



LAWYERS FOR
**CLIMATE
ACTION**  NZ INC.

Submission on Fast-Track Approvals Bill

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Committee Secretariat, Environment Committee

Lawyers for Climate Action Submission on Fast-Track Approvals Bill

1 Lawyers for Climate Action NZ is an incorporated society with over 350 members from across New Zealand. Our members include Kings Counsel, barristers, solicitors, legal academics, and students. We use the law to enable more effective action on the climate crisis. We have no vested interest other than seeing New Zealand contribute to the goals of the Paris Agreement in light of the science of climate change as expressed by the IPCC. More information about us can be found on our website: www.lawyersforclimateaction.nz

2 We strongly oppose the Fast-Track Approvals Bill (**the Bill**).

3 While we acknowledge the desire for a more efficient consenting process, this Bill seeks to achieve this at the expense of the climate. Rather than attempting to strike any balance between climate and environmental outcomes and development, the Bill charts a path for increasing emissions and places New Zealand at significant risk of breaching its climate change obligations under domestic and international law. Significant amendments to the Bill are required.

4 While we are concerned with many aspects of the Bill, this submission focuses predominantly on climate-related issues and concerns.

Critical Climate Context

5 2023 was the hottest year on record.¹ Global emissions are not tracking in line with the emissions pathways required to meet the temperature goal of the Paris Agreement, and there is a rapidly narrowing window to reduce emissions to limit warming to 1.5°C above pre-industrial levels.² In practical terms, exceeding the 1.5°C goal means warming and rising oceans, increased frequency of extreme weather events, droughts, floods, and climate-related displacement of vulnerable people worldwide.

6 We are already seeing the consequences of the climate crisis in New Zealand, with Cyclone Gabrielle in 2023 causing significant harm. In New Zealand, under the most optimistic scenario (with no additional warming), by 2060 global sea levels will have risen by 20-30cm.³ For many places in New Zealand, even the best-case scenario means that a one in 100-year coastal flooding event will occur every year by 2060.⁴

7 The IPCC's 2024 Sixth Assessment Report warned that the climate impacts on people and ecosystems of continued global warming are more widespread and severe than expected and that future risks will escalate rapidly with every fraction of a degree of warming. The

¹ National Oceanic and Atmospheric Administration, "[2023 was the world's warmest year on record](#)" (12 January 2024)

² See [Technical Dialogue of the First Global Stocktake](#) UNFCCC/SB/2023/9 (8 September 2023)

³ NZ SeaRise: Te Tai Pari o Aotearoa, "[Sea Level is Rising Faster than We Thought](#)" (May 2022).

⁴ NIWA "[Planning for Coastal Adaptation](#)" (16 November 2023)

report noted that only “deep, rapid and sustained global greenhouse gas emissions reductions” will limit the most harmful climatic changes.⁵

“Some future changes are unavoidable and/or irreversible but can be limited by deep, rapid and sustained global greenhouse gas emissions reduction...Deep, rapid, and sustained reductions in greenhouse gas emissions would lead to a discernible slowdown in global warming within around two decades, and also to discernible changes in atmospheric composition within a few years.”

Relationship between the Bill and New Zealand’s emissions

8 The Bill does not require consideration of the impacts of a proposed project on climate change, New Zealand’s international climate change obligations, or New Zealand’s emissions budgets or targets under the Climate Change Response Act 2002.

9 Emissions and climate impacts are only mentioned once in the Bill, as one of the permissive considerations Ministers *may* consider when deciding whether to refer a project to an expert panel:

17 Eligibility criteria for projects that may be referred to panel

...

(3) In considering under subsection 2(d) whether the project would have significant regional or national impact, joint Ministers may consider whether the project:

...

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

10 Sub-clause 17(3)(g) is given no particular weight in the list of permissive considerations. Rather, cl 17 gives Ministers complete discretion to consider whichever factors in cl 17(3) they want. This includes factors that could be completely inconsistent with “climate change mitigation”, such as considering whether the project “will support the development of natural resources, including minerals *and petroleum*” (cl 17(3)(f)).

11 And while “climate change mitigation” is one of the listed permissive considerations, it is not a mandatory consideration under cl 17(2). This means that if Ministers consider it at all, it will be necessarily subsumed to other considerations, driven by an overarching, short-term, and highly subjective assessment of “significant regional or national benefits”.

12 While some fast-track projects may contribute to emissions reductions, such as renewable energy projects, the Ministry for the Environment’s Climate Implications of Policy Assessment Team has warned that “expediting infrastructure and development through fast-track approvals could lead to significant indirect emissions impact”.⁶

13 This is not surprising. It is not yet clear what specific projects will be included under Schedule 2A, an approach which we take significant issue with. However, the Government

⁵ IPCC AR6 Assessment Report, [Summary for Policymakers](#) (2023) at [B.3].

⁶ [Ministry of Environment's Supplementary Analysis Report](#) at [129].

has made clear that it intends to use this new fast-tracked consents process to enable many emissions-intensive projects, including:

- (a) construction of significant new roading projects, particularly 15 four-lane Roads of National Significance;
- (b) opencast coal mines; and
- (c) oil and gas drilling, pipeline and refining projects.

14 We are aware that other projects potentially referred to the new fast-tracked process include waste incineration factories, which create toxic pollution and heavy carbon emissions, seabed mining, and sand mining.

15 The Bill, as currently drafted, will likely lead to the construction of infrastructure ‘white elephants’ that would be a net cost to the economy and an unjust debt burden on future generations who will face even greater climate challenges.

16 At the very least, we urge the Government to:

- (a) require assessment of the direct and indirect impacts of each project on greenhouse gas emissions, and whether the project is consistent with the Government’s emissions reduction targets and Paris Agreement obligations. This should be a mandatory consideration under cl 17(2), and a matter which the expert panel should be required to give weight to when assessing proposed approvals and making recommendations;
- (b) require assessment of the extent to which each project assists in building long-term climate change resilience into our infrastructure, or is at risk of being lost or redundant due to the effects of climate change or the transition to a low-carbon economy;
- (c) include climate and environmental bottom lines in the list of criteria that would preclude referral of a project to the fast-tracked process under cl 18, such as whether the project would significantly increase greenhouse gas emissions.

17 We also consider that the Bill should ensure a greater level of expertise and engagement in climate and environmental matters when deciding whether to proceed with proposed projects. At the very least, the panels should be required to seek feedback from the Minister for the Environment, Secretary for the Environment, and Climate Change Commission.

Inconsistency with International Legal Obligations

- 18 We are very concerned that the Bill has not been assessed against New Zealand's international climate change obligations.⁷ This could be a costly and embarrassing mistake for the Government.

Paris Agreement

- 19 New Zealand is a party to the United Nations Framework Convention on Climate Change (**UNFCCC**) and the Paris Agreement.
- 20 The central aim of the Paris Agreement is to “strengthen the global response to the threat of climate change” by:
- “Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognising that this would significantly reduce the risks and impacts of climate change.”
- 21 In order to achieve this goal, signatories to the Paris Agreement must “aim to reach global peaking of greenhouse gas emissions as soon as possible” and agree to “undertake rapid reductions thereafter”.
- 22 Under the Paris Agreement, New Zealand agreed to set a nationally determined contribution (**NDC**) which it “intends to achieve”. New Zealand's first NDC is to reduce greenhouse gas emissions to 50% below 2005 levels by 2030 (**2030 NDC**). New Zealand also agreed to “pursue domestic mitigation measures” with the aim of achieving its NDCs.
- 23 The Paris Agreement is a legally binding international treaty. Under international law, New Zealand must perform its obligations under the Paris Agreement in good faith.⁸ The Paris Agreement also contains normative elements that can be said to establish obligations of conduct for each state party - due diligence obligations. These require state parties to exercise best possible efforts, and ultimately do the utmost, when pursuing domestic measures with the aim of achieving its NDC.
- 24 This Bill places New Zealand at real risk of breaching its Paris Agreement obligations. It takes New Zealand further away from meeting its 2030 NDC as many potential projects risk significantly increasing New Zealand's emissions.
- 25 New Zealand already intends to rely significantly on offshore mitigation to meet its 2030 NDC. Many of the kinds of projects likely to be fast-tracked under the proposed legislation will only *increase* New Zealand's reliance on offshore mitigation, given they will likely result in “significant indirect emissions”.⁹ However, because the Bill does not require any emissions modelling, the Government could be left flying blind in terms of the impact of proposed projects on New Zealand's NDC liability.

⁷ Ministry for the Environment, “[Departmental Disclosure Statement](#)” (1 March 2024) at 3.1.

⁸ Vienna Convention of the Law of Treaties, Art 26.

⁹ [Ministry of Environment's Supplementary Analysis Report](#) at [129].

- 26 This will come at a significant cost, and one which has not been budgeted for. In 2023, the Treasury estimated that the fiscal impacts of our emissions shortfall range from \$3-\$24Bn.¹⁰ If New Zealand opts not to pay for international offsets to meet the 2030 NDC, it could impact New Zealand's international reputation, with flow-on effects on our exporting industries, and access to international capital and low-interest sovereign debt. Any assessment of the economic impacts of potential projects should not ignore these costs.
- 27 Introducing a law to fast-track high-emissions projects without due consideration of their emissions impacts could also demonstrate a lack of good faith and due diligence when considering how serious New Zealand is about pursuing the domestic mitigation efforts required to meet its NDC. That would amount to a breach of the Paris Agreement.
- 28 We are also very concerned by the prospect that the Bill would enable the extraction of fossil fuels in New Zealand. Clause 17(3)(f) explicitly provides that when considering whether a project would have "significant regional or national benefits", the Ministers may consider whether the project "will support the development of natural resources, including minerals and petroleum".
- 29 This flies in the face of the extraordinary agreement reached at COP 28, where New Zealand agreed to "transition[] away from fossil fuels in energy systems... accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science".¹¹ Allowing fast-tracked consents for petroleum exploration is blatantly inconsistent with this commitment, which New Zealand only agreed to on 13 December 2023.

Free Trade Agreements

- 30 In addition to the Paris Agreement, the Bill could be inconsistent with, or place NZ in breach of several provisions in the NZ-UK, NZ-EU, and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CTPP) free trade agreements.
- 31 In the NZ-EU Free Trade Agreement, for instance, the Parties agreed to:
- (a) "ensure that its relevant law and policies provide for, and encourage, high levels of environmental and labour protection, and shall strive to improve such levels, law and policies" (Art 19.2(3));
 - (b) "effectively implement the UNFCCC and the Paris Agreement, including commitments with regard to nationally determined contributions" (Art 19.6(2)).

Article 19.6(3) clarifies that "A Party's commitment to effectively implement the Paris Agreement under paragraph 2 includes the obligation to refrain from any *action or omission that materially defeats the object and purpose of the Paris Agreement.*"

¹⁰ Treasury, [Climate Economic and Fiscal Assessment](#) (April 2023) at p. 86.

¹¹ Conference of the Parties First Global Stocktake (13 December 2023) at [28(d)].

- 32 These obligations are expressed in mandatory terms (“shall”).
- 33 Failure to comply with the Trade and Sustainable Development provisions of NZ-EU FTA gives rise to the possibility of trade sanctions. This could have significant implications on New Zealand’s major exporting sectors and international reputation.
- 34 This submission focuses on climate change, but we understand that there are significant trade-related risks relating to other environmental clauses in various Free Trade Agreements that give rise to similar risks, including the NZ-EU, NZ-UK, and CTPPP agreements.

Inconsistency with domestic emissions obligations

- 35 The CCRA sets a target for New Zealand to:
- a. reduce net emissions of all greenhouse gases (except biogenic methane) to zero by 2050; and
 - b. reduce emissions of biogenic methane to 24-47 per cent below 2017 levels by 2050, including to 10 per cent below 2017 levels by 2030
- (the **2050 Target**).
- 36 Part 1B, Subpart 2 of the CCRA also requires the Minister of Climate Change to set emissions budgets “with a view to meeting the 2050 Target” and “contributing to” the goals of the Paris Agreement. Emissions budgets must also be set “in a way that allows those budgets to be met domestically”.
- 37 It is concerning that this Bill does not enable or require any consideration of how fast-tracked projects might impact New Zealand’s emissions trajectory, emissions budgets, emissions reduction plan, or its NDC.
- 38 The emissions likely to result from the emissions-intensive projects likely to be approved under the Bill will make it very difficult for the Minister of Climate Change to comply with their obligation under s 5X of the Climate Change Response Act to “ensure” that the emissions budgets are met. The fact the Minister of Climate Change sits largely outside¹² the process created by the Bill will only make it more difficult, as will the lack of any requirement for emissions modelling or consideration of the emissions impacts of the projects.
- 39 As a result, the Bill arguably undermines the intent of the Climate Change Response Act, which was to create “clear and stable” emissions reduction policies across sectors that would enable New Zealand to meet its international obligations under the Paris Agreement. It risks creating a disjointed approach as New Zealand shifts towards a low-emissions economy.

¹² Aside from the Minister’s limited involvement under Sch 4, cl 20(3)(h)(ii).

- 40 It also appears very likely that the Bill will cut across and be inconsistent with the First Emissions Reduction Plan. Among other things, the First Emissions Reduction Plan identified that emissions from land transport need to reduce by 41% by 2035 from 2019 levels to achieve the emissions reduction targets in the Climate Change Response Act. The construction of the 15 Roads of National Significance alone, which could be enabled by this Bill *without* appropriate consideration of their emissions impacts, will make this target virtually impossible to achieve.
- 41 It would be a mistake for the Government to progress with the Bill in its current form without better aligning it with New Zealand’s bipartisan legal framework for climate change response. Failure to do so risks undermining the Climate Change Response Act framework.

Natural Justice and Procedural Concerns

- 42 Although this submission is largely focused on the climate-related issues with the Bill, we also are seriously concerned about several procedural elements of the proposed Bill. These include the following:

(a) *Lack of public engagement and transparency around Schedule 2A Projects*

Part A of Schedule 2 allows for projects to be referred straight to the Expert Panel, without requiring referral by the joint Ministers. The Bill, as written, is vague about the process, merely noting that “it is intended to add the lists at a later Parliamentary stage of the Bill”.¹³

The Government has in the last week established a Fast Track Advisory Group to provide independent recommendations to Ministers on which projects to include in Schedule 2A. The criteria by which the Advisory Group will consider potential listed projects is unclear and non-statutory.

The public has been kept in the dark about which projects are going to be listed in Schedule 2A. And it does not appear that the public will be given any opportunity to contribute to, or review, this process.

This lack of transparency is very concerning, particularly given this Bill enables Ministers to override decisions which have been made with significant public engagement and involvement, and judicial oversight.

(b) *Extraordinary discretionary powers granted to Ministers*

Under the Bill, the Ministers for Regional Development, Infrastructure and Transport are given extraordinary and highly discretionary powers to, among other things:

- (i) decide whether a project has “significant regional or national benefits”, a highly subjective assessment;

¹³ Explanatory Note to the Bill, Part 3, Subpart 2.

- (ii) refer a project to the expert panel;
- (iii) decide whether to follow an expert panel's recommendation and approve the projects.

Under cl 25(4), the Joint Ministers can “decide to deviate from a Panel’s recommendations” provided they have “undertaken analysis of the recommendations and any conditions included in accordance with the *relevant assessment criteria*”. This is an unhealthy amount of discretion to give Ministers, particularly as it is not clear what the “relevant assessment criteria” even are.

If the “relevant assessment criteria” are the same conditions as those listed under cl 17, that does not provide much comfort given the highly discretionary nature of those criteria, and their failure to give appropriate weight to climate and environmental considerations.

(c) *Lack of public engagement*

For referral decisions, there is no clear pathway for public involvement. We understand that this includes owners or occupiers of land that will be affected by the project. There are no notification requirements, let alone a requirement to invite submissions from those affected.

Once decisions have been referred to an expert panel, the panels are explicitly unable to seek wide input from the public on the project, instead only being required to obtain written comments from a limited range of affected parties. This raises natural justice concerns, as not all those affected by the proposed project will be given an opportunity to be heard.

For those who are involved in consultation with the panels, the time frames provided for under the Bill do not give enough time for meaningful engagement.

Recommendations

43 We urge the Government to:

- (a) Require assessment of the direct and indirect impacts of each project on greenhouse gas emissions, and whether the project is consistent with the Government’s emissions reduction targets and Paris Agreement obligations at the project referral, assessment, and decision-making stages.

We suggest amendments along the following lines:

17 Eligibility criteria for projects that may be referred to panels

...

(2) The joint Ministers must consider the following criteria:

...

(f) whether the project would have environmental or climate-related impacts, including the impact of the project on the Government's ability to achieve the emissions targets set out in the Climate Change Response Act and to meet its obligations under the Paris Agreement to contribute to global efforts to limit global warming to 1.5C;

...

Schedule 3, cl 1:

1 Function of expert panel

...

(2) In assessing proposed approvals, the panel must generally take into account, giving weight to them (greater or lesser) in the order listed, -

(a) the purpose of this Act;

(b) the factors listed in clause 17(2) and (3); and

(c) considerations under other relevant legislation.

Schedule 4, cl 32:

32 Panel considers applications and notices of requirement for listed and referred projects

(1) The expert panel must assess an application or notice of requirement for a listed or referred project, and any written comments received on the application or notice, giving weight to the following matters, if relevant

...

(g) any impacts of climate change on the project as well as any impacts of the project on, or contributions to, climate change adaption and/or mitigation over the short and long term.

- (b) Require assessment of the extent to which each project assists in building long-term climate change resilience into our infrastructure, or is at risk of being lost or redundant due to the effects of climate change or the transition to a low-carbon economy.
- (c) Include climate and environmental bottom lines in the list of criteria that would preclude referral of a project to the fast-tracked process under s 18, such as whether the project would significantly increase greenhouse gas emissions. We suggest:

18 Ineligible projects

A project must not include any of the following activities:

...

(m) an activity that would result in significant environmental or climate related harms.

- (d) Require the expert panels to seek feedback from the Minister for the Environment, Secretary for the Environment, and Climate Change Commission.
- (e) Amend the purpose of the Act to better reflect the need to balance climate and environmental considerations. The purpose clause does a significant amount of heavy lifting in the Bill, but is unduly narrow and out of step with comparable provisions in common law jurisdictions. The Ministry for the Environment also advised that the purpose, as currently drafted, could reduce operational efficiency and fail to effectively assess the full benefits of potential proposals.¹⁴ One alternative option is as follows:

3 Purpose

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 **in a manner that will enable New Zealanders' future well-being, including the transition to a low-emissions, climate-resilient economy, while continuing to promote the sustainable management of natural and physical resources.**

- (f) Reduce the extraordinary and risky level of discretion given to the Joint Ministers by giving final decision-making authority to the expert panels, as was preferred by the Ministry for the Environment.¹⁵
- (g) Given public consultation for the Bill is underway and no projects have been listed in Schedule 2A, *either* allow for meaningful public consultation on those projects before they reach Select Committee stage, or remove the ability for projects to be listed in Schedule 2A altogether.

44 We wish to be heard at any committee hearing for this Bill.

Signed on behalf of Lawyers for Climate Action NZ Inc:



Jessica Palairt, Executive Director

¹⁴ [Ministry of Environment's Supplementary Analysis Report](#) at p 24.

¹⁵ [Ministry of Environment's Supplementary Analysis Report](#) at pp 21-22.