



Environment Institute  
of Australia and  
New Zealand Inc.

19 April 2024

Committee Secretariat  
Environment Committee  
Parliament Buildings  
Wellington

## RE: Fast-track Approvals Bill

Dear Committee,

Thank you for the opportunity to make a submission on the Fast-track Approvals Bill. This submission has been developed collaboratively by the New Zealand Chapter of the Environmental Institute of Australia and New Zealand (EIANZ).

### About EIANZ

EIANZ is a not-for-profit, multi-disciplinary association of environmental practitioners. Our membership spans a diverse range of technical professions including scientists, policy makers, engineers, lawyers and economists. We advocate for environmental knowledge and awareness, and ethical and competent environmental practice.

EIANZ founded the Certified Environmental Practitioner (CEnvP) Scheme, Australasia's first accreditation scheme designed exclusively for environmental practitioners. Several members of EIANZ hold specialist CEnvP ecologist certifications. Three members residing in NZ are Fellows of the EIANZ recognising their contributions to environmental practice over several decades. These credentials are significant in the recognition of environmental practice in New Zealand.

### Our approach

The feedback expressed in this letter was developed through a consensus approach among interested practitioners within EIANZ at a digital workshop, and the outcome of that gathering circulated to all attending members and to EIANZ's New Zealand Chapter committee for comment.

### Submission Point 1: Supportive Positions

#### Purpose:

EIANZ supports the overarching principle of the bill, which seeks to enable a fast-track decision-making process that facilitates the delivery of infrastructure projects with significant regional or national benefits.

However, members expressed concerns around the inclusion of development projects, as we elaborate on in Submission Point 4. EIANZ members would be more supportive if regard for the environmental effects of the proposed project was captured within the purpose of the bill.

EIANZ recommends revising the Purpose as follows:

*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 and national benefits, while ensuring environmental effects are appropriately managed.*

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### Streamlining Approval Under Multiple Acts:

We are supportive of the ability to consider multiple Acts under one application under the proposed Fast-track Bill. EIANZ agrees that this could lead to comprehensive assessment of environmental effects and management to address effects on the natural environment, heritage and native species that our people treasure.

Members have raised that while 'Part 2, Subpart 1, Application of this Part to approval-processes in other legislation' lists nine different Acts and Regulations, it does not address which Acts and Regulations are afforded precedence when determining environmental effects and the best course of management.

EIANZ recommends Section 1 include a provision that where two or more Acts or Regulations need to be assessed and conditions set in any consent or permit, the Act or Regulation with the most stringent environmental or ecological assessment criteria and subsequent consent or permit conditions take precedence in the assessment.

### Best Practice:

EIANZ members are supportive of the inclusion of Schedule 6 – Wildlife Act clause (2)(d) which references the use of best practice standards when setting conditions. EIANZ members have debated the use of the terminology of "best practice", as it is a subjective term and can differ from practitioner to practitioner. We recommend the below addition to ensure consistency from project to project:

*(d) include conditions considered necessary to ensure that best practice standards (as defined by Department of Conservation) are met; and...*

### Seeking Further Comments and Information:

EIANZ is supportive of Clause 19 (4) which provides the ability for Ministers to invite comments from any other person. Our members strongly support all Ministers seeking comments from relevant persons and/or organisations.

Members are supportive of the ability of the Minister to seek further information under Clause 20(1). EIANZ does consider the phrase '*to be provided within the time frame specified in the request*' to be problematic as timeframes for responses must be sufficient to enable potentially complex and detailed information to be generated.

EIANZ is supportive of Schedule 3 Expert Panel Clause 10(4) and of all panels appointing technical advisers.

## Submission Point 2: Public Consultation and Hearing

### Overview

EIANZ is concerned that the Bill seeks to prevent and limit engagement with the general public and relevant organisations, both of whom may have valid concerns relating to environmental effects. Our members accept that the current submission and hearing process can be very time-consuming and expensive, but this does not justify the removal of the submission and hearing process.

EIANZ submits that the exclusion of the public and the lack of a requirement for a hearing substantially degrades the ability of the Expert Panel to make good decisions. We assume the Expert Panel will then be restricted to the information and assessments provided by the applicant when making their decision and recommendations.

### Importance of Submission and Hearing:

Submissions and hearing processes enable Hearing Commissioners or Expert Panels to extract information with which to make a robust and balanced decision.

EIANZ practitioners are regularly involved in developing submissions and presenting at hearings, and some members are Hearing Commissioners. The review of applicants' assessments and the provision of expert advice from other parties' experts provides a Hearing or Expert Panel with much more information with which to make a good decision.

Our members have significant concerns that without specialised evidence from other parties, the Expert Panel is constrained, and any decisions and consent conditions imposed are less rigorous regarding the technical/scientific backing. Furthermore, our members find that mediation and expert witness caucusing provides a very useful method to review any assessment of environmental effects and provides a much stronger set of agreed facts and points of dispute. This process can also provide a set of proposed consent conditions that can manage the environmental/ecology effects of a project.

EIANZ therefore opposes the wording of Schedule 4 Clause 23 and suggests that a hearing should be held, unless the Expert Panel can document that there is no benefit from being allowed to question the applicants' experts. The report writers of the Government and Crown entities should also be approached for comment. For the reasons set out above we have found that hearings can provide extremely useful avenues of enquiry for the Expert Panel.

EIANZ strongly advocates the following:

- If the Expert Panel under the Fast-track Approvals Act is unable to call upon submissions from outside parties and/or hold a hearing, this limits the decision making. As a minimum, a hearing should be held and the applicant's experts available for questioning by the Expert Panel. We also submit that the Government Department experts providing advice to the Expert Panel should be available to answer questions from the Expert Panel.
- The process should allow the applicant to request a hearing and for the applicant to indicate if there are parties they wish to receive submissions from in that hearing.

### Timeframes:

EIANZ does not support the 10-working day limitation for the provision of written comments from invited persons. This is for several reasons:

- Invited parties may not have the technical expertise or expert staff to review all or even parts of an application and may need to employ technical assistance and/or experts to conduct and review and make comments. Our members often have notable workloads which may limit the invited parties' ability to engage credible experts. This makes achieving the tight timeframes required here difficult, if not impossible.
- This timeframe reduces the likelihood that the written comments provide valuable points for the expert panel to consider.
- We also note this time frame is inflexible with regard to the scale of the application. Major applications with large-scale effects will take longer to review and comment on. Reviewers often need access to raw data or models, and these must be provided by the applicant or their experts. Unless an application includes all the data and models, this information must be requested and provided by the applicant. This information seeking process can consume more than 10 working days.

EIANZ members have suggested following amendments:

- That the invited parties have 20 working days to provide written comments once they have confirmed they have the technical or expert reviewers available.
- If additional data that the applicant has used for their application is required for the review and to make comments (e.g. models and data), the working days limitation is paused until the requested information has been provided by the applicant.
- The EPA has the power to extend the timeframe where valid justification is provided and where the Expert Panel agrees with the justification.

### Submission Point 3: Panellist Expertise

#### Missing Experience:

EIANZ is concerned that the Expert Panel does not require ecological expertise and Schedule 3 Clause 7(e) only mentions that conservation expertise may be required if appropriate. Based on our members' experience across projects that could be covered under this legislation, we cannot conceive of any possible project that would not require an understanding of ecology. We submit that the Expert Panels will be fundamentally flawed, and any decisions and consent conditions will subsequently be flawed. We do not accept that a Fast-track process should have no ecological experts on an Expert Panel.

To this effect, EIANZ recommends a revision to Schedule 3 Clause 7 (1) (e):

*ecological expertise panel member is required on all expert panels.*

#### Qualification/Certification:

EIANZ is concerned that the Expert Panel is being asked to consider matters under nine different Acts and Regulations as well as any requirements of the Fast-track Approvals Bill but may not be qualified to do so.

Our members suggest the following:

- All Expert Panel members must complete the Making Good Decisions Course
- All Expert Panel members must be accredited by their professional body organisation (i.e. EIANZ, CEnvP, NZPI, IPENZ).

### Submission Point 4: Additional Matters

#### Schedule 1 and 2

EIANZ is concerned that Schedules 1 and 2 remain blank at this stage. This is a key part of the Act and the absence of actual projects seeking consent limits our ability to provide any submissions on actual project being considered.

Given this limitation we recommend that projects that have already been through a consent process and been declined, and further declined at Environment Court or High Court proceedings, are not included in these Schedules. The existing consent process has already shown such project to be 'un-consentable'.

#### Inclusion of Development:

Based on our members' reading of the Bill, especially Clause 17, we are concerned that a very limited number of projects could not be considered to meet the criteria laid out for the joint Ministers to consider. As stated within Submission Point 1, EIANZ is generally supportive of the overarching principle of providing a fast-track route for infrastructure. The provision of infrastructure can, when done well, provide wider benefits for New Zealand and the environment.

However, our members' experience of development is that outcomes vary greatly from development to development, or developer to developer. Many of us can recall a development where the prioritisation of profit over the environment has resulted in poor environmental outcomes, which in turn resulted in adverse effects on New Zealanders. Lessons from the recent weather event should not be forgotten – the country is littered with examples of poor environmental outcomes leading to adverse effects to New Zealanders.

Furthermore, including development within the purpose of this Bill has the potential to slow down the processing of infrastructure projects, as private development could significantly outnumber infrastructure projects. This bill should prioritise projects that benefit the greatest number of New Zealanders while at the same time protecting the environment that we all rely on.

Therefore, our members strongly recommended the removal of 'development' from the purpose of the Fast-track Bill.

In closing, our members are not opposed to the overarching goal of the Fast-track Approvals Bill but have significant concerns. We have provided recommendations to refocus the Bill to carefully balance the benefits to New Zealanders with protecting the environment.

EIANZ would welcome the opportunity to work with the Committee, MfE and the EPA on this issue should the opportunity present itself.

Yours sincerely,



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