

22 April 2024

Chair
Environment Committee
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SUBMISSION ON THE FAST-TRACK APPROVALS BILL 2024

1. The Kapiti Coast District Council (KCDC) thanks the Committee for the opportunity to comment on the Fast-track Approvals Bill. The provision of the fast-track process is an important new pathway that can help strengthen the connection between central and local government to streamline large and complex infrastructure and development projects and meet the growing needs and resilience of our communities.
2. KCDC supports the intention of the Bill, and fast-track process, in principle but has a number of concerns with how parts of the Bill are (currently) drafted, and in turn are likely to be implemented in practice. Our concerns focus on the:
 - 2.1. Unbudgeted mandate that the Bill continues to place on local authorities. The issue and proposed changes are set out under: *Our experience of funding requirements for projects of significance and fast-tracked projects.*
 - 2.2. Need to address community concerns that the Bill bypasses local input and usual requirements provided for by the Local Government Act 2002, and by our Te Tiriti obligations. We understand that our mana whenua partners from Ātiawa ki Whakarongotai, Ngāti Raukawa, and Ngāti Toa Rangatira have indicated they are not in support of the Bill on the basis of similar concerns. Further details are set out under: *Supporting better understanding of local context in decision-making processes*
 - 2.3. Unintended consequence of the Bill in implementation, for issues which are not prescribed by legislation. This includes that a local (district) focus is critical, and should not be replaced by regional input. Further details are set out under: *Ensuring the successful implementation of fast-track projects.*
3. We make ten recommendations to make amendments that:
 - Enable local authorities to better support the processes of the Bill.
 - Support a better understanding of local context in decision-making processes.
 - Ensure the successful implementation of fast-track projects (including existing legacy projects).
4. KCDC believes our recommended amendments will help ensure the purpose and benefits of the Bill and fast-track projects are achieved, and that their legacy impacts on the communities in which they sit, remains positive.
5. KCDC welcomes the opportunity to speak to the Committee on our submission. We also support the submissions made on the Bill by Taituarā and Local Government New Zealand.

Our experience of funding requirements with projects of significance and fast-tracked projects

6. The Kāpiti Coast District sits as a gateway between Horowhenua, northern parts of the country, and the Wellington Region. It has been well-positioned to leverage the significant investments that have been made in regional and inter-regional transport networks across the district. Within the district we also have projects that have taken advantage of the fast-track pathways provided through the recently repealed COVID-19 Recovery (Fast-track Consenting) Act 2020.
7. KCDC and our communities are therefore familiar with large infrastructure projects and the positive and consequential impacts they can have on a district. For the most part, these impacts have been positive, providing enhanced and resilient access to and across the district, attracting economic growth and delivering new housing stock. They have, however, also provided some learnings that can be usefully applied to this new Bill for greater robustness of process and subsequent project implementation. The amendments to the Bill that we propose are based on this experience.

Cost recovery for supporting project considerations and Fees framework

8. Clause 14 of Schedule 3 provides that local authorities must recover from an applicant the actual and reasonable cost incurred under that schedule and Schedule 4, in supporting the expert panel and processing an approval under the RMA. However, this cost recovery does not include time and resources the local authority may use in the early, and vitally important pre-application engagement. This expenditure also needs to be recognised and recovery provided for.
9. With previous fast-track applications under the previous Act, KCDC had difficulty engaging appropriately skilled and experienced representative to represent it on the expert panels due to low fees central government assigned to such representation. For representatives on the expert panels under this new Act the remuneration fees need to increase and reflect relative market rates so participants with appropriate skills and capabilities can be attracted to undertake the work. Previous fees for expert panel members to fast-track panels were often less than planning inputs.
10. KCDC **recommends** that the:
 - 10.1. Fees framework for the expert panel is set at a level to attract suitably skilled and capable convenors and panellists.
 - 10.2. Cost recovery provisions of the Bill include it being able to recover the actual and reasonable cost of pre-application engagement with the applicant and for any associated work on the project.

Monitoring and compliance to consent conditions

11. The Bill needs to articulate a monitoring and compliance regime for any approvals given under it, and their associated conditions, with a clear compliance track with consequences for non-compliance. Environment Court or similar action should be provided for. More specifically, this needs to include a right for council to monitor implementation of the consent and construction of any assets to be vested with it.
12. Monitoring and compliance work by council (and other agencies) should be cost recoverable to ensure potential capacity issues for councils (particularly the smaller or more remote) are resolved.

13. KCDC **recommends** that monitoring and compliance matters are either provided for within the Bill, or in subsequent regulation, and that as with other implementation work, it is cost recoverable by local authorities (and other agencies where applicable).

Supporting better understanding of local context in decision-making processes

14. There are a number of changes that would enable local context to be reflected earlier in decision making processes to ensure optimal outcomes are achieved.

Eligibility of regionally and nationally significant projects and other projects

15. Clauses 11 and 12 of the Bill currently outline different pathways and categories for referring projects to the fast-track process. These sections identify Part A listed projects, Part B listed projects, and a third category in 11(c), which provides for “any other project or part of a project referred to a panel by the joint Ministers.”

16. Currently there are no projects on either list, although we understand applications have been called. Our understanding is that projects of regional and national significance will sit on the ‘A’ and ‘B’ lists, but anyone may also apply to use the fast-track process through (cl.14(1)).

17. Having early and advanced understanding of projects applying to the fast-track process is important to enable councils to be well prepared to support the decision-making process.

18. Although clause 17 outlines eligibility criteria for projects applying to the process, there are no indications as to scope and size a project needs to be to be, to be eligible for consideration. There is also no requirement for this information to be specified in an application (cl.14). Similarly, while eligibility criteria include a statement as to whether any previous approval process has been undertaken with a local authority, including any early engagement, there is no requirement for this consultation to have occurred as a prerequisite to application. This is further discussed below.

19. KCDC **recommends** that:

19.1. The Bill set some size minimums with respect to the different types of eligible projects (cl. 17(3)) when being referred as “other projects” under cls.11(c) and 14(5), and

19.2. Applicants are required to engage with the relevant local authority prior to lodging an application and provide information on the nature and scale of project and engagement as part of their application.

Reflecting a balanced view of growth in decision making processes

20. KCDC notes the focus and purpose of the Bill in Clause 3 is to provide a streamlined fast-track decision-making process to facilitate the delivery of infrastructure and development projects. However, with this focus, there is concern that in practice, the purpose of the Act could potentially blindly trump all other considerations.

21. With the Joint Ministers group including development focused portfolios, there is a concern that sustainable management/development consideration (as captured by the secondary priority given to s.5 of the RMA), may result in considerations focussing on short-term and private benefits that may leave communities with long-term environmental or servicing problems. Maintaining a balanced view on environmental and community outcomes is particularly important given the ability of Joint Ministers to override expert panel recommendations on the appropriate conditions to be placed on approvals.

22. KCDC **recommends** that the Joint Ministers Group include the Minister for the Environment as an additional member either permanently, or when projects that have the potential to impact significantly on the environment, are under consideration (as with the Minister of Conservation when a Wildlife Heritage Area is involved).

Reflecting community outcomes and local planning documents

23. Decision-making under the Bill's provisions provides no opportunity to receive direct input from local communities (e.g. by submission). Decision-making, therefore, is at considerable distance from the communities most intimately impacted by the costs and benefits of a project, making local authority input the community's proxy within the process. Local authorities on behalf of their communities have up to four opportunities for input.¹ Part of this input is also through the planning documents for the district and region listed in clause 12(2) of Schedule 4.

24. These documents are all formal statutory planning documents. Of equal importance for communities, and for councils managing their resources, are their non-RMA and non-statutory strategies and plans. The Schedule 4, clause 12(2) list, notably, does not include any of these key non-RMA or non-statutory documents which are used to guide the planning documents, and which are often more up-to-date and reflective of current community interests and concerns. These non-RMA and non-statutory documents include district level: growth strategies, infrastructure strategies, Long-term Plans, and any relevant local community vision or outcome statements. Identifying and including these documents alongside planning documents, and with a stronger weighting, would help ensure a broader understanding of local context as part of the decision-making process.

25. KCDC **recommends** that a mechanism is included within the decision-making criteria of the Bill that captures and weighs the wider social and economic benefits and costs of a project by ensuring:

25.1. The accorded weight of the Schedule 4, cl.12(2) documents is more explicitly stated,

25.2. Non-RMA and non-statutory documents (such as growth strategies, infrastructure strategies, Long-term Plans, and any relevant local community vision or outcome statements documents) are also included for assessment.

Ensuring a level of consistency in decision-making

26. Clause 12(2) of Schedule 4 currently lists the key statutory planning documents that require assessment in respect to the project. The application is to be assessed (Sch. 4, cl.12(1)(h)) against the relevant parts of these documents. Any assessment against the various documents would be under the various tests of the particular document or document part; to give consideration to, or, have regard to, or give effect to, or to be not inconsistent with.

27. There is no guidance given as to how any inconsistency between the prospective activity and any of the tests of the documents will be weighed and resolved, other than the broad primacy of the Bill's purpose. This is particularly to the point where the activity is otherwise prohibited under the RMA or a relevant NPS, National Environment Standard, regional or district plan.

Local authorities can provide input on an application at the following points in the process:

- pre-referral application engagement on the project with the applicant,
- through a written report to Joint Ministers on the referral application (to be provided within 10 working days of receiving a copy of the application),
- through discretionary invitation to provide information to the Expert Panel (Sch. 4 cl.12(2)) and,
- through an appointed representative on the Expert Panel.

28. Greater clarity in this area would help all decision-makers and those providing input into the project to fully understand the ongoing implications of the project on the natural, physical and social environments the project is situated within. It would also canvas any issues with transport, schools, and accessibility to services, infrastructure network availability and good urban outcomes, needing resolution for the project to be successful for the applicant and the community. This should also include clarifying decision-making hierarchies would ensure greater consistency of decision-making across projects.

29. KCDC **recommends** that matters of weight between decision-making criteria of the Bill and other statutory planning documents be further clarified.

Ensuring the successful implementation of fast-track projects

30. This section covers a number of changes to post application approval processes that will support the implementation of projects to ensure a positive legacy; including how local authority input can support more robust decision-making, benefits and outcomes.

Provision of infrastructure

31. With the potential scope of projects and associated decisions it is important that decisions reflect impacts on a local authority's land use planning, wider asset network capacity and long-term infrastructure investment plans. Decisions should also reflect the process for vesting of assets back to council to ensure the financial implications can be identified, understood, and planned for through council's long-term planning requirements. The earlier in a project this is signalled the better. (Hence the recommendation for mandatory engagement between applicant and council).

32. Councils should have input into design requirements for any infrastructure, which should be required to meet local standards, if project assets are to connect to council networks. This will ensure the design and specifications will align with any of council's short- and long-term infrastructure plans and minimise risks of stranded assets or costs due to any under or over investment in network infrastructure. (Hence the recommendation for local authorities, particularly district councils, to be involved in drafting conditions).

33. Alternatively, councils should be given the explicit right not to have the asset vested with them. This should extend to the right of council not to allow connection to council's ratepayer funded networks. In this latter situation, ongoing operational and maintenance cost need to be provided an enduring legal funding entity that is not council (perhaps something similar to the funding provisions of the Urban Development Act).

34. KCDC **recommends** the Bill make provisions for any additional infrastructure to be agreed to meet Council's sustainable development standards for land use and infrastructure development.

Council's role in supporting decisions and implementation of fast-track developments

35. The EPA and expert panel may request information from a local authority on an application. KCDC suggests that when finalising reports on approval to Joint Ministers, the EPA ensures that any relevant local authority is consulted on the prospective conditions to be placed on any approval. Councils have vast experience in condition drafting and monitoring, and each council has a unique wording that they use to reflect their local settings and processes (for example: financial contribution calculations). KCDC would go so far as to suggest that when conditions are to be set that they should be drafted and

submitted to the council for agreement around the wording and timing (but not the intent) of the conditions.

36. Requiring this consultation as a prerequisite, means councils are in a position to most effectively support the process. This enables better understanding of the needs of the project, potential issues and gaps between existing infrastructure and resources, what may be required by the project, and how that gap may be filled. This is especially the case where the project or development is not within an area planned to receive the type of project or development proposed (e.g. a new substantial housing area remote from a council's current urban boundary and existing infrastructure).
37. Early engagement also ensures information can be provided within the tight timeframes for providing a report to Joint Ministers (cl.19) and any timeframes for information set by the EPA in processing the application (Schedule 4, cl.4).
38. While applicants would typically engage with a local authority to discuss a project as a matter of practice, providing for these steps within the legislation and or supporting regulation would ensure local authorities can provide information and support the applicant and decision makers throughout the process. Additionally, with early engagement, matters to do with the provision of any infrastructure required to support the project, and its funding, can be resolved, so as not to become a roadblock during project implementation.
39. KCDC **recommends** that any conditions set for an approved application are shared with the relevant local authority for agreement around wording and timing. Where conditions are to be varied by the Joint Ministers, that the relevant local authority is consulted on any changes.
40. Clause 9 of Schedule 4 provides for information sharing between the EPA and relevant local authorities. However, the information sharing is one-way, from the local authority to the EPA. Also, in notifying its substantive decision to approve or decline an approval, neither Joint Ministers nor the responsible ministry are required to inform the relevant local authority. While the relevant authority may have had an opportunity to input into any conditions to be applied to an approval, it is not informed as to what eventuates in the approval. For the local authority to respond to the project's implementation it needs to be informed of the final conditions of consent, whether or not it has provided information on the application.
41. KCDC **recommends** that the relevant local authority receives a copy of the project approval including the conditions set in the application, irrespective of whether the authority has submitted on the application.

Conditions, consent variations and changes

42. Once approvals, including conditions are given, and with any network standards for the project/development approved, any variation needs its own approval process. This will require a path for reconsideration to be included in the Bill (or subsequent regulation). Conditions of consent should not be varied by Joint Ministers in their approval decision-making without direct consultation with and input from the relevant local authority as to the feasibility and impact of the variation.
43. Any variation during the duration of the approval, should go to the local authority for approval, with the local authority provided the right to decline any vesting of assets if the variations have been made without its approval. There also should be an identifiable point where a variation, through change in character, intensity and scale, becomes

substantively, a new approval/consent, and is required either to go through council as a normal consent or back as an application for fast-track approval.

44. KCDC **recommends** that either a reconsideration and re-approval process be included in the Bill where significant variations to conditions are required, or that such variations require local authority approval.

Conclusion

45. In our submission, we have endeavoured to focus on matters of practicality that require clarification and resolution. The changes suggested will better support the role of local authorities (particularly district councils) in the fast-track process, with the aim to make resultant projects successful both for the applicant, but also for the wider community in which the project sits.

Yours sincerely



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