17 November 2025

Email response to: en.legislation@parliament.govt.nz

Link to submitting online: Fast-track Approvals Amendment Bill 219-1 (2025), Government Bill Contents – New Zealand Legislation

Consultation closing: 2 pm 17 November 2025

Fast Track Approvals Amendment Bill Submission from Fish and Game New Zealand

Executive Summary

Please find attached our submission regarding the Fast Track Approvals Amendment Bill. We have also attached a memo regarding cost recovery and more detail about Fish and Game.

The key points from our submission is:

1. The legislation should be amended to allow Fish and Game to provide comment on Resource Management issues relating to proposals impacting on lakes, rivers and wetlands, i.e. the habitats of the species that we manage.

2. The Fast Track regulations relating to cost recovery should be amended to provide for Fish and Game to recover costs relating to providing comments so that the system is a user pays system as intended.

3. Fish and Game should be invited to comment on all matters relating to the Freshwater Fishing Regulations 1983 and Wildlife Regulations 1955. Please note that some of these functions have been delegated to Fish and Game from the Director General. However either way Fish and Game New Zealand is best placed to comment on the species that we manage (Sports Fish and Game Birds) and DOC and the Director General are best placed to comment on indigenous species.

   The matters referred to in the FTAA needs to include other Freshwater Fishing Regulations such as fish facility and intake fish screens and regulation adequate water for fish passages.

4. Fish and Game urge you to retain section 53(3) as written rather than amend as this provides for other effected bodies to provide comments to the panel. It is unfair to assume that councils are across all the issues and positive / adverse effects that a proposal may involve.

5. Fish and Game is concerned about how the new government policy statement will unduly dictate decisions. Further, this policy would not be created via a public consultation process and may enable small scale industries, with high and long term adverse effects to be enabled ahead of existing industries such as tourism and dairy farming in regions where gold mining is proposed.

6. Fish and Game should be a consultee for referral applications and substantive applications for applications involving game bird and sports fish habitat (lakes, rivers and wetlands). This includes complex freshwater fishing activities.

7. Delete clause 50 which provides for appeals only on points of law.

8. Fish and Game urge you to include provisions similar to the Crown Minerals (Decommissioning and Other Matters) for decommissioning and specific sections on holding of bonds for high risk activities which involve long term adverse effects and risk so that government (and the New Zealand tax payer) isn't left with the cost of clean up from collapsed dams on Gold mining sites years after the mine has closed. We have included a document detailing ideas for bonds, decommissioning and compensation (liability insurance) that we urge you to consider further legislation changes beyond the scope of the amendment bill.

We thank the select committee for the opportunity to submit on this bill. We welcome the opportunity to present to you in person and answer any questions that you have.

Contact Details

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on behalf of

Richie Cosgrove, COO

New Zealand Fish and Game Council

Attachments

Attachment 1 – Fish and Game detailed submission on proposed amendments
Attachment 2 – Cost Recovery Advice FTAA
Attachment 3 – Legal requirements needed for bonds, decommissioning and compensation.
Attachment 4 – About Fish and Game

Attachment 1 - Detailed Submissions from Fish and Game New Zealand

Reference	Proposed Change	Oppose / Support and reasoning
Change 4 Section 4	complex freshwater fisheries activity	**Support** amended wording which provides more protection to: *(ii) that require disturbance of any duration outside the white baiting season to a water body within 500 m of the coast; or* *(iii) that require disturbance of any duration outside the relevant spawning season to a water body that is known for the spawning of trout, salmon, or native fish; or*
Change 5 New section 10A inserted	Government Policy Statement	**Oppose** Means a Government policy statement issued under section 10A. We are concerned that the Government policy statement will be produced without any public consultation and this will have far reaching consequences under this legislation for project selection and decisions. Setting of conditions should also follow avoid, remedy, mitigate in condition setting so that access and recreation is provided for where avoidance or remedy cannot be made possible. We suggest that National Policy Statements / National Direction policy under the RMA or replacement legislation continues to be used. We also suggest that the development of these policies is carried out using a open public consultation process similar to the section 46A of the Resource Management Act. We are concerned that Government Policy could be farmed so that certain projects or industries automatically must be considered, and cannot be refused consent as they are deemed to have national and regional benefits. For example hydro electricity, water storage and mining. This may be framed in such a way that their negative effects are not even considered in light of other (more economically significant sectors in a region. An example could be the dominant market share industries of tourism and dairy in Otago

		compared to the relatively small GDP and jobs related to mining, but potentially negative effects from Gold Mining in that region. We would support a Government Policy on Bonds however. This would be relevant to high risk activities with long term monitoring such as Gold Mining operations to ensure that the New Zealand tax payer is not left to bail out overseas companies that are long gone. DOC also needs to explore how Bonds can be secured on Public Conservation Land where remediation work is required at the conclusion of an activity. **Relief Sought** Clause 5 and associated clauses 12 (1) and 45 (1) (with respect to (aab) should be deleted from the bill.
Change 6 Section 11 amended	Consultation requirements for referral application	**Oppose** While we are neutral on the proposed changes, Fish and Game should also be a statutory consultee for activities that we are mandated for under the Conservation Act and the Wildlife Act, Fishing Regulations 1983 and Wildlife regulations 1955. This would include applications impacting the habitat of sports fish and game birds ie lakes, rivers and wetlands. This includes complex freshwater fisheries activities as described in section 4. Please note that many applicants value our input and are requesting pre-consultation meetings with us to ensure that they have covered all issues in their application. However, some applicants will not do this and therefore this consultation should be formalised via the FTAA. Central South Island Fish and Game assisted with the Genesis application and the recent decision shows the advice and discussions that were put into the process which related to the Fishing Regulations 1983 and access to canal fisheries. Local authorities are not the body who can assist with these regulations, Fish and Game Councils and the Director General are the best to assist with these applications. However, please be clear that DOC will focus comments on indigenous species as their role does not cover management of sports fish and game birds. **Relief Sought** Fish and Game should be a consultee for referral applications and substantive applications for applications involving game bird and sports fish habitat (lakes, rivers and wetlands). This includes complex freshwater fishing activities.

Change 7 Section 13	Referral application	**Support** information requirements for standard freshwater fisheries activity, information specified in clause 4A of Schedule 5. The information requirements do not require an expert to interpret the effectiveness of the proposed fish passage structure for the intended species however. The species that we manage require different flow / gradients that indigenous species however a carefully designed fish passage can provide for both. **Relief Sought** Therefore we suggest that you consult Fish and Game so that sports fish are provided for.
Change 8 Section 14	Complete application	**Oppose** A mechanism to put applications on hold until further information request is provided. Additional information should only relate to the same site and address matters raised by comments to the panel and not result in a far larger project area or adverse effects. It is critical that modifications do not materially expand the scope of a proposal. **Relief Sought** Additional information provision should not allow for applicants to materially add to the site area and scale of the proposal or if such changes are made, request for comments would need to be asked for again (and costs paid for by the applicant) in order to deter changing the application to a larger area or larger effects through the application process.
Change 9 Section 17	Minister invites comments	**Support** Section 17 (1) (b) (iv) other relevant portfolio ministers as we assume this includes the Minister for Hunting and Fishing. We would like the opportunity to advise our minister, rather than DOC on matters relating to Angling and Game Bird hunting values.
Change 11 Section 19	Report in relation to "use of public conservation land"	**Oppose** Section 19 (2) (a) details relating to the existing recreational use of public conservation land is not exclusively held by DOC for the Director General. This detail is often better provided by the recreation community, Fish and Game and Game Animal Council. This issue is particularly relevant to Stewardship Land where hunting permits are provided to a large area, DOC does not necessarily know the importance of a specific piece of land for Angling, game bird hunting

		and other hunting opportunities. In specific instances, fish and game are administrator or manager of land, but in the majority of cases are not. Therefore it is important that Fish and Game is also able to contribute to define "use of public conservation land". **Relief Sought** Fish and Game and others are called by DOC to confirm recreation use of Stewardship Land prior to any consideration for disposal or exchange,
Change 12 Section 22	Criteria for assessing referral application	**Oppose** Section 1A which *Minister must consider a relevant Government policy statement*. See above under section 10A our reasons for opposing this clause. **Relief Sought** Removal of section 1A and any reference to a Government Policy Statement.
Change 14 Section 29	Pre-lodgement requirements for listed project	**Oppose** – see comments for change 6 section 11 above
Change 16 Section 32 Change 17 Section 32A	Apply to land exchange Pre-lodgement consultation with Director-General of Conservation	**Support in Part** Fish and Game would also like to be involved in pre-lodgement consultation involving habitat of fish and game birds prior to land exchange application under section 33 so that game bird hunting and angling recreational opportunities can be identified. Fish and Game is also able to advise on game bird hunting and angling values on land proposed for exchange under section 33.
Change 22 Section 42	Authorised person may lodge substantive	**Oppose** **Additional regulations** should also be included such as regulation 44 – fish facility and intake fish screens and regulation adequate water for fish pass.

	application for approvals	Please note that Fish and Game are the best organisation to advice on the species that we manage ie Sports Fish rather than regional councils or the Director General. Freshwater Fishing Regulations relating to culvert/ford, dam or diversion structure, noxious fish and fish salvage activities should be adhered to. **Relief Sought** Fish and Game want the opportunity to advise the panel on matters relating to Freshwater Fishing regulations 1983. The matters referred to in the FTAA needs to include other Freshwater Fishing Regulations such as fish facility and intake fish screens and regulation adequate water for fish pass.
Change 32 Section 52A	Panel Obtains other advice and reports	**Oppose** Reports under section 52A (2) (c) where a wildlife approval is required for game birds, New Zealand Fish and Game Council should be asked to report. **Relief Sought** Under 52A (2) (e) for complex freshwater fisheries activity approval . In addition to a report prepared to the Director-General of Conservation , New Zealand Fish and Game Council should also provide comments relating to sports fish. Our preference would be for Fish and Game to issue permits under authority from the Director General.
Change 33 Section 53	Panel invites comments on substantive application	**Oppose** Section 53 (3) removal of *"Comments may be invited from any person the panel considers appropriate"* proposed replacement comments on a particular may be invited from any other person but only after checking whether the relevant local authorities or relevant administering agencies intended to comment on the matter and if the panel considers that the comments that the relevant local authorities or relevant administering agencies intend to provide will not enable the panel to sufficiency address the matter or the relevant local authorities or relevant administering agencies do not intend to comment on the matter. The proposed timeframe does not give adequate time for council review. Applicants should continue to have pre-application discussions with council and other parties prior to lodgement of substantive application.

		Councils do not necessarily have the interest or specialists in house to comment on sports fish and game bird habitat interests. They also do not tend to look at activities in terms of access and recreational opportunities that they may provide. The required comment does not direct the council to pull together a full assessment of positive and adverse effects so it isn't even their goal to cover all adverse effects relating to a proposal. Fish and Game would like to see the status quo remain regarding the request for comments so that a variety of public interest bodies and issues and effects can be brought to the attention of the panel. Making this change will result in the exclusion of many parties from the process and information that will be useful for the panel to make their decision. Alternatively, fish and game would like to be asked for comment under s53 (2) on resource management issues relating to projects involving game bird habitat and sports fish habitat. **Relief Sought** Remove proposed changes to section 53 (3) and keep section unchanged so that a variety of public interest bodies can be asked for comment by the panel.
Change 34 Section 60	When processing of substantive application may be suspended	**Support** Replace minister with panel convener
Change 45 Section 81	Decisions on approvals sought in substantive application	**Oppose** (aaa) consider the Minister's reasons for accepting the referral (aab) must consider a relevant Government policy statement Decisions should be in line with the Resource Management Act not Government policy statements that may not be made with any public consultation. **Relief Sought**

		Remove proposed additions so that the minister's reasons and government policy statement is not relevant to FTAA decision making.
Change 46 Section 84A	Conditions relating to infrastructure	**Oppose** This provision provides for the project or staging. The other main condition provision in fast track consenting. We are concerned that applicants will fail to disclose the full extent of the activity at the outset in favour of staging their operation to make the adverse effects appear smaller than the full staged project. **Relief Sought** Applicants should be open and honest up front about the long term scale of the proposed, staged activity.
Change 48 Section 93A	Directions to EPA	**Oppose** This section provides for the Minister to give a general direction to the EPA in relation to the EPA's performance and exercise of its functions, duties, and powers under the Act. However this does not authorise the Minister to give direction in relation to a particular substantive application. Fish and Game note that the EPA should be left to work independently and not under directives from the minister. **Relief sought** Clause 48 should be deleted.
Change 50 Section 99	Appeals against decisions only on question of law	**Oppose** The existing section 53 (3) section should be retained so that other parties can provide comment and appeal decisions. Previously, appeal only on question of law is reserved for High Court processes rather than environment court (similar court) proceedings. This provisions will force interest groups into Judicial Review cases which will prolong the process. **Relief sought** Delete clause 50 which provides for appeals only on points of law.

Change 51 Section 104	Amended Cost Recovery	**Oppose** Other parties that make comment to the process such as New Zealand Fish and Game and Regional Fish and Game Councils should also be able to cost recover. **Relief sought** Fish and Game should be able to cost recovery all costs relevant to providing comments on Fast Track consents. We urge you to amend the regulations so that we are also able to cost recover.
Change 53 Section 108	Regulations may set fees, charges and contributions	**Oppose** Cost recovery criteria should also specify what happens during the time that an application is suspended. Noting with the proposed ability to vary the application during the application processing, this will incur extra costs for reviewing the application. **Relief sought** All costs related to an application should be able to be recovered by those providing comment, including peer review of reports provided by applicants.
Change 54 New Section 117A	Order in Council to amend description in Schedule 2	**Oppose** The new section 117A (2) (c) should also ensure that the size, extent or specific quantities of eg water takes of the project has not changed (the word scale is different to precise location or precise quantum for water take consents). If changes have occurred, it is likely that request for comment should go out again to seek comments on the amended location / size of the application site. This would be similar to the notified process and additional information process under s92 of the Resource Management Act where submitters get an opportunity to submit on new additional information if this information is provided after the consultation period. **Relief sought** Fish and Game is concerned that this clause allows for primary legislation to be directly amended by the Crown, this fails to use the role of parliament and bypasses proper scrutiny of the statutes in the House. Fish and Game submit that this clause should be deleted.

Change 56 Schedule 3		**Oppose** *Item (2) and 3A must notify names of all prospective panel members to the applicant* and If the applicant or Local Authority has reasonable ground to be concerned about the suitability of a prospective member of the panel, they may raise those concerns with the panel convenor before the prospective member is appointed. (2) If the applicant or local authority has reasonable grounds to be concerned about the suitability of a prospective member of the panel, they may raise those concerns with the panel convener before the prospective member is appointed. Provisions (2) - (7) as detailed in the bill should be struck out. These provisions allow for the applicant to "cheery pick" known sympathetic or proactive industry individuals. This will not lead to professional, un-biased well through out decision making. **Relief sought** Conflicts of interest, relevant skills and experience should be the only constraint on applicant selection, not complaints from an applicant about perceived partiality. Delete proposed clause 2 and 3A. **Oppose** Item 13 liability of panel convener, associate panel convener and members Public liability insurance should be taken out for individuals providing this service just like any other profession. This sort of provision should only be provided for non professional unpaid services not professional paid services. **Relief sought** Delete liability clause 13.
Change 57 Schedule 5	4A Information about standard freshwater	**Support** Including formal notification of any dam or diversion structure and the extent to which the proposed structure may impede fish passage; and whether any fish salvage activities are proposed.

	fisheries activity	**Information required** in application including standard freshwater fisheries activity including description of the type of structure or fish facility, dimensions of the structure or fish facility, design of structure, placement of the structure, water regime, the operating regime, freshwater species and values present, quality and quantity in the surrounding habitat, how fish passage will be provided or impeded. Note comments above relating to request for comment – Fish and Game should also be asked to comment in matters relating to sports fish and game bird habitat and Fishing Regulations 1983 and Wildlife Regulations 1955. **Relief sought** Fish and Game should be asked for comment for proposals relating to Freshwater Fishing Regulations 1983.
Change 58 Schedule 6	Amend approvals relating to Conservation Act 1987, Reserves Act 1977, Wildlife Act 1953 and National Parks Act 1980 Proposal: Report by Director General of Conservation	**Oppose** Fish and Game is the statutory body tasked with managing sports fish angling and game bird hunting and their habitats. Therefore we need to provide any conditions to be imposed under clause 8 (regarding proposed section 58 (4) (1) (b) rather than the Director General of Conservation). **Relief sought** Fish and Game also asked for comments when proposals include the habitats of the species that we manage eg lakes, rivers and wetlands containing sports fish and game birds.
Change 59		**Oppose**

Schedule 7		The proposed amendment does not list all offences under the Wildlife Act for example those under 67B, 67A (1) and 67C(1) or section 67F(3) which is covered in section 62 – 70 of the Wildlife Act. Note that wildlife listed in Schedule 1 is wildlife declared to be game. Schedule 3 lists wildlife that may be hunted or killed subject to Minister's notification. The Director General is in the process of amending the delegation to Fish and Game councils to carry out permitting system under section 53, 53A 53B, 53C, 54 and 56 of the Conservation Act. DOC or Fish and Game is tasked with issuing these Wildlife Authorisations. **Relief sought** Under 52A (2) (e) for complex freshwater fisheries activity approval . In addition to a report prepared to the Director-General of Conservation , New Zealand Fish and Game Council should also provide comments relating to sports fish. Our preference would be for Fish and Game to issue permits under authority from the Director General.
Change 60 Schedule 8		**Oppose** – See comments above relating to clause 52A (2) (d)
Change 61 Schedule 9		**Oppose** – Freshwater Fishing Regulation 1983 requirements to prevail, including culverts and fords, dam and diversion, fish facility (fish screens) and adequate water for fish passage.
Change 62 Schedule 11		Oppose *"~~operator has or is likely to have, by the time relevant work undertaken under a permit is completed~~" with "operator has or is highly likely to have, by the time relevant work under a permit is undertaken".* We note that any permits that are not issued in accordance with regulations may attract enforcement action. **Relief sought**

		Advice notes could be used along side consent conditions listing the outstanding matters that the operator must sort out before commencing the activity. The unfortunate thing for the applicant is that sometimes doing these things out of sequence may make it harder to vary the application to obtain permits for example if your design plans do not allow for fish passage for indigenous and sports fish, this is a lost opportunity if you didn't realise this before you lodged your application and got consent. The permit system is quick and easy so best to get these first so that amendments are not needed to your substantive application if you decide to apply for permits after getting the application approved. Alternatively, lodge permits and consents at the same time as you will probably get your permit decision or feedback well before the panel decision or recommendation is made.
Other	Cost Recovery	**Oppose** The Fast Track Approvals process is intended to be a user pays system. An agency may recover actual and reasonable costs in providing assistance before application lodged and in performing functions under the FTAA. EPA must pay a contribution to the costs of third parties in accordance with the regulations, currently the regulations only provide for Maori groups. Fish and Game submit that we should also be able to cost recover for providing comment to the panel for these projects. Specific advice has been provided on this issue from Anderson Lloyd regarding Cost Recovery. This is attached as attachment two of this submission. While other third parties are specifically entitled to provide written comments on certain applications – for example, the New Zealand Conservation Authority, Conservation Boards, the New Zealand Fish and Game Council and the Game Animal Council are entitled to provide written comments on concessions, land exchanges and conservation covenants - they are not currently provided for by the Regulations as being entitled to recover either their actual and reasonable costs, nor a contribution to their costs. **Relief sought** Amendments of the cost recovery regulations to provide for third parties to also cost recover their costs for providing comment to the fast track process.

Memorandum

Date	7 November 2025
To	Shay Schlaepfer
From	Jen Vella/ Hannah Zydenbos
Subject	Fast-track Approvals Act 2024 - Cost Recovery

Introduction

1 The Fast Track Approvals Act 2024 (**FTAA**) establishes a unique consenting regime (the **Fast Track process**) for infrastructure and development projects with significant regional or national benefits, with a view to enabling faster decision-making.

2 In doing so, it alters standard approval/consenting processes, including the roles of various stakeholders and the nature of their participation. Processing of applications is undertaken by the Environmental Protection Authority (**EPA**) and independent expert panels make decisions on applications. Notification is prohibited but panels invite written comments by parties either as specified in the FTAA or as directed by the panel.

3 The Government's intention is that the cost of participating in the Fast Track process will be borne by applicants. The FTAA therefore establishes mechanisms for some of those parties to recover the costs of their participation.

4 The Environmental Defence Society (**EDS**) has requested advice as to which parties can recover their costs of participation under the FTAA and the scope of costs that are recoverable. Including what constitutes "reasonable costs".

5 This memorandum therefore sets out:

(a) A brief overview of the cost recovery provisions of the FTAA;

(b) Who can recover costs; and

(c) The scope of recoverable costs, including what constitutes "reasonable" costs.

6 A summary of this advice is set out first, followed by more detailed advice.

Summary

7 The FTAA enables the recovery of the costs incurred by some parties in relation to referral applications, substantive applications and land exchange applications (**an application**).

8 Those parties currently able to recover costs are:

(a) The Minister for Infrastructure (**Minister**) - for panels, panel convenors and preliminary matters such as determinations on priority and ineligibility;

(b) The Secretary for the Environment and other government agencies (including the EPA) responsible for administering legislation under which approvals are ordinarily obtained - for performing or exercising their functions, powers and duties under the FTAA, including for consulting with, and providing assistance to, a potential applicant prior to an application being lodged;

(c) Relevant local authorities within whose boundaries the project is located (or those who are adjacent to the coastal marine area for a marine consent) - for performing or

exercising their functions, powers and duties under the FTAA, including for consulting with, and providing assistance to, a potential applicant prior to an application being lodged;

(d) Parties with an interest in land proposed to be exchanged - can recover actual and reasonable costs they incur in relation to that negotiation; and

(e) Māori consultation groups who have been invited to comment, and have commented, on an application - this is a contribution only, and the amount of the contribution (which depends on the complexity of the application) is specified in the Fast-Track Approvals (Cost Recovery) Regulations 2025 (**Regulations**).

9 Additional third parties able to claim a contribution toward their costs may be identified in the Regulations in the future. At this stage, other third parties with statutory roles that would often see them participate in certain applications pursuant to their statutory functions, such as the New Zealand Conservation Authority, Conservation Boards, the New Zealand Fish and Game Council and the Game Animal Council, are not currently entitled under the legislation to a contribution towards costs, despite being entitled to provide written comments on certain applications.

10 Costs incurred by the Minister and agencies (which includes the relevant councils) prior to the lodgement of an application are recoverable directly from the authorised person for the project/ potential applicant, whether or not an application is lodged. Costs incurred by agencies after an application is lodged are recovered by the EPA. The EPA must recover costs on behalf of the Minister or agencies if requested to do so. Contributions to the costs of Māori consultation groups must be covered by the EPA. The EPA then has a discretion as to whether it recovers that contribution from the applicant.

11 Except in relation to third parties (who are only entitled to a contribution to costs), the scope of recoverable costs is limited to the "actual and reasonable" costs associated with performing or exercising functions, duties and powers under the FTAA. For local authorities, these include consultation, advising on competing applications/existing resource consents for the same activity, providing written comments and other information or advice as requested, attending hearings and reviewing draft conditions. In addition, the FTAA includes a principle that all practicable steps must be taken to use cost-effective processes.

12 Some question has been raised in relation to the role of local authorities, and whether costs associated with undertaking a substantive merits assessment are within their functions, powers and duties under the FTAA. In that context, the Panel Convener has expressed concern that a local authority's written comments may not be properly informed without technical expert review. There is also a question as to whether costs for work undertaken in the period between lodgement of a substantive application and being invited to provide written comments, or during a suspension, are recoverable. The EPA has updated its cost recovery policy to confirm that it will generally not recover costs during a suspension period unless to give effect to the suspension, or in response to a direction by the panel and by agreement with the applicant.

13 There is no specific mechanism in the FTAA for challenging whether costs are "actual" or "reasonable". Costs are a debt recoverable by the person owed in a court of competent jurisdiction. Case law under similar provisions of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ Act**) suggests that the absence of a specific mechanism for an objection to costs means that costs are only able to be challenged on the grounds that they are unlawful or unreasonable in an administrative law sense. For costs to be "reasonable", they must be lawful, and genuine and intelligent consideration must be given to whether they are required to deal with the issue at hand. That case law may be of limited guidance because the cost recovery provisions of the FTAA also differ to those of the EEZ Act in many respects - including that the FTAA contains a general principle that all practicable steps should be taken to use cost-effective processes that are proportionate to the function, power or duty being exercised.

14 In light of the case law and provisions of the FTAA, persons should ensure that the costs being incurred are lawful - costs need to relate to the specific functions, powers and duties assigned to them under the FTAA; they should be cognisant of their role under the FTAA, and how it differs to their role under the Resource Management Act 1991 (**RMA**), particularly in light of the issues raised above; they should take all practicable steps to use cost-effective processes; and they should consider whether the cost being incurred is required to deal with the issue at hand.

15 The Fast Track Approvals Amendment Bill proposes amendments to the FTAA to allow regulations to determine what "actual and reasonable costs" are, including by setting upper limits, identifying criteria for the quantification of costs, or excluding certain categories of costs that may be recovered. The Bill proposes that regulations may also set out a disputes resolution process for recovering costs under s104.

Overview of cost recovery provisions under the FTAA

16 It is noted at the outset that section 10 of the FTAA establishes an overarching procedural principle relevant to costs that processes must be cost-effective and proportionate. Section 10(1) provides that:

> Every person performing functions and duties and exercising powers under this Act must take all practicable steps to use timely, efficient, consistent and cost-effective processes that are proportionate to the functions, duties or powers being performed or exercised.

17 The EPA is also required to minimise costs and avoid delay in performing these functions, powers and duties as far as is reasonably practicable.[1]

18 Cost recovery under the FTAA is generally governed by sections 103 - 112 of the FTAA and the Regulations. The key provisions that address who can recover costs, what costs can be recovered and how costs can be recovered are detailed below. Further analysis of these matters is contained in the sections that follow.

19 Agencies can recover actual and reasonable costs incurred by them in consulting and providing assistance before an application is lodged. These costs can be recovered whether or not the application is lodged and must be recovered directly from the potential applicant.[2]

20 If an application is lodged, the EPA can recover actual and reasonable costs incurred by it and any other agency in performing or exercising functions, powers and duties under the FTAA. The Minister can also recover actual and reasonable costs incurred in relation to a panel and a panel convenor.[3]

21 In relation to certain preliminary steps.[4]

(a) If a substantive application is not lodged, agencies and the Minister can recover actual and reasonable costs incurred by them in performing or exercising their functions, powers and duties under the FTAA;

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[1] Section 92(2)

[2] Section 104(1)

[3] Section 104(2)

[4] These preliminary steps are set out at sections 29 – 31 and 37 – 39 of the FTAA

(b) If a substantive application is lodged, the EPA can recover actual and reasonable costs incurred by the EPA and any other agency, and the Minister can recover actual and reasonable costs incurred in relation to a panel and a panel convenor.

22 Those preliminary steps include preliminary consultation, identification of existing resource consents for the same activity, lodging a pre-request aquaculture agreement, lodging mining permit information, applications for priority and applications for determinations on ineligibility.

23 The EPA must contribute to the costs incurred by third parties listed in regulations. The EPA can recover these costs from the applicant.[5] The regulations can set the method for calculating the contribution, or the amount of the contribution, and the process to be followed in order to claim the contribution.[6] Regulations have been promulgated that identify "Māori consultation groups" as being entitled to claim a contribution to costs (discussed further below).

24 In relation to a substantive application for a land exchange, the holder of an interest in land with whom an applicant is required to negotiate can recover actual and reasonable costs they incur in relation to that negotiation. These are recoverable directly from the applicant.[7]

25 Costs can be recovered through fixed fees or charges, estimated fees or charges (followed by a reconciliation to account for actual and reasonable costs) or levies.[8] Regulations made under the FTAA may set fixed or estimated fees and charges, methods for calculating fees and charges, reconciliation processes[9] and levies payable to the EPA.[10] The Regulations currently only provide for contributions to Māori consultation groups, which are fixed fees for "lower" and "higher" contributions, depending on the complexity of the application (see below).[11]

26 The Regulations also allow for further fees to be recovered by the EPA in order to recover the total actual and reasonable costs incurred by agencies or the Minister, or in relation to the panel and panel convenor or contributions to the costs of third parties.[12]

27 The EPA, Secretary for the Environment and administering agencies must publish their rates for further fees on their websites,[13] although this obligation does not extend to local authorities. The EPA and other government agencies have published cost recovery policies,[14] some of which include the hourly rates that will apply to cost recovery. These policies do not have a statutory basis but do provide some transparency as to how each agency will approach the recovery of costs. The adoption and publication of similar policies by local authorities would assist in transparency for applicants.

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[5] Section 104(4) and s110.

[6] Section 108(1)(g)

[7] Section 111

[8] Section 106

[9] Section 108(a) – (c)

[10] Section 109

[11] Regulation 6 and Schedule 2

[12] Regulation 5

[13] Regulation 5(3)

[14] The EPA's policy for Fast Track fees, levies and cost recovery can be found here.

28 Costs are a debt due to the relevant interest holder (in relation to land exchanges) or agency, or the Crown that is recoverable in a court of competent jurisdiction.[15] The EPA must recover costs that are recoverable on behalf of the Minister or another agency if requested to do so.[16] That includes Minister or agency costs incurred prior to the lodgement of an application provided the costs relate to the performance or exercise of each of those parties' functions, powers and duties.

Who can recover costs?

29 The following parties have some ability to recover costs (either directly, or indirectly through the EPA) for their participation in FTAA processes:

(a) the Minister;

(b) the EPA and other agencies;

(c) third parties identified in regulations; and

(d) interest holders in the context of a land exchange application.

30 "Agencies" are defined by the FTAA[17] as the EPA, the "responsible agency", an "administering agency", or a "relevant local authority" where:

(a) the "responsible agency" is the Secretary for the Environment (i.e., the Chief Executive of the Ministry for the Environment);[18]

(b) "administering agency" means the chief executive of a department that, with the authority of the Prime Minister, is responsible for the administration of a "specified Act".[19] The specified Acts and administering agencies are listed in the FTAA and are those Acts, and agencies that administer those Acts, under which approvals would ordinarily be sought if not for the FTAA,[20] and

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[15] Sections 107 and 111

[16] Section 104(5)

[17] Section 103.

[18] Section 4

[19] Section 4

[20] The specified Acts and relevant departments are:

(a) The Resource Management Act 1991 and the Ministry for the Environment.
(b) The Conservation Act 1987, Reserves Act 1977, Wildlife Act 1953, and National Parks Act 1980 and the Department of Conservation.
(c) The Heritage New Zealand Pouhere Taonga Act 2014 and the Ministry for Culture and Heritage and Heritage New Zealand Pouhere Taonga.
(d) Freshwater Fisheries Regulations 1983 and the Department of Conservation.
(e) The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 and the Ministry for the Environment and the Environmental Protection Agency.
(f) The Crown Minerals Act 1991 and the Ministry of Business, Innovation and Employment;
(g) Ministry for Primary Industries, the Office for Māori-Crown Relations – Te Arawhiti, and the Ministry of Māori Development – Te Puni Kōkiri – see section 103.

(c) "relevant local authority" means any local authority whose region or district the project is in and, for the purpose of marine consents, this includes regions or districts adjacent to the proposed site.[21]

31 A "third party" is defined (unless the context otherwise requires) for the purposes of sections 104 to 112 – which are the cost recovery provisions of the Act – as:[22]

(a) a person (other than an applicant, an agency, the Minister or a panel) who:

(i) responds to an invitation from an applicant, an agency, the Minister, or a panel to comment on an application; or

(ii) appears at a panel hearing; or

(iii) (iv) provides information to a panel in response to a request to do so; and

(b) any other class of persons specified as a third party by regulations.

32 While the definition of "third party" is broad, the EPA is only required to pay a contribution to the costs of a third party in accordance with regulations[23] and may only recover the costs of contributions it has made to the costs of relevant third parties.[24] The Regulations currently only identify "Māori consultation groups" as being entitled to receive contributions.[25] The EPA has confirmed that it interprets the cost recovery provisions for third parties in this manner.[26]

33 Māori consultation groups are those who have been invited to comment on an application.[27] Depending on the project, this may include iwi authorities, groups that represent hapū that are parties to relevant Mana Whakahono ā Rohe or joint management agreements, Treaty settlement entities, groups with recognised negotiation mandates or current negotiations for Treaty settlements, protected customary rights groups and customary marine title groups (including applicant groups), and owners of Māori land in the project area.

34 While other third parties are specifically entitled to provide written comments on certain applications – for example, the New Zealand Conservation Authority, Conservation Boards, the New Zealand Fish and Game Council and the Game Animal Council are entitled to provide written comments on concessions, land exchanges and conservation covenants - they are not currently provided for by the Regulations as being entitled to recover either their actual and reasonable costs, nor a contribution to their costs.

35 Holders of an interest in land may recover the actual and reasonable costs that they incur in relation to negotiating a land exchange from the applicant for a substantive application for a land exchange approval, whether or not the negotiation results in a land exchange.[28]

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[21] Section 4.

[22] Section 103.

[23] Section 110(1)

[24] Sections 104(4) and 110

[25] Regulation 6, Fast-track Approvals (Cost Recovery) Regulations 2025

[26] Policy for Fast-track Fees, Levies and Cost Recovery (Environmental Protection Authority, June 2025), at paragraph 42

[27] Regulation 3

[28] Section 111(3)

Recoverable costs

36 While the Minister and agencies are able to recover "actual and reasonable costs" of performing or exercising each of those parties' functions, powers and duties, and those with an interest in land proposed to be exchanged are entitled to recover the "actual and reasonable costs" of negotiating the land exchange, Māori consultation groups are entitled to a contribution towards their costs only. The scope of recoverable costs are set out below.

Māori consultation groups – contribution to costs

37 For Māori consultation groups, the level of contribution that can be claimed from the EPA depends on the complexity of the application and is set out in the Regulations as follows:[29]

(a) If one type of approval is sought, Māori consultation groups are entitled to a "lower" contribution of:

(i) $1,500 for referral applications;

(ii) $1,500 for land exchange applications; and

(iii) $7,000 for substantive applications.

(b) If more than one type of approval is sought, Māori consultation groups are entitled to a "higher" contribution of:

(i) $2,000 for a referral application;

(ii) $1,500 for a land exchange application; and

(iii) $10,000 for a substantive application.

38 Payment is made by the EPA upon application and recovered by the EPA from the applicant.

Minister and agencies (including local authorities)

39 For the Minister, the EPA and other agencies (including local authorities), "actual and reasonable costs" are recoverable for performing or exercising those parties' functions, powers and duties under the FTAA. In the case of the Minister, "actual and reasonable costs" of the performance or exercise of the functions, powers and duties of the panel and panel convenor are also recoverable.

40 The term "functions, duties and powers" is specifically defined by the FTAA[30] as including:

(a) commissioning advice or other services required to process an application; and

(b) undertaking consultation, negotiating with affected parties, or responding to an invitation to comment in relation to an application; and

(c) undertaking the activities described in paragraph (a) or (b) to enable other persons to perform or exercise their functions, duties, and powers under this Act; and

(d) preparing advice in preparation for—

[29] Regulation 6

[30] Section 103.

(i) performing or exercising functions, duties, and powers; or

(ii) Act; and

(e) appearing at a hearing held by a panel, including preparing for the hearing; and

(f) provision of secretarial and support services by the EPA or the responsible agency; and

(g) for approvals described in section 42(4)(f) (land exchanges) that are subject to conditions, actions taken by the relevant administering agency to ensure that the conditions continue to be complied with.

41 The specific functions, duties and powers of local authorities under the FTAA include, for example:

(a) Participating in consultation initiated by the applicant prior to lodging a referral application,[31] a substantive application for a listed project[32] or a land exchange application,[33]

(b) Providing information to the applicant as to whether there are existing resource consents for the same resource (or to occupy the same space used for aquaculture activities)[34] and to the Minister (in relation to a referral application),[35] and consulting with the EPA on its recommendation to the Minister as to whether there are any competing applications or existing resource consents;[36]

(c) Providing written comments on a referral application (as invited by the Minister),[37] a substantive application (as invited by a panel)[38] or an application for a land exchange (as invited by the Director-General of Conservation (**D-G**));[39]

(d) Providing any information requested by the Minister (in relation to a referral application),[40] any information or reports or any other advice within its knowledge as requested by the panel (on a substantive application)[41] or any information requested by the EPA in relation to a listed or referred project, before or after it receives a substantive application;[42]

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[31] Section 11(1)(a)

[32] Section 29(1)

[33] Applicants for a land exchange are required to provide full details of any consultation undertaken with any parties with rights or interests in the land to be exchanged – Schedule 6, clause 24. Local authorities are to be invited to provide written comments – Section 35(1)

[34] Section 30

[35] Section 17(3)

[36] Section 47

[37] Section 17(1)

[38] Section 53(2)

[39] Section 35(1)

[40] Section 20(1)

[41] Section 67(1); Schedule 3, clause 12

[42] Section 90

(e) Preparation for, and attendance at, any hearing;[43]

(f) Providing comments on the draft report by the D-G on a land exchange application,[44] consulting with the D-G in preparing its report (where the council is the manager of a reserve proposed to be exchanged)[45] and on draft conditions prior to the panel granting approval to a substantive application.[46]

42 Guidance from the Panel Conveners[47] (**Practice Guidance**) sets out that their expectation is for local authorities' participation to (in the context of the functions, powers and duties above):

(a) Provide an opinion on whether an application is complete and within scope (in terms of section 46);

(b) At a Panel Convener's conference, to inform the decision timeframe, identify likely issues, including disputed facts, opinions, or legal matters. The Practice Guidance suggests that input from planning and technical advisors will be likely, but a merit assessment is not sought at this stage;

(c) Provide written comments on the application which could involve a merits and technical assessment, including engaging expert opinion and evaluating the substantive application including technical reports, legal advice and submissions.

43 The approach to providing written comments by local authorities, including the role of technical experts, has been raised in the context of decisions on the Ports of Auckland Limited (**POAL**) and Homestead Bay applications under the FTAA.

44 The POAL panel noted that, unlike section 42A reports prepared under the RMA, it is the council, not individual council specialists, who are invited to comment under section 53 of the FTAA. The panel considered that comments from technical specialists only need to be provided to the extent that they inform the council's comments, and that the council should curate such comments into a concise summary of the matters that it considers to be material to the panel's decision making and how the council proposes matters in contention should be addressed.[48]

45 Drawing on those comments, Queenstown Lakes District Council (**QLDC**), in the Homestead Bay application, expressed concern as to:[49]

> …what are the *"actual and reasonable costs incurred by [QLDC] in performing or exercising their functions, duties or powers under this Act in relation to the application"*. That is because the FTAA only requires the Council to provide written comment on the Substantive Application, it does not require the Council to undertake

[43] Section 57(4)

[44] Section 35(5)

[45] Schedule 6, clause 26(3)

[46] Section 70(1)

[47] Fast-Track Approvals Act 2024: Panel Conveners' Practice and Procedure Guidance, 22 July 2025.

[48] Memorandum of Counsel for Queenstown Lakes District Council responding to Minute 3 of the Panel Convener (11 August 2025), at [5.3]

[49] Minute of the Panel Convener - Seeking clarification from QLDC (FTAA-2506-1071) (12 August 2025)

> a full merits assessment of the Application, including through obtaining peer reviews, in the way it might normally do when it is a decision maker under the RMA.

46 In response, the Panel Convener noted that the FTAA does not define what is meant by "comment" for the purposes of section 53, suggesting that section 42A of the RMA is the nearest equivalent section and advising that it will seek advice from the EPA subject to clarification of QLDC's concerns.[49]

47 QLDC clarified that it was concerned that the FTAA does not assign a function, power or duty to local authorities to give a recommendation on the proposal, which would require a full assessment of the benefits, effects and various matters that the panel is required to turn its mind to, including the purpose and context of the FTAA. Rather, the FTAA framework allocates evaluation and decision making to the independent panel.[50]

48 Noting the POAL panel's view that the council's role is not to provide a section 42A report, QLDC signaled its intention that the scope of its involvement would be to:

(a) Outline matters or areas it would examine further if it were the decision-maker, including further information it would request;

(b) Provide comment on the consistency or otherwise of the proposal with its community-endorsed spatial strategies and plans, including by relying in existing evidence or information it holds;

(c) With the exception of infrastructure, not undertake peer reviews unless instructed by the panel in accordance with the panel's powers under section 67 of the FTAA.

49 Whether costs can be incurred during periods in which there is no specific role for a person, or during a period of suspension, has also been raised in the context of the Homestead Bay and Drury Quarry Expansion applications.

50 In the Homestead Bay application, QLDC raised a concern that, post-lodgment of the substantive application and prior to the establishment of a panel, local authorities do not have any powers, functions or duties, so it is unclear whether they are entitled to recover any costs during that period.

51 In response, the Panel Convener indicated that QLDC may need to consider a wider range of issues in order to comment on conditions and expressed concern that if local authorities do not engage experts prior to being invited to make comment, it is unlikely that their comments will be properly informed by expert opinion. This may result in the panel needing to request reports or information from the local authority, impacting the decision time frame.[51]

52 The EPA[52] could not confirm whether costs incurred by a local authority in obtaining peer reviews of the application after the substantive application is lodged and prior to being invited to make written comments, are recoverable from the EPA as an actual and reasonable cost. The EPA did not address the broader question relating to the role of local authorities under the FTAA and the recoverability of costs for obtaining peer reviews or providing reports more generally. This is therefore still an area of uncertainty.

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[50] Memorandum of Counsel for Queenstown Lakes District Council responding to the Panel Convener's request for clarification (13 August 2025)

[51] Minute of the Panel Convenor – Post conference directions to conference participants (FTAA-2506-1071) (13 August 2025)

[52] Memorandum for Environmental Protection Authority responding to the Panel Convener (26 August 2025)

53 In the Drury Quarry Expansion application, the panel advised that it was made aware of clarification from the EPA that no costs can be incurred by any person, including the panel and the EPA, during a suspension period, even where an applicant indicates that it is content for the work to continue. The panel sought advice from the EPA as to whether expert conferencing could occur during this period.

54 In response, the EPA updated its cost recovery policy as follows (although the lawfulness of this policy is untested):

> 53. If a panel suspends processing of a substantive application under section 64 of the Act, the EPA may recover the costs incurred until and including the date the panel grants a suspension, plus any necessary consequential costs to give effect to the suspension. Subject to section 64(5) of the Act, further work and cost recovery may also occur at the specific direction of the panel and agreement of the applicant.
>
> 54. Where a substantive application is returned to the applicant at the direction of the panel under section 66(4) of the Act, the EPA will recover any further costs incurred until and including the date the EPA notifies the decision of the panel to return the application.

Actual and reasonable costs

55 The FTAA does not provide specific guidance as to what constitutes "reasonable" costs. While the phrase "actual and reasonable costs" is used in other resource management-related legislation,[53] the provisions of each piece of legislation relating to cost recovery differ. There is therefore little case law that provides guidance that may be extrapolated to the FTAA.

56 Environmental Protection Authority v Chatham Rock Phosphate Ltd[54] (**EPA v Chatham Rock**) and Chatham Rock Phosphate Ltd v Environmental Protection Authority[55] (**Chatham Rock v EPA**) (together, **Chatham Rock cases**) may provide some guidance as to how a Court would consider "reasonable" costs. The Chatham Rock cases relate to a challenge by the applicant to costs incurred under the provisions of the **EEZ** Act.

57 Under the EEZ Act, the EPA is required to take steps to recover the direct and indirect costs incurred in performing or exercising its functions, powers and duties that are not covered by an appropriation (i.e., public money assigned to cover those costs) by Parliament.[56] In determining the most appropriate method of cost recovery, one of the criteria the Minister must have regard to is that costs should be collected only to meet the 'actual and reasonable costs' of the performance of the function, power or duty.[57] There is no specific mechanism for objecting to those costs, and costs are a debt recoverable in a court of competent jurisdiction.[58]

58 In *EPA v Chatham Rock*, the applicant had refused to pay part of the EPA's invoice. The EPA therefore sought to recover those costs as a debt in the High Court. As part of that process (i.e., as a defence), the applicant challenged the EPA's invoice on the grounds that the costs were not

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[53] For example, the Resource Management Act 1991 – in relation to additional charges (section 36(5) and recovery of costs associated with a referral (section 149ZD); the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 - in relation to recovery of costs of EPA and boards of inquiry (see, for example, sections 52A, 143); the Covid-19 Recovery (Fast-track Consenting) Act 2020 (Schedule 5, clauses 13 and 14)

[54] *Environmental Protection Authority v Chatham Rock Phosphate Ltd* [2016] NZHC 2079

[55] *Chatham Rock Phosphate Ltd v Environmental Protection Authority* [2018] NZLR 179

[56] EEZ, s143(1)

[57] EEZ, s143(3)(c)

[58] EEZ, ss52A and 147

actually incurred, were not reasonably incurred or were not reasonable in amount. However, the High Court held that the only means by which costs could be challenged was via judicial review, and costs could not be challenged as a defence to an action to recover debt in a court of competent jurisdiction.[59] The applicant therefore brought judicial review proceedings against the EPA in *Chatham Rock v EPA*.

59 In the judicial review case, the High Court made the following points:

(a) The costs being recovered must be lawful, however assessing lawfulness does not require the Court to engage in a costs revision process. The Court does need to satisfy itself that the EPA correctly understood and exercised its power to charge.[60]

(b) The reasonableness of the costs is not to be determined by their amount. The Court will not second-guess assessments the EPA reached on the basis of its expert understanding of the environment in which it operates. It is not the function of the Court on judicial review to form a view about whether aspects of the process could have been approached differently and with lower costs.[61]

(c) The Court will not engage in merits reviews, for example, of information provided to the EPA, such as the accuracy of staff reports.[62]

(d) Where the EPA had consulted with the applicant on decisions, such as hearing venue, and the applicant had not objected, it was "on strong ground".[63]

(e) The EPA had processes in place to avoid costs being simply passed on without consideration[64] and it engaged in a "genuine and intelligent decision about what resources are required to deal with the issue at hand".[65]

60 The Court distinguished the costs recovery provisions under the EEZ Act from those under the RMA, which contains express rights of objection to charges made by a local authority or the EPA. Noting that there is no equivalent right of objection in the EEZ Act, the Court said:[66]

> The absence of any right of objection appears deliberate. I construe its omission, together with the prescriptive legislative provisions for costs recovery, as impliedly imposing a high threshold for successful review of EPA's charges under the EEZ regime.

61 Like the EEZ Act, the FTAA does not contain an express mechanism for an objection to costs, and costs are a debt recoverable in a court of competent jurisdiction. However, the cost recovery provisions of the EEZ Act and FTAA also differ in several ways - including the general procedural principle in section 10 of the FTAA that all practicable steps must be taken to use cost-effective processes that are proportionate to the function, power or duty being exercised.

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[59] *EPA v Chatham Rock*, at [77]

[60] *Chatham Rock v EPA*, at [76]

[61] *Chatham Rock v EPA*, at [96]

[62] *Chatham Rock v EPA*, at [90]

[63] *Chatham Rock v EPA*, at [89]

[64] *Chatham Rock v EPA*, at [92]

[65] *Chatham Rock v EPA*, at [97]

[66] *Chatham Rock v EPA*, at [97]

62 While there is some uncertainty as to how "reasonable costs" would be assessed, having regard to the specific provisions of the FTAA, and taking into account the principles enunciated by the Court in the *EPA v Chatham Rock* decision:

(a) To be lawful, costs incurred must sheet home to the functions, powers and duties assigned under the FTAA. Some of those functions, powers and duties are specific (e.g., to provide notice of existing resource consents), some are required to be undertaken in response to a specific request, e.g., advice from a panel, and others are broad, e.g., the ability to provide written comments.

(b) When exercising or performing functions, powers and duties, the Minister and agencies should be cognisant of their role under the FTAA, which is different to their role under the RMA, recognising that there is currently some uncertainty as to recoverable costs in this space in light of the matters raised in the context of the Homestead Bay, Drury Quarry Expansion and POAL applications.

(c) When exercising or performing functions, powers and duties, the Minister and agencies should consider whether the cost being incurred is required to deal with the issue at hand and they should take all practicable steps to use cost-effective processes which are proportionate to the function, power of duty being exercised.

Proposed amendments to the FTAA

63 The Fast Track Approvals Amendment Bill was introduced on 4 November 2025 and had its first reading on 6 November 2025. It is anticipated that the legislation will be passed by the end of 2025.

64 The Bill proposes amendments to the FTAA to allow regulations to determine what "actual and reasonable costs" are, including by setting upper limits, identifying criteria for the quantification of costs, or excluding certain categories of costs that may be recovered. The Bill proposes that regulations may also set out a disputes resolution process for recovering costs under s104 of the FTAA.

65 Other amendments to the Bill may affect cost recovery by various parties including the proposed removal of consultation requirements and limitations on the scope of written comments by local authorities. It is not clear whether contributions to costs currently available for Māori consultation groups will be amended if consultation with those groups is no longer required.

Decommissioning, Bonds and Compensation for Mining Operations

Key Patterns in NZ Mining Environmental Incidents

1. Most incidents involve heavy metals, sedimentation, and water contamination rather than catastrophic spills (which could still occur if there were an earthquake).
2. Gold mining is the most frequent source of chemical contamination (cyanide, mercury, arsenic).
3. Coal mining tends to produce acid mine drainage, sediment runoff, and dust issues.
4. Many historic sites remain contaminated and require ongoing remediation.
5. Modern mines are subject to Resource Management Act consents, which enforce monitoring, mitigation, and reporting. However, the focus of the RMA is on fines and does not have the following legislation in place. There are several mine applications on the Fast Track Approval schedule, and therefore it is assumed that consenting new mines is a priority of this government.

Mining Legislation in New Zealand

If the government wants to consent to mining operations, it also needs to take a serious look at the existing legislation and introduce several new laws to provide for mine decommissioning, long-term environmental protection, and future compensation. International best practices in Canada, Queensland, Western Australia, and the US show a lack of adequate law in the New Zealand system. For a start, we need to ensure we have mine remediation costs, variable bond requirements and financial assurance requirements in place.

If NZ wanted an effective, modern system, the best combination should include:

1. Dedicated Mine Closure & Rehabilitation Act or regulations similar to Crown Minerals (Decommissioning and Other Matters) 2021, providing for decommissioning and site abandonment plans that are in place for petroleum infrastructure. Criminal and civil liability also need to be strict.
2. Full-cost bonding and annual reassessment
3. National Mine Rehabilitation Fund is funded by levies
4. Mandatory long-term monitoring & liability insurance, including environmental liability.
5. Clear statutory compensation rights for environmental damage

6. Strict liability for pollution events
7. Independent tailings oversight
8. Public transparency of bonds and closure plans

This would significantly reduce taxpayer exposure and prevent repeats of historic contamination problems.

1. Create a Stand-Alone Mine Decommissioning & Closure Act

Legislation could include the following key features

- Require mine closure plans from the *start* of the project, updated every 3–5 years.
- Include mandatory progressive rehabilitation (not waiting until the end of mining).
- Require operators to show that closure methods are *technically and financially feasible*.
- Mandate the transfer of closure plans to any new owner (to prevent "orphan mines").

Why this helps

This removes ambiguity and creates national consistency rather than scattered regional rules.

2. Reform Financial Assurance / Bonding Requirements

NZ's mine bonds have historically been too low and sometimes based on optimistic assumptions.

Legal reforms could include:

A. Full-Cost Bonding (like Colorado & Alaska)

- Bonds must equal the total cost of full rehabilitation, as if the company walked away *today*.
- Costs assessed independently, not by the company.

B. Multiple Financial Instruments Allowed

To reduce risk:

- Surety bonds

- Cash deposits
- Third-party insurance
- Trust funds
- Letters of credit
- Environmental performance bonds

C. Mandatory Annual Updating

Bond values are adjusted every year based on:

- Inflation
- Changes in mine plan
- Environmental monitoring results
- Updated closure costs

D. No Bond Reduction Until Independent Audit

Ensure mined areas are fully rehabilitated and stable before any bond is released.

3. Establish a Central Government "Mine Rehabilitation Fund"

Like the U.S. Abandoned Mine Land (AML) fund or Australia's Mining Rehabilitation Fund (MRF).

Structure could include:

- Annual levies on **all mining operations** (e.g., per tonne / per ounce / % of revenues).
- Funds used for:
    - Remediation of legacy mines
    - Emergency pollution events during the operation and post-operation of the mine
    - Supporting affected communities

Why this helps

NZ has hundreds of historical gold and coal sites without responsible operators; a national fund addresses these gaps.

4. Statutory Long-Term Environmental & Social Monitoring Obligations

Post-closure obligations could include:

- Monitoring of water quality, sediments, tailings stability, subsidence, and toxic metals.
- Mandatory reporting to the regulator and public registry.
- Timeframes (e.g., 30–60 years) depending on the tailings type and risk.
- Compulsory insurance for latent environmental defects (like Canada's "latent defect" insurance).

5. Create a Legal Framework for Compensation When Environmental Harm Occurs

NZ's current system relies mostly on **fines** under the RMA and **civil action**, which rarely produce compensation.

Possible reforms:

A. Statutory Right to Compensation

Affected individuals, iwi, or communities could claim compensation for:

- Loss of water quality
- Loss of fisheries / mahinga kai
- Damage to land
- Cultural harm
- Economic loss (tourism, farming, drinking water, etc.)

B. Mandatory Industry Insurance Pools

Mining companies must carry:

- Environmental liability insurance
- Pollution and tailings-failure insurance
- Long-term ecological damage insurance

Similar to offshore oil & gas requirements.

C. Strict Liability for Pollution

No need to prove negligence—if the mine caused the environmental harm, it must compensate.

6. Stronger Tailings Storage Regulations

To align with the Global Industry Standard on Tailings Management (GISTM):

New laws could require:

- Independent Dam Safety Reviews are conducted every 3 years.
- Certified Engineer of Record is legally responsible.
- Mandatory public disclosure of risk assessments.
- Prohibition of upstream tailings dams (used in Brazil before failures).
- Real-time water quality & dam-movement monitoring.

More details about prohibiting upstream tailings dams:

New Zealand should ban building tailings dams on top of old tailings, because this design has failed catastrophically elsewhere. Some examples of catastrophic dam collapses in Brazil. Examples include the 2015 Mariana involving a $7 billion settlement with the Brazilian government and affected communities. and the 2019 Brumadinho disasters) involved upstream tailings dams. **"**Upstream tailings dams" are a type of structure used to store mine waste (tailings) where the dam is built progressively on top of the previously deposited tailings, rather than on solid natural ground. This design is cheaper but less stable, especially in wet conditions or earthquakes. Prohibition means that new mines would not be allowed to build this type of dam in New Zealand.

7. Mandatory Community Agreements (Similar to Canada's IBAs)

Require legally binding agreements with:

- Iwi / hapū
- Local communities, including other downstream users of uncontaminated freshwater resources

These can include:

- Revenue sharing
- Environmental monitoring participation
- Cultural heritage protection
- Compensation mechanisms
- Employment & training guarantees

8. Strengthen Enforcement and Increase Penalties

NZ fines for environmental harm are often low ($100k–$200k).

Reforms could include:

- Fines are tied to a percentage of **revenue** or **profit**, not a fixed amount.
- Criminal liability for directors in cases of environmental endangerment.
- Automatic suspension of operations after major unauthorised discharges.

9. Public Register of Mine Rehabilitation and Bonds

Transparency measure:

- Bonds held
- Closure plans
- Environmental monitoring results
- Water quality data
- Updates on rehabilitation progress

This mirrors Western Australia's Mining Rehabilitation Fund transparency requirements.

Compensation / Settlement Examples from around the World

Examples of Bonds in NZ

EEZ Zone and deep-sea mining applications

Landfill consents in NZ – MfE technical Guidelines for Disposal to Land 2022, including bonds for remedial work.

RMA section 108

Section 108(2)(b) allows a consent condition to require a bond to be entered into with the council. Section 108A specifies[1] that a bond may be required to ensure the performance of any one or more conditions of a resource consent and it may continue to be in force after the expiry of the consent to secure the ongoing performance of conditions relating to long-term effects. Bonds can be registered against the Title (Computer Register) of the land to which the activity relates to act as a covenant running with the land and binding subsequent owners (s109).

[1] Bonds from Quality Planning Bonds | Quality Planning

If a consent holder is for some reason unable to ensure compliance with a bond requirement, such as the liquidation of a consent holder company, then a financial bond is available for the council to use to undertake those specific works. A further example is that a bond may be required for landfill activities where the effects of the landfill may still occur after it is filled and rehabilitated (for example, because of leachate problems).

For subdivisions, s222 allows bonds to be entered into as part of grant of a completion certificate and deposit of the survey plan (s224) and in doing so a council may exercise all powers conferred under s108A. This effectively allows bonds to be applied following grant of subdivision consent.

It is critical that legal advice is obtained to assist in drafting a bond condition. An example bond condition:

At least two months prior to the installation of any part of the marine farm, the consent holder shall enter into an enforceable agreement and bond with the AB Council for a sum of $1,000.00 per hectare granted to ensure compliance with conditions (X) and (Y). The bond is required under Section 108(2)(b) of the Resource Management Act 1991. To meet the bond requirement, either:

1. *The bond shall be guaranteed by a guarantor acceptable to the AB Council who shall be bound to pay for the carrying out of any works required to meet requirements of Conditions (X) and (Y) in the event of any default by the consent holder, or*
2. *The consent holder shall provide the AB Council with such security as is acceptable to the AB Council for the performance of any works required to meet the requirements of Conditions (X) and (Y) in the event of any default by the consent holder.*

The value of the bond should be based on the estimate cost of the works subject to the bond.

Bonds should not be used as a penalty for non-compliance. The purpose of a bond is to ensure that an event such as restoration occurs, not to solve compliance issues.

About Fish and Game

1.1 Fish and Game is the statutory manager for sports fish and game, with functions conveyed under the Conservation Act 1987. The organisation is an affiliation of 12 regional Councils and one national Council. Together, these organisations represent approx. 130,000 anglers and hunters.

1.2 The sports fish and game resource managed by Fish and Game are defined and protected under the Conservation Act and the Wildlife Act 1953. The species within include introduced sports fish and a mix of native and introduced waterfowl and upland game[1].

1.3 Our vision, purpose and values are illustrated below:

1.4 Fish and Game is entirely funded by licence holder fees and private contributions, meaning the delegated function of managing the species for the public good is funded entirely by the users. It is a democratic '*user pays, user say*'s organisation. Using this system, Fish and Game funds public good research to ensure fisheries and game populations are managed sustainably; undertakes compliance with the licencing system; and contributes to public planning processes to ensure that hunters and anglers values are recognised and provided for.

1.5 In relation to planning, Fish & Game have the statutory function to advocate for hunters and anglers values and ensure that the habitats of gamebirds and sports fish are provided for. At any one time we may have around 150,000 licence holders, and a larger number (approximately 300,000) that are transient licence holders. The habitat we specifically advocate for includes lakes and rivers that contain trout and salmon (and other sports fish) and wetlands where game bird hunting occurs.

[1] Most New Zealanders refer to these species as 'game birds', distinguishing them from other types of large game, such as deer or pigs. The Wildlife Act 1953 defines these birds simply as 'game' and this phrase is used in the context of this submission.

Fish and Game in Resource Management

2.1 Fish and Game works to provide for the ongoing enjoyment of hunting and freshwater fishing assets, the maintenance (or enhancement) of public access to rivers, lakes, and wetlands for hunting and fishing, and the protection of the habitat of trout and salmon.

2.2 Hunting and angling require legal and physical access both to habitats and the resource itself. Maintenance and enhancement of access is critically important to the pursuits of our licence holders. The maintenance and enhancement of public access to and along lakes and rivers is listed in the RMA 1991 as a matter of national importance.

2.3 We see the opportunity for proposals to be required to provide improved access both to their sites and other nearby areas that involve hunting or fishing values as a form of mitigation for any loss of values on site. We seek that Fish and Game are consulted as an expert advisor where gamebird and or sports fishery values could be impacted. We can work with government officials to ensure outcomes that achieve both economic imperatives, along with recognising and providing for hunting and fishing values.

2.4 We specifically seek the protection of:

i. habitat of trout and salmon.
ii. maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers where sports fishing and game bird values exist.
iii. preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, lakes and rivers and their margins where sports fishing and game bird values exist.
iv. Recognition and provision for freshwater angling/game bird hunting and amenity values.

What does Fish & Game do?

Fish & Game NEW ZEALAND

Who are we? **Fish & Game New Zealand manages, maintains and enhances sports fish and game birds and their freshwater habitats in the best long-term interests of anglers, hunters and all New Zealanders.**

Our vision

A New Zealand where freshwater habitats and species flourish, where game bird hunting and fishing traditions thrive and all New Zealanders enjoy access to sustainable wild fish and game resources.

Together, let's ensure a thriving future for fishing and game bird hunting!

What we do

- Manage fishing and hunting regulations
- Conduct research to monitor fish and game bird populations
- Collaborate with communities to protect natural habitats
- Provide educational programmes and resources
- Advocate for valued habitats and species
- Negotiate and maintain access for anglers, hunters and all New Zealanders

fishandgame.org.nz

#ReWild

What does Fish & Game do?

Species management: We monitor and survey species populations; set season regulations; and sustainably manage pressure on the resource.

Habitat protection: Advocate and take action to protect and enhance lakes, rivers, streams and wetlands; and secure 'national park' status to important rivers through Water Conservation Orders.

Access and participation: Negotiate and advocate so all New Zealanders can access our natural places; maintain access signage, information and brochures; organise fishing and hunting events and classes.

Public awareness: Maintain public advocacy; schools programmes; website and newsletters; community liaison; promote the right of licensed anglers and game bird hunters to pursue their chosen pastime.

Compliance: Recruit, train, equip and coordinate warranted rangers, to educate and enforce regulations to ensure the fish and game resource is sustained.

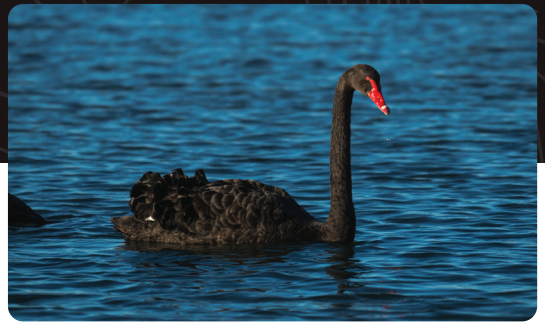
Licensing: Provide a nationwide licensing system with a range of licence categories and sales channels that makes it easy to buy a licence. We are solely funded by licence holders.

Council: Hold public meetings of elected licence holders to approve regulations and budgets, set policies and provide governance for the Fish & Game system.

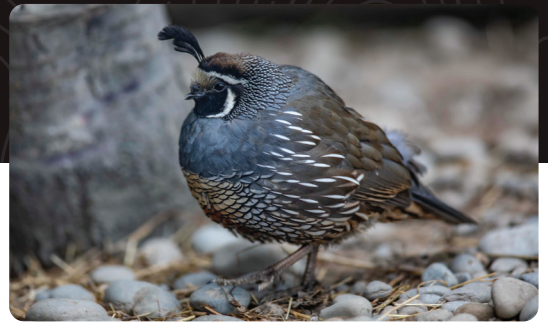
Coordination and planning: Provide research, planning and reporting; financial management and general coordination across Fish & Game New Zealand.

fishandgame.org.nz **#ReWild**

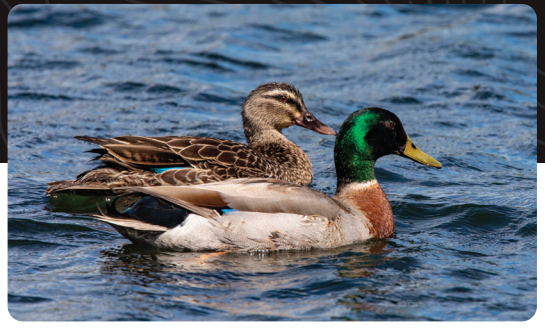
Species we manage



Black Swan Kakianau

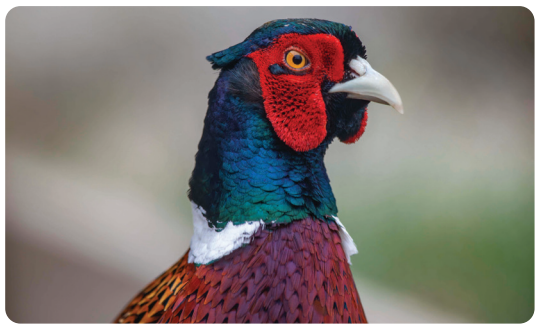


Californian Quail Koitareke



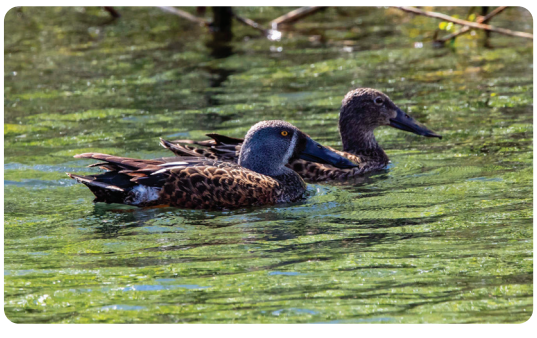
Mallard Rakiraki

Paradise Shelduck Pūtakitaki



Pheasant Peihana

Pūkeko



Shoveler Kuruwhengi

Chukar

Grey Duck Pārera

Brown Trout

Rainbow Trout

Chinook Salmon

Sockeye Salmon

Brook Trout

Tiger Trout

Perch

Tench

Fish & Game NEW ZEALAND ™

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