



Report Title:	Cabinet Fees Request: Fast-Track Expert Consenting Panel Members under the Natural and Built Environment Act		
Report No:	2024-0267		
Date:	3 September 2024		
To:	Hon Nicola Willis, Minister for the Public Service		
Action Sought:	Agree to sign the attached letter supporting the Minister for the Environment for a standing fee exception.	Due Date	3 September 2024
Contact Person:	Robert Anderson, Manager, Public Sector Performance		
Contact No:	9(2)(a) privacy		
Encl:	Yes	Priority:	High
Security Level:	UNCLASSIFIED		

Executive Summary

1. The Minister for the Environment, Hon Penny Simmonds (the Minister), seeks your support to pay a standing fee exception to members of the Fast-Track Expert Consenting Panels (the Panels).
2. The repeal of the Natural and Built Environment Act 2023 (NBEA) in late 2023, left in place the Fast-track consenting provisions. The Panels are, therefore, not new bodies, but a function that is stand alone, until the Fast-track legislation is introduced.
3. Under the NBEA, the Panels' purpose is to consider and determine resource consents and designations for eligible projects, replacing the role that local authorities and Boards of Inquiry play under the Resource Management Act 1991 (RMA).
4. Under the Bill, the Chief Environment Court Judge acts as Panel Convenor and is required to appoint up to four members for each Panel, including a chair. The Minister, in this case, is the fee setter. Each Panel must include one member nominated by the relevant local authorities and one person nominated by the relevant iwi authorities.
5. Under the Cabinet Fees Framework (the Framework), the Panels are classified as a Group 2, Level 1 decision-making body [CO (22) 2]. Daily fees for these bodies range from \$765 to \$1,194 for chairs and \$490 to \$759 for members. We note that the fees ranges mentioned in the Minister's letter are different as the officials have incorrectly quoted fee ranges from a previous Cabinet Circular, which has since been updated.
6. The Minister considers that, as in the case of the previous Fast-Track panels, these fee ranges are insufficient for appointing members given the complexity of the issues they will consider, the short timeframes and having to make complex decisions under the new statutory criteria. By paying a higher fee, the Minister aims to attract and secure the

appropriate level of skills and experience, as well as sourcing candidates from a limited pool who are high in demand.

7. The Minister seeks a standing exception from the Group 2, Level 1 fee range for the panel members due to the expected variability of projects to be received for consideration.
8. A standing exception will allow exceptional fees to be paid to all new Panel appointments and re-appointments without the need for further Cabinet consideration.
9. This fee level will ensure that suitably qualified individuals can be recruited and retained.
10. The proposed fee exception is consistent with the pre-existing standing exception for the Fast-Track panels.
11. The Public Service Commission (the Commission) considers that the proposed fee exception is supportable due to the need to attract and retain the skills, capabilities, and experience necessary to lead this work.
12. It is recommended that you sign the attached letter supporting the Minister for the Environment for a standing fee exception.

Purpose of Report

13. The Minister for the Environment, Hon Penny Simmonds, (the Minister) seeks your support to pay a standing fee exception to members of the Fast-Track Expert Consenting Panels (the Panels).

Context

14. The Cabinet Fees Framework (the Framework) makes provision to pay fees above the levels set in the fee scales - a fee exception. Such exceptions need to be based on clear evidence and/or reasons for an increase or exception.
15. The Panel's purpose is to consider and determine resource consents and designations for eligible projects, replacing the role that local authorities and Boards of Inquiry play under the Resource Management Act 1991.
16. In this case, the Chief Environment Court Judge, currently Judge Kirkpatrick, acts as convenor, therefore has the appointing responsibility as required under the Natural and Built Environment Act 2023. The Minister for the Environment is the fee setter.
17. The Convenor is required to appoint up to four members to each Panel, including a chair for each panel. The chairs must be a current or retired Environment Court Judge, other Judge or a senior resource management lawyer.
18. The panel members are required to consider complex issues within short timeframes and are being sourced from a very limited pool of candidates who are high in demand.
19. Similar bodies have been granted fee exceptions to attract and secure appropriate level of skills and significant experience.
20. Under the Framework, the Panels are classified as a Group 2, Level 1 decision-making body [CO (22) 2]. Daily fees for these bodies range from \$765 to \$1,194 for chairs and \$490 to \$759 for members. These fees ranges are different to the fee ranges mentioned in the Minister's letter, as the officials have incorrectly quoted fee ranges from a previous Cabinet Circular, which has since been updated.
21. The Minister for the Environment considers that these fee ranges are insufficient for appointing members given the complexity of the issues, short timeframes and skills and experience required, along with a small pool of candidates to consider.
22. The Minister for the Environment's proposal is that:
 - Any judges appointed as chairs of the Panels will be paid their equivalent daily fee as a Judge at the time of appointment. This would be paid by the Ministry of Justice and cost recovered from the Environment Protection Authority. This is consistent with the Framework where the daily fee will not exceed the daily fee paid to a High Court Judge.
 - Should the Panel Convenor act as a Chair for one of the Panels, they will receive the daily rate of the Panel Convenor. They will not be double paid for performing the duties of both roles in a single day.
 - Chairs that are not Judges will receive a daily rate of \$1,200.
 - A fee range of \$850 - \$1,100 is proposed for Panel members due to the expected variability in projects. The fees for members will be determined by the Panel Convenor on a case-by-case basis. The minimum fee of the range (\$850) is equivalent fee for an Environment Commissioner.

Public Service Commission's view

23. As appointments are not to be made immediately, the Minister for the Environment does not suggest there will be recruitment or retention difficulties.
24. Exceptional fees, if agreed, should be set in line with precedent exceptions. Recent fee exceptions for comparable Group 2, Level 1 bodies are set out at Appendix A. The proposed daily fees for the chair and panel members are broadly in line with the precedent fees for comparable roles.
25. The Fast-Track Expert Consenting Panels under the NBEA were introduced to replace the role local authorities and Boards of Inquiry play under the RMA, to consider and determine resource consents and designations for eligible projects. RMA reform work programme is a Government priority.
26. The Commission's advice is that you support the case for standing fee exceptions for the Fast-Track Expert Consenting Panels as per the Minister for the Environment's proposal. This level of fee exception would be at a high level but broadly consistent with exceptional fees paid to other comparable Group 2, Level 1 bodies.

Financial Implications

27. The Ministry for the Environment will manage the funding for the Panel fees from its baseline.

Next Steps

28. It is recommended that you sign the attached letter to the Minister agreeing to provide support for the proposed fees for the Fast-Track Expert Consenting Panels when she seeks Cabinet's agreement at the Cabinet's Appointments and Honours Committee.
29. If you agree, the Commission will release this briefing in full once it has been considered by you.

Recommended Action

We recommend that you:

- a **agree** to support the proposed standing fee exception sought by the Minister for the Environment for Fast Track Panels provided for under the Natural and Built Environment Act 2023 (as outlined in paragraph 22 of the advice)

Agree/disagree

- b **sign** the attached letter to the Minister for the Environment

Agree/disagree

- c **agree** that the Public Service Commission release this briefing once it has been considered by you.

Agree/disagree.

Hon Nicola Willis

Minister for the Public Service

IN CONFIDENCE