



Submission to the Environment Select Committee on the Fast-track Approvals Bill

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We wish to make an oral submission to the Select Committee on this Bill.

Introduction

Living Streets Aotearoa is the New Zealand organisation for people on foot, promoting walking-friendly communities. We are a nationwide organisation with local branches and affiliates throughout New Zealand.

We want more people walking and enjoying public spaces be they young or old, fast or slow, whether walking, sitting, commuting, shopping, between appointments, or out on the streets for exercise, for leisure or for pleasure.

We welcome the opportunity to submit to the Select Committee on the Fast-track Approvals Bill. However, we believe that this Bill is unnecessary, and we are deeply concerned about its undermining of constitutional provisions, its undemocratic nature (both in general, and with specific regard to the listing of and decision-making on projects to be considered under these fast-track processes), and the likely effects of this Bill should it proceed without fundamental changes. We consider these topics briefly below.

Living Streets Aotearoa objects to this Bill and submits that it should be withdrawn.

This Bill is unnecessary

1. The Bill goes well beyond what is needed to address the problems for which there is actual evidence. The Ministry for the Environment's stated that analysis was not as thorough as "*would usually be expected for a Bill of this significance*".¹ The Ministry also specifically advises against taking most of the key design measures in the Bill.
2. The existing fast-track consenting law has reduced consenting process time by up to 18 months. The need for a new Fast-track Approvals Bill has not been demonstrated.
3. Both the COVID fast track process, the [COVID-19 Recovery \(Fast-track Consenting\) Act 2020](#), and the [Natural and Built Environment Act 2023](#) had independent, not political, decision-making. They had a purpose that, amongst other matters, recognised the

¹ Ministry for the Environment *Supplementary Analysis Report: Fast Track Approvals Bill (2024)* at 5.

importance of strong environmental protection. And they upheld crucial national direction made under the Resource Management Act.

This Bill undermines fundamental constitutional provisions and is deeply undemocratic

4. The proposed Fast-track Approvals Bill results in an unprecedented extension of executive powers. If undue power is given to the Executive then our democracy becomes out of balance, and poor outcomes result.
5. Making selected Ministers the legislators, the regulatory gatekeepers on what projects are picked for fast track and the decision makers is contrary to a fundamental pillar of our democracy, the separation of powers, and fails to prevent the concentration of power by providing for checks and balances.
6. Granting regulatory approvals should not be used to raise political capital, and to do so is constitutionally wrong. It is unclear how conflicts of interest are to be defined or managed, and identifying and managing these is particularly important given both the lack of transparency of the process and the unprecedented powers this Bill would grant to a small number of Ministers.
7. Lobbyists close to these Ministers' ears will gain an unfair advantage. The Ministry for the Environment has emphasised this risk, where it recommended putting "the legal risk of decision-making onto the expert panel (rather than the relevant Ministers)."
8. The Bill also is in breach of the NZ Bill of Rights Act, as further discussed below, and Te Tiriti o Waitangi.²
9. Furthermore, this Bill appears to be in breach of a number of New Zealand's international obligations, including various trade agreements.

The process of listing projects to be included in the Bill, and the decision-making process for fast-tracked projects, are also flawed and undemocratic

10. The proposed projects for Schedule 2 have not been included and this means it is impossible to comment on them.
11. Consultation on whether a project is fast-tracked or not is limited:
 - a. The government has said that a large number of developments will be automatically sent down the fast track in Schedules to the Bill (i.e will be Listed Projects), without the need for even Ministers to refer them under any kind of legislative test (and therefore removing them from judicial review). There is no consultation on these projects becoming fast-tracked.
 - b. When making referral decisions, Ministers must invite written comment from local government, other relevant Ministers and various Māori entities.³ There

² See India Logan-Riley, video presentation, as cited in Catherine Delahunty, "Fast track to nowhere", <https://e-tangata.co.nz/reflections/fast-track-to-nowhere/>, 14 April 2024.

³ Clause 19.

does not appear to be any requirement to notify owners or occupiers of land who potentially have property rights affected by a project.

12. Community consultation:

- a. The expert panel must consult with affected landowners and local authorities when considering projects that are part of Schedule 2.
- b. The expert panel does not need to consult affected local businesses, tangata whenua that are not post-settlement entities or NGO groups.
- c. This cuts out a portion of affected parties who often also have important information around the impact of consents and how to improve them.
- d. There is no independent voice or peer review for adverse effects. The Parliamentary Commissioner for the Environment – the public and independent watchdog – is excluded. The Minister for the Environment, who is meant to be democratically accountable for environmental outcomes, is not a relevant Minister from which the panels must seek feedback.
- e. This places significant weight on local and regional councils to inform expert panels of environmental, social and economic effects of a proposal.

13. Ministers' decision to grant consents:

- a. If a Minister decides to make a decision that is different from the expert panel's recommendation then the Minister is not required to go back and consult with landowners and adjacent landowners or local authorities. The Ministry for the Environment has raised the natural justice issues with this⁴.
- b. This also means that the Minister may grant consents which a local authority does not have the capacity to monitor and enforce or which override landowner rights and interests. This undermines the social licence and mandate of local authorities who also need community support to apply and regulate consents after they are granted. This creates further unknown costs for local government which have not been assessed especially if impacted residents feel their property rights have been overridden.
- c. This is a fundamental breach of long-accepted principles of public participation in environmental decision-making. This is contrary to rights of natural justice that affected parties should be given the right to be heard maintained through Article 27(1) of the NZ Bill of Rights Act.
- d. The Bill will likely undermine certainty and confidence of the public and business if projects are green-lighted which may fail due to having been ill-prepared without appropriate local input or are the outcome of a successful lobbying campaign rather than being a sound and appropriate proposal for the region and the nation.

This Bill is likely to lead to environmentally and economically unjustified projects going ahead, causing a loss of social licence

14. The consequence of the fundamental flaws in this Bill discussed above is highly likely to be that projects which are economically unjustifiable and will cause significant

⁴ Ministry for the Environment Supplementary Analysis Report: Fast Track Approvals Bill (2024) at 21.

environmental damage will be approved and will proceed, contrary to the national interest. In fact, it appears that projects that have previously been rejected can now be reconsidered.

15. It is extraordinary that the Ministers for the Environment, Conservation, and Climate Change Issues are almost completely excluded from the decision-making processes under this Bill.
16. Living Streets Aotearoa is an organisation that advocates for pedestrians and for walking as a fundamental part of a low-carbon, people-centred transport system that provides transport choice.
17. We are concerned that the many deficiencies of the Bill, and of the process to list and consider projects, will lead to very expensive, high-carbon transport projects being approved without the necessary scrutiny, reducing transport options and reversing the progress that was beginning to be made towards transport decarbonisation. We are not convinced that the impact of projects on pedestrians will be considered at all.
18. Removing or severely circumscribing the right of people to be involved in the making of decisions that have major effects on their lives and communities will lead to a lack of social licence for these projects and to projects that have not fully considered all impacts or mitigations.

Our conclusion and recommendations

19. This Bill is so deeply flawed that it should be withdrawn. A better case for change is required.
20. Should the Bill proceed, at minimum it should be amended so that:
 - a. It is no longer in breach of Te Tiriti of Waitangi and the NZ Bill of Rights Act
 - b. It is no longer in breach of New Zealand's international obligations
 - c. This Bill must require public notification and consultation on all listed and referred projects within time frames adequate for consideration, scrutiny and submissions.
 - d. The Minister for the Environment, and where applicable the Minister of Conservation and the Minister for Climate Change Issues, must be listed as members of the decision-making group of Ministers, should this decision-making group be retained within the Bill.