Submission on the Fast-track Approvals Bill

Submitter: Civic Trust Auckland
Contact name: Audrey van Ryn (Secretary)
Phone: 021 0354431
Email: cta@civictrustauckland.org.nz
Postal address: PO Box 29002 Epsom Auckland 1344

Civic Trust Auckland (CTA) is a non-profit public interest group formed in 1968 with activities and interests throughout the Auckland region. It is a regular submitter on matters of interest to it, both to Auckland Council and to central government.

CTA **strongly opposes** the Fast-track Approvals Bill and we ask that the government rejects it.

We wish to make the following comments:

1. The purpose of the Bill

(a) CTA supports the government's aim to streamline approvals for projects with significant regional and national benefit, and we support some aspects of fast-track processes for infrastructure decision making.

(b) However, there are already adequate fast-track procedures for infrastructure projects that the government can use, such as a direct referral to the Environment Court and the Natural and Built Environment Act fast-track consenting regime.

(c) The COVID-19 Recovery Act was enacted for a specific purpose, namely, to provide an economic stimulus during the pandemic. It was enacted for a finite period, and, given its limited lifespan and therefore its return to the status quo, it included the requirement to take other Acts into account, such as the RMA and its sustainable management purposes.

(d) As a community group with an interest in good planning, particularly in relation to its effect on the environment, one of our primary concerns is that there is inadequate consideration given to the controls already in place to protect the built and natural environment, and no balancing of sustainable management of these natural and physical resources with the development focus of the Bill's purpose.

(e) In CTA's view, we should not have legislation that encourages growth in places where it hasn't been planned for and is reliant on infrastructure for

which there is no (or inadequate) funding, when infrastructure has been provided for elsewhere.

(f) We consider that urgency for approving projects should only be used in actual emergencies such as those that involve the protection of human lives.

2. Project eligibility

(a) Auckland Council's mandatory strategic documents seem to be almost irrelevant considerations for determining a project's eligibility for fast-tracking, as consideration of them is discretionary. These plans and strategies have sought to address the lack of certainty about infrastructure projects.

(b) When projects are consented, the provision of infrastructure and transport will be needed. If councils divert funding from planned development, this is unlikely to facilitate the delivery of infrastructure and projects beyond that which has already been planned for.

(c) The Ministry for the Environment recommended that the Bill should not provide for listed projects to get automatic referral, for procedural reasons (e.g., lack of transparency and iwi engagement). That Ministry also recommended that the purpose of the Bill include reference to sustainable management, and for matters under the RMA (national direction) to have equal weighting with development. This recommendation has not been followed. Instead, Clause 32 creates a clear hierarchy that favours infrastructure and development objectives over the sustainable management purpose and principles of the RMA.

(d) The government can apply for its own projects to be fast-tracked. We consider this to be inappropriate.

(e) The Bill does not include any listed projects and therefore submitters are unable to comment on the automatic fast-track referral or deemed significance of particular projects.

(f) The criteria for a project or development to have national or regional significance are undefined, and there also appears to be no legal definition of the terms "significant" or "benefit."

3. Concerns specific to conservation/heritage legislation

(a) New Zealand's freshwater quality, biodiversity, heritage and, climate are all at risk and need to have more protections put in place, not to have them removed.

(b) We refer to the open letter from ten scientific groups representing thousands of scientists that conduct research on New Zealand's unique biodiversity, which reads: "We are highly concerned that recent and proposed legislative changes threaten to undermine New Zealand's progress on key environmental issues, both nationally and internationally. …New Zealand's plants, animals, fungi and ecosystems are globally unique and underpin key economic sectors (e.g. healthy soils and ecosystems are critical for our primary production sector, and tourists come to see our wild places and

native species), but are also threatened with extinction. … Safeguarding and enhancing our natural environment is not merely a 'nice to have', but is critical for sustaining wellbeing and primary productivity."

(c) The Bill overrides the planning rules of local authorities by referring projects for fast tracking despite them being a prohibited activity. Regional strategies and spatial strategies should be a starting point for decisions.

(d) It is inappropriate that the Minister for the Environment and the Minister of Conservation are not involved in the referral process. We are also concerned that neither the Secretary for the Environment nor the Parliamentary Commissioner for the Environment do not need to be invited to give feedback on projects. Further, we find it inappropriate that Heritage New Zealand Pouhere Taonga and the Infrastructure Commission/Te Waihanga are excluded from providing comment on listed projects.

(e) The Minister of Conservation has powers only with respect to conservation legislation, with no role in relation to the coastal and marine environment.

(f) The government should act in line with the Paris Agreement as required.

(g) There is no requirement to exclude referral of projects that would: (a) significantly increase greenhouse gas emissions, (b) contribute to the extinction of indigenous species, (c) pollute freshwater, (d) degrade water bodies covered by a Water Conservation Order, (e) cause serious risk to human health and safety, or (f) breach international law.

(h) There is no requirement that concessions be consistent with conservation management strategies and conservation management plans (Schedule 5, Clause 4(i)).

(i) There is no requirement that an application for a structure/facility be declined where it could reasonably be undertaken outside of conservation land or in another part of the conservation land where it would have lower impact.

(j) Ministers do not have to apply any statutory criteria relating to environmental harms and to the extent they are required to consider environmental effects as part of the process required by the Bill, they can disregard all environmental effects when deciding whether to grant an application.

(k) We object to the Bill seeming to allow access arrangements to mine Schedule 4 land and in national parks and marine reserves.

(l) We are concerned that under the Bill, conservation covenants can be amended or revoked by the Minister of Conservation.

(m) Prohibited activity rules in the Auckland Unitary Plan (and other plans) can be overridden, such as applying to demolish HNZPT Category 1 and Council category A historic heritage. Urban activities on non-urban land may be enabled, contrary to the Auckland Unitary Plan and Auckland Council's Future Development Strategy 2023, with likely significant negative environmental outcomes. Local government and their communities have deemed certain activities to be prohibited for a reason: they are considered to be too harmful to ever be allowed, with regard to human health and safety, as well as safeguarding the environment and/or cultural values.

(n) Past New Zealand Governments and Councils have been members of ICOMOS New Zealand and ICOMOS International. All statutory NZ Government and local government entities have signed an international agreement to manage and protect cultural heritage property and contribute to heritage conservation. This Bill is able to override heritage legislation and heritage advice from Heritage New Zealand and Council heritage advisors.

(o) No evidence has been supplied in the Bill regarding outcomes for the built or the natural environment. The Bill is contrary to the National Party's Blueprint for a Better Environment, which addresses sustainable freshwater, protection of our oceans and marine life, enhancing biodiversity, and opportunities for outdoor recreation, and is based on cohesive rules that target better environmental outcomes, achieving growth and prosperity within environmental limits.

4. Panels and others involved in the process

(a) Panels should be properly resourced with sufficient members with the requisite skills, to deal with all matters relevant to a particular project. For example, only one place on a panel is provided for a Council representative. We support representation that would incorporate the views of local/community boards.

(b) Projects will be able to be submitted to the advisory group for evaluation but it seems that the public will not be able to provide any input on this. Furthermore, public and limited notification of a consent application or notice of requirement is not allowed by panels.

(c) There is little involvement in the process for local authorities on significant development proposals and no involvement at all for special interest, community or environmental groups.

(d) Expert independent panels would have an advisory role only, and can be overridden by ministers. Three ministers (the Ministers for Regional Development, Infrastructure and Transport), development-focused ministers, would be given unbridled power to approve any development. This includes overriding environmental protections such as the Conservation Act and the Heritage New Zealand Pouhere Taonga Act.

(e) We object to there being no requirement to consult any person or entity representing the environment outside government, aside from Māori entities, and no person or entity within government other than the Minister and Director-General of Conservation. Projects that the panels are scrutinising are likely to be those that affect the environment, and additional input from a range of entities is important.

(f) The prohibition on notification excludes participation by Māori groups except for registered iwi authorities, which is problematic where groups have a range of differing economic, environmental, cultural and social interests.

(g) The expert panel may determine what weight it wants to give to iwi management plans, Mana Whakahono ā Rohe and joint management plans.

It is expressly directed to give these instruments less weight than the purpose of the Bill. This means that engagement that occurred prior to the Bill with iwi and hapū is devalued and undermined.

(h) Reference to Section 8 of the RMA is not included in the Clause 32 hierarchy, which has the result that panels are not required to take into account the principles of Te Tiriti o Waitangi when making their recommendations.

(i) CTA supports expert independent panels being convened by a panel convener, who should be a current or former judge of the Environment Court or High Court. However, we do not support the requirement that panel conveners consult with Ministers when appointing panel members and chairs. The reason for this is to instil public confidence in the Bill. We are greatly concerned that panel members are not required to have skills and experience relevant to natural environmental management or built heritage.

(j) The Bill requires the expert panel to give more weight to the purpose of the Fast-track Approvals Bill than the purpose of the RMA (for resource consents) or conservation purposes (for concessions).

(k) Clause 25(8) suggests that Ministers are not required to give reasons if a project is approved. If no reasons are provided for approving a project it is difficult to identify where an error of law may have occurred. There are so few restraints or requirements on decision-making, that options to challenge the decision for the Ministers are likely to be limited.

(l) The Ministers appoint the panel convenor, and then must be consulted on the membership of panels and the chairperson of each panel. There is little scope, if any, for independence in the expert panels. If a panel member does not meet the convenor's favour they may be removed.

(m) The timeframe under which panels must make recommendations on projects is too short, with just 40 days to become apprised of, understand and evaluate complex projects. Panels often would not have available to them information provided by experts.

(n) The public does not have the right to be notified or heard, with comments on projects only accepted from those invited or with an interest greater than that of the public. Time frames for notification of the few allowed to participate, for their response, and for expert panel consideration are too short.

(o) Appeals on Ministers' decisions will be limited to points of law to the High Court. Give that there is proposed to be no general public oversight of the fast-track proposals and evidence in support of them, there should be appeals on points of law, also the ability to appeal on substantive matters based on credible evidence.

(p) CTA would like to see more considered and inclusive mechanisms developed that include participatory democracy and public input.

5. Recommendations

We wish to make the following recommendations:

That the government rejects or amends this Bill as follows:

(a) Remove ministerial override so that decisions are made by expert panels, with their decisions based on science and evidence only.

(b) Enable the voice of communities by giving them the right to have input into developments in the places where they live, in fact, inviting them to provide input, in the interests of better decision making. Processes could still be streamlined but public input provided for by further empowering the panel's proposed Council representative.

(c) Integrate environmental protections, by taking into account New Zealand's current conservation and environmental laws, which have been carefully developed over the last 4 decades. RMA instruments should retain their current level of influence in decision making.

(d) Disallow damaging projects, including prohibited activities and projects that have already been rejected by the courts, particularly those that would damage conservation land and our oceans.

(e) Remove all listed projects from the Bill.

(f) Enable a well-considered, widely gazetted and inclusive discussion about RMA reform.

(g) Include in Clause 18 prohibited demolition of at least Category I items listed by Heritage New Zealand Pouhere Taonga and Category A items scheduled by Council, both of which are of regional significance.

(h) Ensure iwi authorities without Treaty settlements are included in the consultation and commenting processes.

(i) Provide for a monitoring regime to assess the effects of projects.

(j) Limit fast-tracking to infrastructure projects requiring RMA approvals only as supported by evidence, with the ability to expand to other approvals in subsequent legislation if supported by evidence and a well-designed system.

(k) Require all projects be assessed against mandatory statutory criteria for fast-track referral.

(l) Expand the list of ineligible projects in Auckland to prevent urban activities on rural or Future Urban zoned land, regional parks, the Hauraki Gulf Marine Park and areas subject to the Waitākere Ranges Heritage Area Act 2008.

(m) Make any prohibited activity in district or regional plans ineligible for fast-tracking.

(n) Prevent projects requiring connection to water, wastewater or roading infrastructure where required infrastructure is unavailable or inadequate, without infrastructure agreements.

(o) Broaden “relevant local authorities” to include local/community boards’ statutory functions, council-controlled organisations, and adjoining local authorities.

(p) Require panels to process subsequent applications to fast-tracked applications (usually to modify conditions), as these are difficult to process without application documentation (not held by local authorities).

(q) Require public notification, of not less than 25 working days.

(r) Increase timeframes for providing comments on whether projects are fast-tracked and on merits of projects; for developing conditions; and for panels to evaluate projects and hold hearings, mediation or expert conferencing.

(s) Include full cost recovery for local authorities.

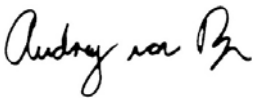
(t) Prevent vesting of inferior assets and avoid liability and operational expenditure.

(u) Require information to be included in referral applications not only the “anticipated” and “known” adverse effects of the project on the environment as drafted in the legislation (14(3)(e)) but also the reasonably foreseeable “potential” adverse effects.

(v) Include a sunset clause for the Bill or otherwise provide some effective legislative review.

We wish to be heard in support of our submission.

Date of submission: 19 April, 2024
Signature:



Audrey van Ryn
Secretary, Civic Trust Auckland