.[21]

g) The right in s 165E (2) RMA for the trustee and iwi in the region to be consulted in respect of activities in an ASA where that activity is compatible with aquaculture activities is removed[22].

94. It is a fundamental principle of environmental management that decisions should be based on the best available information. This principle is entirely ignored by the FTAB.

95. Under the RMA and other environmental legislation, iwi have had the opportunity participate more fully in the decision-making process. For significant projects there are typically oral hearings where evidence can be presented, and questions asked of witnesses for other parties.

96. The timeframes in the FTAB are likely to make it almost impossible to commission expert evidence on proposals. It is likely to be impossible for persons asked to comment on an application to counter the evidence of the applicant with their own expert evidence within the 10-day period for comments. This also means that it is unlikely that iwi will be able to obtain independent evidence about what the effects of the project would be, in order to assess its impacts on them and support a submission in opposition or indeed in favour of the project.

97. The practical effect is that the expert panel and or, the ministers will be making recommendations and decisions based on full and complete evidence from the applicant in favour of the project and little or no meaningful information from the limited pool of persons/entities that must be given the opportunity to comment.

98. The FTAB states that "the applicant must undertake engagement with relevant iwi, hapū and Treaty settlement entities" and "include in their referral application a record of the engagement and a statement explaining how it has informed the project". There is no further specific detail about the nature or type of engagement that is required. We do not regard this pre-submission requirement to be a proper substitute for a process that allows iwi to meaningfully engage when any application is being considered. There is no guarantee that it will be a genuine and meaningful consultation. There is also no guarantee that it will involve sufficient detail about the potential effects of the project to enable iwi to make an informed assessment of the application or about the commissioning of evidence in rebuttal or support.

[19] Fast-Track Approvals Bill 2024, clause 39(3) and (4).
[20] Fast-Track Approvals Bill 2024, clause 25(6).
[21] Fast-Track Approvals Bill 2024, schedule 12 clause 5
[22] Fast-Track Approvals Bill 2024, clause 18(e)

99. Furthermore, pre-application "engagement" cannot be a substitute for a meaningful opportunity to participate in the decision-making process. If a decision is being made that affects the rights and interests of iwi, they must have a meaningful opportunity to put their views before the decision-maker, along with supporting evidence. The nature and timeframes of the process in the FTAB prevent that, particularly in relation to evidence.

Recommendations

100. The FTAB needs to contain a robust definition for "relevant iwi authorities" that ensures the appropriate iwi authority is approached to engage on applications and provide nominations for the expert panel.

101. We recommend that the FTAB is amended to increase the ability of iwi to provide important evidence. This includes the earlier notification to "relevant iwi" as well as relevant iwi authorities of a project being referred, in accordance with clause 19. This will enable longer time to collate comments and evidence in anticipation of an application being referred by the ministers to the expert panel. Simply lengthening the timeframes for comment would also assist to support more robust engagement with iwi. Neither would unduly lengthen the time for an application to progress through the panel assessment process.

102. The FTAB needs to contain further guidance around how to undertake meaningful engagement with iwi, hapū and treaty settlement entities. Additional clauses should be outlined within the FTAB that stipulate how to engage and the necessity for reaching agreement with iwi prior to lodging a referral application.

A role for Te Ohu Kaimoana

103. The Hon Chris Bishop noted in the first reading of the "the reason why the schedules don't contain any projects is we felt, on reflection, it was better to run a process that was insulated from Government and insulated from Ministers and where Ministers could have the ability to assess the advice of an independent panel about what project should be included and what projects should not be included, and then, ultimately, the projects will go to the Ministers and go to Cabinet for approval".[23]

104. In the time that has passed since the first reading of the FTAB, the Hon Chris Bishop has sent a letter out to prospective applicants that wish to have their projects listed in Schedule 2A. This letter outlined the process that will be undertaken to determine whether a project is listed in Schedule 2. A fast-track projects Advisory Group (**Advisory Group**) will be formed to "undertake an assessment of the projects against the referral criteria in the Bill, including considering the implications of listing projects on Treaty Settlements and other arrangements". The Advisory Group will then make recommendations to the ministers regarding which project should be approved to be listed within the FTAB. The letter confirmed that "the 'listed projects' will be

[23] (7 March 2024) Fast-track Approvals Bill – First Reading, Chris Bishop).

included in Schedules 2A and 2B of the Bill once the Select Committee process has concluded"[24]. There is no information available regarding who will be on the Advisory Group. It appears that the appointments process will be entirely at the discretion of development Ministers. As noted in the Environmental Defence Society's draft submission "developers will be able to submit projects to the Advisory Group for evaluation but there is no indication that any person or group that represents the environment will be able to provide input. There is not even an indication that those directly affected by the projects will be consulted. The Advisory Group will be making its recommendations based on an entirely one-sided process".[25] Essentially, the Advisory Group is creating a list that lacks transparency is not subject to public scrutiny.

105. We are concerned that the lack of information surrounding whether the Advisory Group will seek outside input when determining whether a project should go through the fast-track process. As outlined earlier in our response, the FTAB as it currently stands provides a loophole for listed projects that are incompatible with aquaculture activities or are indeed for aquaculture activities but are to be undertaken by an applicant that does not hold the authorisation to potentially be approved even though they occur within an ASA.

106. In order to avoid this, it is crucial that representation on the Advisory Group either includes those that have a fulsome understanding of both Māori Fisheries and Aquaculture Settlements, or the Advisory Group is able to commission independent advice from the appropriate expertise in the sector. This will ensure the protection the Māori Fisheries and Aquaculture settlements, iwi and hapū interests in the coastal marine area and their relationship with Tangaroa.

Recommendations

Te Ohu Kaimoana has a specific function and purpose as the trustee of the Māori Fisheries and Aquaculture Settlements, and on behalf of our iwi beneficiaries to analyse and advocate on coastal and marine issues. Therefore, we recommend that the Advisory Group must be required to consult the proposed applications for schedule 2 with any Treaty Settlement entities relevant to the proposed application. This supports the requirement to give effect to the principles of Te Tiriti and commitments by Ministers to uphold Treaty Settlements.

Drafting amendments required to provide for the Māori Fisheries Settlement

107. In a table at appendix 1 we have identified parts of the Bill which require amendment to ensure the FTAB does not conflict with the Māori Fisheries and Aquaculture Settlements. We are happy to discuss these recommendations should further clarification on the technical detail be required.

Concluding Remarks

108. This submission serves to identify key issues within the FTAB that need to be addressed. Our intention in raising these issues whilst also providing key recommendations and suggested ways

[24] Letter from Hon Chris Bishop, dated 3 April 2024
[25] Environmental Defence Society submission on the Fast-track Approvals Bill pg. 4

forward to resolve these issues, is to provide guidance and support to rectify what we see as critical areas or concerns.

109. As we see it, the proposed FTAB has been presented as a piece of legislation which aims to speed up the consenting process for significant projects in order to support economic growth. Despite these intentions, we see the FTAB, its current form, as a vehicle circumventing restrictions contained within a variety of legislative instruments and may prove to be at the cost of protecting vital treaty settlement obligations. These settlement obligations, which we have reinforced throughout this response, are existing rights of iwi Māori and obligations and duties that need to be uphold by the Crown.

110. This government stands to completely erode treaty settlements through this legislation, and as the legislated custodian of the Fisheries settlement, Te Ohu Kaimoana is putting this government on notice that this Bill requires vital amendments and transparent discussions with iwi Māori before further progress is made.

Appendix One: Table of proposed amendments

Clause	Effect of Clause/ Recommendations
Clause 3	The purpose is obviously framed to facilitate development, but the absence of any qualification whatsoever means that the few provisions authorising applications to be rejected are, by definition, contrary to the purpose of the Act. Suggest some limited qualification focussed on those discretions e.g. "except where authorised by this Act".
Clause 4	Suggest expansion of the definition of *'approval'.* At present it says a range of instruments are included, but it doesn't describe the essential character of what an approval is. Leaves room for argument about Ministerial decisions that are clearly intended to be included e.g. Schedule 5 provides guidance on grant of a *concession,* authorisation of *land exchanges*, and revocation of *conservation covenants.* The definition doesn't list any of those. Perhaps something like*, "means the exercise of a discretion conferred by statute required for a Part A listed project, a Part B listed project or a referred project to proceed, and includes….* Suggest a definition of '*resource consent application'* that includes s127 applications, in the same way as the definition of Notice of Requirement is expanded to include designation changes. Needs a definition of *'working days'*- although by default it will carry the meaning set out in the RMA. No definition of *relevant iwi* or *relevant iwi authorities*. Iwi authority is defined in the RMA, but query whether that is sufficiently clear for this purpose.
Clause 10	Combined approval – these are speciality areas with specific issues that need to be managed in a way that allows for the regional and national interests to be met. It seems unlikely a decision maker would have the ability to understand these issues at that level without either significant assistance which would increase the length of the process or relying on an administrative analysis that is not likely to be sufficient. Again, if the scope of the activity was narrowed to actual infrastructure for national need then that would more likely be acceptable but when it can be applied at a regional level to a more generalised scope of activities it creates an inequality in the system and an increased likelihood of poor medium and long term planning/budget effects. Cl. 10(2) should refer to 'approvals', to avoid suggestions it is focusing on a different range of instruments from those in Cl.10(1)
Clause 11	There are no timeframes set to appoint a panel for listed or referred projects.
Clause 14	Cl. 14(3)(f) wouldn't require consideration of the New Zealand Coastal Policy Statement (**NZCPS**), because national policy statements are defined with reference to RMA s52. Is this Intended?

Clause 16	Despite being headed consultation the clause requires 'engagement'. If consultation is intended, it would be clearer to use that word as there is clear case law guidance as to the meaning.
Clause 17	National and regional significance is not defined other than by inference in cl. 17. It is not defined in the RMA but of course ss 6 and 7 of the RMA assist in this understanding. These sections are not referred to in the FTAB. Section 17(2)- no consideration of adverse effects. Cl. 17(3) does not refer to sustainable management or anything like it and states only 'significant environmental issues' which is unclear as to what this means or how. Cl. 17(3)(j)- bit odd that local and regional documents are considered but not national direction (other than via the separate reference to the NPSUD). This clause, together with the purpose clause and lack of definition of 'infrastructure' in the FTAB, makes it appear that any project could become a Fast-Track Project. There is a definition for 'infrastructure' in the RMA which would provide a refinement in scope. Clause 4(2) of the FTAB does state that terms not defined in the FTAB are to be those defined in the RMA but greater transparency in the drafting of clause 17 would clarify the scope of project intended to be captured.
Clause 19	Cl. 19(5), 10 working days seems absurdly short given that may be the only opportunity to address effects and/or condition issues. The same point arises under Sch 4, cl. 21(1).
Clause 21	Cl. 21 (2)(c)- giving Ministers a discretion to reject applications that have significant adverse effects implies a discretion to allow them, where that is the case. Suggest providing greater guidance around those discretions. What considerations would mean it would be appropriate to allow an application in that case? The silence is inviting the High Court to step in. Cl. 21(2)(g) the Minister can decline an application even if it meets the eligibility criteria for any other relevant reason. Subclause (6) seems to repeat this. Not sure both are needed, plus just adds to the level of ministerial discretion in a way that probably isn't necessary.
Clause 25	This clause confers substantial decision-making power on the ministers to approve or decline the project without describing any criteria for the making of that decision. Section 25(4) attempts to set some criteria where a Ministers wishes to depart from a Panel's recommendations. However, this is quite vague. It refers to the minister undertaking analysis of the recommendations against assessment criteria – we think this could be clearer/more defined to ensure the criteria for making the decision are more fully described. The clause would be easier to read and understand what is intended if a short section were inserted before cl. 25, cross referencing Schedule 3 for the mechanics of the formation and operation of a Panel, rather than relying on the definition (of 'Panel').
Clause 30	Section 30 would fit better after Section 25. Section 30 also appears incorrect- Schedules 5-10 puts rules around Ministerial decisions, not what the Panel is doing.

Clause 1	cl. 1(2) needs clarification. Is it trying to say the purpose of the Fast-track Act has greater weight than considerations in the other legislation? cl.1(3)- what mandatory requirements?
Clause 2	cl. 2(5) suggests the Expert Panel has jurisdiction over RMA matters only; cf Sch 12, which suggests the Panel has a role in relation to Fisheries Act 1996 (aquaculture) matters. If it is indeed just RMA matters, the reference in clause 1(2)(b) to 'other relevant legislation' seems a bit odd
Clause 4	Cl. 4(1)- we note the potential for planners to chair these panels. Presumably a response to the fact that it is difficult to find enough lawyers prepared to chair Fast-track panels after the initial flush of enthusiasm. Fine if the Panels are just dealing with RMA matters, but questionable if their jurisdiction extends to other Acts .
Clause 1	It is clear that this is the quasi RMA process. Cl. 3(1) however says that application can be made under other Acts. Needs to go on and say that the approvals under those other Acts are to be addressed in accordance with the subsequent schedules, not schedule 4. If that is not the intention, the Schedule has to be rewritten to make clear what provisions apply to RMA applications, and what apply to applications under other Acts.
Clause 14	Cl. 14 (a) – The reference to "*effects on people in the neighbourhood*" seems odd – how is this defined? We would have thought that all of the projects that this process will be used for are going to have effects on the wider community which should be considered at least?
Clause 20	What is the justification for the Infrastructure Commission and Heritage NZ only being able to comment on referred projects? At this point in the process the assessment etc is the same. We are not sure what justifies the difference.
Clause 24	Provides a set of illusory provisions around hearings that will never occur (because the timeframes the Panel has to work under- 25 working days from the receipt of comments and a maximum extension of another 25- will make it impossible in practice for a hearing to be held) and if they were, would be little more than a charade given the notice periods to participants. Suggest either provide a proper opportunity for hearing or delete that provision.
Clause 32	National direction is not defined. A definition is good practice.
Clause 35	Section 104A to 104C RMA apply – If an activity is controlled/restricted discretionary, and the matters of discretion don't include 'regional/national significance/benefits" type considerations, how can the purpose of the Act be taken into consideration – seems to be a potential clash between these clauses and Cl.32.

	35(5) It seems strange that listed projects are subject to the s104D test for non-complying activities but referred projects are not. There does not appear to be a rationale for any difference in treatment – either both subject or both exempt.
Clause 39	Cl. 39(7) needs to state more clearly that the recommendation referred to in (b) is the recommendation to grant or refuse, and that a panel is under no obligation to provide more detailed reasons than directed (but may choose to do so), to stave off judicial reviews targeting the absence of more detailed reasons (that the Panel will have no time to write).
Clause 40	Contrast the incredibly short timeframes all other participants are working under and the absence of any timeframe for the Ministerial decision. It could at least say "*as soon as practicable*"
Clause 13	The Refence to s 116A of the Fisheries Act 1996 is in error (there is no s 116A in the Fisheries Act 1996). Clearly it should refer to s 116A of the RMA which deals with commencement of consents.

Appendix Two: Te Hā o Tangaroa kia ora ai tāua