

ATTACHMENTS

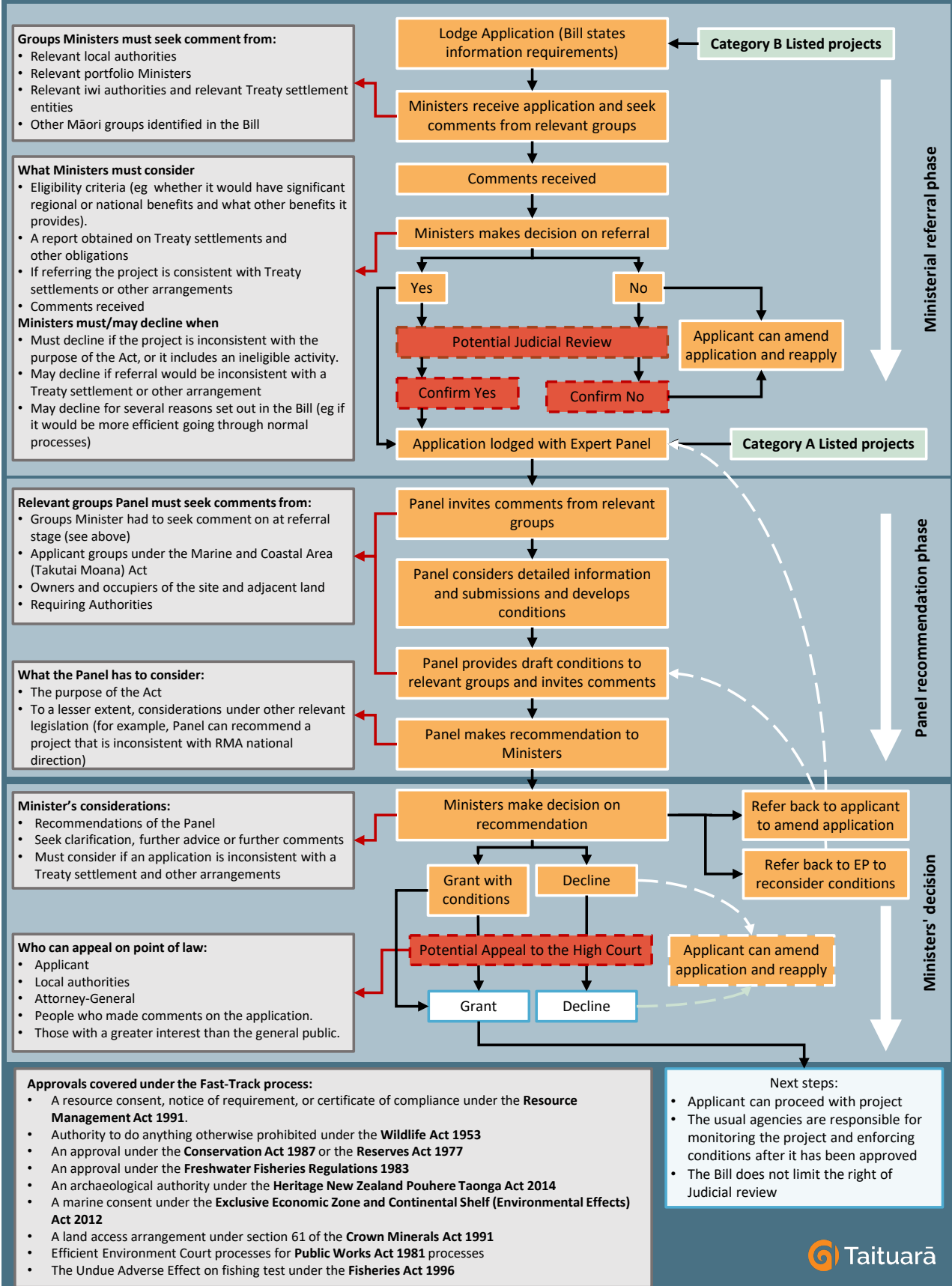
Extraordinary Council Meeting

16 April 2024

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Fast-track process under the Fast Track Consenting Bill



Taupō District Council Submission on the Fast-Track Approvals Bill

Submission to: Committee Secretariat,
Environment Committee
Parliament Buildings
Wellington

1 This is a submission by Taupō District Council on the following:

1.2 Fast-Track Approvals Bill

2 Scope of Taupō District Council's submission:

2.2 Taupō District Council is submitting on what we believe are the key issues with the Fast-track Approvals Bill (Bill). We are supportive of the submission provided by Taituarā. Rather than repeat matters raised in that submission, we have focused on those issues related to our district and that raise the most concern with the Bill as drafted.

3 Taupō District Council's position on the Fast-track Approvals Bill:

3.1 Taupō District Council supports measures to achieve timely approvals and consents for projects of national and regional significance in a sustainable way. However, we are concerned that this standalone fast-track Bill for Resource Management Act (RMA) and other legislative approvals has been rushed through without proper consideration of environmental safeguards and wider implications for local authorities and infrastructure provision. As drafted the Bill also lacks coherence, which presents a risk to the purpose of the fast-track consenting and approval system.

4 Project Prioritisation and Alignment with Local Authority Priorities

4.1 The criteria for identifying projects eligible for fast-track consenting should be transparent. We are concerned that Schedule 2 projects are not yet included in the Bill and that there is no opportunity for public comment. The Bill also does not define "significant regional or national benefit". This needs to be clarified to determine which projects are appropriate to be listed.

4.2 We support those parts of the Bill that highlight the need for projects to align with local government plans and strategies. The development of council plans and strategies has involved extensive engagement and consultation with our local community, iwi partners, hapū, and stakeholders to inform decision making. It will be important that any project approved under this legislation does not undermine the role of local authorities in local land use planning, infrastructure provision and decision-making.

4.3 Councils create long-term plans and an infrastructure strategy every three years to ensure there is effective infrastructure planning and considered prioritisation of significant infrastructure projects. We also have a requirement to plan for growth under the National Policy Statement – Urban Development. We are concerned that as currently drafted the Bill allows for approvals for projects such as large-scale housing developments without consideration of wider infrastructure implications e.g. wastewater. This lack of strategic planning of infrastructure could potentially have massive implications for local authorities.

4.4 We support the following clauses under the eligibility criteria for projects that may be referred to panel:

17(3)(a) has been identified as a priority project in a central government, local government, or sector plan or strategy (for example, in a general policy statement or spatial strategy):

17(3)(c) will increase the supply of housing, address housing needs, or contribute to a well-functioning urban environment:

17(3)(g) will support climate change mitigation, including the reduction or removal of greenhouse gas emissions:

(h) will support adaptation, resilience, and recovery from natural hazards:

(i) will address significant environmental issues:

(j) is consistent with local or regional planning documents, including spatial strategies.

Recommendations

- Make Schedule 2 projects publicly available for submissions before the Bill proceeds further.
- Require Expert Panels and Joint Ministers to consider wider infrastructure implications of projects such as housing developments, to ensure they align with council's growth strategies, infrastructure strategies and other strategic planning documents.

5 Environmental Safeguards

- 5.1 We urge the government to ensure that the Bill strikes a balance between expediency of approvals and robust environmental considerations. Unlike existing fast track processes, this Bill allows for approvals under multiple pieces of legislation that are there to safeguard the environment. We are concerned that the decision to approve projects will be in the hands of the Ministers for Regional Economic Development, Infrastructure and Transport whose portfolios are all development focused. As the Bill includes approvals under the RMA, we believe the Minister for the Environment should be included as one of the Joint Ministers.
- 5.2 We are concerned that for listed and referred projects the Minister for the Environment is not included as a relevant Minister from which the panels must seek feedback, and the Secretary for the Environment does not need to be extended an invitation to comment. The Secretary has a statutory mandate under the Environment Act 1986 that operates independently from Ministers. Similarly, it is concerning that the Parliamentary Commissioner for the Environment does not have to be invited to comment by Ministers (referring) or panels (recommending). Given the potential for referred projects to have significant effects on the environment, we believe the Bill should invite comment from at least one if not all of these parties.
- 5.3 We are also concerned that Ministerial approvals give the highest weighting to the purpose of the Bill, being delivery of beneficial development and infrastructure, and the least weighting to the other listed matters, such as effects on the environment. Enabling development and protecting the environment can be compatible and we believe the Bill can be amended to achieve this.
- 5.4 Of particular concern is Clause 17(5) which provides that a project is not ineligible just because it includes an activity that is a prohibited activity under the Resource Management Act 1991 (RMA). A prohibited activity is the most restrictive of any activity status. The decision to use it in plan making is backed with strong evidence of its necessity, including justification through objectives and policies. Allowing a project to be referred when it includes a Prohibited activity is very concerning. This Clause is also inconsistent to Clause 17(j) where the joint ministers consider whether the project is *consistent* with local or regional planning documents.

- 5.5 We are also concerned that Section 104D of the RMA is expressly **not** applied to a panel's consideration of a resource consent for a referred project. Section 104D currently prevents non-complying activities from being granted consent where the activity would have more than minor adverse effects on the environment or be contrary to plan objectives and policies. This is another environmental safeguard that the Bill has removed. It also has the potential to undermine the integrity of, and public confidence in, the administration of the District Plan.
- 5.6 We are concerned that applications under the Bill can bypass the Plan Change process. This might incentivise developers to apply for a fast-track approval when they should have applied for a Plan Change. Plan Changes allow councils to set up a long-term management framework that considers matters like cumulative effects of development and wider infrastructure implications.
- 5.7 We are concerned that Ministers can specify the duration of consents without any time limit given. Given applicants do not have to provide robust evidence on how long-term environmental impacts will be managed and/or mitigated, we believe there should be set consent timeframes and a mandatory review condition should be included as part of the decision, to mitigate the risks of unintended consequences.
- 5.8 We support **Clause 21 Decision to decline application for referral:**
- (2)(c) the project may have significant adverse effects on the environment;
 (2)(f) the project includes an activity that is a prohibited activity under the Resource Management Act 1991.
- 5.9 We support the inclusion of Clause 7: Te Ture Whaimana however it is not clear how the legislation if giving effect to Te Ture Whaimana. We recommend that Te Ture Whaimana be included as one of the matters to be considered by joint Ministers when making decisions, under Clause 17(3). Ensuring coherence with established frameworks will facilitate the streamlined decision-making objectives of the Bill while upholding the principles of sustainable resource management and environmental protection.

Recommendations

- Amend the purpose of the Bill to include environmental considerations
- Include Minister for the Environment as a joint Minister.
- Amend the Bill to invite comment from the Minister for the Environment and/or Secretary for the Environment and/or Parliamentary Commissioner for the Environment.
- Amend the Bill to give equal weighting to the purpose of the Bill and Sections 6 and 7 Matters of the RMA in decision making.
- Remove Clause 17(5) to remove Prohibited Activities from being eligible for referral.
- Remove Clause 35(5) of the Bill and include section 104 D of the RMA as a matter relevant for consideration.
- Include a time limit for consents as set out in the Resource Management Act and a mandatory review condition as part of the decision.
- Retain clauses 21(2)(c) and (f).
- Add to Clause 17(3); is consistent with Te Ture Whaimana.

6 Te Tiriti o Waitangi Settlements and Obligations

- 6.1 Taupō District Council is committed to meeting its statutory Tiriti O Waitangi obligations and acknowledges partnership as the basis of Te Tiriti. We have a Mana Whakahono ā Rohe with Ngāti Tūrangitukua and Joint Management Agreements with our iwi partners. We want to safeguard the commitments made in these relationship agreements. As currently worded, we have concern that the Fast-track Approvals Bill may put our iwi partnership commitments at risk. Our reasons are set out in the following points.
- 6.2 The Bill does not make any reference to the principles of the Treaty of Waitangi / Tiriti O Waitangi. This is inconsistent with existing legislation and raises concerns about how Ministers will take into account the Treaty Principles in decision making. We would have more confidence in the fast-track approval process if the Bill includes a clause to state that all persons exercising functions and powers under this Act shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).
- 6.3 Clause 6 states that *all persons exercising functions, powers, and duties under this Act must act in a manner that is consistent with (a) the obligations arising under existing Treaty settlements*. This wording is not clear as to what the scope of acting inconsistently with Treaty settlements will be and does not give strong direction that the Treaty settlements are to be given effect to. Further, clause 6 is limited to existing Treaty settlements, and not future settlements yet to be established. This in our view is not within the spirit of Te Tiriti o Waitangi, nor our partnership commitments.
- 6.4 The Fast-track process overrides these agreements and reduces the weight of those planning documents, effectively reducing the voice of Iwi and hapū. This means there is a risk that decisions are made that are consistent with Treaty settlement redress but not consistent with the position of settlement entities and agreements.
- 6.5 We therefore recommend amending the wording of Clause 13 Ministers must consider Treaty settlements and other obligations to say, 'give effect to', to ensure commitments and partnerships made under Treaty settlement agreements are protected.
- 6.6 We recommend replacing Clause 6 with all persons exercising functions, powers, and duties under this Act must give effect to the principles of the Treaty of Waitangi'.

Recommendations

- Amend Clause 13 to '*Ministers must give effect to Treaty settlements and other obligations*.
- Replace Clause 6 with '*all persons exercising functions, powers, and duties under this Act must give effect to the principles of the Treaty of Waitangi*'.

7 Public Participation

- 7.1 Taupō District Council accepts the need for some constraints on public involvement to ensure some consenting decisions are made more quickly than under current legislation. However, this cannot come at the expense of transparency, especially since the Bill allows a much wider range of projects to utilise the process than other fast track legislation.
- 7.2 There does not appear to be any requirement to notify owners or occupiers of land about a referral application or a referral decision, let alone invite submissions. Ministers can invite written comment

from any person, but that is at their discretion. We think it would be prudent to notify landowners and occupiers about a project referral application and decision and allow for comment.

- 7.3 Public and limited notification of a consent application or notice of requirement is not allowed by panels. At their discretion, panels can invite comments from any person that they consider appropriate but there does not seem to be any requirement that the public be involved in the process. Again, we think it would be prudent for directly affected parties to be allowed to provide comment.
- 7.4 We are also concerned that the Bill does not require consultation with Iwi, hapu and/or marae. The responsible agency preparing the reports are only required to seek feedback from Iwi Entities. This approach to consultation removes the ability for iwi, hapū and marae to participate in the consenting and approval process. We think the Bill should be amended to include provisions to include Iwi, hapū.

Recommendations

- Amend the Bill to include notification to landowners and occupiers and allow for their comment on a referral application.
- Amend the Bill to allow directly affected parties the ability to provide comment on consent applications and notice of requirements.
- Amend the Bill to include provisions to include Iwi, hapu and marae as notified parties that are able to provide comment on referral applications.

8 Reserves

- 8.1 Taupō District Council is concerned that under Schedule 5 clauses 5 and 6, a council reserve management plan is not a matter the panel must consider in assessing a proposed application or a matter the Minister must consider in deciding whether to grant fast-track concession. The Bill does however provide for any conservation management strategies or conservation management plans that have been co-authored, authored, or approved by a Treaty settlement entity. It is not clear why council management plans are not given the same consideration in the Bill, and we recommend the Bill be amended to include them.

Recommendations

- Amend Schedule 5 of the Bill to:

5 Matters panel must consider:

In assessing a proposed application that involves a fast-track concession and in its report on the substantive application referred by the Minister of Conservation, the expert panel must include consideration of —

any local authority reserve management plan

6 Matters Minister must consider in deciding whether to grant fast-track concession

- (1) In deciding whether to grant a fast-track concession, the Minister of Conservation must —*

Have regard to a local authority's reserve management plan, and seek the views of the entity on the proposed fast-track concession

9 Decision Making

- 9.1 As drafted, the Expert Panel is making recommendations while the Joint Ministers are making the final decision on approvals. We are concerned that the recommendations of the panel can be challenged, and that joint Ministers can commission additional advice. This gives Ministers significant intervention powers that not only undermines the panel but brings into question the function and value of having an expert panel. Ministers should not be able to adjust conditions recommended by expert panels. Setting conditions requires expert knowledge which does not reside with Ministers or officials, but which expert panels are best placed to provide.
- 9.2 Having the Ministers for Regional Economic Development, Infrastructure and Transport in charge of decision making also raises questions around pre-determination and bias. We recommend amending the Bill to have the Expert Panel as final decision makers rather than Ministers.
- 9.3 The Bill circumvents public participation and established environmental planning processes to fast-track projects, yet the process of receiving and approving recommendations between Ministers and expert panels appears to be cumbersome. These inconsistencies contradict the fast-track purpose of the Bill.
- 9.4 As the Bill includes approvals under the RMA we believe the Minister for the Environment should be included as one of the Joint Ministers.
- 9.5 We support local authorities nominating a person for the expert panel. Ministers are less knowledgeable about local matters and it will be important that the referral and approval process does not undermine local land use planning and decision making.
- 9.6 As Joint Ministers are making decisions on projects it is not clear which agency is managing the appeal process. This needs to be clarified in the Bill.
- 9.7 Taupō District Council supports the ability for judicial review of ministerial decisions.

Recommendations

- Remove ability for Joint Ministers to ignore expert panel recommendations.
- Include the Minister for the Environment as a Joint Minister.
- Retain ability for local authorities to nominate a person for the expert panel.
- Retain judicial review clause.

10 Coherence of Bill

- 10.1 The Bill and its associated schedules lacks coherence and has inconsistencies. For example, the Conservation Act processes in the Bill require decision makers to take into consideration the Principles of the Treaty which is different to the Bill where persons making decisions must uphold Treaty settlements and obligations. We believe inconsistencies are a result of rushed drafting. We urge the Committee to take the time to ensure the fast-track legislation is coherent and sensible.

11 Conclusions

- 11.1 Taupō District Council supports some aspects of the new Bill. We support measures to achieve timely approvals and consents for projects of national and regional significance in a sustainable way. However, we are concerned that this standalone fast-track bill for Resource Management Act (RMA) and other legislative approvals has been rushed through without proper consideration of

environmental safeguards and wider implications for local authorities and infrastructure provision. As drafted the Bill also lacks coherence, which presents a risk to the purpose of the fast-track consenting and approval system.

- 11.2 Taupō District Council wishes to appear at the select Committee

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