PSA submission on the Fast-Track Approvals Bill

Prepared for the Environment Committee
April 2024

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About the PSA

The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) is the largest trade union in New Zealand with around 95,000 members. We are a democratic and bicultural organisation representing people working in the public service including for departments, crown agents and other crown entities, and state-owned enterprises; local government; tertiary education institutions; and non-governmental organisations working in the health, social services and community sectors. Te Rūnanga o Ngā Toa Āwhina is the Māori arm of the PSA membership.

The PSA has been advocating for strong, innovative and effective public and community services since our establishment in 1913. People working in public and community services join the PSA to negotiate their terms of employment collectively, to have a voice within their workplace and to have an independent public voice on the quality of public and community services and how they're delivered.

The PSA is affiliated to Te Kauae Kaimahi the New Zealand Council of Trade Unions, Public Services International and UniGlobal.

About this submission

This submission on the proposed Fast-Track Approvals Bill was developed through consultation with interested PSA members. In particular we focused on seeking feedback from those with expertise in environmental management and infrastructure, and from our Eco Network – a network of around 3,000 public servants who are motivated to act to improve workplace sustainability and campaign for action on climate change across the public sector.

Overall comments

The PSA strongly opposes this Bill.

It is clear that the proposed Fast-Track Approvals Bill goes far beyond the aim of just streamlining consenting processes. It appears to be less about improving the efficiency of decision-making and more about circumventing environmental protections to enable projects that wouldn't normally make the cut because of their adverse impacts on the environment.

The proposed Bill is deeply concerning on many levels. Handing over discretionary decision-making power to a small group of ministers to decide both what enters the fast-track process and what the final result will be, with the power to ignore expert advice and override existing environmental law,

is undemocratic and dangerous. The Bill lets Ministers pick and choose projects for the fast-track process. Government can be the developer, the regulatory gatekeeper and the ultimate decision maker, which is an inappropriate distribution of power in the executive. It also risks bottlenecks that make the process inefficient.

This legislation is an unjustified threat to New Zealand's natural environment, raising the prospect that development projects with significant adverse impacts can proceed against the evidence and without adequate controls or oversight. This Bill would enable projects to be effectively rubber-stamped even if they would be (or have already been) declined under other legislation.

The process for developing this legislation has been concerning, with a distinct lack of consultation with stakeholder groups with a role in advocating for the environment. It is undemocratic that the list of projects has not been provided prior to the select committee process; it is the select committee's role to scrutinise the legislation and provide a process for the public to have input into that scrutiny, and it cannot carry out that role if sections of the legislation aren't provided until after the select committee submission period is over.

We want to emphasise that our criticisms of the process are not directed at officials doing their best to carry out their obligation to impartially serve the government of the day. We see the poor process as a reflection of ministers' disregard for good democratic process – the same disregard that is apparent in the content of the legislation itself.

The consultation requirements in the Bill are inadequate, and roles with government that have a specific role to play in terms of environmental stewardship (like ministers for the environment and conservation) have been excluded. The timeframes in the Bill for assessment of complex proposals where departments do not have the expertise in house will hinder the quality of response that can be made. The consideration of too many large applications at the same time has the potential to swamp agencies requested to make comment.

We acknowledge the need to improve the existing consenting process to make it work more efficiently. Members we spoke to agreed that current consenting timeframes can be too long, and that there would be benefits from having a process by which projects with significant wellbeing benefits (like large-scale affordable housing projects and public transport infrastructure) can be progressed without being held up by people looking to preserve private property interests over the public good.

There is a need for change, but this Bill is not the right solution. We would like to see legislation that makes consenting as efficient as possible without sacrificing democratic decision-making – at the most appropriate level to the matter being considered – or sacrificing the natural environment.

Recommended changes

As stated earlier, the PSA opposes this Bill. We recommend that the select committee report back to Parliament with a recommendation that this Bill does not proceed.

Failing that, we propose the following changes to address the serious problems with this Bill if it goes ahead:

Balance of development and protection within the Bill

1) Amend the purpose of the Bill so that it is not solely based on facilitating the delivery of infrastructure. The purpose should also include sustainable development, protecting the health of the natural environment, and promoting the wellbeing of current and future generations. This could borrow wording from the purpose of the COVID-19 Recovery (Fast-track Consenting) Act 2020 or the repealed Natural and Built Environment Act 2023.

2) Include stronger provisions to protect the natural environment from inappropriate development with significant adverse effects; including requirements not just protect but restore, ensuring net gains for the environment on projects that have an adverse effect, and including a requirement for reparation of damaged landscapes due to project activities.

Relationship with other legislation

3) Include a requirement to give effect to the Principles of Te Tiriti o Waitangi.

4) Remove the ability of the Bill to override other environmental and conservation law. The Bill should not be able to allow projects that are prohibited by other law, or allow projects to be undertaken without conditions that would be required under other law. It should also not include a decision-making hierarchy that puts its development purpose above important matters in other environmental legislation.

5) Clarify how the Bill interacts with the requirements of the Local Government Act 2002 so local government can be clear on how this Bill affects their obligations under that Act.

Criteria for projects that can be included

6) Focus the criteria for admission into the fast-track process so it incentivises projects that add to the public good, including the wellbeing of people and the environment (e.g., affordable housing, public transport, and infrastructure for climate mitigation and adaptation) over extractive projects that damage the natural environment. This could be achieved by using the list set out in Schedule 10, section 14 of the Natural and Built Environment Act 2023.

7) Amend the criteria for what can be referred to a fast-track process so that:

- activities prohibited under other legislation, including the RMA, cannot be referred
- proposals already declined under other legislation, including the RMA, cannot be referred
- proposals that have been rejected by the Environment Court cannot be referred
- proposals that would breach international law cannot be referred
- proposals for activity in sensitive, protected or otherwise significant environments (e.g., nature and scientific reserves, conservation land) cannot be referred

8) Set out a list of matters that ministers must (instead of may) consider, including:

- the effect of the proposed activity on greenhouse gas emissions, contribution to the extinction of indigenous species, risk to human health and safety, degradation of water quality, especially in water bodies covered by a Water Conservation Order.

Decision making process

9) Give final decision-making authority on applications to the expert panel instead of ministers.

10) Remove the requirement for the panel convenor to consult with ministers when appointing the expert panel.

11) Require panel members to have current expertise in areas relevant to environmental management, including specific expertise relating to the possible effects of the proposed project (e.g., marine environmental management or conservation, depending on the location and type of project).

12) (If decision-making continues to sit with joint ministers) limit the scope of ministers' ability to adjust conditions, direct the panel to reconsider, and to deviate from a panel's recommendation. The scope of discretionary decisions that can be made by ministers should be limited to changes which enhance the public good (e.g., being able to impose more stringent conditions for the purpose of environmental protection or climate mitigation; but not to relax conditions).

13) (If decision-making continues to sit with joint ministers) panel recommendations should be required to clearly state a recommendation has been made due to referral back by ministers, and if so what direction the panel has received about reconsidering it. This is to avoid recommendations appearing to be made independently by the panel when they are actually made under constraints or direction from ministers.

14) (If decision-making continues to sit with joint ministers) include the Minister for the Environment in ministerial decision-making (along with the Minister of Conservation in cases that relate to conservation interests, not just matters prohibited in the Wildlife Act 1953), and provide clear instructions for those ministers to consider matters that are relevant to their portfolio.

15) Provide a more robust process in sensitive areas (e.g., conservation land).

16) In the hearings process (schedule 4, clause 24) clarify that cross-examination will be allowed to all parties.

Consultation, appeals, and timeframes

17) Include a process for undertaking constructive engagement between applicants and affected parties to resolve issues and agree to conditions before projects proceed to the expert panel.

18) Allow sufficient timeframes to consult with interested parties, including iwi, and include a requirement for consultation with iwi to give full effect to obligations under Te Tiriti o Waitangi and be aligned with the iwi consultation requirements that currently exist under conservation legislation.

19) Extend the timeframes in the Bill to ensure officials and experts have sufficient opportunity to provide good quality advice on applications. Timeframes should be proportionate to the size and complexity of the application.

20) Allow the Department of Conservation to submit on any application that would have an effect on conservation values (including the conservation land or on native species that DOC is responsible for protecting). This could be done by including the Department of Conservation as a 'responsible agency' in the interpretation section of the Bill.

21) Include a requirement to invite comment from the Secretary for the Environment and the Parliamentary Commissioner for the Environment.

22) Allow substantive appeals, not only on points of law.

23) Provide a longer timeframe for appeals.

Monitoring and enforcement

24) Provide clarity about who would be responsible for monitoring of conditions imposed on successful applications, how the monitoring agency will provide information to inform decisions about monitoring requirements, and how monitoring costs can be recovered. This currently appears to be included in the Bill in relation to the Exclusive Economic Zone and Continental Shelf but not for other activities.

Conclusion

We appreciate the opportunity to provide feedback on the proposed Bill. We strongly encourage Parliament's Environment Committee to listen to the strong and widespread opposition to this Bill, and to recommend changes that would lessen the potential for serious harm to our natural environment now and in the future.

For further information about this submission, please contact:

Andrew McCauley
Senior Advisor, Policy and Strategy
New Zealand Public Service Association | Te Pūkenga Here Tikanga Mahi
PO Box 3817, Wellington 6140
Phone: 027 2712642
Email: andrew.mccauley@psa.org.nz