Northland REGIONAL COUNCIL
Te Kaunihera ā rohe o Te Taitokerau

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Northland Regional Council submission on the *Fast-track Approvals Bill*

Northland Regional Council is grateful for the opportunity to provide feedback on the Fast-track Approvals Bill that has been presented to the House of Representatives. This Bill is a significant shift in the way that major infrastructure and other developments gain approvals under a range of resource management legislation. Council recognises that Northland has experienced underinvestment in infrastructure for decades – the region also has areas of significant deprivation. The need for infrastructure and development with significant regional benefits is recognised and strongly supported. Council is supportive of a fast-track pathway for such proposals, provided it is appropriately balanced alongside environmental, cultural, and social outcomes.

Council is of the view that the Bill is not appropriately balanced in its current form. Decisions made through the Bill risk being made in favour of economic outcomes without sufficient regard to the potential adverse effects. Council is also strongly opposed to the limited ability for tangata whenua affected by fast-track applications to participate in the decision-making process.

In our submission points below, we have included changes that we consider necessary to provide an appropriately balanced fast track process. To that end, we would like to reiterate that council is supportive of a fast-track process and we recognise earlier fast track legislation provided for a substantially expedited consenting process for important infrastructure investments across the country, including in Northland. The relief we have sought through our submission points is intended to enable an expedited approval process, whilst ensuring decision makers take into account and provide for the wellbeing of our communities and environment.

We have seen draft submissions from Te Uru Kahika, Local Government New Zealand, and the New Zealand Planning Institute. Our submission was prepared independently from these entities, yet we have reached similar conclusions on the Bill's existing shortfalls, risks, and issues that need to be addressed prior to becoming law.

Submission Points

Summary of Submission Points

The key points raised in this submission seek a greater balance between enabling regionally and nationally beneficial developments with the protection of our natural, built, and societal values. We include submissions on the following:

1. Tangata whenua participation in decision-making
2. Purpose of the Fast Track Approvals Bill
3. Eligibility of Prohibited Activities
4. Decision Making Process
5. Expert Panel Composition and Qualifications
6. Consultation and Participation
7. Processing Timeframes
8. Cost Recovery

1. Tangata whenua participation in decision making

Council is concerned that the FTAB as it stands runs significant risk of severely constraining iwi and hapū participation in decision making by failing to provide adequate provision for Māori rights and interests and cut across the principles of the Treaty of Waitangi.

This is due to:

- The absence of any reference to upholding Treaty principles (i.e. the omission of any reference to Section 8 RMA);
- participation largely being limited to post settlement governance entities, Marine and Coastal Area Act claimants/rights holders and hapū with mana whakahono-a-rohe agreement;
- The process not being fully open to non-settled iwi/hapū will exclude a significant proportion of potentially affected tangata whenua from participating in the decision making process;
- Timeframes for input and decision making are also unlikely to be practical for tangata whenua;
- The wide discretion open to Ministers and the expert panel on the extent to which iwi/hapū can participate in decision making.

The combination of these factors creates risk of ill-informed decisions, the inability for tangata whenua to promote protection of their rights and interests and inconsistent approaches to Māori participation – the consequence being harm to the relationship between Crown and iwi /hapū with similar implications for local government.

Relief sought:

- Include a requirement for all persons exercising functions and powers under the FTAB to take into account the principles of the Treaty of Waitangi.
- Explicitly require Ministers to document the results of consultation with hapū / mana whenua prior to referral decisions and require that their views be taken into account in referral decisions and any subsequent directions to the expert panel/
- Explicitly require expert panels to invite comment from hapū / mana whenua prior to recommendations to Ministers.

2. Purpose of the Fast-Track Approvals Bill

Council opposes the current wording of the FTAB purpose defined under s3: The purpose of this Act is to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits.

The purpose of the FTAB, and consequently all subsequent sections, schedules, and clauses of the Bill, is silent on any actual and potential impacts that could occur as a result of granting approvals to a project with the deemed significant regional or national benefits. By omitting any link to environmental, social, cultural, and economic within the purpose, projects that have significant adverse impacts will ostensibly be approved provided there are also significant benefits. There is no equalisation method within the existing wording, and the emphasis is weighted almost entirely towards the demonstration of significant benefits.

The consideration of projects for listing and/or referral need only to achieve this purpose, and the subsequent consideration of the application will consider whether or not the purpose is achieved over all other legislation. The wording provides no balance and is ambiguous to the point where almost any project with a large enough scale could pass the test of meeting the purpose. This could potentially include projects that have hitherto been declined for approvals due to substantial and significant adverse effects. It is anticipated that such projects will be submitted to the Joint Ministers for listing and referral due to the inability to progress under long-standing protections. The purpose of the FTAB essentially trumping all other legislative intent (such as section 5 of the RMA) is not supported – we recommend amendments to the bill to provide greater balance. The omission of any reference to Section 8 of the RMA (the requirement to take into account the principles of the Treaty of Waitangi) is also of significant concern.

Relief sought:

- Amend the purpose of the FTAB to support the delivery of infrastructure and development projects with significant regional or national benefits balanced by the environmental, social, economic, and cultural heritage protective mechanisms enshrined in the Resource Management Act, Conservation Act, Wildlife Act, Reserves Act, the EEZ Act, Freshwater Fisheries Regulations, Heritage NZ Pouhere Taonga Act.
- Include a requirement for all persons exercising functions and powers under the FTAB to take into account the principles of the Treaty of Waitangi.

3. Eligibility of Prohibited Activities

Council opposes the eligibility of projects that are fully or are in part prohibited activities pursuant to the RMA for referral and consideration under the FTAB.

Regional and District Councils regulate activities pursuant to Part 3 of the RMA and are authorised to classify activities and activity statuses in their relevant plans pursuant to Part 3 and s77A of the RMA. Classes of activities and their regulatory requirements under resource consent processes are defined in s87A of the RMA, and provides under s87A(6):

> *If an activity is described in this Act, regulations (including a national environmental standard) or a plan as a prohibited activity, -*
>
> *(a) no application for a resource consent may be made for the activity and*
> *(b) the consent authority must not grant a consent for it;*

Regional and District Plan making is a participatory process that generally involves:

- multiple rounds of consultation with members of the public and subject matter experts,
- submissions on the plan text and further submissions following amendments,
- hearings convened by the Environment Court and independent commissioners where evidence supporting said submissions is presented and considered in an objective and considered manner,
- mediations between submitters and Council where consensus could be gained;
- appeals on matters where agreements could not be reached, and
- scheduled reviews to determine effectiveness and appropriateness of plan provisions over time.

This process results in a robust decision that has been tested in the courts of law and with our communities. Prohibited activity rules in plans are subject to a particularly high level of scrutiny and these provisions are applied very carefully (for example to avoid allocating freshwater beyond allocation limits). It is appropriate for councils to have the ability to prevent a consent pathway for prohibited activities where potentially permanent and significant impacts would arise from the activity being undertaken,

The FTAB seeks to establish a separate process for several approvals under different legislation, including the RMA. As there is no consent pathway for a prohibited activity under the RMA, nor a regulatory process to assess an application for a prohibited activity, there is ambiguity in the intent and procedure of accepting a referral for an application with a prohibited component. Where a prohibited activity is referred and approved by the Joint Ministers, it would operate in the same manner as a plan change, but without the democratic and participatory process enshrined in current law. This is beyond the scope of a consenting process and the would-be powers authorised by the FTAB.

We therefore oppose the inclusion of cause 17(5):

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

Relief sought:

- Delete clause 17(5).

4. Decision Making Process

Council opposes the referral and decision-making processes for projects under Schedule 2A and Schedule 2B of the FTAB.

As Schedule 2A projects are not being identified, there is insufficient information available to undertake a genuine feedback process and insufficient information available to understand the total implications of the FTAB for local authorities.

We understand that the selection of listed projects will include those deemed to provide significant national and regional benefits based on the recommendations of an appointed panel with decisions made by the Joint Ministers. Successful and sustainable infrastructure projects require an appropriate amount of due diligence at the front end to align with the long-term planning processes Councils and Government Agencies undertake. There are examples of projects in Northland referred through the COVID-19 Fast Track Recovery Process which have not had sufficient due diligence, and now local ratepayers and New Zealand tax payers are financially burdened to address funding gaps.

Given that projects to be listed under Schedule 2A will be decided upon in the passing of this bill, the amount and quality of the due diligence undertaken is unknown and there will be no opportunity to raise concerns for the local authorities and departments who must 'inherit' the regulation of these projects. It is important for this process to be transparent in order for Local Authorities to be able to input into the process and understand the long-term implications of such development to plan accordingly.

There are also significant risks created by the decision-making process for referred activities caused by a lack of independent expert consideration for project applications and uncertainty surround the level of scrutiny of Joint Ministers decision making. The current wording in the Bill requires the creation of an expert panel, who will be:

- assigned to assess a substantive application of a Listed or Referred Project

- required to complete the assessment within an extremely short period of time
- tasked with the creation of conditions for each approval; and
- subject to limitations on undertaking any substantive consultation (see Submission Point 6).

Regardless of the recommendation reached by the expert panel, the recommendation can be ignored or overturned by the Joint Ministers pursuant to s25(4) and (5) of the FTAB:

> *(1) The panel must prepare a report with recommendations on the substantive application referred to it under this Act and provide the report to the joint Ministers.*
> *(2) In preparing the report, the panel must consult the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development.*
> *(3) Those Ministers must be allowed 5 working days to comment on the draft report, its assessment of the project in relation to the relevant Treaty settlement, and any conditions relevant to that assessment, before the report is provided to the joint Ministers for their final decision.*
> *(4) Joint Ministers must not decide to deviate from a Panel's recommendations unless they have undertaken analysis of the recommendations and any conditions included in accordance with the relevant assessment criteria.*
> *(5) In determining a substantive application, the joint Ministers may refer a part or the whole of the panel's recommendations back to the panel to reconsider and give the panel any directions the Ministers think appropriate as to the reconsideration of a part or the whole of the recommendations.*
> *(6) The Ministers may –*
> *a. Seek clarification from the panel on any recommendation:*
> *b. Commission additional advice:*
> *c. Seek further comments from any affected parties.*
> *(7) After considering the expert panel's report on a referral application for a project, the joint Ministers must –*
> *a. Approve the project and grant the relevant approvals subject to the conditions (if any) specified in the approval; or*
> *b. Decline to approve the project.*
> *(8) The responsible agency must notify the applicant of the joint Ministers' decision, including (if applicable) the reasons for declining approval.*
> *(9) An applicant whose application for approval is declined my reapply to the Ministers by lodging a fresh referral application with the responsible agency.*

It is anticipated that an independent panel of qualified experts would approach the assessment of any application in an objective manner, fully considering every aspect of the proposal. The objectivity of this assessment is substantially limited by the lack of consultation ability, overarching purpose of the legislation and the required timeframes; however, the existing wording of s25(4) enables an overriding, unqualified analysis of the expert panel recommendations.

Clause 5(2) of Schedule 3 appears to enable Treaty settlement arrangements to be modified by agreement with the relevant iwi authority/settlement entity, however under Clause 5(3)

the iwi authority / settlement entity cannot "*unreasonably withhold*" agreement to a modified arrangement. This is very vague language and is likely to create uncertainty and has the potential to cut across settlement arrangements. This and associated references should be deleted given settlement arrangements have been through a legislative process that should be respected.

Relief sought:

- Amend the decision-making process to align with the Fast-Track process developed under the Natural and Built Environment Act 2023, which provided:
    - Decision making powers to the independently appointed expert panel and Minister for the Environment;
    - A realistic timeframe within which substantive applications could be fairly assessed and determined;
    - Delete Section 5(3) of Schedule 3 and the reference in Section 4 relating to 'unreasonably withholding agreement'.

5. Expert Panel Composition and Qualifications

Council opposes the currently worded composition and qualification requirements of the expert panels tasked with assessing applications.

The Expert Panels to be convened to consider projects referred under Schedule 2B are defined through section 7 of schedule 3:

(1) The members of the panel must, collectively, have –
- *a. The knowledge, skills, and expertise relevant to the purpose of this Act; and*
- *b. The knowledge and skills required for matters specific to the project, including the technical expertise relevant to the project; and*
- *c. An understanding of te Tiriti o Waitangi / the Treaty of Waitangi and its principles; and*
- *d. an understanding of tikanga Māori and mātauranga Māori; and*
- *e. if appropriate, conservation expertise.*

(2) A person is not ineligible for appointment as a panel member by reason only that the person is a member of a particular iwi or hapū (including an iwi or hapū that is represented by an iwi authority that much be invited by the panel to comment on the application).

In its current form, the composition of the panel and the qualifications of its members severely restricts the ability of the panel to undertake a comprehensive review of any substantial applications that would support a project listed or referred under Schedules 2A and 2B. Of note:

- Specific knowledge, skills, and technical expertise required are limited to achieving the purpose of this Bill, which as noted above is restricted to the delivery of large developments, but not assessment of impacts.

- The inclusion of the need for an understanding of te Tiriti and tikanga Maori and Matauranga Maori holds no weight given the lack of reverence to these instruments in the decision-making process.
- There is no requirement for professional accreditation, which bypasses the inherent codes of ethics and good practice that are required to be recognised in New Zealand and abroad as a competent and objective professional.

Further to the lack of definition set out in the relevant clauses, the Bill's requirement to assess applications within strict timeframes further limits the availability of independent subject matter experts. This sector and tangata whenua are already stretched with respect to the availability of competent professionals. The rate at which referred projects will be assessed will have immediate implications to:

- The quality and robustness of an assessment of projects;
- The quality and efficiency of conditions of consent or other approvals;
- The availability of subject matter experts to non-Fast-Track projects.

The existing provisions do not afford adequate oversight of potential long-term impacts to the environment, communities, tangata whenua and cultural values. Gaps in expertise will be particularly at issue during condition development, which could hinder the ability for local authorities and other regulators to effectively enforce approvals. There are also likely to be implications for council operated infrastructure that need to be understood and considered by the panel (e.g. roading, wastewater) – this will require good technical knowledge and close liaison with council's infrastructure managers which takes time.

Relief Sought

- Amend provisions set out under Schedule 3 to:
    - require panel members to be professionally qualified or otherwise approved by the panel convenor;
    - require panel composition to include sufficient knowledge and expertise in environmental assessments and law, which is particularly important for adopted conditions of any approval.

6. Consultation and Participation

Council opposes the form in which submissions have been sought for the FTAB as well as the proposed restriction of public participation in the assessment of any project.

Further to Point 4, the lack of information available to substantively assess and consider the proposed FTAB (with particular respect to an empty Schedule 2A), the rushed nature of moving the FTAB through the Parliamentary process, creates significant risk of poor outcomes – this is compounded by what we see as inadequate participatory rights in decision making which can be critical in reaching informed decisions.

Regarding a lack public involvement in the consideration of projects as set out in s20 of Schedule 4, the wording of the provision indicates that the agencies, persons, and groups identified to invite comment will have little-to no impacts on the recommendations adopted by the Joint Ministers.

The identified parties requiring invitations to comment also appear to be arbitrary and are not linked by potential effects, but only property boundaries. This characteristic becomes more prominent as the potential adverse impact grow. In its current wording, there is no requirement to consult with downstream water users, residents and persons within a shared aquifer and/or air shed, nor are considerations for the effects on quality of life taken into account, such as noise and vibration, visual impacts, traffic safety and generation, and community aspirations.

We acknowledge the consultation required with iwi authorities, MACA applicants / rights holders and parties to Mana Whakahono a Rohe agreements. Limiting consolation to these entities creates a major gap in Northland where we have around 200 hapū. As it stands the requirement in the FTAB to consult / engage with hapū appears entirely at the discretion of Ministers and / or the expert panel. Our existing resource management legislation recognises that different types of activities have different types of effects in both scale and nature. Where these effects could impede on the quality of life for surrounding people, environments, culture and other activities, the RMA affords the ability for Councils to notify resource consent applications to seek further information to fully assess effects and impose appropriate conditions to enable the operation of activities while limiting adverse effects.

Finally, the extent to which comments are taken into account are not clear in this Bill, and the appeal rights to such parties are limited only to points of law submitted to the High Court. This subsection does allow the expert panel to invite others to comment on a proposal at their discretion, but there are no matters of discretion defined in the Bill. Hearings are also not required but may be held if the expert panel deems appropriate.

In its current form, the requirements to invite comments from those identified appear to lack any purpose other than to note comments from relevant parties.

Relief sought:

- Amend provisions to link identified stakeholders and relevant parties notified and invited to comment based on scale and magnitude of effects, as per the existing processes that exist in the NBEA Fast-Track process.
- Strengthen requirements for applicants, Ministers and the expert panel (Section 20(3-6) to consult with hapū / mana whenua.
- Amend existing clauses and add clauses to enable the expert panel to notify applications in special circumstances.
- Clearly state the purpose of consultation and the direction to the Expert Panel with respect to considering submission responses.
- Extend the timeframes for consultation in line with the existing NBEA Fast-Track process.

7. Processing Timeframes

Council Opposes the proposed processing timeframes prescribed in s21 of Schedule 4.

The assessment of a substantial application for major infrastructure or developments by a panel of 4 individuals requires careful consideration of the facts and investigations contained in an application, the corroboration of statements made in such an application and the associated time required to consider these, and consensus between panel members who will likely have different perspectives and considerations. Input from the relevant local authorities will be required, particularly where impacts could be potentially significant and cover a broad area or there are major implications for council infrastructure / capacity.

The FTAB currently limits the timeframe for input from local authorities to the expert panel to 10-days. This timeframe also applies to iwi / hapū where they have an opportunity to comment. For context, this is similar to the timeframe required to process a controlled activity with only minor potential effects. The FTAB projects are likely to be significant in terms of scale, complexity and potential adverse effects. Further to this, information requested from local authorities would be sought so late in the assessment process that any feedback regarding the serviceability of a project would potentially be of limited use to the decision making process, or may require the application to be declined for further refinement.

Council also notes that the expert panel also has a very restricted timeframe with which to process and assess an application and we have concerns that these timeframes will preclude the ability of the panel to fully consider a proposal.

Relief sought:

- Amend processing timeframes set out in Section 21 of Schedule 4 to include a minimum of 40-working-days following receipt of comments under Clause 21 and enabling the doubling of timeframes (a further 40-working days) where deemed appropriate by the expert panel.

8. Cost Recovery

Council supports the ability for Local Authorities to recover costs associated with input to the approvals process and ongoing monitoring of consent/authorisation conditions.

Applications processed under the COVID-19 Recovery (Fast-track Consenting) Act 2020 did not enable Local Authorities to recover costs associated with effort and resources used in responding to expert panel queries that comprised part of the application process. This meant that ratepayers bore these particular application costs.

It is recognised that the NBEA 2023 provided local authorities the ability to recover all costs associated with the fast-track consenting process.

We therefore support the inclusion of:

- clause 2(4)(d) of Schedule 1 of the FTAB:

  the recovery of costs of the processes under Part 2 of Schedule 10 of the Natural and Built Environment Act 2023, as provided for in clause 94 of that schedule, and as applied by clause 9 of Schedule 1 of the repealed Act.

and

- clause 14(1) of Schedule 13 of the FTAB:

  a local authority must recover from an application the actual and reasonable costs incurred by the local authority in complying with this schedule and schedule 4.

However, there does not appear to be any provisions that recognise the need to compensate iwi or hapū to participate in the decision-making process.

Relief sought:

- Set out provisions in the legislation that provides appropriate compensation for iwi or hapū input.

Signed on Behalf of the Northland Regional Council

Jonathan Gibbard

Tāhūhū Rangapū - CEO