

Navigating speed bumps on the Fast-track

The Government's Fast-track Approvals Act 2024 (FTAA) aims to accelerate consenting processes for significant national and regional projects by consolidating and streamlining multiple approval processes for listed and referred projects, and bypassing some of the complexities associated with consenting under the Resource Management Act. However, there are risks, writes **Greg Wilson** from Boffa Miskell.

The stated benefits of the Fast-track are pretty clear. On paper, it's a cheaper, relatively quicker, more streamlined and consolidated approvals process with less sideline involvement for regionally or nationally significant projects. But unsurprisingly, there are risks.

In fact, as illustrated here, the risk and associated resource profile for the Fast-track process is quite different from that of the standard track RMA consent. In the Fast-track process, the emphasis is on getting the front end right in terms of quality and cohesion of multidisciplinary effects assessments to offset the limited appeal rights, which relate to points of law only.

Understanding the resourcing pinch points, obstacles and slipstreams on the Fast-track can lead to better choices and build confidence for proponents of the infrastructure or development being considered. It helps too if any social licence to operate can be gauged early with any necessary stakeholders. The quality of this early investment, required under Clause 16 of the FTAA, can be crucial in choosing the most appropriate planning track. It can also help discern whether more traditional approval paths would better suit the project whilst offering a bit more latitude for risk management, project development and direction.

Qualifying

If speed of obtaining approval is the imperative, the Fast-track offers value. The 149 listed projects under the FTAA are already a step ahead and can make a substantive application directly with the Environmental Protection Authority (EPA).

But any Fast-track application for a project must be assessed, and a determination made that the application is complete, and that there are no competing or existing consents for the project.

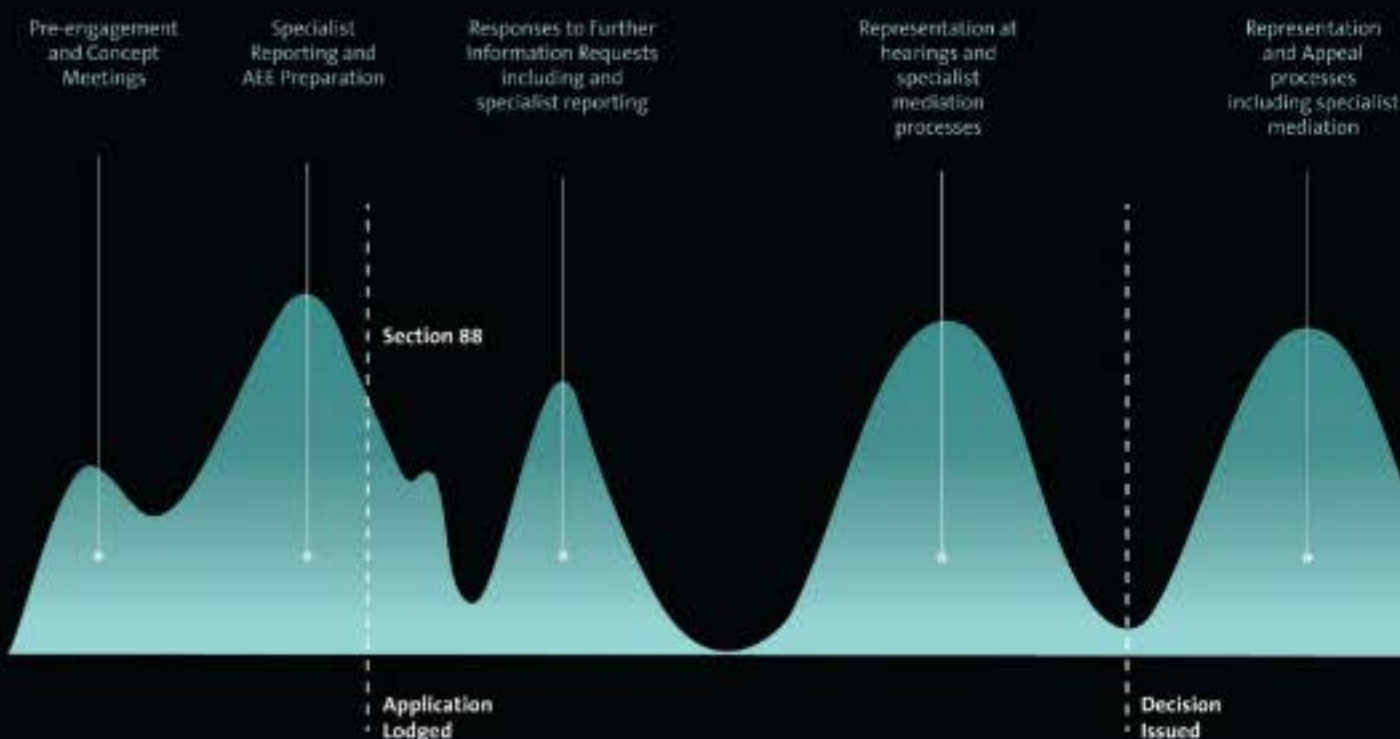
Unlisted projects must go through the referral process and seek permission to get on the Fast-track. To do this, the project team must demonstrate to the Minister for Infrastructure that the project meets the significant regional or national benefit criteria. In making a decision, the Minister will first seek comments from local authorities and iwi and then must consider the Fast-track system's capacity to accept referred decisions. If there is insufficient capacity of suitably qualified experts to form an expert panel, there is some degree of uncertainty over timing and when the project might reach the starting line.

The fast pace of processing and seeking project comments comes at a financial cost. Expenses related to the FTAA, and the upfront costs of application fees should be factored in at this early stage. A combination of levies and application fees apply for both referral applications and for any subsequent substantive applications in the FTAA. Fee recovery will also apply where costs exceed initial fees and will even apply at a pre-lodgement stage to address agency discussions.

The upfront combined levy and application fee for the substantive application sits at around \$450,000. Factoring in these significant upfront costs, when compared with traditional RMA process fees, may help to determine if the Fast-track is the right fit for a project.

Indicative Resource Allocation RMA Publicly Notified Resource Consent

Curve represents the indicative dedication of resources and specialists in preparing analysis and reporting in response to statutory requirements



Quality, context and compensation

Getting the most out of the Fast-track process is predicated on a comprehensive application with clear and defensible evaluation methodologies, and a compelling summary of the project's 'significant national and regional benefits'; all in a relatively compressed timeline.

The Fast-track approval process requires a focused and high-quality application from the start. This places an emphasis on amassing an understanding of environmental effects to inform the expert panel's evaluation in a compressed timeframe and preparing all required approvals to enable the bundling benefits of the fast-track system.

There is no requirement for an expert panel in the Fast-track process to hold a hearing regarding a substantive application, although the expert panel may wish to trigger one. Hearings, Council or Environment Court, bring together the culmination of effort for applications focused on the key matters of contention; without them there's no opportunity to iteratively build upon the information required to assess environmental effects and provide the evidence basis to support the proposal and develop conditions that will manage the impact on the environment.

Fast-track applications are not publicly notified — that's the key factor that speeds the relative pace and smoothness of the application process. However, eliminating public notification introduces the risk of losing deeper understandings and possible project responsiveness to local issues.

The information exchanged and knowledge gained through submissions and hearings could be captured through comprehensive pre-engagement on a Fast-track application. This represents a heavy front-end cost and a focus of resources.

For some projects, this front-loading will require extra focus on the mitigation measures, safeguards and any relevant contingency plans to help prevent or reduce the actual or potential effect of the proposed activity.

Decision-making under the FTAA differs strongly from the usual resource consent pathway considerations and restrictions including the regard given to the effects management hierarchy.

The expert panel is required under the FTAA to give the most weight to the purpose of the Act, that being the facilitation of regional or national benefits of a project. In doing so it must consider whether the residual adverse effects of a project that cannot be managed, offset or compensated are outweighed by the regional and national benefits. This means that applications not only need to be supported by adequate evidence from the outset, with the scope and veracity of offset or compensation schemes strongly supported, but that the potential significant regional or national benefits are also clearly articulated. Doing so will reduce the risk profile through the remainder of the process.

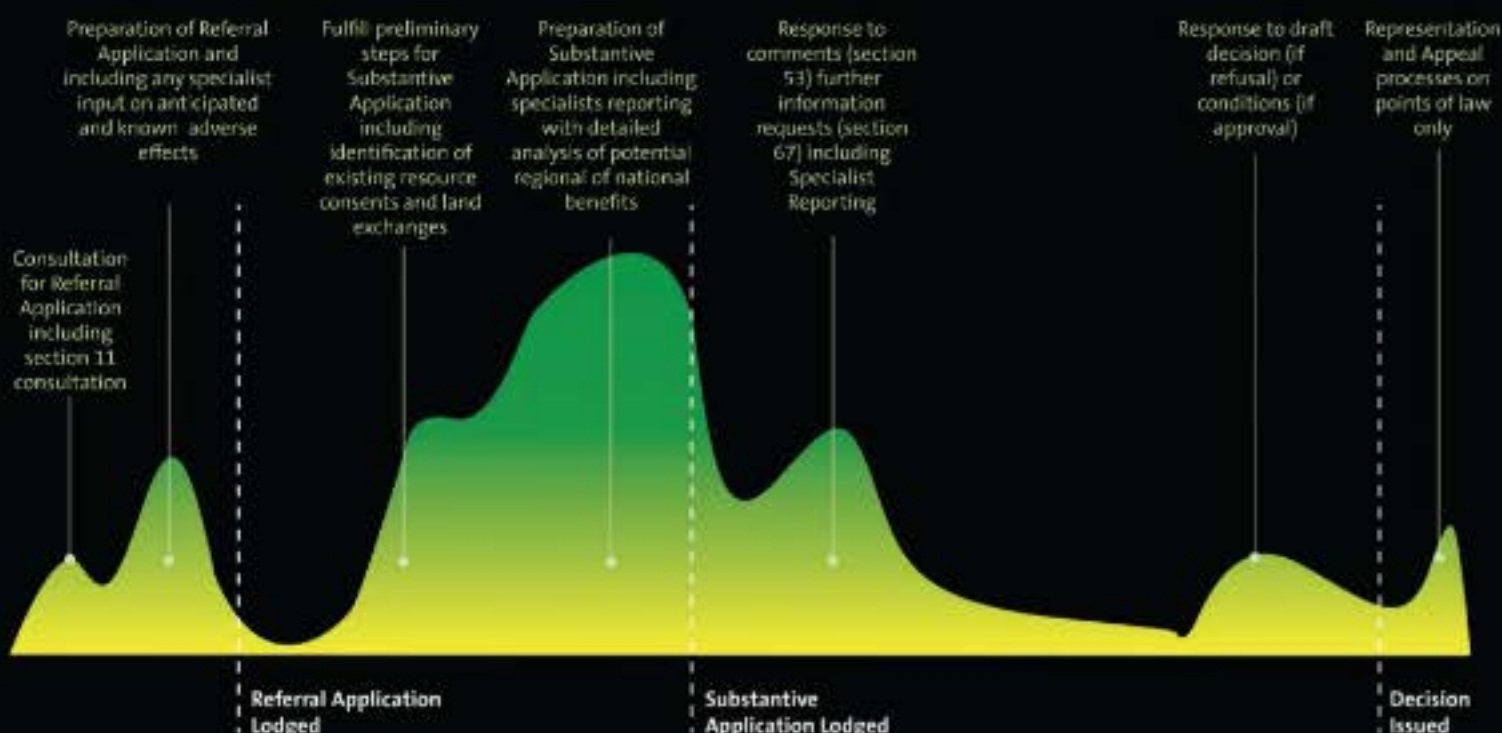
The visualisations below indicate where the specialist advice, analysis and reporting focus for a complex major project differs between the normal track, resource management track and FTAA.

The clustering of all relevant disciplines in a holistic fashion is much more apparent in the FTAA track compared to the metered and iterative allocation of disciplines and resources. The risk profile for the preparation and progression through each process generally equates to this indicative resource profile.

Focusing specialists and integrating assessments early is key;

Indicative Resource Allocation Fast Track Approvals (FTAA) Referral Project

Curve represents the indicative dedication of resources and specialists in preparing analysis and reporting in response to statutory requirements



the dominant resource and risk profile for projects under the FTAA sits at the front end of the process.

- Assembling the key specialists such as ecologists, cultural advisors, landscape planners, engagement and social impact specialists early will allow for the mapping out of a coherent and effective programme for consultation and devising effects mitigation regimes, including any offset or compensation measures.
- Consultation should be undertaken with a view to prioritising the mandatory consultation requirements of the FTAA to allow for engagement with iwi authorities and relationship holders to understand the cultural values and sensitivities of the subject area and with the proposed infrastructure or development. The potential benefits of the proposal to iwi and hapu should be discussed and suitably inform the application.
- Deliberative processes to generate acceptable outcomes for decision makers, like specialist 'hot tubbing' in hearings, are less available as hearings are not automatic. Thus, an effective consent strategy should be devised early for both referral (if not listed) and substantive applications.
- Having the relevant specialists available to respond to any questions that the expert panel may have and ensuring that collaboration with other specialists and flexibility may be required to enable a positive outcome. This may also be necessary to apply if a draft decision is issued by the expert panel seeking to refuse the consent.

The traditional RMA consent pathway may offer more flexibility, wriggle room and 'forgiveness' for certain complex projects.

The publicly notified or even direct referral routes for a major project may be preferable in instances where some uncertainties exist about a major project, or where the relative significance of regional and national benefits may be less clear.

- The incremental learning available through public notification, hearings, and relief available through merit-based appeals to the Environment Court can provide for direction change, more nuanced responses to matters raised in submissions and evidence, and tailoring of consent conditions.
- The greater degree of public participation can add to the overall time for arriving at a consent outcome. However, the process also allows for a proponent to attribute resources in a measured and targeted way so that resource allocation is efficient and programmable.
- The availability of merit-based appeals is a strong differentiator between the tracks, with the normal track providing greater latitude to contest decisions and seek relief.

Overall, preparing a focused and comprehensive application has always been at the core of planning approvals.

The FTAA prioritises the quality and cohesion of multidisciplinary-effects assessments at the beginning of the process, with limited opportunities for moderating approaches. Assembling the right specialist team that can provide an authoritative assessment of effects and compose rigorous and well-evidenced offset and compensation schemes should be part of the plan to get on the fast track. **Q&M**