By email

18 April 2024

Email to: en@parliament.govt.nz

Office of the Chairperson
100 Cuba Street
Wellington T 04 384 5708
www.gw.govt.nz

Tēnā koutou katoa,

Fast-track Approvals Bill – Greater Wellington Regional Council Submission

Greater Wellington Regional Council (Greater Wellington) makes the following submission to the Environment Select Committee on the Fast-track Approvals Bill.

As a regional council, Greater Wellington is responsible for a number of statutory functions that are of direct relevance to this Bill. These include consenting, compliance monitoring, and enforcement functions under the Resource Management Act (RMA), and we also have a role in developing regional land use and transport strategies and policies. As such, we understand the rationale behind the Bill, but have significant concerns about its drafting and implementation. We would welcome the opportunity to work with Government to resolve these.

1. Summary of key points

The key points of our submission are as follows:

a. The proposed fast-track legislation poses significant risks to the environment and economy, to mana whenua and communities, and should not move forward without substantial amendments.

b. We are concerned about the limited recognition of Te Tiriti articles which undermines the interests of Māori, with high concern for iwi yet to settle with the Crown.

c. The roles of regional and unitary councils in the process should be strengthened.

d. There is no balance between development goals and environmental/climate considerations in this legislation that could lead to long-term negative impacts on the environment, society, and the economy.

e. The public should have the opportunity to comment on the list of eligible projects.

f. The Bill should contain a sunset clause to make fast-tracking temporary while wider

substantial RMA reform legislation is developed.

2. Our points in detail

2.1. The proposed fast-track legislation poses significant risks to the environment and economy, to mana whenua and communities, and should not move forward without substantial amendments.

Greater Wellington recognises that there are sometimes barriers to the construction of large and complex projects leading to costly delays. However, there are existing mechanisms in the RMA for such projects to short-cut parts of the standard consenting process, including direct referral to the Environment Court to cut out appeals, and applicants are able to apply for a private plan change for a proposed project where there is no current consenting pathway. Regional plans include more lenient rules or policies specifically for regionally significant infrastructure to recognise their benefit to regional communities.

This proposed legislation, by design, bypasses existing mechanisms in the resource management framework. This includes the existing regional planning rules and fast-track provisions. In the case of the former, these have often gone through both a public and judicial process to reach the agreed regional framework.

The now-repealed COVID-19 Recovery (Fast-track Consenting) Act 2020 allowed for an expedited process while still being aligned with the Resource Management Act. The similarly repealed Natural and Built Environment Act 2023 also provided for a fast-track consenting process in which an independent expert panel, appointed by the Chief Environment Judge, was the decision-maker. Many of the safeguards in these repealed Acts are missing from the current proposal and should be reinstated.

We have specific concerns and recommendations about the following aspects of the Bill:

a. The expert panel only has the ability to make recommendations. This in effect gives Ministers the dual roles of submitting consents into the process as well as granting the consents. The panel should have decision making powers with referral to Ministers only if there is a recommendation to decline the application.

b. The breadth of legislation that the Bill overrides (clause 10) coupled with the lack of full Regulatory Impact Statement (RIS) raises the risk of unintended consequences. Great care is required in the absence of this analysis to avoid unintended and irreversible economic and environmental consequences.

c. There is no requirement for Ministers or the expert panel to seek comment from the public, affected parties, or to hold a hearing. Rights to appeal are very limited and can only be made on questions of law. As a minimum, affected property owners should be advised and have the right to make submissions. Clause 16 consultation requirements for applicants does not currently require this.

d. Eligibility criteria for projects to be fast-tracked (clause 17) are overly broad, heavily weighted to economic development, and lack the overall rigour of cost-benefit analysis

that would make it clear why a project was to be fast-tracked. The eligibility criteria should explicitly include whole of life cost-benefit analysis and strong environmental considerations.

e. Alignment with regional spatial plans and Future Development Strategies should be included as criteria for being accepted for fast-tracking (clause 17). Ad-hoc project approvals are at odds with sound planning and work against desired outcomes over the long term. This will also cut across the long-term and future development planning that local government is required to undertake, alongside its communities, by the National Policy Statement on Urban Development. Furthermore, we recommend that the Infrastructure Commission moderate this list at a national level so that projects are being prioritised at both the national and regional levels. At a minimum, we recommend the Bill reference existing spatial plans (including Future Development Strategies) as a criterion for determining where a project is suitable for acceptance as a fast-tracked project, and that the Panel is required to consider consistency with a Future Development Strategy as part of their assessment.

2.2. The Bill contains limited recognition of te Tiriti articles, which undermines the interests of Māori, especially the interests of iwi yet to settle with the Crown.

There is no requirement to "give effect to" Te Tiriti articles, and the principles of the Treaty of Waitangi, in the Bill, to protect and uphold iwi and hapū rights and interests set out in Te Tiriti o Waitangi. In the context of the Treaty itself, the Bill only provides iwi and hapū some protection for those rights and interests arising from Treaty settlements and specified customary rights.

Greater Wellington has worked in partnership with mana whenua for thirty-one years, which includes working with mana whenua partners to develop the region's Future Development Strategy, and to develop an overarching approach to managing the Environment (such as development up to notification of the proposed Natural Resources Plan). Under clause 6, the Bill only acknowledges obligations under existing Treaty settlements and certain customary rights. Clause 13 further sets out that before making their decision, Ministers must 'consider Treaty settlements and other obligations'. We are concerned that this clause has the potential to disadvantage iwi groups who have yet to settle their claims and jeopardise their potential property rights. We believe therefore that the rights of iwi and mana whenua groups yet to settle should be explicitly recognised.

We believe that provision should be made in the expert panel for iwi and mana whenua membership or representation. Panel members must collectively have excellent understanding of te Tiriti o Waitangi articles and its principles, and a high-level understanding of tikanga Māori and mātauranga Māori.

Unlike other participants in the proposed process, there appears to be no provision to recover the costs incurred by iwi or hapū in responding to fast-track consent applications (clause 14). There is also a high risk with limited consultation time periods, that iwi and hapū infrastructure are unable to respond accordingly like other affected parties.

Potentially, this could mean that iwi or hapū would either have to spend their own time and resources, thereby diverting them from other priority kaupapa or work, or they might not even be able to afford to comment on or respond to applications in a meaningful way. Another potential risk for iwi and hapū is lands that have multiple ownership rights, and who will be appointed on the expert panel, especially if an iwi or hapū is unsettled. This process has the potential to cause conflict and inflammation between iwi and hapū relationships with each other.

2.3. The roles of regional and unitary councils should be strengthened.

Regional and unitary councils have a specific role as the environmental regulator, and become the compliance, monitoring and enforcement agent of any projects granted by the proposed process. The expert panel should take into account operative regional planning documents (Regional Policy Statement and Regional Plans). Membership of the expert panel should also include a member nominated by a regional council (as well as the relevant territorial authority).

A mandatory requirement should be introduced for consultation with the relevant local authorities before the lodgement of the application, and as a requirement of acceptance under Schedule 4 (including showing how any comments received have been incorporated into the proposal). Our experience with COVID fast-track consenting shows that workable, robust, and enforceable conditions are a key outcome of the decision-making process. Where the conditions imposed are not workable, the project must apply for consent variations and/or face problems with compliance. This causes delays and a loss in efficiency to the project, and importantly further economic cost. Consideration should be given to a mandatory 'conditions' hearing to ensure robust conditions are imposed, which the compliance agencies are confident they can enforce.

All costs incurred should be recoverable by Local Authorities. The Bill isn't clear on the recovery of costs for pre-lodgement consultation and providing comments on a referral application. Schedule 3 14(2) should be expanded to make this explicit.

The panel should be required to have particular regard to the reasons for a project being declined by any previous consenting/approval process or being advised that there was no consenting pathway. For example, development in a flood-hazard area, on a fault line, or at risk of impacting an aquifer or water-supply area should hold weight in fast-track decision-making.

2.4. Development goals have precedence over environmental or climate considerations in this legislation

In making decisions on a project, the purpose of the Bill (to facilitate projects with significant regional or national benefits) will take precedence over considerations in other legislation. There are currently no environmental parameters in which the purpose must be achieved, unlike for instance, the Resource Management Act 1991. The environment has limits and beyond which development will have long-term (sometimes irreversible)

detrimental effects not only to the environment but to economy and society as well.

Eligibility criteria for projects to be fast-tracked (clause 17), are very broad and heavily weighted to economic development (of the 15 criteria listed, only two make reference to climate or environment). Of particular note, clause 17(5) spells out that 'A project is not ineligible just because the project includes an activity that is a prohibited activity under the Resource Management Act 1991.' This clause should be removed. Prohibited activities are determined as being beyond the limits of the environment, and/or beyond limit of what mana whenua and the community are prepared to accept. Prohibited activity status also applies in sites identified as tapu by iwi mana whenua. This clause may also directly conflict with Sections 62 and 66 of the Marine and Coastal Area (Takutai Moana) Act 2011; it is our understanding that MACA protections sit above the fast-track provisions.

We strongly recommend that the Minister for the Environment be included as one of the decision-making Ministers in order to preserve that balance between development goals and long-term environmental sustainability. We also recommend that operative regional planning documents such as the Regional Policy Statement, Regional Plan, and Future Development Strategy need to be considered by the expert panels in recommending consenting conditions. We also recommend that the eligibility criteria for projects reflect the environmental limits that they need to work within.

We also note and support the submission from Te Ura Kahika – Regional and Unitary Councils Aotearoa.

2.5. The public should have the opportunity to see and comment on eligible projects

Without the schedules in the Bill being populated with projects, there is no ability to comprehend the scope of the legislation and the impacts it will have on communities and the environment. We can get a sense of some of the projects that may be included from the coalition agreements, but members of the public that have already participated in consenting processes which have resulted in projects being declined may have a totally different view of the Bill if those projects were actually listed.

We are concerned that these projects will only be added to the Bill after the select committee process, which will not allow for any public scrutiny or input. Full understanding of the ramifications of the Bill is hampered by the lack of concrete examples of the projects the fast-track process will consider. In many cases, these projects will have direct impacts on people, their property rights, communities and/or have potentially significant environmental or climate implications. It is our view that the public should therefore have a right to comment on the list as part of the select committee process, or where a project is nominated for fast-track approval after the Bill's passage, these be notified for the public to be able to comment. This is particularly important where proposed projects will affect private property owners who should have the right to visibility and compensation if their land or property is subject to a fast-track application.

The lack of visibility of the projects also means that the scale of approvals cannot be

measured. The 'bulk' approval of large infrastructure projects will result in pressure on the country's capacity to begin these projects quickly. Such an increase in demand for construction resources will inevitably lead to cost increases and cause other projects (which may be more economically and socially worthwhile) being delayed. The bar should be as high as possible for projects to receive special treatment under this regime. We believe that a thorough cost-benefit analysis should be part of the fast-track process.

2.6. This bill is part of a wider package of resource management reform and should contain a sunset clause

We note that this Bill is intended as an interim step to accelerate construction of required infrastructure and is part of a wider resource management reform package. The issues that impede infrastructure construction are wider than the pace of consenting where viable fast-track mechanisms exist and are already used. They include availability of funding, construction sector capacity, market conditions and, depending on the sector, long and convoluted planning processes. A wider system review is required if the construction of much needed projects is to be accelerated. These considerations should form part of the wider resource management reform process in the problem definition phase.

We recommend a sunset clause is inserted to make fast-tracking temporary, while wider substantial RMA reform (and reviews of other conservation-related legislation) is undertaken. Additionally, any projects approved under this process should be transitioned into any new regime.

3. What we would like to see changed in the bill

A summary of our recommendations for changes are as follows:

a. The final decision-making function, including the ability to apply conditions, should sit with the expert panel.

b. If recommendation (a) is not accepted, then we strongly recommend that:

   - The Minister for the Environment be added as a deciding Minister, and
   - Ministers be required to disclose their reasons for declining any expert panel recommendations.

c. The Bill should give effect to Te Tiriti articles, and the principles of the Treaty of Waitangi to protect and uphold iwi and hapū rights and interests set out in Te Tiriti o Waitangi.

d. The addition of provisions to provide protection for Treaty claimants who are yet to settle to ensure that the project does not compromise any future settlement.

e. Local authorities and iwi mana whenua groups should be able to recover from the applicant the actual and reasonable costs incurred by their participation in the Fast-Track process.

f. Inclusion of fast-track eligibility provisions that require projects to be aligned with the regional priorities set out in a Future Development Strategy and other statutory regional plans including the Regional Land Transport Plan.

g. The applicant and expert panel be required to consult with regional or unitary councils on the development of conditions which should be aligned with operative RMA Regional Planning documents.

h. Inclusion of economic and whole of life cost-benefit analysis within the criteria for granting approval.

i. Provisions that require recognition of private property rights including provisions to consult with property owners whose land or property is subject to a fast-track approval project.

j. The full list of projects to be made available to the public for comment before being added to the Bill.

k. A sunset clause be inserted to make fast-tracking temporary while wider substantial RMA reform (and reviews of other conservation-related legislation) is undertaken.

4. Closing remarks

Greater Wellington Regional Council once again thanks the Environment Select Committee for the opportunity to provide feedback on the Fast-track Approvals Bill.

We would like to speak to our submission.

Ngā mihi nui,

Adrienne Staples
Deputy Chair, Greater Wellington Regional Council