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Fast-Track Approvals Bill

The New Zealand Association for Impact Assessment (NZAIA) thanks the Select Committee for the opportunity to submit on the Fast-Track Approvals Bill.

About the New Zealand Association for Impact Assessment (NZAIA)

NZAIA is a community of impact assessment (IA) specialists and supporters. Our membership comprises about 100 practitioners: environmental and social consultants; academics, researchers and students, and other assorted professionals and interested parties. Our members include many of the leading IA experts in NZ, with longstanding reputations and a wealth of New Zealand, Pacific and international experience. We all share a deep interest in ex ante impact assessment, a decision-support method for evaluating proposed policies, plans and projects for their unintended consequences, and therefore one of the most widely practised and important global tools for safeguarding the environment and the people and communities who rely on it.

NZAIA is an affiliate of the International Association for Impact Assessment (IAIA), a professional association with some 1700 members located across 120 countries. NZAIA is also partnered with the Environment Institute of Australia and New Zealand Inc. (EIANZ); and the Secretariat of the Pacific Regional Environment Programme (SPREP).

Submission

As the Bill stands, we have serious concerns, from the point of view of effective consideration of the effects (positive and negative) of proposed developments.

1. Broadly we consider the Bill will weaken the environmental, social and cultural scrutiny of projects, lowering the ability of project planning to enhance benefits and reduce any significant adverse effects. We outline a number of specific concerns later in the submission.
2. The Fast-track Bill imposes severe limits on public involvement and we see this as a major problem. Impact assessments (such as AEEs) are one of the most important mechanisms for ensuring the values of potentially affected parties are recognised by decision-makers. Values are critical to our public processes otherwise public decision-making descends into technocratic approaches. The lack of public involvement and lack of transparency in the fast-track process will inevitably lead to a loss of social license, especially for major projects that are already contentious. That opens the real possibility of ongoing social activism (e.g. protests, local and international consumer boycotts, litigation, etc.), and potential

long term economic costs for developers, and authorities, when developments face resulting delays. We recognise the need in certain situations to manage public involvement to speed decision-making processes, but we do not support the degree of limitation that this Bill proposes.

3. The final decisions on the fast-track projects will sit with the joint Ministers. At present there is no substantive input to decision-making from the Minister for the Environment, even when significant adverse effects on the environment could be central to the decisions. Again we believe this will lead to a rapid loss of social license in projects approved under this legislation, with messy outcomes. Accordingly we recommend adding the Minister for the Environment to the list of Ministers in (a) in the definition of Joint Ministers in s4 (Interpretation) of the Bill.
4. The new process will potentially be open to a large number of projects and project types, which could seriously undermine the normal processes for planning and managing resource development. In addition it will severely challenge the resources of the EPA and the responsible agencies. This has the real potential to lead to inconsistent practices across panels, affecting the quality of recommendations to Ministers.
5. The Bill opens the possibility that projects previously prohibited, or denied consents, under existing legislation, on the basis of sound environmental, social and/or cultural grounds, could go ahead and have significant adverse consequences. We do not support this provision.
6. Overall, can the public be assured that complex new applications (e.g. a proposal for mineral development in the EEZ, with enhanced port facilities and onshore mineral processing....?) will be decided safely under this legislation? We do not consider this is the case.

Specific issues

While we welcome the Bill recognises the need to retain the assessment of effects on the environment where it is already established in legislation (e.g. RMA, EEZ Act, etc.), we have concerns about the nature and role of the assessment of effects provide for in the Bill.

1. Applicants for referral are asked in s14(3)(e) to provide “a description of the anticipated and known adverse effects of the project”, with the caveat (s14(2)(b)) they “need only provide a general level of detail about the different approvals required for the project”. This description, presumably in quite general terms, is to be used by Joint Ministers when deciding whether the project may have a significant adverse effects on the environment (s21(2)(c)).

We recognise applicants for referral may not have prepared all the information required for specific consent applications, including an AEE under Schedule 4 or an EIA under Schedule 9 for example, but there does need to be a sufficient level of effects information to support Ministers’ decisions.

Accordingly, we suggest applicants should be required to have completed, as a minimum, a **preliminary assessment of effects**, open for public scrutiny, before

applying for the fast-track. MfE could produce guidelines on what such a preliminary assessment might contain (e.g. based on existing, secondary data, professional judgement, previous projects of a similar nature, etc.) to ensure a level of consistency in the information provided in applications.

Impact assessment is an aid to better project design, and international best practice encourages developers to integrate impact assessment processes alongside technical and economic feasibility studies from the earliest stages of project design. There should also be appropriate levels of public involvement from the earliest opportunities. That information would provide the basis for a preliminary assessment that would meet the requirement of s14(3)(e) but also have sufficient detail to meet the Ministers' needs under s21(2)(c).

2. The requirements for the composition and operation of the expert panels need to be strengthened to ensure there is adequate expertise available for the consideration of the effects of major projects, particularly in light of the time constraints on the panels. For example, at least one member of the panel should have recognised expertise and qualifications in environmental planning and resource or environmental management, such as CEnvP, MNZPI or CPRM. In addition, most if not all panel members should be accredited under the MfE *Making Good Decisions Programme*. We suggest the Joint Ministers be required to have the same accreditation in light of their role in the decision-making process.
3. With regard to Schedule 4, process for approvals under the RMA:
 - a. EPA are required to publish all documents received or sent out by EPA. Does this include the consent applications themselves, or only the administrative documentation? This might be made clearer, given cl 20(1) that panels " must not give public or limited notification of a consent application or notice of requirement. We prefer the full applications be published on the EPA website.
 - b. The information to be included in an AEE (cl 13) is based on the existing RMA Schedule 4 requirement, apart from "*if it is likely that the activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity.*"(RMA Sched 4 6(1)(a)). We suggest that as a minimum the applicants should show that where relevant they have considered alternative locations or methods. Otherwise there is no requirement that applicants should avoid or mitigate adverse effects by sensible siting and design decisions early in their developments.
 - c. Under cl13(2) the AEE "*need not include any additional information specified in a relevant policy statement or plan*". We do not support this clause. Presumably there will be sound reasons for relevant policies or plans requiring the additional information, in relation to potential effects, and this should be part of a coherent analysis of effects.
 - d. We welcome the confirmation in Cl 17 that sufficient information be provided in applications to correspond with the scale and significance of effects, and especially that this applies regardless of the conditions that applicants might propose, including management plans.
 - e. We profoundly object to the lack of transparency and opportunities for public involvement in the processing of applications (Cl 20-29). The discretionary

provision for panels to invite comment from other parties is not enough. All applications should be open to public scrutiny. As a minimum, members of the public should have the right to submit written comments, especially on AEEs, to correct information in the assessments, to provide local perspectives and to raise legitimate concerns that would not otherwise be put forward by any of the statutory consultees. This is basic good practice and cannot be left to the discretion of a panel chair. Similarly, in the event a hearing is held on a proposal, there should be a provision for key representatives of affected parties or affected communities to participate.

Finally we would like to point out that approval processes for projects and designations will be improved by more effective scrutiny of national and regional level policies and plans that provide the wider institutional context within which these processes occur. While that cannot be addressed by this Bill, we do urge the government consider giving greater formal attention to the use of strategic environmental assessment at these higher decision-making levels when considering future revisions to the RMA.

Terry Calmeyer, Chairperson, NZAIA

On behalf the New Zealand Association for Impact Assessment Core Group

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