12 April 2024

Fast Track Approvals Bill

PHACCT and GOPI Submission

The Porirua Harbour and Catchments Community Trust (PHT) and the Guardians of Pāuatahanui Inlet (GOPI) advocate for and engage in community support activities that enable the recognition and protection of the ecological, recreational and cultural values of Te Awarua-o-Porirua Harbour (comprising the Onepoto arm and the Pāuatahanui Inlet) and contributing catchments. Te Awarua-o-Porirua harbour is the largest estuary in the North Island. Although significantly degraded by well over a century of urban and rural land developments and intrusive transport infrastructure it continues to be a significant wildlife habitat, with high cultural and recreational values.

Summary

1. The PHACCT and GOPI consider this Bill, in its current form, would support fast tracking of projects that have the potential to cause major environmental damage to coastal and marine ecosystems and to their contributing catchments. Without amendment, the Bill risks major and irreversible damage to the environment and its life supporting ecosystems.

2. There are previous well tested provisions in the Covid 19 Fast Track Consenting Act 2020 (now repealed) and the Fast Track procedures in the now repealed Natural and Built Environment (NBE) legislation which had many similar objectives to this Bill but their environmental requirements and safeguards were much stronger. We submit many of these should be carried forward into this Bill.

Background

3. Land use activities have major effects on these catchments and the harbour ecosystem and major national and regional projects pose the risk of significant adverse effects.

Our experience with the Transmission Gully Motorway is evidence of such effects where thousands of tonnes of sediments and contaminants washed into the harbour system during its construction. Greater Wellington Regional Council dealt with over 285 compliance and enforcement issues during its construction.

4. Major projects affecting the Awarua-o-Porirua catchment are likely to include the Grenada to Petone link road and urban development projects on Lincolnshire Farm and Stebbings Valley, the large Northern Porirua Growth Corridor and possible commercial and industrial development in the Judgeford area. Potential wind farm development would pose risks especially the creation of access roads to sites on high ground (as was proposed in 2005 for the high Puketiro area to the east of Transmission Gully).

Concerns about the current Bill

5. The Bill:

    - Contains no meaningful environmental criteria either in its purpose or processes;
    - Severely limits participation rights by environmental groups such as ours and by local communities;
    - Limits involvement by local government and, especially, has the potential to completely shut out and override provisions in district and regional plans and impose compliance and enforcement costs on local government;
    - Overrides environmental and conservation legislation including the Resource Management Act, the Conservation Act, the Wildlife Act, the Reserves Act, the Fisheries Act, the Crown Minerals Act and Heritage and Exclusive Economic Zone legislation.
    - Gives Ministers the sole and unprecedented power to make decisions on projects;
    - Has limited rights of appeal (to the High Court only on points of law) and no appeal to an expert Court such as the Environment Court.

6. Should this Bill proceed, we consider some critically important changes must be made to its provisions. Without these, the Bill and its processes risk major and irreversible damage to the environment and its life-supporting ecosystems.

There are previous well tested solutions that would improve this Bill

7. We note that the Covid 19 Fast Track Consenting Act 2020 (now repealed) and the Fast Track procedures in the now repealed Natural and Built Environment (NBE) legislation had many similar objectives to this Bill but their environmental requirements and safeguards were much stronger.

8. We consider there is a strong case for simply reviving a version of the Fast Track procedures in the COVID 19 or NBE legislation rather than drafting something that is in many ways similar but has much more limited environmental safeguards. We note that the Environmental Protection Authority lists some 66 projects approved under the COVID 19 Fast Track legislation and some 44 lodged and in process. Only a handful were declined.

Proposed Changes to be made to the Bill

9. If this Bill is to proceed we consider the following provisions need change. These changes and our supporting reasons are:

    9.1. The Purpose of the Bill in Clause 3 is solely to:

    > "provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits."

    No mention is made of any environmental considerations which are almost certainly to be affected if this Bill is enacted in its current form. This contrasts with the purpose of the COVID 19 Recovery Fast Track Approvals Act the purpose of which included:

    > "continuing to promote the sustainable management of natural and physical resources."

    We consider these words should be included in the purpose of this Bill. They should be defined as having the same meaning as in Section 5(2) of the RMA.

    9.2. The criteria joint Ministers must use to decide which projects can access the fast-track processes under this legislation (Clause 17(2)), contain no ***requirements*** to consider any environmental criteria, and the Minister for the Environment is not part of the Panel of Joint Ministers. We consider Joint Ministers under this legislation must include the Minister for the Environment, especially as the Ministry for the Environment is to be a responsible agency under this legislation.

    Clause 17(3) says that Ministers ***may*** consider whether the project:

    > "(g) will support climate change mitigation, including the reduction or removal of greenhouse gas emissions:
    >
    > (h) will support adaptation, resilience, and recovery from natural hazards:
    >
    > (i) will address significant environmental issues:
    >
    > (j) is consistent with local or regional planning documents, including spatial strategies."

We consider that these considerations should be mandatory and Clause 17(3)(i) should read “identifies and will adequately address any adverse effects the project may have on the environment and its ecosystems”

Provisions in the Covid 19 fast Track legislation such as those in its Section 19 (d) should also be considered for inclusion. These include:

> “(v) improving environmental outcomes for coastal or freshwater quality, air quality, or indigenous biodiversity:
>
> (vi) minimising waste:
>
> (vii) contributing to New Zealand’s efforts to mitigate climate change and transition more quickly to a low-emissions economy (in terms of reducing New Zealand’s net emissions of greenhouse gases):
>
> (viii) promoting the protection of historic heritage:
>
> (ix) strengthening environmental, economic, and social resilience, in terms of managing the risks from natural hazards and the effects of climate change.”

Further, there are well drafted and tried provisions in the Covid 19 Fast Track legislation that could also be included such as;

- Decisions under this legislation being subject to Part 2 of the RMA;
- Applicants being required to identify actual and potential effects on the environment;
- Ensuring decisions and approvals have positive effects on the environment.

9.3. Clause 17(5) says:

> “A project is not ineligible just because the project includes an activity that is a prohibited activity under the Resource Management Act 1991.”

This clause could result in major and even irreversible damage to the environment. Prohibited Activities are given that status for a reason - that the damage they could cause is unacceptable.

We submit that this clause should be removed from the Bill.

9.4. Ineligible Projects (Clause 18) does not include any project that may adversely affect significant or threatened ecosystems or species. We consider such a reference must be included in this list and the advice of the relevant local authorities should be sought to decide whether such adverse effects may occur.

9.5. Under Clause 19, Ministers are not required to ask for comments from any environmental or community groups whose interests might be affected by the project. Clause 19 (4) says:

> “The joint Ministers may also copy the application to, and invite written comments from, any other person”

We consider this to be too vague. Instead, we submit that Joint Ministers must, on the advice of the relevant local authority, invite written comments from environmental or community groups whose interests might be adversely affected by the project.

9.6. We submit that the provisions in clause 21 (2) (c) which require declining any project that may have significant adverse effects on the environment should be elevated to Clause 21 (1) and be mandatory rather than discretionary as in Clause 21 (2).

We note that there is no definition of environment or sustainable management in Clause 4 (Interpretation). We submit that this should be rectified and the definition of sustainable management from Section 5(2) of the Resource Management Act should be included.

9.7. Clause 25 gives joint Ministers the power to accept or decline applications. This is a serious deviation from established practice on such matters. The powers given to Ministers under this legislation are unprecedented. We submit that this part of the process must end with a decision made by the Expert Panel as was the case with the Covid 19 and NBE Fast Track legislation.

9.8. Schedule 3, Clause 7 lists requirements for Expert Panel members. We submit that expertise relating to the environmental context of the project must be a mandatory part of Panel membership.

9.9. The Bill has the clear potential to override the plans and rules which have been developed with community input and which include environmental protection measures. We submit that more explicit regard to existing plans and rules under the RMA should be included in the Bill.

9.10. The Bill appears to be silent on compliance and enforcement of the decisions and consent conditions made under its provisions. Presumably local government will be required to undertake these important functions. Further, decisions on projects could well impose new and additional costs on local and regional councils. We submit that final decisions made under this legislation should be supported by funding and/or resources for enforcement and monitoring.

In addition to extra costs, undertaking compliance and enforcement functions may pose problems for local government and its communities, especially if consent conditions contradict the provisions otherwise applied through existing plans. Likewise, if consents under this Bill have limited environmental requirements, these may contradict wider measures applied to adjacent land or marine areas to reduce, limit or provide wider offset measures to compensate for environmental damage.

We submit that:

1 A provision in the Bill or its regulations should set out compliance and enforcement responsibilities and related funding and/or resource assistance; and

2 Decisions made under this legislation must be constrained so their consequences do not contradict or render ineffective wider measures to reduce, limit or provide offset measures to compensate for environmental damage and which are applied through plans that affect adjacent land or marine areas.

Conclusion

10. We conclude that in seeking to reduce perceived “red tape” delaying or stymying projects of regional or national importance the draft legislation has vastly over compensated and removed vital protection for the natural environment. If passed in its present form, the legislation will turn the clock back to a situation where protection of New Zealand’s most vital asset, it’s natural environment, is severely jeopardised.

We wish to be heard in support of this submission.

Michael Player
Chairperson
Te Awarua-o-Porirua Harbour
And Catchments Community Trust

Lindsay Gow
Chairperson
Guardians of
Pāuatahanui Inlet