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19 April 2024

Consultation: Fast-track Approvals Bill
Environment Committee Komiti Whiriwhiri Take Taiao
1 Museum Street
Wellington 6160

en@parliament.govt.nz

Dear Sir/Madam

Submission on Fast-track Approvals Bill

Thank you for the opportunity to submit on the Government's Fast-track Approvals Bill. The West Coast Regional Council's (WCRC or the Council) submission is attached.

The Council consulted with their iwi partners, Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (Poutini Ngāi Tahu or PNT), who are mana whenua on the West Coast/Tai Poutini, in the development of this submission.

Due to our high workload and short notice, Council could not make a comprehensive submission on the Bill. This submission therefore covers the most important points for the WCRC. We would be grateful for acknowledgement of receipt of our submission.

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Yours faithfully

Darryl Lew
Chief Executive

West Coast Regional Council Submission on the Fast-track Approvals Bill

Introduction

The West Coast Regional Council (WCRC or the Council) appreciates the opportunity to submit on the Government's Fast-track Approvals Bill (the FTAB or the Bill).

Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (of Poutini Ngāi Tahu – PNT) are mana whenua of Te Tai o Poutini (the West Coast). The '*Paetae Kotahitanga ki Te Tai Poutini Partnership Protocol, Whakahono ā Rohe Resource Management Act Iwi Participation Agreement October 2020*' (a protocol and arrangement between Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio, Te Rūnanga o Ngāi Tahu and the West Coast Regional Council), captures the intent of WCRC and its partners to progress our relationship in accordance with the Treaty of Waitangi partnership between iwi and the Crown.

At short notice, our mana whenua partners were invited to have input into this submission, and provided brief feedback which has been incorporated.

WCRC & Poutini Ngāi Tahu (PNT) support in principle the majority of the Bill. The West Coast is rich in natural resources, and utilising the fast-track process for larger developments will add significantly to jobs on the West Coast, and support a regenerative economic future. The West Coast is a microcosm of the national economy, and industry and commerce in the Region generally mirrors the rest of the country. Improving the regulatory environment and investing in critical infrastructure will support key sectors of the West Coast's economy, including:

- Forestry
- Fishing
- Agriculture & Dairy
- Mining
- Tourism

Despite the media hype, the FTAB has safeguards for the environment built into it, and the participation of the affected iwi and local authorities throughout the approval process.

There are some parts of the Bill that the Council and PNT have concerns about or could see some improvements made to it, and this submission makes recommendations to address these matters.

The Council and PNT considered the near-final draft submission by the regional sector body – Te Uru Kahika (TUK) - which is prepared on behalf of the Regional Council Chief Executives. WCRC and PNT agree with most of the TUK submission, however we have a different view to the TUK submission on some matters. This submission also addresses where Council and PNT have a different view to the TUK submission.

Support for the Bill

The WCRC supports in principle the FTAB for the following two reasons:

1. Potentially enabling development in the Region

The fast-track approvals process could provide opportunities in the West Coast for larger-scale developments and infrastructure such as the Waitaha River 'run of the river' hydro electricity generation scheme, potential relocation of the State Highway south of the Waiho River bridge at Franz Josef away from the River's flood plain, and various mining proposals, to be processed more efficiently. These developments could otherwise face high costs and lengthy delays going through the Resource Management Act (RMA) submission, hearing and appeals process, especially where an activity will be located on, or close to, public conservation land which covers 84% of our Region.

Opening Stewardship Land, and non-National Park Conservation Land to exploration and development opportunities such as alluvial and mined gold, non-thermal coal production, strategic green energy minerals, and harvesting naturally felled timber is essential to the future of the West Coast.

Investment in infrastructure resilience is essential to unlock the region's mineral, agricultural and tourism potential. Infrastructure upgrades are critical to the region's natural hazard resilience, particularly in response to climate events or an 8 or higher quake along the Alpine Fault (AF 8+).

2. Provision for managing adverse environmental effects giving effect to Part 2 matters under the RMA

While the focus of the Bill is on facilitating the delivery of infrastructure and development projects with significant regional or national benefits enabling development which will contribute positively to regional economies, the Bill appears to also provide for managing adverse environmental effects under s14 when making application (referral application), and under s21 where joint Ministers decide to decline applications (decision to decline applications for referral).

Further and detailed opportunity also exists under Schedule 4 (Process for approvals under Resource Management Act 1991) to consider adverse effects on the environment. Under Schedule 4 of the Bill, there is opportunity to consider Part 2 matters of the RMA and key sections under the RMA consent process. Under Schedule 4, section 12(h), there is also opportunity to consider relevant national directions, regional plan/policies and planning documents lodged by a local iwi authority.

Council supports all of these provisions as they indicate alignment/provide consistency with one of the main tenets of the RMA – managing adverse environmental effects.

Feedback

Retain these provisions, and strengthen them where needed. Where significant adverse effects are considered, there must be opportunity to avoid, remedy and mitigate adverse effects without which the process of considering adverse effects will not be complete.

Improvements to the Bill

The Council considers that the Bill could be improved by making the following changes:

1. Make final decision-making more robust

Council is aware that the decision-making process of the joint Ministers appears to be more critical than that of the Expert Panel, since the Panel makes recommendations to the joint Ministers, who then make the final decision on an application. It is therefore important that the Bill has clear criteria for the joint Ministers' decision-making process, and/or that the Ministers must give greater weight to the Expert Panel's recommendations.

Recommendation

Ensure that the Bill has clear criteria for the joint Ministers' decision-making process, and/or that the Ministers must give greater weight to the Expert Panel's recommendations.

2. Increase provision for local authority participation on Expert Panel

As the Expert Panel is likely to consider applications for both regional council and city/district council consents, the number of local authority representatives provided for in Schedule 3, clause (3)(1) to be on the Panel could be insufficient to represent both local authorities. While clause (3)(6) provides for more than one local authority representative to be appointed to the Panel, this is at the Convenor's discretion and in specified circumstances. Council supports the suggestion in the TUK submission No 53b, to provide training on effective participation for local government and Māori representatives in the FTA process. In addition to this, Council considers that the numbers of local authority members on the Panel should be increased depending on the significance of the approval or disapproval to the region.

Recommendation

Increase the numbers of local authority members on the Expert Panel to provide for both regional and city/district input.

3. Increase provision for Maori participation

There appears to be several opportunities in the Bill for affected iwi and hapu to be involved in the process, including:

- The joint Ministers must obtain a report which outlines what Treaty settlements and other obligations must be considered by the Ministers (section 13 of the Bill);
- The applicant must consult with the relevant iwi, hapu and settlement entities (with 10 day timeframe)(section 16);
- The Ministers must invite written comments on an application from the relevant iwi and settlement entities, those party to a Mana Whakahono a Rohe agreement, and any Maori land-administering entity where Māori land is in the proposed area of activity (section 19);
- Having representation on the expert panel, with the option for more than one iwi authority to be on the expert panel provided for in Schedule 3, clause (3)(6) of the Bill, albeit at the Convenor's discretion and in specified circumstances;
- Iwi or hapu participation in the appointment of hearing commissioners;
- Any other consultation requirements or obligations with iwi or hapu as outlined in Treaty settlement Acts (section 6).

However, there are some constraints on iwi and hapu participation in these processes. For example, the timeframes in the Bill for consulting with mana whenua are relatively short and may not work for iwi where consultation and participation within a tribe and/or hapu may take more time, given their

internal, collective structures and processes. PNT support the Te Uru Kahika submission Nos 16-21, which seek that the Bill goes further with providing for iwi participation under the Treaty of Waitangi principles, including having sufficient numbers appointed to the Expert Panel. PNT further agree with the TUK submission No 28, that *“More effective participation from Regional Government can add considerable value at the expert panel stage.”*

Recommendation

Iwi and hapu participation must be improved at the decision making level.

4. Cost recovery provisions needed for iwi and hapu

PNT agree with the TUK submission No 36, that *“cost-recovery provisions in the Bill ought to be extended to include reasonable costs incurred by iwi and hapū in participating in fast-track processes.”*

Recommendation

Add cost recovery provisions to the Bill to include reasonable costs incurred by iwi and hapū in participating in fast-track processes.

Te Uru Kahika submission

1. Support for TUK submission

As mentioned in the Introduction of this submission, the Council and PNT support most of the TUK submission. Some of the TUK submission points that Council and PNT agree with are already referred to in this WCRC submission. The following are other key TUK submission points that are supported:

No 22: decision-making to be the charge of expert panels, appointed for their inherent expertise and capability.

No 25: Enhancing effective participation in the fast-tracking process: process steps between application lodgement and consideration by the expert panel are too short for very large projects, limiting effective input by councils and other parties.

No 26: Add a pre-lodgement stage bounded by set timeframes (for pre-lodgement engagement and specific inputs required from councils). Evidence shows that good pre-lodgement engagement builds quality applications, capable of being approved and successfully implemented.

No 29: Require conditions to be developed by applicants and councils, with the option to bring in other participants on merit based on circumstances.

Provide an option to expert panels to direct caucusing with participants, in lieu of a hearing, while still maintaining process efficiency.

No 35: The cost-recovery regime needs to be broadened and rebalanced. While an improvement on the COVID fast track regime, ratepayers should not be expected to pick up the full tab for councils' functions in relation to pre-lodgement advice to applicants and assessing and reporting on applications.

2. Where we differ in views

The Council has not specifically indicated its support for all of the TUK submission as there are a small number of matters where we have a different view.

TUK Submission Nos 10 and 11: The Council does not agree with adding a reference in the Bill to “*sustainable management as a secondary focus*”. While it may be an attempt to link the purpose of the Bill with s5 of the RMA, our view is that treating sustainable management as a secondary focus is inconsistent with the RMA. A common sense interpretation and application of the Bill’s provisions for assessing environmental effects, and Schedule 4 of the Bill upholding much of the RMA process means “sustainable management as a secondary focus” does not need to be added to the Bill.

TUK Submission No 33: PNT opposes the change sought by TUK to replace references to “prohibited activity” status, with “the potential for long term and significant irreversible harm”. The latter is very subjective, and how it is interpreted could depend on who is doing the interpreting. Council agrees with the PNT view.

Feedback

Retain references to “prohibited activity” status.

TUK Submission No 41: PNT opposes the change sought by TUK to make the consideration of eligibility criteria mandatory (section 17). The reason given in the TUK submission, that the Fast-track process “*could be used as a back door for such projects*”, is also not supported. Council agrees with the PNT view, and considers there are sufficient checks in the Bill, especially with a Court Judge as the Expert Panel Convenor, and subject to clear criteria for Minister’s final decision-making or greater weight given to the Panel’s recommendations, to ensure that no ‘back door’ approvals are given.

This ends our submission.