Environmental Defence Society submission on the Fast-track Approvals Amendment Bill

SUBMITTER DETAILS

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Introduction

1. The Environmental Defence Society (**EDS**) thanks the Environment Select Committee for the opportunity to make a submission on the Fast-track Approvals Amendment Bill (**Bill**).

2. EDS is an apolitical, not-for-profit organisation dedicated to achieving improved environmental outcomes for all New Zealanders. It is active as a litigator, policy think tank, events convenor and environmental advocate. It has dedicated considerable resource over the past seven years into looking at the future of the resource management system in Aotearoa New Zealand.[1] It has become a leading voice in this space.

3. EDS has expert knowledge of the Fast-track Approvals Act 2024 (**FTAA**). It filed an extensive submission on the Fast-track Approvals Bill and appeared before the Select Committee on the same. It has since undertaken extensive analysis and review of the FTAA and its implementation, including:

    (a) Publishing a plain-English guide to the FTAA on its Environment Guide website;[2]

    (b) Liaising with the Environmental Protection Authority (**EPA**) on its legal requirements under the FTAA to publish information;[3]

    (c) Instructing Anderson Llyod to produce a legal memorandum on cost recovery under the FTAA (published November 2025);[4]

    (d) Meeting with the EPA about its legal obligations under s 46 FTAA (its 'completeness' test);

[1] For a list of EDS's resource management publications see: https://eds.org.nz/our-work/policy/projects/resource-management-reform/
[2] https://www.environmentguide.org.nz/ftaa/
[3] https://eds.org.nz/wp-content/uploads/2025/05/EDS-Letter-to-EPA-information-publication-28Apr25-Final79.pdf and https://eds.org.nz/wp-content/uploads/2025/05/Signed-ENQ-49347-G8M2B5-Fast-Track-OIA-response91.pdf
[4] https://eds.org.nz/resources/documents/reports/fast-track-approvals-act-2024-cost-recovery-legal-memorandum/

(e) Liaising with councils about referred and substantive applications, including pre-lodgement consultation undertaken by applicants;

(f) Being briefed by applicants on their proposed applications;

(g) Liaising with legal counsel acting for participants engaged in FTAA processes, including those acting for applicants, councils, community groups and hapū; and

(h) Liaising with officials from administering agencies engaged in FTAA processes.

4. EDS has also engaged directly in projects that give rise to actual or potential adverse impacts on indigenous biodiversity, outstanding landscapes, natural character of the coastal environment or freshwater management. EDS has recently been invited to comment on the Taranaki VTM project and is seeking invitation to comment on other applications.

5. EDS strongly opposes the Bill. From an environmental, process and constitutional perspective, it makes the already deeply deficient FTAA even worse.

Why EDS opposes the Bill

6. There are three main reasons that EDS opposes the Bill:

(a) It will weaken environmental protections even further for fast-tracked projects;

(b) It will further erode public participation in applications and expert testing of projects; and

(c) It is highly questionable from the perspectives of proper process and constitutional propriety.

7. The Bill is being framed primarily as a measure to improve competition in the grocery sector (by providing for this to be taken into account when a referral decision is being made). Grocery competition is a very minor component of the Bill. It is misleading and disingenuous to frame the purpose of the Bill in this way. EDS does not oppose the inclusion of grocery competition in the Bill.

Ability to issue a Government Policy Statement will give Ministers undue influence over outcomes

8. Clause 5 of the Bill proposes that a new Government Policy Statement (**GPS**) can be issued by the Minister for Infrastructure to specify policies about the 'regional or national benefits' of certain types of projects.

9. The term 'regional or national benefits' is important under the FTAA, because:

(a) It is an important gateway test to the fast-track process for referred projects (i.e., projects that the Minister can refer to expert panels for consideration);[5] and

(b) It is a consideration when panels are deciding on a substantive application.[6]

[5] FTAA, s 22
[6] FTAA, ss 81 and 85

10. Under the Bill, the GPS "must" be considered in both these steps.[7]

11. The effect of this amendment is to provide the Minister with an opportunity to dictate that certain projects have regional or national benefits. This removes testing of a project's benefits by submitters and independent expert panels. For example:

    (a) A GPS could result in referred applications automatically meeting the first limb of acceptance into the fast-track process under s 22(1)(a) of the FTAA. This would render any s 17 FTAA comments on a referred application's benefits nugatory, including those from local authorities and Māori groups.

    (b) A GPS could result in substantive applications automatically meeting one half of the proportionality assessment in s 85(3) of the FTAA. Under section85(3) a decision-making panel can decline an approval if the project's "adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits". A GPS could not amend the adverse effects assessment, but it could remove the ability for the panel to independently assess the project's benefits.

12. A GPS could significantly constrain the economic assessment required by an application. For example, it could remove the need for an application to undertake a cost benefit analysis, which is necessary to determine the full impacts of a project on society. Instead, applicants might be able to rely on Economic Impact Assessments, which merely confirm things like employment opportunities and financial returns, with no consideration of environmental, social, cultural or other costs.

13. Consider, for example, a GPS that states that a project that provides for 100 new jobs and contributes over 10 million dollars to GPD/tax revenue/royalties (in the case of mining) etc is of regional benefit. An application could simply confirm that it meets those thresholds. There would be no ability to challenge these benefits in the context of an application's disbenefits.

14. Adopting a 'gross' benefits approach, whereby only a project's pros are considered and the cons ignored, would result in perverse outcomes. For example, projects that may deliver significant positive outputs but impose costs that outweigh those outputs could nonetheless be elevated under the FTAA. This could result in:

    (a) The FTAA facilitating the delivery of projects that are a disservice to society; and

    (b) The inefficient use of natural and physical resources i.e., using resources for projects that do not deliver the greatest benefit to society.

15. All of this is particularly concerning because there are no parameters around what a GPS can say and how it is prepared (other than a requirement to consult with relevant portfolio Ministers). The ability to issue a GPS has been dropped into the Bill with basically no guardrails. Everything would be decided within the black box of government. Public consultation would not be required.

[7] Bill, cl 12 and 45

16. A GPS could also conceivably be very specific with respect to the 'types' of projects covered by GPS policies. In addition to defining "benefits" in accordance with economic thresholds (as described above), a GPS could ascribe a blanket "benefit" to certain projects. For example, a GPS could state that all coal mines are of national significance. This gives the Minister the ability to influence the outcomes of 'pet' projects or industries.

17. In effect, the GPS approach takes the Minister one step closer to the original desire with the FTAA - to make decisions on projects.

18. It confers significant discretion on the Minister to determine what projects are eligible to proceed to panels, and to influence the outcome of those panel decisions.

19. This is an affront to proper process (the idea of separating political and technocratic/expert functions) and usurps the independent role of panels.

20. Ministerial decision-making was removed from the Fast-track Approvals Bill, and did not make into the FTAA, after extensive public outcry about politicians meddling in decisions (especially given actual or potential conflicts arising because of political donations from sectors or companies). The use of GPSs in the Bill would reintroduce such influence in a more subtle, but no less concerning, way. It is far from just a technical change.

21. EDS submits that clause 5 and associated clauses 12(1) and 45(1) (with respect to (aab)) should be deleted from the Bill.

Ability to modify applications after lodgement could significantly expand the scope of projects already in the process

22. Clause 42 of the Bill proposes to give the Minister the power to approve a 'modification' to a substantive application after it has been lodged, if requested by a panel. This means that a project could be significantly altered *after* it passes the referral gateway or after it has been listed in Schedule 2 of the FTAA.

23. To approve a modification, the Minister need only be satisfied that a project 'still has significant national or regional benefits'. This enables modified proposals that have been referred to bypass the information requirements of s 13 of the FTAA and means that they are subject to a narrower test than original referral decisions under section 22 of the FTAA. As a result, modified applications do not need to list persons and groups likely to be affected by the change, whether new aspects of the application are prohibited under Resource Management Act 1991 (**RMA**), or whether the modification renders the application ineligible. Further, they do not need to demonstrate that the fast-track process is necessary to facility delivery of the project or how it might affect the efficient operation of other fast-track approvals.

24. This could encourage applicants to make more modest applications when initially seeking referral and seek Ministerial approval for extensive modification later. This is possible as there are no constraints proposed in the Bill on the extent of a modification. It could result in significant expansion of a proposal from that which was initially referred to a panel or listed in the FTAA.

25. Clause 42 should be amended so that modifications cannot be approved if they materially *expand* the scope of a proposal. This would still allow modifications to be made where they

are appropriate, for example to allow an applicant to change a proposal to address concerns raised by a panel about environmental impacts.

26. There is useful case law under the RMA that could inform drafting. For example, there should be "no jurisdiction to grant a consent which extends beyond the ambit of an application"[8] and there needs to be an assessment of "the degree of change (does the matter become a different application?) and prejudice to other parties or the public."[9] But modifications should be allowed to address (avoid, remedy or mitigate) adverse effects.[10]

27. These constraints would not allow the Minister to approve the expansion of a project beyond what was envisaged at the initial referral stage.

28. EDS submits that clause 42 be amended to ensure that modifications cannot go beyond the scope of the original application, and that they reflect RMA case law as per the comments above.

Reduced timeframes will further erode the quality of decisions

29. Timeframes are further constrained under the Bill. Under clause 9, the time in which comments on a referral application must be provided would be reduced from 20 working days to 15 working days. This provides very little time for meaningful comment from the limited range of bodies from which comment must be sought, who are already under enormous pressure.

30. Under clause 44, the timeframe for panels to reach a final decision on an application would have a maximum of 60 working days, as opposed to "a time frame that the panel convener considers is appropriate, having regard to the scale, nature, and complexity of the approvals sought in, and any other matters raised by, the substantive application".

31. This decision timeframe is arbitrary and too short for complex and large projects having extensive environmental impacts. It is shorter than what some applicants have requested so far under the FTAA, and what panel convenors have decided is appropriate:

Project	**Applicant's requested time frame**	**Time frame decided by Panel Convenor**
Stella Passage	40 working days	80 working days
TTR	100 working days	130 working days
Sunfield	50 working days	71 working days
Tekapo Power Scheme	40 working days	80 working days

32. The condensed timeframes will affect the quality of information, decisions and conditions, and may increase the risk of judicial review.

33. EDS opposes the shortened timeframes proposed.

[8] *Sutton v Moule* (1992) 2 NZRMA 41, at 46
[9] *Sustainable Ventures Ltd v Tasman District Council* [2012] NZEnvC 235, at [32]
[10] For example, the Environment Court decision in *Re Meridian Energy Ltd* saw a proposal for a wind farm approved but only after imposing consent conditions requiring two turbines to be removed to reduce significant adverse visual amenity effects on specified landowners (*Re Meridian Energy Ltd* [2013] NZEnvC 59)

Constrained standing will further erode participation and checks and balances on decision-making

34. Under s 53 of the FTAA, a panel can invite comment from anyone it considers 'appropriate'. This includes NGOs and community groups. Clause 33(2) of the Bill proposes to constrain this discretion by only allowing a panel to invite such comments where a local authority or relevant administering agency does not 'intend' to cover a particular matter, or if their intended comments would not 'sufficiently' address the matter.

35. In effect, this approach will largely shut communities and NGOs out of the fast-track process. Their involvement is already significantly curtailed under the FTAA, which does not provide for public notification of projects, and provides for their involvement only at the discretion of panels. The Bill's proposed amendment doubles down on this limited involvement, rendering their participation to residual comment at the very best.

36. The approach brings significant risk that important information will not be put before decision-making panels and that applications will escape robust challenge. It puts councils in the position of being the 'mouthpiece' for communities and the wider public interest. This is problematic because:

    (a) "Comments" are not defined by the FTAA and there is currently uncertainty about the scope of council's comments under s 53 of the FTAA. Is the council's role to provide the equivalent of a s 42A report under the RMA, including undertaking a full merits assessment and providing a recommendation to grant (and possible conditions) or decline? Are the comments a summary of matters the council would examine further it if was the decision-maker? Does a council's comments include technical peer reviews of the application or are they a political statement?

    (b) Councils rely on applicants to pay for the costs incurred in providing comments (under cost-recovery provisions). This might compromise the extent of their investigations.

    (c) Councils have prescribed functions that do not necessarily represent the wider Aotearoa New Zealand public interest.

    (d) Clauses 6 and 14 of the Bill propose that applicants for referred and listed projects no longer need to consult with councils before lodging an application with the EPA. Instead, there would only be an obligation to notify councils of an application. This could occur on the day of lodgement with the EPA and does not necessarily involve provision of the application itself (notification could simply be a 'heads up' that the lodgement is being filed).[11] The effect is that councils are expected to provide all relevant information on behalf of their communities and the public interest for large, complex and technical proposals but with less time to prepare.

37. Clause 33 is also not workable in practical terms:

    (a) Clause 33(2) requires that a panel 'check' whether a council intends to comment on a particular matter before deciding to invite comment from others. Under s 53(1) a

[11] Māori participation is also proposed to be eroded under clause 6, in that the requirement will (in most cases) be to notify Māori rather than consult

panel only has 10 working days from appointment to invite comments. Is the checking to occur in this brief period?

(b) A council cannot realistically be expected to convey its intentions on comments until after it has had time to properly review the substantive application and liaise with experts on technical issues. Given that the Bill proposes to remove the requirement that applicants consult with councils pre-lodgement, provision of the application to councils might feasibly only occur after the application is lodged with the EPA.

(c) At that point a strict timeline is triggered:

i. The EPA has 15 working days to make its completeness and scope assessment (s 46(1) FTAA). If the application complies, it must provide the application to the panel convenor (s 46(3)).
ii. Clause 29 of the Bill proposes that Panel Convenors set up panels within 15 working days after receiving notice of the application.
iii. From that point, a panel only has 10 working days from appointment to invite comments (s 53(1) FTAA).

(d) The entire process could leave councils with only 40 working days to confirm its intentions to comment. That is an unreasonable burden, particularly for large applications such as the Bendigo gold mine proposal which contains upwards of 10,000 pages of technical information. During this timeframe councils are also expected to advise the EPA of any issues pertaining to completeness and scope, advise on competing applications and participate in a panel convenor conference. Councils are likely to have multiple applications on the go at one time.

(e) Given the speed, it is likely that councils will not be able to confidently confirm intentions as to comments until very late in the 40 working days, especially if the comments need to be approved by elected members first.

(f) This would squeeze preparation of comments by others that might be invited if councils confirm they do not intend to cover an issue, or if their comments will not enable the panel to sufficiently address the matter.

(g) There is also the scenario in which a council *intends* to provide comments, and conveys this to a panel, but then fails to provide them in practice. Given there is no right for any person to seek a waiver of the time limit for written comments to be received by the EPA (s 54(4) FTAA), failure of a council to provide intended comments would create a lacuna in information. Those that missed out would be left with little choice but to judicially review the s 53 decision to obtain standing.

(h) Furthermore, clause 33 seems to assume that a panel can quite easily determine not only whether a council's comments will be *forthcoming*, but also whether they will be *sufficient* to address a particular matter, based only on a council's *intentions*. A council may well tell a panel that it *intends* to provide sufficient comments. But what happens if they turn out to be *insufficient*? At that point there appears to be no mechanism for other persons to be invited to backfill such deficiencies.

38. The constraints on standing in clause 33(2) are unworkable and would weaken the checks and balances in the system provided by community and NGO involvement in applications. There is

a significant risk that important information will not be put before decision-making panels and that applications will escape robust challenge.

39. The approach would also erode natural justice and property rights as neighbours not adjacent to the boundary of a project may be shut out of the process, even if a project would have significant impacts on them or their property values (eg a large mine creating noise and traffic).

40. All this leads to increased risk of legal challenge, undermining the purpose of the FTAA to facilitate the fast delivery of development and infrastructure.

41. EDS submits that clause 33(2) should be deleted.

42. The scope and purpose of council comments need to be clarified via the Bill irrespective of what happens with clause 33.

Appeal rights are inappropriately constrained

43. Clause 50 the Bill proposes to prevent appeals on points of law from anyone invited to provide comment by a panel (for a substantive decision) or the Minister (for a referral decision), unless they are a person from which the panel/Minister 'must' invite comments. In practice, this would prevent NGOs and community groups from appealing to the High Court on points of law, even if they provided comments on the project.

44. This is likely to backfire, since it would simply channel litigants into judicial review, which may take longer and be more costly to resolve. That is exactly what has happened with similar fast-track housing legislation in Ireland, which has now been abandoned.

45. EDS submits that clause 50 should be deleted.

Applicants could unduly influence the composition of decision-making panels

46. Clause 56(2) of the Bill proposes an ability for applicants to complain about the 'suitability' of panel members, including when an applicant feels that they are not 'impartial'. Such concerns would need to be taken into account when a panel is being appointed. This has the clear potential to erode the independence of a panel convener and is essentially a veto power because no convenor is likely to make an appointment if questions around impartiality are raised (it would put any decision at risk of legal challenge).

47. Applicants should have no influence over the makeup of an independent panel, and panel shopping is completely inappropriate. Experts and lawyers need to be able to act for clients without fear of future job prospects or be hesitant to express their independent conclusions.

48. Furthermore, New Zealand already has a small pool of qualified panellists, and the ability of applicants to vet appointments would reduce it further. This means that the fast-track might become even slower, since fewer panels could be stood up at any one time. An allegation of partiality would most likely bar a potential panellist from serving on any future panel.

49. EDS submits that Clause 56(2) should be amended to focus on the identification and management of *conflicts of interest* (a legitimate and commonplace constraint on decision-makers), not complaints from an applicant about perceived partiality. The clause as drafted

would have a chilling effect on experts being prepared to be available for appointment to panels.

The Bill is procedurally and constitutionally questionable

50. Clause 48 of the Bill proposes to give the Minister the power to give a general direction to the EPA in relation to its performance and the exercise of its functions, duties, and powers under the FTAA. The Minister would have to consult the EPA before giving a direction and could not give a direction that relates to a particular substantive application.

51. The potential scope for interference in how the EPA discharges its independent statutory functions is concerning, including for example, when it comes to treatment/release of data and information and engagement with the public. The reason why the EPA has administrative functions under the Act is because it is independent of Ministers.

52. It is not clear what would happen if the Minister came to the view that the EPA had failed to follow a direction.

53. Under clause 54 the Minister would also be able to recommend the making of an Order in Council to amend the description of a listed project in Schedule 2 of the Act. Although the scope of these projects is not allowed to be made 'substantially different', there is no mention of the extent of environmental impacts when determining whether that is the case or not.

54. The clause allows primary legislation to be directly amended by the Crown. This is a blatant use of a Henry VIII clause, which usurps the role of Parliament and bypasses proper democratic scrutiny of statutes in the House. This is constitutionally wrong, and EDS has written to the Attorney-General to express its concerns.[12] If Ministers had concerns that "projects may naturally evolve from when they were first considered for listing in 2024 to when they are ready for substantive lodgement"[13] then those projects should not have been specifically listed in primary legislation to begin with.

55. EDS submits that clauses 48 and 54 should be deleted.

An additional amendment is needed to address uncertainties around cost-recovery

56. The Bill should be used as an opportunity to make much needed changes around cost-recovery. As it stands, councils can recover their "actual and reasonable" costs for participating in fast-track processes, however there is uncertainty about what exactly that covers (see above discussion on scope of council comments).

57. This may have a bearing on the extent to which councils can recover costs for technical peer reviews and expert advice necessary to prepare informed comments for decision-making panels. Given the pace and complexity of the fast-track process, councils need to be able to access technical expertise quickly and confidently.

58. If there's any doubt about what is recoverable, councils may limit their engagement. That is likely to mean weaker evidence and poorer decisions, increasing the chances of resultant legal

[12] https://eds.org.nz/resources/documents/reports/letter-to-attorney-general-re-fast-track-approvals-amendment-bill/

[13] bill-government-2025-219.pdf

challenges. This is particularly important given that the Bill severely restricts public input and places a heavy reliance on councils to 'speak' for local communities and the public interest.

59. The legislation needs to confirm the role of councils in providing comments on individual applications.

60. Further, statutory bodies like the New Zealand Conservation Authority and Conservation Boards are not entitled to recover their costs, despite the Act requiring that they be invited to comment on certain applications. This deters vital input to panels from an environmental perspective and shifts the burden of fast-track projects from developers to organisations that are already fiscally constrained. The Bill should clarify that statutory conservation bodies are able to recover their costs in the same way as councils.

Concluding comments

61. Overall, the elements of the Bill discussed in this submission appear to be a knee-jerk reaction to a sub-set of decisions that have been made under the FTAA so far, notably for mining and regarding port development. EDS's view is that the Bill is more about pushing through potentially destructive mining projects than it is an effort to improve competition in the grocery sector, fix technical hiccups in the original law, or further streamline processes. The expectation from Ministers seems to have been that projects would simply be greenlit, without opportunity for people to be involved or proper scrutiny. That was the wrong expectation to have.

62. The changes discussed in this submission are not necessary when one looks at the bigger picture. Most projects (eg repowering of the Tekapo power scheme, Ports of Auckland expansion, Maitahi housing development in Nelson) have progressed smoothly without any justification for the additional ministerial influence, imposition of shorter timeframes, or further curtailing of participation envisaged in this Bill.

63. Community and environmental groups form part of the fabric of our society. They are integral to our democratic processes and have a right to be heard. Cutting them out of the fast-track submission process is an assault on their rights and appears to be driven by a desire to override local voices in favour of the interests of large overseas companies. This is wrong.

64. In terms of legislative process, the timeframe for public submission on the Bill is vanishingly short (7 working days). This represents a further erosion of the democratic process and is likely to result in errors in the Bill not being fixed.

65. The departmental disclosure statement's observation that, aside from (minimal) changes regarding grocery sector competition, the Bill comprises only "technical and machinery changes" and does not "substantially alter its decision-making framework."[14] EDS fundamentally disagrees with this conclusion. As raised in this submission, there are substantial differences and risks to environmental outcomes. Indeed, some features are described in the disclosure statement as "unusual".[15]

66. For the same reason, EDS is very concerned that "when policy decisions were taken in August 2025, the Ministry for Regulation granted an exemption from the requirement to provide a Regulatory Impact Statement on the grounds that the economic, social or environmental

[14] bill-government-2025-219.pdf
[15] bill-government-2025-219.pdf

impacts are limited and easy to assess."[16] Frankly, this is an incredible proposition and undermines confidence in that agency. The potential impacts of this Bill are extensive. No impact analysis has been undertaken since then.

67. We reiterate our more general view that the FTAA remains deeply deficient and should either be fundamentally changed or removed from the statute book.

68. We wish to be heard in support of our submission.

[16] bill-government-2025-219.pdf