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WAIMAKARIRI DISTRICT COUNCIL SUBMISSION ON THE FAST-TRACK APPROVALS BILL 2024

1. Introduction

- 1.1 The Waimakariri District Council (the Council) thanks the Environment Committee for the opportunity to provide a submission on the Fast-track Approvals Bill (the Bill).
- 1.2 We note it was first read by the 54th Parliament on 7 March 2024 and is open for submission until 19 April 2024. This submission provides some background about the Waimakariri District and outlines the Council's position on the Bill with our reasons, and amendments requested.
- 1.3 The Council is supportive of the need for resource management systems reform. The Resource Management Act 1991 (RMA) is now over 30 years old. Procedurally it has become increasingly complex and costly as the number of planning instruments and information requirements to be considered in preparing plans and processing resource consent applications, has grown.
- 1.4 However, we are concerned that this Bill, in its current form, may not deliver the Government's specified objectives of cutting through bureaucracy and fast-tracking decision-making process that will facilitate the delivery of regionally and nationally significant infrastructure and development projects.
- 1.5 We encourage the Government to reconsider its approach and perhaps slow down its pace of developing this piece of legislation to allow the opportunity for a comprehensive consideration of not just the Bill but also the list of projects in Schedule 2A.
- 1.6 At a summary level, our recommendations to the Select Committee are:
 - a. In principle, we support the Bill with some reservations as highlighted in this submission.
 - b. The purpose of the Bill be amended and expanded to include provisions around safeguarding the environment, and the recognising of local knowledge, experience and priorities.
 - c. Projects that are explicitly prohibited by the RMA and District Plans be made ineligible for consideration, or if they are made eligible, there should be a framework for environmental safeguards.

- 1.7 With this in mind the Council seeks to make the following general points of submission. Detailed feedback on the Bill and its provisions are set out in the appendix document that accompanies this letter.

2. Background

- 2.1 Waimakariri District is located in the Canterbury Region, north of the Waimakariri River. The district lies within the takiwā of Ngāi Tūāhuriri, a hapū of Ngāi Tahu. It extends from Pegasus Bay in the east to the Puketeraki Ranges in the west, sharing boundaries with Christchurch City to the south, Selwyn District to the south and west, and Hurunui District to the north.
- 2.2 The Waimakariri District is geographically diverse, ranging from provincial townships such as Rangiora and Kaiapoi, through to the remote high country farming area of Lees Valley. Eighty percent of the population is located in the east of the district and approximately 60 percent of residents live in the four main urban areas of Rangiora, Kaiapoi, Woodend/Pegasus and Oxford. The remainder live in smaller settlements or the district's rural area, including approximately 6000 on rural-residential or rural 'lifestyle' blocks.
- 2.3 The district's population increased from 33,000 to 62,800 in the years 1996 - 2020 and is estimated now in 2024 to be just over to 71,000. This makes Waimakariri District the fourth largest territorial local authority of Te Wai Pounamu/ South Island, with a population larger than Invercargill City, Nelson and the Queenstown-Lakes District.
- 2.4 Geographically, socio-culturally, and economically the Waimakariri District has a strong agricultural base and rural outlook. People and visitors alike identify with and are attracted to a 'country lifestyle'. However, the district's proximity to Christchurch City means it has a significant and growing urban and 'peri-urban' population.
- 2.5 As a territorial local authority, the Council is the administering body for its locality. It has under statute responsibilities for diverse functions alongside providing a wide range of services that directly impact on the lives and safety of its residents.
- 2.6 This includes developing and managing the District Plan under the RMA. The District Plan sets rules for sustainably managing how people use, subdivide and develop land, what and where they can build and what kind of activities they can undertake. The Plan also controls any adverse effects an activity could have on the neighbourhood and protects the uniqueness of our district by looking after our heritage, cultural values, outstanding landscapes and coastal environment.

3 Summary of Position and Recommendations

- 3.1 The Council supports a review of the RMA. We support actions to make the planning process more streamlined; and to make resource consent and planning processes less costly and time-consuming.
- 3.2 We agree that there is merit in streamlining the multiple consenting and permissions processes that would apply under a range of legislation that are typically required for large and / or complex projects into one.

- 3.3 However, we think there is a risk that expedient decision-making could be prioritised at the expense of vital environmental considerations. This risk is particularly cogent given that the purpose and provisions of the Bill will take primacy over other legislation - like the RMA, and by extension over the environmental bottom lines approach that underpins RMA decision making.
- 3.4 We believe that a complete repeal and rewrite of the purpose and principles of the fast-track approvals process may not be the most efficient option. We submit the Government's objectives may be better achieved by amending the existing fast-track process under the RMA, or at least retaining its purpose and amending it to better deliver expected outcomes.
- 3.5 Council supports the requirement for projects to comply with Treaty settlements and other obligations before being referred to the expert panel. We recommend that a similar compliance assessment be undertaken in respect of potentially relevant environmental outcomes, including consistency with existing statutory provisions.
- 3.6 We think it is appropriate that the joint Ministers are aided in their decision making by an expert panel who will consider application to the FTA process and make recommendation to the Ministers. However, we are concerned about the skills and expertise that panel members will possess and their process of selection.
- 3.7 At present, any parties (including local authorities) invited by the joint Ministers to provide comments on a fast-track application must do so within 10 working days. This time frame is very short and limits Council's ability to consult with external stakeholders or seek professional advice in its comments.
- 3.8 We support the expert panel including a representative from the relevant territorial authority when a matter is being considered from that authority's area. Applying local district knowledge would be advantageous to the decision making of ministers, and reflect local knowledge, priorities and aspirations.
- 3.9 We suggest that power is highly concentrated with Ministers who can reject panel recommendations and choose to proceed down a different path. It also appears that the Minister for the Environment and the Parliamentary Commissioner for the Environment appear to have no regulatory function despite them bearing responsibility for the long-term safety and health of New Zealand's environment. We would suggest that consideration be given to adding at least the Minister for the Environment to the joint Ministerial panel.
- 3.10 The eligibility criteria are very broad, and therefore a large number of projects may be eligible for referral. Furthermore, the list of eligible projects that are to be listed in Schedule 2A, and therefore able to proceed straight to panel consideration without needing referral, has not been made available for public scrutiny as part of this public consultation phase.
- 3.11 From what we gather projects will be assessed against how consistent they are with the purpose of the Bill, i.e., whether they provide significant regional or national benefits; and activities that are prohibited under the RMA are specifically made eligible. These activities often have significant adverse environmental or human health effects. We therefore recommend, at a minimum, the development and adoption of clear environmental limits to manage cumulative effects that may arise. It would be appropriate for consideration be

given to any unintended social, cultural and economic effects that may arise from such projects.

3.11 We would have valued more time to consider in more detail the proposed FTA to ensure the purpose and provisions of the Bill adequately meet the expectations of our community. What we submit is the best we could do within the timeframe allowed.

3.12 As per 1.6, our recommendations to the Select Committee are:

- a) In principle, we support the Bill with some reservations as highlighted in this submission.
- b) The purpose of the Bill be amended and expanded to include provisions around safeguarding the environment, and the recognising of local knowledge, experience and priorities.
- c) Projects that are explicitly prohibited by the RMA and District Plans be made ineligible for consideration, or if they are made eligible, there should be a framework for environmental safeguards.

Our contact for service and questions is Syliva Docherty – Senior Policy Analyst (03 266 9173 or sylvia.docherty@wmk.govt.nz).

The Council would like to speak in support of its submission.

Yours faithfully



Dan Gordon
Mayor
Waimakariri District Council



Jeff Millward
Chief Executive
Waimakariri District Council

APPENDIX: DETAILED SUBMISSION

1.0 Overview of the Bill

- 1.1 As noted above, Council is supportive of the need for resource management systems reform. We commend the Government for their commitment to a comprehensive reform process and look forward to supporting the transition process as it evolves. However, we are concerned that the provisions of this Bill are far reaching and require a more deliberative and collaborative process than has been allowed for thus far.
- 1.2 We support the principle of replacing multiple planning processes with a single, integrated approach to managing consents and permissions that would be required for large and / or complex projects of regional or national significance. However, we do not agree that this should occur in a process that reduces RMA and other legislative considerations to a distant second. We consider that a more streamlined and truly speedy fast-tracking process would result from a process that gives an appropriate level of consideration to other matters beyond the purpose of the Bill and thereby limits the risk of litigation or perverse unintended consequences.
- 1.3 We encourage the Government to reconsider its approach and perhaps slow down its pace of developing this piece of legislation. We agree that there is a need for a decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits.
- 1.4 As the Bill is currently worded, there is a clear hierarchy of criteria, where its development-focused purpose is dominant. This means environmental safeguards in the purpose and principles of the RMA, national direction, and council plans/policy statements are second order considerations. This creates the risk of undermining the purpose and principles of the RMA and yielding perverse outcomes.
- 1.5 It is Council's position that slowing down the process of passing this legislation will allow time for a robust consideration of the proposed measures and a thorough analysis of any unintended consequences. Furthermore, slowing down the development process of the Bill, will allow time for the list of Schedule 2A projects to be completed and made available for public consideration as well.

2.0 Project Eligibility

- 2.1 The Bill provides for projects listed under Schedule 2A to bypass the criteria for referred projects and go straight to the expert panel for consideration. There is however no guidance available on the criteria that will inform how these projects are chosen and the list of eligible projects has not been made available for scrutiny as part of the Bill's consultation.
- 2.2 Fast tracked projects can involve activities which are prohibited under the legislation like the RMA. Examples in Canterbury could include the discharge of effluent and hazardous substances on land near water and drinking water, excessive nitrogen on farmland and damming the Ashley Rakahuri River. We recommend that the Bill be amended to limit the ability to over-ride prohibited activity status; or at a minimum require stringent safeguards to limit the risk of perverse or environmentally adverse outcomes.
- 2.3 Furthermore, referred projects have to meet "nationally or regionally significant benefits" criteria which are currently not clearly defined and therefore raise the risk of misuse. We note that the Bill lists sectors in which projects may be considered significant, but there is

very little detail on the criteria against which these projects will be assessed. The legislation should provide a clear and unambiguous definition of what is considered nationally and regionally significant. This will also provide safeguards to ensure that the Bill does not result in outcomes that contravene the Bill of Rights Act or international climate change agreements.

3.0 Decision-making Process

- 3.1 We support the requirement that the expert panel must include one person nominated by Council and one person nominated by iwi. However, there is no requirement for any of the panel members to have knowledge, skills, and expertise relevant to environmental management or pertinent legislation like the RMA or the Conservation Act. We are also concerned the requirement for panel convenors to consult with Ministers when appointing panel members may limit the independence that would be expected of the expert panel.
- 3.2 Since the purpose of the Bill is to streamline and accelerate the approvals process for large and / or complex projects of significant benefit, we consider the extent of Ministerial involvement required through this process may end up serving as a hindrance to the desired speed. The scale, complexity and potentially large number of applications that may be lodged will generate administrative complexity and the process of funnelling them through for Ministerial approvals, may ultimately serve to be a bottleneck.
- 3.3 Good governance requires genuine consideration of the roles of governance and management, and that the provisions of the Bill as it is currently worded raises the risk of direct political involvement in an approval process that should otherwise be an evidential one. We agree that Government's role should be setting broad based national planning policy and legislation, but less so in assessing and determining individual development approvals.
- 3.4 All projects, either listed or referred, are required to be assessed by expert panels who then make recommendations to joint Ministers on whether projects should be declined or approved, and what conditions should be applied. Ministers in turn reserve the right to accept or decline the panel's recommendations. Council recommends that decision-making should be by the expert panel. However, if the position remains that Ministers get the final say on declining or approving projects, we recommend that there should be clear guidance on what matters of discretion must be considered if they choose to go against the panel's recommendation.

4.0 Localism and Public Participation

- 4.1 Local governance or localism - being decision-making at the level closest to the community affected, is recognised internationally as fundamental to delivering effective democracy (Hartwich, 2013). *Ārewa ake te Kaupapa – Raising the Platform, Review into the Future for Local Government Interim Report (2021, p.8)* states that, "local authorities play a critical role in the country's system of democracy, providing for people's voices to be heard in the leadership of their communities and the delivery of local services and assets." However, the proposed Bill promotes increased centralisation of decision-making and by-passes many of the key tenets of localism.
- 4.2 WDC champions the importance of localism and local knowledge in infrastructure planning and regulation. New Zealand is geographically diverse, and our regulatory history is full of examples of the difficulties of a 'one size fits all' approach to regulation and the adoption of generic rules that are not universally appropriate. More recent

examples of difficulties with centralised regulation include the suitability of national environmental standards for air, plantation forestry and freshwater as they apply in some areas; and the appropriateness of Medium Density Residential Standards (MDRS) in Tier 1 and Tier 2 local authorities under the Resource Management (Housing Supply) Amendment Act 2021. We consider the provisions of this Bill are in a similar vein as some of these regulatory approaches.

- 4.3 We are however pleased to note that the Government has challenged some of these provisions and has pledged to introduce legislation to address the others. We are also heartened by the Government's localism driven approach to its Local Water Done Well programme and urge that a similar ethos be applied to this legislation.
- 4.4 We note that the Bill is creating a process of decision-making which is centralised, with top-down control by Government. This approach of centralisation is apparent in the powers given to the joint Ministers including:
- a. referring applications
 - b. determining referral applications from the panel
 - c. making substantive decisions on fast-track applications
 - d. selection of panel conveners and panel members
 - e. dismissing panel conveners
 - f. choosing to accept or reject the panel's recommendation.
- 4.5 We note that the Bill will remove local decision making for projects likely to have the most impact on the local community and environment. As a Council, we would encourage a greater level of local decision making and advocate for a localism-based approach. We support the expert panel including a representative from the relevant territorial authority when a matter is being considered from that authority's area. Applying local district knowledge would be advantageous to the decision making of ministers, and reflect local knowledge, priorities and aspirations.
- 4.6 We encourage greater opportunities for public participation in planning and resource consent decision-making. The Bill provides reduced opportunities for public participation by:
- a. Not allowing public or limited notification of applications.
 - b. Not requiring hearings to be held, although it does not forbid them.
 - c. Not allowing parties to be able to comment on any new information provided by applicants.
 - d. Limiting appeal rights to points of law only.
- 4.7 Public participation in local authority decision-making is a key facet of democracy and a requirement under the Local Government Act 2002. There is the risk that the provisions of the Bill will constrain the public's ability to meaningfully participate in a process that potentially limits the enjoyment of their private property rights – a position that this Government has made clear that it enshrines. We therefore recommend that the Bill be amended to reconsider the opportunities for public involvement.
- 4.8 We also request that the right to appeal restrictions be lifted and opportunity be granted for appeals on social, economic and environmental grounds for all parties.
- 4.9 The 10 working days timeframes by which Councils must provide comments is very short, particularly as this is coupled with the fact that extensions cannot be sought and there is no assurance that late comments could be considered. This greatly limits our ability to comment on applications in an informed way which in turn raises the risk of conditions

needing to be amended afterwards, resulting in variation applications. Truncated timeframes can impact the quality of outcomes (for all parties) and decision making.

- 4.10 As a Council we have firsthand experience of this scenario arising as part of the COVID-19 Fast-track approvals process and would be keen to avoid a repeat. We request an increase in the timeframes for providing comments; and for the expert panel to have scope to suspend timeframes when further information is required or when parties are having to respond to complex applications.

5.0 Environment

- 5.1 The Ministers of Infrastructure, Transport and Regional Development are the three joint Ministers with final decision-making authority. The makeup of the joint Ministers' portfolios suggests a strong emphasis on economic development with limited focus on environmental and climate matters.
- 5.2 We note that the Minister for the Environment and the Parliamentary Commissioner for the Environment appear to have no regulatory role in this Bill despite them bearing responsibility for the long-term safety and health of New Zealand's environment. We suggest that the Minister for Environment be included in the joint Ministers, as this will hopefully go a long way towards assuaging concerns that have been raised about the risk of damage to the environment.
- 5.3 Ministers can, but are not obliged to, decline an application if there are significant adverse effects. We are concerned that this is a high threshold and implies that moderate adverse effects are acceptable. There is also no requirement to consider cumulative effects of projects, therefore, some areas may experience increased environmental effects as a combination of projects add to them.
- 5.4 Council notes that the Bill does not appear to require any assessments of projects in line with the provisions of any international agreements that New Zealand is party to. We recommend that a requirement be inserted for projects under consideration to be assessed against international agreements for climate change and the environment.