

18 April 2024

Environment Committee

## **FAST-TRACK APPROVAL BILL SUBMISSION**

This submission is made on behalf of the Hawke's Bay Regional Planning Committee (HBRPC). Nothing in this submission negates the positions taken in individual submissions of Post Settlement Governance Entities, whom are all members of the HBRPC.

The HBRPC is opposed to the Fast-track Approvals Bill as it is currently drafted. HBRC understands the opportunity to make consenting process more efficient for major projects. At the same time the committee seeks to ensure that the proposed legislation upholds the Hawke's Bay Regional Planning Act (2015).

We wish to be heard in support of our written submission.

### **Hawke's Bay Regional Planning Committee Act 2015**

The HBRPC is a statutory joint committee of the Hawke's Bay Regional Council established by the Hawke's Bay Regional Planning Committee Act 2015 and constituted under Schedule 7 of the Local Government Act 2002.

The HBRPC was established as a result of Treaty settlement redress agreed firstly in the 2010 Ngāti Pāhauwera Deed of Settlement and subsequently in the 2013 Maungaharuru-Tangitū Deed of Settlement.

The purpose of the HBRPC is to improve tangata whenua involvement in the development and review of documents prepared in accordance with the Resource Management Act 1991 for the Hawke's Bay Region. The HBRPC is a successful co-governance group for the management of natural resources in Hawke's Bay. The Act provides for equal membership with 10 elected council representatives and 10 tangata whenua representatives. All RPC members have full speaking and voting rights. The HBRPC can only be disestablished with the unanimous written agreement of the appointers.

PSGE Membership of the RPC includes:

Tātau Tātau o te Wairoa

Ngāti Pāhauwera Development Trust

Maungaharuru-Tangitū Trust

Mana Ahuriri Incorporated

Tamateā Pōkai Whenua

Te Kōpere o te iwi o Hineuru Trust

Ngāti Ruapani ki Waikaremoana

Te Kotahitanga o Ngāti Tūwharetoa

Tūhoe Te Uru Taumatua

### **Existing fast track legislation**

HBRPC notes there has been fast-track consenting legislation in place since 2020 and this has been used to successfully facilitate the delivery of infrastructure and development projects with significant regional or national benefits across the Hawke's Bay region, including successful residential development projects.

The existing fast-track pathway has, in part, been successful with support from the local community because it has provided a streamlined process balanced with effective engagement with local authorities, local communities and tangata whenua. The existing process has ensured successful

projects have been through a robust independent assessment process that realises both the benefits of the projects while also managing environmental effects. In essence, providing for both the economy and the environment with the support of local communities and tangata whenua. The process under the existing legislation has worked reasonably well.

### **Fast-track Approvals Bill 2024 (the Bill)**

The HBRPC has significant concerns that as currently drafted, the proposed legislation is inconsistent with both the HBRPC Act, the Ngāti Pahauwera and Maungaharuru-Tangitū Treaty settlements.

The HBRPC acknowledges the provisions in the Bill intended to provide iwi with opportunities to participate, including clause 6 that requires all persons exercising functions, duties and powers to act in a manner consistent with existing Treaty settlements. However, the broader operation of the bill, such as allowing the joint Ministers to approve projects, even when the expert advisory panel has recommended against approving the application - including for activities deemed to be prohibited activities in regional plans, the restrictive timeframes, uncertain funding of iwi participation is inconsistent with the HBRPC Act and the Treaty settlements this HBRPC is founded upon.

Centralising decision-making authority in the joint Ministers, including where the joint Ministers have the power to approve projects that the HBRPC has determined are prohibited activities, undermines the authority and effectiveness of the HBRPC and therefore the Treaty settlements this HBRPC is founded upon.

The HBRPC also submits that, while it supports the recognition of existing Treaty Settlement interests in the bill including in clause 6, the rights and interests of iwi and hapū guaranteed under Te Tiriti o Waitangi extend beyond the redress negotiated in existing Treaty settlements. This

includes the rights and interests of iwi and hapū who are yet to settle with the Crown, and applicants for customary rights under the Marine and Coastal (Takutai Moana) Act 2011 who have not yet had their applications considered.

HBRPC seeks changes to the Bill to broaden the Treaty of Waitangi obligations. The legislation must take into account the principles of the Treaty of Waitangi and uphold iwi and hapū rights and interests through inclusion of a Treaty principles clause; and enable non-settled iwi and hapū the same access to the fast-track process and consultation obligations as settled iwi.

### **Obligations relating to The Deed of Settlement the Crown and Ngāti Pāhauwera and between the Crown and Maungaharuru-Tangitū**

The Crown has made clear commitments in Treaty settlements with iwi in the Hawke's Bay region to provide meaningful participation in management of natural resources and the taiao. The HBRPC Act acknowledges the rights and interests of tangata whenua in respect to natural resources in the Hawke's Bay region. As currently drafted, the Bill will undermine and be inconsistent with the Crown's existing commitments.

In considering and recommending policies and rules of the the HB Regional Policy Statement, HB Regional Resource Management Plan and HB Regional Coastal Environment Plan (and their future replacements). These plans acknowledge the rights and interests of tangata whenua in respect to natural resources in the Hawke's Bay region. Measures such as prohibited activity status represents an informed policy decision that effects of certain activities are unacceptable to the community in Hawke's Bay and any adverse effects cannot be avoided, managed or mitigated. A fast-tracked project should not usurp the direction of the HBRPC particularly given that there is no specific requirement for any consultation or expert evidence on the effects that undertaking a prohibited activity would have on the receiving environment.

HBRPC notes that the Bill does not expressly exclude prohibited activities in Clause 18 and submits that the draft legislation should be amended to **expressly exclude activities prohibited by a national environmental standard, regional or district plan and note this exclusion in Clause 18 'Ineligible projects.'**

### **Māori rights and interests in the Hawke's Bay Region**

The Crown has acknowledged the rights and interests of Māori in the natural environment within legislation to varying degrees for decades. The Crown has obligations under Te Tiriti o Waitangi Treaty of Waitangi to provide for and protect Māori rights and interests in relation to resource management legislation and policy development. The Bill in its current form fails to provide for and protect the existing rights and interests of iwi and hapū in relation to resource management.

Clause 13 proposes a report that will summarise the impact of the application on various aspects of existing Treaty settlements. HBRPC is concerned that the responsible agencies will not have the capacity nor capability to do this. This concern is based on our previous experience and lack of central government understanding of the unique aspects of the HBRPC Act.

HBRPC submits that the draft legislation should be amended to **broaden the obligations to take account of the principles of Te Tiriti o Waitangi Treaty of Waitangi and to uphold iwi and hapū rights and interests through inclusion of a Treaty principles clause; and enable non-settled iwi and hapū the same access to the fast-track process and consultation obligations as settled iwi.**

It is also currently unclear whether Treaty settlement entities will have the capacity or time to comment on any clause 13 report within the timeframes in the bill. In accordance with the intent of the HBRPC Act 2015, the HBRPC recommends that Treaty settlement entities must be given the opportunity and appropriate time to comment on and review the report.

## Amendments sought

In addition to amendments already sought in this submission the HBRPC makes the following comments.

HBRPC supports the requirements in clause 16 for applicants to undertake engagement with relevant iwi, hapū and Treaty settlement entities; Takutai Moana applicant groups and relevant local authorities; and provide a record of the engagement and statement of how it has informed the project. The HBRPC notes however there is no obligation on applicants to ensure consultation is undertaken in a timely manner, nor is there any provision for costs of engagement to be met by the applicant.

The HBRPC submits that costs for iwi and hapū participation, including cost recovery for consultation must be provided for within the legislation, as it does for a local authority, the EPA, responsible agencies and other agencies. Tangata whenua will incur significant costs in responding to requests for engagement, as well as seeking to protect their rights and interests more generally under this Bill. The bill needs to ensure tangata whenua are able to access sustainable funding to cover their participation in any process under the Bill, including provisions for cost recovery from applicants and funding from central government budgets. Tangata whenua should not be bearing the costs of participating in this process to protect their rights and interests.

The HBRPC supports clause 19 of the proposed legislation and submits that, the timeframe for providing feedback should be extended to 20 working days, rather than the 10-working day timeframe currently in place for providing comments. Ten working days is not enough time to provide substantial advice on the cultural effects of a project, particularly given the significance of the infrastructure contemplated by the Bill.

Clause 21 - HBRPC submits that, if an application is inconsistent with a Treaty settlement, that means that the application must, rather than may, be declined. To not do so would be inconsistent with the provisions of section 6 of the proposed legislation. The HBRPC further recommends that clause 21(2)(a) should maintain the ability for joint Ministers to decline a project if any part of it is inconsistent with a Mana Whakahono a Rohe or joint management agreement.

The HBRPC opposes Schedule 3 section 2, in particular the primacy given to the FTA bill over other relevant legislation. Giving greater weight to the FTA bill over the purpose and provisions of other relevant legislation means existing Treaty Settlements, which give effect to the principles of the Treaty of Waitangi and provide for Māori rights and interests in respect to natural resources, and which are based on and linked to the existing legislation are undermined and breached. This is an unconscionable approach from the Crown.

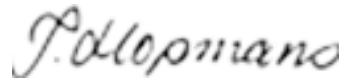
HBRPC is concerned about the exclusion of participation of iwi and hapū, councils and the public, from the application and referral process. A range of fundamental considerations would consequently not be available to the expert advisory group. The framework would offer a more balanced and transparent process of consideration were it open to public submission. Should this process remain, particularly the Track A process, HBRPC submit that the criteria for listing these projects be included in the Bill.

HBRPC also submit that eligibility criteria should be made mandatory. Projects already declined through other processes and re-presented in their same form must be ineligible. Allowing such projects to be considered would not offer a “fast track”, but a back door for effects already found to be unacceptable.

Naku noa, na



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