Fast-track Approvals Bill response - key points

Concerns with recognition of Treaty principles and Treaty settlements [17] –[20]

The Bill does not reference Te Tiriti o Waitangi and its principles. Rather, it simply notes that all persons exercising functions, powers and duties need to act in a manner consistent with the obligations arising under existing Treaty settlements. We are concerned for groups who are yet to settle as we don't see the Bill protecting the rights and interests of iwi and hapū beyond settlements. We have recommended inserting reference to the principles of Te Tiriti o Waitangi and removing the word "existing" before treaty settlements so that non-settled groups and all treaty settlements have appropriate safeguards.

Clarifying Te Ohu Kaimoana as a Treaty settlement entity [24]

It is not clear whether Te Ohu Kaimaona would be considered a "Treaty settlement entity" as it is currently defined in the Bill. We do not want to leave this to chance so we have recommended that the definition within the Bill is amended to expressly refer to Te Ohu Kaimoana. We have recommended this amendment to be sure that Te Ohu Kaimoana is provided all opportunities to be an engagement partner and can sit alongside MIOs, IAOs and other treaty settlement entities.

Must decline list [82]-[83] and [92]

The Ministers for Infrastructure, Regional Development and Transport will have ultimate power to approve a project. We want to see the Bill amended to include a list with conditions for why a project "must be" declined. We raise concerns that Ministers will be able to approve a project which will have significant adverse effects on the environment or breaches the Māori Fisheries Settlement. Therefore, we have recommended at a minimum, if a proposed project is inconsistent with any Treaty settlement, it must be declined.

Ranking of criteria [90]

The Bill provides for a process which will see an expert panel consider projects against certain criteria. Rather than each point of criteria weighted equally, the purpose of the Act "to facilitate the delivery of infrastructure and development projects with significant regional or national benefit" is effectively a trump card over all other relevant considerations. We want to see a balanced approach taken so that all projects are assessed according to the relevant legislative criteria which consider the relevant environment and other rights and interests.

Expert panel to make final decision on the outcome of applications [79] – [80] and [91]

Currently the Ministers have ultimate power and authority to determine the outcome of any and all project applications. Although there will be an expert panel considering some applications (only projects referred by the Minister, not projects already listed in the Bill) there is no legal requirement for the Ministers to follow the recommendations of the panel. We want to see the Bill amended so that the expert panel has the authority to decide the outcome of project applications. We are concerned that the expert nature of the panel will have no true power and be rendered a rubber stamping group without this change.

Timeframes to respond to applications require extension [47] and [60]

Treaty settlement entities will be provided with only 10 working days to provide a response to proposed project applications. This is not enough time to effectively consider applications, consult experts when required and provide a robust response. We have suggested this timeframe should be extended to 20 working days.

Aquaculture development entering the EEZ [72] and [75]

This Bill highlights an interest in open ocean aquaculture aquaculture in the EEZ. Currently under the Māori Commercial Aquaculture Settlement Act 2004, aquaculture development is limited to regional council boundaries, ordinarily within 12 nautical miles. We are concerned that Māori do not currently have any enforceable settlement interests within the EEZ. We have recommended that aquaculture settlement in the EEZ needs to be resolved prior to any applications being progressed for open ocean aquaculture in the EEZ under this Bill.

Preserving and extending the 'aquaculture decision / undue adverse effect testing' [44] – [59]

We recomnmend 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 co-design this with officials. Further to this, we have recommended the aquaculture decision by the CE of MPI should be binding rather than a recommendation to the expert panel or joint Ministers.

Impacts on Māori customary non-commercial fishing rights and interests [56] – [59]

Currently there are no protections in the Bill for Māori customary non-commercial fishing rights and interests. We are concerned that projects may be approved that will affect where this fishing can take place. This is deeply concerning for our MIO and whānau who rely on the moana as their pātaka or mahinga kai. We have recommended that where a proposed project has an undue adverse effect on Māori customary non-commercial fishing, that project should not proceed without the approval of the relevant hapū or iwi with mana moana at place.

Te Ohu Kaimoana's role on the Fast-Track Projects Advisory Group [106] - [109]

An Advisory Group has been established that will determine which projects will be recommended to Ministers as listed projects in the Bill. We want to see this Advisory Group be required to consult on the proposed applications with any Treaty settlement entities, including MIOs and IAOs impacted by projects.