Environmental Defence Society

Make your submission on the Fast-track Approvals Bill: What to tell our lawmakers

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The Fast Track Approvals Bill

- Submissions to the Environment Select Committee are due by 19 April.
- EDS's draft submission can be found on its website. A link will be circulated after the webinar. We welcome feedback.
- We will be finalising our submission closer to the deadline. We encourage people to use our submission (but would appreciate EDS being credited when quoting).
- We'll be creating a template submission in the next few days, for others to use as a basis for their own submission. We will be circulating a link to that in the next few days.

This webinar

- A bit of context.
- Key features of the Bill – what does it do?
- What you should be telling our law makers.
- A recording of the webinar, and powerpoint slides, will be made available and posted on the EDS website.

Context

- The RMA is not fit for purpose.
- We had the Randerson Panel report, followed by the NBE and SPA.
- Fast-track consenting – under Covid-19 legislation and the NBE.
- The NBE and SPA were gone by Christmas.
- Except for the fast track…
- Now we have the promised replacement in the form of the Bill.
- There are also medium and longer term RMA reform plans.

The Bill in a nutshell

- Alternative process for developers (including the Crown itself) to obtain various regulatory approvals under lots of environmental legislation.
- One stop shop – a single process for all permissions.
- Step 1 – a gateway to the fast-track process (listed and referred projects).
- Step 2 – independent and expert consenting panels make recommendations (grant/decline/conditions).
- Step 3 – Ministers make final decision.
- Appeals to High Court on points of law (for those with standing).

A Ministerial sandwich

Source: Facebook

Key concerns – what to tell our lawmakers

- This is not actually a fast-tracking process – speed is a minor component. It is about substance – circumventing almost all environmental protections.
- It is a war on nature.
- The purpose of the Bill is:

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

Too many projects are eligible for referral

- Too many kinds of project are eligible to enter a process that seriously weakens environmental safeguards.
- “Significant national or regional benefit” is the main criterion.
- Criteria for assessing this are broad, open ended, and discretionary.
- They include “supporting primary industries” and “development of natural resources”.
- Environmental reasons for declining are discretionary (and operate in the context of a development-focused purpose).

Too many projects are eligible for referral

- Very few projects are ineligible for referral on environmental grounds.
- RMA prohibited activities are specifically made eligible - these often have “significant environmental or human health effects” (MfE).
- Most Crown conservation land is fair game (high value categories like national parks and marine reserves, among others, are excluded).
- Climate targets don’t matter.
- Water conservation orders are not a barrier.


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Too many projects are eligible for referral

- Potential to play favourites.
- Who makes the referral decision? Development-focused Ministers.
- Minister for the Environment is sidelined.

There are big issues with listed projects being deemed eligible

- Some projects are to be listed in Schedule 2A directly, and go straight to panel consideration without need for referral. BUT … no one knows what they are.
- The projects may well not be appropriate for fast-tracking.
- Some may have been rejected for very good reasons already, and are seeking another route.
- It would be possible for these projects to be included without having to meet even the weak tests for referral (including exclusion of Treaty settlement land).

There are big issues with listed projects being deemed eligible

- The legislative process is also very concerning.
- A fast, untransparent and non-statutory process is being used to populate schedule 2 with 100+ projects instead of robust select committee process with proper opportunity for submissions.
- We still don’t know the details of this process.
- It’s a lolly scramble, with all sorts of proponents writing to Ministers behind the scenes to get projects listed.

Criteria mean panel recommendations to approve are all but guaranteed

- A consenting panel makes recommendations on whether to grant/decline/impose conditions.
- Schedule 4 outlines the process for RMA approvals.
- This is drafted so that a panel recommendation to grant is all but guaranteed.
- There is a clear hierarchy of criteria, where the development-focused purpose of the Bill is overwhelmingly dominant.
- Environmental safeguards in the purpose and principles of the RMA, national direction, and council plans/policy statements are second order considerations.
- There is no reference to climate change or Treaty principles.
- Panel timeframes are alarmingly short.

Power is excessively concentrated in (the wrong) Ministers

- Ministers (transport, economic development and infrastructure) can reject panel recommendations and proceed down a different path.
- Panels are reduced to advisory bodies, as under the National Development Act 1979.
- This is very different to previous fast-track processes.
- It is a risk to the environment as well as Ministers.
- It is an inefficient approach to decision-making.


Photo: Department of Conservation

Public participation

"if there is a mineral, if there is a mining opportunity and it's impeded by a blind frog, goodbye, Freddie."

Hon Shane Jones, December 2023

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Public participation has been excessively eroded

- When referring projects, Ministers have to seek comment from only a small range of persons (arms of government and Māori entities).
- Panels must invite comment only from a limited range of persons too.
- This doesn’t even include the Minister for the Environment or Parliamentary Commissioner for the Environment.
- The High Court cannot hear appeals even on points of law unless someone with standing takes action (though judicial review is available).

Conservation legislation should not be subject to this fast-track

- The process applies to approvals under various conservation statutes, including wildlife permits, concessions, land exchanges, conservation covenants, mining access arrangements.
- No longer is there a requirement that concessions be consistent with conservation management strategies and plans.
- Approvals can be granted even where obviously inconsistent with Conservation Act.
- There is concern that current drafting would even allow referral of applications to mine on conservation land in Schedule 4 of the Crown Minerals Act, like national parks.

The big picture

- Once referred or listed, it would be extremely surprising if approval is not granted.
- This is not about speed, it’s about substance.
- Project-specific powers are highly concentrated in Ministers.
- Environmental criteria for decision-making are weak.
- Rushed projects will not be able to be undone later on.

The big picture

The big picture

- For all these reasons and more, tell our lawmakers to not pass the Bill.
- It is a war on nature.
- If lawmakers are determined to charge ahead, key features need to be changed.
- In other words, just stick to the existing fast track retained from the NBE Act.

The big picture

- In particular…
- There should be final decision-making power for panels, not Ministers.
- There should be proper weighting for environmental criteria, including Part 2 of the RMA and national direction.
- There should be no referral of inappropriate projects like those involving prohibited status or those infringing water conservation orders.
- There should be a degree of public interest participation/oversight.
- We then need a reasoned conversation about deeper reform of the RMA, using proper process.

Questions and discussion

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