

19 April 2024

Environment Select Committee

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Submission on the Fast Track Approvals Bill 2024

Introduction

1. Energy Resources Aotearoa represents the full energy value chain through and beyond the low emissions journey. We represent over 40 members covering the production, transport, and sale of oil and gas, electricity, refined fuels, and future fuels. We provide a strategic sector perspective on energy, environment and climate change issues and enable constructive collaboration across the energy system.
2. This document constitutes our submission on the *Fast-track Approvals Bill 2024* (the "Bill"). While we support the intent and purpose of the Bill, and recommend it proceed through the Committee stage, we highlight some changes to the proposed legislation which we believe would improve the Bill.
3. We welcome the opportunity to present our submission to the Committee.

Overarching comments

4. Energy Resources Aotearoa welcomes the introduction of the Bill. We support the purpose of this legislation to provide faster decision-making processes for infrastructure and projects that provide significant regional or national benefits.
5. The case for urgent reform of New Zealand's resource management legislation is strong. Consenting processes are slow, unpredictable, and costly, requiring serious attention.¹ Balancing environmental and social trade-offs with property rights and economic efficiency is a complex area of public policy and should not be rushed. We see the introduction of this legislation as a welcome, interim step to facilitate the development of critical infrastructure while pragmatic, durable

1 The Infrastructure Commission commissioned Sapere to examine the costs of consenting infrastructure projects. Alarming they found consenting processes add about NZ\$1.29 billion a year to the cost of an infrastructure projects, while the consenting time has doubled in the last five years. The report is available at: <https://tewaihang.govt.nz/our-work/research-insights/the-cost-of-consenting-infrastructure-projects-in-new-zealand>

reform of New Zealand's current resource management legislation is methodically worked through.

Decision-makers need to ensure a high barrier to entry for applicants

6. Getting this legislation right will be crucial to ensuring New Zealand's long-term security and well-being. We are pleased to see this Bill introduced to facilitate the development of the necessary infrastructure in the near term.
7. However, we caution that the success and durability of this legislation will rely on ongoing public support. It is essential the public have the confidence that the fast-track approvals process suitably balances economic development and environmental protections and biodiversity. While we do not share these concerns and welcome the Bill's rebalancing of priorities, it is important to recognise these views exist.
8. New Zealand's resource management legislation is designed to provide separation between decision-makers. That is, decisions relating to the economic benefits of an activity (the decision to proceed) are largely separated from decisions on how the activity is allowed to proceed.
9. This means the management of any effects, which are typically managed through conditions attached to the consents, are determined independently of any consideration of the benefits. The proposed legislation represents a departure from the status quo for eligible projects. Essentially the decision that the benefits outweigh the effects is brought under one authority.
10. In our view this means the decision to refer the application for fast-track approval is singularly important. Therefore, these decisions need to be open and transparent. This should apply to both referred and declined projects at the application stage. This should be a high bar for referral by Ministers to the fast-track approvals process.

Submission

More emphasis on quantifying benefits is needed

11. The requirement to demonstrate significant regional or national benefit when considering the necessary environmental and social trade-offs is arguably the most important determination by decision-makers. This, in conjunction with Ministers acting in the decision-making capacity, has the potential to divide public opinion.
12. Given these necessary trade-offs, the ability to define what the "significant benefits" are means they may be subjective and highly contentious. This is especially true in New Zealand where consenting processes have often become mired in the submissions and appeals, due in part to a reluctance to accept environmental trade-offs.

13. It is important therefore that these trade-offs can be consistently quantified and described when assessing the net public good of an application for referral to the fast-track approvals process. This being the case, we would like to see more emphasis in the composition of the Expert Panel on quantifying the economic benefits of the proposed project.
14. We also agree with the New Zealand Initiative's view that economic efficiency is an important measure for the Expert Panel to consider.² This would help the Panel's understanding in respect to the allocation of increasingly scarce resources.

Eligibility criteria

15. We agree with the policy decision to not exclude projects just because an activity is excluded under the Resource Management Act 1991 (s17(5) of the Bill). This is because the Resource Management Act grants local government the authority to prohibit activities that might be inconsistent with central government priorities, and contrary to a national benefit test. Regional restrictions on resource extraction (petroleum and minerals) are examples of this.
16. The importance of section 17(2)(e) of the Bill should not be understated. To ensure an efficient process the onus should be on an applicant to ensure the Expert Panel has sufficient information to inform their recommendations. We recommend further strengthening this criterion to ensure only applications that are sufficiently advanced are submitted for assessment of whether or not they can be referred to the fast-track process.
17. This essentially shifts the readiness test further down the process – to ensure minimal timewasting. Noting s24(3)(d)(ii) sets a default 2-year deadline for approval, unless otherwise specified by the Ministers.

Retaining decision-making at the Ministerial level is potentially contentious

18. The decision to retain decision-making powers at the ministerial level seems by far to be the most contentious element of the Bill.³ The inference is that centralising decision-making has the potential for Ministers to be unduly influenced by private interests. We also note this is somewhat mitigated by having multiple Ministers as the decision-maker. However, it is vital for public confidence in the process that any decisions are transparent, and that decision-makers can demonstrate they have not been unduly influenced by private interests.

2 As described in the New Zealand Initiative initial analysis of the Bill 7 March 2024 (available at: <https://www.nzinitiative.org.nz/reports-and-media/reports/policy-point-fast-track-approvals-bill/>)

3 By way of example, press releases by the Environmental Defence Society and Greenpeace highlight the "unprecedented powers" reserved for those deciding ministers (see: <https://eds.org.nz/resources/documents/media-releases/2024/fast-track-bill/> and <https://www.greenpeace.org/aotearoa/story/the-fast-track-consenting-bill-whats-the-story/> respectively)

19. Other criticisms of the Bill's design include the loss or erosion of the "local voice" in the decision-making processes, and the exclusion of the Minister for the Environment as a decision-maker. We do not share those concerns.
20. The Ministry for the Environment (MfE) by-and-large is focused on policy development, with little regulatory function in resource management issues. That is to say, the function of the Ministry is in the development, not the application of legislation. Indeed, the Minister for the Environment has limited regulatory functions in resource management. Most of the relevant regulatory functions are the responsibility of Crown Entities such as the Environmental Protection Authority (the "EPA") or to Local Government.
21. In respect to the loss of the local voice in the development of any recommendations, and ultimately any decision, we remind the Committee these projects are not developed in isolation. This is reflected in the information requirements for a referral application, as outlined in Section 14(3) of Subpart 2 in the Bill. Similarly, representations of local government and iwi preferences are also mitigated as representatives are included in the make-up of the expert panel.
22. However, we suggest the Committee examine whether an approach similar to that used in the Crown Minerals Act 1991 might be appropriate. In this case Ministers retain the decision-making power, but this is normally delegated to Officials (or in this case the Expert Panel). Ministers can at any time "take-back" their decision-making powers, as and when the need arises.

Selection and composition of the expert panel

23. Our understanding is an Expert Panel is selected independently and convened to assess each application, whether that be applying for referral or in determining the consent conditions. This would make sense given the criteria for having relevant iwi and local government members.
24. The Expert Panel has two distinct functions in relation to the process outlined in the Bill. The first is in making a recommendation as to whether or not an application for referral should proceed or be declined. The second is in setting the conditions of approval for a successfully referred project. These functions require significantly different skillsets.
25. Therefore, it is important the Expert Panel has the expertise appropriate for the type of recommendation required. Specifically:
 - a. the decision or recommendation to refer the application to the fast-track approvals process should necessarily focus on the regional and national benefits, as well as the social and environmental trade-offs. This is essentially a determination of whether or not an activity should be allowed to proceed. We again emphasise the need for economic expertise to be included at this stage; and

- b. once referred, the focus of the Panel needs to shift to setting pragmatic, reasonable, and cost-effective consent conditions. Essentially the Panel moves into determining whether the effects of the activity are appropriately identified and mitigated, or whether sufficient offsets have been identified where required.
26. Additionally, consideration should be given to the Expert Panel size and their level of oversight in the pipeline of applications. Given the broad nature of the applications, and the potential for projects to be inter-regional and have interdependent consents (for example significant transport projects), additional expertise or representation may be required.

We support the “one-stop-shop” approach to setting conditions

27. Anecdotally our members advise the consenting process for large projects is not straightforward. The range and number of consents required can be confusing, with inconsistent information requirements and unclear timeframes. These uncertain timeframes compound to make planning and execution of projects unnecessarily difficult and add cost.
28. We note that in paragraph 35 of the Supplementary Analysis Report prepared by MfE it suggests the “one-stop-shop” consenting process is a degradation of protections, particularly for wildlife. They highlight here the process, while advancing some of the government's goals, i.e., increasing the number of projects gaining approval, will likely be at the expense of other goals – such as conservation objectives and by extension biodiversity. We do not agree with this view.
29. While we agree this proposed legislation is unquestionably “development forward”, we do not agree this likely undermines those other goals. Corporate responsibility and environmental performance are important measures for companies. This is reflected in corporate reporting and in the effort that goes into understanding environmental and social effects and in identifying appropriate mitigations for projects.
30. Indeed, we believe this legislation returns decision-making to a more balanced approach to gauging economic, environmental, and social trade-offs for eligible projects. Something that has been lacking in New Zealand’s resource management space for some time.
31. The “one-stop-shop” approach, where the Expert Panel determines a common set of conditions for the application, will significantly improve consenting timeframes. This approach brings clarity to a range of consenting processes and overlapping (but slightly different) information requirement when dealing with different decision-makers.

Marine consent issues need further attention

32. We welcome the inclusion of marine consents as part of the Expert Panel's remit. However, given the tight timeframe under which this Bill was developed, the focus has rightly been on Resource Management Act 1991 issues. We note some concerns with how this proposed legislation might interact with the requirements of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the "EEZ Act"), particularly given the exclusion of offshore decommissioning in New Zealand's Exclusive Economic Zone (the "EEZ").
33. We highlight, for example, the make-up of the Expert Panel. For marine consents, which cover activities in the EEZ, the requirement for local government membership does not make sense. Issues may be further compounded for projects where activities are undertaken in both the EEZ and territorial waters.
34. Similarly, it is not clear if a distinction is made between the information required for a referral application, and the requirements after a project has been referred. Again, we highlight the two-step process, and importance of understanding what recommendations and decisions are required of the Expert Panel and Ministers.

Summary of recommendations

35. We make the following recommendations, which we believe will improve the legislation and ameliorate some of the concerns voiced with the introduction of this Bill;
 - a. retain the decision-making power at the Ministerial level, but consider whether this power would normally be delegated to the Expert Panel;
 - b. consider more flexibility in the number of appointments to the Expert Panel to account for specialist knowledge and experience which may be needed for complex assessments;
 - c. ensure Expert Panels have a specific emphasis on economic analysis capabilities to quantify the regional and national benefits of projects, particularly when considering the recommendation to refer an application to the fast-track approvals process;
 - d. consider strengthening the eligibility criteria in Section 17 to ensure only fully formed and developed projects are considered by the Expert Panel; and
 - e. consider additional, specific measures for the EEZ Act.

Conclusion

36. We appreciate the opportunity to submit on this Bill. We recommend the Bill proceed.

37. We welcome the opportunity to present our submission to the Committee.