RMLA[NZ]
THE ASSOCIATION FOR
RESOURCE MANAGEMENT
PRACTITIONERS
Te Kahui Ture Taiao

SUBMISSION ON THE FAST-TRACK APPROVALS BILL 2024

Submission On Behalf of the Resource Management Law Association of New Zealand | Te Kahui Ture Taiao ("RMLA")

INTRODUCTION

About RMLA

1. This Submission is made by Te Kahui Ture Taiao/the Association for Resource Management Practitioners (RMLA) in relation to the Fast-track Approvals Bill 2024 (Bill). RMLA is concerned to promote within New Zealand:

    a. An understanding of Resource Management Law and its interpretation in a multi-disciplinary framework.

    b. Excellence in resource management policy and practice.

    c. Resource management processes which are legally sound, effective and efficient and which produce high quality environmental outcomes.

2. RMLA has a mixed membership. Members include lawyers, planners, judges, environmental consultants, environmental engineers, local authority officers and councillors, central government policy analysts, industry representatives and others. Currently the Association has approximately 900 members. Within such an organisation there are inevitably a divergent range of interests in views of members.

3. While the membership has been consulted in preparing this submission, it is not possible for RMLA to form a single universally accepted view on the Bill. It should also be noted that a number of members may be providing their own individual feedback and those may represent quite different approaches to the views expressed here.

Preparation of this submission

4. RMLA' s main objective in making submissions on Government proposals is to ensure that a coherent and workable body of resource management and environmental law and practice is developed in Aotearoa/New Zealand. As a result, it is not the RMLA's practice to comment on matters of policy. RMLA's preference is for long term, enduring reform with bipartisan support that targets the issues that have been comprehensively identified to date, in a sound and evidence-based way.

5. This submission focuses on what (if any) changes can or should be made to the proposal to ensure that the instrument being considered will:

a. Be consistent with the general framework of existing laws and policies and legally sound;

b. Be practicable, effective and efficient;

c. Assist in promoting best practice; and

d. Produce high quality environmental outcomes.

6. In order to ensure its members were aware of the key elements of the Bill and to inform RMLA's submission from a broad and diverse range of viewpoints, RMLA carried out a survey of members on the Bill's high-level issues in March 2024 (March survey).

7. Feedback from that survey has informed this submission. It was provided anonymously. However, it will have come from a range of RMLA members from across the motu, including lawyers, planners and economists. RMLA is grateful to those who provided feedback for their contributions.

SUBMISSION

Overall comment on the Bill

8. RMLA acknowledges the need to address the increasing timeframes and costs associated with obtaining resource consents. The majority of those who responded to the March survey considered that the time and cost of consenting had increased, either somewhat or significantly, between 2010 and 2019. RMLA also understands the need to ensure the timely delivery of projects that will deliver benefits to Aotearoa/New Zealand, especially to address the infrastructure deficit. RMLA is supportive of that objective and sees that in some respects the Bill may assist to achieve that outcome.

9. Given the breadth of the RMLA membership, there are members who support the Bill and have been involved in applying to have projects listed in Schedule 2 of the Bill, via the process which is currently open through the MfE website. There is also a reasonable level of support for the one-stop nature of the Bill.

10. However, RMLA is concerned at the lack of environmental protection (and lack of ability to prioritise other important policy goals, such as protecting land for food growing and avoidance of climate change impacts) afforded by the Bill, and does not consider that lack of protection is justified in the circumstances. Nor does the Bill promote good resource management policy or practice, or legally sound, effective and efficient resource management processes in its current form.

11. In that regard, the scope of the Bill is very broad, potentially capturing a wide range and large number of projects that would avoid robust environmental scrutiny. The rationale for doing so is not to provide urgent recovery from a global pandemic, natural disaster or other national emergency – unlike the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTA) on which it is based. Rather, it has been promulgated to overcome perceived hurdles in the current consenting system under the Resource Management Act 1991 (RMA).

12. Anecdotally, RMLA members have identified a range of factors that can contribute to increasing consenting costs and timeframes, notably:

a. Council capacity and capability (with many, if not all, local authorities requiring better resourcing and training capability to properly undertake the consenting functions they are tasked with);

b. Complexity of national direction (including poor integration, poor drafting and the introduction of untested concepts); and

c. Most critically, constant changes to the regulatory framework for planning and consenting.[1]

13. However, the Bill does not seek to rectify those issues at a systems level, in stark contrast with the Natural and Built Environment Act 2023 (NBEA). The NBEA was developed following an extensive inquiry by the Randerson panel and sought to reduce consenting requirements while protecting the environment by establishing environmental bottom lines, enabling more activities without the need for consents, and providing more integrated regional and national direction, including through spatial planning.

14. Instead, the approach taken in the Bill is to override the current consenting system to provide (yet another) alternative consenting pathway – continuing the ad hoc approach toward "fixing" the RMA that we have seen over the last decade or more. In doing so, the Bill cuts across existing legislation that offers environmental protection.

15. The Ministry for the Environment's Departmental Disclosure Statement on the Bill (1 March 2024), indicates that the Bill adopts this approach without the benefit of:

a. The normal quality assurance provided by the preparation of a Regulatory Impact Statement;

b. Any assessment of the Bill's compliance with Aotearoa/New Zealand's international obligations, other than those under the United Nations Convention on the Law of the Sea;

c. A detailed or thorough analysis as to the Bill's consistency with Te Tiriti o Waitangi, as would be expected for a Bill of this significance;

d. A completed assessment of the Bill against the Bill of Rights Act 1990; or

e. Sufficient testing and assessment as to whether the Bill's provisions are workable and complete, to give effect to the recommendations outlined in the Departmental Disclosure Statement Technical Guide published by The Treasury – Te Tai Ōhanga.

16. RMLA supports the timely provision of well planned, quality development and infrastructure, which is critical to enabling people and communities to provide for their social, economic and cultural well-being and for their health and safety (which is the purpose of the RMA). There will be good projects, designed to avoid, remedy or mitigate adverse effects on the environment, that will be appropriate for this process in a way that could legitimately benefit Aotearoa/New Zealand. However, any legislative response needs to focus on those projects, and be a

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[1] RMLA's submission on the Resource Management (Streamlining and Simplifying) Amendment Act 2009 (Amendment Act) noted that there is a "transaction cost" associated with every statutory amendment because each change requires transitional provisions, interpretation of new provisions, and consideration of how various parts of the Act or consenting pathways fit together, given they have been drafted at different times under different policy imperatives, and can sit across different legislation. Fifteen years later, that point remains valid.

balanced, proportional, and effective response to perceived issues – otherwise it risks exacerbating existing issues or creating new ones.

17. We also support the call for enduring reform based on cross-party support. Some commentators have observed similarities between the Bill and the National Development Act 1979, which sought to fast track Think Big projects. Sir Geoffrey Palmer has contended that the RMA was a response to the draconian approach of the National Development Act.[2] The constant amendments to the RMA, and swinging reform from election to election, has created a complex regulatory environment that is not achieving sustainable management for Aotearoa/New Zealand. In relation to RMA amendments in 2013, Sir Geoffrey warned:

> *"Governments strive to produce economic growth and wealth so that people can have jobs and economic security. In New Zealand these issues become more strident and fraught at times of economic adversity, such as those we have been undergoing in the last few years, as a result of the global financial meltdown. As so often is the case, when confronted with problems New Zealand resorts to frenetic legislative activity, drastically changing its regulatory frameworks in order to produce the desired result. Yet almost always the performance does not produce the outcome wished for and we hardly ever measure the effects of our policy changes to see whether their objects have been achieved."*

18. RMLA's key concerns with the Bill are outlined below. It has only been possible to identify and address the most obvious matters arising from the Bill in the time available. This submission does not represent a comprehensive list of issues with the Bill, and any omission does not reflect a lack of concern by RMLA or its members. Further, while the comments below relate to the Bill in its entirety, they focus on the specific provisions relating to resource consents and notices of requirement under the RMA - primarily for reasons of time.

RMLA key concerns with the Bill

Limited consideration of environment effects and other policy goals

19. RMLA's primary concern is that the Bill overrides a suite of legislation which has until now been widely accepted as providing the basic level of environmental controls and protections necessary to ensure the environment can continue to sustain our economic activities into the future. Those protections are particularly important because a healthy natural environment underpins the wellbeing of our people and communities, and our key industries (including agriculture, fisheries, aquaculture and tourism) rely heavily on a healthy environment. Damaging our natural environment, or our environmental reputation, could have significant economic impacts – and ultimately result in an "own goal".

20. We have received mixed messages via Ministerial comments in the media as to the role of environmental matters in the Bill. On the one hand, we have heard that the Bill is not intended to signal the "death knell" for environmental protections and, on the other, that environmental and conservation matters are not to get in the way of development. Regardless of the intention, RMLA is concerned that the current framing of the Bill will result in environmental effects being overlooked, even where they may be significant.

21. Key aspects of the Bill that are particularly concerning from this perspective include:

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[2] Palmer QC, Sir Geoffrey, *The Resource Management Act Reforms: A Return to Unbridled Power*? (August 7, 2013). Victoria University of Wellington Legal Research Paper No. 32/2021, Available at SSRN: https://ssrn.com/abstract=3933441 or http://dx.doi.org/10.2139/ssrn.3933441.

a. The purpose of the Bill has more weight than the sustainable management purpose of the RMA and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ). Effects on the environment feature at the bottom of the list of weighted considerations (e.g., Schedule 4, clause 32(f)). This contrasts with treatment of the Conservation Act – where a decision-maker is to "have regard to" both the purposes of Bill and the Conservation Act equally (e.g., Schedule 5, clause 6(1), although we note that this is inconsistent with the function of expert panels which must give more weight to the purpose of the Bill than considerations under other legislation).

b. The low weighting given to RMA policy instruments is not just an issue for protection of the natural environment. It also means that diverse policy goals such as prioritising productive uses of highly productive land (i.e. growing food), achieving well-functioning urban environments, ensuring water quality and quantity is suitable for the operation of existing hydro-electric schemes, and minimising risks from natural hazards must legally be de-prioritised in approval recommendations and decisions, and over-ridden where they would not be consistent with the Bill's purpose.

c. In light of the overriding purpose of the Bill, it is not clear how environmental effects are to be considered in the context of the weighting exercise under Schedule 4, clause 32 and Schedule 9, clause 9. As drafted, there is significant scope for environmental effects to be disregarded in the process – this is particularly concerning where adverse effects would be significant.

d. Ministers may decline to refer or approve proposals that have significant adverse effects, but are not required to. Proposals that have already been found to have significant adverse effects, or effects which cannot be determined with sufficient certainty - including those that have been declined by the Environment Court and senior Courts on that basis - can therefore be approved.

e. Resource consents and designations can be sought for proposals that include activities prohibited under the relevant planning instrument(s) (clause 17(5)) – despite the local community having determined such activities to be unacceptable due to the nature of their effects. By contrast, a marine consent cannot be granted to an activity prohibited under the EEZ framework (Schedule 9, clause 2). RMLA is unclear as to the policy basis for the Bill allowing prohibited activities to be consented.

f. The Minister for the Environment has no role in the referral or approval of applications for resource consent or notices of requirement, despite that Minister being responsible for the RMA. (Infrastructure New Zealand identified this aspect of the Bill as "strange"). This is in contrast with the provisions relating to EEZ authorisations, where the Minister is to be consulted on the potential referral of a project that includes a marine consent. By contrast, the Minister for Regional Development is included as one of the joint Ministers, despite there being limited justification for why that Minister should have greater input into determining applications under the fast-track process than any other Minister. The Bill provides sufficient opportunities for that Minister to indicate and provide input on the extent to which projects provide regional development benefits, without them also being one of the joint Ministers.

22. RMLA is concerned that the ability to disregard effects on the environment and key planning instruments, combined with public comments made by Ministers as to their intention to do so, means that there is little incentive for applicants to put forward well-designed and appropriately located proposals that would avoid significant adverse effects on the environment.

Lack of integration with New Zealand's response to climate change

23. The Climate Change Response (Zero Carbon) Amendment Act 2019 was passed into law with unanimous support. Although the National Party expressed concerns about its methane targets, it nonetheless supported the Bill's passage. The 2019 amendments introduced a framework into the Climate Change Response Act 2002 by which Aotearoa/New Zealand will achieve its international emissions reduction commitments. A key tool in the framework is emission reduction plans. The current Emissions Reduction Plan relies on planning and consenting under the RMA to achieve many aspects of emissions reductions.

24. The Bill has no integration with Aotearoa/New Zealand's legal framework for emissions reduction (and only mentions climate change with respect to enabling projects that will support climate change mitigation to be referred to the fast track). This lack of integration will significantly jeopardise Aotearoa/New Zealand's ability to achieve its domestic and international emissions reduction targets.

Complexity of the Bill/likelihood of it achieving intended outcomes

25. The Bill is complex and introduces new terms, concepts and procedures, including giving the Bill's purpose more weight than RMA/ EEZ provisions. There is significant discretion for Ministers at multiple decision points, new approaches to the assessment of proposals, terms requiring interpretation (such as regionally and nationally significant infrastructure) and potential impacts on the Treaty relationship and Treaty settlements.

26. Given the public disquiet over the Bill, it is likely to be extensively tested in the Courts – particularly where a project has already been declined by the Environment Court or higher Courts – including on constitutional grounds.

27. RMLA is therefore concerned that the Bill may not achieve its intended outcomes – resulting in slowing applications down rather than being a faster track for approvals, particularly for the first projects off the rank (ie., listed projects in Part A of Schedule 2). These issues may also deter worthwhile projects, which could validly be progressed via an effective and robust streamlined consenting pathway, from deciding to use the Bill for this purpose. The remainder of this submission raises matters that may further exacerbate this issue.

Excessive Ministerial intervention and power

28. RMLA is concerned that the Bill proposes a level of Ministerial intervention and power that is inappropriate and disproportionate in the circumstances. In particular:

    a. If Ministers do not agree with the recommendations of the relevant expert panel, they may deviate from those recommendations provided that they undertake their own analysis in accordance with the assessment criteria (clause 25(4)). It is not clear what the relevant "assessment criteria" are. Nor is it clear whether "in accordance with the assessment criteria" is merely a procedural obligation or a substantive one.

    b. The Ministers making the decision may not have any experience or expertise in environmental or resource management, or in the design, assessment and implementation of large infrastructure or development projects. There is no requirement for Ministers to obtain expert advice (although they are able to do so).

    c. There is a risk of poorly designed or inappropriately located development, or conditions that are insufficient to address environmental effects, resulting in projects that have a

shorter than intended lifespan or do not achieve intended benefits. For example, a lack of robust analysis could result in key matters (e.g. impacts of climate change or geological instability) not being properly identified or addressed when granting approval to a project.

d. The concentration of decision-making power in Ministers, rather than independent experts, leaves Ministers vulnerable to the perception that consents are being granted due to lobbying, or even as a quid pro quo for political donations (whether that is true or not).

29. RMLA understand that Ministers are compiling a list of projects to be included in Schedule 2, some of which (ie. Part A listed projects) will be automatically referred to a panel. Those projects are not subject to the statutory eligibility criteria (clause 17). While the Ministers may be applying non-statutory criteria, there does not appear to be any transparency around that process at this stage (including what the listed projects will be, or information provided in support of those – see below). If projects are listed that would not otherwise have been eligible, there is nothing in the decision-making criteria to prevent approvals being granted.

Lack of appropriate public participation/access to justice

30. The Bill proposes to significantly curtail public participation by:

a. Prohibiting notification, not requiring hearings and limiting appeal rights. Only a limited list of parties are able to provide submissions on a proposal once referred, which does not include all parties that may be directly impacted by a proposal. Potentially directly affected parties not captured in Schedule 4, clause 20 include existing important industries that may be adversely affected by an incompatible project (e.g. tourism, horticulture, viticulture, hydro-electric scheme operators). Depending on the scale of a proposal, nearby but not adjacent landowners/occupiers could also be directly affected; and

b. Overriding planning instruments that have been developed in consultation with the public at a national, regional and local level.

31. In addition, the projects to be listed in the Bill (to be automatically referred to an expert panel) will not be made public prior to the Select Committee process and the Ministry for the Environment has advised that information supporting listed project applications will not be proactively released until after the Bill has passed into law. There is therefore to be no public scrutiny of listed projects.

32. Public participation is critical to upholding natural justice and access to justice, which are cornerstones of the rule of law in Aotearoa/New Zealand. There must therefore be good grounds to justify curtailing participation – for example, the unique and narrow circumstances provided for in the FTA. That regime was initiated to provide a streamlined process for straightforward, "shovel ready" projects which could commence construction and stimulate economic growth almost immediately. Notably, it did *not* circumvent environmental protections and retained the purpose of the RMA, alongside its broader purpose to urgently promote employment to support recovery from the economic impacts associated with the COVID-19 pandemic.

33. RMLA's submission on the Covid Fast-track Bill said:

> *"Subsidiarity and public participation in environmental decision-making are important principles of international environmental law (Rio Declaration, Principle 10) that have been adopted by New Zealand's resource management system. This Bill almost entirely limits public input into consent decisions. As such it is critical that it is for a fixed duration and that other safeguards are provided."*

34. In this case, the scope of projects captured by the Bill is extremely broad – and the Bill is not a short-term, targeted response designed to address an unanticipated emergency. It is intended to entirely replace the normal consenting process for a very wide range of projects – media reports are of 200 projects being invited to apply for the initial list and the number of applicants may be much higher than this. RMLA submits that the significant curtailment of rights of public participation is not justified and is disproportionate in light of the breadth and extent of projects that could proceed on this basis.

35. The need for the Bill appears to have been primarily justified on the *Sapere* report (commissioned by Te Waihanga), and in particular the following conclusions from that report:[3]

    a. The median time taken by local authorities to reach a decision on a consent application has increased by 50% from 2014/15 to 2018/19. This is for all resource consents, not just infrastructure, and there is reason to believe the impact has been worse for infrastructure consents; and

    b. The time taken by local authorities to reach a decision on consent applications for infrastructure projects has increased by 150% for consents issued between 2010-14 compared to 2015-19.

36. However, the Resource Management (Streamlining and Simplifying) Amendment Act 2009 (Amendment Act) also introduced a number of measures to significantly reduce public participation in consenting processes – again in the name of addressing consenting costs and timeframes. And the Amendment Act has been in force during the exact period considered in the *Sapere* report. So if excluding public participation was the solution to faster consenting, the *Sapere* analysis should have found a reduction in consenting timeframes during the period it assessed – not an increase.

37. In relation to applications for concessions and land exchanges under the Conservation Act and Reserves Act, it does not seem appropriate, or in the interest of all New Zealanders, to exclude the public from being able to participate in the fast-track process for projects that will be undertaken on Crown land that is administered by Te Papa Atawhai.

Māori rights and interests, Treaty/te Tiriti principles clause and provision for Treaty settlements

38. The Bill lacks a requirement to consider to Treaty/te Tiriti principles in decision-making. Its predecessors required decision-makers to act in a manner consistent with the principles of te Tiriti o Waitangi and Treaty settlements (FTA, s6) and to give effect to the principles of te Tiriti o Waitangi (NBEA, s5). The RMA requires decision makers to take te Tiriti principles into account (s8); the Conservation Act must be administered and interpreted to give effect to te Tiriti principles (s4); and the EEZ Act recognises the Crown's responsibility to give effect to te Tiriti principles (s12).

39. The Bill omits these sections from the relevant considerations for determining applications, despite there being no decision by Parliament to remove or replace references to Te Tiriti o Waitangi in legislation. No justification has been provided for this.

40. The Crown has obligations under the Treaty that must be complied with. RMLA submits that this should be made clear in the Bill, consistent with other legislation. Not doing so will inevitably lead to litigation, particularly for the first projects off the rank, and subvert the fast-track purpose of the Bill. We also note that while there is provision for consultation with iwi,

[3] *The cost of consenting infrastructure projects in New Zealand*, Sapere Research Group, July 2021, at page 16.

the timeframes in the Bill may not adequately reflect te Tiriti principles as they are unlikely to provide sufficient time and opportunity for meaningful engagement. This lack of time to provide input or submit is particularly concerning where iwi authorities are expected to be the conduit for feedback from hapū.

41. There is an obligation (clause 6) to act in a manner that is consistent with the obligations arising under existing Treaty settlements and customary rights recognised under either the Marine and Coastal (Takutai Moana) Act 2011 or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

42. We expect that post-settlement governance entities and other iwi groups will make submissions on the potential impact of the Bill on their claims, settlements and other rights and interests. We make the following observations:

    a. The requirement to act in a manner consistent with the obligations in settlements differs from the FTA requirement to act in a manner consistent with settlements. This may result in the intent, integrity and effect of settlements being overlooked in favour of a "tick box exercise" to meet specific legal obligations rather than the spirit and intent of a settlement.

    b. Many settlements provide for iwi participation in the development of planning instruments, which guide what activities may be granted consent. Many iwi have also advanced their rights and interests outside of settlements (and do not reap the benefit of the clause 6 obligation) – however those planning instruments have less weight than the purpose of the Bill.

    c. Unsettled iwi may also be impacted by proposals progressed under the Bill. It is not clear that their rights and interest will be adequately considered and protected, in the absence of a specific obligation relating to the principles of te Tiriti.

    d. Conservation Management Strategies and Conservation Management Plans "may" be considered on Conservation Act approvals, but only where they were authored by a Treaty Settlement entity. This will exclude the majority of these instruments, and is unfair to unsettled iwi and hapū, post-settlement groups in areas where these Strategies and Plans have not been reviewed since their settlement, and non-Māori.

Insufficient timeframes

43. While acknowledging the purpose of the Bill, RMLA is nevertheless concerned that the proposed timeframes are impractical and unworkable for the types of proposals that will be progressed on the new fast track.

44. Timeframes for comments, applicants' responses to comments and expert panel recommendations are likely to impact the on the quality of information provided, assessment undertaken and decision making. By contrast, the joint Ministers are not subject to any timeframes in respect of their decision-making responsibilities under the Bill.

45. RMLA submits that longer timeframes for applicants, other parties and the panel will support robust decision-making and potentially reduce appeals by improving the quality of decisions without comprising the overall objective of the Bill. Fast decisions based on information that is perceived to be insufficient will also reduce the social licence for a project – a factor which may influence an applicant's decision to use the fast track.

46. We also note that shorter processing timeframes have not necessarily been historically preferred by applicants. Previous fast track-type processes have been underutilised, partly due to the timeframes involved. For example, the Board of Inquiry process for proposals of national significance was introduced via the Amendment Act to address "*real problems in how long it takes to get major infrastructure projects through under the consenting process, particularly as they have to go through a local consenting process and inevitably, end up at the Environment Court*". Yet the process has only been used a total of 16 times in the 15 years since it was introduced, and only 3 times in the last 10 years (i.e. since 2014). One of the key reasons for that is that the 9 month timeframe (from notification) for the Board to issue its decision on large, complex projects was impractical and unworkable for all involved – especially applicants.

47. While the Bill seeks to address some of the issues that have deterred applicants from using the Board of Inquiry process, such as further reducing public participation and not requiring a hearing, it is likely to create others – such as the increased risk of judicial review/appeal proceedings (see as an example the recent Supreme Court decision on the East West Link, a Board of Inquiry process). This may also deter applicants and result in the perverse outcome that it is more appropriate, cost-efficient and effective for them to use the standard RMA consent process.

Panel membership

48. The Bill establishes a similar expert panel-based process as the FTA. Experience under that process has been that the Panel Convener has had difficulty finding practitioners to serve as Panel members, largely due to the number of projects seeking consent via that track. This has resulted in projects being delayed for lack of an expert panel.

49. Similar issues may arise under this proposal, but for the following reasons:

    a. There may little incentive to act as a Panel member, if practitioners perceive that they are effectively "rubber stampers" for joint Ministers, and panel recommendations can be overridden at will. This is particularly the case for the first "raft" of projects when the new legislation will be tested.

    b. As the Bill is currently drafted, it requires large volumes of work to be completed in impractical (and often impossible) timeframes. This is particularly the case with complex projects including other approvals and permissions in the one stop shop.

    c. Practitioners may not wish to be associated with projects that involve prohibited activities, are likely to cause significant environmental harm, or because insufficient time to properly consider the application will limit the quality of their decision-making.

50. Broadening the scope of eligible Panel members may resolve this issue to some extent, but may also impact on quality of decision-making/ recommendations.

51. The Select Committee may also wish to consider:

    a. Making provision for a current or retired Environment Court judge to chair a panel, particularly given the complex legal issues that are likely to arise due to the new concepts and procedures introduced by the Bill – this may be particularly helpful to manage risks associated with the first projects off the rank.

    b. Enabling the Panel Convenor to appoint a deputy convenor, or delegate functions to an alternate in order to address potentially large workloads.

52. We note that each panel is to comprise one lawyer or planner alongside a local authority member and an iwi member, with the ability appoint one other member. There may therefore be limited ability for the panel to test expert technical evidence supplied by the applicant, particularly in the context of very limited public involvement. This raises concerns given the scale and complexities of regionally or nationally significant projects seeking to use the one stop shop.

Conservation Act and Reserves Act Schedule 5

53. There are significant omissions/gaps in Schedule 5. Projects that engage with Schedule 5, and other schedules such as Schedule 9 for marine consents in the EEZ, may not require resource consents under the RMA, and therefore Schedule 4 which sets out the detailed process requirements will not be engaged. Schedules 5 and 9, and potentially others, need to stand alone and cover all necessary process steps.

54. There are also material inconsistencies in the structural and drafting approaches between the Schedules for no apparent reason. The table appended to this submission attempts to pick up some of these issues and propose solutions.

Recommendations/relief sought by RMLA

55. It is difficult for the RMA to comment on individual provisions of the Bill or provide specific amendments to address the issues raised, given the clear intent behind the legislation. RMLA's preference is for long term, enduring reform with bipartisan support that targets the issues that have been comprehensively identified to date, in a sound and evidence-based way.

56. We note that the fast-track process from the NBEA has been retained and is currently able to be utilised. RMLA considers it would be preferable for this to remain the fast-track consenting pathway, while the overall RMA reform programme is considered (as the Government has indicated it is currently doing).

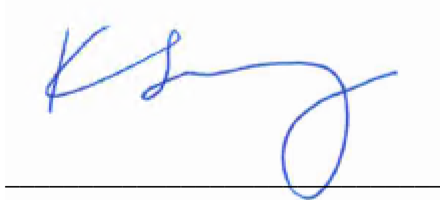
57. However, if the Bill is to be progressed, RMLA submits that:

    a. Applications should be considered under the normal provisions of the governing legislation (e.g., the RMA or the EEZ), while taking into account the purpose of the Bill. This is the approach that fast-track predecessors have taken (for example, see FTA, Schedule 6, clause 31) and will ensure that environmental matters (including effects, and the relevant planning provisions) are appropriately considered;

    b. Alternatively, we have suggested some basic amendments in the table attached as Appendix A, which are not intended to be comprehensive, but which reflect the type of approach that may go some way towards addressing the issues identified in this submission.

REQUEST TO BE HEARD

58. RMLA wishes to be heard in support of this submission.



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Kate Stubbing, Secretary, on behalf of RMLA

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Appendix A – Overview of amendments sought by RMLA to Fast-track Approvals Bill to address key concerns in submission.

Notes:

1. It has not been possible to identify a comprehensive list of proposed amendments given the timeframes available and complexit y of the Bill, which makes significant amendments to a wide range of processes. These suggestions are therefore indicative of the types of changes required to address RMLA's submission.

2. Consequential amendments will be required to address the key matters set out below.

No.	Relevant provision	Proposed amendment	Explanation
1.	Clause 3 - Purpose	Include sustainable management purpose of RMA alongside delivery of regionally and nationally significant infrastructure and development projects. E.g.: *"The purpose of this Act is to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits*<u>*, while continuing to promote the sustainable management of natural and physical resources.*</u>*"*	This is the approach taken by the COVID-19 Recovery (Fast-track Consenting) Act 2020. It will assist to ensure that environmental considerations are not overlooked. Alternatively, clause 32 could be amended to give both the purpose of this Bill and the RMA equal weighting (ie, have regard to both). Similar amendments would be required to equivalent EEZ Act provisions.
2.	Clause 4 - Interpretation	Amend definition of joint Ministers to read as follows: "***joint Ministers****:* *(a) Except as otherwise provided for in this definition, means the Minister for the Environment and Minister for Infrastructure acting jointly, but with the Minister for the Environment having the deciding vote where required;* *(b) In relation to an approval for any road, rail or ferry infrastructure, includes the Minister of Transport acting jointly with the Ministers identified in (a);*	Minister for the Environment, as Minister responsible for RMA, should be involved in decision-making on resource consents and notices of requirement. Alternatively, require consultation with Minister for the Environment, consistent with requirements under Schedule 9 for EEZ Act related matters. The Minister of Conservation requires specific mention. A fast track approval may only seek a concession, and not require resource consents, meaning the joint Minister

No.	Relevant provision	Proposed amendment	Explanation
		(c) In relation to an approval to do anything otherwise prohibited by the Wildlife Act 1953, a concession under Part 3B of the Conservation Act 1987 or an authorisation, licence or right to do something under the Reserves Act 1977, means the Minister of Conservation only; and *(d) In relation to an approval under the Crown Minerals Act 1991, includes the Minister responsible for that Act or the appropriate Minister (within the meaning of that Act) acting jointly with the Ministers identified in (a)."*	referred to in (a) are not involved in the decision making process set out in Schedule 5.
3.	Clause 6 – Obligation relating to Treaty settlements and recognised customary rights	Include requirement to act in a manner that is consistent with the principles of te Tiriti o Waitangi (at a minimum).	This is consistent with the approach taken in the COVID-19 Recovery (Fast-track Consenting) Act 2020. Reasons are set out in submission.
4.	Clause 10(5) - force and effect of approval	Clarify that approvals listed in clause 10(1) are to be enforced in accordance with the legislation set out in clause 10(1).	We assume that, for example, resource consents are subject to the enforcement provisions under the RMA. Clarifying this would remove any uncertainty for local authorities.
5.	Clause 17(2) - Eligibility criteria	Require that in determining a referral application, Ministers must consider (as relevant criteria) whether the proposal: • Is likely to give rise to significant adverse effects; • Is inconsistent with a transition to a low-emissions economy;	There is currently no requirement to consider environmental effects in deciding whether to refer a project to a panel. This is a significant oversight. Consistency with local or regional planning documents is referred to in subclause (5), but it is not appropriate in that list – it is more appropriate as a criteria for referral

No.	Relevant provision	Proposed amendment	Explanation
		• Will worsen New Zealand's resilience to climate change; and • Is consistent with local or regional planning documents, including spatial strategies.	and will overcome to some extent issues relating to weighting of plans in clause 32.
6.	Clause 17(3) - Eligibility criteria	Amend the list to reflect matters relevant to determining whether a project will deliver regionally or nationally significant benefits.	Clause 17(3) lists matters that the Ministers can consider in determining whether the project will deliver regionally or nationally significant benefits, but these matters are not necessarily relevant to identifying those benefits. For example, the fact that a project will support primary industries or is consistent with local or regional planning documents are not relevant to determining the significance of benefits.
7.	Clause 17(3) - Eligibility criteria	Amend the list to be more targeted.	This could include the types of projects that are genuinely required to close the infrastructure deficit or address other significant matters in the public interest that have been difficult to overcome. This is necessary in order to justify overriding normal environmental protections and reducing public participation and appeal rights. Some RMLA members take the view that housing developments do not justify the fast-track process as currently envisaged.
8.	Clause 17(5) - Eligibility criteria	Delete.	Prohibited activities should not be eligible for fast-tracking. They have been considered and determined to be inappropriate by the local community due to the nature of their effects, or the inappropriateness of their location (which could be due to a range of factors including, for example, risk of natural hazards).
9.	Clause 18 – Ineligible activities	Add activities identified as prohibited activities in any legislation, regulation or planning instrument.	As above.

No.	Relevant provision	Proposed amendment	Explanation
10.	Clause 19(5) - Process after joint Minister receive application	Amend timeframes in clause 19(5) to at least 20 days.	Providing additional time will improve quality of information received, better provide for access to justice and not significantly compromise overall objectives of the Bill.
11.	Clause 21(1) - Decision to decline application for referral	Amend clause 21(1) to require Ministers to decline a project if it is: • Inconsistent with a Treaty settlement or other arrangement • Likely to have significant adverse effects on the environment	The Ministers are required to act in a manner consistent with obligations in Treaty settlements and other arrangements. This requires declining to refer an application if the project is inconsistent with a settlement or other arrangement. A project should not be referred if it will have significant adverse effects on the environment. ***This will incentivise applicants to design projects to avoid, remedy or mitigate significant adverse environmental effects.***
12.	Clause 25(1) – Panel to report and joint Ministers to decide whether to approve project	Amend to provide for panel to make decision.	Decisions should be made by experts and based on evidence. Ministerial decision-making may expose Ministers to perceptions of bias or that consents inappropriately granted given potential lack of expertise on which to base decisions. Decisions made at arms-length will protect Ministers from those perceptions.
13.	Clause 25(3) – Panel to report and joint Ministers to decide whether to approve project	Amend timeframes in clause 25(3) to allow at least 10 working days.	Treaty settlements are often complex. Increasing timeframes will improve quality of decision-making and not significantly compromise overall objectives of the Bill.
14.	Clause 26 Appeals	Amend clause (1) as follows: Any of the following persons may appeal to the High Court against the whole or part of the final decision of joint	If a fast track project requires only a concession, and not any other approval, the joint Ministers will not be engaged in the decision making, only the Minister of Conservation,

No.	Relevant provision	Proposed amendment	Explanation
		Ministers or the Minister of Conservation to grant or decline an approval...	therefore the Minister of Conservation requires specific mention.
15.	Schedule 4, clause 1(3)	Clarify that the panel can recommend /determine that an approval: • Can be declined on any grounds (not just where mandatory considerations are not able to be met); and • Must be declined if mandatory requirements relevant to the activity are not able to be met.	There is uncertainty amongst practitioners as to whether the intention of the Bill is to enable the panel to recommend approvals be declined. This needs to be clarified. RMLA's submission is that the panel should be able to recommend (or determine, if our submission re panel decision-making is accepted) decline for any reason. If mandatory requirements are truly mandatory, then the approvals must be declined for that reason (otherwise they are not mandatory).
16.	Schedule 4, clause 3(1)	Amend to remove limit on panel membership to ensure that, collectively, they have appropriate expertise to assess matters arising out of project (in accordance with Sch1, clause 7).	Given the short timeframes, limited public participation and Ministerial decision-making, the ability to test evidence will be limited. Panel members need to have sufficient expertise to ensure quality decision-making. Four panel members may be insufficient for this, given requirements for chairperson, iwi appointed member and local authority appointed member.
17.	Schedule 4, clause 2	Enable panel convenor to appoint deputy, or delegate.	If a large number of projects are referred for fast-track, it would be efficient to enable the panel convenor to appoint a deputy to assist with workload, or delegate to another appropriate person.
18.	Schedule 4, clause 4(1)	Amend to enable existing or retired Environment Court judges to chair panels.	The Bill poses a number of new, complex legal issues including interpretation of the legislation. An Environment Court judge will be well placed to consider and work through those legal issues, interpret new law and establish best practice.

No.	Relevant provision	Proposed amendment	Explanation
19.	Schedule 4, clause 20 – Public and Limited Notification not permitted	Add for listed and referred projects that the panel must invite comments to landowners/occupiers and industries that are likely to be affected by the project.	Setting a broader criteria for parties entitled to comment will help mitigate the risk of unintended adverse effects on people, and existing important industries that may be incompatible with a proposal.
20.	Schedule 4, clause 21	Amend timeframes to provide at least 20 working days to provide written comments.	Providing additional time will improve quality of information received, better provide for access to justice and not significantly compromise overall objectives of the Bill. This is particularly necessary for complex projects involving multiple approvals.
21.	Schedule 4, clause 22	Amend timeframes to provide at least 10 working days to provide a response to comments.	As above
22.	Schedule 4, clause 32(1)	Amend weighting of matters to give purpose of Bill and purpose of RMA same weighting, or require regard to be had to both (per the approach to the Minister's consideration of Conservation Act and Reserves Act concessions in Schedule 5 clause (1)).	This will assist to ensure that environmental considerations are not overlooked. As drafted, it is unclear as to how a proposal with significant adverse effects (for example, that has been previously declined on those grounds) will be treated if the purpose of the Bill is to be given the most weight, when effects (normally considered under section 104) is at the bottom of the list of weighted considerations.
23.	Schedule 4, clause 40	Amend to require the Minister's decision to address the same matters as the panel recommendation in clause 39(7) if it deviates from the panel's recommendation.	If Ministers are to retain decision-making power, it is important for transparency that that decision and reasons for it are fully documented and made publicly available. This is particularly important for the purposes of determining whether the Ministers decision is lawful.
24.	Schedule 5	Either include comparable process steps from Schedule 4, or:	A fast track application may only be for a concession, and not for a resource consent. Therefore Schedule 4 may not be engaged. This means all of the process steps that are

No.	Relevant provision	Proposed amendment	Explanation
		• Delete clause 4 (a) as section 17SA of the Conservation Act enables return of an application that lacks required information; • Delete clause 4(d) as section 17SD directs when further information is required; and • Ensure it is clear that the process steps in the Conservation Act and Reserves Act apply.	set out in Schedule 4 need to be replicated in Schedule 5, otherwise there is no provisions covering matters such as the EPAs role, information requirements, assessing sufficiency of information, consultation, notification, procedure for hearings, suspension of processing, conditions, the fact the Panel has to make a recommendation/write a report.
25.	Schedule 5, clause 4	Delete clause 4 (c) as section 17SC sets out the requirements for notification.	The Conservation Act manages the one third of New Zealand's land, owned by the crown and managed for conservation purposes which all New Zealanders have an interest in. A high expectation of public notification is appropriate. And otherwise, as noted above, Schedule 5 is completely silent on notification. This was perhaps on the incorrect assumption that a project will also require a resource consent and therefore Schedule 4 covers off notification. But a project may not require a consent, only a concession. Schedule 5 needs to stand on its own.
26.	Schedule 5, clause 5	Amend clause 5 so that the matters the panel must consider at least include all of the matters listed in clause 6 (that the Minister of Conservation must consider), in addition to the content of clause 5.	The matters the panel is directed to consider is very confined. This clause is structured and drafted in a manner that is not consistent with the corresponding clauses in Schedule 4 for RMA consents (32, 33, 34, 35, 36,) which contain a long list of detailed matters the expert panel must and may consider, and must or may disregard. The expert panel should be required to assess the most comprehensive information, prior to the Minister considering the panel's recommendation.

No.	Relevant provision	Proposed amendment	Explanation
27.	Schedule 5, clause 5	Amend clause 5 so that panels are required to consider all conservation management strategies and plans. As this Schedule covers the Reserves Act as well, add to clause 5 the requirement that the panels consider reserve management plans also.	Contrary to clause 32 of Schedule 4 which requires panels to consider operative and proposed policy statements and plans, clause 5 restricts the panel's mandatory consideration to conservation management strategies and plans that have been co-authored , authored or approved by a Treaty settlement entity. This is an inconsistent approach, and will leave a significant vacuum in terms of the ability of the panels to comprehensively assess the effects of a proposal on conservation land and values. Conservation management strategies and plans are comprehensive, both in terms of detailed identification of values, and detailed direction in terms of outcomes being sought in respect of the same.
28.	Schedule 5 - New clause	Add a clause setting out the process for the panel to make its recommendation to the Minister.	As noted above this process step and requirements is missing.
29.	Schedule 5, clause 6	Add a requirement that the Minister must consider the recommendation from the panel, in addition to the other matters listed. Amend clause 6 (1) (b) so that the Minister must consider all relevant Conservation Management Strategies and Plans.	There is no reference to needing to consider the report prepared by the panel, for the same reasons as set out above.
30.	Schedule 6 – New clause	Add a clause setting out the process for the panel to make its recommendation to the Minister.	As with Schedule 5, the required process steps for considering a proposal to do something that is otherwise prohibited under the Wildlife Act have not been set out.
31.	Schedule 9 - Marine consents under the Exclusive	Significant additional drafting required to set out the complete process steps	Fast track projects may be entirely within the EEZ and not trigger the RMA at all. Therefore, none of the process steps in Schedule 4 will be engaged. Schedule 9 needs to

No.	Relevant provision	Proposed amendment	Explanation
	Economic Zone and Continental Shelf (Environmental Effects) Act 2021		be a standalone Schedule setting out the full process for marine consents in the EEZ