World Wide Fund for Nature – New Zealand (WWF-New Zealand) submission on the Fast-track Approvals Bill

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Introduction

1. WWF-New Zealand appreciates the opportunity to submit on the Fast-track Approvals Bill (the Bill).

2. WWF-New Zealand is a not-for-profit, environmental non-government organisation, and part of the international environmental organisation WWF (World Wide Fund for Nature). WWF is the world's leading conservation organisation, and is active in over one hundred countries and has more than five million supporters globally.

3. Our mission is to stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature. We bring together individuals, communities, businesses, and government to develop and implement innovative, evidence-based solutions.

4. Globally, WWF has been a leading voice on the development of tools and approaches to support a nature-positive future, particularly through the negotiation of the Kunming-Montreal Global Biodiversity Framework, as a co-founder of the Taskforce on Nature-related Financial Disclosures, and as a member and convenor of the Nature Positive Initiative.[1]

[1] https://www.naturepositive.org/news

5. In New Zealand, WWF advocates for the establishment of the enabling conditions required to support our domestic transition to a nature-positive future, and supports the uptake of nature-positive practice by industry with tools like the WWF Biodiversity Risk Filter.[2]

6. *WWF strongly opposes the Fast-track Approvals Bill because it overrides critical environmental laws in New Zealand, places too much decision-making power in the hands of Ministers, and removes democratic rights of New Zealanders to have input into decision-making processes that affect them and the environment.*

Summary of why WWF opposes the Bill

7. WWF acknowledges that many large projects take significant time and resources, requiring many approvals that on the surface may appear to duplicate one another. However, rather than just streamlining approval processes (as the title suggests), this Bill attempts to override New Zealand's schema of environmental laws and enable development to occur regardless of negative environmental and social impacts.

8. *Substantial changes would be required for the Bill to properly protect the rights of New Zealanders and our highly threatened biodiversity. If this does not occur, the Bill should be withdrawn.*

9. The Bill enables a small cohort of development-focused Ministers to override normal due process with little constraint – or even reject advice that comes through the Bill's own process – and to make the final decisions on development projects. That role should instead be performed by independent expert panels with the ability to approve or decline projects, after applying normal environmental tests. That would avoid Ministers being exposed to perceptions of improper influence, bias, and even potentially corruption.

10. Previous governments have developed fast-track approval Acts for bespoke situations, primarily natural disasters (Christchurch and Kaikoura earthquakes, 2023 eastern North Island severe weather events). These Acts streamlined processes across multiple primary Acts, while still enabling good environmental outcomes. They truly were about fast-tracking.

11. This Bill does not do the same. Its purpose elevates development above environmental considerations and good public process, and undermines the importance of biodiversity and the impacts of climate change on our country. There is no clear justification as to why this is necessary or reasonable.

[2] https://riskfilter.org/biodiversity/home

12. The ministerial decision-making powers created by this Bill are disproportionate to the issues it is attempting to address. The Bill should either be recast to achieve consenting efficiencies without excessive ministerial powers, or be withdrawn. In either event, the existing fast-track regime would provide a good basis from which to proceed (this having been carried over in the interim from the Natural and Built Environment Act 2023, Part 2 of Schedule 10).

13. We support the submission made by the IUCN, to which we are also a party. Its detail is not repeated in this submission, but we reserve the right to speak to these matters before the Select Committee.

Structure of the submission

14. The below submission covers the following:

A. Purpose of the Act

15. Clause 3 of the Bill says: *The purpose of this Act is to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits.*" This is very specific, with no rider or context around when and where such activities are appropriate.

16. Other considerations such as environmental implications are secondary, with the Bill overriding the set of environmental protection laws, and the values they embrace, that New Zealand has crafted over time (e.g. the Resource

Management Act 1991 (RMA), Conservation Act 1987, Reserves Act 1977, Wildlife Act 1953). This override includes requirements in the purposes of these laws for matters to be given effect to, be provided for, had regard to, be taken into account, or similar.

17. These different phrases have strong legal meanings and established case law. Under the Bill, matters they relate to will be given lesser weight than the clause 3 purpose or sometimes only be considered (e.g. Schedule 3 clause (1)(2), Sch 4 cl 32(1), Sch 10 cl 4(2)(c)). “Consider” is not a well-defined legal term in New Zealand’s environmental law, and is likely to cause much legal debate and litigation if the Bill is enacted.

18. Significant development proposals could proceed with limited consideration of environmental values. Previously declined projects could be reconsidered, such as the Waitaha hydro dam or Te Kuha opencast coal mine on the West Coast. These projects were declined as they were inconsistent with the purpose of the Conservation Act, with adverse conservation effects unable to be avoided, remedied or mitigated. The Bill’s override of such protections is unacceptable.

B. Degradation of New Zealand’s threatened biodiversity

19. New Zealand’s indigenous biodiversity is in persistent and steep decline. A third of our native species are threatened with extinction. We are in the midst of a climate crisis. The twin crises of climate change and nature loss are the existential challenges of our time.

20. The Bill does not have sufficient safeguards in place to ensure the impacts of expedited development on nature and people are appropriately managed. Inappropriate, for example, is the Minister of Conservation having to share, with three development Ministers, decision-making relating to anything otherwise prohibited by the Wildlife Act. This could result in more harm to indigenous species that are already under significant pressure.

21. The Bill’s undermining of conservation and other environmental legislation would be a big blow for New Zealand’s biodiversity, with normal tests becoming secondary to development imperatives. If the Bill is proceeded with, additional environmental criteria must be included to guide expert panel recommendations and ministerial decision-making, including explicit consideration of climate mitigation, adaptation and resilience, and the protection of indigenous species, ecosystems and habitats.

C. Treaty considerations under the Conservation Act 1987

22. The Bill seeks to avoid the "give effect to the principles of the Treaty" obligations the Crown has to Māori under section 4 of the Conservation Act. The Crown should not just legislate its obligations away – especially not when the Supreme Court in 2018 provided clear guidance on the strength of these requirements. Also, the Bill's current provisions relating to the process of Treaty settlements are insufficiently directive to ensure the Crown actually upholds its Treaty of Waitangi commitments.

D. Removal of democratic public rights

Scrutiny of lists

23. A key criticism of the Bill is the lack of process for enabling public comment on proposed projects. Schedule 2, Part A will list projects to be automatically sent to expert panels for consideration and recommendation, and Part B will list projects that joint Ministers can consider referring to expert panels – but neither list will have any projects in it until the Bill returns to the House from the select committee.

24. So neither the select committee nor submitters will be able to scrutinise the lists, despite them being core to understanding the impact of the final Bill. That is unacceptable, and untransparent as to how the Government intends to use the legislation. The public will be unable to assess the appropriateness of what will be defined as projects with significant regional or national benefits. Also, the Bill includes no process for how projects get added to Schedule 2, so it could be at ministerial decision-making whim.

25. The processing of the Bill should be halted until the lists are made available to the select committee in order that the public can comment on them.

Lack of public input

26. While Ministers or expert panels can seek comment from stated parties on projects, the Bill removes public submission and appeal processes under the multiple laws the Bill is overriding. The Bill does not even provide ready access to the fast-track process for groups representing relevant aspects of the public interest.

27. People would be denied an effective voice over activities that could have a significant impact on them personally, or on wider environmental matters that are important to New Zealanders and their communities.

28. Many large-scale activities such as roading, mining, irrigation and energy developments impact people, communities and the environment much more widely than the direct footprint. Schedule 4 clause 20 says that an expert panel

must invite comments from relevant local authorities and Māori entities, directly affected landowners or occupiers, various government Ministers, some government agencies, and affected requiring authorities. Other than that, it is entirely up to the panel whether or not to invite comments from "any other person the panel considers appropriate", even if they would be impacted by the activity.

Inconsistency with existing planning documents

29. There is inconsistency in the Bill about how existing planning frameworks are applied in approving or declining the referral of a project (e.g. regional and district plans, conservation planning documents, National Policy Statements and regulations under the RMA, and General Policies under conservation legislation).

30. For example, clause 17(3)(j) says that Ministers may consider whether the project *"is consistent with local or regional planning documents, including spatial strategies."* Yet clause 17(5) then says that *"A project is not ineligible just because the project includes an activity that is a prohibited activity under the Resource Management Act 1991.*"

31. This makes it possible to advance a project activity even if a relevant national, regional or local planning document says it should not occur. All of these documents are prepared with significant public consultation and good democratic process. Enabling them to be ignored and overridden at any stage in the fast-track process is legally and morally questionable.

E. Decision-making processes

Unprecedented ministerial decision-making power

32. The Bill provides a series of decision-making steps that are primarily made by joint Ministers, with advice or recommendations from others including an expert panel. The joint Ministers are development-oriented (Infrastructure, Transport, Regional Development), with the exception in limited circumstances of also the Minister of Conservation and the Minister responsible for the Crown Minerals Act 1991.

33. The question arises as to how development Ministers can be considered transparent and unbiased decision-makers, particularly when they have already made it clear that development should be prioritised, with environmental impacts being a secondary consideration.

34. It is not unusual for Ministers to make regulatory decisions, although these are typically constrained by strong rules and due process. The RMA, related conservation legislation and the Crown Minerals Act all include decision-making by Ministers (whether through delegation to officials or directly). Such decision-

making processes provide checks and balances through public engagement, receiving evidence, and seeking good advice.

35. Many of these elements are absent from the Bill and lead to a scenario where bias and improper influence in decision-making could occur. Appeal rights are limited to matters of process and law only, not factual evidence. Given that the Bill is rather vague or open-ended on what constrains joint Ministers' decisions, litigation may ensue to place some boundaries around them.

36. What is also unusual in the Bill is the unprecedented power for Ministers to make decisions on a wide range of individual RMA-related consent applications. Such decisions are routinely taken by local councillors, hearing commissioners, boards of inquiry, and the Environment Court; or under the existing fast-track system, by independent consenting panels.

37. Being made at arm's length from Ministers avoids decisions being politicised, and underpins their legitimacy. People can accept decisions when they are reached through fair and proper processes, even if they do not like particular outcomes.

38. It is not common practice for a Minister to make decisions on another Minister's portfolio responsibilities, but this Bill enables that. Most disconcerting is that joint Ministers, including the Minister of Economic Development, can make a decision within the portfolio responsibilities of the Minister of the Environment without that Minister's involvement.

39. It is wrong that the Ministers responsible for primary Acts (e.g. the RMA) are excluded from decision-making on activities that will then have to be managed through those primary Acts once the fast-track approvals process is concluded.

40. Under Schedule 5, the Minister of Conservation is the decision-maker for Conservation Act and Reserve Act decisions. This is appropriate as this Minister and their department will have to implement and manage outcomes of these decisions on the lands they are responsible for managing day to day.

41. This is not the case for those Ministers (including Conservation, Environment) who are responsible for the management of the outcomes of decisions made under Schedules 4, 6, 7, 8, 9 and 12. While these Ministers (or their departments) may be consulted through the process, their comments can be disregarded by development-focused joint Ministers in their final decision-making.

42. There are three critical steps for decision-making under the Bill, which are addressed separately below.

Referral to expert panels

43. The first critical decision is whether a project can go through the fast-track process. This referral decision is made by the joint Ministers (except for projects listed in Schedule 2 Part A, which are automatically sent to expert panels). This decision is informed by criteria in the Bill and by comments from relevant local authorities, Ministers and Māori entities.

44. The eligibility criteria in clause 17 make clear that the Bill is about enabling significant regional or national development of almost any type, including for housing supply, economic benefit, primary industries, mining, climate change mitigation, natural hazard adaption, and significant environmental issues. Large-scale irrigation and energy development projects would be within scope of the criteria.

45. Clause 18 lists ineligible projects. There are provisions relating to Māori interests, particularly where they are landowners. Otherwise, there are only limited exceptions to what is eligible for fast-tracking.

46. Should the Bill proceed, it is critical that clause 18 (h) be clarified. It says that activities on land listed in items 1-11 and 14 of Schedule 4 of the Crown Minerals Act are ineligible for the fast-track process. This includes National Parks, nature reserves, scientific reserves and several other types of reserves and conservation land. On a plain reading, cl 18(h) applies when approvals are not actually being sought under the Crown Minerals Act – non-mining activities on Schedule 4 land would continue to be considered under their own primary legislation.

47. Should the Bill proceed, it should be made very clear that no Schedule 4 land is open to the fast-track process for either mining access (essentially surface mining) or non-mining activities (i.e. a longstanding status quo would prevail). This prohibition should include items 12 and 13 of Schedule 4 (referred to by omission in clause 18(h)), i.e. public conservation land in the northern part of the Coromandel Peninsula and the Peninsula's internal waters.

Expert panel recommendation process

48. Expert panels are already used under the RMA and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012. Generally these panels either make decisions or provide recommendations to Ministers. Their decisions or recommendations are binding, except under limited circumstances.

49. The existing processes provide for good decision-making. They generally enable submitters and hearings, therefore enabling multiple perspectives to be considered, not just those of applicants. Decision-making panels are typically

formed with a Judge, a relevant iwi member and two other panel members (a council appointment and a relevant expert). These processes provide assurance of reasonable scrutiny by a panel based on comprehensive evidence and advice coming before it.

50. Many projects under the Bill are likely to involve consent or permissions under a number of the primary Acts specified in the Bill. The likelihood that expert panel members will have expertise across all of these is slim.

51. The expert panel process is quite restricted in what it can do and the type of information it can gather and consider. Panels can seek comments and expert advice. However, of particular concern is the lack of mandatory requirements for panels to seek expert advice across multi-disciplinary matters they will be considering. It is possible they could feel constrained not to enquire too widely, by time limits or by how closely involved Ministers are in the decision-making process.

52. Various clauses in the Bill's Schedules outline matters to be considered. The RMA and conservation concessions under the Conservation Act use an avoid, remedy and mitigate hierarchy to assess and address effects. There is strong case law on how this is applied. The Bill replaces this well-tested hierarchy with terms such as " *.. to help prevent or reduce the actual or potential effect of the activity"* in Schedule 4, clause 13 (d) – implying that degrees of effect are still acceptable regardless of their scale. The meaning of such new terms will likely be tested in the Courts.

53. There is no longer a presumption that adverse effects should be avoided, let alone mitigated or remedied. There is no longer a balance being considered between environmental and economic drivers. These are all critical for ensuring our natural environment is protected from significant harm from development.

54. The Bill provides a variety of options to mitigate effects through financial compensation. Significant adverse effects can occur if the applicant is prepared to provide financial recompense as mitigation. This is particularly the case in concessions and land exchanges processes under the Conservation Act (refer Schedule 5, clauses 8 and 18(5)). The Bill provides more leeway for a proposal to be approved should compensation feature than existing laws do.

55. This has very little to do with fast-tracking a process, and is more about enabling development in places it would otherwise not be allowed. This could be interpreted as verging on corruption, if enough money sways the acceptance of a loss of threatened ecosystems in one place, on the basis of a promised future improvement of a different ecosystem or species elsewhere.

56. An expert panel is limited in considering climate change in its recommendations. In relation to environmental effects, Schedule 4 clauses 12–16 do not specifically require information to be provided on the effects of climate change. As this is one of the most critical crises facing the globe, it is absurd that any substantive development is not required to consider the role it may play in making climate change worse (or better). This matter must be considered by a panel and decision-making Ministers.

57. The Bill enables activities – such as energy generation, irrigation schemes and flood prevention systems – that respond to the effects of climate change; but it needs to be made clear whether these activities could exacerbate climate change in any way. For example, a new irrigation scheme, while providing a reliable water source in areas that are becoming drier, could completely modify hydrological systems and wetlands that are critical for carbon sequestration.

Joint Ministers decision-making

58. This is the most concerning part of the decision-making part of the Bill. Clause 25 outlines the process and matters the joint Ministers consider once they have received recommendations from the expert panel.

59. Clause 25(4) says that *"Joint Ministers must not decide to deviate from a Panel's recommendations unless they have undertaken analysis of the recommendations and any conditions …".* Clause 25(6) then says that the Ministers can seek their own additional information (not necessarily through the panel), and then make decisions to approve or decline the project.

60. This is highly concerning as any advice that joint Ministers seek does not require further testing or evaluation, and could be from any source and potentially go against what the panel is recommending. If joint Ministers don't like a decline or partial decline, they could overturn this because of some other advice they have asked for or received. This could be perceived as Ministers being exposed to improper influence or potential corruption.

61. This provision should be deleted entirely and joint Ministers should be bound by the recommendations of the panel.

Timeframes for making good decisions

62. Timeframes have been included throughout the Bill to ensure the process is completed quickly. While this may fit with the intent of fast-tracking and be expedient, it may not result in good decision-making.

63. For example, if an expert panel considering a project application needs further information to make a sound recommendation, the limited time to issue a recommendation (generally 65 working days after receiving an application) may be insufficient given the complexities of a large project. Meeting an unrealistic deadline, despite information about a project's effects being inadequate, will likely result in a recommendation of poor quality.

F. International Consequences

64. This Bill has been devised to promote and enable economic development, but there appears to have been little to no consideration of the potential economic impacts of the Bill on our international reputation and relationships.

65. The joint submission of New Zealand's eNGOs on the implementation of the NZ-UK Free Trade Agreement highlights what could occur when requirements of free trade agreements are not met. There has been no assessment to determine what the undermining of New Zealand's environmental laws may mean in terms of breaching these agreements.

66. The speed with which this Bill has been developed has not enabled thorough assessment of unintended consequences. A recent example that demonstrates how readily others can challenge our environmental laws is the Sea Shepherd New Zealand case lodged within the United States legal framework.

67. In a significant legal victory, Sea Shepherd Conservation Society and Sea Shepherd New Zealand jointly filed a lawsuit to protect the critically endangered Māui dolphin. This led to a United States Court of International Trade issuing a preliminary ban on imports of nine fish species caught off the west coast of New Zealand's North Island. The ban specifically targeted set-net and trawl fisheries operating in the Maui dolphin habitat, a critically threatened species.

68. The preliminary import ban (just recently revoked) was in place until the United States determined that New Zealand's regulatory programme for these fisheries is comparable in effectiveness to the United States programme.

69. This ruling sends a strong message that other nations do have the ability to impact our export markets should our environmental actions be found wanting.

70. Our environmental record internationally is strong and many of our country's largest corporates rely on this reputation in their markets. Our tourism sector is completely reliant on healthy nature and promotes us as strong guardians of New Zealand's natural wonders.

71. Several years ago, the World Heritage Committee formally warned New Zealand as a signatory to the World Heritage Convention that unconstrained development in the South-West New Zealand World Heritage Area was putting this classification at risk. This resulted from applications being considered for a monorail development and the Milford-Dart tunnel under our conservation laws. If the projects had been approved, New Zealand was at a real risk of being investigated and potentially losing the World Heritage classification.

72. The weakening of our environmental laws and regulations by the Bill would not go unnoticed internationally. If against our advice (and that of many others) the Bill were to proceed, further work would be urgently required to understand what it means in terms of treaties, agreements and other international obligations New Zealand has signed up to.

73. It would also be sensible to consider what the impact on our exporters may be if their international customers questioned the way in which they progressed large projects – if the projects negatively impacted native species, ecosystems, clean water, and the climate. Again, no proper assessment has been undertaken to understand these potential unintended consequences.

G. Conclusion

74. This Bill is an attempt by the Government to remove environmental protections in order to expedite development, and to enable development Ministers to make final decisions on approvals.

75. The Bill is poorly conceived, and has been rushed with little consideration of its wider impacts. Its ambiguities and inconsistencies would likely result in years of legal debate and litigation in the Courts.

76. The Bill should not be passed. Reforms to primary legislation that this Bill intends to displace, including the RMA, would be more appropriate but should follow robust analysis and engagement.

77. WWF-New Zealand appreciates the invitation to submit on the Bill. We would welcome the opportunity to speak to our submission in front of the Select Committee.