

Submission by



to the

**Environment Committee**

on the

**Fast-track Approvals Bill**

April 2024

## **FAST-TRACK APPROVALS BILL SUBMISSION BY BUSINESSNZ<sup>1</sup>**

### **1.0 Introduction**

- 1.1 BusinessNZ welcomes the opportunity to make a submission on the Fast-track Approvals Bill ('the Bill') and recommends that the Bill proceeds.
- 1.2 The purpose of the Bill is to provide a streamlined decision-making process to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.
- 1.3 BusinessNZ notes that while the Bill is a standalone Bill, the Government is committed to further reforms of the Resource Management Act (RMA) later this Parliamentary term, with new resource management laws based on the guiding principle of the enjoyment of property rights. Ultimately BusinessNZ supports this approach but accepts that it is necessary to make progress on much needed infrastructure in the meantime – hence our broad support for the Fast-track Approvals Bill.
- 1.4 The key motivation for the Bill is to reduce the cost of and time for consenting major infrastructure and development projects. A 2021 report for the Infrastructure Commission<sup>2</sup> estimated that current consenting processes for infrastructure projects cost \$1.29 billion per year and that it took nearly twice as long to get a resource consent for key projects as it did five years before. Note, this estimate considered only RMA processes. It did not include the costs of other conservation-related legislation. Furthermore, it included only infrastructure projects – it did not include projects such as housing, mining or aquaculture etc. which fast-tracking will also support.
- 1.5 Current consenting processes are slow. Furthermore, regionally or nationally significant projects can be rejected or have costly conditions placed on them due to the RMA, or other conservation-related legislation. Typical grounds for rejection focus on managing adverse effects, such as environmental impact. Often, the consent process does not sufficiently recognise the economic and social benefits of development relative to other considerations, the sheer difficulty of avoiding environmental impacts from any large-scale project and the full range of environmental management techniques that a large project can access, where impacts cannot be avoided.

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<sup>1</sup> Background information on BusinessNZ is attached as Appendix 1.

<sup>2</sup> The Cost of Consenting of Infrastructure Projects in New Zealand, July 2021, Sapere report commissioned by the Infrastructure Commission.

- 1.6 It is not necessary to traverse the deficiencies of the Resource Management Act (RMA) in further detail but simply to state that a wide cross-section of society consider it is no longer fit for purpose.
- 1.7 BusinessNZ, along with many other organisations across the political spectrum, has raised concerns about the RMA for many years. Some organisations consider the Act has not provided for adequate environmental protection, while many businesses testify to their inability to develop infrastructure and undertake business development given the slow and cumbersome nature of the processes involved.
- 1.8 BusinessNZ considers the RMA has served as a handbrake on the Government, limiting its ability to achieve its economic development aspirations, especially in respect to rapid growth in the urban context where it has impeded the ability to obtain the infrastructure consents needed to support growth. In BusinessNZ's view, the RMA will continue to inhibit government aspirations until such time as it is amended to better allow for both economic growth and environmental protection. It is recognised that economic development will not always be compatible with environmental protection so that furthering one or the other will necessarily involve a balancing exercise.
- 1.9 The previous Government attempted replacement of the RMA with the Natural and Built Environment Act and Spatial Planning Act which failed to achieve any regulatory improvement on the existing RMA with many groups, including BusinessNZ, questioning whether they would result in arguably worse outcomes than under the current RMA. Confusing and potentially conflicting objectives within in the Natural and Built Environment Act's objectives (outcomes), alongside new and untested concepts meant that their early removal from the statute books was a priority for the incoming Government.
- 1.10 Notwithstanding BusinessNZ's strong support for the Bill proceeding, we have a number of suggestions to improve the Bill, and ensure that there are clear and transparent decision-making principles in the Bill given the significant powers provided to Ministers in (a) referring projects to the Expert Panel and (b) in ultimately making decisions whether projects can proceed (or be modified) post recommendations being made by the Expert Panel.
- 1.11 The remainder of this submission looks at some critical issues, some covered and some not covered, in the Bill but which BusinessNZ considers should be considered within the current Bill.
- 1.12 Given the diversity of our membership, some members and sectors will have specific issues they wish to comment on the Bill. Therefore, we have encouraged individual members and sector representatives to make their own submissions raising those issues specific to their areas of interest.
- 1.13 BusinessNZ requests the opportunity to appear before the Select Committee in due course to present our submission.

## **RECOMMENDATIONS**

BusinessNZ **recommends** that:

**The Bill proceeds.**

## **WITHOUT PREJUDICE TO THE PRINCIPAL RECOMMENDATION ABOVE:**

BusinessNZ **recommends** that:

**Consideration be given to including reconsenting of major infrastructure projects and large-scale existing commercial and industrial operations within the ambit of the Bill, given that the Bill appears to only allow for new projects to be referred to the Expert Panel.**

BusinessNZ **recommends** that:

**Consideration should be given to including affected landowners and connected infrastructure providers as to persons who should be consulted during the fast-track process (see, in particular, clauses 14, 16, 19, and 23).**

BusinessNZ **recommends** that:

**While the Bill allows for a number of projects to be fast-tracked it will be important that the suppliers of required goods and services are able to deliver these in a timely manner.**

BusinessNZ **recommends** that:

**It is important that Ministers remain agnostic to the types of projects included within the list(s) of significant regional or national infrastructure, provided the net economic and environmental costs and benefits are adequately assessed by the Panel.**

BusinessNZ **recommends** that:

**Eligibility criteria for projects should include enhancing economic efficiency.**

BusinessNZ **recommends** that:

**Consideration be given to including the Minister for the Environment within the Ministerial decision-making process alongside the Ministers of Infrastructure, Regional Development and Transport to ensure full consideration of both economic and environmental interests.**

BusinessNZ **recommends** that:

**Given the potential for a large number of projects to be referred to the Expert Panel, it will be important that the Panel is adequately resourced, including the ability to attract the necessary talent to provide strong economic and environmental analysis.**

BusinessNZ **recommends** that:

**the approval process should be amended to provide more realistic timeframes for the Expert Panel to review applications, given the potential complexity of some projects. At the same time, consideration should be given to including timeframes for Ministry advice and Ministerial decisions (of which there are no prescribed timeframes currently).**

BusinessNZ **recommends** that:

**To encourage efficient investment in natural resource and infrastructure development for the economic well-being of current and future generations of New Zealanders, the Select Committee insert clauses into the Bill:**

- (a) **recognising the importance of upholding property rights to encourage efficient investment; and**
- (b) **introducing a compensation regime for regulatory takings to encourage better decision-making from regulators when affecting private property in the public interest.**

BusinessNZ **recommends** that:

**Consideration be given to increasing the amount provided to landowners where property is taken under the Public Works Act for infrastructure from the current “market value” to one which takes account of the costs, uncertainty and disruption of having one’s property compulsorily acquired.**

BusinessNZ **recommends** that:

**Ministers should be required to consult with potentially materially affected landowners and/or other persons likely to be materially affected, as a result of a potential projects proceeding given that current requirements in the Bill largely state that Ministers *may consult* (see for example Clause 19(4)) but there is no *mandatory* requirement to consult with potentially materially affected parties.**

BusinessNZ **recommends** that:

**Consideration be given to inserting a sunset clause in the Bill, given that once the full replacement legislation for the RMA is in place, this Bill should be redundant.**

## **2.0 Issues requiring further thought and consideration.**

- 2.1 This section looks at a number of issues, some not necessarily covered, or only partially covered in the Bill, which BusinessNZ considers should be included in the Bill, to ensure that the Bill is robust, transparent and fit for purpose.
- 2.2 The issues below are in no particular order of importance.

### Including more projects (and reconsenting) within the Bill

- 2.3 BusinessNZ would question why the opportunity was not taken to be even bolder and fast track many other general developments i.e. extending the fast-tracking to all development in order to maximise employment and economic growth opportunities throughout NZ. In this respect, BusinessNZ would also question why existing infrastructure (reconsenting), particularly for large projects is not included in the list of significant regional or national infrastructure and developments in the Bill, given that reconsenting can be a long and arduous journey for some regional infrastructure projects such as the reconsenting of freshwater for hydro-generation, and for large-scale industrial and commercial developments that have often become a significant, long-standing contribution for the communities where they are located.

BusinessNZ **recommends** that:

**Consideration be given to including reconsenting of major infrastructure projects and large-scale existing commercial and industrial operations within the ambit of the Bill, given that the Bill appears to only allow for new projects to be referred to the Expert Panel.**

### Interconnectedness of critical infrastructure

- 2.4 One of the important aspects that is perhaps missing in the Bill is taking any account of the interconnectedness of critical infrastructure. If this is not addressed, then fast-tracked projects (including much needed housing developments and new roads) could be without essential utilities such as internet access and mobile calling.
- 2.5 There are interdependencies between different types of critical infrastructure that need to be considered and provided for in the design of the fast-track process and reflected in the Bill. For example, telecommunications, electricity and water infrastructure is often situated along or under roads. Housing and business developments need utilities. Everyone needs telecommunications in an emergency, as demonstrated by severe weather events over the past year or so.

- 2.6 In this respect, if telecommunications are considered as an afterthought, connectivity may not be able to be provided, and there will be disruption and delays for residents.
- 2.7 In respect to road projects – they are in fact infrastructure corridors. These corridors often need to also house (either on or in the road) water pipes, electricity lines and telecommunications. A high-profile example of this is Transmission Gully, where telecommunications was not factored into the projects, and the result is a major highway with significant black spots. This is a major issue if motorists encounter problems or have an accident.

BusinessNZ **recommends** that:

**Consideration should be given to including affected landowners and connected infrastructure providers as to persons who should be consulted during the fast-track process (see, in particular, clauses 14, 16, 19, and 23).**

Fast-track project must allow for timely delivery of services.

- 2.8 While the Bill allows for a number of projects to be fast-tracked, it will be important that the suppliers of required goods and services are able to deliver these in a timely manner. For example, if an aggregate-reliant project is to be fast-tracked then there must be no unnecessary constraints placed on access to the extraction site or subsequent delivery of aggregate. To make this clear, it will be important that the general infrastructure is able to be provided for (e.g. access roads) to ensure that such mineral extraction can take place in an efficient manner while at the same time taking account of any significant adverse environmental impacts which may occur as a result of such activity.

BusinessNZ **recommends** that:

**While the Bill allows for a number of projects to be fast-tracked it will be important that the suppliers of required goods and services are able to deliver these in a timely manner.**

Impartiality of Ministers in promoting projects

- 2.9 BusinessNZ considers that it will be important that Ministers remain agnostic to the types of projects included within the list of significant regional or national infrastructure, provided the costs and benefits of any projects are largely internalised. For example, provided emissions are adequately covered within the Emissions Trading Scheme (ETS), Ministers should be agnostic as to which specific projects should be supported or rejected.

BusinessNZ **recommends** that:

**It is important that Ministers remain agnostic to the types of projects included within the list(s) of significant regional or national infrastructure, provided the net economic and environmental costs and benefits are adequately assessed by the Panel.**

Eligibility criteria for fast-track projects should include economic efficiency

- 2.10 BusinessNZ notes that clause 17 sets out the eligibility criteria for projects that may be referred to the Expert Panel. Clause 14 talks about “eligible projects”. In the interpretation clause there is a definition of “eligible activity” – which is the meaning given to it in clause 17. There is not a definition of eligible projects. Clause 17 does not talk about eligible activities – but it does talk about projects.
- 2.11 The Bill’s eligibility criteria places strong emphasis on economic development which is good. However, BusinessNZ would encourage an emphasis on adding economic efficiency to the eligibility criteria.
- 2.12 The economic literature refers broadly to three key types: allocative, productive, and dynamic efficiency, although there are others as well, e.g. administrative efficiency - each important in its own right.
  - (1) *Allocative efficiency*: the regulatory/tax/expenditure system should not unduly interfere with the efficient allocation of resources by favouring one sector over another.
  - (2) *Productive efficiency* (sometimes called technical efficiency): given output for lowest input cost.
  - (3) *Dynamic efficiency*: resource use should respond to changed economic circumstances, so that depending on economic circumstances, resources should be able to flow reasonably easily to higher-valued uses.
- 2.13 Focusing on enhancing economic efficiency is important for getting the best wellbeing gains from the use of scarce resources and would assist Ministers and the Expert Panel in better defining what is national and/or regional interest.

BusinessNZ **recommends** that:

**Eligibility criteria for projects should include enhancing economic efficiency.**

## Transparency in decision-making of Ministers

- 2.14 It is important that clear and transparent processes are in place for Ministers in making public any decisions to either oppose or modify the decisions of the Expert Panel and the reasons why, given that one would expect the Expert Panel to adequately take account of the economic and social benefits of projects alongside, determining any significant environmental affects, and making the appropriate trade-offs required.
- 2.15 Given that Ministers have significant functions and powers as outlined in the Bill, it will be important to ensure that there are enough checks and balances, given widespread ministerial powers will potentially impact on the use and development of projects and resource use with officials questioning whether the Expert Panel should have the final say on whether a project should proceed.<sup>3</sup>
- 2.16 BusinessNZ considers that the views of officials have merit and suggest there are a number of things which could be done to improve decision-making, to ensure that there is little or no potential for Ministers to be considered as favouring some sectors over others. If this Bill remains in place for successive future Governments where there could be a tendency to promote 'pet projects' at the Minister's whim – or potentially even more damaging, unnecessarily restricting particular projects being fast-tracked because they do not meet the short-term priorities of the Government of the day. This underpins our comments in para 2.9 about the importance of Ministers remaining impartial in promoting projects.
- 2.17 With the Bill's strictly limited appeal rights, it will be important that Ministerial powers are used sparingly, and that adequate account is taken of affected parties when decisions are made, including adequate consideration of trade-offs between economic and environmental interests as appropriate.
- 2.18 To avoid any potential accusations of Ministerial favouritism in either promoting or opposing a project, BusinessNZ considered that Ministers should be required to advise not only the promoters of projects, but the general public, as to why projects have failed to be referred to the Expert Panel or the reasons for not accepting the recommendations of the Expert Panel.
- 2.19 While the above suggestion of greater transparency by Ministers would have superficial appeal, a number of BusinessNZ members have pointed out the potential problems of such an approach given that it could open up the potential

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<sup>3</sup> Appendix 3: Supplementary Analysis Report: Fast-track Approvals Bill (Thursday 29<sup>th</sup> February 2024 - p.22) states that this option (Ministerial decision-making)....*has increased legal risk of judicial review on the decisions made by Ministers, particularly if they differ in their final decision from the recommendation of the expert panel.*

for judicial reviews (JDs) on Ministerial decision-making which could end up being problematic and slowing the process for consent considerably.

- 2.20 Notwithstanding the above,, given the potential for some projects to have significant environment benefits and/or costs, it would seem sensible that the Minister for the Environment should be one of the Ministers involved in decision making, alongside the current three decision-making Ministers (Infrastructure, Regional Development and Transport) to provide for all factors to be adequately considered when coming to a decision.
- 2.21 While it is noted there are requirements for referral applications to include, for example, a description of the anticipated and known adverse effects of the project on the environment (see clause 14(3)(e)) and also a description of whether and how the project would be affected by climate change and natural hazards (see clause 14(3)(v)), it is sensible to add the Minister of the Environment to the decision-making process given the potential for some projects to have potentially significant economic and environmental costs and benefits. Necessary and difficult trade-offs will still need to be made in some cases between economic and environmental values, but having the Minister for the Environment on board would provide for an additional voice.

BusinessNZ **recommends** that:

**Consideration be given to including the Minister for the Environment within the Ministerial decision-making process alongside the Ministers of Infrastructure, Regional Development and Transport to ensure full consideration of both economic and environmental interests.**

#### Appropriate resourcing of the Expert Panels

- 2.22 BusinessNZ considers that it is important that the Bill contains adequate resourcing of the Expert Panel to do their job appropriately and undertake thorough cost/benefit analysis given the potential trade-offs that may need to be made in respect to economic benefits of particular projects, and accounting adequately for any adverse impacts on the environment.
- 2.23 The Expert Panel must be adequately resourced with appropriate technical economic expertise in which to make sound economic cost/benefit analysis on projects which come before them, therefore minimising the potential need for Ministers to step in and alter any decisions of the Panel.
- 2.24 In this respect, it is important that the analysis of the Expert Panel stands up to rigorous interrogation, by both supporters and opponents of particular projects.

BusinessNZ **recommends** that:

**Given the potential for a large number of projects to be referred to the Expert Panel, it will be important that the Panel is adequately resourced, including the ability to attract the necessary talent to provide strong economic and environmental analysis.**

Time frames for decision-making

- 2.25 The Bill imposes strict timeframes on the Expert Panel (EP) review of applications, the provision of written comments, and on panels' deliberations. These timeframes, in some cases maybe unrealistic - particularly given the potential scale of regionally or nationally significant projects, and could result in rushed decision-making without adequate consideration of the full implications (costs and benefits) of projects. Taking more time to enable more input from key stakeholders and better refinement of conditions is likely to lead to a better overall outcome.
- 2.26 On the other hand, there are steps in the process (Ministry advice and Ministerial decisions) for which no timeframes are prescribed. This could lead to delays and bottlenecks which would be undesirable.

BusinessNZ **recommends** that:

**the approval process should be amended to provide more realistic timeframes for the Expert Panel to review applications given the potential complexity of some projects. At the same time, consideration should be given to including timeframes for Ministry advice and Ministerial decisions (of which there are no prescribed timeframes currently).**

Compensation where property is impacted upon in the public interest.

- 2.27 Upholding property rights is something which should be at the heart of all resource management decision making, so long as significant externalities that may impact on third parties are considered, thus internalising costs where practicable.
- 2.28 BusinessNZ considers that it is important that property rights are upheld, and appropriate compensation is provided for regulatory takings. Arguably more generous compensation than currently provided for under the Public Works Act where property is taken, or use is restricted in the public interest is required to better reflect the attachment some landowners may have to their existing properties which may not necessarily be reflected in normal market prices.

- 2.29 Without this security, businesses and their capital will simply flow to countries with much more business-friendly regulatory settings. A fundamental pillar of a market economy is the relative security individuals and businesses have over their property. If businesses cannot develop and utilise resources without interference, then we lose the incentive to grow our economy, and to provide jobs and incomes for hard-working New Zealanders.
- 2.30 It is understood that in some jurisdictions overseas can offer well above the market value when a property is compulsorily acquired in the public interest.

*"In a system of voluntary exchange, compensation takes the form of an agreed price between an uncoerced buyer and an uncoerced seller. This element of consent implies that the exchange is mutually beneficial. How any surplus between the seller's willingness to sell and the buyer's willingness to pay is shared is a matter for negotiation.*

*Just compensation might require more than the payment of market value. Prices are determined at the margin and most property owners are not willing sellers (or buyers) at today's market prices. The Public Works Act 1981 recognises the need to compensate above market value through provisions that allow for relocation assistance and a modest solarium in the case of residences that are taken. Epstein notes that in the United States some state statutes set compensation at 150 percent of market value. On the other hand, governments have a responsibility to taxpayers not to pay too much. Epstein suggests that a reasonable option might be to pay a fixed proportion, say 10 or 20 percent, above market value without accepting individual evidence on the matter....."<sup>4</sup>*

- 2.31 Given the potential for some landowners to be materially impacted upon by projects proceeding, it may be desirable to include more formal *mandatory* consultation processes with those directly and materially affected by a project (e.g. landowners whose property is adversely impacted upon than currently required in the Bill e.g. Clause 19(4)).
- 2.32 Notwithstanding the desirability of ensuring early consultation with potentially materially affected parties, BusinessNZ is cognisant of ensuring that only those landowners and/or other persons directly and materially affected by a project proceeding should be required to be consulted. It is not appropriate to allow for all-comers to simply hold-up and stifle new investment when they are not materially affected by a project proceeding or not.

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<sup>4</sup> Wilkinson, Bryce (2008), *A Primer on Property Rights, Takings and Compensation* prepared for BusinessNZ, Federated Farmers of NZ, the NZ Business Roundtable and the NZ Chambers of Commerce (p.25).

BusinessNZ recommends that:

**To encourage efficient investment in natural resource and infrastructure development for the economic well-being of current and future generations of New Zealanders, the Select Committee insert clauses into the Bill:**

- (a) **recognising the importance of upholding property rights to encourage efficient investment; and**
- (b) **introducing a compensation regime for regulatory takings to encourage better decision-making from regulators when affecting private property in the public interest.**

BusinessNZ recommends that:

**Consideration be given to increasing the amount provided to landowners where property is taken under the Public Works Act for infrastructure from the current “market value” to one which takes account of the costs, uncertainty and disruption of having one’s property compulsorily acquired.**

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**Ministers should be required to consult with potentially materially affected landowners and/or other persons likely to be materially affected, as a result of a potential projects proceeding given that current requirements in the Bill largely state that Ministers *may consult* (see for example Clause 19(4)) but there is no *mandatory* requirement to consult with potentially materially affected parties.**

#### Appropriateness of Including Sunset Clause in the Bill

- 2.34 BusinessNZ questions whether it would be appropriate to include a sunset clause for this particular Bill, given that it would be assumed that once a full review and replacement of the RMA is undertaken, that it could be considered unnecessary or even desirable that this Bill (assumed then Act) remains in place. In this respect, it will ultimately be important that all projects large or small, local, regional or national can be progressed in fast efficient manner which it is assumed is the intention of the Government’s targeted replacement of the RMA later this term. Longer term, having Ministers decide whether or not projects can be fast-tracked would arguably create two classes of consents and has the potential to muddy the waters.

**BusinessNZ recommends that:**

**Consideration be given to inserting a sunset clause in the Bill, given that once the full replacement legislation for the RMA is in place, this Bill should be redundant.**

## Appendix One - Background information on BusinessNZ



The BusinessNZ Network is New Zealand's largest business organisation, representing:

- Business groups EMA, Business Central, Business Canterbury, and Business South
- BusinessNZ policy and advocacy services
- Major Companies Group of New Zealand's largest businesses
- Gold Group of medium-sized businesses
- Affiliated Industries Group of national industry associations
- ExportNZ representing New Zealand exporting enterprises
- ManufacturingNZ representing New Zealand manufacturing enterprises
- Sustainable Business Council of enterprises leading sustainable business practice
- BusinessNZ Energy Council of enterprises leading sustainable energy production and use
- Buy NZ Made - country of origin licensing organisation for NZ-made products, NZ-grown ingredients, and NZ-coded software services

The BusinessNZ Network is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

The BusinessNZ Network contributes to Government, tripartite working parties and international bodies including the International Labour Organisation (ILO), the International Organisation of Employers (IOE) and Business at OECD (BIAC).

