Submission on the Fast Track Approvals Bill

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By Low Carbon Kāpiti Inc

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Who we are

Low Carbon Kāpiti (LCK) is a grassroots community organisation made up of local people who want to see more action to reduce the causes of the climate crisis. Established in 2017, we have a current membership of 350+ based across the Kāpiti Coast District. Our focus is both national and regional.

1. We strongly oppose the Bill.

2. The Bill bypasses nearly all of the country's environmental protections, enshrined in law and policy over many decades, in order to priortise an extremely broad set of possible projects, many of which are likely to be environmentally destructive. These activities may be profitable to the companies carrying them out, but the true costs will be borne by wider society and future generations, and may be intolerable.

3. Projects established under the Bill may be technically approved, but will not be sustainable and will not have social licence. Future governments may well revoke approvals for this reason.

4. The Bill places excessive power to both propose and approve projects in the hands of just three ministers, ministers with pro-development portfolios. The role on the Minister of Conservation is limited and the Ministers of Environment and Climate Change have no role at all. It unjustifiably removes public participation and checks and balances. This is anti-democratic and creates a moral hazard – these three ministers will be the sole focus of businesses lobbying for fast-track approval.

Key concern #1: Too many harmful projects are eligible to enter the fast-track

5. Some projects will be explicitly listed in the Bill and proceed to consideration by a panel, without the need for any statutory assessment as to whether they are eligible for fast-track.[1]

[1] Clause 18 and 21.

6. No listed projects have been included in the Bill as introduced. This means that specific projects (potentially 100 or more) may remain completely unscrutinised by the public despite being included in the final law. That is not how law should be made. It is the Select Committee's role to examine the content of our law, based on detailed submissions from experts, stakeholders and the public.

7. We are deeply concerned that projects which end up being listed may include those that have been previously declined, proposals that are likely to have been declined under existing RMA processes, or proposals that have significant environmental effects that would otherwise have merited public consultation. It renders all previous work considering these rejected proposals wasted.

8. Specifically we are concerned about proposals for the extraction of fossil fuels being approved. The situation with climate change is becoming increasingly dire and bringing more fossil fuels to market is putting fuel on the fire, in a very literal sense. It may also lead to serious mal-adaption, where investment is made in areas vulnerable to climate impacts such as floodplains and low-lying coastal areas.

9. In addition to listed projects, the Bill lets Ministers pick and choose projects for the fast-track process. Government can thus be the developer, the regulatory gatekeeper and the ultimate decision maker. This is an inappropriate distribution of power in the executive.

10. The eligibility criteria for referral ("significant regional or national benefits") are discretionary, open to Ministerial interpretation and too broad. They capture almost all activities. The Bill should be more targeted than this.

11. There are also only very few cases where projects are specifically *not* eligible to enter the fast-track for environmental reasons. One of the most concerning aspects is that prohibited RMA activities are specifically made eligible. These outright bans are for the most environmentally dangerous activities, which this Bill will enable.

12. There is also no requirement to stop the referral of projects that would increase greenhouse gas emissions, contribute to extinctions, pollute freshwater, cause risk to human health, pollute water bodies covered by water conservation orders, or even breach international law on marine dumping. This is completely unacceptable.

13. Although Ministers *can* refuse projects on environmental grounds, this is discretionary and is made in the context of the Bill's development-focused purpose.

14. It is also inappropriate that the "joint ministers" responsible for referral decisions are those for Regional Economic Development, Infrastructure and Transport, and do not include the Minister for the Environment (or the Minister of Conservation in the coastal marine environment).[2]

Key concern #2: The process and decision-making criteria are inappropriate

[2] Despite that Minister being responsible for core legislation being overridden by the Bill.

15. The Bill's process and decision-making criteria are grossly inadequate. Once referred by Ministers, the fast-track process is little more than a rubber-stamping exercise for projects.

16. It is not appropriate that the development purpose of the Bill should take priority, and not be qualified by any consideration of the natural environment. The purpose and principles of the RMA, national direction, council plans and other RMA provisions are all second order considerations with less weight. The RMA and its instruments should not be slide lined.

17. Reference to section 8 of the RMA is noticeably absent. This means Panels are not required to take into account the principles of the Treaty of Waitangi / Te Tiriti o Waitangi when making their recommendations.

18. Panels are not directed to consider the importance of reducing greenhouse gas emissions. They should have to in furtherance of New Zealand meeting its international emissions reduction commitments.

19. Ministers can choose to accept or reject panel recommendations and proceed down a different route. It is deeply problematic that Ministers (who do not have the right expertise), rather than expert panels (who do), make the final decisions. It reduces panels to advisory bodies that can be ignored. It is also inappropriate for development-focused Ministers to be the ones making these calls.

20. Direct political decision-making on particular development projects leaves Ministers open to considerable legal and political risk. It is unclear how conflicts of interest are to be defined or managed.

Key concern #3: Public involvement and other checks and balances are absent

21. The Bill dispenses with almost all opportunities for the public to be involved in decisions having significant effects on New Zealand's environment and natural resources. This is undemocratic.

22. When making referral decisions, Ministers must invite written comment from local government, other relevant Ministers and various Māori entities.[3] There does not appear to be any requirement to notify owners or occupiers of land who potentially have property rights affected by a project. This is unfair and wrong.

23. Public notification is not allowed by panels either.[4] Panels must invite comment from a narrow range of people and groups and can choose to invite comments from any person that they consider "appropriate". But there is no requirement that the public be involved in the process. Nor is the Parliamentary Commissioner for the Environment – our independent watchdog – to be consulted or even informed. The Minister for the Environment, who is meant to be democratically accountable for environmental outcomes, is not a relevant Minister from which the panels must seek feedback.

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[3] Clause 19.

[4] Schedule 4, cl 20.

24. All this is particularly concerning because the very projects that are likely to be referred to panels are also the ones that are likely to have significant adverse environmental effects and warrant the additional scrutiny provided through submissions and expert evidence from non-governmental organisations.[5]

Key concern #4: Conservation protections are overridden

25. We are concerned that the Bill overrides key conservation protections.

26. The Bill allows for changes to how approvals under the Wildlife Act 1953 are made. The ability to provide for offsetting and even compensation[6] for impacts on wildlife is a major departure from the Act, which does not allow authorisation of harm to wildlife. There are no parameters around the extent of harm that can be caused – even to Threatened, Data Deficient and At-Risk species. The approach provided for in the Bill will increase the risk of species being pushed towards extinction where they inconvenience new highways, mines or dams.

27. Once species are lost, they cannot be brought back. Extinctions and the destruction of ecosystems and the natural world comes at an incalculable cost. These costs are not just aesthetic either. All human prosperity is built on the foundation of the life-supporting natural systems of the world. We compromise them at our own peril.

28. The inclusion of access arrangements under the Crown Minerals Act 1991 as an "approval" eligible for fast tracking under the Bill is also of significant concern. Such approvals allow for access to Crown owned conservation land for mining. This could enable mining to occur on stewardship land, conservation parks, forest parks, local reserves and other places without the public being notified. Most alarmingly, the Bill does not clearly prevent the referral of projects seeking to conduct open coast mining (eg for coal) in places like national parks or national reserves.

29. The Minister of Regional Development has repeatedly stated his enthusiasm for coal mining. Continuing and increasing the use of coal is totally incompatible with avoiding dangerous climate warming, and the domestic and international commitments the country has made to avoiding it.

Key concern #5: The rationale for the Bill is weak

30. The Bill goes well beyond what is needed to address the problems for which there is actual evidence. We call attention to the Ministry for the Environment's statement that analysis was not as thorough as "*would usually be expected for a Bill of this significance*".[7] The Ministry also specifically advises against taking most of the key design measures in the Bill.

31. The Bill bears little resemblance to existing fast-track processes, which are currently operating adequately. Fast tracking under the Covid-19 legislation, which went nowhere near as far as this Bill and is largely replicated in the current fast track process retained from the Natural and

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[5] Even prohibited activities – which by definition are environmentally harmful – are eligible for fast-tracking and therefore little public scrutiny.

[6] Schedule 5, cl 1(2)(e).

[7] Ministry for the Environment *Supplementary Analysis Report: Fast Track Approvals Bill* (2024) at 5.

Built Environment Act, has shaved 18 months off the average consenting timeframe. This begs the question why it is needed at all, to which there appears to be no good answer.

32. The Bill represents a monumental shift in environmental consenting in this country. It will undoubtedly lock in environmental degradation for decades to come. There is simply no need for the Bill. It is likely to enrich a select few while making the majority of people poorer by undermining the environment on which all those living now and in the future depend. It should not be passed.

33. We thank the Select Committee for the opportunity to submit on this Bill.

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