# Submission to the

# Environment Committee

# Fast-Track Approvals Bill

April 2024



Objective ID: A15778833

## Introduction

1. Tauranga City Council (**TCC**) welcomes the opportunity to submit on the Fast-Track Approvals Bill (Bill).

2. If there is an opportunity, TCC would like to be heard by the Committee.

3. We are available to discuss our submission further with you or provide additional information and evidence that would be of assistance. Enquires should be directed to:


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## TCC supports the general aims of the Bill

4. TCC supports the general intent of the Bill to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefit. TCC welcomes legislation that could be used to provide greater certainty for projects needed to meet significant urban growth pressures and existing housing shortfalls. It goes without saying that this should be done in a way that achieves good environmental outcomes and provides appropriate levels of input from other parties, especially Tangata Whenua.

5. As with other high-growth councils around New Zealand, TCC has experienced challenges associated with effectively responding to growth pressures under the current planning system which have contributed to Tauranga's acute housing shortfall and our infrastructure deficit. TCC welcomes change to approval processes that assist in quickly meeting urban growth demands, developing land for residential and business purposes, and providing much needed infrastructure to service our city and its development in the interests of promoting ongoing economic and social well-being. Specifically, TCC supports the following aspects of the Bill:

    - The inclusion of non-complying activities in the fast-track consenting process.
    - The identification of projects in Schedule 2 of the Bill which provides certainty for those projects. TCC is currently considering projects it may wish to progress through a fast-track approvals process.
    - The provision for approvals under the following legislation:
        - Reserves Act 1977
        - Public Works Act 1981
        - Heritage New Zealand Pouhere Taonga 2014.

6. For the most part the drafting of the Bill seems to be sound and fit for purpose. However, to ensure the best possible outcomes, TCC seeks some amendments. The key matters we wish to address are:

    - Tauranga has a significant shortfall of housing and is working on a number of projects to enable additional housing. We seek that the Bill provides further clarity in *clause 17*, on the scale of housing required to meet the eligibility criteria for the fast-track consenting process.

- Ensuring that development contributions under the LGA can be required for consents granted under this legislation in accordance with council development contribution policies as if the consents had been granted under the RMA.
- Introducing a new subclause under *clause 39* to provide large greenfield or infrastructure projects with a consent lapse time of five years.
- Introducing a an expediated rezoning process for approvals granted and implemented under this legislation (e.g. for housing development consented on rural land)
- Addressing cross boundary jurisdictional issues.
- Resourcing for Iwi/Māori to provide feedback on fast-track proposals will be an issue given the tight timeframes and limited resourcing.
- Introducing a requirement for a pre-application meeting with relevant Local Authorities for all proposed fast-track consents.
- *Clause 4* identifies the meaning of 'Joint Ministers' in this Bill which does not include the Minister for the Environment. TCC considers that the Minister for the Environment could be included in the final decision making for fast-track consents which relate to wind, hydropower or mining projects.
- Introduce a standardised process for councils to recover costs and clarify what happens if an applicant does not agree with estimated costs.

7. TCC also notes that the aim of the Bill is to create a single process for all consents and approvals required for a project. We endorse this approach and raise the issue whether all relevant approvals have been identified and incorporated into the legislation. We have identified two potential oversight regarding:

    - **road stopping** processes which does not seem to be provided for in the Bill and in our experience are often required in greenfield urban development projects.
    - **boundary change** processes between councils where growth and development occurs on the edge of a city but in the adjacent council jurisdiction.

## Context and background

### Tauranga City Council is a high-growth Council and Faces Challenges with Growth Management

9. Tauranga is New Zealand's fourth smallest territorial authority by land area. It has experienced exceptional growth driven by a range of factors, with this growth expected to continue in the future. According to Statistics NZ Estimated Resident Population (ERP) as of 30 June 2022, Tauranga had an estimated population of around 157,900 people[1]. Over the next thirty years, this is expected to increase by 54,800 to a population of 212,700. This requires a further 30,000 homes to be delivered on top of an existing housing shortage of around 5,000 homes.

10. TCC is a high-growth Council, facing numerous challenges and competing priorities that require careful consideration and balance through the planning process. These include:

    a) Substantial urban development pressures;
    b) Dependence on landowners to release land for development;
    c) A housing shortage and high housing costs;

[1] The latest available Stats NZ ERP for Tauranga City is 161,800 people as of 30 June 2023.

d) Limited housing diversity;
e) Lengthy *Resource Management Act 1991* (**RMA**) timeframes for re-zoning potential development areas;
f) Significant landscape, ecological and natural hazard constraints; and
g) Substantial transport issues, including dependence on the planning, funding and delivery of NZTA State Highway projects to enable urban development is some locations.

11. TCC is working to resolve growth pressures through a range of initiatives. At a strategic level TCC and the wider western Bay of Plenty SmartGrowth Partnership undertook joint spatial planning with government agencies through the Urban Form & Transport Initiative (UFTI) project to develop a 50 to 100-year vision and masterplan for urban development and transport infrastructure to meet community needs. This is currently being updated through the SmartGrowth Strategy review (which incorporates our 30-year Future Development Strategy) which is expected to be formally approved by the SmartGrowth Partnership Governance Group in April 2024 and by the partner Councils in May 2024.

12. TCC has a strong interest in accelerated pathways to bring forward development in areas identified for development, such as opportunities that this Bill may provide.

## Effectiveness of the Bill to effectively enhance urban growth and economic recovery

13. This section outlines issues we think exist with the drafting of the Bill and options for consideration to address these issues.

*Clause 17 Eligibility criteria for projects that may be referred to panel*

14. As noted above, Tauranga has a significant shortfall of housing and is working on a number of projects to enable additional housing.

15. Developers, other housing providers and TCC itself may seek to utilise the fast-track approvals process for projects directly related to providing housing and urban development. However, it is unclear in *clause 17 - Eligibility criteria for projects that may be referred to panel,* the threshold for housing and urban development projects to meet the eligibility criteria for the fast-track consenting process.

16. We seek that *clause 17* of the Bill is amended to clarify the scale of housing required to meet the eligibility criteria for the fast-track consenting process. It is noted that the meaning of 'regionally significant' will differ based on the context of each region, for example the size of a housing project in the context of a Tier 1 high growth Council is likely to look different than a housing project in a Tier 2 or 3 Council with low or no growth. Further, in locations with housing shortfalls (like Tauranga) smaller scale housing developments may create greater benefits and be more significant than in locations with sufficient development capacity.

17. It is unclear if and how the Bill recognises supply of business land. Tauranga has a shortfall of business land, and we seek to ensure the legislation enables regionally and nationally significant business land proposals to be eligible.

18. One option to clarify the eligibility criteria for both housing and business, is to introduce a new subsection, under *clause 17,* which states that a project is considered to have significant regional benefits for the purpose of *subsection (2)(d)* if it addresses a housing or business land need or shortfall identified in the Housing and Business Development Capacity Assessment and/or the Future Development Strategy completed in accordance with the National Policy Statement – Urban Development (NPS-UD).

19. It is also unclear to us whether the eligibility criteria are sufficiently broad to apply to some activities which bring significant regional benefits. For instance, whether reconsenting or new consents for municipal water takes or wastewater discharges would be eligible for consideration. These consents are the backbone of councils 'licence to operate' reticulated water networks for existing and future residents but they relate to existing infrastructure rather than new infrastructure. Our experience is that these reconsenting process can be difficult and contentious and take numerous years to complete.

20. Additionally, we suggest that careful thought is given to whether it is appropriate for activities classified as prohibited activities in a District Plan to be eligible for the fast-track process. The inclusion of a prohibited activity in a district plans generally requires councils to step through a rigorous process and is used as an extreme measure. The inclusion of prohibited activities in the Bill has the risk of undermining that process. For example, it may be a prohibited activity to build beyond a building restriction line in an erosion zone, to ensure that risk to human life and property is reduced.

| Issue | Submission | Outcome Sought |
|---|---|---|
| It is unclear what scale of housing will be considered regionally significant. | Amend | • Clarify the scale of housing that is required for a project to be considered regionally significant e.g. it would help address a shortfall identified in an Housing and Business Assessment or a Future Development Strategy.<br>• Introduce a new subsection, under *clause 17,* which states that a project is considered to have significant regional benefits for the purpose of *subsection (2)(d)* if it addresses a housing or business land need or shortfall identified in the Housing and Business Development Capacity Assessment and/or the Future Development Strategy completed in accordance with the NPS-UD. |
| It is unclear whether business land projects are eligible for consideration | Amend | Ensure criteria provides for business land projects of regional or national significance to be eligible for consideration, e.g., projects that address shortages identified in a Housing and Business Assessment or projects identified in a Future Development Strategy completed in accordance with the NPS-UD . |
| It is unclear whether reconsenting or new consents for water takes and wastewater discharges are eligible | Amend | Ensure the eligibility criteria are sufficiently broad to cater for these activities which relate to existing infrastructure. |
| Inclusion of prohibited activities under the RMA | Consider | The inclusion of prohibited activities in district plans is difficult to implement, used sparingly and generally included as an extreme measure. Reconsider if prohibited activities under the RMA should be eligible for the fast-track process. Potentially this could be addressed by introducing a stronger 'gateway' process for prohibited activities as part of the application process including assessment of why the activity is prohibited and what the case is for this to be overridden. |

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| The wording for clause 17(5) could be improved. | Consider | If prohibited activities are retained, consider rewording the clause 17(5) to remove the double negative. For example, the clause could be written as follows:<br><br>(5) A project that includes a prohibited activity under the Resource Management Act 1991 is eligible. |

*Development Contributions*

21. Development contributions fall under the Local Government Act 2002 (LGA), and this includes provisions to enable development contributions to be required on resource consents. Development contributions are an important funding stream for many councils, and they ensure that councils can recover the cost of delivering the necessary infrastructure to support housing and business development.

22. It is important that councils have a mechanism to require development contributions on consents granted under this legislation as if they were granted under the RMA. Given the way the Bill has been drafted, there is no direct reference to development contributions. As a result, we think this issue may have been overlooked. We note that this matter was effectively addressed in the drafting of the Housing Accords and Special Housing Areas Act (HAASHA), which has now been repealed, by providing that subpart 5 of Part 8 of the Local Government Act 2002 applies, with all necessary modifications, in relation to a resource consent granted under that Act. TCC seeks that the same approach is used in this Bill.

23. It is noted that in the case of HAASHA, consents were granted by councils and under this Bill they will not. As such additional provisions would also be required to:

    a. Ensure early engagement between councils and applicants in respect of development contributions that would be required; and

    b. Ensuring consent issue is aligned with issuing of Development Contribution Notices and invoices.

| Issue | Submission | Outcome Sought |
|---|---|---|
| *Development Contributions* | Amend | Provide for the consideration of development contributions in the same manner as this issue was resolved in the drafting of the Housing Accords and Special Housing Areas Act (HAASHA). Note the requirement for additional provisions will also be required to:<br><br>a. Ensure early engagement between councils and applicants in respect of development contributions that would be required; and<br><br>b. Ensuring consent issue is aligned with issuing of Development Contribution Notices and invoices. |

24. Notwithstanding this recommendation, if unplanned or out of sequence development is approved through the proposed fast-track process it is likely to result in a substantial under-collection in the cost of growth with costs being cross-subsidised by ratepayers.

25. As the infrastructure investment to service these areas would not been planned for, it will not be included in the council's development contributions policy. Following a successful FTA application, the council can make plans for the necessary infrastructure investment and amend its development contributions policy accordingly. However, a council can only charge the contributions from the development contributions policy that were operative at the time the consent application was lodged. As a result, consents lodged as part of an FTA application will not be liable for contributions under the new policy. The share of the costs of the required infrastructure that the developer would otherwise pay would have to be met by ratepayers. This would be inconsistent with the principle that growth should pay for growth.

26. Development contributions, our main growth funding tool, are based on cost recovery and therefore require a full infrastructure planning response to recover the share of the costs of cumulative infrastructure. Implementing a Development Contributions Policy that responds to the urbanisation of an area or adequately includes infrastructure required to service the growth of an existing urban area requires significant technical work, public consultation, and Council approval.

27. Developments that proceed ahead of an updated Development Contributions Policy will not be paying their fair share towards growth infrastructure creating a funding gap.

28. Auckland Council have addressed this matter in some detail in their submission. We support Auckland Council's submission in this regard and the potential options suggested to address this matter so that the growth pays for growth principle can be upheld.

| Issue | Submission | Outcome Sought |
|---|---|---|
| *Development Contributions* | Consider | Consider and respond to the issues identified in the Auckland Council submission and implement solutions that will ensure the growth pays for growth principle is upheld for unplanned and out of sequence development that progress through a fast-track process. |

*Consent lapse period*

29. Revise *clause 39(9)* to provide large greenfield or infrastructure projects with a consent lapse time of five years. An approved resource consent for large infrastructure projects provides certainty, which is needed to then secure financing and funding to enable the project to proceed, which in our experience often requires more than two years' time. 5 years is also the default period in the RMA.

30. Additionally, for Greenfields, other matters such as external infrastructure delivery can sit outside the control of the applicant and in our experience can take longer than two years to resolve.

| Issue | Submission | Outcome Sought |
|---|---|---|
| Large projects typically take longer to implement than 2 years | Introduce | Introduce new clause or section that provides large greenfield or infrastructure projects with a consent lapse time of five years.<br><br>Consider the ability for the lapse period to be reviewed to avoid consents and approvals lapsing and projects having to be reconsented. |

*Aligning District Plans with development that occurs through this process*

31. There are likely to be projects accepted and approved through the fast-track process that are misaligned with current zoning in a District Plan e.g., a consent for housing on rural zoned land.

32. To resolve this misalignment would require a Plan Change under the RMA to the District Plan. As we all know, the standard Schedule 1 Plan Change process is lengthy, cumbersome, and costly and would not seem appropriate where consents have been granted and implemented. An alternative pathway to rezoning land is recommended if a plan change is identified as necessary.

33. It would be beneficial to provide Local Authorities with the ability to amend their District Plan through a similarly fast-tracked approach. One option is the Streamlined Planning Process (SPP) as an alternative to the standard Schedule 1 process to provide flexibility in the plan change process and certainty of timeframes.

| Issue | Submission | Outcome Sought |
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| *Approved fast-track consents that require a plan change* | Introduce | Provide a pathway for projects that are approved through the fast-track consent and need a subsequent plan change to have automatic approval to use the SPP (or other appropriate fast-tracked rezoning approach). |

*Cross Boundary Matters*

*34.* The SmartGrowth partnership addresses growth at a strategic sub-regional level. While the jurisdictional boundaries of TCC and Western Bay of Plenty District Council (WBOPDC) determine which territorial authority has the legal obligations and responsibilities in their respective areas, the overall approach to growth is approached in a joined-up manner.

*35.* There are a number of arrangements which the Councils have previously, and likely in future will, put in place in terms of:

- residential and business land in WBOPDC connecting into and utilising TCC owned infrastructure (including water and wastewater).
- boundary changes occurring as rural land just outside Tauranga City's boundary is identified and rezoned for residential or business purposes.
- funding arrangements associated with infrastructure capacity provision across territorial authority boundaries.

*36.* The Fast-Track Approval Bill should contemplate and provide for these situations.

| Issue | Submission | Outcome Sought |
|---|---|---|
| Fast-track applications may be located outside of the TCC jurisdictional control, yet require infrastructure servicing and possibly appropriate to transfer via a territorial boundary adjustment | Amend | • Initial screening for eligibility to include strengthened criteria addressing infrastructure capacity and integration. Sections 14 & 17 strengthened to ensure any project approved has fully addressed infrastructure capacity, expansion and integration issues (including funding).<br>• Provide for the joint Ministers or Expert Panel to, where appropriate, give approval for any necessary underlying territorial boundary adjustment. |

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| | | • Provide for an expediated boundary change process between local authorities to enable integrated servicing and revenue collection (including development contributions and rates) |
| Development Contributions for developments outside a Council's boundary | Amend | Provide for development contributions to be charged where developments are approved within one Council's jurisdictional area which will utilise infrastructure in another Council's area.<br><br>This will enable recovery where there are cross boundary arrangements between Councils for the provision and utilisation of shared infrastructure. |

*Resourcing for Iwi/Māori*

37. TCC notes that under *clause 21 General provisions relating to invitations given under clause 20(2) (clause 21),* written comments must be received by the expert panel within 10 working days after the date on which the invitation is given under clause 20.

38. TCC supports the requirement for the panel to invite comment from relevant Iwi authorities, however, the Bill should consider the level of resourcing required for Iwi authorities to be able to work through the complicated projects and provide comment within the tight timeframe.

39. In our experience tangata whenua are involved in several projects in parallel. We agree with the assessment undertaken in the supplementary analysis report for this Bill that tangata whenua will have to either forgo being able to comment on their interests or to forgo the other matters they had resourced to prioritise responding to the fast-track consent. We consider that the tight timeframe, as proposed, could hinder meaningful engagement with tangata whenua.

| Issue | Submission | Outcome Sought |
|---|---|---|
| Tight timeframe for Iwi/Māori to provide comment will likely prevent meaningful engagement. | Amend | Consider increasing the timeframe for Iwi/Māori to provide comment to 20 working days. |

*Pre-application meetings*

40. Consider introducing a recognised and established pre-application meeting requirement between the applicant and the relevant councils. A pre-application meeting would provide:

    a. the applicant and councils to consider the needs of the project, in terms of infrastructure provision, capacity of existing strategic services, upgrades required for transport, stormwater, water and wastewater systems, and the amount of development contributions that would be required.

    b. opportunity to discuss how the proposed project aligns with relevant standards/codes for infrastructure published by relevant local authorities and infrastructure companies.

    c. councils with the opportunity to see and understand an application before it is lodged, allowing councils to plan for the resourcing of the application, which would be beneficial given the tight response timeframes for fast-track applications.

d. the applicant guidance on collating all relevant information prior to lodging the fast-track consent, thus ensuring a more efficient process.

| Issue | Submission | Outcome Sought |
|---|---|---|
| Risk of limited or no communication between councils and applicant. | Introduce | Introduce pre-application meeting requirements for all fast-track consents. |

*Consider amending the definition of 'Joint Ministers' to include the Minister for the Environment (Clause 4, Interpretation, Joint Ministers)*

41. As proposed, the term Joint Ministers '*means the Minister for Infrastructure, Minister of Transport, and Minister for Regional Development, acting jointly*'.

42. Additionally, the Bill recognises that the Ministers responsible for the Wildlife Act 1953 and the Crown Minerals Act 1991 are included in the Joint Ministers in relation to an approval under those acts.

43. It is unclear in the Bill if and when the Minister for the Environment will be involved in the final decision of a fast-track consent. Given some projects may have significant environmental effects consideration should be given to the involvement of the Minister for the Environment, in relation to projects such as mining, wind farms or hydro power.

| Issue | Submission | Outcome Sought |
|---|---|---|
| Ministerial decision-making | Consider | Include the Minister for the Environment in the Joint Ministers for projects likely to have significant environmental effects such as mining, wind farms or hydro power. |

*Cost-recovery*

44. Consider introducing a standardised process to make it simpler and clearer for Councils to recover costs via the expert panel rather than directly. This would help Councils recover their costs, but also simplifies the process for applicants.

| Issue | Submission | Outcome Sought |
|---|---|---|
| It is unclear how councils will recover costs. | Introduce | Introduce a standardised process for councils to recover costs and clarify what happens if an applicant does not agree with estimated costs. |

## Clarification sought

45. This section identifies queries which TCC seeks clarification on.

*Scope of input required from local government*

46. The Bill does not define the type or scope of input required from Local Government. It would be efficient in terms of timeframes and costs, to have standardised and defined input being sought from councils. Under the current fast track legislation, if the Panel does not have specific questions, general comment is requested. Defining and refining the scope and nature of this input

would allow for much more effective and useful comment from councils and alleviate resourcing issues for councils.

*Seeking further information*

47. If the Panel has the ability to seek further information, can those providing comment also seek further information from the applicant via the Panel?

*Resourcing*

48. Clarification is sought on how the Bill will be resourced. Delivering larger volume of complex projects within compressed timeframes will require significant resourcing and it is currently unclear how the process will be resourced.

## Summary

49. We thank you again for the opportunity to make comments on this Bill and we trust our comments and suggestions will assist in creating a robust and useful final product.
50. We would like to reiterate our support to this Bill and its importance in addressing a costly and inefficient RMA system that is holding Tauranga and the nation back.
51. We would also like to reiterate the importance of achieving the right balance so that the environment is protected and input from other parties, especially Tangata Whenua, is appropriately incorporated into projects that proceed through a fast-track approvals process.