Stage 2 Cost Recovery Impact Statement

Cost recovery and financial contributions under the Fast-track Approvals legislation

Agency Disclosure Statement

This Cost Recovery Impact Statement has been prepared by the Ministry for the Environment.

It provides an analysis of options to recover the costs to government agencies associated with processing applications and implementing the Fast-track Approvals Bill (the Bill). It also provides an analysis of proposed financial contributions to be paid to Māori groups who respond to a request to comment on a fast-track application, with these financial contribution values paid by government and recovered from the relevant applicant.

Changes have been recommended to the empowering provisions in parallel with this work

This is a stage 2 cost recovery impact statement, seeking agreement to cost recovery levels. A stage 1 cost recovery impact statement has not been prepared for cost recovery under the Fast-track Approvals legislation. The intention of stage 1 is "to clearly explain the policy rationale for cost recovery and to provide a high level cost recovery model, which includes estimates of the cost recovery levels". Following consultation with the Ministry of Regulation, stage 1 was not deemed necessary because the Fast-track Approvals Bill already contained cost recovery provisions, and the focus of this analysis was on seeking agreement to the cost recovery levels.

The cost recovery provisions in the Bill as introduced were found to be insufficient and incomplete, and these issues were not completely addressed through select committee's consideration of the Bill. As a result, this analysis has been prepared in parallel with the provision of advice to Ministers with delegated decision-making authority on recommended changes to the empowering provisions in the Fast-track Approvals Bill. The timing to progress these decisions has been constrained by tight deadlines, so while this cost recovery impact statement has been in development, Cabinet and delegated Ministers have taken several decisions on proposed changes to make to the Bill via Amendment Papers.

This parallel effort has resulted in this impact statement containing elements that may have been more appropriate in a stage 1 impact statement – for example the consideration of the best method for recovering system costs – however by the time this impact statement will be considered, those design decisions have already been taken.

Only limited, targeted consultation has been undertaken, for a very short period of time

There has been timing pressure on this work, with the aim to have a cost recovery framework in place in time for the commencement of the Fast-track Approvals regime. Ministers have now agreed to provide for applications to open in February 2025, and we are endeavouring to have regulations in place before then to align with applications opening. Ministers also directed the Ministry to undertake targeted policy testing on the initial proposed amounts to be set in regulation, rather than a full public consultation process.

The timing pressure has meant that targeted policy testing could only occur for about a week, over a period which included a public holiday. Extensions of one or two days were given to a few respondents, however these extensions left us with less time to analyse their feedback.

The work involved in processing applications can only be roughly estimated pre-implementation, as it is a novel process

There are precedents for fast-track consenting in respect to Resource Management Act 1991 (RMA) approvals, such as the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA). However, this Fast-track Approvals regime is more complex and will be the first of its kind as a 'one-stop-shop' for approvals under other parent legislation, with multiple agencies and local authorities involved in advising an expert panel on and processing applications. An applicant may apply for any number and combination of approvals, depending on the specific needs of their project. The multi-agency approach and potential for significant variability in the work involved across different applications introduces a significant degree of complexity and initial uncertainty in the likely costs of processing applications. Costs of consents under the FTCA have been used to help to calibrate the recommended fees (deposit amounts), but we have a low level of certainty of what the total costs of processing each application are likely to be. These limitations have led us to our preferred approach of taking deposits from applicants, but the total costs recovered be based on actual and reasonable time and expenses.

Similarly, while participants in our targeted policy testing called for more nuanced rates to be set, for example with different tiers of based on project scale or complexity, we do not have enough evidence at this pre-implementation stage to support the setting of differentiated rates in these initial regulations. Providing for differentiated rates at this early stage would introduce further uncertainty to the modelling assumptions that the levy is based on (which is based around expected application volumes), as well as a further upfront decision-point for what rates would apply to each application. This would require further development of a fair system of categorising projects for this purpose, which this is not considered feasible at this time due to the limited evidence base ahead of implementation. This approach may be adopted in the future following review.

The amounts recommended for financial contributions to support Māori groups are supported by very little evidence

We are proposing that fixed contributions be paid to Māori groups to support their ability to respond to invitations to comment on applications within the timeframe required. This is, in turn, expected to support persons exercising functions under the Bill, including Ministers and the panel, to meet their obligations to act consistently with obligations in existing Treaty settlements and customary rights recognised under relevant legislation, and support the Crown to meet its obligations under the Treaty to actively protect Māori interests.

Legal and workability challenges have meant that we have not been able to provide for the relevant Māori groups to recover their actual and reasonable costs, and but rather fixed contribution amounts can be paid to these groups, which will be recoverable from applicants. There are inherent challenges and limitations in attempting to set an appropriate fixed amount for variable work across a range of different contexts. As a result, the recommended contribution amounts are likely to be nominal amounts only, and unlikely to cover the full costs of Māori groups' involvement in fast-track processes. We are proposing two sets of fixed contribution amounts: one where an FTA application is for approval under only one piece of 'parent legislation' (eg, the RMA), and another where an

FTA application is for approvals under for multiple pieces of ‘parent legislation’ (eg, the RMA *and* the Conservation Act).

In addition, just like the effort for government in processing applications, the effort for Māori groups in commenting on applications can only be roughly estimated at this initial pre-application stage and there is likely to be significant variability across applications and groups in practice.

It is intended that the contribution amounts will be reviewed once the regime has been in operation, however, the fixed contribution approach will always have inherent limitations.

Implementation costs for the Environmental Protection Authority

The Environmental Protection Authority (EPA) is being tasked with being the lead agency for cost recovery for fast-track. The EPA has estimated its establishment costs, and these have been independently reviewed by MartinJenkins. Work is underway to establish a repayable capital injection to provide upfront financing to the EPA, which would be repaid from revenue received from applicants through a levy contributing to system costs. The repayable capital injection may attract interest expense and capital charge, though this has not been confirmed at this time. There are uncertainties in the total expected system costs, the timing of the expenditure relative to revenue, and the expected levy revenue (based on the number and rate of applications), all of which impact on the level of certainty we can have that the proposed levy amounts are appropriate.

Due to significant uncertainty in the pre-implementation phase of the fast-track regime, simplicity has been a focus of the initial approach outlined in this proposal. A future implementation review will be undertaken, which provides opportunity for a potentially more sophisticated and nuanced approaches in future.

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Executive summary

Once the Fast-track Approvals Bill is enacted, a new one-stop-shop process will be in place for projects of national or regional significance, for approvals under multiple pieces of parent legislation. Earlier fast-track regimes have been limited to Resource Management Act 1991 approvals, with the process administered by the Environmental Protection Authority (EPA).

Under the new regime, a range of different central government agencies will be required to process or provide advice to decision makers on applications. For particular applications, the Bill provides for local authorities' involvement in providing advice and commenting, and specific Māori groups will be invited to comment.

The intention is that the Fast-track Approvals system is a user-pays system, where central and local government is not required to subsidise the system, and Māori groups are supported financially to participate in application processes. This means that the costs of central government agencies and local authorities will be recoverable, and financial contributions will be paid to Māori groups to support their involvement. There are workability and legal challenges in providing for cost recovery for third parties, and as such financial contributions are proposed rather than full cost recovery. Under this approach, specified amounts would be set in regulations as financial contributions to be provided to Māori groups responding to invitations to comment on fast-track applications.

The EPA will have a central role in cost recovery. It will act as the centralised collection agency responsible for charging applicants and reimbursing the agencies whose costs are recoverable and paying out the financial contributions to Māori groups once the costs have been recovered from applicants.

It is proposed that application fees be set as deposit amounts for each of the three application stages and types: referral applications, land exchange applications, and substantive applications. The prescribed fees would be deposit amounts only, and full cost recovery will be based on the full actual and reasonable costs of the work to process an application. Agencies who can recover costs under the legislation will go through their own processes to set and publish their own charges, though these will not be prescribed in regulation.

In addition to the application fees, it is recommended that applicants be required to pay a levy, which will fund system costs including the EPA's lead agency costs, IT costs, and to cover litigation and bad debt. The proposed levy amounts have been established based on modelling by MartinJenkins of expected system costs and application volumes over a five-year period.

The recommended fees and levy values are set out in Table A, below.

Table A: Recommended fee and levy values

	Proposed fee (excluding GST)	Proposed levy (excluding GST)
Referral application	$12,000*	$6,700
Land exchange application	$36,000*	$13,400
Substantive application	$250,000*	$140,000

*Note: The proposed fees are deposit amounts only.

There are two contribution amounts proposed for Māori groups, one for where there is an application for approval/s under one piece of parent legislation, and another for applications for approvals under multiple pieces of parent legislation. The evidence base to support the prescribed values is limited, particularly for applications under multiple pieces of parent legislation, and there are inherent challenges in prescribing a set amount to reflect variable work. As such, the financial contributions are likely to be nominal amounts which are not intended to reflect the true costs to Māori groups of their involvement, given the limited time and evidence base available to develop more nuanced fees.

Estimates of contribution amounts are set out in Table B below. For each type of application, there is a low, a medium, and a high option, which are based on the expected cost to Māori groups for applications of low, medium, and high complexity. Assessing the complexity of each application for this singular purpose would be a further challengeable decision point, and as such we recommend a single option apply at each stage. Noting the variation between application complexity, and uncertainty at this pre-implementation stage, we recommend the 'medium complexity' amount be applied to applications for approval under a single piece of 'parent legislation' (eg, any number of approvals under the RMA), and the 'high complexity' amount be applied to applications for approvals under more than one piece of 'parent legislation'. A more nuanced scaling approach based on an assessment of complexity could be applied in a future review of this framework.

Table B: Financial contribution rates for specified Māori groups providing comments (excluding GST, if any)

	Low complexity	Medium complexity (recommended where approval is sought under a single piece of parent legislation)	High complexity (recommended where approvals sought under more than one piece of parent legislation)
Referral application	$1,000	$1,500	$2,000
Land exchange application	$1,000	$1,500	$2,000
Substantive application	$4,000	$7,000	$10,000

Targeted policy testing of the proposed fee, levy, and financial contribution amounts was undertaken with selected industry associations, prospective applicants, local authorities, and Māori groups from 21 October to 28 October 2024. Feedback was received from 18 organisations.

Almost all groups supported the principle of user pays underpinning the Fast-track legislation. Further feedback related to the complexity of the implementation of this new legislation, the complexity and variability of the projects that may utilise the fast-track process, and the short timeframes within which the consultation and development of fees, levies, and financial contribution amounts was occurring.

Feedback on the specific rates proposed fed into the analysis, conclusions, and recommendations in this impact statement.

The Fast-track Approvals regime will be novel in that it consolidates approval processes under various existing statutes, involving a range of central government agencies and with decisions made by expert panels. As such, the work involved in (and therefore the costs of) processing and deciding applications can only be estimated at this stage prior to implementation. Similarly, the application volume projections are estimates only.

For the fast-track approvals legislation as a whole, a post-implementation assessment will be undertaken jointly by MfE and Ministry for Business, Innovation and Employment (MBIE) one year after enactment of the legislation. It is intended that the fees, levies, and financial contribution amounts be reviewed within 2026, and potentially sooner once real world information is available.

Status quo

Major infrastructure developers in New Zealand are often required to obtain official permits, consents and concessions from a range of agencies to begin significant projects. These approvals can take a significant amount of time to consider, with many major projects taking years to complete the approval process and begin development.

The Fast-track Approvals Bill is currently being considered by Parliament, which, if it becomes law, would create a process to fast-track approvals for projects of national or regional significance. The system will act as a 'one-stop-shop' for resource consents, notices of requirement, and certificates of compliance under the Resource Management Act (1991) and other approvals required under:

- The Wildlife Act 1953
- The Conservation Act 1987
- The Reserves Act 1977
- The Freshwater Fisheries Regulations 1983
- The Heritage New Zealand Pouhere Taonga Act 2014
- The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
- The Crown Minerals Act 1991
- The Public Works Act 1981
- The Fisheries Act 1996.

Under the fast-track legislation, there will be two main decision points: first there is a decision by the Minister on whether to refer an application to an expert panel to make a substantive decision; then there is the substantive decision by the expert panel.[1] Both of these decision points will be supported by central government, with the Ministry for the Environment supporting the Minister in the referral decision, and the Environmental Protection Authority (EPA) supporting the substantive decision-making process. The panel will be empowered to direct the EPA to request further information and prepare or commission a report on any issues relevant to the application. Other government agencies including the Department of Conservation, Ministry for Primary Industries, Heritage New Zealand, the Ministry of

[1] Projects that are listed in Schedule 2 of the Bill may apply for substantive approval without the referral process.

Business, Innovation and Employment, Land Information New Zealand, and Te Arawhiti will be involved in providing advice as required, depending on the approvals applied for. These agencies have been involved in the development of the cost recovery proposals, as outlined in the consultation section.

In addition, between the referral application and substantive application stage, if an application has been referred and it involves a land exchange, the land exchange application will be made prior to the substantive application being lodged, and will involve a similar panel process. [2]

The legislation will require that the relevant local authorities and Māori groups are consulted or invited to provide comments: (1) by the applicant prior to making an application for referral; (2) by the Minister in relation to a referral application; (3) by the Department of Conservation in relation to a land exchange application; and (4) by the panel once an application has been referred to it.

The primary legislation will provide for the recovery of costs from users (applicants and prospective applicants)[3], including the costs of central government, the expert panel, and panel convenor, as well as the ability for local authorities to recover their costs associated with the consultation processes noted above.

Subsequent to the Bill being introduced, Cabinet agreed to a number of additional provisions relating to cost recovery to be added to the Bill via Amendment Paper [CAB-24-MIN-0362]. These included that existing property rights holders can recover their costs where they must negotiate with applicants for land exchanges, the costs to Māori groups of being involved in application processes can be recovered, and that regulation-making powers providing for cost recovery (fees and levy) regulations to be made.

It has also been agreed that the EPA will be the lead agency for cost recovery. It will act as the centralised collection agency responsible for charging applicants and reimbursing the agencies whose costs are recoverable. Work is separately underway to ensure the EPA is adequately resourced to implement its functions ahead of the commencement of the regime and the ability to recover costs.

For the purposes of this analysis, the status quo is considered to be the situation in which the primary legislation is passed with a general empowerment to recover costs, but no more specific provisions have been set.

Problem definition

Under the status quo, it would be lawful for the government to recover actual and reasonable costs associated with processing any given application. However, without setting the approach in either regulations or a cost recovery policy, there is a risk that each cost-recovery process becomes a negotiation between the government and system users, with no certainty provided to applicants up front about which costs might be recovered and what the

[2] The Bill enables the exchange of public conservation land with other land where the exchange will result in a net benefit for conservation. The other land will have the same or greater conservation value as the public conservation land and once exchanged will be protected as conservation land.

[3] The Fast-track Approvals Bill provides that the actual and reasonable costs of providing any assistance to a person who intends to lodge and application may be recovered from that person whether or not the application is subsequently lodged.

likely rates would be. This approach would also carry a risk of under-recovery and potential for evasion.

A general ability to recover actual and reasonable costs of processing and considering an application also would not necessarily fully recover the costs to government of implementing the fast-track approvals system, as there are system costs that do not relate to specific applications.

The focus of this cost recovery impact statement is to address the potential problems associated with not providing a more specific approach to recovering costs under the broad empowering provisions that will be set out in the primary legislation.

Cost recovery principles and objectives

When the Bill was introduced, the cost recovery provisions in the Bill were insufficient and incomplete. Cabinet agreed that changes would be made via Amendment Papers [CAB-24-MIN-0362]. The intent is that clauses in the Bill which will authorise the recovery of costs ensure that the full costs associated with the Crown carrying out its functions and duties and exercising its powers under the legislation are recoverable from users, and that other non-users' costs are also covered by users. Cabinet also agreed that the primary legislation will provide for both fees and levies to be charged to applicants. The policy intent for cost recovery recognises that that fast-track pathways are *optional* pathways for seeking approvals, and only available to projects of national or regional significance. Standard pathways under the relevant legislation remain available.

The principles we have developed for cost recovery under the Fast-track legislation to guide this analysis are:

- The costs to government of carrying out its functions and duties and exercising its powers should be fully funded by users of the fast-track approvals system; the Crown should not subsidise the processing of applications or running of the system.
- Costs to users should be reasonable; functions should be carried out efficiently.
- Where costs can be attributed to specific applications/users, these should be borne by that user rather than shared between all users.
- Indirect costs should be shared between all users.
- The approach to charging users should be simple and easy to understand.

Based on these principles, the following objectives have been developed, which the cost-recovery options are evaluated against:

- ***User pays***: Central and local government is not required to subsidise the system, and Māori groups are supported financially to participate in application processes.[4]
- ***Reasonableness***: Costs to users should be reasonable.
- ***Minimises cross-subsidisation***: Wherever possible, users pay for the costs that are specifically attributable to them.

[4] Unless they are the applicant

- ***Provides certainty***: Applicants have a degree of certainty about the likely cost of using the fast-track system.
- ***Simplicity***: Touch points for applicants are minimised and charges are easy to understand. Administration of the cost recovery system is not unnecessarily complicated.

Rationale for cost recovery

User charges

Full cost recovery is proposed because users of the fast-track system receive private benefits. It is proposed that user charges be put in place for applicants and prospective applicants.

One of the principles of cost recovery for the fast-track system is that the Crown should not subsidise the processing of applications or running of the system.

The use of the fast-track approvals system is a club good, where potential users can and will be excluded from the benefits of a fast-tracked approach to approvals.[5] The system is designed so that a high threshold must be met before a project is eligible for the fast-track pathway – projects must be of national or regional significance or listed in a schedule to the Bill. Projects that don't meet the criteria are able to be considered through the pathways ordinarily available under the Resource Management Act 1991 and any other Acts for which approvals are sought.

The fast-track system should be non-rivalrous – one applicant's use of the system should not prevent another applicant's use. To ensure this, it is necessary to build sufficient capacity into the system to ensure that all applications can be processed effectively and efficiently, in line with the statutory timeframes set out in the legislation.

Costs of litigation

In addition to seeking to recover the costs of assisting prospective applicants, processing and considering applications, and administering the system more generally, there is a potential cost to the Crown associated with any litigation – particularly as this is a new regime which parties may wish to test in the courts. While courts may award costs, it is not a given that costs would be awarded to government, awards may not represent the full cost to government of its involvement, and they may be awarded only after a significant delay from the time the expenditure occurred. Litigation risk is considered a system cost in relation to the new legislation as it rolls out. As case law emerges, greater certainty will be available to all users regarding novel concepts in the legislation. Due to the above considerations, we propose to establish a litigation fund, administered by the EPA, to fund the cost of government's (and the expert panel's and panel convenor's) involvement in any litigation. We note the Electricity Authority has a litigation fund which is funded by an industry levy.

[5] A club good has the property that people can be excluded from its benefits at low cost, but its use by one person does not detract from its use by another.

System capacity requirements

Based on the numbers of projects proposed to be listed in Schedule 2 of the Bill, the number of projects that applied to be listed, and the number of projects which utilised previous fast-track regimes, it is estimated that between 50 and 100 substantive applications will be made per year over the first three years of the regime, and a further 60 to 118 referral applications. While these estimates are based on applicant indications of readiness to lodge and have a high degree of uncertainty, the system needs to be able to flex to handle the higher-end possibilities.

Cabinet has agreed that cost recovery will be centralised via a lead agency, the EPA, which means that it will be possible to structure the charges to be paid up front. Applicants will pay the EPA, who will reimburse other agencies for the cost of carrying out their functions [CAB-24-MIN-0362].

Setting up a system that can handle such high volumes across a number of agencies and types of approvals will come at a cost. Based on our current understanding of the legislative requirements, the one-off implementation costs may be up to $9 million, with further annual indirect costs that are not applicant-specific. These costs have been quantified by the EPA with external review and quality assurance from MartinJenkins. They are explained further in the ‘Level of levies’ section, below.

Costs to other participants

There will be a statutory requirement on applicants, the Minister, the Department of Conservation (for land exchange applications), and the panel to consult or invite comments from local authorities and Māori groups, as well as other parts of government, and some other third parties. One of the objectives is that Māori groups are supported financially for their involvement in a system from which applicants receive private benefits. Cabinet has agreed that post-settlement governance entities (PSGEs) and other Māori groups who are required to be consulted are able to recover their costs, and this was accompanied by regulatory impact analysis [CAB-24-MIN-0362], however Ministers have subsequently agreed to provide for financial contributions rather than full cost recovery for Māori groups, given the workability and legal challenges of implementing cost recovery for third parties.

What charging method is most appropriate?

Charging for applications and pre-application assistance

We have considered three main approaches to charging for applications and pre-application assistance:

- variable charging:
    - for applications this option would involve variable fees based on hourly rates and expenses, charged in arrears, and centralised through the EPA;
    - for pre-application assistance this option would involve each agency setting its own rates and charging users directly;
- a single centralised fixed upfront fee for each type of application and a single fee for pre-application assistance; and

- a centralised upfront fee plus additional charges or partial refunds. This is a hybrid approach where a fixed fee is charged upfront as a deposit, followed by additional fees charged in arrears for additional work once the value of the upfront fee has been exceeded, or partial refunds issued if actual costs are less than the upfront fee. This approach would involve providing statements of all costs incurred and payments made.

Table 1 assesses these options for application charges against the objectives and the status quo, which for the purposes of this analysis is assumed to be a variable fee charged in arrears, as it is the most likely approach to be used if a more specific cost recovery framework is not put in place.

Table 2 considers options for recovering the costs of providing pre-application assistance to prospective applicants. For pre-application assistance, the status quo is also assumed to be variable charging, but with each agency responsible for its own charging rather than it being centralised through the EPA.

Post-approval processes (such as compliance, monitoring or enforcement activities) are out of scope, as the Bill provides that once approvals are granted they are to be treated as if they were given under the legislation they relate to so the existing cost-recovery provisions in the Resource Management Act 1991 (RMA) will apply to monitoring RMA consents, for instance.

We have, however, included in a later section consideration of how system costs including costs of appeals or other litigation would be funded.

The following key is used across each of the options analysis tables:

✓✓	much better than doing nothing/the status quo/counterfactual
✓	better than doing nothing/the status quo/counterfactual
-	about the same as doing nothing/the status quo/counterfactual
✗	worse than doing nothing/the status quo/counterfactual
✗✗	much worse than doing nothing/the status quo/counterfactual

Table 1: Charging method options for applications

	Variable charge in arrears *(assumed status quo)*	Single centralised fixed upfront fee	Centralised upfront fee plus additional charges / partial refunds
User pays: *Central and local government is not required to subsidise the system, and Māori groups are supported financially to participate in application processes.*		✗✗	✓
	Hourly rates plus expenses for actual work done would only charge users for what they used. There is a small risk of evasion with this approach (and therefore possibly that not all costs are fully recovered).	There is a risk of costs being under-recovered if the fee is set too low, or users being over-charged if the fees are too high. This is a material risk for referral and land exchange applications and a significant risk for substantial applications given that the system is new and the number of hours and other expenses required to process applications can only be roughly estimated at this stage.	Users would pay for the service they receive and compared to the variable fee approach the risk of evasion is minimised. The risk of under- or over-charging is lower under this option than a fixed fee approach.
Reasonableness*: Costs to users should be reasonable.*		✗	-
	Reasonable in that users would only pay for the service they received.	A fixed fee for substantive applications is unlikely to be reasonable given the significant variability in work required and third party expenses (such as advice commissioned) across different applications. A fixed fee for referral applications may be more reasonable than for substantive applications as the estimated work involved in processing referral applications will follow a set process with less variability. However there is a lack of baseline information to enable such charges to be reasonably set at this time.	Reasonable in that users would only pay for the service they received.
Minimises cross-subsidisation: *Wherever possible, users pay for the costs that are specifically attributable to them.*		✗✗	-
	Users would only pay for the service they received.	A fixed fee approach would inherently involve cross-subsidisation. At the referral stage, it is estimated that the variability of work involved across different applications is likely to be minimal, but at the substantive application stage this could be significant given the level of variability across applications.	Users would only pay for the service they received.

	Variable charge in arrears *(assumed status quo)*	Single centralised fixed upfront fee	Centralised upfront fee plus additional charges / partial refunds
Provides certainty: *Applicants have a degree of certainty about the likely cost of using the fast-track system.*		✓✓	✓
	This option would not provide users certainty about the likely total costs. Particularly at the substantive application stage, there is likely to be significant variability between different users, increasing the likely uncertainty.	A fixed fee would give applicants certainty of what the total charge will be.	This approach would provide applicants a degree of certainly about the likely minimum cost compared to a fully variable fee, but less certainty than a fixed fee.
Simplicity: *Touch points for applicants are minimised and administration is not unnecessarily complicated.*		✓	-
	This approach would involve a moderate administrative burden, which is likely to be unavoidable within the context of the fast-track approvals regime with multiple agencies involved in a user pays system.	A fixed fee would be significantly simpler to administer in user-facing transactions, but could be more administratively complex in remitting costs recovered back to cost-bearing agencies, depending on the method applied to apportioning costs.	The administrative burden of this approach would be similar to the variable fee approach (with marginally fewer touch points given the large upfront deposit).

Preferred charging method for applications

The preferred approach to recovering costs for all application types is the hybrid fee approach: to set high application fees which act as a deposit towards the actual costs of processing an application, with additional charges (or partial refunds) in arrears reflecting the total actual cost. It is proposed that the application fee be set at a rate in line with the likely minimum cost of completing the processing that type of application for most applications, minimising the risk of overcharging or needing to issue partial refunds.

This approach would provide users with less certainty than a fixed fee approach but would ensure that the approach is a full user-pays model with cross-subsidisation minimised and risks of under- or over-recovering and risks of evasion would be mitigated.

Under this approach, during the processing of an application, all component costs would be itemised on a statement including staff time and panel time based on hourly changes, costs of obtaining additional advice, disbursements, and contributions towards indirect costs. It is proposed that local authorities and Māori groups would indirectly recover their costs or contributions towards their costs from the EPA, who would then on-charge these costs to the applicant; that is, these would be added to the statement. Once all charges have been identified for a given application, additional fees would be payable by the applicant to pay the difference between the application fee and the total, or a partial refund would be issued.

This approach is preferred because it creates a high, but reasonable, barrier to entry with a high upfront deposit, helping to ensure that only applicants who are serious with continuing and paying for the process apply. We note the fast-track process is only available for projects that offer national and/or regionally significant benefits. Payment upfront minimises the risk that the Crown will need to recover unpaid fees as debt. It would also give applicants a degree of certainty about the likely (minimum) cost of seeking approval under the fast-track process.

We considered whether the referral and substantive application fees could be combined together into one large upfront fee covering most of the cost of both stages, with further fees based on actual costs charged later. We have ruled this out. One big upfront fee would not be reasonable, as not all referral applications will proceed to the substantive application stage: they may be declined for referral, or the applicant may simply not follow through with a referred application for any reason. Furthermore, an application that is referred has two years to lodge a substantive application (unless the Minister specifies a different timeframe). It would add unnecessary complexity to the fee structure to determine at what stage within this two-year period a partial refund should be issued if a substantive application is not lodged; holding the funds for two years would not meet the reasonableness test, nor would not refunding at all.

Table 2: Charging method options for pre-application assistance

	Each agency sets its own rates and charges users directly *(assumed status quo)*	Single centralised fixed upfront fee	Centralised upfront fee plus additional charges / partial refunds
User pays: *Central and local government is not required to subsidise the system, and Māori groups are supported financially to participate in application processes.*		✗	✓
	Providing for each agency to directly charge users would be a user pays approach. There is a small risk of evasion if prospective applicants are charged in arrears.	There is a risk of costs being under-recovered if the fee is set too low, or users being over-charged if the fees are too high. This is a reasonably material risk given that the system is new and there may not be an upper limit on the amount of assistance a prospective applicant could seek or require.	Users would pay for the service they receive. The risk of evasion is lower under this approach compared to the status quo as deposits will be required to be paid upfront.
Reasonableness*: Costs to users should be reasonable.*		✗	-
	Reasonable in that users would only pay for the service they received.	A fixed fee for a variably sized optional process potentially involving multiple agencies is unlikely to be reasonable.	Reasonable in that users would only pay for the service they received.
Minimises cross-subsidisation: *Wherever possible, users pay for the costs that are specifically attributable to them.*		✗	-
	Only users of the pre-application assistance service would pay for the assistance they receive.	A fixed fee approach would inherently involve cross-subsidisation. This could be significant given the level of variability across pre-application assistance.	Only users of the pre-application assistance service would pay for the assistance they receive.
Provides certainty: *Applicants have a degree of certainty about the likely cost of using the fast-track system.*		✓	-
	Users of this service would have a limited degree of certainty of the costs they will pay, depending on how each agency chooses to charge and whether charges are published.	A fixed fee would give users of pre-application assistance certainty of what the total charge will be.	This approach would provide applicants a degree of certainly about the likely minimum cost compared to a fully variable approach, but less certainty than a fixed fee.

		✗✗	✗✗
Simplicity: *Touch points for applicants are minimised and administration is not unnecessarily complicated.*	Enabling each agency to sets its own rates and charge users directly is the simplest approach to charging for an optional service where there is likely to be significant variability between different users' needs.	A single fixed upfront fee for all pre-application assistance would be simple to administer in user-facing transactions, but would be more administratively complex in remitting costs recovered back to cost-bearing agencies. A single prospective applicant might seek assistance multiple times from multiple agencies over a period of years.	This approach would be more complex than necessary at this stage of the process as it would require timesheeting, centralised through the EPA, and payments remitted back to cost-bearing agencies.

Preferred charging method for pre-application work

The preferred approach to charging for pre-application work is for each agency to set its own rates with these charges *not* centralised through the EPA as lead agency for cost recovery.

This approach would provide users with less certainty than a fixed fee approach, and could have a slightly higher risk of evasion than an upfront fee approach (depending on each agency's approach to charging for pre-application assistance) but it would be much simpler to implement than any centralised approach through the EPA. This is because prospective applicants may directly approach a number of different agencies depending on the approvals they will be seeking, without any one agency having visibility of this at the pre-application stage.

As an alternative option, we considered treating pre-application assistance as a system cost. However, this approach would still require the EPA to have visibility of all costs incurred by relevant agencies to reimburse cost-bearing agencies.

What charging method is most appropriate to recover system costs?

As noted, in addition to the costs that can be attributed to specific users, there will be costs associated with setting up and running the system. One of the principles is that these costs should be shared between all users, and the user pays objective intends that central and local government does subsidise the system.

As system costs are not attributable to specific users but are attributable to users of the system as a club, there are a few options for how to recover these costs. One is to treat them as overheads built into hourly charge-out rates, and another is to create a levy fund which users (applicants) pay into.

These options are analysed against the relevant objectives and the assumed status quo in Table 3. For the purposes of this analysis the status quo is assumed to be that cost recovery is not enabled for system costs and Crown funding is required. For this set of options, the 'minimises cross-subsidisation' objective is removed as it is not applicable to system costs.

Table 3: Charging method options for system costs

	Crown funded *(assumed status quo)*	Fixed levy charge on each type of application	System costs incorporated into overheads
User pays: *Central and local government is not required to subsidise the system, and Māori groups are supported financially to participate in application processes.*		✓✓	✓
	Crown funding would not reflect an overall user pays approach to implement the system.	Charging system users via a levy would ensure a user pays approach, however there is a risk of over- or under-recovery of system costs because the levy rate would have to be estimated based on the expected system costs and number of applications.	Charging system users via a overhead charges would ensure a user pays approach, however there is a risk of over- or under-recovery because of the estimates involved.
Reasonableness*: Costs to users should be reasonable.*		✓	-
	A Crown-funded approach would be reasonable from an applicants' perspective but less reasonable for those bearing the cost.	This approach would be considered a reasonable way to apportion shares of costs.	This approach may result in unreasonable outcomes whereby applications that require more EPA staff time pay more towards the system costs.
Provides certainty: *Applicants have a degree of certainty about the likely cost of using the fast-track system.*		-	-
	Applicants would have certainty if a user pays model was not used for system costs.	Applicants would have certainty of the fixed charge value.	Applicants would have certainty of the hourly rates and the inclusion of system costs within that rate, but less certainty of their overall contribution to system costs.
Simplicity: *Touch points for applicants are minimised and administration is not unnecessarily complicated.*		-	-
	A Crown-funded approach would be simple from an applicants' perspective.	This approach would be reasonably simple to administer in user-facing transactions.	This approach would be reasonably simple to administer in user-facing transactions.

Preferred charging method for system costs

Our preferred approach to recovering system costs is to set fixed charges that applicants must pay when making an application of each type (referral, land exchange, and substantive application stages), in addition to the upfront fee they must pay. This option rated best or equal against each of the objectives.

In practice, this charge would be a levy rather than a fee as it will not relate to a specific good or service but is charged to a particular group to help fund a particular government objective or function.

Cabinet has agreed for levy provisions to be added to the Fast-track Approvals Bill via an Amendment Paper to enable these system costs to be recovered from applicants via a levy [CAB-24-MIN-0362].

The level of the proposed fee and levy and its cost components (cost recovery model)

The proposed approach to charging overall is to charge each applicant or prospective applicant directly for the costs directly attributable to them (with deposits required through set fees for applications), with additional charges payable by applicants through a levy which covers system costs. Financial contributions made to Māori groups would be recoverable from applicants as part of their total fees.

Consequently, the total charges each user is required to pay will differ case-by-case depending on the actual cost of processing their application.

We have considered, and advise against, prescribing hourly rates in regulations. Current practice is a mixture of regulations prescribing rates, and legislation that broadly empowers the recovery of costs without setting rates in secondary legislation, such as the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA).

Given the number of different agencies that will be involved in fast-track approvals and able to recover their costs, we consider setting rates in regulation to be unduly prescriptive and it would create a sizable administrative burden. With prescribed rates there is a risk that, over time, they fall behind actual costs and agencies end up under-recovering their costs. We recommend each agency and local authority should be able to set its own actual and reasonable rates, outside of regulation, in the same manner as the FTCA cost recovery approach. Those rates are outside of the scope of this Cost Recovery Impact Statement.

Level of upfront fees (deposit amounts)

The proposed upfront fees to be set in regulation as a deposit towards the total cost of considering an application are set out in Table 4.[6]

[6] Levy payments would be additional to the fees, and also required to be paid by applicants when making an application.

Table 4: Proposed fees to be set as deposits (excluding GST)

	Proposed initial fee/deposit
Referral application	$12,000
Land exchange application	$36,000
Substantive application	$250,000

These figures have been developed based on the following assumptions and information:

Referral applications

- It is estimated that across central government, an average of approximately 34 hours will be spent on each referral application.
- Based on the EPA's published hourly rates, an average hourly rate of $225 is assumed.[7]
- Based on these figures, expected likely cost to central government is therefore assumed to be approximately $7,650 per referral application.
- Local authorities' costs and contributions made to Māori groups will be paid out by the EPA and recovered from the relevant applicant. Feedback from local authorities on the draft rate tested with them ($8,000) suggested that this should be increased to recognise the likely magnitude of local authority costs and recover these via the deposit as much as possible also.
- It is intended that as much as possible, all recoverable costs associated with the referral application stage are covered by the upfront application fee and the need to charge additional fees or issue refunds is minimised.
- However, the proposed application fees are deposit amounts only, so the actual costs charged to each applicant will differ.

Land exchange applications

- The Department of Conservation (DOC) has estimated that a land exchange will on average will take a minimum of 35 hours of DOC staff time, at $8,155.
- In addition to staff time, land exchange applications will incur costs of panel time, and external costs such as valuations and surveying.
- To minimise the risk of unpaid fees to the EPA and to provide an expectation of the likely costs associated with a land exchange, the deposit amount is proposed to be set at a level that recovers a significant proportion of the total cost of considering a land exchange application.
- DOC has found that the average cost of valuations and surveying was $15,000 in previous invoices where Statutory Land Management had utilised these services, but these did not include land exchanges. Costs are typically higher for land exchanges as

[7] For existing FTCA approvals, the EPA lists hourly rates for four different roles ($310, $259, $186, and $148), a simple average of these rates is $225 (https://www.epa.govt.nz/applications-and-permits/fees-and-charges/)

both parcels of land require a survey and valuation. DOC therefore recommends that $25,000 be set aside for these services.

- DOC further estimated panel costs of around $2,400 on average would be incurred for each land exchange.
- The proposed application fees are deposit amounts only, so the actual costs charged to each applicant will differ.

Substantive applications

- The range of fees charged by the EPA under FTCA for substantive applications ranged from $40,000 for the smallest scale project application (such as a subdivision), though the mid-range for applications tended to be around $150,000 to $200,000, with the highest total application cost around $400,000 (for a retirement village).
- Under the new regime, the EPA as lead agency will be consolidating invoicing for broader number of government agencies and local government, and disbursing financial contributions for Māori groups. As such the magnitude of costs, billed by the EPA as lead agency, are expected to be greater than experienced under the FTCA.
- A proposed upfront deposit of $200,000, was put out for targeted policy testing. This was estimated be close to the actual and reasonable costs of government and panel costs for the majority of applications.
- Local authority feedback suggested that costs of up to $50,000 could be incurred by local authorities for complex applications.
- A deposit of $250,000 therefore minimises the magnitude of uncertainty surrounding refunds or secondary payments, reduces the risks to the Crown associated with bad debts, and provides a direction to applicants over the magnitude of funding required to go through this process.
- The proposed application fees are deposit amounts only, so the actual costs charged to each applicant will differ.

Level of levies

As noted above, our preferred approach to recovering indirect system costs is to set a levy charge that applicants must pay when making an application of any type (referral, land exchange, and substantive application stages), in addition to the upfront fee they must pay. The levy is intended to cover:

- contributions towards litigation costs relating to fast-track approvals for the expert panel, panel convenor, and
- Crown's costs associated with the EPA in performing its functions and exercising its powers and duties under the legislation, where those costs are not directly recovered from applicants through the fees regime; this includes the costs of the panel convenor
- covering bad debt from unpaid fees for fast-track approvals.

Levy modelling

MartinJenkins developed a model to calculate the proposed levy amounts, with the intention that the full system costs are recovered from applicants. The costs have been quantified by

the EPA with external review and quality assurance from MartinJenkins. The costs include establishment and operation costs for processes and systems over a five-year forecast period. These costs include the following main categories, which are set out below:

- ICT implementation costs
- costs associated with bad debts
- a fund to support litigation related to any fast-track approvals
- lead agency management costs including system and process development and implementation, including costs associated with developing and maintaining a technology solution to support application submission and tracking
- asset replacement funding.

The level of these expected costs differs depending on the assumptions made regarding application volumes, as set out in Table 6.

MartinJenkins' model considered three different application volume scenarios: expected volumes (E), high volumes (H), and low volumes (L), as set out in Table 5. The expected volumes were provided by the Ministry for the Environment and based on the numbers of projects listed in Schedule 2 of the Bill, the number of projects that applied to be listed, and the number of projects which utilised previous fast-track regimes.

Table 5: Expected application volumes to 2028/29

	2024/25			2025/26			2026/27			2027/28			2028/29		
	E	H	L	E	H	L	E	H	L	E	H	L	E	H	L
Referral	47	59	29	94	118	59	94	118	59	75	94	47	66	83	42
Land exchange	0	0	0	1	1	0	1	1	0	1	1	0	1	1	0
Substantive	40	50	25	80	100	50	80	100	50	64	80	40	56	70	35

Table 6: Expected system costs under three application volume scenarios

System cost component	Expected volumes	High volumes	Low volumes
ICT implementation	$9 million	$9 million	$9 million
Bad debt	$1.5 million	$1.8 million	$900,000
Litigation	$5 million	$5.4 million	$4.4 million
Lead agency management costs	$4.7 million	$5.2 million	$3.9 million
Asset replacement funding	$9 million	$9 million	$9 million
Debt repayment	$2.2 million	$2.2 million	$2.2 million
Total expected costs*	$31.6 million	$32.9 million	$29.6 million

*Note: totals may not sum due to rounding

MartinJenkins noted the cost estimates appear sensible for the functions that are proposed to be performed, but note that ICT implementation costs drive a large proportion of the levy's rate. MartinJenkins has not completed a detailed requirements review of the proposed ICT implementation costs and for this reason, it is difficult to make a judgment on the relative value for money of this investment. However, it noted these costs drive a large impact on the proposed levy, and it may be worth considering the size and scale of this investment relative to the levy fee imposed on applicants.

Costs are also escalated at 2% per annum over the five-year forecast period, starting in 2025/26 to account for any inflationary changes that could occur over the forecast period.

Treasury has also advised the EPA and MfE that, if a capital injection is provided to support implementation costs, this capital injection would be re-payable and could attract interest expense and capital charge. We have assumed that the Crown may provide up to a $10m capital injection and this would be repaid within the five year period with interest (debt repayment cost in table 6), and have not factored a capital charge into the model, however there is a risk that the EPA may attract a capital charge if its capital assets go over $15 million.

As noted and directed by both the Ministry for the Environment and the EPA, the cost model only recovers costs by utilising levy revenue, not application fee revenue. Application fee revenue is presumed to be wholly utilised on direct application costs, which are not included in the model. However, application fee revenue is estimated in the model in order to accurately proportion the levy across the application types in the same way that application fees are proportioned. Application fee revenue is not used to offset levy costs.

The levy cost per application is calculated by proportioning the costs in the same way that application fees are proportioned, and then dividing costs by the number of applications received for the different application types. This approach helps to ensure that the levy's costs are spread in the same way as application fees have been set. Another approach to apportioning the costs would be to determine the amount of effort/cost associated with the levy that relates to each application type. However, it is not considered practical to apportion the levy costs in this way, and as the application fee is an estimated value of direct cost effort, it appears appropriate to apportion levy costs in the same way.

Because levy costs are largely fixed, the levy per application is more sensitive to volume estimates than the application fee. Having a levy separate from the application fee will create some management challenges, particularly as it relates to the uncertainty around application volumes. The assumption for application fees is that the application fee equals the marginal direct costs of each application.

By contrast, this is not the case with the levy, because the levy is primarily funding fixed costs that do not increase or decrease substantially with changes in volumes. This makes the levy rate far more sensitive to volume assumptions.

Table 7 sets out the modelled levy values under each of the application volume scenarios.

Table 7: Levy scenarios for different application volumes (excluding GST)

	Expected volumes	High volumes	Low volumes
Referral application	$4,500	$3,700	$6,700
Land exchange application	$13,400	$11,200	$13,400
Substantive application	$93,300	$77,700	$140,000

There are trade-offs to be made in recommending the level of levy. If the rates are set based on expected application volumes and the expected application volumes do not materialise, insufficient levy revenue will be collected to cover system costs. If rates are set based on the low volume estimates, there is potential to over recover system costs. Though we note this could be managed through future levy reviews and the resetting of rates.

Financial contributions towards Māori groups' costs

As noted above, Ministers have agreed to provide for financial contributions to be made to Māori groups to support their involvement in fast-track processes. There are workability and legal challenges in providing for cost recovery for third parties, and as such financial contributions are proposed rather than full cost recovery.[8] Under this approach, specified amounts would be set in regulations as financial contributions to be provided to Māori groups responding to invitations from the Minister, the Department of Conservation, or the expert panel to comment on fast-track applications. These amounts would be paid by the EPA once they have been cost-recovered from the relevant applicant.

The contributions would be per group responding to an invitation to comment on a referral, land exchange or substantive application. This means that, if more than one group is included in this for a particular application, then multiple groups would not have to split the contributions between them). We recommend two sets of contribution amounts, one for where applications are for approvals under one piece of parent legislation, and another where applications are for approvals under more than one piece of parent legislation.

The evidence base to support the prescribed values is limited and there are inherent challenges in prescribing a set amount to reflect variable work (as evidenced by the analysis of a fixed application fee approach, above). As such, the financial contributions are likely to be nominal amounts which are not intended to reflect the true costs to Māori groups of their involvement, given the limited time and evidence base available to develop more nuanced fees.

Estimates of contribution amounts for applications of differing levels of complexity are set out in Table 8 below. For each type of application, there is a low, a medium, and a high option,

[8] Third parties are not subject to the same public accountability requirements that central and local government agencies are. The requirements mean that cost recovery powers for government must be 'actual and reasonable' and include oversight from the Auditor General, and requirements under the Public Finance Act, Local Government Act and others. In commercial environments, there is an ability for buyers and sellers to negotiate. In the context of fast-track approvals, the costs borne by third parties commenting on applications are not subject to commercial drivers, as the user (applicant) will not be directly involved in obtaining comments when these are sought by the Minister or the expert panel. Because of this set of circumstances, there is no simple way to provide for any check on the amount that third parties might seek to recover.

which are based on the expected cost to Māori groups for applications of low, medium, and high complexity.

It is important to note that these financial contributions only relate to these particular formal process steps under the fast-track approvals regime. For example, they do not extend to pre-lodgement engagement between applicants and these groups.

Feedback from targeted policy testing highlighted the need to ensure that contributions to Māori groups accurately and reasonably reflect their costs and time, and that the draft rates consulted on were too low. With any one-size-fits-all approach, there is a risk of over- or under- funding. We do not have adequate evidence at this stage to even determine the expected range of complexity across substantive applications. To address this lack of evidence we recommend the medium complexity figures are used where an application is for approval under just one piece of parent legislation, and the high complexity figures are used where the application is for an approval under more than one piece of parent legislation.

Table 8: Financial contribution rates for specified Māori groups providing comments (excluding GST, if any)

	Low complexity	Medium complexity (recommended where approval is sought under a single piece of parent legislation)	High complexity recommended where approvals sought under more than one piece of parent legislation)
Referral application	$1,000	$1,500	$2,000
Land exchange application	$1,000	$1,500	$2,000
Substantive application	$4,000	$7,000	$10,000

The figures in these options have been developed based on the following assumptions and information:

Referral and land exchange applications

- A referral application will be relatively small, and the applicant will have already consulted with the relevant groups before lodging the application, and costs to Māori groups may have already been recovered directly from the applicant at the pre-application stage.
- A land exchange application is a specific sub-part of an application only relating to the land exchange, so the best estimate is to size it the same as a referral application.
- Published charge-out rates for Māori groups are not readily available, but feedback from targeted policy testing indicates these should be in a similar range to central government costs. Te Rūnanga o Ngāi Tahu indicated it has a standard hourly rate of $200 to $220, excluding GST.
- There are constrained timeframes for Māori groups to comment on applications, which can give some indication of the expected volume of work associated with responding to

an invitation to comment. There will be 20 working days to comment on each type of application.

- We assume ~4-10 hours per application for referral and land exchange applications based on the expected tasks including:
    - reviewing the application materials provided
    - identifying any areas of significance, for example where the proposal overlaps with any areas under management plans
    - providing a written response to the request.

Substantive applications

- For substantive applications, there will be a range of complexity involved, and substantive applications will be significantly more complex than referral or land exchange applications.
- Te Rūnanga o Ngāi Tahu estimated 15-20 hours of work per simple application, 40-45 hours for average applications, and 50-60 hours for complex applications. These figures were based on the previous fast-track consenting process for RMA approvals only.
- New Plymouth District Council has a grant of up to $5,000 for participation in resource consent processes, though this is for iwi and hapū to purchase professional services rather than for their own time.
- Under the FTCA, MfE administered funding to support environmental NGOs, with up to $3,000 available per application.

Impact analysis

The proposal to set application fees and levies for fast-track approvals will impact on applicants.

The proposed approach to cost recovery, with all cost recovery relating to applications centralised through the EPA, is expected to be more efficient than providing for each cost-bearing agency and local authority to recover its own costs directly from applicants, as some agencies do not currently have the systems in place to recover costs. This approach is supported by cost-bearing agencies and local authorities. However, the centralised function will create an administrative burden for the EPA, which will incur costs in implementing the system. These costs are to be recovered from applicants via the proposed levy.

This is a new regime, and applying for approvals under the fast-track process rather than conventional pathways is *optional* for applicants. We have not quantified the costs to applicants of using conventional pathways, however consenting and other approval costs are known to be high, and as indicated above, under FTCA at the higher end the cost to applicants was up to $400,000.

The proposal to set fixed financial contributions amounts to be paid to Māori groups who respond to invitations to comment on applications will impact on those Māori groups. If the rates are too low, they may be insufficient in achieving the intent of supporting these groups to participate (and ultimately inform decision making).

There is also a risk of perverse outcomes from setting fixed contribution amounts for responses, which do not recognise the work that has gone in or the quality of responses. The

provision of payments could incentivise groups with limited interest in an application to provide a nominal response in order to receive payment. This risk appears to be an unavoidable consequence of the fixed contributions model.

Providing for these contributions to be recovered from applicants will also drive up the total costs to applicants, however the proposed contribution amounts are a small fraction of the expected overall cost to applicants and are therefore expected to have a negligible impact.

Climate Implications of Policy Assessment (CIPA)

The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this policy proposal, as the threshold for significance is not met.

Consultation

The proposed approach to cost recovery has been developed by the Ministry for the Environment in close collaboration with the EPA. All government agencies who may be able to recover costs under the Fast-track Approvals Act have been consulted and involved in the development of the overall cost recovery framework including the Department of Conservation, Ministry of Business, Innovation and Employment, Ministry for Primary Industries, Heritage New Zealand (and Ministry for Culture and Heritage), Land Information New Zealand, Te Arawhiti, and Te Puni Kōkiri. The Treasury has also been consulted and actively involved in work to support the EPA's financing.

A set of proposed fee and levy values and financial contribution amounts were consulted on in a limited, targeted capacity. Targeted policy testing was undertaken with selected industry associations, prospective applicants with projects proposed to be listed in Schedule 2 of the Bill (that have also used the previous FTCA process), local authorities, and Māori groups from 21 October to 28 October 2024, with material provided by email setting out the proposed approach to cost recovery including proposed rates and their rationale. The material is included in an appendix.

Feedback was received from 18 organisations: seven prospective applicants, five industry groups, five local authorities or local authority groups, and one Māori group.

Almost all groups supported the principle of user pays underpinning the Fast-track legislation. Further feedback related to the complexity of the implementation of this new legislation, the complexity and variability of the projects that may utilise the fast-track process, and the short timeframes within which the consultation and development of fees, levies, and financial contribution amounts was occurring.

The most substantial matters raised included:

- ensuring that contributions to Māori groups accurately and reasonably reflect their costs and time, similarly to the proposed approach for central and local government, including suggesting further consultation to do so
- the proposed deposits did not adequately account for local authority costs
- increased mechanisms to manage the risk of costs escalating, including the ability to estimate or challenge costs, particularly for complex or multi-staged projects

- requests for differentiation to reflect the varying complexity and monetary value of projects proposed
- the importance of reasonable levy and application fees, as high costs to applicants may discourage the use of the fast-track process
- some feedback suggested that as public benefits are expected from projects utilising the fast-track process, it should not be a full user pays model
- concerns over whether litigation and bad debts should be funded by levies, given the inability for a single applicant to have influence other applications' litigation processes and costs
- the availability of adequate expertise and resource to support, recruit and renumerate qualified panel members.

Feedback on the specific rates proposed has fed into our analysis, conclusions, and recommendations.

Conclusions and recommendations

We recommend that fees and levies be set as follows in Table 9.

Table 9: Recommended fee and levy values

	Proposed fee (excluding GST)	Proposed levy (excluding GST)
Referral application	$12,000*	$6,700
Land exchange application	$36,000*	$13,400
Substantive application	$250,000*	$140,000

*Note: The proposed fees are deposit amounts only.

The proposed fees would be deposit amounts payable upon making an application, with the total charge to the applicant to be determined based on the actual and reasonable costs. Agencies incurring costs would publish their changes and all component costs would be itemised on a statement and once all charges have been identified for a given application, additional fees would be payable by the applicant to pay the difference between the application fee and the total, or a partial refund may be issued.

The proposed levies are based on the low application volume scenario. This scenario is recommended as it is most likely to limit the financial exposure risk to the EPA.

We recommend applying the 'medium complexity' amounts from Table 8 above, for financial contributions for Māori groups where approval is sought under a single piece of parent legislation, and applying the 'high complexity' amounts where approvals are sought under multiple pieces of parent legislation, as follows:

	Medium complexity (recommended where approval is sought under a single piece of parent legislation)	High complexity (recommended where approvals sought under more than one piece of parent legislation)
Referral application	$1,500	$2,000
Land exchange application	$1,500	$2,000
Substantive application	$7,000	$10,000

Implementation plan

It is intended that the application fees, levies, and financial contributions to Māori groups are set out in regulations made and intended to commence before applications open under the Fast-track Approvals Act in February 2025.

In parallel, agencies who are able to recover costs under the legislation will go through their own processes to set and publish their own charges.

The Ministry for the Environment and the EPA have established extensive implementation work programmes for Fast-track Approvals, and all relevant administering agencies also have their own implementation work programmes underway. A cross-agency work programme connects agencies on understanding the role and scope of their fast-track activities, capacity and resourcing, business systems, cost recovery systems, process documentation, and overall readiness.

The EPA will act as the centralised collection agency responsible for recovering costs from applicants at the referral application, land exchange application, and substantive application stages – meaning it charges applicants on behalf of all other government agencies, the panel, panel convenor, and local authorities, and reimburses those parties once in receipt of payment. It would also pay the financial contributions to Māori groups and recover those costs from applicants.

The EPA's centralised collection function would **not** extend to pre-application assistance (each agency can directly charge for that).

The EPA has signalled there will need to be an investment into the EPA to meet the costs associated with setting up the systems and processes as well as managing risks associated with non-recoverable costs such as (i) significant delays in receiving payment from applicants and (ii) the risk of not being fully reimbursed by applicants for actual and reasonable costs.

The proposed levy is intended to cover these system costs, however other work is underway in parallel to ensure the EPA is supported with appropriate financing and able to manage its cashflow. This includes work to establish a repayable capital injection to provide upfront financing to the EPA, which would be repaid from levy revenue.

Monitoring and evaluation

The Fast-track Approvals regime will be novel in that it consolidates approval processes under various existing statutes, involving a range of central government agencies and with decisions made by expert panels. As such, the work involved in (and therefore the costs of) processing and deciding applications can only be estimated at this stage prior to implementation. Similarly, the application volume projections are estimates only.

While there is a low risk that prescribed fees are set at inappropriate levels – given that fees will be structured as a deposit only with additional charges or refunds issued – there is a reasonable likelihood that the levy values and contributions made to Māori groups do not accurately reflect the true costs.

In the short term, these will need to be closely monitored.

MfE is responsible for monitoring the EPA's performance, including its financial performance. The EPA provides regular ongoing monitoring of third-party revenue and direct costs incurred.

The EPA's revenue from fast-track fees and levies will be recorded in the financial statements in its Annual Report. The financial statements are audited by Audit New Zealand on behalf of the Auditor General. The Annual Report is also examined by a Select Committee of Parliament.

Review

For the fast-track approvals legislation as a whole, as noted in the *Supplementary Analysis Report: Fast-track Approvals Bill*, a post-implementation assessment will be undertaken jointly by MfE and Ministry for Business, Innovation and Employment (MBIE) one year after enactment of the legislation. Some initial system indicators are to be collected quarterly in the period prior to the post-implementation report, which will include the gross cost to the Crown of operating the fast-track system and the net cost to the Crown of operating the fast-track system (after taking revenue from applicants into account).

It is intended that the fees and levies be reviewed within the 2026, and potentially sooner depending on what is found in the post-implementation assessment with respect to costs. A review should consider:

- the EPA's actual system costs, and how these compare to projections
- the projected future system costs as the system matures into business as usual
- application volumes and trends
- levy revenue

The financial contributions made to Māori groups will also require reviewing. Once real world information is available about the operation of the system, it may be possible to consider whether more nuance can be applied to the way contribution amounts are set, for example to provide different contribution amounts based on an assessment of the complexity of applications, type of approvals applied for, or any location-specific considerations relating to applications.

Appendix: Material used for targeted policy testing

Ministry for the Environment
Manatū Mō Te Taiao

Proposed Fast-track Approvals initial fees and levies

Purpose

- We are testing draft initial application fees and levies payable by applicants under the Fast-track Approvals Bill, to be set in regulations.
- This slide pack provides further background material for context.
- Draft amounts for feedback are set out on slides 11. Working for how these draft amounts were determined is set out from slide 14 onwards.
- Please send through any feedback to rm.reform@mfe.govt.nz by 28 October 2024.

Ministry for the Environment
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Context

- The Fast-track Approvals Bill proposes to introduce a ‘one-stop-shop’ for a range of approvals across different legislation for regionally or nationally significant projects.
- Agencies and other groups will have costs associated with the process.
- The amount of work needed to fulfil statutory requirements will vary case-by-case.
- In terms of costs, the Government’s policy intent is that:
  - the full cost of the fast-track process to the Crown should be borne by applicants (ie, no Crown subsidy)
  - administration of the cost-recovery regime should be centralised.
- Ministers are considering options whether to provide for some financial contribution towards costs for particular Māori groups referred to in the legislation, payable by applicants – we may engage further on this subject to Ministerial direction.

Costs of pre-application work

Managed through direct engagement between prospective applicants and other agencies/local authorities

- The Bill envisages engagement between prospective applicants and other parties prior to lodgement of formal applications.
- Government agencies and local authorities will be empowered to recover their pre-lodgement engagement costs from prospective applicants.
- For wider groups, the Bill does not mandate (direct nor preclude) private arrangements being entered into, as can occur under existing RMA processes.

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Application fees and levies

The initial application fee will be a downpayment, with further fees charged to cover costs (if downpayment is insufficient)

There will also be a levy payable at the time of lodging an application

- When lodging an application, we propose applicants are required to pay to the EPA:
  - initial **application** fee (downpayment)
  - **levy**.
- The initial application fee and levy amounts will be set out in regulation (with different amounts for each application stage).
- The initial application fees will serve as a deposit towards the total processing costs.
  - As processing progresses, if processing costs exceed the deposit, the applicant will be required to pay **additional fees** to the EPA.
  - If total charges do not reach the deposit amount, applicants they may receive a **refund for a portion** of their application fee.

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What the fees will cover

The fees will cover the total cost of considering an application

- All work will be accounted for including the costs to central and local government, expert panel members and consultants.
- Agencies/local government to set their own rates (actual and reasonable).
- Charges will be passed onto the EPA and the EPA will reimburse all other parties for their recoverable costs, and recover all costs from the applicant.
- Further work over and above that covered by the downpayment (if any) will be charged to the applicant as additional fees; these amounts will not be set out in regulation.

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What the levy will cover

The levy will contribute towards system costs that are not attributable to specific applications

The levy will be used to:

- establish a litigation fund, to fund the panel, panel convenor, and Crown's involvement in any litigation
- fund the EPA's system costs specific to fast-track but not specific to any given application (eg IT systems)
- cover bad debt from unpaid fees when debt recovery attempts have been exhausted (so agencies and local authorities can be paid and the EPA is not out of pocket).

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Post-approval

Appeals (if any) and monitoring and enforcement costs

- Any costs required from applicants after approvals are granted (e.g. monitoring costs, development contributions) to be directly between approval holder and the relevant entity.
- For monitoring/enforcement of approvals:
  - refer to relevant provisions under "parent legislation" (e.g. RMA and LGA for resource consents, Conservation Act for concessions etc)
  - entities responsible for monitoring / enforcement under parent legislation are able to recover their costs in accordance with any relevant provisions under those Acts.

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Setting rates

Total charges will be based on the total actual and reasonable costs

- Local authorities and government agencies will be empowered to set their own cost policies (subject to them being actual and reasonable).

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How parties are paid / reimbursed during application processing

Centralised through the EPA

- Each organisation would provide time sheeting/invoicing to the EPA, attributable to specific applications and their stages.
- EPA invoices applicants, with costs itemised.
- EPA reimburses agencies, reflecting invoiced time (including overheads). Quarterly is seen as administratively efficient.
- Unpaid charges can be recovered by EPA (and other agencies if applicable) as debt.

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We seek feedback on proposed initial fee and levy amounts

The initial application fees will be a downpayment – additional costs (if any) will be extra.

The levy amount will be a fixed amount for each application, the range of possible levy values here is based on various scenarios of application volumes.

- Referral application
  - Proposed initial fee: $8,000 + GST
  - Levy contribution: A specific amount within the range of $4,000 - $7,500 + GST
- Land exchange application (if applicable)
  - Proposed initial fee: $35,500 + GST
  - Levy contribution: A specific amount within the range of $20,000 - $22,000 + GST
- Substantive application
  - Proposed initial fee: $200,000 + GST
  - Levy contribution: A specific amount within the range of $100,000 - $185,000 + GST, but likely to be approximately $125,000 + GST

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Principles for approaching cost recovery

We have developed the following principles to guide our approach to recovering costs.

1. The costs to government of carrying out its functions and duties and exercising its powers should be fully funded by users of the fast-track approvals system; the Crown should not subsidise the processing of applications or running of the system.
2. Costs to users should be reasonable; functions should be carried out efficiently.
3. Where costs can be attributed to specific applications/users, these should be borne by that user rather than shared between all users.
4. Indirect costs should be shared between all users.
5. The approach to charging users should be simple and easy to understand.

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Appendix: Supporting material

Level of upfront fees (downpayment amounts) – Referral application

- The proposed upfront fees to be set in regulation as a downpayment towards the total cost of considering an application are as follows.

	Proposed fee
Referral application	$8,000 + GST
Land exchange application	$35,500 + GST
Substantive application	$200,000 + GST

- Working is laid out on the following slides

Level of upfront fees (downpayment amounts) – Referral applications

- Each agency will be setting its own rates, which is yet to be completed. For the purpose of roughly estimating this downpayment amount, an average hourly rate of $225 was applied, alongside an estimated average of 34 hours across central government on each referral application. Multiplying these figures results in approximately $7,650.
- Local authorities' costs will be paid out by the EPA and recovered from the relevant applicant.
- It is intended that as much as possible, all recoverable costs associated with the referral application stage are covered by the upfront application fee and the need to charge additional fees or issue refunds is minimised.
- The proposed application fees are downpayment amounts only, so the actual costs charged to each applicant will differ.

[2] *For existing FTCA approvals (2024-2025 financial year), the EPA lists hourly rates for four different roles ($310, $259, $186, and $148), a simple average of these rates is $225 (https://www.epa.govt.nz/applications-and-permits/fees-and-charges/)*

Level of upfront fees (downpayment amounts) – Land exchange applications

- The Department of Conservation (DOC) has estimated that a land exchange will on average will take a minimum of 35 hours of DOC staff time, at $8,155.
- In addition to staff time, land exchange applications will incur costs of panel time, and external costs such as valuations and surveying.
- To minimise the risk of unpaid fees to the EPA, the downpayment amount is proposed to be set at a level that recovers a significant proportion of the total cost of considering a land exchange application.
- DOC has found that the average cost of valuations and surveying was $15,000 in previous invoices where Statutory Land Management had utilised these services, but these did not include land exchanges. Costs are typically higher for land exchanges as both parcels of land require a survey and valuation; DOC therefore recommends that $25,000 be set aside for these services.
- DOC further estimated panel costs of around $2,400 on average would be incurred for each land exchange.
- The proposed application fees are downpayment amounts only, so the actual costs charged to each applicant will differ.

Level of upfront fees (downpayment amounts) – Substantive applications

- The range of fees charged by the EPA under FTCA for substantive applications ranged from $40,000 for the smallest scale project application (such as a subdivision), though the mid-range for applications tended to be around $150,000 to $200,000, with the highest total application cost around $400,000 (for a retirement village).
- Under the new regime, the EPA will be consolidating costs for a broader number of government agencies. As such the magnitude of costs, billed by the EPA, are expected to be greater than experienced under the FTCA.
- It is proposed the upfront deposit is set at $200,000 (+ GST), which is estimated be close to the actual and reasonable costs for the majority of applications. This therefore minimises the magnitude of uncertainty surrounding refunds or secondary payments, reduces the risks to the Crown associated with bad debts, and provides a direction to applicants over the magnitude of funding required to go through this process.
- The proposed application fees are downpayment amounts only, so the actual costs charged to each applicant will differ.

Level of levies

The levy is intended to cover:

- contributions toward the panel, panel convenor, and Crown's involvement in any litigation relating fast-track approvals
- costs associated with the EPA in performing its functions and exercising its powers and duties under the legislation, where those costs are not directly recovered from applicants through the fees regime
- covering bad debt from unpaid fees for fast-track approvals.

The costs have been quantified by the EPA with external review and quality assurance from MartinJenkins as follows. The costs include establishment and operation costs for processes and systems over the five-year forecast period. These costs include the following main categories:

- ICT Implementation Costs estimated at $9 million
- costs associated with bad debts and a fund to support litigation related to any fast-track approvals estimated at $9 million
- lead agency management costs including system and process development and implementation, including costs associated with developing and maintaining a technology solution to support application submission and tracking, estimated at $3.1 million
- depreciation and Treasury financing costs estimated at $24.6 million.

The total estimate for levy-based costs (costs expected to be incurred by EPA for the set up and operation of the Fast Track Application system that are not attributable to specific application) is $46 million over the 5 year period modelled.

Costs are also escalated at 2% per annum over the five-year forecast period, to account for any inflationary changes that could occur over the forecast period.

The projected number of applications for the purpose of this estimation has been developed as follows.

Level of levies

Application volume scenarios for the purpose of establishing proposed levy amounts are as follows

	Year 1			Year 2			Year 3			Year 4			Year 5			Note
	H	M	L	H	M	L	H	M	L	H	M	L	H	M	L	
Referral	118	94	59	118	94	59	118	94	59	94	75	47	83	66	42	*
Land exchange	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
Substantive	100	80	50	100	80	50	100	80	50	80	64	40	70	56	35	*

* Note: Assumed 20% decrease year 4 and 30% year 5

Proposed levy amounts, based on the above scenarios, will be within the following ranges

	Proposed levy (range)
Referral application	A specific amount within the range of $4,000 - $7,500 + GST
Land exchange application	A specific amount within the range of $20,000 - $22,000 + GST
Substantive application	A specific amount within the range of $100,000 - $185,000 + GST, but likely to be approximately $125,000 + GST


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Proposed Fast-track Approvals financial contributions to Māori groups

Purpose

This material is additional to the Proposed Fast-track Approvals initial fees and levies, and focuses on proposed financial contributions to be made to Māori groups

- We are currently testing draft initial application fees and levies payable by applicants under the Fast-track Approvals Bill, to be set in regulations
- This slide pack provides further information on potential financial contributions to be paid to Māori groups for their involvement in the process
- Draft amounts for feedback are set out on slide 6
- Working for these draft amounts are set out in slide 8 onwards
- Please send through any feedback to rm.reform@mfe.govt.nz by 28 October

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Requirements to invite Māori groups to comment

The Bill provides for third party involvement as follows:

- before lodging a referral application, the applicant must consult various parties
- when the Minister receives a referral application, the Minister must copy the application to, and invite written comments from various parties
- for a proposed land exchange, the Department of Conservation must invite written comments on the proposed land exchange from various parties
- when the panel considers a substantive application, it must invite comments from various parties
- the panel may hold a hearing and hear from any of those parties who provided comments in response to an invitation to comment on a proposed land exchange or a substantive application
- at any time before a panel makes its decisions on a substantive application, it may direct the EPA to request further information from any of those parties who provides comments in response to an invitation to comment on a proposed land exchange or a substantive application
- before a panel decides to grant an approval, it must direct the EPA to provide a copy of the draft conditions to every person who provided comments on the application, and invite comments on the draft conditions
- at other stages for specific approval types such as on aquaculture decisions required for certain coastal permits.

Requirements to invite Māori groups to comment

The Māori groups who must be invited for comment include (to the extent relevant to the type and location of each project):

- iwi authorities
- hapū
- iwi authorities and groups that represent hapū that are parties to relevant Mana Whakahono ā Rohe or joint management agreements
- Treaty settlement entities
- Groups with recognised negotiation mandates for, or current negotiations for, Treaty settlements
- protected customary rights groups and customary marine title groups
- relevant applicant groups with applications for customary marine title under the Marine and Coastal Area (Takutai Moana Act) 2011
- the tāngata whenua of any area within the project area that is a taiāpure-local fishery, a mātaitai reserve, or an area that is subject to bylaws made under Part 9 of the Fisheries Act 1996
- ngā hapū o Ngāti Porou
- the owners of Māori land in the project area
- any other Māori groups with relevant interests.

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Proposed approach to providing financial contributions to Māori groups

Centralised through the EPA

- It is proposed that Māori groups responding to an invitation to comment under the legislation will be eligible for a financial contribution towards the cost of responding.
- The contribution amounts would be set out in regulation.
- Charges will be passed onto the EPA and the EPA would reimburse all other parties for their recoverable costs, and recover all costs from the applicant.

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We seek feedback on proposed contribution rates to Māori groups

We propose that regulations set fixed contribution amounts (per group) at the following stages:

- Referral application

  Proposed contribution towards costs: $500 + GST (if any)

- Land exchange application

  Proposed contribution towards costs: $500 + GST (if any)

- Substantive application

  Proposed contribution towards costs: $3,000 + GST (if any)

Pre-application costs would not be regulated. This process requirement falls directly on the applicant.

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Appendix: Supporting material

Financial contributions towards Māori groups' costs

- There are workability and legal challenges in providing for cost recovery for third parties, and as such financial contributions are proposed rather than full cost recovery. Under this approach, specified amounts would be set in regulations as financial contributions to be provided to Māori groups responding to invitations to comment on fast-track applications. These amounts would be paid by the EPA and then cost-recovered from the relevant applicant.
- These amounts would be per group responding to an invitation to comment on an application, not per application (i.e. if there are lots of groups involved, they do not have to split the contributions between them).
- The evidence base to support the prescribed values is limited and there are inherent challenges in prescribing a set amount to reflect variable work. As such, the financial contributions are likely to be nominal amounts which do not reflect the true costs to Māori groups of their involvement, given the limited time and evidence base available. These would be reviewed as more information comes to light during implementation.
- The proposed contribution amounts are set out in the table below.
- These figures have been developed based on assumptions and information in the following slide:

	Proposed contribution amount
Referral application	$500
Land exchange application	$500
Substantive application	$3,000

Financial contributions towards Māori groups' costs (cont.)

Referral and land exchange applications

- a referral application will be relatively small, and the applicant will have already consulted with the relevant groups before lodging the application, and costs to Māori groups may have already been recovered directly from the applicant at that pre-application stage
- and land exchange application is a specific sub-part of an application only relating to the land exchange, so the best estimate is to size it the same as a referral application
- published charge-out rates for Māori groups are not readily available, but Tūwharetoa has a published hourly rate of $130/hour + GST for commercial licences processing etc.
- there are constrained timeframes for Māori groups to comment on applications, which can give some indication of the expected volume of work associated with responding to an invitation to comment
- we assume ~3-4 hours per application for referral and land exchange applications based on the expected tasks including:
    - reviewing the application materials provided
    - identifying any areas of significance, for example where the proposal overlaps with any areas under management plans
    - providing a written response to the request.

Substantive applications

- for substantive applications, there will be a range of complexity involved, and substantive applications will be significantly more complex than referral or land exchange applications
- the amount needs to be set at a reasonable mid-point for an average application to ensure the amount recovered from applicants is reasonable
- New Plymouth District Council has a grant of up to $5,000 for participation in resource consent processes, though this is for iwi and hapū to purchase professional services rather than for their own time
- under the FTCA, MfE administered funding to support environmental NGOs, with up to $3,000 available per application.


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