

Date: Tuesday 28 May 2024
Time: 10.00am
Meeting Room: Claris Conference Centre
Venue: 19 Whangaparapara Road
Claris
Aotea / Great Barrier Island

Aotea / Great Barrier Local Board OPEN ATTACHMENTS

ATTACHMENTS UNDER SEPARATE COVER

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19 April 2024

Committee Secretariat
Environment Committee
Parliament Buildings
Wellington

Auckland Council's submission on the Fast-track Approvals Bill

Thank you for providing Auckland Council with the opportunity to submit on the Fast-track Approvals Bill. The Auckland Council group submission is attached.

The council wishes to be heard on its submission.

This submission is endorsed by the Chair and Deputy Chair of the Planning Environment and Parks Committee and a member of Houkura / the Independent Māori Statutory Board.

The Group submission incorporates feedback from the Auckland Council and its CCOs Auckland Transport, Watercare Services Limited and Eke Panuku.

Local Board submissions on the Bill are appended to the council's submission.

Houkura / the Independent Māori Statutory Board has also provided input to this submission.

Please contact Karryn Kirk, Principal Strategic Adviser, Auckland Plan Strategy and Research (Karryn.kirk@aucklandcouncil.govt.nz) and Rebecca Greaves, Lead Planner, Plans and Places (Rebecca.greaves@aucklandcouncil.govt.nz), if you have any queries regarding Auckland Council's submission.

Ngā mihi,



Councillor Richard Hills
Chair of the Planning,
Environment and Parks
Committee



Councillor Angela Dalton
Deputy Chair of the Planning,
Environment and Parks Committee



Edward Ashby
Houkura / Independent Māori
Statutory Board

Mihimihi

Ka mihi ake ai ki ngā maunga here kōrero,
ki ngā pari whakarongo tai,
ki ngā awa tuku kiri o ōna manawhenua,
ōna mana ā-iwi taketake mai, tauiwi atu.
Tāmaki – makau a te rau, murau a te tini,
wenerau a te mano.
Kāhore tō rite i te ao.

*I greet the mountains, repository of all that
has been said of this place,
there I greet the cliffs that have heard the
ebb and flow of the tides of time,
and the rivers that cleansed the forebears of
all who came those born of this land
and the newcomers among us all.
Auckland – beloved of hundreds, famed
among the multitude, envy of thousands.
You are unique in the world.*

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Executive summary

Auckland Council supports the government’s desire to streamline approvals for infrastructure projects that have significant regional and national benefits. However, it opposes the Fast-track Approvals Bill in its current form.

The Fast-track Approvals Bill is opposed on account of the significant negative effects it will have on the natural environment, including indigenous biodiversity and Outstanding Natural Features and Landscapes. As currently drafted, the Bill substantially shifts the dial on decision-making in favour of projects, diluting the usual environmental checks and balances that go with standard resource approval processes and other fast-track processes used to date. The Bill introduces significant increased risk of adverse effects on the natural environment and also on Māori rights and interests from infrastructure and development proposals.

The level of discretion and power afforded to Ministers in decision-making is a key concern. If enacted the legislation should make the expert panel responsible for decision-making, not Ministers. Local government has a role in advocating for local democracy for communities through mandate and decision-making. Broadening the scope for Ministers to make decisions on proposals with impacts at the local level risks politicising development and excluding the public on local matters. There must be separation between the regulatory decision-making body and the government executive to maintain independence and transparency.

The broad range of approvals that could be eligible for fast-tracking is far-reaching and unsupported by evidence. While the Resource Management Act 1991, and amendments through the repeal legislation remains in force, there are other consenting pathways that can effectively expedite decision-making while balancing the objectives of development with environmental outcomes. These arrangements should remain in force as the government’s resource management programme progresses.

The Bill raises fundamental issues relating to poor environmental outcomes; central and local government obligations to Māori; natural justice, loss of local voice and inadequate public consultation; high risk to local authority infrastructure provision, financing and funding; asset management and regulatory management; and inefficient processes.

The system design raises practical implementation issues for asset management, regulatory functions and proposes inefficient processes.

Auckland Council opposes the following key aspects of the Bill:

- The purpose clause of the Bill: its singular development focus does not balance speed and development, alongside sustainable management of natural and physical resources.
- The omission of a clause requiring persons exercising powers, functions and duties to uphold the principles of the Treaty of Waitangi.
- A politicised process requiring extensive and coordinated Ministerial decision-making, that is vulnerable to perceptions of bias and capture.

- The 'engagement' process with local authorities is insufficient. Engagement with councils prior to submitting projects should be a more formal 'pre-lodgement' process run by the EPA for early identification and resolution of issues.
- A weak role for expert panels as advisors. Ministers may choose to ignore the panel's recommendations.
- Inclusion of Schedule 2A and 2B listed projects without an opportunity to make a submission following the Fast-Track Projects Advisory Group's consideration of projects for inclusion in the Bill. Excluding the council from the decision-making process when considering and including projects in the list will limit local knowledge, local participation and sponsorship. Likewise, failure to enable submissions raises significant natural justice and public participation concerns.
- The absence of provisions addressing financing and funding of infrastructure and the principle that growth pays for growth. The inadequacy of existing financing and funding tools is a known issue of significance. The Bill will create additional strain on already stretched local authorities as fast-tracking is not reserved for 'development ready' projects (i.e. financing and funding for supporting infrastructure is in place).
- The broad range of approvals that could be eligible for fast-tracking is far-reaching and unsupported by evidence. Decision-making is not integrated and removed from 'home' legislation.
- The ability to consider (and approve) Resource Management Act 1991 prohibited activities.
- Combined eligibility criteria – regional and national benefits are bundled together but require two different thresholds with a mandatory evaluation framework.
- Low threshold for significance of housing projects in relation to Policy 1 of NPS UD. Projects must be required to 'significantly contribute' to housing supply, considered against the relevant local authority's Housing and Business Development Capacity Assessment.
- The narrow range of projects ineligible to be referred to the fast-track process and the absence of any ineligibility criteria for listed projects in Schedule 2.
- Enabling a Reserves Act approval without the written consent of the local authority owner, noting this is a decision-making function delegated to local boards in Tāmaki Makaurau / Auckland.
- The timeframes for participation, including for local authorities, are too tight especially given the significance of the projects and the complexity of multiple approval-types.
- The centralisation of local authority functions. This will result in a loss of local voice, knowledge and key partnerships with mana whenua for regional projects. The removal of public participation is a concern.
- Local authorities cannot fully recover costs (although, in this aspect, the Bill is an improvement on the COVID-19 Recovery (Fast-track Consenting) Act 2020).
- Potential capacity issues for expert panels, the EPA and central government agencies if large number of applications need to be considered simultaneously. The SAR underestimates the resources likely to be required.

E mahi ana mātou i te mahi mō Tāmaki Makaurau

- The relevant agencies are not resourced to vet applications for information sufficiency, in terms of reviewing specialist reports, and ensuring relevant plan provisions are adequately addressed and assessed.
- There are inefficiencies in the process (i.e. convenor must consult with Minister extensively in appointing panels, applications can be returned a number of times and changes made, multiple agencies administer processes).
- Inefficiencies, discretionary decision-making and poor integration work against certainty for applicants, and other system participants.
- The exclusion of the public from the process is a significant concern if all proposed approvals are enacted.
- Extensions of time, change of conditions and monitoring of consents will become an issue for councils, who were not the decision-makers and do not have all the information for subsequent applications and monitoring.

Auckland Council supports the following aspects of the Bill:

- The intent of the Bill, in so far as, streamlining decision-making process to facilitate the delivery of infrastructure projects with significant regional or national benefits. The Bill's focus on delivery needs to go further to balance and include provision for sustainable management of natural and physical resources. Positive environmental and social outcomes must be achieved as well as the infrastructure that New Zealanders need.
- Auckland Council, and its CCOs, see potential benefits in utilising the fast-track process for selected regionally significant projects in the Auckland and Waikato regions to reduce both the time and expense involved in standard Resource Management Act 1991 processes, while providing essential water and wastewater services for New Zealand's largest city. However, this should not undermine council plans.
- The Bill could be beneficial in creating avenues for development of Māori-led projects within the Auckland region and projects that provide benefits for mana whenua and mataawaka groups. With appropriate changes and clarifications, this legislation could support the advancement of infrastructure and development projects that are led by Māori, which benefit iwi, hapū, marae and hapori Māori.
- Protections for existing Treaty settlements and other legislative arrangements and the ability of Ministers to decline an application if referral is inconsistent with a Treaty settlement.
- Information, engagement, and other procedural requirements for applicants, Ministers, and the expert panels in relation to particular Māori groups or interests (including Treaty settlement entities and Takutai Moana rights and title holders), at various application and decision-making points in the fast-track process.
- Addressing Māori rights and interests. However, further work is required to ensure relevant groups can participate in the process, and that meaningful engagement is prioritised and provided for.
- The omission of council-initiated plan changes and private plan change requests as fast-track approvals because:
 - a) a streamlined process already exists for plan changes

- b) plan changes affect landowners' property rights and many other interests so a limited-participation process generating natural justice issues is inappropriate
 - c) the Bill's tight timeframes cannot accommodate the two-phases of notification required for plan changes (distinct from other approval types) and
 - d) inclusion of plan changes would prevent local voice from both would-be submitters, and Auckland Council including local boards in setting policies for Tāmaki Makaurau Auckland.
- The requirement that a project, for which referral to the fast-track is sought, includes a description of the anticipated and known adverse effects on the environment (clause 14 or accompanying Schedule requirements if a non-Resource Management Act 1991 approval is sought). However, the information threshold must be higher than the general level of detail required by clause 14(2) with robust specialist reporting to enable:
 - (a) reliable decision-making on fast-track referral and
 - (b) those invited to make comments have a meaningful opportunity to do so.
 - The requirement for an applicant to list those persons that the applicant considers are likely to be affected by a project.
 - The inclusion of a summary of compliance / enforcement action taken against an applicant in the list of matters to be provided by applicants. However, the council has concerns regarding its practical implementation. Auckland Council agrees that poor performers or irresponsible consent holders should not benefit from fast-tracking but it is unclear whether:
 - (a) the information will affect decision-making
 - (b) the information requirements apply to applicants' different corporate entities and
 - (c) the administrative burden falling largely to councils in collating and supplying information will be a useful input to the fast-track regime.
 - Requirements for applicants to consult with local authorities before lodging referral applications but seeks this requirement be extended to listed projects before their lodgement with the EPA to resolve issues from the outset of the application process and providing a more certain process for applicants. Auckland Council has a wealth of experience in providing pre-application support whereas the EPA's primary functions are different and the COVID-19 Recovery (Fast-track Consenting) Act 2020 process demonstrated a capability deficit. The council also supports the requirement for applicants to include in their referral application, a record of 'engagement' and a statement explaining how it has informed the project.
 - Local authorities' invitation to provide comments on applications and be involved in reviewing conditions. However, constrained timeframes (10 working days) prohibit genuine involvement. CCOs also need to be included, and provision also made for adjoining local authorities, for example when a project extends into or impacts upon another district.
 - Some fast-track referral eligibility criteria are supported.¹ However, other criteria are strongly opposed, as is the discretion as to how criteria are considered, if it all. A mandatory eligibility criteria framework

¹ Examples include the inclusion of projects that address climate change mitigation, adaptation, resilience, and recovery, significant environmental issues and consistency with local or regional planning documents, including spatial strategies.

