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19 April 2024

David MacLeod
Chair
Environment Select Committee
Wellington

Tēnā koe Chair

Submission on Fast-track Approvals Bill

1. Please find attached Meridian's submission on the Fast-track Approvals Bill (the Bill).

2. The existing approach under the RMA towards managing both existing and new renewable energy generation is inefficient and costly, and it has become worse over time. It is imperative that the Bill delivers substantial improvements in the planning process.

3. Meridian, has worked with other major electricity generators, to prepare a comprehensive collective submission from the Electricity Sector Environmental Group (ESEG). I highly recommend the Committee to consider the ESEG submission and the supporting analysis.

4. Meridian supports the Bill for the following reasons:

    (a) Streamlines Process: The Bill proposes a streamlined approval process for renewable energy this is essential to meeting the challenging targets for the industry and the country. In this regard Meridian has two Projects that it will be submitting to the Advisory Group on 3 May being:

        (i) Waiinu Energy Park, Taranaki: The proposed Energy Park (wind, solar and a battery energy storage system) is located over two 'blocks' of privately owned farmland (4,700 ha and 600 ha). The project is one of the largest economic renewable energy development opportunities in New Zealand with a planned project capacity around 750MW.

        (ii) Western Bay Solar Project, Waikato: The proposed solar project is located across 630ha of privately owned farmland and has a maximum capacity of 500MW.

    (b) Benefits: If approved, the fast-tracked renewable electricity projects will create numerous employment opportunities, stimulate economic recovery, displace carbon emissions, and increase electricity generation. The proposed fast-track legislation is a critical step towards decarbonising the New Zealand economy.

(c) Provides a One-Stop-Shop: The proposed system will be a 'one-stop-shop' for resource consents, notices of requirement, and certificates of compliance under the Resource Management Act (1991) and approvals required under various other acts including the Conservation Act 1987, Wildlife Act 1953, Freshwater Fisheries Regulations 1983, Reserves Act 1977. This will increase efficiencies, improve productive and reduce duplication.

(d) Respect for Treaty Settlements: The Bill has an overarching clause requiring everyone working under the bill to act in a manner that is consistent with existing Treaty of Waitangi settlements.

5. The most important changes required to the Bill are that it must allow for reconsenting and repowering of existing hydro and wind generation respectively. This is a hugely important issue.

6. Meridian operates the Waitaki and Manapouri Power Schemes. These two schemes are of national importance, collectively contributing to over 26% of New Zealand's total electricity generation on average.

7. The current process for renewing water permits for these schemes is lengthy and inefficient, especially considering the physical infrastructure for these schemes already exists and is a permanent and embedded part of the environment. Going backwards on this score is no basis for the large-scale investments needed in the industry. Accordingly, we believe that a pathway must be provided for reconsenting and repowering within the Bill and that this Bill should not only apply to new development.

8. I look forward to presenting and discussing our submission with the Committee.

Nāhaku noa, nā

Neal Barclay
Chief Executive

Fast-track Approvals Bill

Submission to Environment Committee

by Meridian Energy Limited

19 April 2024

SUBMISSION ON BEHALF OF MERIDIAN ENERGY LIMITED

To: Environment Select Committee

Submitter: Meridian Energy Limited

INTRODUCTION

1 This submission is made by Meridian Energy Limited (*Meridian*) in relation to the Fast-track Approvals Bill (*the FTAA*).

2 Meridian wishes to appear before the Select Committee to speak to this submission and to answer any questions the Committee might have.

3 We attach at Appendix 1 a joint submission prepared for the Electricity Sector Environment Group (*ESEG*) that Meridian is part of, and which relief Meridian supports.[1]

BACKGROUND

4 Meridian is listed on the New Zealand Stock Exchange and Australian Securities Exchange and is a mixed ownership model company, 51% owned by the New Zealand Government.

5 The core business of Meridian is based on the generation, marketing, trading, and retailing of electricity.

6 As Aotearoa New Zealand's largest electricity generator, Meridian produces approximately 30% of the country's electricity, all of which is derived from 100% renewable sources such as wind, water, and sun.

Meridian's experience as a renewable generation asset owner and developer

7 Meridian is a significant developer of renewable energy projects in Aotearoa New Zealand (and has overseas development and operational experience with past developments in Australia, Antarctic, United States and Tonga). Meridian's generation facilities are regionally and nationally important physical resources.

8 In Aotearoa New Zealand, Meridian is the owner and operator of the nation's two largest hydro power schemes: the Waitaki Power Scheme (*WPS*), which extends from Lake Pūkaki downstream and comprises six power stations, and the Manapōuri Power Scheme

[1] Meridian Energy Limited, Mercury NZ Limited, Contact Energy Limited, Manawa Energy Limited and Genesis Energy Limited

(*MPS*). These hydro schemes generate approximately 90% of Meridian's electricity output and are critical to Aotearoa New Zealand's security of electricity supply.[2]

9 Meridian owns and operates five wind farms across New Zealand that it has consented and built, these are: Te Uku (Raglan), Te Apiti (Manawatu), Mill Creek (Wellington), West Wind (Wellington)[3], and White Hill (Southland).[4] Collectively, these wind farms generate sufficient electricity to power approximately 200,000 homes annually. These facilities were consented and built between the early 2000's and mid 2010s decade.

10 Meridian is currently in the process of constructing a new wind farm in Hawke's Bay, valued at $395 million. The Harapaki Wind Farm will stand as New Zealand's second-largest wind farm, consisting of 41 turbines each with a capacity of 4.3 MW. This will generate a total of 176 MW of renewable energy, enough to power over 70,000 average households. The project has already reached a significant milestone, with more than 20 turbines operational and generating electricity.

11 In addition to this, Meridian is currently constructing Aotearoa's largest grid-connected battery energy storage system (*BESS*) at Ruakākā, located north of Auckland. The BESS, spanning an area equivalent to two rugby fields, will provide additional reserve power and resilience to the national grid. It is on schedule to be fully commissioned by September 2024.

Current Meridian Consenting Processes

12 Resource consent applications for a solar farm at Ruakākā (**Ruakākā Solar**) adjacent to the BESS were submitted in September 2023. In February 2024, resource consents authorising the construction and operation of the solar farm and related effects were granted by the Whangarei District Council. In March 2024 the resource consent applications to the Northland Regional Council were publicly notified. The key issue is the extent of wetland protection and restoration required on a site that is land zoned Heavy Industrial in the vicinity of Marsden Point. A hearing will be scheduled for mid-2024 and when the decision is released it will be capable of being appealed to the Environment Court. The final timing for this project, which Meridian considers should have been processed without requiring notification, is now open ended.

13 Meridian is currently working towards obtaining resource consents for the **Mt Munro Wind Farm**, situated approximately 5km south of Eketāhuna. The proposed wind farm will consist of 20 wind turbines, with a combined generation capacity of up to 90MW. This is sufficient to power up to 42,000 homes annually. The resource consent application for this project was submitted to applicable four relevant councils (Tararua District, Masterton District, Horizons MW and Greater Wellington) in May 2023. The applications were accepted for direct referral to the Environment Court in November 2023. It is anticipated that the case will be heard by the Environment Court around September 2024 and a decision will likely follow some months later. Direct Referral to the Environment Court is regarded as one of the 'fast' processes under the RMA, however it will likely be around two years from consent lodgement until a decision is issued in this instance.

14 Meridian and NZ Windfarms have entered into a 50-50 joint venture to repower the **Te Rere Hau** wind farm located near Palmerston North on the Tararua Ranges. The

[2] Meridian hydro storage (Waitaki system and Manapōuri) is around 2,118GWh. Nationally, hydro generation capacity is approximately 5,361MW and storage is 3,845GWh
[3] Meridian also owns and operates the Brooklyn Wind Turbine, Wellington
[4] Te Apiti wind farm (90MW), White Hill wind farm (58MW), West Wind wind farm (143MW), Te Uku wind farm (64MW) and Mill Creek wind farm (59MW)

estimated capital cost for this revitalisation and re-powering is projected to be between $500 million and $600 million, with a total generation capacity of up to 170 MW. In December 2021 resource consent applications were made pursuant to the Covid-19 Recovery Fast-track process. In May 2023, the Te Rere Hau wind farm was granted a two-year fast track consent, allowing for the installation of 30 new, larger turbines. Currently, a second phase extension consent is being sought in the Covid-19 Recovery Fast-track is being pursued to extend the project with an additional nine turbines.[5] The extension applications were lodged in March 2023 and in April 2024 a hearing panel was appointed. A decision on the extension application is likely to be issued in the second half of 2024. This initiative marks New Zealand's first wind farm repowering project and has the potential to increase the annual renewable energy production of the existing development by a factor of seven. From start to end the consenting via this Fast-track process will be around two and a half years.

15 Meridian is currently seeking resource consent for the **Manapōuri Lake Control Flow Improvement Project**. While this project does not contribute to additional power generation, it is designed to enhance the aquatic ecology and preserve the freshwater values of the Lower Waiau River. The project aims to improve the flow conveyance and reliability through the Manapōuri Lake Control, with an expected increase in flushing flow reliability from the current 30% to approximately 70%. The proposal includes the construction of a new channel, involving the excavation and disposal of approximately 225,000m^3 of gravel and bed material over a stretch of about 1 km, on land owned by Meridian near the new channel. While this project does not contribute to additional power generation, it is designed to enhance the aquatic ecology and preserve the freshwater values of the Lower Waiau River. The project was submitted in December 2023 and was publicly notified, with the submission period closing in April 2024. A hearing and decision is expected in the second half of 2024. Having been publicly notified the project decision could then be appealed to the Environment Court.

16 Meridian, Ngāi Tahu, Woodside Energy, and Mitsui & Co., Ltd are currently in discussions over commercial arrangements prior to moving forward to the development stage for the proposed **Southern Green Hydrogen** (SGH) project in Southland. The SGH project plans to produce 500,000 tonnes of ammonia per year, undertaking electrolysis powered by renewable energy sources and would likely be one of the world's largest green hydrogen projects. The assessment of environmental effects of the facility are being worked on at present, technical works on the proposal are continuing and the team is also exploring various options for the supply of hydrogen and ammonia. These include catering to the domestic market and potentially exporting ammonia to markets in Asia and Europe. All these efforts are part of a comprehensive assessment to ensure the project's success and sustainability.

17 Accordingly, Meridian is heavily involved with existing RMA approval processes process as to obtaining resource consents and other approvals with four projects currently in active consenting processes (i.e. Mt Munro Wind Farm; Ruakākā solar; Te Rere Hau wind farm and the Manapōuri Lake Control Improvement Project). Existing RMA processes, even the 'fast' processes, are not efficient and entail key uncertainties about when projects can advance to subsequent delivery stages.

18 Meridian's experience of RMA consenting process has demonstrated a strongly increasing tendency of longer timeframes, increasing complexity and greater uncertainty. With no

[5] The Minister for the Environment agreed to refer this application to an expert consenting panel, and on 22 June 2023 Schedule 91 was included in the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020

corresponding better environmental outcomes as a result. Back in 2003, Meridian obtained planning approval for Te Apiti, New Zealand's first commercial wind farm. The hearing was completed in a single day, and a decision containing 20 consent conditions was delivered in under three months following the filing of the consent application. Contrastingly, the Mill Creek wind farm in Wellington presented a more challenging scenario. The consenting process demanded two hearings and spanned nearly four years to grant approval for a turbine count that was half of what Te Apiti had. The decision was accompanied by 90 conditions and numerous detailed management plans. From Meridian's standpoint, the final decision for Mill Creek did not yield a better environmental outcome than earlier processes. Hence, the FTAA is timely, fitting and absolutely required. For a more detailed comparison of the time cost and complexity for Meridian projects over time, please refer to the table below.

Power Station	Turbines	Average homes	Council hearing days	Environment Court hearing days	Number of Territorial council conditions	Lodged	Final Decision issued
Te Apiti	55	30,000	1	Nil	20	19 June 2003	3 September 2003
White Hill	29	22,000	3	Nil	30	6 October 2004	21 December 2004
West Wind	62	73,000	17	18	114	1 July 2005	20 July 2007
North Bank Tunnel	Hydro	300,000	27	11	-	12 October 2006	23 November 2010
Hayes	176	263,000	19	32	90	12 July 2006	16 August 2010 (HC decision)
Mill Creek	26	34,000	26	11	90	12 March 2008	16 February 2012
Central	52	50,000	10	3	109	5 May 2008	14 June 2010
Hurunui	28	31,000	Nil	26	114	21 February 2011	4 November 2013

Immediate future development

19 In 2023 Meridian publicly set an ambitious goal to achieve seven large-scale renewable projects by 2030, within seven years (7x7). This marks the most extensive construction programme undertaken by a New Zealand generator in decades. This initiative is essential for the country to effectively mitigate climate change and transition of the economy towards a low carbon future. Utilising the FTAA Meridian proposes to include at least two further significant projects via the Schedule 2A process, being:

a. The **Waiinu Energy Park**. Near Waiinu Beach and Waitootara, South Taranaki and 42km north-west of Whanganui comprises Wind generation (350MW, 50 turbines), Solar array (400MW) a Battery Energy Storage System together with supporting infrastructure on privately owned land held in two 'blocks' on 4,700 ha and 600 ha approximately. The maximum annual generation is expected to be 2,000 GWh. The project is one of the largest economic renewable energy development opportunities in New Zealand that Meridian is aware of. The project entails a likely investment of approximately $1.5 – $1.7 billion.

b. The **Western Bay Solar** Project. Located on the western side of Lake Taupo and east of Bunnythorpe to Whakamaru 220kV transmissions lines. The proposed solar project has a maximum capacity of 500MW and is located within an approximate project site of 630ha of privately owned farm land. This project entails an investment of approximately $800 million.

20 Meridian, has a proven track record, the experience, resourcing and the determination to invest in the consenting and construction of large-scale renewable electricity generation facilities. A regulatory framework that can quickly assess, and if suitable approve, these opportunities is crucial.

The need for generation investment and transition to a low carbon economy

21 Generation investment is required at pace to ensure security of supply and least cost options for generation can be delivered together with the transition towards a low carbon economy. It is very clear that the only realistic pathway to that transformation is increasing electrification and a step change in the delivery of new renewable generation and maintenance of existing renewable generation. The FTAA is essential in this regard.

22 There is an unparalleled requirement to develop new renewable generation methods to achieve the transition to a low carbon economy. Figure 1 and Figure 2 below illustrate the actual electricity generation from 1950 to 2020, as well as the projected levels up to 2050 to align with New Zealand's aspirations for a low carbon future. Approximately 1,250 GWh of new renewable energy generation will be needed each and every year until 2050. This is equivalent to initiating a new West Wind windfarm project every five months until 2050. For additional context, an average of 380 GWh of new renewable energy was commissioned annually in the 30 years leading up to 2020. This implies that the nation will need to hit an annual run-rate of construction equivalent to about 300% of the past electricity generation each year until 2050. Crucially as the next section notes the country also needs to re-consent and re-power the foundation of existing renewable generation, in the same timeframe.

23 The graphs below are derived from a report by Concept Consulting, which independently evaluated the amount of new renewable energy generation needed to meet targets. The general assessments and conclusions align broadly with other similar studies conducted by organisations including Transpower, the Climate Change Commission and Electricity Authority.

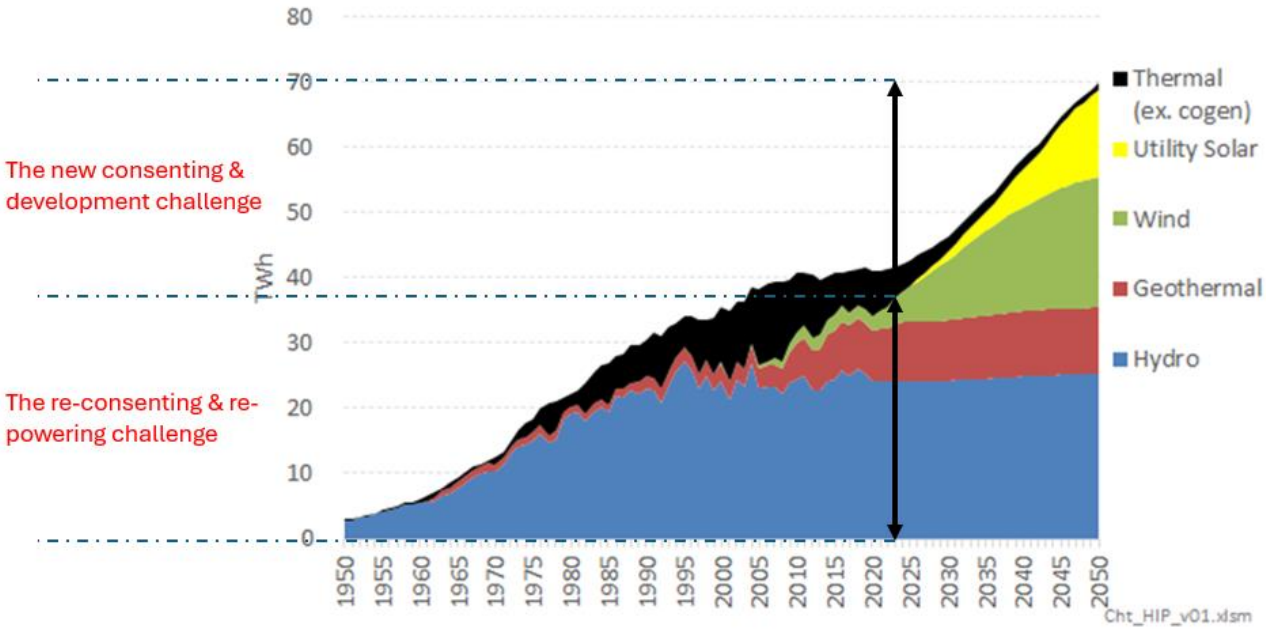

Figure 1: Central projection of generation levels

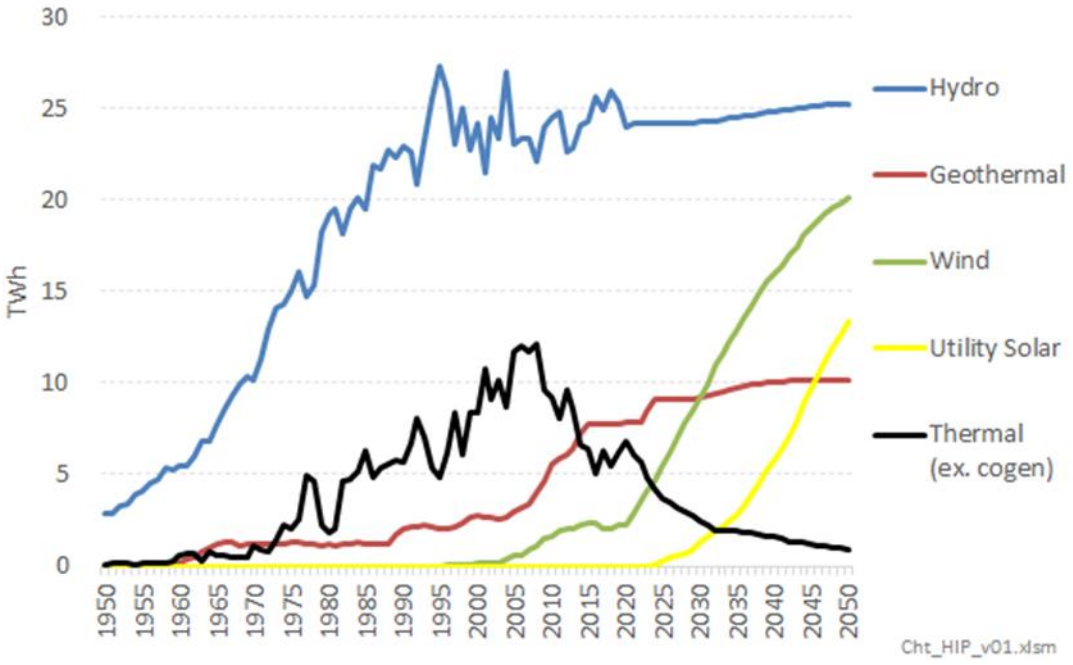

Figure 2: Central projection of generation levels (by type)

24 Accordingly, given the scale and size of utility infrastructure, a fit for purpose regime for consent assessment and approval is essential. Therefore, Meridian supports the introduction of the FTAA designed to help navigate these challenges. Meridian, in particular, values the streamlined 'one-stop-shop' model, where all approvals can be

secured concurrently. This approach is anticipated to boost efficiency in obtaining approvals for large-scale projects.

Importance of re-consenting and re-powering

25 The extent of renewable generation that has to re-consent is huge. At the most simple level this can be conceptualised as essentially all existing hydro and geo-thermal generation that will require reconsenting. This is required simply to stand still by maintaining the foundation of the current electricity system, from which to launch towards the increase in renewable generation required for a future low carbon electricity system and economy.

26 Re-powering is also relevant in this context as existing generation particularly existing wind generation will need to re-power. The first generation of significant wind developments entering re-powering is underway now; Te Rere Hau is the existing project that Meridian is involved in with NZ Windfarms. In coming years that will include Te Apiti and this issue will role out across the sector.

27 There must be a process that is fit for purpose which allows for maintenance of the existing renewable electricity generation that is already in place. All available projections (e.g. as shown in figure 1) assume that existing generation continues. Reducing the generation output and capacity from existing renewable generation and having a process that encourages perpetual re-litigation and uncertainty is deeply counterproductive.

28 Meridian supports and will seek to utilise the FTAA, in doing so it makes the following submissions points regarding recommended amendments.

FIRST SUBMISSION POINT –THE FTAA SHOULD INTENTIONALY AND EXPLICITLY APPLY TO RECONSENTING HYDRO AND REPOWERING WIND FARMS - SUPPORT AND OPPOSE CLAUSE 3, FOURTH SCHEDULE CLAUSES 35(1), 37(2), 37(4) AND 35:

29 As it stands, the FTAA in its current form is not suitable for the reconsenting of hydro developments and repowering existing wind farms. Reconsenting and repowering types of projects, being already in existence with well understood effects should be capable of undertaking a FTAA assessment and approval. The approach of the FTAA is unclear in regard to existing projects/facilities and must be more intentional and directive in its approach.

30 Meridian is currently engaged in the process of reconsenting the WPS. This process, which is likely to span several years before reaching a final conclusion, will result in considerable costs, delays, and inefficiencies as it works through the existing RMA processes. This is despite the fact that the WPS complies with the Canterbury Regional Council's Waitaki Catchment Water Allocation Regional Plan (WCWARP) and Canterbury Land and Water Regional Plan (CLWRP) and is a controlled activity under both (i.e., it cannot be refused). The WPS is the largest hydro scheme in the country by electricity output, it plays a pivotal role in ensuring the security of the country's electricity supply and achieving New Zealand's greenhouse gas emission targets. The WPS, has been operational since 1935, is a fully embedded in the local environment and is an integral part of New Zealand's electricity system. Lake Pūkaki, a part of the WPS, serves as the largest hydroelectricity storage lake in New Zealand, providing an average of 2013 GWh of stored water, which accounts for 56% of New Zealand's historical average hydro storage. The WPS is

essentially irreplaceable. The following agreements have been entered into in support of a like-for-like reconsenting outcome:

- Director General of Conservation
- Central South Island Fish and Game Council
- New Zealand Transport Agency / Waka Kotahi
- Whitewater New Zealand and Tekapo Whitewater Trust
- Mana whenua (the three Waitaki Rūnaka, supported by Te Rūnanga o Ngāi Tahu)

31 Negotiations on three further mitigations agreements are well advanced. Affected Party Approvals have also been provided on specific matters by:

- Glentanner Station in relation to the irrigation offtake and vehicle access for Catherine Fields
- Haldon Reserve Trust in relation to Haldon Arm recreational camping ground
- High Country Salmon Limited in relation to its almon farming operations, including the facilities located in Lake Ruataniwha/Ōhau B Canal/Wairepo Arm
- Mount Cook Alpine Salmon Limited in relation to its Pūkaki Visitors Centre and salmon farms located in the Ōhau Canal, Lake Ruataniwha/Ōhau B Canal and Ōhau C Canal
- Network Waitaki in relation to its substation, underground cables and transformer located at the Waitaki Dam
- Pūkaki Tourism Holdings Limited in relation to its commercial kayaking rental business over part of Lake Pūkaki
- Waimate District Council in relation to the Briar Gully, Te Akatarawa, Waitangi West, Waitangi East, and Fisherman's Bend camping grounds
- Waitaki District Council in relation to the Alps to Ocean cycleway and Parson Rock, Loch Laird, Otematata Boat Harbour and Wildlife Reserve camping grounds
- Kurow Duntroon Irrigation company in relation to its intake located at the Waitaki Dam

32 Despite the scheme's immense significance for New Zealand, its compliance with the regulatory planning framework, and the agreement of key stakeholders to the reconsenting of the project, it will likely take years before approval is granted and a like-for like outcome is not assured. Ironically, this means that the new and enhanced environmental mitigation measures proposed by Meridian cannot commence until consent is issued, thereby the delay and uncertainty are detrimental to achieving better environmental outcomes.

33 Meridian is also in preparatory stages for the repowering of existing wind farms. Typically, a wind farm has a life cycle of 25 – 30 years. The first of those owned by Meridian is Te Apiti. Repowering would likely involve the use of existing infrastructure (such as internal roads, cabling, etc.), but with the installation of fewer, yet larger turbines, producing significantly more renewable electricity. These existing sites are already recognised within the environment as wind farms, and therefore, the effects are minimal, known and well understood. However, new consents will be required despite the land's existing and accepted use for renewable electricity generation already occurring.

34 Meridian would prefer to utilise the FTAA for reconsenting and repowering, however, as currently drafted it is unfit for this purpose for the following reasons:

(a) **Water Allocation Continued Use:** Meridian's current consents to the WPS are set to expire in April 2025. As per Section 124 (and related provisions in s124A – 124C) of the RMA, a replacement application lodged six months prior to the expiry ensures continued authority to utilise existing consents and access to the water, while the new applications are processed and decided. This required the filing of a reconsenting application for WPS by October 2024, which Meridian has done. However, the FTAA is unlikely to be enacted before October and does not contain a similar provision or recognise such provisions in the RMA. Further the FFAA requires Meridian to withdraw its current RMA application, losing its Section 124 protection for the WPS. The FTAA requires a provision to allow existing consented activities to be able to continue to operate while replacement consent applications are being processed and decided, recognising the specific timing issues.

(b) **Purpose and Function:** The FTAA's primary objective is to expedite the execution of infrastructure and development projects. However, it is unclear whether Clause 3 of the FTAA recognises reconsenting and existing infrastructure or is solely intended for new developments. The issue is, where a project already exists (i.e., it has previously been 'delivered') it is not clear that reconsenting achieves the purpose of the FTAA. Amendment is required to clearly recognise reconsenting and repowering of existing facilities are projects contemplated by the FTAA purpose clause.

(c) **Controlled Activity Status:** WPS reconsenting is a 'controlled activity' status under the WCWARP and CLWRP. This means that any controlled consents must be granted. Moreover, the conditions of the resource consent can only be applied to those aspects for which control is specifically reserved in the described regional plan. Regrettably, this consent status seemingly does not apply to the FTAA. For example, under the FTAA, any condition can be evaluated and enforced on the applicant via Schedule 4 clause 35(1). Amendment is required to limit any condition on a resource consent to being conditions applicable under the RMA.

(d) **Consent Conditions:** Conditions of consent have the potential to reduce the national and regional benefits of the WPS (and other national and regional infrastructure) by reducing the effectiveness and increasing cost. In 2017 the RMA was amended by the introduction of Section 108AA to create greater statutory discipline in the imposition of conditions of consent. Continuation of this more disciplined approach is important to achieve the purpose of the FTTA.

35 For the above reasons Meridian seeks the following amendments:

(a) Amend Clause 3 to read:

The purpose of this Act is to provide a fast-track decision-making process that facilitates the delivery of new infrastructure and development projects, and the ongoing delivery of existing infrastructure and development projects giving greatest weight to ~~with~~ significant regional or national benefits.

This amendment is to ensure that the FTAA regime includes reconsenting of existing infrastructure rather than being limited to new infrastructure only and seeks to strengthen the FTAA with the introduction of the words 'giving the greatest weight to' which matches the language at Schedule 4, clause 32(1).

(b) Amend Schedule 4 Clause 35(1) to read:

Sections 104A to 104C, 105 to 107, and 138A(1), (2), (5), and (6) of the Resource Management Act 1991 apply to a panel's consideration of a consent application for a listed and referred project.

The above amendment ensures listed projects are also considered subject to s104A-104C, 105 to 107 and 138A(1), (2), (5) and (6). It requires a panel to have regard to relevant resource management matters in that planning document when considering both a listed and referred project. This requirement aligns with clause 35(3) and may be a drafting error.

(c) Amend Schedule 4 Clause 37(2) to read:

A panel may recommend that an application be subject to the conditions it considers appropriate in accordance with the Resource Management Act 1991, including conditions required to ensure that any aspect of a Treaty settlement or other arrangement with 1 or more iwi or hapū is recognised or protected.

The above amendment seeks to ensure that the FTAA and the wide-ranging power to impose conditions adheres to the restrictions that apply to consent conditions in the RMA (i.e. controlled activity).

(d) Amend Schedule 4 Clause 37(4) to read:

Sections 108, 108AA to 112, and 220 of the Resource Management Act 1991 apply to conditions imposed under subclause (2), subject to all necessary modifications, including the following:

We are of the opinion that the absence of section 108AA is likely a drafting oversight. However, if left uncorrected, it could imply that panels have been given the authority to propose extensive conditions, including some that would not be permissible under the RMA.

(e) Include within Schedule 4 Clause 35:

If a consent application for a listed or referred project relates to the application of natural resources used for an activity and the consent holder applies for a replacement consent before the expiry of the consent under the Resource Management Act 1991 or this Act the consent holder may continue to operate under that resource consent until the determination of the holder's application and any subsequent appeals and s 124 – 124C of the Resource Management Act shall apply as if the application was made in conformity with the timeframes and process described there.

The above amendment is to ensure that an applicant may apply to reconsent their existing activity without being penalised by way of utilising the FTAA and is otherwise consistent with the intent of s124 of the Resource Management Act being the ability to continue to exercise a resource consent while processing a new consent.

SECOND SUBMISSION POINT – THE FTAA NEEDS TO STRENGTHEN THE ELIGIBILITY CRITERIA FOR RENEWABLE ELECTRICITY – SUPPORT AND OPPOSE CLAUSE 17(3)

36 Clause 17 provides the eligibility criteria for fast-track projects. It specifically mentions aquaculture, it omits renewable electricity generation. Given the non-substitutability of electricity in daily life, the need to ensure a secure supply of electricity and the existential threat of climate change to New Zealand's wellbeing, we submit it is essential to include REG activities in this provision.

37 For the above reasons Meridian seeks the following amendments:

(a) Include within clause 17(3):

Will maintain or deliver significant renewable electricity generation and/or will convey electricity to the distribution network or the national grid:

The above amendment expressly seeks to include REG as one of the many eligibility criteria for projects that may be referred to the panel and provides this for exiting and new REG.

THIRD SUBMISSION POINT – THE FTAA NEEDS TO PROVIDE FOR ADDITIONAL APPICATIONS TO BE INCLUDED OR ADDED WITHIN THE SAME PROCESS – SUPPORT AND OPPOSE CLAUSE 10(2):

38 Clause 10 outlines part of the approval process for qualifying projects. Specifically, it allows for either a single approval for a project (for instance, a resource consent under the Resource Management Act) and/or a comprehensive package of all necessary approvals for the project (such as a resource consent under the Resource Management Act coupled with an approval under the Conservation Act).

39 As an additional point we believe it would be advantageous if the FTAA could anticipate the inclusion of supplementary applications into an existing listed or proposed referred project. This would be particularly useful in scenarios where a project is listed and referred, and subsequently warrants expansion with extra landowners joining a project.

40 We suggest a new subclause be included at Clause 10(2):

> *Where appropriate, an applicant may make a further application to their initially listed and referred application under the fast-track process and for the same to be heard concurrently.*
>
> The above amendment would allow for supplementary and connected applications to catch up with the substantive application and therefore save time and otherwise be more efficient.

FOURTH SUBMISSION POINT – ENGAGE, CONSULT OR INFORM - SUPPORT AND OPPOSE CLAUSE 16:

41 Clause 16 sets out the consultation prerequisites for approvals under the FTAA. These steps must be executed prior to submitting a referral application and necessitate that the applicant engage with iwi and local authorities.

42 Clause 16 asserts that '*…the applicant must undertake* ***engagement*** *with…*'. While the Explanatory Note – General Policy Statement refers to '*the consultation requirements*', as does the heading to the section '*Consultation Requirements…*', the section itself uses the term '*engagement*'.

43 The concern is that the use of the word '*engagement*' in Clause 16 may suggest a more substantial commitment on the part of the applicant. The Oxford Dictionary defines '*engage*' as '*to bind or secure by a pledge, to bind by a contract or formal promise*', which implies a higher level of commitment than '*consult*', which generally means '*to ask for advice or seek counsel from*'. The term '*consult*' is widely used within the RMA and is commonly understood to imply a less binding interaction than '*engagemen*t'. That is, consultation is a routine part of the resource consent application process in practice. There is also existing case law about what consult means and requires, whereas the concept of engage and engagement is new and does not have the benefit for all participants regarding what is required.

44 We understand the mandatory requirement for discussions with iwi and local authorities is understood to reflect the scale and significance of the project. Case law generally supports that 'meaningful consultation' is fact-specific and must be assessed objectively. However, the overarching principle in all cases is reasonableness. For a consultation to be considered meaningful, it requires the provision of sufficient information to the other party. This ensures they are adequately informed and capable of providing insightful and useful responses. Is this the intended outcome? That is, a two-way process to shape any particular project? There is also the possibility that a party may not agree to being consulted or engaged with or is otherwise unavailable. We propose that a more appropriate benchmark would be to "inform" or "notify" iwi and respective local authorities in the first instance to ensure they are aware of potential referral applications. This thinking is especially important considering *Muaupoko Tribal Authority Inc v Minister for the Environment* 2023 NZCA 641 where Clause 3.33 and Appendix 5 of the National Policy Statement for Freshwater Management was quashed because consultation with mana whenua and kaitiaki was found to be inadequate, inappropriate and insufficient and that the opportunity for input must be meaningful, that is, "more than mere notification is required".

45 We suggest the following amendment to Clause 16:

*…the applicant must undertake <u>to notify</u> [***or** *consult with]~~engagement with~~ the following groups before lodging…*

The above amendment is intended to ensure there is a lesser threshold of discussion before lodging a referral application.

FIFTH SUBMISSION POINT – LAND INCLUDED WITHIN INELIGIBLE PROJECTS – OPPOSE CLAUSE 18(h):

46 Clause 18 outlines the types of projects that are not eligible for consideration under the FTAA. An issue arises with Clause 18(h), which stipulates that any activity conducted on land located within a national park, nature reserve, scientific reserve, wilderness area, conservation area (designated as wilderness or sanctuary areas), wildlife sanctuary, marine reserve, Ramsar site, the Mercury Islands group (with certain exceptions), Kaikoura Island Scenic Reserve, and Rakitu Island Scenic Reserve is ineligible. These areas correspond to items 1-11 and 14 of Schedule 4 in the Crowns Minerals Act 1991.

47 The location of New Zealand's largest power station being the Manapōuri Power Scheme is within the Fiordland National Park. There are also three marine reserves[6] within Doubtful Sound (created after the Manapouri hydro scheme) where the Manapōuri tunnel discharges freshwater into Deep Cove and the application of the Fiordland (Te Moana o Atawhenua) Marine Area Act. Additionally, there are suggestion to expand the Aoraki/Mt Cook National Park to include the Tasman River delta of Lake Pūkaki, which is part of the Waitaki Hydro Scheme and serves as a hydro lake. It is believed that Crown Land, managed by LINZ, is contemplating options to alienate parts of the Meridian Operating Easement Land at Lake Pūkaki and other locations relevant to the WPS. This land safeguards the ongoing use and operation of the WPS, and there are considerations to transfer its freehold title to certain third parties. This includes the Department of Conservation (DOC), which may hold it under the Reserves Act 1977 pursuant to section 167(1) of the Land Act 1948. This could potentially lead to a change in the status of land designated as scenic reserve land in the future. Moreover, there is a proposal for the establishment of the Te Manahuna Aoraki dryland park in the future.

48 The primary concern is that, for those nationally significant hydro schemes that despite their established status, irreversibility, fully embedded nature in the existing environment and national significance ; reconsenting activities may face active prohibition (i.e. be ineligible) from utilising the FTAA processes. This could prevent the use of FTAA processes for reconsenting and any potential upgrades or enhancements in the future. While it may be prudent for the FTAA to preclude new activities from being considered in the listed areas, it is strongly submitted that allowing for reconsenting of existing activities is entirely reasonable and consistent with the FTAA intention of maintaining existing values in those areas.

[6] Elizabeth Island Marine Reserve, The Gut Marine Reserve and The Gaer Arm Marine Reserve

49 We suggest the amendment of clause 18(h):

> *Unless already existing, an activity (other than an activity that would require an access arrangement under the Crown Minerals Act 1991) that would occur on land that is listed in items 1 to 11 or 14 of Schedule 4 of that Act:,*
>
> The above amendment is aimed at ensuring nationally important infrastructure located within the National Park (or elsewhere) may still have the opportunity of utilising the FTAA.

SIXTH SUBMISSION POINT – WHEN MINISTERS MAY REQUEST INFORMATION – SUPPORT AND OPPOSE CLAUSE 20(3):

50 Clause 20 allows the joint Ministers to request additional information pertaining to a referral application. While a provision of this type could be of assistance, clause 20(3) provides that such a request can be made at any point prior to a decision being reached. We perceive this may be a drafting oversight, as we believe that the joint Ministers should have the authority to seek further information concerning the referral decision, not the substantive decision itself.

51 We suggest subclause 20(3) be amended to read:

> *A request may be made at any time before a decision on the referral application is made.*
>
> The above amendment would ensure information is only requested by Ministers at the time of referral.

SEVENTH SUBMISSION POINT – INEVITABLE SIGNIFICANT EFFECTS RESULT IN DECLINING A REFERRAL APPLICATION – OPPOSE CLAUSE 21(2)(c):

52 Clause 21(2)(c) permits the joint Ministers to reject a referral application if the project might result in '*significant adverse effects on the environment*.'. It is inevitable that projects of national and regional magnitude will have a corresponding scale of effects, and environmental changes (such as subjective visual effects or amenity). We strongly submit that Clause 21(2)(c) should be removed. This is because the referral application is not the comprehensive application and decsion, and the substantive application will entail additional details. Moreover, the current wording of the clause does not consider any mitigation, offsetting, or compensation measures. Furthermore, as long as clause 21(2)(c) remains almost every decision to refer a project will be vulnerable to challenge as the project will result in significant adverse effects. In any regard we observe that clause 21(2)(g) stipulates that the referral application can be rejected for any other reason, ensuring that the joint Ministers retain full and flexible discretion to decline to refer.

53 We suggest subclause 21(2)(c) be deleted:

> ~~*The project may have significant adverse effects on the environment;*~~

The above amendment would allow for a more appropriate assessment of significant adverse effects by the expert panel and more robust decisions regarding referral.

EIGHTH SUBMISSION POINT – APPLICATION OF THE CONSERVATION ACT – SUPPORT AND OPPOSE SCHEDULE 5, CLAUSE 2(2)

54 Schedule 5 outlines the procedure for securing concessions under the Conservation Act 1987 and approvals under the Reserves Act 1977. In this regard numerous amendments are made to the Conservation Act. However, the issue arises when not every section within the Conservation Act is amended to accommodate the application of the FTAA. This situation could potentially lead to a conflict between the Conservation Act and the FTAA. Therefore, we propose that it would be sensible to ensure that Schedule 5 explicitly states that the FTAA takes precedence over any conflicting matter.

55 We suggest amending Schedule 5, clause 2(2) to read as follows:

> *~~Remaining~~ Provisions of the Conservation Act 1987 that are not explicitly ~~modified~~ altered by this schedule ~~otherwise~~ will continue to apply to a fast-track concession, ~~to the extent that they are relevant~~ except when they need to be modified or superseded by necessary implication, consequential amendment, or when ~~and with any~~ necessary modifications are required.*
>
> The above amendment is seeking to ensure that all clauses within the Conservation Act are addressed and subject to the FTAA.

NINTH SUBMISSION POINT – DURATION OF LAPSE DATE SHOULD BE FIVE YEARS – OPPOSE 4th SCHEDULE Cl 39(9)

56 The Fourth schedule Clause 39(9) outlines the process under the Resource Management Act. The issue with Clause 39(9) is that it only provides a consent lapse period of 2 years. Within our industry all projects include considerable overseas sourced components, commercial negotiation and mobilisation of large workforces and contractor teams. Tendering for supply of components and labour while making the non-reversable decision to enter contracts against foreign currency movements and supply chain disruptions, shipping constraints, war, pandemics, and availability of transmission capacity while ensuring commercial and probity discipline - will in a number of cases take considerably longer than a 2 year lapse period. We submit that the default lapse period currently provided for within the Resource Management Act of 5 years should apply.

57 We recommend the following amendment to the Fourth Schedule Clause 39(9):

> *The date specified under subclause (8) must not be later than ~~2~~ 5 years—*
>
> The above amendment would enable a five year lapsing date period as is consistent with the Resource Management Act.

TENTH SUBMISSION POINT – FAST TRACK APPLICATIONS – SUPPORT SCHEDULE 2A:

58 Schedule 2A sets out listed projects that are referred to an expert panel without requiring referral by the joint Ministers. Part A is currently not populated, and submitters are instead invited to make an application on the Ministry for Environment Fast-track approval applications form by 3 May 2024. Meridian will be making an application for at least two projects being the Waiinu Energy Park is near Waiinu Beach and Waitootara, South Taranaki and the Western Bay Solar Project on the western side of Lake Taupo.

59 We recommend the retention and population of Schedule 2A.

ELEVENTH SUBMISSION POINT –APPEALS SHOULD BE LIMITED TO PARTIES WHO PARTICIPATED OPPOSE CLAUSE 26(1)(e):

60 Clause 26(1)(e), currently provides that an individual with an interest greater than that of the general public has the right to appeal a FTAA project decision to the High Court. A variety of specified interested parties are entitled to appeal under Clause 26 and that a range of interested parties may be invited to submit their comments on any application, as referenced in the Fourth Schedule, clause 20. The expanded appeal rights allowed by this clause to allow appeals by any party who was not a participant in the process; this would lead to significant inefficiencies and encourage appeals and tactical behaviour by non-participants that directly conflicts with the intention and purpose of the FTAA.

61 We consider that Clause 26(1)(e) must be deleted:

> ~~*any person who has an interest in the decision appealed against that is greater than that of the general public*~~
>
> The above amendment would ensure any appeal to the High Court would be from the applicant/requiring authority, the local authority, Attorney-General, and/or any party invited to comment being the party who were considered relevant to participate in the substantive process.

TWELFTH SUBMISSION POINT – THE PANEL SHOULD MAKETHE FINAL DECISION - OPPOSE Clause 25(7)

62 Clause 25 provides that the joint Ministers have the authority to refer the recommending report on a substantive project back to the expert panel for reconsideration. They may also commission additional advice themselves and/or solicit further comments from any affected parties. Ultimately, pursuant to the current drafting of clause 25 the Ministers have the final decision-making power to approve or decline any project.

63 Having a project considered by an expert panel, to then be considered again by Ministers is not efficient. It also adds an extra layer of uncertainty for project applicants if a project opponent can find any prior statement or action by a Minister that could (rightly or wrongly) taint a decision and be tactically challengeable.

64 It is respectfully submitted that a preferrable approach would be for Clause 25 to be amended to allow for Ministers to review and comment on draft decisions and conditions, but for the expert panel to be the decision maker.

THIRTEENTH SUBMISSION POINT – PANEL CONSIDERTIONS WEIGHT - OPPOSE SCHEDULE 3, CLAUSE 1(2):

65 Clause 1(2) sets out the purpose and functions of the expert panel, it contains what appears to be an error or typo. The clause states that when assessing any project, the panel is required to consider factors giving weight '(greater or lesser) in the order listed'. However, this approach seems to contradict the weight clearly articulated in the Fourth Schedule Clause 32, which states '…in the order listed (greater to lesser)'. We presume that the drafting of Clause 1(2) contains an error, and that 'or' should be replaced with 'to'.

66 We propose the following amendment to Schedule 3, Clause 1(2):

> *In assessing proposed approvals, the panel must generally take into account, giving weight to them (greater <u>to</u> ~~or~~ lesser) in the order listed,—*
>
> This amendment ensures consistency with the weighting principles found elsewhere within the FTAA.

FOURTHEENTH SUBMISSION POINT – APPLICANTS SHOULD HAVE A RIGHT TO A HEARING – SUPPORT AND OPPOSE SCHEDULE 4, CLAUSES 23 AND 24(1):

67 Clauses 23 and 24 specify that a hearing is not mandatory. However, the concern arises when dealing with complex and intricate matters where all parties might benefit from a hearing. We suggest amending the clauses to allow the applicant or the requiring authority to request a hearing if needed.

68 We propose the following amendment to Schedule 4, Clause 23:

> *There is no requirement for a panel to hold a hearing in respect of a consent application or notice of requirement and no person has a right to be heard by a panel, <u>unless the applicant or requiring authority requests to be heard</u>.*
>
> This amendment ensures the consistency with the weighting principles found elsewhere within the FTAA.

69 We also proposed that Schedule 4 Clause 24(1) and (2) be amended for the same reasons, that is, it reads:

> If, in its discretion, a panel considers it is appropriate to hold a hearing, <u>or if a hearing is required under clause 23</u>, it may hear from—
>
> ~~(a) the applicant; and~~
>
> ~~If a person or group that provided comments is heard, a panel must give the consent applicant or requiring authority the opportunity to be heard.~~<u>A panel must give the consent applicant or requiring authority the opportunity to be heard.</u>

CONCLUSION

70 The application of the RMA to consenting has become too slow, too complex and too uncertain. Existing RMA 'fast' processes are, in fact, not fast and not comprehensive. Meridian has extensive experience of consenting processes and subsequently building and operating significant new and existing renewable electricity infrastructure. The

extent of new generation needed and the extent of reconsenting and repowering is entirely unprecedented in this country; it will not be able to occur effectively without the FTAA applying to both new projects and reconsenting and repowering.

71 Meridian (and others) are ready willing and determined to invest in renewable generation projects that will serve the interests of customers, competition for new build opportunities, a secure electricity system and transition to a low carbon economy. The FTAA is required to enable that to occur.

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Appendix 1 -ESEG submission dated 19 April 2024

JOINT SUBMISSION OF ELECTRICITY SECTOR ENVIRONMENT GROUP

Introduction

1. This submission is made by New Zealand's principal electricity generators[1] collectively referred to as the Electricity Sector Environment Group (**ESEG**), to the Fast-track Approvals Bill (**the Bill**).

2. ESEG supports legislation providing for a comprehensive and efficient process to enable the approval of infrastructure projects with significant regional or national benefits.

3. As it stands, the Resource Management Act is too slow, too complex and too uncertain. It sustains neither environment nor economy. It presents an insurmountable barrier to New Zealand meeting its decarbonisation and electrification targets, including to double the supply of affordable clean energy as proposed under the Government's *Electrify NZ* policy.

4. The overriding purpose of this submission from the ESEG is to ensure that the Fast-track Approvals legislation operates to its intended effect and purpose as a key step towards broader system reform, so that the pace and scale of investment needed in renewable electricity generation (**REG**) projects to deliver on *Electrify NZ*, can actually be made.

5. It is vital that a timely, robust and effective process is established with urgency to assess and approve both new REG activities; and the very extensive amount of existing REG that must be re-consented and upgraded or repowered just to 'stand still'

[1] Meridian Energy, Mercury NZ, Contact Energy, Manawa Energy and Genesis Energy, together with the NZ Wind Energy Association.

in terms of New Zealand's electricity generation capacity, and maintain the current platform for further electrification of the economy.

6. Attached to this submission is a table setting out the detailed submission points and specific amendments to the Bill which ESEG considers are needed with this principal objective firmly in mind.

7. By way of summary, the specific amendments to the Bill detailed in the attached table are needed in order:

   (a) To orient the purpose of the Fast-track Approvals Act (**FTAA**) more towards establishing an efficient and complete (umbrella or 'one stop') decision-making process that approves beneficial projects, than on the speed of the process *per se*.

   (b) To ensure that, in addition to new REG activities, projects involving the continued operation (i.e. reconsenting), upgrading or repowering of existing REG assets (by way of changes to conditions of existing consents) can qualify as "eligible", given the critical need to secure the existing baseline of REG capacity for New Zealand to meet the *Electrify NZ* electrification targets.

   (c) To ensure that the agencies and institutions responsible for administration and decision making under the FTAA are sufficiently skilled, experienced and resourced, to provide the capacity needed for the process to be efficient and indeed "fast".

   (d) To ensure that decisions made to approve projects with significant regional or national benefits are not just timely, but robust, and safe from the prospect of successful legal challenge.

   (e) To that end, to recommend that decisions on whether to approve or decline approvals for eligible projects are made by the independent expert panels, rather than by the joint Ministers (as proposed under the Bill as currently drafted);

   (f) To ensure expert panels have the skills and experience needed to deal with the complex legal and factual issues likely to be presented by applications for approvals across the range of statutes covered by the FTAA.

   (g) To provide greater certainty as to the range and nature of projects qualifying as "eligible" to enter the process and be referred to an expert panel, and make the criteria for deciding whether to refer an eligible activity to an expert panel more certain, targeted and consistent with the Act's purpose.

(h) To rationalise the substantive tests needing to be applied and the processes needing to be followed in making decisions for the range of approvals across the Act, including across and within all relevant schedules.

(i) To simplify and rationalise the procedural steps from the point of entry to the fast-track process, by reducing the extent of discretion involved and focus the information required and generated at each stage of the process. Similarly, through proposing that the EPA rather than Government Ministries be responsible for all stages of application processing and administration.

(j) To increase or make more flexible the timeframes for processing and determination of an application sufficiently to ensure that good and robust outcomes are delivered, while still maintaining an efficient (and fast) approval process.

(k) To delete provisions carried over from the Covid Recovery Fast-track consenting process that were appropriate to the "shovel ready" objective of the time; particularly the two year limitation for implementation of projects. On its own, this provision would undermine the utility of the FTAA process as an option for consenting and approval of REG projects. A two-year lapsing date is unworkable in light of equipment procurement timeframes, and the need for detailed design and funding at the scale required for such investments.

(l) Conversely, a minimum 35-year duration of consent for REG activities should be required by the Act, given the intergenerational scale such investments represent.

(m) To otherwise ensure that drafting of the FTAA enables the statute to operate to its intended effect and purpose, through a range of proposed amendments to specific definitions and machinery provisions.

8. Subject to these changes being made, the FTAA is supported by the ESEG, with the regionally and national significant benefits of REG thereby better able to be secured and enabled under the legislation, specifically in mind.

9. ESEG trusts that this submission will be of assistance to the Select Committee and officials in examining and considering the drafting of the Bill, particularly in light of the overriding objective of the legislation as recorded at the outset of this joint submission.

FAST-TRACK APPROVALS BILL
SPECIFIC SUBMISSION POINTS FOR ELECTRICITY SECTOR ENVIRONMENT GROUP

Clause	Support/ Oppose	Reasons	Relief Sought
Clause 3 – Purpose	Support with amendment	The ESEG supports legislation providing for an efficient and complete or 'one stop' process to enable the approval of infrastructure projects with significant regional or national benefits. One of the principal impediments to New Zealand meeting its decarbonisation and electrification targets, including to double the supply of affordable clean energy as proposed under the Government's *Electrify NZ* Policy, is the unbalanced, protracted, complex, and resource consuming process for the assessment and approval of new and renewed or upgraded renewable electricity generation (**REG**) activities under the Resource Management Act 1991 (**RMA**), as it stands. This impediment is compounded by the frequent need to obtain other statutory approvals for a given project (for example under the Wildlife Act 1953, or Conservation Act 1987). A clear and concisely framed purpose statement that would be set as the dominant test for decision making under the Fast-track Approvals Act (**FTAA**), would serve to substantially address this pervasive problem with the status quo under New Zealand's existing resource management system. On the other hand, ESEG is concerned that the purpose as drafted in clause 3 of the Bill is more focused on the provision of a 'fast-track' *process*, than the significant regional or national benefits of the infrastructure and other projects themselves. While efficient processes are important, at the end of the day, outcomes are at least as important as pace. As addressed later in this submission, there are aspects of the Bill which promote the speed of the process to an excessive extent, and to the potential detriment of the regional and national benefits sought to be secured through project approval under the FTAA. The agencies, institutions and processes established under the FTAA will also need to be adequately resourced, skilled, robust against potential legal challenge, and sufficiently independent. ESEG is concerned that is not the case under the Bill as currently drafted. Aside from that point, ESEG notes that decision making under the Act will not facilitate the "delivery" of infrastructure projects (as currently referred to under clause 3), but instead, the approval of such projects. Actual delivery will depend on a range of factors including funding, procurement, construction, plant and equipment pricing, and broader consent implementation, which again needs to be accommodated within the FTAA. The	Amend clause 3 as follows: The purpose of this Act is to ~~provide a fast-track~~ establish an efficient and complete decision making process that ~~facilitates the delivery of~~ gives priority weighting to the approval of new, renewed and enhanced infrastructure and development projects with significant regional or national benefits. As otherwise sought in this submission table to ensure a robust, complete and efficient approval process for projects involving both consent renewals and new developments with significant national or regional benefits.

Clause	Support/ Oppose	Reasons	Relief Sought
		current two-year period for consent implementation set under Schedule 4 for RMA approvals, will be prohibitive against such delivery. A further and critical point is this. ESEG cannot emphasise enough, the importance from a decarbonisation and electrification perspective of ensuring that the existing baseline of electricity generation capacity is secured; without risk that existing REG activities would not be reconsented or be consented with reduced output on expiry of existing approvals. Consenting the pace and scale of REG needed to meet New Zealand's greenhouse gas emission reduction commitments end electrification targets will be challenging enough, assuming the existing baseline of REG capacity and output is entirely secure. If this existing capacity or output is at risk (or remains at risk, as under the current resource management system), meeting those commitments and the *Electrify NZ* ambition to double the supply of clean affordable energy would almost certainly become unachievable. ESEG therefore seeks to ensure that the FTAA enables the efficient approval of both new REG projects *and* consent renewals. A range of changes are sought to the Bill, starting with the purpose clause, with these objectives and concerns in mind. The purpose clause drafting proposed by ESEG would better ensure it is helpful to decision makers when applied as the dominant test for consideration of applications for approval, regarding the relative weighting to be given to regional and national benefits of infrastructure and development projects, in particular. The FTAA is supported by the ESEG subject to these changes being made, and with the regionally and nationally and significant benefits of REG thereby able to be better secured and enabled under the legislation, specifically in mind.	
Clause 4 – Interpretation, Definition of "approval"	Support with amendment	While supporting the definition in so far as it embraces the wide range of statutory approvals intended to be provided for under the FTAA, to better ensure the complete 'one stop' intent of the Act is achieved, the reference to "other authority" in the definition should be extended to expressly embrace all other legislation covered by the Bill, providing certainty that all forms of approval needed for a given project can be applied for and granted.	Amend definition of "approval" in clause 3 by adding the following words …. "or other authority <u>in any form required by the legislation referred to in **section 10**</u>".
Clause 4 – Interpretation, Definition of	Oppose: propose	The definition of "eligible activity" in clause 4 is said to have the "meaning given" by clause 17.	Transfer those criteria under current clause 17 (2) to (5) which are more relevant to a decision on whether

Clause	Support/ Oppose	Reasons	Relief Sought
"eligible activity" Clause17- eligibility criteria Clause 4 – Interpretation, Definition of "project"	amendment	However, clause 17 does not define or list a set of eligible activities to provide such a 'meaning', but instead includes a range of criteria that may be considered by the joint Ministers, after being forwarded an application to use the fast-track process by the responsible agency. These criteria include (in addition to consistency with the Act's purpose, and enabling process efficiency): • The impact which referring the 'project' would have on the efficient operation of the fast-track process; and • Whether the 'project' would have significant regional or national benefits. (clauses 17(2)(c) and (d)) As to the second of these criteria, the joint Ministers *may* consider *whether* a project "will deliver regionally or nationally significant infrastructure" or "will support climate change mitigation, including the reduction or removal of greenhouse gas emissions" in deciding whether that criterion is met. (clauses 17(3)(b) and (g)) While supporting express reference to climate change mitigation and the reduction or removal of greenhouse gas emissions (as can be achieved through approving new and upgraded or expanded REG projects), this factor is at the joint Ministers' discretion. There is also no definition of "regionally or nationally significant infrastructure" in the Bill. The Bill therefore gives no certainty as to what type, nature or scale of projects would be considered to have "significant regional or national benefits" for the purpose of clause 17(2)(d), and in turn be eligible for referral to an expert panel (if not listed in Schedule 2A or B). While the question of benefits (regional or national) is undoubtedly a relevant factor as to whether an eligible activity should be referred to an expert panel under clause 22, it should not define whether an activity is eligible *from the outset*. The impact which referring a given project would have on the efficient operation of the fast-track process (under clause 17(2)(c)) would similarly be better considered in clause 21 than under clause 17, i.e. again as a factor in deciding whether to refer an eligible	to refer an eligible project to an expert panel, to s 21 and s 22. Replace clause 17 with a definitive list of "eligible activities" including: • An electricity or gas distribution or an electricity transmission network, including all ancillary structures, facilities and associated infrastructure; • Renewable electricity generation and storage, including generation and storage of electricity from solar, wind, water, geothermal, biomass, tidal, wave, or ocean current energy sources; • Electricity generation and storage that supports the security of electricity supply; and • Any activity involving the upgrading, expansion, repowering or renewal of approval of these activities. Amend the definition of 'project' to include projects involving new or existing eligible activities.

Clause	Support/ Oppose	Reasons	Relief Sought
		project to a panel, not whether a project is eligible from the outset. However, additional concerns regarding this criterion (from a fast track system capacity perspective) are addressed later in this submission. In summary on this point, the Bill confers discretion both as to whether a given project (infrastructure or otherwise) would comprise an "eligible activity" in the first place, and then as to whether (even assuming 'eligible') that project would in fact be referred to an expert panel under clauses 21/22 of the FTAA. ESEG submits that there is no need for a "double discretion" stage evaluation process before referral to an expert panel. As it stands, the Bill runs counter to the intended purpose of the FTAA in this respect, as the process is neither efficient or sufficiently certain and directive as to the intended outcome. It is noted that the equivalent provision of Schedule 10 to the NBEA (as remains in force) sets a definitive list of what comprise "eligible activities", with the Minister then having discretion over whether to refer such an activity to an expert panel, with the benefit of specific project information and comments from relevant agencies and other parties. Under that approach there is only one stage of discretion applied. In line with that approach, and in so far as electricity generation and distribution are concerned, the list of eligible activities should include both generation and storage utilising all renewable resources currently referenced in the National Policy Statement-Renewable Electricity Generation 2011 (**NPS-REG**), as well electricity transmission and distribution infrastructure, and projects involving the renewal of approval for, upgrading or repowering of existing REG activities, as follows: • An electricity or gas distribution or an electricity transmission network, including all ancillary structures, facilities and associated infrastructure; • Renewable electricity generation and storage, including generation and storage of electricity from solar, wind, water, geothermal, biomass, tidal, wave, or ocean current energy sources; • Electricity generation and storage that supports the security of electricity supply; and • Any activity involving the upgrading, expansion, repowering or renewal of approval of these activities.	

Clause	Support/ Oppose	Reasons	Relief Sought
		As noted earlier in this submission table, it is critical that the existing baseline capacity for electricity generation and distribution is secure and eligible for approval under the FTAA. The fourth bullet point above (providing for renewals) is essential for that reason. Conversely, the prescription for eligible activities set out above would expressly provide for both new projects and renewals (including upgrading and repowering) *for all forms of REG*, whereas under the NBEA, eligibility for hydro generation was confined to renewals. For this same reason, the definition of 'project' under the Bill needs to be amended to cover projects involving existing REG assets. For such assets, an application under the FTAA would likely involve a request to change conditions enabling the asset to be upgraded or repowered, delivering potentially significant gains in REG capacity. The prospective applicant would still need to demonstrate that the purpose of the Act would be achieved by referring such a project to an expert panel, i.e. on the basis that it would have significant regional or national benefits (under clause 22, as sought to be amended below). An expanded definition of 'project' to expressly include projects involving new or existing eligible activities would then better support subsequent provisions of the Bill referring to 'projects' or 'eligible projects' rather than 'activities' (such as clauses 14, 16, 21, 22, and 25). Finally, the eligible activity prescription should include reference to *any electricity generation including storage* that supports <u>security of supply</u>, to ensure that the level of economic activity sought to be promoted under the FTAA through development and infrastructure projects generally, can be sustained by a reliable supply of affordable clean energy at all times.	
Clause 4 – Interpretation, Definition of "joint Ministers"	Support and oppose: propose amendment	ESEG understands the intention that the Ministers would make the initial "gateway" assessment as to whether to refer eligible projects to an expert panel under clauses 21/22, as addressed in the submission above. However, as currently drafted, the definition of "joint Ministers" has the potential to set up a situation where up to five Ministers may be involved in making the gateway decisions (for referral to an expert panel), and ultimately the substantive decisions on whether a given approval is granted (under clause 25). This includes the Minister of Conservation for fast-track concessions under Schedule 5 (as addressed later in this submission table).	Amend the Bill (including the definition of "joint Ministers" and all references to the same throughout), to provide for relevant decision making by just one Crown Minister, with provision for the seeking of comments from other relevant portfolio Ministers, prior to making the decisions involved.

Clause	Support/ Oppose	Reasons	Relief Sought
		While having no particular preference as to which Ministers are involved, ESEG submits that it could run counter to the intended efficiency objective of the Bill, to provide for decision making by an amalgam of Ministers with different portfolio objectives, bearing in mind the likelihood of different streams of advice from officials across the respective departments or Ministries, informing each Minister's decision involved. These differences may compound the risk of legal challenges to decisions made by Ministers under the FTAA, as addressed further below. ESEG respectfully submits that rather than these decision-making roles being exercised by Ministers collectively, just one Minister should make the relevant decisions, in consultation with the Ministers of the other relevant portfolios, for example as provided for under clause 19 (whereby comments are invited from the relevant portfolio Ministers in any event).	
Clause 4 – Interpretation, Definitions of: • Part A listed project • Part B listed referred project. Clause 4 – Interpretation, Definition of "referral application" Definition of "referred project" in s 11 Reference to these terms as variously applied in	Support with amendment	ESEG understands the apparent intention of the Bill in providing for both "listed" and "referred" projects, reflecting the model established under the Covid-19 Recovery (Fast-track Consenting) Act 2020 (**CFCA**). However, in introducing the hybrid category of "Part B listed referred" projects, the Bill creates a degree of uncertainty and inconsistency as to "points of entry" to the process, and the statutory tests for approval (or otherwise) of applications, under each of the respective categories. There are also a number of drafting anomalies in provisions referring to these categories across the Bill, that need to be resolved. ESEG further understands in this respect that the intention of the "Part B listed referred project" category is that they are in effect *deemed* from the outset to have "significant regional or national benefits" (per clause 12(3)), and so *may* be referred to a Panel as such. By contrast, applications for "Part A" listed projects *must* be referred to an expert panel with the applications therefore lodged directly with the Environmental Protection Agency (**EPA**) (rather than through initial application to "responsible agency", as for "referral applications" under clause 14). That said, it is not assumed that a listed project has to be approved through the FTAA alone, just that if the proponent of a given project wishes to utilise the FTAA process, the application for that project must be lodged with the EPA (rather than the responsible agency). Clause 12(2) could be amended to clarify the intention in this respect. With that understanding in mind, ESEG notes the following points by way of uncertainty, inconsistency and anomalies in the Bill drafting, and as to what appear to be unnecessary	Amend the provisions of the Bill as referred to in this part of the submission in order to: • Specifically include within clause 4, a definition of "referred project". • Apply consistent terminology across the relevant provisions including clauses 14, 21 and 22 (to each refer to "referral application"). • Delete the words "in a referral application" from clause 3 (1) of Schedule 4 (refer revised drafting below in relation to this clause specifically). • Clarify whether "listed referred projects" are "listed" or "referred" projects as intended throughout the Bill (noting clause 12(4) in that respect). • Combine clauses 34 and 35 of Schedule 4 to the Bill so the same substantive tests and relevant matters are the same for each category, unless there is a specific rationale for some statutory tests applying to "referred

Clause	Support/ Oppose	Reasons	Relief Sought
relevant sections of the Bill including 12, 14, 20, and in Schedule 4, clauses 3, 34 and 35		variations between categories in terms of the substantive tests for consideration of such applications: (a) Clause 12(4) states that the provisions of the Act that apply to "referred projects" equally apply to "Part B listed referred projects". However, the term "referred projects" is not specifically defined in clause 4 but instead (indirectly) under clause 11(c). For clarity and consistency of drafting, the definition of "referred project" should be specifically included within clause 4. (b) Beyond that, clause 4 and s 14 define and address "referral applications" which, in terms of clause 14, must be made to the "responsible agency" in respect of eligible projects. (c) Clause 3(1) of Schedule 4 to the Bill, in turn requires that an applicant for *"a referral application"* may "in respect of a listed project" or a referred project apply to the EPA for a consent that would otherwise be sought under the relevant Act. The reference to a "referral application" in that context is wrong, as referral applications do not include listed projects. (d) Clauses 21 and 22 refer to "applications for referral" rather than "referral applications" (as defined with reference to clause 14) with one of the tests on whether to accept such an application (and refer it to an expert panel), being the eligibility criteria in clause 17. For a Part B listed project, that should not be necessary because (in terms of clause 12(3)), a listed referred project is effectively deemed to have significant regional or national benefits in the first place. Refining clause 17(as proposed below) to set out a definitive list of eligible activities (rather than criteria for the same), along with rewording of clause 21 (as also proposed below), would address this concern. (e) Beyond that, the terminology employed should be consistent across the sections and refer to "referral applications" (in line with clause 14), rather than "applications for referral". (f) Under Schedule 4 (for RMA approvals), different tests are set for listed and referred projects, with a range of additional matters needing to be considered for referred projects (that do not apply to listed projects), and again whereby those additional matters would nevertheless apply to Part B listed referred projects, as a result of clause 12(4).	projects" (as include Part B *listed* referred projects), but not Part A listed projects. • Amend clause 12(2) to provide that a listed project application must be lodged with the EPA if the applicant for that project seeks to utilise the FTAA, rather than all listed projects necessarily having to be approved through the FTAA process.

Clause	Support/ Oppose	Reasons	Relief Sought
		(g) ESEG also does not understand the rationale for different and additional substantive tests applying to Part B listed referred projects or indeed "referred projects" themselves, when otherwise (under clause 32 of Schedule 4) the substantive tests for determination of all categories of application, are the same.	
Clause 4 – Interpretation, Definition of "responsible agency" Clause 14 – Referral applications Clause 15 – Responsible agency decides whether referral application is complete Clause 14, Schedule 3 (Cost recovery) Clause 3, Schedule 4 (Lodging consent applications and Notices of Requirement)	Support and Oppose: propose amendment	Under the Bill as currently drafted, referral applications are made to the "responsible agency", prior to the joint Ministers deciding whether to refer such applications to an expert panel. If so referred, the referral application is then lodged with the EPA under clause 3 of Schedule 4 to the Bill (for RMA approvals). The term "responsible agency" is defined in clause 4 of the Bill to mean: (a) The Ministry for the Environment (b) The Ministry of Business, Innovation and Employment (**MBIE**). It is unclear from this definition which of the two Ministries comprise the "responsible agency" in any given case (or whether it is both). Regardless, and assuming that it is intended to be both (the conjunctive "and" being missing from the definition), ESEG submits that it would be more efficient and cost effective for referral applications to be lodged with the EPA in the first instance, rather than with one or more of the responsible agencies as defined under clause 4. This would avoid the potential for duplication of processing and additional administration associated with both Ministries (Environment and MBIE) being involved in the initial processing of a referral application before it reaches the joint Ministers (for a decision on whether to refer such an application to an expert panel). In that regard it is noted that under clause 14 of Schedule 3, both the EPA and each responsible agency are required to recover their (actual and reasonable) costs in providing assistance to applicants, or exercising and performing their functions, duties or powers under the FTAA. Beyond that, the EPA has developed an expertise and systems for the receipt and processing of applications for infrastructure projects of a scale and nature that would have regionally or nationally significant benefits, including for proposals of national significance under Part 6AA of the RMA, and applications under the Exclusive Economic Zone and	Delete definition of "responsible agency" (or, if the function of the 'responsible agency is to be retained, amend it through adding the intended conjunctive between items (a) and (b)). Provide for the EPA to be the point of lodgement for a referral application and its initial screening under clauses 14 and 15 of the Bill, and otherwise amend the Bill so that the EPA administers all stages of the process for both referral applications and listed projects.

Clause	Support/ Oppose	Reasons	Relief Sought
		Continental Shelf (Environment Effects) Act 2012 (**EEZ Act**), as relevant under Schedule 9 to the Bill. As to the FTAA itself, the EPA will be the authority that ultimately receives a referral application following a Minister's decision to refer it to an expert panel (e.g. under clause 3 of Schedule 4), and if involved in the initial screening of that application as provided for under clause 15 of the Bill (prior to a referral application going to the Minister), the agency would already have an extant file and level of information available to it in performing its subsequent functions under Schedule 4 (and the equivalent schedules for the other legislation covered by the Bill). Overall, ESEG submits that there would be considerably greater system efficiency and reduced costs achieved through substituting the EPA for the "responsible agency" under clauses 14 and 15 of the Bill, and otherwise amending the Bill so that the EPA administers all stages of the process for both referral applications and listed projects.	
Clause 9 – Procedural principles	Support	ESEG supports the procedural principles set out in clause 9 as being consistent with the intention and stated purpose of the Bill.	Retain clause 9.
Clause 14 – Referral applications	Support and oppose: propose amendment	While generally supporting the content of clause 14 (subject to previous points made as to the "responsible agency" and the definition of "referral application"), ESEG opposes the requirement under clause 14 (3)(c) for information to be included in an application regarding "the anticipated commencement and completion dates for construction activities". That clause is carried over from the CFCA, which was intended to fast track consenting to deliver "shovel ready" projects towards the purpose of that Act (*urgently* promoting employment to support recovery from the economic and social impacts of Covid-19). Commencement and completion dates should not be relevant under this more enduring legislation aimed at a complete and efficient approval system, and may not be known at the time applications are made for statutory approvals. This point is addressed further below regarding ESEG's concerns over the maximum timeframe of 2 years set for consent implementation under Clause 39 of Schedule 4 to the Bill, as also carried over from the CFCA. Clause 14(3)(c) should be deleted accordingly. Beyond that clause 14 should make it clear what the purpose of the information required under the clause is.	Amend clause 14(2)(b) as follows: Need only provide a general level of detail about the different approvals required for the project, sufficient to inform the joint Ministers' decision ~~on the application~~ <u>on whether to refer the project to an expert panel</u>. Delete clause 14(3)(c). Amend clause 14(3)(f) as follows: <u>for an approval under s 10(1)(a)</u>, a general assessment of the project … Replace clause 14(3)(t) with the following wording: Identification of all of the approvals that are required for the project under the legislation referred to in s 10(1).

Clause	Support/ Oppose	Reasons	Relief Sought
		As currently drafted under clause 14(2)(b), an application: > Need only provide a general level of detail about the different approvals required for the project, *sufficient to inform the joint Ministers' decision on the application*. However, the joint Ministers have a dual decision-making function; first to decide whether to refer an application to an expert panel and second whether or not to approve the project (under clause 25, as currently drafted, but addressed further below). It should be clarified that it is only information to support that first decision that is needed at the referral application stage. That point aside, under clause 14(3)(f), the information required for a referral application must include a general assessment of the project in relation to national direction under the RMA. It should be clarified that this only applies to referral applications for RMA approvals pursuant to clause 10(1)(a) of the Bill. Under clause 14(3)(t), a referral application must include a description of all other legal authorisations that may be required to commence the project. Again, this clause has been carried over from the equivalent provision in the CFCA, which did not provide for those other approvals to actually be considered and approved under the same piece of legislation. Under the complete or 'umbrella' FTAA model, the requirement should simply be to state what other approvals (of the various kinds listed in clause 10(1)) are required for the project, consistent with clause 10(2) of the Bill. Finally, while supporting provision for the Secretary for the Environment to approve forms for referral applications under clause 14(4), the Department of Conservation has already prepared guidance as to the information requirements for applications for approval under the Wildlife Act 1953, and this could be directly referenced in the clause.	Amend clause 14(4) to refer to the content of application forms being approved based on guidance from any other relevant agency such as the Department of Conservation.
Clause 15 – Decision on whether referral application is complete	Oppose: propose amendment	Leaving aside the point made above about the role of the "responsible agency" as opposed to the EPA, ESEG opposes the ability for an application to be returned if not 'complete' (as proposed to be defined under clause 15(4)). Instead of returning the application outright, the responsible agency (or EPA as preferred by ESEG), should identify what information as required by s 14 or with reference to s 17	Delete clause 15(3) and replace it with the following: > If the [responsible agency/EPA] decides that the referral application is incomplete, the [responsible agency/EPA] must advise the applicant what specific information is required to make the application complete, and set a

Clause	Support/ Oppose	Reasons	Relief Sought
		and s 18 is missing, and allow a reasonable time within which that information must be submitted. Further to the submission point made above about the definition of what comprises an "eligible activity", the reference in clause 15(4)(b) should simply be to whether the application describes an activity that *is* an eligible activity as opposed to an "ineligible activity" (for the purpose of clause 18). Specifically, there should be no discretion for the "responsible agency" (or EPA under ESEG's preferred approach) to decide whether the application describes an activity which that agency considers is eligible/ineligible.	timeframe of no less than 10 working days for the applicant to submit that information. Delete clause 15(4)(b) and replace it with the following wording: Identifies whether the activity is an eligible activity under **s 17** or an ineligible activity under **s 18**.
Clause 16 – Consultation requirements	Support and Oppose: propose amendment.	ESEG entirely accepts as established best practice that proponents of the type of projects eligible for approval under the FTAA must engage with mana whenua/tangata whenua prior to submitting an RMA application. This is both to ensure that the project appropriately responds to (recognises and provides for) relationships and resources of cultural significance to the relevant iwi/hapū concerned, and that the decision maker is sufficiently informed about those matters. The members of the ESEG consistently strive to adopt and apply that best practice in all RMA applications made, and for other relevant statutory approval processes of the kind covered by the Bill. On the other hand, ESEG would observe that one of the biggest factors driving consent process timeframes as a whole, relates to the engagement/consultation step of that process, under the RMA as it stands. There is always the prospect that, even with the very best endeavours and intentions of everyone involved, engagement may not be successfully concluded. ESEG submits that if the requirement to consult and engage is elevated to having mandatory status under the Bill (as proposed under clause 16), this should be confined to making a genuine attempt at engagement and documenting the outcomes of that process, rather than (as currently drafted) necessarily "undertaking" engagement – comprising a two way process over which the applicant does not have control. The term 'consult' has been defined by the Courts to require genuine effort to engage with an open mind and willingness to amend a proposal or even start afresh, but does not extend to negotiation or necessarily reaching agreement. Clause 16 should therefore refer to "consultation" rather than "engagement", as would also be consistent with the	Amend clause 16 as follows: (1) For an application for an approval under this Act, the applicant must ~~undertake engagement~~ consult with the following groups before lodging a referral application: … (2) An applicant must include in their referral application a record of the ~~engagement~~ consultation and a statement explaining how it has informed the project.

Clause	Support/ Oppose	Reasons	Relief Sought
		terminology applied elsewhere in the Bill (for example as under clause 14(3)(i) and clause 22(1)(c)).	
Clause 18 – Ineligible projects	Support with amendment	While supporting in principle that projects are deemed to be "ineligible" where they would occur on Treaty settlement land, Māori customary land, Māori reservations, or customary marine title areas/protected customary rights areas, clause 18 should be amended to provide (consistently) for the relevant Māori land owner(s) or customary marine title/rights holder(s), to consent to the project proceeding. In addition, there are situations where the relevant Treaty settlement or other legislation confers a property right sufficient to enable a given infrastructure project to proceed or be continued, and again this needs to be provided for within the clause. Similarly, while not opposing the exclusion of activities that would occur on land listed in items 1 to 11 or 14 of Schedule 4 to the Crown Minerals Act 1991 (under clause 18(h) of the Bill), ESEG notes that there are a number of REG assets that deliver a substantial component of New Zealand's current generation capacity located in such areas, particularly the major hydro-generation assets established in the 1960s and 1970s (for example the Manapōuri Power Station is located within a National Park). Again, building on the point made at the outset of this submission table about the critical need to secure the existing baseline of generation capacity, ESEG submits that it should only be new activities that are excluded as being eligible under this provision. Projects involving existing REG activities and assets should remain eligible (ie renewals, upgrading or repowering of such assets). That point aside, the drafting of clause 18(h) needs to be improved to avoid the ambiguity/ uncertainty created by the reference to activities requiring access arrangements under the Crown Minerals Act being placed after the words "an activity", at the outset of the provision. This wording would be better placed at the end of the clause.	Include an equivalent to clause 18(a)(ii) within clause 18(b) (providing for the relevant customary land owner etc to agree to a project in writing). Amend clause 18(a) by adding a new clause (iii) as follows: …. (ii) has not been agreed to in writing by the relevant landowner; or (iii) could not proceed within an existing property right sufficient to provide for the activity. Amend clause 18(h) as follows: An activity (~~other than an activity that would require an access arrangement under Crown Minerals Act 1991~~) that would occur on land that is listed in items 1 to 11 or 14 of Schedule 4 of ~~that Act~~ the Crown Minerals Act 1991, other than projects involving eligible activities existing at the date of commencement of this Act, and activities that would require an access arrangement under the Crown Minerals Act 1991.
Clause 19 – Process after joint Ministers receive application	Support with amendment	While generally supported, ESEG notes the following drafting issues with clause 19: • The term "relevant portfolio Ministers" as employed under clause 19(1)(b) is not defined. The equivalent clause under the CFCA specifically listed the "relevant Ministers" from whom comments were to be invited before deciding whether to refer a project to an expert panel (s 21(6)), and the equivalent NBEA Schedule 10 provision (s 18) is worded as follows: The Ministers of the Crown responsible for any relevant portfolios.	Amend clause 19(1) as follows: Unless the joint Ministers decide ~~to decline the application~~ not to refer the application to an expert panel under **s 21** before inviting comments, the Ministers must copy the application to, and invite written comments as to whether the application should be referred to an expert panel, from, -…

Clause	Support/ Oppose	Reasons	Relief Sought
		ESEG submits that, in line with these precedents, greater clarity on which Ministers should be approached for comments should be provided in the drafting. • Beyond that, it should be made clear that the purpose of inviting comments relates solely to whether the application should be referred to an expert panel (i.e. ahead of the joint Ministers' decisions under either s 21 or s 22). Under clause 20 of Schedule 4 an expert panel must invite comment from relevant Ministers of the Crown regarding the substantive merits of a given application (before deciding whether to recommend the approval be granted and if so on what conditions) so such comment is not needed at this preliminary decision stage. • In similar vein, clause 19 commences with the words "unless the joint Ministers decide to decline the application". This creates uncertainty as to whether it is intended that the Ministers might decide to decline the application outright, as opposed to deciding to decline to refer the application to an expert panel (under clause 21). ESEG assumes the latter is intended. Again, this should be clarified within the provision.	Define the term "relevant portfolio Ministers" as employed under clause 19(1)(b), or specifically list the relevant Ministers as under the CFCA.
Clause 20 – Minister may request information	Support with amendment	While supporting the ability for the joint Ministers to request further information about a referral application, that should only apply until the point at which a decision is made on whether to refer the application to an expert panel under clauses 21 or 22. There is otherwise the prospect of further information requests from the joint Ministers at any stage before a decision is made on whether or not to approve the project under clause 25 (as currently drafted). There is no need for the joint Ministers to request further information beyond the point at which the application is referred to an expert panel. If so referred, the expert panel then has its own powers to request further information under (for example) clause 28 of Schedule 4.	Amend clause 20(3) as follows: (3) A request may be made at any time before a decision on the application is made under **s 21** or **s 22**.
Clause 21 – Decisions to decline applications	Oppose: Propose amendment	For the reasons stated above in relation to clause 19, clause 21(1) should be amended to refer to the joint Ministers deciding whether to decline to refer an application to an expert panel (rather than declining an application for referral altogether). As also addressed earlier in this submission table, clause 17 should be reframed to set a definitive list of the types of activities which are eligible, with the relevant considerations beyond that as to whether a project should or should not be referred to an expert panel	Amend clause 21(1) as follows: (1) The joint Ministers must decline to refer a referral application to an expert panel ~~decline an application for referral~~ if the Ministers are satisfied that …

Clause	Support/ Oppose	Reasons	Relief Sought
		transferred into clauses 21 and 22. Clauses 21 (1) (b) and (6) should therefore also be amended to refer to the project involving or being for an eligible activity as identified under section 17, rather than 'meeting the eligibility criteria' in that section. Beyond that, ESEG is concerned at the broad discretion conferred by clause 21, whereby the Ministers may decline to refer an application to an expert panel if: • It is more appropriate to deal with the application under another Act (clause 21(2)(b) ; or • The project may have significant adverse effects on the environment (clause 21(2)(c). The first clause (21(2)(b)) is excessively broad and open to interpretation. If the clause needs to be retained at all, it would be better worded in line with the equivalent clause in NBEA Schedule 10 (clause 16) as follows: The usual consenting pathway is more appropriate for the activity. As to clause 21(2)(c), any infrastructure or development project of scale (and as such providing regionally or nationally significant benefits) is likely to have at least some significant adverse effects on the environment. The extent to which such effects can be avoided, remedied, mitigated (offset or compensated) should still be able to be considered by an expert panel in making the final decision whether to grant or refuse approval for the project, rather than potentially significant effects disqualifying the project before reaching an expert panel. As is stands, this clause presents an unnecessary barrier to potential project approval and creates risk of a Ministerial referral decision being legally challenged for any project where the application identifies the potential for significant adverse effects to arise. It should be deleted accordingly.	Delete clause 21(1)(b) and replace it with the following: (b) The project does not involve an eligible activity identified under **section 17**. Delete clause 21(6) and replace it with the following: (6) Even if a project or part of a project is for an eligible activity identified under **section 17**, the Minister may decide not to refer it to an expert. Delete clause 21(2)(b) or replace it as follows: The usual consenting pathway is more appropriate for the activity. Delete clause 21(2)(c).
Clause 22 – Decision to accept application for referral	Support and oppose: propose amendment	Clause 22(3) provides for the joint Ministers to refer a project to an expert panel where it meets the eligibility criteria in clause 17. Again, as addressed earlier in this submission table, clause 17 should be reframed to set a definitive list of the types of activities which are eligible, with the relevant considerations beyond that as to whether a project should or should not be referred to an expert panel transferred into clauses 21 and 22.	Amend clause 22(3) to set out the tests that the joint Ministers must apply in deciding whether to refer a project for an eligible activity to an expert panel, and in particular those tests currently set out in subclauses 17(2)(a), (b) and (d), along with sub clauses (3) to (5) .

Clause	Support/ Oppose	Reasons	Relief Sought
		In addition to the points made above regarding clause 21 in that respect, and drawing on existing clause 17, ESEG submits that the principal tests under clause 22 should include: • Whether referring the project is consistent with the purpose of the Act (per current clause 17 (2) (a)). • Whether access to the process provided for under the Act would enable the project to be processed in a more timely and cost efficient way (per current clause 17 (2) (b)). • Whether the project would have significant regional or national benefits (having regard to the matters currently set out in clause 17(3)) (per current clause 17 (2) (d)). As addressed previously, the issue of whether a project would have significant regional or national benefits should not be a matter of discretion in terms of whether a given project is "eligible" in the first place, but as to whether it is referred to an expert panel, or included in Schedule 2 from the outset. Transfer of this provision to clause 22 is proposed accordingly. Conversely, ESEG notes that the existing test in clause 17(2)(c) (the impact referring the project would have on the efficient operation of the fast-track process), raises resourcing and capacity issues that are addressed further later in this submission table. If this test is to be transferred into either clause 21 (decision to decline application to refer) or clause 22 (decision to accept application to refer), then this underscores how critically important it will be to ensure that the agencies and institutions established under the FTAA do have the necessary capacity, for the purpose and intent of the legislation to be achieved.	
Clause 23 – Specification of restriction and timeframes	Support with amendment	The power to invite and direct which parties can provide comments is an important component of an efficient and fair process, and is supported. However, clause 23(1)(d) refers to the joint Ministers specifying the "persons or groups from whom the Panel must invite "*submissions*". The Bill does not provide for the lodging of submissions but instead the receipt of comments (for example, under clause 20 of Schedule 4). Conversely, Schedule 5, (providing for fast-track concessions), does not require for any form of notification, and nor does the Wildlife Act approvals process under Schedule 6. The joint Ministers should	Amend clause 23 (1) (d) as follows: (d) persons or groups from whom the panel must invite ~~submissions~~ comments, where comments are provided for under **Schedules 4 to 12** for the type of approvals required for the project.

Clause	Support/ Oppose	Reasons	Relief Sought
		therefore only be given the power to direct comments, where provided for in the relevant schedules to the Act.	
Clause 24 – Notice of decision on referral application	Support with amendment	Clause 24(4) refers to the "Minister" providing all of the relevant information to the responsible agency and the Panel Convenor. It is unclear whether this is intentionally a reference to the "Minister" (being the Minister of Infrastructure), or intended to be a reference to the joint Ministers as otherwise defined under the Bill. ESEG assumes the latter (for example with clause 24(3) referring to "Ministers" (plural)), but this needs to be clarified.	Amend clause 24(4) so as to refer to the "joint Ministers" rather than the "Minister".
Clause 25 – Panel to report and joint Ministers to decide whether to approval project	Oppose: propose amendment.	Under the FTAA, the final decision-making power on whether to approve projects under the FTAA would rest with the joint Ministers. ESEG considers that decision making under the FTAA must be robust, safe and secure from the prospect of successful legal challenge to the greatest extent possible, in order for the FTAA to achieve the intent and stated purpose of the legislation. The legislation must also be workable, bearing in mind the realities of the scale, nature and extent of applications likely to be made under it. Finally, the process should also be sufficiently independent rather than prone to the policy predispositions and priorities of the Government Ministers of the day, for this legislation to have enduring benefits. For these reasons, ESEG submits that it is preferable that expert panels should have the final decision-making function, rather than their powers being confined to making recommendations. In particular, the ESEG considers that judicial reviews or appeals on points of law would almost inevitably be filed regarding decisions made by joint Ministers to depart from an expert panel's recommendations on any project attracting a material degree of controversy, including on the following grounds: • Natural justice – the joint Ministers would not have directly received comments from those parties invited to provide them, or presided over any hearing (as provided for under Schedule 4).	Remove provision for the joint Ministers to decide whether or not to approve a given project from the Bill and either delete or substantially amend clause 25 accordingly. As an alternative, include provision for the joint Ministers to make comment on a draft decision from an expert panel before it is released and whereby if such comment is made, those comments must also be released to any other parties to the process once the expert panel has made its final decision. Make all necessary consequential amendments to Schedules 3 to 12 of the Bill, including to clauses 39 and 40 of Schedule 4.

Clause	Support/ Oppose	Reasons	Relief Sought
		• Predetermination or bias, with the joint Ministers necessarily having decided earlier in the process to refer a given application to an expert panel on the basis that (*inter alia*), to do so would be consistent with the purpose of the Act,- when this is also the dominant test for project approval under Schedule 3 clause 1, and Schedule 4, clause 32. • That the joint Ministers considered an irrelevant factor (or failed to consider a relevant factor) in deciding to reject an expert panel's recommendation, particularly in light of the very broad yet uncertain basis for departing from a Panel's recommendation proposed under clause 25(4) as currently drafted. Even if clause 25(4) was reworded to address that concern, it would still give rise to the need for an extensive and thorough account of the factors applied by the joint Ministers, and as to why a different conclusion has been reached, in order for the decision to be robust from legal challenge on this ground. Given the overall substantial legal risk surrounding any decision made to depart from an expert panel's recommendation, the practical benefit from an efficient approvals system perspective of conferring that power on the joint Ministers, is open to serious question. In addition to this very real potential litigation risk (with associated delays and costs) ESEG is concerned at resourcing and capacity constraints facing the joint Ministers as ultimate decision makers. In that capacity, and as noted above, the joint Ministers would need to undertake a likely extensive even exhaustive assessment and evaluation of the application, comments received, and the statutory criteria (as set throughout Schedules 4 to 12 of the Bill, and the various legislation referred to in those Schedules), before deciding whether to approve a given application, particularly if that decision were to run against an expert panel's recommendation. As it stands, there have been significant resourcing and capacity constraints and challenges associated with the CFCA process in terms of recruiting persons with sufficient calibre, experience and expertise to populate expert panels (a point addressed further later in this submission). With respect, the likely case load on the joint Ministers if they are to retain an evaluation and decision-making function could readily become unworkable/untenable. ESEG nevertheless proposes for consideration an option whereby, rather than having the final decision-making power, the Ministers would be provided with a draft copy of the expert panel's decision, and given an opportunity to comment on that decision before it is released to the other parties.	

Clause	Support/ Oppose	Reasons	Relief Sought
		This approach would reflect current clause 25(3) whereby the Ministers must be allowed five working days to comment on a draft report. In that way, the joint Ministers would have an opportunity to raise specific issues of concern with the expert panel's draft decision, including any specific matters they might wish the expert panel to reconsider, or alternatively address if not already covered adequately in the draft decision. As a matter of natural justice, a copy of any such comments on the draft decision would need to be provided to the other parties to the process (if any), when that final decision is released. For all of these various reasons, ESEG otherwise respectfully submits that provision for the joint Ministers to decide whether or not to approve a given project should be removed from the Bill, and clause 25 either deleted or substantially amended accordingly. Consequential amendments should also be made to clause 39 of Schedule 4 (and its equivalent in any other schedules), whereby references to panel recommendations would be amended to the panel's decision (reflecting the drafting of clause 37 of Schedule 6 to the CFCA), and clause 40 of Schedule 4 would be deleted.	
Clause 26 – Appeals on question of law	Support and oppose: propose amendment	While acknowledging that the right of appeal from decisions made under the FTAA would be confined to points of law (which is supported), the ESEG is concerned at extending the right to appeal beyond the applicant for approval, relevant local authorities, anyone invited to provide comment on the application, and the Attorney-General. For RMA approvals, Schedule 4 to the Bill provides for the inviting of comments from an extensive range of parties including all relevant local authorities, iwi authorities, Treaty settlement entities, customary marine title holders, Crown Ministers and owners and occupiers of adjacent land, along with "any other person the panel considers appropriate" (clause 20, Schedule 4). Extending rights of appeal beyond those parties to include "any person who has an interest in the decision appealed against that is greater than that of the general public" opens the door excessively wide to point of law appeals, applying a statutory test which has been prone to litigation in the Courts under the RMA, particularly as to whether public interest groups qualify for standing on the equivalent test under s274. It would undermine the degree of process certainty and efficiency intended for the FTAA to include scope for such "interested" parties who had no part in a decision making process to appeal to the High Court (and potentially beyond to the Supreme Court).	Amend clause 26(1)(d) as follows: (d) Any person or group that provided comments in response to an invitation given under this Act, <u>excluding any person invited to provide comments under Schedule 4 clauses 20(4) and (6).</u> Delete clause 26(1)(e).

Clause	Support/ Oppose	Reasons	Relief Sought
		ESEG also questions whether parties invited by an expert panel to make comment on an RMA approval application going beyond the prescription in clause 20(3) (for listed projects) and 20(5) (for referred projects) should be entitled to appeal. Providing discretion for additional parties to make comments on an application where considered appropriate by an expert panel in the circumstances is one thing, but to confer an appeal right beyond that again is submitted to be unnecessary and contrary to the degree of process certainty and efficiency intended for the FTAA.	
SCHEDULE 3 – EXPERT PANELS			
Clause 1 – Function of Expert Panels	Oppose: propose amendment	ESEG has two substantive concerns regarding clause 1 of Schedule 3 to the Bill, along with a more fundamental concern regarding the structure of the Bill as a whole, as to which processes and decision-making criteria apply to the range of approvals provided for under the FTAA. The first substantive concern relates to clause 1(2), which is intended to provide direction as to relative weight which an expert panel must apply to the purpose of the FTAA, as opposed to considerations under the other relevant legislation. As currently drafted, the clause provides that the panel must "generally" take into account and give "greater or lesser" weight to those factors, in the order listed. It is assumed that the intention is that greater weight must be given to the purpose of the Act than to the considerations under other relevant legislation, but amendment to the clause is needed to ensure that intention is reflected in the drafting. This interpretation is consistent with the approach taken in Schedule 4, clause 32, regarding expert panel decision making criteria. The provisions should align, but with clause 1 of Schedule 3 being more directive, rather than setting what is "generally" required (as under clause 3 as currently worded). It also needs to be clarified exactly what "other relevant legislation" is being referred to in the clause, including as modified or displaced by the various schedules applying to that legislation under the Bill. The second substantive concern relates to the role of expert panels as having a recommendatory rather than decision making function (as addressed previously in relation to clause 25 of the Bill).	Amend clause 1 of **Schedule 3** so as to provide for the function of expert panels as decision makers rather than having a recommendatory power only. Make consequential amendments to clause 39 and 40 of schedule 4 (and equivalent provision in any other schedules) to refer to decision making by expert panels rather than recommendations. Amend clause 1(2) as follows: In assessing proposed approvals, the Panel must ~~generally~~ take into account, giving greater to lesser weight to them ~~(greater or lesser)~~, in the order listed, - (a) The purpose of this Act; and (b) All relevant considerations under ~~other relevant~~ the legislation applicable to the approvals sought for the project, as provided for under and modified by **Schedules 4 to 12.** More fundamentally, rationalise the substantive tests, considerations and processes that must be applied and followed in making decisions under the Act across the Bill including under Schedules 3 to

Clause	Support/ Oppose	Reasons	Relief Sought
		ESEG submits that clause 1(3) and (4) should be amended to require that the expert panel make a decision after considering a project in accordance with the Act and provide the joint Ministers with a report setting out the reasons for that decision (to either approve or decline approval to all or part of a given project, and as to any conditions that the panel has decided should be imposed on approval of the project). On the same basis and as also submitted above, consequential amendments should be made to clauses 39 of Schedule 4 (and its equivalent in any other schedules), whereby references to panel recommendations would be amended to panel decisions (reflecting the drafting of clause 37 of Schedule 6 to the CFCA), and clause 40 of Schedule 4 would be deleted. Beyond that, ESEG's more fundamental concern with the drafting structure of the Bill as it stands is that it raises significant uncertainty, ambiguity and therefore potential litigation risk (judicial reviews, point of law appeals) as to what the substantive tests are for granting approvals with (for example): • Clause 1 of Schedule 3 requiring expert panels to generally take into account the purpose of the Act and the considerations under the other relevant legislation (as addressed above); and • Clauses 32 to 36 of Schedule 4, having its own set of specific considerations for RMA applications including with reference to the purpose of the FTAA, RMA provisions and plans. • Schedule 5, clause 6 (as addressed below) having differently expressed tests again, including the purpose of the FTAA, conservation management strategies and plans etc, for fast-track concessions. • Schedule 6 (dealing with the Wildlife Act 1953) containing no reference to the purpose of the FTAA in clause 1 (setting out the matters in considering whether an authority under the Wildlife Act should be included in an approval), Schedule 7 (addressing the Heritage New Zealand Pouhere Taonga Act 2014) saying the purpose of that Act is 'secondary' to the FTAA purpose (clause 4 (b) (iii) as to an expert panel's recommendation), while Schedule 9 (EEZ Act) (clause 9) has the same ambiguity "greater or lesser weight" inherent to clause 1 of Schedule 3 (as addressed above).	12, in order to ensure consistency and coherence across the FTAA and remove any conflict between the various schedules and provisions, including as to: • the relative place and weight of the purpose of the FTAA, alongside the other relevant statutory considerations for the specific types of approval involved (with the purpose of the FTAA having priority weighting for all approval processes throughout); • the relevant information requirements for each form of approval; • the extent to which comments invited under Schedule 4 may extend to other matters beyond the RMA approval sought for any given project; and • the setting of conditions for each form of approval issued under a given decision.

Clause	Support/ Oppose	Reasons	Relief Sought
		Overall, these substantive tests need to be rationalised so that it is clear for the decision making entity for each type of approval exactly which considerations apply, and conversely which factors do not apply, along with the relative place and weight to be given to the FTAA purpose alongside the specific provisions of the other relevant statutes, and (where applicable) policy statements, plans and strategies prepared under them. There is also a considerable degree of inconsistency and uncertainty across the Bill as to the relevant procedures to be applied and the level of information that needs to be submitted to support the different kinds of approval (with e.g. Schedules 4, 5, 7 and 9 setting out specific information requirements for the relevant forms of statutory approvals those schedules address, but other schedules having no such prescription). Notably, clause 3 of schedule 4 (providing for the making of RMA applications for listed and referred projects to the EPA), appears to have no equivalent for other forms of approval, which leaves a gap in the Bill, particularly for projects that may not involve an RMA approval, but require (say) a fast track concession- there would effectively be no point of lodgement for such applications. There is provision for inviting comments from other parties, particularly for RMA approvals, but it is unclear whether such comments may extend to the matters needing to be addressed for any other forms of approvals sought alongside RMA applications – e.g. must comments be confined to the RMA approval considerations or can they cover issues raised by all of the various other forms of approvals that may be needed for a given project? There is then beyond that the potentially complex issue of what conditions can be imposed on each form of approval as might be required for a given project. Fundamentally, ESEG submits that each form of approval should be issued in a manner specific to the legislation involved, and containing conditions only of the kind authorised by the specific statutes covered by Schedules 4 to 12. Very careful thought needs to be given as to the way the Bill is drafted in these various respects to ensure that the FTAA is coherent as well as complete. ESEG respectfully submits that Schedule 3 should provide the basic code as to substantive tests and house the procedural requirements, with variations on the theme then expressed (where necessary) in the remaining schedules to the Bill. ESEG intends to consider this more fundamental and generic issue with the drafting of the Bill further and may seek to table additional specific amendments to address the concern at the Select Committee hearing.	

Clause	Support/ Oppose	Reasons	Relief Sought
Clauses 2-4 – Appointment of Panel Convenor, Panels and Chairperson Clause 7 – Skills and experience of Panel members Clause 8 – Remuneration of Panel Convenor and members	Support and oppose: propose amendment	ESEG submits that in order for the FTAA to operate to its intended effect and purpose, it is critical that expert panels: • Be sufficiently and appropriately skilled and experienced; and • Have sufficient capacity to deal with the number, range and complexity of projects that would need to be considered by such panels under the FTAA, in order for the process to be truly efficient, and indeed "fast". • Be sufficiently independent. As noted above, ESEG understands that there are still a great many listed and referred projects still waiting to be considered under the CFCA, as a result of difficulties the Panel Convenor under that legislation has had in recruiting suitably skilled and experienced expert panels to deal with those applications. It would entirely defeat the purpose of the Bill if the 'fast-track' process under the FTAA grinds to a halt, for want of capacity within the system. ESEG notes in this respect (as addressed previously in this submission), that a stated reason under the Bill for refusing to refer an application to an expert panel (under clause 17 as it stands) is *the impact that referring the project would have on the efficient operation of the fast-track process*. If this provision is retained (or an equivalent under clause 21), the system could readily become self-limiting in this respect. On the issue of relevant skills and experience, ESEG notes that clause 4(1) and 4(3) of Schedule 3 provide for the appointment, not just of suitably qualified lawyers, but planners "with experience in relevant law", or anyone accredited under s 39A of the RMA, to be the chairperson of an expert panel. By their very nature, projects requiring approvals under the FTAA will often be complex both factually and legally, given the extensive, complex and potentially conflicting body of statutory provisions that would need to be applied when considering applications, particularly for projects requiring approvals across a range of legislation (as provided for under Schedules 4 to 12 of the Bill). It is respectfully submitted to be beyond the capacity of even an experienced planner (whether accredited as a Hearings Commissioner or otherwise) to be appointed as chairperson of a panel to consider (for example) a major project needing not just RMA	Substantially revise and amend the provisions of Schedule 3 to ensure that expert panels are sufficiently skilled and experienced across all legal and technical issues likely to be raised by projects referred to them under the FTAA. Similarly to ensure that expert panels are adequately resourced and remunerated, and have sufficient capacity to deal with the likely extent, range and complexity of approvals to be sought under the FTAA, as well as being sufficiently independent. As one option, consider provision for standing appointment of extant or retired Environment Judges as panel members and chairs.

Clause	Support/ Oppose	Reasons	Relief Sought
		approvals, but a concession and/or land exchange under the Conservation Act, along with authorisations under the Wildlife or Heritage New Zealand Pouhere Taonga Act 2014, or the EEZ Act. In short, ESEG questions whether provision for appointment of experienced planners as panel chairs is a realistic solution to the capacity problem that has arisen under the CFCA. In similar vein, clause 7 of schedule 3 refers to the members of a panel (collectively) having the knowledge, skills and expertise relevant to the purpose of the Act (being the FTAA itself). However, panel member knowledge, skills and expertise would frequently need to extend well beyond the purpose of the FTAA, and include experience with the purpose and provisions of the other legislation covered by the Bill including the RMA, Conservation Act, Heritage New Zealand Pouhere Taonga Act etc. Technical expertise relative to a given project will assist (as provided for under clause 7(1)(b)), but would not cover the legally complex and potentially conflicting body of statutory provisions raised by such an application. In terms of resourcing and remuneration, clause 8 replicates the equivalent provision of the CFCA (setting remuneration for the panel convenor and panel members in accordance with the relevant fees framework). That clause, with the fees framework level of remuneration, proved inadequate to attract recruitment of expert panel members under that legislation, at least without very considerable effort and persuasion on the Panel Convenor's part. This issue became a significant constraint on the efficient processing of applications under the CFCA. As to independence, the ESEG also notes that panel convenor, panel member and panel chair appointments are all to be made in consultation with either the Minister for Infrastructure, or relevant portfolio Ministers. That provision for such consultation is a departure from the CFCA and may give rise to assertions or complaints (or even legal challenges) as to a perceived or real lack of independence of the panels, members and chairs concerned. With all of this in mind, ESEG proposes as an option for consideration, provision for appointment of current or retired Environment Judges as standing members (and potential chairs) of expert panels (rather than this status being confined to the appointment of the panel convenor).	

Clause	Support/ Oppose	Reasons	Relief Sought
		There is existing provision under the RMA for the Environment Court to hear direct referral applications as a form of "fast-track" procedure under the legislation as it stands. Assuming the FTAA operates to its intended effect and purpose, there is a real likelihood that the workload of the Environment Court would be reduced over the tenure of this legislation (as to the consideration of resource consent applications and notices of requirement for designation in particular), with many projects of regional or national significance potentially being diverted into the FTAA process from the RMA itself. Overall, ESEG considers that this approach may serve to lend greater skill, experience, capacity and independence to the FTAA system, better promoting the objectives of the legislation.	
Clause 14 – Cost recovery	Support and oppose: propose amendment	While not opposing the provision for cost recovery under clause 14, ESEG is concerned that the clause would enable the recovery of actual or reasonable costs incurred by a wide range of bodies and agencies, to a greater extent than provided for under the other relevant legislation covered by the Bill, in its own right. The statutory language clearly draws on the RMA (s 36AAA) in enabling the recovery of "actual and reasonable costs", but for other legislation covered by the Bill, this should only be to the extent provided for in that legislation.	Amend clause 14 to provide that the EPA, local authorities and other relevant agencies may recover their actual and reasonable costs <u>to the extent provided for in the respective legislation covered in Schedules 4 to 12 of the Bill</u>.
SCHEDULE 4 – PROCESS FOR APPROVALS UNDER THE RMA			
Clause 2	Support and oppose: propose amendment	Clause 2(2) of Schedule 4 provides that where an application for resource consent is made under FTAA, the FTAA process applies and the RMA process is displaced. While supporting the need for clarity that the FTAA process overrides the RMA once fully engaged, ESEG submits that the RMA process should only be displaced if an application is actually made and referred to an expert panel (as for a listed project, or referred project at the joint Ministers' discretion). If not so referred, the proponent should be free to revert to the conventional consenting pathway under the RMA, whereas as currently drafted, the clause reads as a 'one way door'. Clause 2(2) should be amended accordingly. Clause 2(3) limits applications to change conditions of an existing resource consent to situations where the application is associated with a <u>new</u> listed or referred project (and the change is material to implementation of the new project).	Amend clause 2(2) as follows: If an application for a resource consent for an activity is made <u>and</u> <u>is referred to an expert panel</u> under this Act, – … Amend clause 2(3) as follows: (3) A person – (a) May apply under this Act <u>for a renewal of an existing resource consent</u> or a change or cancellation of a condition of an existing resource consent, but only if the application accompanies <u>or</u>

Clause	Support/ Oppose	Reasons	Relief Sought
		ESEG is concerned that this wording would preclude applications to re-consent existing REG and upgrade or repower existing REG assets, even where that would have the potential for significant additional generation capacity (and associated regional or national benefits), because this would not comprise a "new" listed or referred project. Such repowering or upgrading/reconfiguration of an existing asset is likely to require amendments to existing conditions (for example, on number, location or height of wind turbines, minimum residual flow or lake /river levels and the like). For the reasons addressed earlier about the need to secure and scaffold from the existing baseline of generation capacity and output, and in addition to the requested amendment of 'project' as set out above, clause 2(3) of Schedule 4 should be amended to ensure that it covers re-consenting or varying the conditions of existing REG and substantial upgrading or repowering of existing REG assets through changes to conditions, even where no 'new' project is involved. The applicant would still need to demonstrate that the project would deliver significant benefits for the project to be referred to an expert panel, but (again) that should be a matter for consideration under clause 22, or in deciding whether to include the project in Schedule 2 from the outset.	is part of a ~~new~~ listed or referred project and the renewal, change or cancellation of a condition in the existing consent is material to the implementation of the ~~new~~ project.
Clause 3 – Lodging consent applications and Notices of Requirement	Support and oppose: propose amendment	As submitted above, the words "in a referral application" should be deleted from clause 3(1). Beyond that, the words at the end of clause 3(1) "under the relevant Act listed in **Section 10**" can be deleted and replaced with a reference to the Resource Management Act 1991 (being the sole statute relevant under Schedule 4). Conversely, as submitted above, an equivalent clause needs to be added (presumably within Schedule 3) as the point of entry to the FTAA process for other approval types, particularly where an application does not involve an RMA approval. The reference to "**Schedule 3**" in clause 3(3)(c)(ii) can be deleted as Schedule 3 deals with the establishment of expert panels (the clause can simply refer to any restrictions or obligations set out in the relevant referral order).	Amend clause 3(1) as follows: An applicant ~~in a referral application~~ may, in respect of a listed project or a referred project, apply for a consent that would otherwise be applied for under ~~the relevant Act listed in **Section 10**~~ the Resource Management Act 1991. Add an equivalent provision to Schedule 3 to provide for applications that do not seek RMA approvals. Delete the reference to **Schedule 3** in clause 3(3)(c)(ii).
Clauses 5 and 6 – EPA to refer or return	Oppose: propose amendment	Clauses 5 and 6 provide for the EPA to determine whether an application meets the requirements of clause 5(1)(a) to (c), and if not directs that the EPA must return the application immediately to the person who lodged it.	Increase the timeframe for the EPA to determine whether an application is compliant with the requirements of clause 5, from five to 10 working days.

Clause	Support/ Oppose	Reasons	Relief Sought
consent application		A five working day turnaround for the EPA is extremely tight and ESEG is concerned that this may lead to a "default" practice of rejecting applications (for example where the EPA is uncertain whether all of the information requirements under clauses 12 to 16 are met). In addition, and as addressed above regarding clause 15 of the Bill itself, rather than returning the application outright, the EPA should identify where the relevant non-compliance with clause 5(1) lies and/or what information specifically is missing, and provide a reasonable timeframe within which that non-compliance must be addressed or the missing information submitted.	Delete clause 6(1) and replace it with the following: (1) If the EPA determines that a consent application or notice of requirement does not comply with the requirements of **clause 5(1)**, it must advise the applicant what is needed to meet the requirements of that clause, including any information required to make the application comply with **clauses 12 to 16**, and set a timeframe of no less than 10 working days for the applicant to submit that information.
Clause 12 – Information required in consent applications	Support and oppose: propose amendment	Clause 12(1)(e) refers to a description of any other "activities" that are part of the proposal. It is assumed that the reference should be to what other "approvals" are required to enable the project to which the consent application relates to proceed, (reflecting clause 10(2) of the Bill). The more substantive issues with clause are that: • Clause 12(g)(iii) should be deleted. For an application to have been referred to an expert panel (whether as a listed or referred project), a decision would already have been made with reference to clauses 21 and 22 of the Act, as to whether the project helps to achieve the purpose of the Act. Regardless, an assessment of the activity against the purpose of the Act is required under clause 12(g)(ii). • Under clause 12(i), information must be provided about any Treaty settlements that apply in the "project area". That term is too uncertain (for example what exactly would comprise the "project area" for a major REG activity?). The term "project area" should be replaced with "project site".	Delete clause 12(1)(e) and replace it with the following: A description of any other approvals required for the project to which the consent application relates. Delete clause 12(g)(iii). Replace the words "project area" in clause 12(i) with "project site".
Clauses 20, 21, 24 and 39 – Timeframes for notification comments, hearing and	Oppose: propose amendment	As submitted at the outset of this table, ESEG considers that the substantive outcomes to be delivered through the FTAA are at least as important as the timeframe. ESEG is concerned that the timeframes set for: • The invitation of comments by an expert panel (5 working days, under clause 20(2));	Amend these clauses of Schedule 4 to double each of the respective timeframes as follows: • Clause 20(2) – 10 working days. • Clause 21 – 20 working days.

Clause	Support/ Oppose	Reasons	Relief Sought
Panel recommend-dations		• The receipt of comments by the EPA from date of invitation (10 working days under clause 21(1)); • A consent applicant or requiring authority to respond to comments received (5 working days under clause 22); and • Completing any hearing (relative to the deadline for a final recommendation under clause 39(3)), under clause 24(6); and • Making a final recommendation on an application or notice of requirement (25 working days from receipt of comments, under clause 39(3)). are seriously inadequate to accommodate the sensible processing, response to and consideration of projects of the nature, scale and complexity likely to be referred to expert panels under the FTAA. These timeframes for each process step appear to be based on the equivalent provisions under the CFCA. There is arguably a lesser case for an extreme level of timeframe compression under the FTAA than for the CFCA, which was directed at delivering shovel ready projects as a matter of urgency. A doubling of each of these timeframes would still provide for a highly efficient process that could be completed within less than six months (circa 90 working days), which in itself would place very challenging demands on all parties involved (including the EPA, applicant, parties invited to provide comment and the expert panel). This is certainly the case if there is any prospect of a hearing being accommodated within the overall timeframe set by clause 39(3) (as required by clause 24(6)). The ESEG also submits that these timeframes should be able to be extended with an applicant's agreement, in the same way as provided for under s 37A of the RMA. An applicant may wish to do this (rather than requesting suspension of processing of an application under clause 26), to address issues raised in comments substantively, instead of being forced to respond within the timeframe required by clause 22. Beyond that, the timeframe for the making of a recommendation under clause 39(2) should run from the date the applicant or requiring authority make any responding comments under clause 22, not the date comments from other parties are received under clause 21, in order to ensure the panel has the 'full picture', before turning to deliberations	• Clause 22 – 10 working days. • Clause 39 – 50 working days, from the date of receipt of comments under clause 22 (not clause 21). Include an equivalent to s37A of the RMA to enable these timeframes to be extended with the applicant's agreement. Replace the words "responsible agency" with "EPA" and "**section 17**" with "**clause 5**" in clause 20(2).

Clause	Support/ Oppose	Reasons	Relief Sought
		and report writing. Overall, this would be more efficient even allowing for the additional time involved, than the panel commencing this work before responding comments are received, and then potentially revising or even reversing aspects of its work to that point. Finally, there are two drafting errors in clause 20(2) namely: • The reference should be to the "EPA" rather than the "responsible agency" as the agency which determines whether the application meets the requirements of this schedule, and refers an application or notice of requirement to an expert panel; and • The reference to **section 17** in clause 20(2) should be replaced with **clause 5** (which sets the requirements for a complete application under Schedule 4).	
Clauses 23 and 24 – Hearing not required/ procedure if hearing is held	Support and Oppose: propose amendment	Clauses 23 and 24 provide that a hearing is not required and confer a discretion on an expert panel as to whether to hold a hearing (as well as over which parties to the process would be heard, if a hearing is held). ESEG supports the expert panel being able to decide whether a hearing is required or not. However, ESEG submits that if a hearing is held, there should be no question that the applicant/requiring authority should have a right to appear, make submissions and call evidence. Moreover, there should be an ability for an applicant/requiring authority to request a hearing, in which case a hearing must be convened. Clauses 23 and 24 should be amended accordingly.	Amend clauses 23 and 24 as follows: 23 **Hearing not required** There is no requirement for a panel to hold a hearing in respect of a consent application or notice of requirement and no person has a right to be heard by a panel, unless the applicant or requiring authority requests to be heard. Amend clause 24(1) as follows: (1) If, in its discretion, a panel considers it is appropriate to hold a hearing, or if a hearing is required under **clause 23**, it may hear from – ~~(a) The applicant; and~~ Delete clause 24(2) and replace it with the following: A panel must give the consent applicant or requiring authority the opportunity to be heard.
Clause 28 – Further information	Support and oppose: propose	While supporting the ability for an expert panel to request further information, ESEG considers that a 15 working day period for responding to that request would be appropriate, in line with the equivalent period set under s 92A of the RMA, and bearing in mind the potential scale and complexity of a given project for which approval under the	Amend the timeframe in clause 28(3) to 15 rather than 10 working days and correct the clause reference in clause 28(1)(a)(iii) to refer to clauses 20(3) and (5).

Clause	Support/ Oppose	Reasons	Relief Sought
	amendment	FTAA may be sought (and the corresponding extent of information that might be required to respond to such a request in turn). ESEG also notes that there appears to be a drafting error in referring to the ability to request further information from any person invited to provide comments under clause 20(2). The reference should be clause 20(3) (for listed projects) or clause 20(5) (for referred projects).	
Clauses 25 and 26 – Delays and suspension of consent processing	Support and oppose: propose amendment	While not opposing in principle the capacity for a direction to be made that the processing of an application be suspended where the grounds in clause 25(3) apply, ESEG submits that the power to direct such suspension should rest with the chairperson of the expert panel, as would be seized of an application (per clause 25(1)), at the time such a direction was made. Similarly, while supporting the ability for an applicant to request the suspension of processing of an application under clause 26, ESEG submits that there should be no discretion, and that a panel should be required to suspend the processing of an application or notice of requirement where requested by the applicant or requiring authority. Beyond that, ESEG suggests an additional option whereby an expert panel could *suggest* the suspension of the processing of an application. In both instances, this would enable the process to be responsive to issues that may arise during the course of the processing and consideration of an application, including in response to comments received (as invited by the expert panel under clause 20). For example, there would be no merit in an application proceeding to the point of being ultimately declined by an expert panel, should it determine during the course of its consideration that there is some "fatal" flaw in its ability to approve the project as a result of a given factual or legal scenario surfacing during the course of that consideration.	Amend clause 25 so as to substitute the chairperson of an expert panel for the "Minister" throughout the clause, as the person holding the power to direct a delay in the processing of a consent application or notice of requirement. Amend clause 26(4) to require that the panel *must* suspend the processing of an application when requested by a consent applicant or requiring authority. Provide for the chairperson of an expert panel to recommend to the consent applicant or requiring authority that the application be suspended, where it considers that this is necessary or appropriate in order for the panel to be able to continue to consider and determine the application for requirement.
Clause 32 – Substantive tests for listed and referred projects	Support and oppose	ESEG refers to the submission point made above as to the need to rationalise the substantive tests for decision making across all relevant schedules and statutes covered by the FTAA, including clause 32 of Schedule 4.	As sought above in relation to clause 1 of Schedule 3 and the need for coherence across the FTAA schedules more generally.
Clauses 33-36	Support and oppose:	ESEG notes the following drafting issues with respect to these clauses (in addition to the points raised earlier regarding the different tests for listed as opposed to referred projects), that need to be addressed and corrected:	Delete the duplications within clause 34 and between clauses 33 and 35 as noted.

Clause	Support/ Oppose	Reasons	Relief Sought
	propose amendment	• Clause 34(3) appears to duplicate clause 34(2)(a)(ii). • Clause 35(3) appears to duplicate clause 33(1). • The provision within clause 36 (2) for an expert panel to consider positive effects on the environment to offset or compensate any adverse effects (if those effects result from measures proposed or agreed by the requiring authority), should be included in clause 34 as well (expert panel consideration of consent applications and notices of requirement) or transferred to that clause, so that this provision applies to consent applications as well. • Clause 35(5), displacing the gateway tests in s 104D of the RMA for referred projects should similarly be included within clause 34 (considerations for listed and referred projects) or transferred to that clause, so that s 104D is displaced for listed projects as well.	Include the equivalent of clause 35(5) in clause 34, or transfer that clause into clause 34 from clause 35. Include the equivalent of clause 36(2) in clause 34, or transfer that clause into clause 34 from clause 36.
Clause 39 – Lapsing date and duration	Oppose: propose amendment	Clause 39(9) requires that the lapsing date included in an expert panel recommendation on a resource consent or designation must be no later than 2 years from the date of commencement of the consent or the inclusion of a designation in a district plan. ESEG strongly opposes this requirement. A two-year lapsing date may have been warranted under the CFCA (directed at delivering shovel ready projects with urgency), but is neither appropriate nor needed under the FTAA. This provision would on its own essentially preclude ESEG members from considering the FTAA process as an option for consenting and approval of REG projects, as a two year lapsing date for such projects is usually unrealistic and unworkable in light of fluctuating market conditions, equipment procurement, contract negotiation, contractor availability and supply chain timeframes, along with the need for detailed design and initial environmental baseline monitoring and management plan preparation as frequently required for such projects, all of which need to be navigated before a consent can be given effect to. ESEG also submits that the FTAA should take the opportunity to set the minimum duration of consent for projects involving REG activities at 35 years, consistent with the Government's *Electrify NZ* policy programme.	Delete clause 39(9). Either revert to the default five year lapsing date under the RMA or if a maximum date is to be set under the FTAA, it should be 10 years. Amend clause 39 to require that the consent duration for RMA approvals for REG activities be no less than 35 years.

Clause	Support/ Oppose	Reasons	Relief Sought
		The issue of consent duration is a particularly significant one for the electricity generation sector. REG projects involve very substantial capital commitments and represent intergenerational scale investments. Security of consent term to ensure a sufficient return on that scale of investment is critical to funding decisions to proceed with such investments, at board level. The ESEG members are increasingly facing a trend across New Zealand where consent terms for projects involving water, air or coastal resources are being reduced below the 35-year maximum currently set under the RMA. The FTAA could address that concern for applications approved under the legislation now, pending further RMA reform on the point.	
Clause 42 – Decisions may be issued in stages	Support: propose amendment	While supporting provision within the FTAA for decisions involving multiple activities to be approved in stages, ESEG submits that this power should be applicable across all of the relevant legislation pursuant to which approvals may be sought under the FTAA. For example, there can be significant lag times associated with the obtaining and implementation of a permit under the Wildlife Act 1953 in order to authorise baseline environmental monitoring to be completed by an REG proponent, before it is in a position to make or complete an application under the RMA. This clause and power to issue decisions in stages should be retained, but transferred to Schedule 3 so that it is a generic power available to expert panels for all forms of statutory approval.	Transfer clause 42 of Schedule 4 into Schedule 3 to provide for decisions to be issued in stages across the range of approvals that may be required for a given listed or referred project.

SCHEDULE 5 – PROCESS RELATING TO CONCESSIONS AND APPROVALS UNDER CONSERVATION AND RESERVES ACTS			
Clauses 1 and 2	Support and oppose: propose amendment	As with clause 2 of Schedule 4, clause 2 (1) of Schedule 5 provides that where an application for a fast-track concession is made, the fast-track approval process applies instead of the equivalent processes for obtaining a concession under the Conservation Act, or a Reserves Act approval. While supporting the need for clarity (that the fast-track process overrides the Conservation/Reserves Act processes), and again as with clause 2 of Schedule 4, ESEG submits that the Conservation/Reserves Act processes should only be displaced if an application is actually made and referred to an expert panel.	Amend clause 2(2) as follows: If an application for a fast-track concession is made <u>and is referred to an expert panel</u> under this Act, – … Amend clause 2(2) as follows:

Clause	Support/ Oppose	Reasons	Relief Sought
		If it is not, the proponent should be able to revert to the conventional pathway under the Conservation and Reserves Act, as they stand. That point aside, clause 2(2) provides that provisions of the Conservation Act 1987 that are not modified by the schedule otherwise apply to a fast-track concession *to the extent that they are relevant and with any necessary modifications*. The drafting of the Conservation Act is complex even tortuous to the point (in some respects) that it lacks coherence. ESEG is concerned that there may be provisions within the statute that could frustrate or impede the intent of the FTAA in providing for an efficient and complete approvals process, but which have not been expressly modified in Schedule 5 (particularly under clause 4, as addressed below). While supported in as far as it goes, clause 2(2) should be redrafted to ensure that the remaining provisions of the Conservation Act are displaced or modified to the extent necessary by implication, or consequential amendment. As to the Reserves Act, the drafting in clauses 1 and 2 is confusing as to the form of approval that may be obtained under the FTAA for an activity taking place on a reserve, particularly as to whether anything beyond the very limited type of lease or licence available under that Act can be obtained for any reserve areas owned or administered by a local authority. Clause 1(1) provides that a "**Reserves Act approval**" means an authorisation, licence or right to do something under the Reserves Act on a reserve, while clause 1(3) states (to avoid doubt) that such an approval is to be treated as if it were a "concession". Alongside that, clause 2(3) provides that if a Reserves Act approval relates to land that is not owned by a local authority, it is only to be treated as a fast-track concession with the written consent of the owner, trustee, or controlling authority of the land. These provisions must be interpreted and applied alongside s 59A of the Reserves Act which provides that the Minister of Conservation may grant a concession in respect of any *reserve vested in the Crown*, including any reserve controlled or managed by the range of administering bodies that may be appointed under the Act, and as if any references in Part 3B of the Conservation Act to a conservation area were references to such a reserve.	Remaining provisions of the Conservation Act 1987 that are not <u>expressly</u> modified by this schedule otherwise apply to a fast-track concession, ~~to the extent that they are relevant~~ <u>except to the extent that they need to be modified or displaced by necessary implication, or consequential amendment</u> ~~and with any necessary modifications~~. Make all necessary consequential amendments to the Reserves Act to ensure that concessions for the type of infrastructure and development projects intended to be provided for under the FTAA can actually be granted, despite anything to the contrary in the Reserves Act 1977 and whether for Crown owned reserves or otherwise.

Clause	Support/ Oppose	Reasons	Relief Sought
		Beyond that again, the Reserves Act itself sets stringent limitations on the types of leases or licences that can be granted for various types of reserves established under that Act, generally being confined to leases or licences providing for necessary activities to the reserve purpose, such as stands, pavilions, gymnasiums, baths or camping grounds, and equally sets very stringent limitations as to the types of activities that can take place in such reserves (particularly for nature and scientific reserves) (refer sections 53 to 59 of the Reserves Act). Simply put in that regard, the scope for approval of an activity (including by way of lease or licence) is highly constrained by the Reserves Act and would not accommodate the types of activities associated with REG projects (or indeed many other infrastructure or other development proposals). The Reserves Act is considerably more stringent in that respect than the provision for concessions under the Conservation Act. While being deemed to be a "concession" regardless of the nature of approval (per clause 1(3)), it is not clear within the Bill that a concession could authorise anything greater than provided for under the Reserves Act itself. There is then the issue of the need for written consent from owners, trustees or controlling authorities for reserves not owned by a local authority (including Crown owned reserve land) under clause 2(3) of Schedule 5, for the fast track concession process to apply . Overall, the interface/relationship between the Conservation Act and Reserves Act as to the ability to grant concessions under Schedule 5 needs to be carefully considered, and if it is intended to extend the range of activities that might be approved by way of "concession" under the Reserves Act pursuant to Schedule 5, the Bill needs to amend (inter alia) s 53 to s 59 of the Reserves Act to expressly provide for that.	
Clause 3	Support and oppose: propose amendment	Clause 3 provides that the Minister of Conservation has the functions (duties and powers) of the joint Ministers in relation to the fast-track process for concessions, with all references to "joint Ministers" in the Act to be read as references to the Minister of Conservation in relation to fast-track concession processes. While supporting the involvement of the Minister of Conservation in fast-track concessions, ESEG considers that the Minister of Infrastructure should also be involved in decision making for such approvals as well, to add balance to the assessments required under the FTAA, consistent with the purpose and intention of the Bill. ESEG also reiterates earlier submissions made that it considers expert panels rather than the Government Ministers should have the ultimate decision-making role for fast-track	As submitted in relation to the Bill more broadly, and Schedule 4, provide for expert panels rather than the Minister of Conservation to grant concession applications under the Conservation Act and approvals under Reserves Act, and re-draft the Bill accordingly. Amend clause 3 by added a new subclause (c) as follows: For the avoidance of doubt, the Minister of Conservation and the Minister [expert panel

Clause	Support/ Oppose	Reasons	Relief Sought
		approvals, including concessions and approvals under the Conservation and Reserves Acts. Under this approach, the Minister of Conservation and the Minister for Infrastructure (rather than the joint Ministers or Minister of Conservation alone) would still make decisions on whether to refer eligible projects (involving fast-track concession or Reserves Acts approvals) to an expert panel. The expert panel would then decide whether to grant (or withhold) the concession. That point aside, out of caution, clause 3 of Schedule 5 should expressly provide that it is the Minister of Conservation and the Minister (or, the appointed expert panel in line with ESEG's preference), that has the decision making function for a concession under s 17Q of the Conservation Act, as that provision is not covered by clause 4, and may otherwise be thought to still apply. The same applies regarding decisions as to whether any conditions of a concession are to be varied, on application by the concession holder under s 17ZC.	appointed under **section 22]** has the powers and functions referred to in section 17Q and 17ZC of the Conservation Act 1987. Amend clauses 3(a) and (b) to refer to the Minister of Conservation and the Minister (i.e. for Infrastructure, as defined in section 4), rather than the Minister of Conservation alone as having the relevant functions, duties and powers.
Clause 4, sections of Conservation Act disapplied	Support with amendment	ESEG supports the displacement of the various sections listed in clause 4 of Schedule 5 to ensure that the fast-track process for concessions is efficient and timely, as well as consistent with the intent and purpose of the FTAA. However, there are cross references to the provisions of the Conservation Act which are displaced by clause 4, that remain within the provisions which are retained. For example, s 17S(g)(ii) (which is retained) refers to information directed at s 17U, but s 17U(3) is displaced under clause 4, and noting that s 17U(3) would otherwise prevent the granting of a concession contrary to the provisions of the Act (or the conservation purposes for which the land concerned is held). Similarly, s 17T is retained in relation to compliance with s 17R(2), which precludes an application for a concession where a conservation management plan process has been initiated which relates to that application. Sections 17U(1) (d) and (f) are also retained, with the former referring to information received under s 17SD and s 17SE, but these sections are themselves displaced by clause 4. The latter relates to submissions received in response to public notification under section 49, but the provision for public notice under s 17SC and 17T would no longer apply.	Amend clause 4 by adding an additional clause (2) as follows: Any provision referred to in (a) to (i) above in any other section of Part 3B of the Conservation Act 1987 also does not apply to a fast-track concession. Add reference to s 17U (1)(d) and (f) as well as (2)(b) within clause 4(g). Add reference to s 49 as new clause 4(j).

Clause	Support/ Oppose	Reasons	Relief Sought
		ESEG submits that, again out of caution, a "sweeper" provision should be added to clause 4 that would displace operation of any other provision of Part 3B of the Conservation Act referencing or relating to those provisions set out in clause 4 (a) to (i). Beyond that, ESEG submits that: • Section 17U(2)(b) should be displaced, which provides that a concession application may be declined if there are no adequate methods for remedying, mitigating or avoiding effects of an activity. In the case of an REG activity, it is not always possible to avoid, remedy or mitigate effects and some effects can be significant. Bearing in mind that conditions can be imposed on a concession including for the payment of compensation for such adverse effects (under s 17X), this should not be a barrier to the concession being granted. • Out of caution, s 49, relating to notification of concession applications should be expressly displaced (consistent with disapplication of s 17SC and T).	
Clause 4, modify Section 17U(5)	Seek additional modification to Conservation Act.	Section 17U(5)(b)(ii) precludes the grant of a lease or licence over land surrounding a structure or facility unless that is "essential" to enable an activity to be carried out. ESEG submits that Schedule 5 should also modify this provision of the Conservation Act to provide that a lease or licence for surrounding areas can be granted where this is *reasonably necessary* to enable the activity to be carried out (rather than essential), and bearing in mind the functional or operational requirements of the activity concerned. Alternatively, clause 17U(5)(b)(ii) should be deleted so that a lease or licence may be granted under s 17U(5)(b)(i) where (and simply) necessary for safety or security reasons.	Amend Schedule 5 to displace or amend s 17U(5)(b)(ii) of the Conservation Act so that a lease or licence for surrounding areas can be granted where reasonably necessary for safety or security reasons (rather than being essential).
Clause 4, modify Section 17V(3).	Seek additional modification to Conservation Act.	Section 17V(3)(b) precludes the granting of a lease over a marginal strip unless the Minister is satisfied that the activities involved require the use of both the marginal strip and the adjacent water. There may be situations for REG activities where a lease is required over a marginal strip but the activities involved do not use the adjacent water. This should not be precluded under the FTAA.	Amend Schedule 5 to displace s 17V(3)(b) of the Conservation Act.
Clause 4, modify Section 17Z	Seek additional modification to Conservation Act	Section 17Z of the Conservation Act provides that the term of a lease, licence or easement may not exceed 30 years except in exceptional circumstances. Consistent with the submissions made earlier in this table regarding the necessary duration of consents for REG projects, Schedule 5 should amend s 17Z to provide for a	Amend Schedule 5 to replace the reference to "30 years" where it appears within s 17Z of the Conservation Act, with "35 years".

Clause	Support/ Oppose	Reasons	Relief Sought
		term not exceeding 35 years (except in exceptional circumstances) for these forms of concession.	
Clause 5	Oppose: propose amendment	Clause 5(a) provides that an expert panel must consider whether an activity that involves a fast-track concession in relation to a conservation area could be undertaken in an alternative location outside of that area, or in a different conservation area where the adverse effects would be significantly less. This clause effectively replicates s 17U(4) of the Conservation Act, which is otherwise displaced under clause 4. Rather than maintaining a requirement for consideration of alternative sites (which has proven fraught and time consuming under the RMA), ESEG submits that, at least in the case of infrastructure (and REG infrastructure in particular), the relevant factor should be whether there is a *functional or operational need* for the activity to either locate (or be continued) within the conservation area in question. By way of example, it is noted that this test is applied under the National Policy Statement for Indigenous Biodiversity in the exception enabling specified infrastructure to have adverse effects on significant natural areas.	Amend clause 5(a) so as to only apply to activities other than "infrastructure" as defined under the RMA. Add a new section specific to infrastructure as follows: For infrastructure (as defined under s 2 of the Resource Management Act 1991), whether there is a functional or operational need for the activity to be located within the conservation area.
Clauses 5 and 6 – Matters to be considered, Panel and Minister functions	Oppose: propose amendment	As submitted previously in this table, ESEG considers that the expert panels appointed under the FTAA rather than the relevant Ministers should have the decision making function for approvals under the legislation. Clauses 5 and 6 should be redrafted accordingly, including to refer (in clause 5) to the expert panel's "decision" rather than "report", and with clause 6 referring to the expert panel making a decision having regard to the various matters then set out in clause 6(1)(a) to (g). ESEG also refers back to the more fundamental submission made above about the different and potentially conflicting tests for decision making across the Bill, and the need to ensure that the purpose of the FTAA is the dominant test in all cases, in particular. That point aside, clause 6(1)(g) as it stands requires that the Minister of Conservation obtain a report that is "prepared in accordance with this clause". The report has to be prepared by the Department of Conservation and contain information about any existing arrangements.	Amend clauses 5 and 6 to reflect the decision making function of expert panels (rather than the Minister of Conservation) in relation to concession applications. Delete clause 6(1)(g) and replace clause 6(2) with the following: (2) The expert panel must obtain and consider a report on the application from the Department of Conservation that addresses the matters in clause 6(1) and in addition contains information about any existing arrangements that create obligations in relation to the land. As submitted above, rationalise the decision making criteria for all forms of approvals across the Act to ensure consistency and remove any conflict between the various schedules and provisions.

Clause	Support/ Oppose	Reasons	Relief Sought
		While provision for the Department of Conservation to prepare a report on the concession application in question with reference to the relevant statutory considerations is appropriate, the drafting of this clause needs to be amended to require that specifically.	
Clause 7 – Variations of concession	Support with amendment	While supporting reference within the schedule to applications to vary or extend concessions, clause 7 should more expressly refer to those provisions of the Conservation Act that apply to such applications, and reflect that such applications are not made to the Minister of Conservation under the FTAA but (in the first instance) to either the responsible agency (or as preferred by ESEG), the EPA.	Amend clause 7 as follows: If a fast-track concession is granted, and a concessionaire applies ~~to the Minister of Conservation~~ for a variation or extension to the concession under s 17ZAA, s 17ZAAB or s 17ZC of the Conservation Act 1987 ~~this Part~~ this schedule applies to the variation or extension as if it were an application for a fast-track concession.
Clause 13	Support with amendment	Clause 13 provides that s 23(1) must be read as if the words "(ca) what approvals are able to be considered by the expert panel" were inserted after s 23(1)(c). ESEG submits that the reference should be to the type of concession able to be considered by the expert panel rather than what "approvals" are able to be considered by the expert panel.	Amend clause 13 as follows: (ca) What type of concession is able to be considered by the expert panel.
Clause 15	Oppose	Clause 15 makes consequential amendments to Schedule 3 clauses 2 and 4 regarding the involvement of Ministers in the appointment of expert panel members and as to the ability to appoint accredited Hearing Commissioners as expert panel chairs. For the reasons addressed earlier in this submission table, consequential amendments are needed to this clause (or it should be deleted), to ensure that expert panels are sufficiently independent and have chairs with qualifications, skills and experience suitable to the nature and complexity of concession applications.	As sought above in relation to Schedule 3, clauses 2 to 8.
Clause 18	Support with amendment	Clause 18 provides for the exchange of "conservation areas" in a manner that appears to go beyond the power to approve such exchanges under the Conservation Act itself, whereby (under s 16A), exchanges are confined to stewardship areas. On the assumption that it is intended that clause 18 would supersede clause 16A and any limitations inherent to that section regarding provision for the exchange of conservation areas that are not stewardship areas (noting the definition of "stewardship area" under s 2 the Conservation Act), this needs to be more expressly stated under the Act.	Amend clause 18(1) as follows: (1) If this Part applies, and not withstanding anything to the contrary in the Conservation Act 1987, the Minister of Conservation [expert panel] may, in accordance with this clause …

Clause	Support/ Oppose	Reasons	Relief Sought
Section 10 – Additional Schedule		In line with the complete or "one stop" approvals process intended under the FTAA for regionally or nationally significant infrastructure projects, ESEG submits that additional provision should be made for projects requiring road closures under the Local Government Act 1974 and/or the Public Works Act 1981. Wind and solar renewable generation sites that are considered of regional or national significance are often found in areas where legal land parcels were first established as part of the Crown's settlement subdivisions in the 19th century and include unformed roads (also known as paper roads). Approval to encroach or occupy a paper road for a REG project can require a road stopping or closure approval from the applicable local authority accordingly. On that basis ESEG submits that the approvals process under the Local Government Act 1974 and the Public Works Act 1981 for the closure of unformed legal roads be added to the list of applicable approval processes under clause 10, with an additional schedule added to the Bill to provide for the relevant procedure and statutory considerations.	Amend clause 10 and add an additional schedule to the Bill to provide for road closures under the Local Government Act 1974 and Public Works Act 1981 as an additional form of approval able to be obtained under the FTAA.