

Natural & Built Environment Bill Snapshot

A future for fast-track consenting

The Government's proposal to make fast-track consenting (**FTC**) a permanent option in our future consenting regime is one good news story in the Natural and Built Environment Bill (**Bill**) introduced last week. Judging by demand to date, the FTC regime has clearly provided a sought-after and much needed consenting option for projects that could not necessarily satisfy the national significance threshold to be referred to a board of inquiry and which would otherwise have faced a protracted process involving submitters in opposition and hearings whether at first instance, on appeal or through direct referral to the Environment Court.

After just two years in existence the future of the FTC regime, first introduced through the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**FTC Act**), looks certain, albeit with a slightly adjusted focus for a pre-COVID world. There may, of course, be a need to construct a legislative bridge to span any gap in time between the currently scheduled repeal of the FTC Act in July 2023 and the commencement of the Bill as an Act which will likely occur at a later date. An amendment to section 3(1) of the FTC Act, which records the current 8 July 2023 expiry date for the FTC regime, appears to be a logical solution.

Section 19 of the FTC Act currently provides for, amongst other things, referred or listed projects that may result in a 'public benefit' which it illustrates through an open-ended list of project types. Those projects can be championed by either the public or private sector (or a mix of both), the focus is not on who has financial responsibility for the project but on the public benefit that may result from the project. In comparison, section 316 of the Bill proposes to narrow this focus by restricting the group of projects eligible for the future FTC regime to a closed list of 'eligible activities'. For the most part the list of eligible activities either mirror the current RMA's network utility operations or continue some of the project types provided for in the FTC Act such as housing developments.

However, one interesting distinction between the FTC Act and the new Bill is the proposal, in the final part of section 316 of the Bill, to restrict eligible educational facilities and health facilities to those promoted by the public sector alone; this is the conclusion we have reached through the Bill's inclusion of the subheading "Other central or local government assets" in section 316.

The Bill does not define either educational facilities or health facilities, however the use of the subheading in section 316 which only references public assets indicates that educational facilities and health facilities funded and promoted by the private sector will not be able to use the future FTC regime. This seems a significant missed opportunity for our communities given the public benefit which results from the provision of both types of facilities has very little to do with whether they are promoted and funded by the private sector or public sector. A return to the FTC Act's focus on the public benefit resulting from such projects is one solution that could ensure access to the future FTC regime for all educational and health facilities; that has to be a better outcome for everyone.

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