

# Departmental Disclosure Statement

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COVID-19 Recovery (Fast-Track Consenting) Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for the Environment.

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

11 June 2020

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## Part One: General Policy Statement

The intent of the COVID-19 Recovery (Fast-Track Consenting) Bill is to urgently promote employment growth to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand while continuing to promote the sustainable management of natural and physical resources.

The Bill seeks to achieve this by establishing new fast-track resource consenting and designation processes for infrastructure and development projects. This Bill also enables specific work on existing infrastructure to occur without the need for a resource consent.

The Bill, with the aim of supporting employment and boosting local economies, will accelerate nationwide projects and activities already planned by central and local government, as well as the private sector. The Bill also seeks to address New Zealand's infrastructure deficit, improve long-term productivity, and encourage projects that will promote New Zealanders' future wellbeing and resilience. This includes supporting the transition to a low-emissions economy and improving resilience to climate change and natural hazards while supporting sustainable management. Persons exercising functions and powers under this Bill must act in a manner that is consistent with the principles of the Treaty of Waitangi and with Treaty settlements.

The Bill will enable 2 categories of projects to have access to the fast-track consenting and designation processes, as follows:

- **listed projects:** Schedule 2 of the Bill lists specific Government-led projects for which applications for resource consents (consent applications) or notices of requirement for designations (notices of requirement) can be submitted to the EPA to be assessed for completeness before being referred to a panel for consideration:
- **referred projects:** any persons with a project can apply to the Minister for the Environment (the Minister) to fast-track their consent or designation. If approved, the Minister will recommend an Order in Council to the Governor-General to confirm the eligible project to be referred to a panel. The Minister of Conservation will jointly make the referral decision with the Minister if any part of the project would occur in the coastal marine area.

Projects may be in the form of a single large project or comprise smaller and related projects, and they may cross local authority boundaries. The panel will consider and determine resource consents and designations for listed and referred projects and replace the role of local authorities as consenting authorities under the Resource Management Act 1991 (RMA). The panel will also make the decision on notices of requirement for designations. Appropriate environmental safeguards, as provided for under the RMA will apply to this process. The panel must apply the purpose of the Bill alongside Part 2 of the RMA.

In addition, the Bill enables certain agencies to carry out specific works on existing infrastructure without the need for a resource consent. The works are limited to the

operation, replacement, and maintenance of, and minor upgrades to, certain existing infrastructure located within the road and rail corridor and on land owned by the agencies. The specific works detailed in the Bill can be undertaken by the New Zealand Transport Agency and KiwiRail Holdings Limited. The Bill also enables local authorities, Kāinga Ora—Homes and Communities, and the Ministry of Housing and Urban Development (MHUD) to be added for specific activities and works after the Bill is enacted, through an Order in Council recommended to the Governor-General by the Minister.

The Bill is a short-term intervention to stimulate the economy, and therefore the new Act would self-repeal 2 years from enactment. The Minister will still be able to recommend an Order in Council to the Governor-General to confirm eligible projects up until the 2-year deadline. Orders in Council developed under this legislation (before the self-repeal date) would continue to have effect, as required, to ensure that consents and designations for these projects can be determined (and cost-recovered) beyond the self-repeal date.

## Projects listed in the Bill

*Schedule 2* of the Bill lists projects (listed projects) for which consent applications or notices of requirement can be submitted to the EPA to be assessed for completeness before being referred to a panel for consideration. All of these projects are led by government agencies and Crown entities and have been assessed as delivering public benefit.

When considering these projects, a panel's function is largely limited to imposing conditions on the consent and designations. For applications for resource consents and designations required for listed projects, the panel may only decline a listed project if the resource consent or designation would not be consistent with a national policy statement, including the New Zealand coastal policy statement, or would not be consistent with the terms of a relevant Treaty settlement.

## Referred projects confirmed through Orders in Council

Any person or organisation will be able to apply to the Minister to use the fast-track consenting process. When considering whether the project would help to achieve the purpose of the Bill, the Minister may consider any or all of the following matters:

- economic benefits for communities or industries affected by COVID-19;
- the social and cultural wellbeing of current and future generations;
- whether the project would likely progress faster by using this process;
- whether there is potential for the project to have significant adverse environmental effects;
- whether the project may result in a public benefit by, for example,—
  - generating employment;
  - increasing housing supply;
  - contributing to well-functioning urban environments;

- providing infrastructure in order to improve economic, employment, and environmental outcomes, and increase productivity:
- improving environmental outcomes for coastal or freshwater quality, air quality, or indigenous biodiversity:
- minimising waste:
- contributing to New Zealand's efforts to mitigate climate change and transition more quickly to a low-emissions economy (in terms of reducing New Zealand's net emissions of greenhouse gases):
- promoting the protection of historic heritage:
- strengthening environmental, economic, and social resilience, in terms of managing the risks from natural hazards and the effects of climate change.

A project is not eligible to be referred to a panel if it involves an activity that is described as a prohibited activity in relevant plan or national environmental standard; if it would occur on land returned under a Treaty settlement or within a customary marine title area; or if it would have more than a minor adverse effect on the exercise of a protected customary right without the prior written approval of the relevant landowners (with respect to Treaty settlements) or holders of relevant customary marine title orders or protected customary rights recognition orders recognised under the Marine and Coastal Area (Takutai Moana) Act 2011. If the Minister is satisfied that the application is eligible and will help to achieve the purpose of the Bill, and the Minister decides to not decline the application, the Minister will undertake targeted consultation with relevant local authorities and appropriate ministerial colleagues. The Minister may also choose to invite written comments from others.

Before the Minister decides to refer a project to an expert consenting panel, the Minister must also obtain and consider a report by the Office for Māori Crown Relations— Te Arawhiti on Treaty settlement obligations, and interests under the Marine and Coastal Area (Takutai Moana) Act 2011. This report will contain the following information:

- the relevant iwi authorities and Treaty settlement entities in the project area:
- the Treaty settlements (Acts and deeds) that relate to the project area:
- the relevant principles and provisions in those Treaty settlements, including those that relate to the composition of a decision-making body for the purposes of the RMA:
- any recognised negotiation mandates for, or current negotiations for, Treaty settlements that relate to the project area:
- any court orders that recognise protected customary rights or customary marine title in relation to the project area.

The Minister will have discretion to reject an application for any reason at any point prior to the Order in Council being made.

The Ministry for the Environment will provide advice to support the Minister's decision on whether to accept an application and refer a project to a panel through an Order in Council. The decision-making criteria that apply to resource consents and designations in the RMA will also apply to referred projects, except that panels must apply the purpose of the Bill alongside Part 2 of the RMA.

## Expert consenting panel processes

The panels will be responsible for considering applications and determining resource consents and designations for listed and referred projects.

A panel convener who is a sitting or retired Environment Court Judge will convene the panels, appoint panel members, and chairpersons of panels. The convener can choose to be a chairperson.

The panels will be chaired by a current or retired Environment Court Judge (or other judge, or a suitably qualified lawyer with resource management expertise), and must include a member of (or person nominated by) the relevant local authorities and include a member nominated by the relevant iwi authorities. Each panel must collectively have—

- knowledge, skill, and expertise relating to resource management:
- technical expertise relevant to the project:
- expertise in tikanga Māori and mātauranga Māori.

The Environmental Protection Authority will assess consent applications and notices of requirement for completeness and provide secretariat support and other services to the panels.

The panels will determine the consent applications and notices of requirement, and follow a fast-track resource consent (or notice of requirement) process, consisting of—

- tailored information requirements for consent applications and notices of requirement:
- instead of publicly notifying or limited notifying consent applications or notices of requirement, the panel will invite comments on the application from persons specified in the legislation and the Orders in Council (if applicable) not later than 10 working days after the application is first lodged:
- persons who have been invited to comment have 10 working days after the date on which the invitation was given to provide comments:
- no requirement to hold a hearing:
- in making its decision, the panel will be required to—
  - apply Part 2 of the RMA alongside the purpose of the new Act:
  - act consistently with the principles of the Treaty of Waitangi:
  - act consistently with any relevant Treaty settlements:
  - have regard to relevant plans, regional and national policy statements, and other documents, similar to the way that a decision-maker would under the RMA:
- the panel must issue its decision on the application it is considering within 25 working days of the date it specifies for receiving comments on the application:
- the panel can double this 25 working day time frame if the scale of the project that is the subject of the application means it cannot be determined within that time frame.

The overall processing time frame will be reduced, because the panel will have no additional ability to extend time frames (other than the additional 25 working days above), limited ability to suspend applications (see *clause 6 of Schedule 6*), and restricted appeal rights.

For projects including multiple activities, of any size, panels may issue decisions in stages to enable initial works to be started while further details or later stages of the project are worked through in subsequent approval processes.

Panels will also make decisions for notices of requirement lodged by requiring authorities to confirm designations. Under standard RMA processes, requiring authorities are the decision makers and the relevant local authority only make recommendations. It is not appropriate for a requiring authority to make the decision on a designation and conditions when the fast-track process is being used, given the lack of a merits appeal. Therefore, the panels will make the decision on a designation, similar to the decision-making framework for Boards of Inquiry considering proposals of national significance under the RMA.

The applicant or requiring authority for the listed and referred projects is responsible for the costs incurred by the expert consenting panel and the EPA in performing their duties and functions under this legislation.

## Work on infrastructure

The Bill enables specific works for certain existing public infrastructure to be undertaken by certain agencies as of right, subject to performance standards that follow best-practice guidelines. This process is limited to the operation, replacement, and maintenance of, and minor upgrades to, existing public infrastructure located solely within the road and rail corridor and on land owned by certain agencies. This is to ensure that this provision relates to the maintenance and minor upgrade of existing infrastructure and not to new projects where infrastructure currently does not exist.

Currently the specific works and performance standards have been developed for the New Zealand Transport Agency and Kiwirail Holdings Limited. Kāinga Ora–Homes and Communities, MHUD, and local authorities could access this Bill when their specific works and performance standards are added through an Order in Council.

As a safeguard, this process is not available where the proposed activity is categorised as a discretionary, non-complying, or prohibited activity in the relevant council plan. The works will not be able to be undertaken in sites of cultural or historical significance, within outstanding water bodies or wāhi tapu sites, or if the work requires a permanent water take that would require a resource consent under the relevant plan or proposed plan. The works must also comply with performance standards that follow best-practice guidance and site management.

The agencies must partner with iwi and hapū groups and Treaty settlement entities that have interests in the area of the proposed work, to identify sites of cultural significance and how to manage them adequately. They must also provide a notice of intention to the

relevant local authorities and iwi, hapū, and Treaty settlement entities before work is undertaken, detailing the extent of works, any protocols or management plans needed, and how monitoring will occur.

Local authorities will be responsible for compliance, monitoring, and enforcement to ensure that agencies meet the performance standards and take appropriate action if necessary. The Bill will provide for local authorities to recover costs and for iwi and hapū to recover costs incurred in relation to identifying wāhi tapu and other sites of cultural significance. This Bill will authorise regional council activities for a duration of 15 years, to avoid the need to immediately re-consent ongoing activities that would otherwise require a resource consent (such as discharges) once the Act is repealed.

## **Treaty of Waitangi**

The Bill includes an overarching Treaty of Waitangi clause, stating that the Minister and all persons exercising functions and powers under the Bill must act in a manner that is consistent with the principles of the Treaty of Waitangi and with Treaty settlements.

As outlined earlier, the Office for Māori Crown Relations—Te Arawhiti will be required to provide a report to the Minister that includes information on the relevant iwi authority, any Treaty settlement entities in the project area, any Treaty settlements in the project area, and interests under the Marine and Coastal Area (Takutai Moana) Act 2011.

This report will assist the Minister to comply with clause 6 of the Bill, which requires the Minister to act in a manner consistent with the principles of the Treaty of Waitangi and Treaty settlement legislation when making a determination as to whether a project should be referred to a panel. This report will also be provided to the panel if the project is referred for consideration. It will be the responsibility of the panel to ensure any consents granted and any designations confirmed, including any conditions, are consistent with the principles of the Treaty and any Treaty settlements.

## **Public participation and appeal rights**

To support the intent of the fast-track process to accelerate consenting and recovery from the economic and social impacts of COVID-19, the Bill provides the Government with a range of powers to by-pass usual consenting process steps, including public consultation, hearing processes, and appeals to the Environment Court.

As described in the section on the panel process, the Bill does not require public or limited notification of an application. Instead the panel will be required to invite comments on the application from persons specified in the Order in Council and the persons expressly listed in *Schedule 6*. The Bill provides reduced time frames compared to standard RMA processes for the nominated persons to provide their comments. The consent process does not include a requirement to hold a hearing. If a panel does hold a hearing, it may grant leave to allow cross-examination.



Appeals against a panel decision on a consent application (or notice of requirement to confirm a designation) are limited to a point of law appeal to the High Court and a further right of appeal to the Court of Appeal. There will be no further right of appeal beyond the Court of Appeal. Any application for judicial review will need to be filed at the same time as a point of law appeal to the High Court.

The following persons will be able to lodge an appeal:

- the consent applicant or requiring authority, as the case requires:
- any relevant local authority:
- the Attorney-General:
- any person who provided comments in response to an invitation by the panel:
- any person who has an interest in the decision appealed against that is greater than that of the general public.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>
This legislation is enacted in response to the COVID-19 pandemic.	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
Treasury determined that this proposal is a direct COVID-19 response and has suspended the RIA requirements in accordance with a Cabinet decision (CAB-20-MIN-0138 refers).	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>The policy and corresponding Bill was prepared under urgency. Analysis of the potential loss of income or wealth attributable to the policy has not been explicitly considered.</p> <p>However, the policy is intended to give effect to the 2020 'once in a generation' Budget, with a \$50 billion COVID-19 Response and Recovery Fund at the centre. The Budget lays out the first \$15.9 billion of investment including a targeted wage subsidy extension, training and apprenticeships, and an 8,000 public house building programme.</p> <p><a href="https://treasury.govt.nz/information-and-services/new-zealand-economy/covid-19-economic-response/commentary">https://treasury.govt.nz/information-and-services/new-zealand-economy/covid-19-economic-response/commentary</a></p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>

The legislation will tailor information required to support an application for resource consent and notice of requirement for a designation and limits the involvement of the public in the decision making process. This is an overall reduction in information and local expertise that usually informs a consent or designation decision and is likely to result in more complex conditions on consents and designations, and a corresponding increase in the monitoring, compliance and enforcement burden for local authorities. Similarly activities specified as being able to be carried out as permitted activities will require compliance monitoring and enforcement.

The Bill provides for local authorities to monitor activities and take enforcement action in line with current duties and powers under the RMA.

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
None

### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
<p>This Bill requires Ministers or other persons that will perform duties and functions under the legislation to act in a manner consistent with the principles the Treaty of Waitangi and Treaty Settlements.</p> <p>Expert Consenting panels convened under the Bill must collectively have:</p> <ul style="list-style-type: none"><li>• knowledge, skill and experience relating to resource management</li><li>• technical expertise in relation to the project or the effects of the project</li><li>• expertise in tikanga Māori and mātauranga Māori.</li></ul>

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	YES

### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	NO
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	YES
<p>Appeals against a panel decision on a resource consent or Notice of Requirement to confirm a designation will include a point of law appeal to the High Court and a further right of appeal to the Court of Appeal. An application for judicial review is to be filed at the same time as the point of law appeal to the High Court. This removes the jurisdiction of the Supreme Court as the final court of appeal.</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	YES
<p>The Ministry of Justice was consulted in both the policy formulation and the legislative design stage of the proposals in relation to appeals.</p>	

### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	NO
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<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
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### External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
The Local Government Resource Management Group was engaged in the early policy development, and some council consenting staff have been consulted with to test workability matters.	

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES, IN PART</b>
Iwi technicians were involved in contributing to some policy development for referred projects and permitted activities.	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>YES</b>
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 leasee 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

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
The Bill provides that members of Expert Consenting Panels are not liable under the Bill as long as they act in good faith.	

## Significant decision-making powers

<b>4.6. Does this Bill 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?</b>	<b>YES</b>
<p>In regards to the two fast track consenting processes, the Bill limits the ability of the public to participate in the consenting and designation decision making process and limits rights of appeal that are currently available under standard RMA processes.</p> <ul style="list-style-type: none"> <li>• Expert Consenting Panel makes decisions on designations, not Requiring Authorities.</li> <li>• There is no right of appeal to the Supreme Court.</li> <li>• There are no merit appeals</li> <li>• The Panel will have the right to decline applications for consent and notices of requirement for designations in certain circumstances.</li> </ul> <p>These limitations on public participation, decision making and appeal rights are the key aspects of the policy that deliver on the desired speed of the processes. This is because public participation in consenting and designation processes and associated appeals in standard RMA processes is time consuming and would be likely to prevent the fast delivery of key projects that will assist with economic recovery from COVID-19.</p> <p>The inclusion of strong eligibility criteria and independent review through the use of specialist panels will ensure the process is fair.</p> <p>The Expert Consenting Panels, when considering projects approved by the Minister through an Order In Council will be required to:</p> <ul style="list-style-type: none"> <li>• apply Part 2 of the RMA alongside the purpose of the new Act</li> <li>• have regard to any relevant national policy statement, local authority plan or proposed plan, or other matters listed in section 104(1) of the RMA when considering applications for resource consents</li> <li>• have particular regard to the matters similarly listed in section 171(1) and (1B) of the RMA when considering applications for designations.</li> </ul> <p>While there is some limitation on a person's interests and rights as they exist currently under the RMA, the legislation is temporary and will self-repeal after 2 years.</p> <p>In regards to the permitted activities on existing infrastructure listed in the Bill, and those that may be added later, the Bill limits the ability of the public to participate in the consenting and designation decision making process and limits rights of appeal that are currently available under standard RMA processes for controlled and restricted discretionary activities, and the panel has no decision making role in relation to them. This track overrides controlled and restricted discretionary provisions in district and regional plans and amends local government's decision making in relation to those plans.</p> <p>However, overall the permitted activities are limited to operation, replacement, maintenance and minor updates to existing infrastructure which occur solely within the road and rail corridor. As such, the effects associated with these activities are reasonably anticipated and are to be avoided, remedied and mitigated through the use of the performance standards.</p>	

## Powers to make delegated legislation

<b>4.7. Does this Bill 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?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>The Bill enables Orders in Council to provide a fast-track consenting process for specific projects. Any person or organisation will be able to apply to the Minister to use the fast-track consenting process.</p> <p>The Minister will consider projects against criteria and undertake targeted consultation (including, relevant local authorities, any relevant requiring authority or iwi authority, and appropriate ministerial colleagues) before an Order in Council is made.</p> <p>This Bill also enables specific Crown agencies and local authorities to be added through Order in Councils for deemed permitted activities, locations for which those can occur in and the relevant performance standards to be added.</p>	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>YES</b>
<p>The Bill includes an overarching Treaty of Waitangi clause in this Bill, given it will operate separately from the full framework of the RMA which provides other protections for Māori interests.</p> <ul style="list-style-type: none"> <li>a. In achieving the purpose of the legislation, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall act in a manner: <ul style="list-style-type: none"> <li>i. consistent with the principles of the Treaty of Waitangi.</li> <li>ii. consistent with Treaty Settlements.</li> </ul> </li> </ul> <p>When considering a project, the Minister for the Environment will receive a report that outlines any Treaty settlement obligations or matters relevant to the project. This step will support the Minister to meet the above clause in relation to their decision to refer a project to the Expert Consenting Panel. This report will be provided to the Panel if the project is referred to them for consideration. It will be the responsibility of the Panel to ensure any consents granted and designations confirmed, including any conditions are consistent with the principles of the Treaty of Waitangi, and any Treaty Settlements.</p>	



## Appendix One: Further Information Relating to Part Two

### Extent of impact analysis available – question 2.5(a)

This proposal is a direct COVID-19 response.

The Treasury has determined that this proposal is a direct Covid-19 response and has suspended the RIA requirements in accordance with Cabinet decision (CAB-20-MIN-0138 refers). The preferred option is based on previous examples of legislation designed to respond to emergency events.

The proposed monitoring and evaluation measures must be strictly adhered to in order to prevent unintended consequences that could not have been assessed systematically due to time constraints.

The criteria used to evaluate the preferred option of special legislation were:

- a) Effectiveness: the extent to which the option will achieve the objectives
- b) Equity: what equity issues might it create
- c) Flexibility: how flexible is the proposed option
- d) Risk: the potential for unintended consequences.

Developing targeted legislation is an effective option compared to the status quo as it will directly enable physical works to commence earlier for projects that might otherwise have a slow and uncertain path through existing RMA consenting processes.

The fast-track process does not give all parties equal access, possibly favouring larger proposals despite smaller or non-infrastructure related projects also benefiting the economy. The Bill involves processes and eligibility criteria to ensure clarity on how to access the most appropriate consenting process.

The proposal will enable:

- flexibility in the way projects of different scales can be consented.

The risks identified with the proposal include:

- disruption of the existing resource consenting and designation system
- risk of judicial review of decisions
- prospect of new jurisprudence

The risks are avoided or mitigated by

- targeting proposals of regional or national significance for fast-track consenting and designation processes
- the development of strong eligibility criteria
- insertion of independent review through the use of Expert Consenting Panels.

The legislation would self-repeal after two years.