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Environment Committee
Parliament Buildings
Wellington
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19 April 2024

Submission of Aotearoa Water Action on the Fast-Track Approvals Bill

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AWA opposes the Bill

AWA would like the opportunity to speak to this submission.

1. Committee Members, thank you for hearing our submission on the Fast-Track Approval Bill.
2. AWA is a not-for-profit organisation that was incorporated to challenge water bottling consents granted by Environment Canterbury. We have significant experience working with the RMA and the appeal processes in the Environment Court and higher courts. AWA's Charter emphasises the importance of democratic processes in protecting water. It supports constitutional transformation in Aotearoa that entrenches Te Tiriti o Waitangi and the protection of environmental values and human rights.

3. This Bill has been difficult to read. It feels like we've jumped in a time machine and landed back the 1970s. So much good work is at risk of being undone. Yes, we need to be able to build critical infrastructure - but not anywhere at any cost. And not without safeguards against Ministerial power.
4. This Bill fails to provide any environmental, social, or cultural safeguards. It vetos every piece of environmental protection this Country has put in place and puts us and our water - and ultimately our economy - at significant risk.
5. AWA's submission is brief and will focus on our areas of experience – which are freshwater, community consultation, and consenting under the RMA. However, we strongly support the much broader submission made by the Environmental Defence Society. It is a well-considered submission touching on many issues, including some of the unintended consequences for New Zealand's economy. We hope you read it at least once.

Undermining the RMA

6. This Bill is not just **a way to avoid the delays often associated with** the RMA's processes; it is **a way to avoid the protections** that the RMA and local plans and policy statements provide to **communities and the environment**. The RMA is imperfect, but any piece of legislation that attempts to balance competing priorities will be perceived as problematic. It should be improved and there will be different opinions about how to do that, but for a number of reasons it shouldn't be undermined. The RMA allows people to have a say on development and environmental protection (so it plays a role in guarding against disenfranchisement); it provides a level of protection for the environment, for communities, and for future generations; and it provides a level of certainty or predictability to property owners.
7. The following sections and clauses of the Bill illustrate the extent to which the RMA and local planning would be undermined if the Bill passes:
 - Eligibility criteria to apply for referral (in s17) are broad and there is no requirement to weigh the costs and benefits of a proposal - including social, cultural, economic and environmental costs and benefits.
 - Clause 34(4)(b) allows a Panel to recommend that an application be granted even if the proposal includes prohibited activities and regardless of what type of activity the application is for.
 - The Bill overrides the 104D RMA gateway test which prevents consent being granted to non-complying activities that cause effects that are more than minor and that are also contrary to the objectives and policies in the relevant Regional and District Plans.

- Clause 32, Schedule 4 requires the Panel to consider an application and all information by giving the most weight to the purpose of the Fast-Track Consenting Act. That purpose takes precedence over the purpose of the RMA. That means that if you support this Bill, the legislation will place ‘nationally and regionally significant infrastructure and developments’ above the well being of people.
- Clause 32 also places the broad purpose of this Bill above the very detailed and considered Plans that Councils have developed with input from their communities and the Courts.
- Clause 32 will therefore also have the effect of overriding decades of case law.
- Clause 20 prevents the Panel from requiring public or limited notification.

The impact on freshwater

8. This Bill provides no protections for freshwater. All protections put in place by regional councils will be overridden by the new legislation - including rules preventing the discharges of specific contaminants (sediment, chemicals, and nutrients) to water or land, the taking of water in fully and over-allocated catchments, and so on.
9. The outcome of that might look like: more rivers, streams, and beaches you can't swim in; drinking water that requires increasingly expensive treatment processes; undrinkable water where treatment can't remove contaminants; water restrictions where there is insufficient water for community supply; collapsing aquifers (our free underground storage and treatment 'reservoirs'); salt-water intrusion into depleted aquifers; the degradation of water ecosystems and the ecosystems supported by water; and so on. This could happen in your town, to your families, or to your favourite beach or river.
10. Iwi will have a say on applications and so will Councils, but 3 Ministers will have the power to make decisions that put large developments - even ones that generate nothing more than jobs – ahead of carefully-developed Council policies and rules, including prohibitions that protect water and communities.
11. As an example of what could occur, a foreign company could make an application for a large water bottling development - saying it will create hundreds of jobs in regional New Zealand. We know this story well. And even if the rules prohibit water being taken because the catchment is fully allocated, the proposal could gain consent from the three Ministers. It would be extraordinarily difficult to appeal on a point of law because the purpose of the fast-track legislation overrides the RMA (and all the plans that sit under it). And the discretion of the Ministers is almost absolute.
12. So, we are asking that you consider all of the things that *could* happen if this Bill is passed. Consider all the potential unintended consequences of turning this Bill into

law. And perhaps even think about your own drinking water supply and all your favourite places while you do that.

The ability to appeal

13. The RMA was built on the principle of public input. It allowed applications for development that were previously impossible and so public engagement was considered a critical check and balance in the process. Under the RMA, the community has input into planning processes, opportunities to submit if applications are notified, and rights of appeal to the Environment Court and higher courts.
14. In stark contrast, this Bill overrides the policy and rule framework developed with community input, and it prevents public and limited notification (Clause 20 Schedule 4). It *does* allow for appeals on points of law for those with standing – including those with an interest greater than the general public - but it's not clear how environmental and community groups would know a decision had been made in time to meet the very limited timeframes to appeal to the High Court (just 15 working days).
15. In addition, given that the purpose of the Bill overrides the purpose of the RMA and all the plans that sit beneath it, there will be little scope to appeal. Except perhaps for iwi, and that may be an unfair and unmanageable burden.
16. Given the above, the Bill lacks meaningful protection against the misuse of Ministerial powers and that's hugely concerning. Communities affected by these decisions, with very little power to act as kaitiaki and protect what matters to them, *will* feel disenfranchised.

Recommendations

17. AWA urges the Committee to recommend declining the Bill. It does not enable a 'fast track' - it is an alternative track that overrides every environmental protection we have. This Bill is so dangerous - to people, the environment, and our democracy - that we hesitate to recommend changes. However, we will make the following short points:
18. The purpose of the Fast Track Bill should not carry more weight than the purpose of the RMA.
19. Prohibited activities must remain prohibited. There are very few in council Plans and they are prohibited for very good reasons – usually the decisions to apply that activity status have been made by the Courts. Don't allow the Bill to override those rules.

20. Special protections *must* be put in place to protect aquifers, and all fresh water. Freshwater is the lifeblood of ecosystems, communities and our economy. The consequences of overriding existing protections could be catastrophic.
21. Require meaningful checks and balances. Ensure there are meaningful rights of appeal, by including timeframes and decision notification requirements that support the ability to appeal.
22. And finally, protect the integrity of our government and our democracy by including limits to the powers of the 3 Ministers. Recognising that lobbying is not regulated in this country.

Thank you for considering our submission.