



Employers and Manufacturers Association (EMA)

Submission to the Environment Committee on the Fast Track Approvals Bill

April 19, 2024

Introduction

The Employers and Manufacturers Association (EMA) sees the Fast-track Approvals Bill as a necessary but not enduring addition to the tangled mix that is resource consenting in New Zealand.

We support the fast-track approach, with some reservations, but only as a short-term measure to kick start the delivery of critical projects in the near term.

The EMA has long campaigned against the Resource Management Act (RMA) as an overly complex, expensive, inefficient legislative instrument that serves as a hand brake on business and economic development while failing to actually provide the protection for the environment that it was intended to deliver.

Our joint campaign with a number of like-minded organisations to reform the Act was eventually successful. Unfortunately, it was replaced with another complex piece of legislation that contained a number of terms and relatively vague definitions that would have likely faced years of challenges in court to define, with resultant long and costly delays for many much-needed infrastructure projects and other developments.

With its stated goal of delivering infrastructure more quickly, the current Government has scrapped the recent replacement legislation, reverted to the pre-2023 RMA, and is seeking to introduce new fast-track legislation to enable large-scale and national interest projects to skip the unwieldy processes of the 1991 Act.

While understanding the desire to revert to the devil-you-know of the old legislation, with its jurisprudence in place and terms now well defined, the EMA believes it, and the current Fast-track Approval Bill, should only be temporary while a longer-term piece of legislation is drafted.

Preferably that new legislation will have cross-party support to prevent the rapid shift we have just witnessed, and will enable faster consenting for large-scale infrastructure without the need for fast-track approval or Ministerial intervention.

The EMA makes the following suggestions to improve the Fast-track Approvals Bill:

The Bill should lapse as soon as full replacement resource management legislation is passed in Parliament.

Previous Ministerial-led decision making has led to High Court challenges and unintended consequences.

Then Environment Minister Chris Carter saw his decision not to grant consent to the Whangamata Marina overturned by the High Court, while more recently Minister David Parker's rapid drive to introduce new freshwater standards saw quarrying development effectively stopped for two years while that unintended consequence was unwound through new legislation.

Even with the best of intentions, this desire for fast resolution can lead to poor or unintended outcomes.

The current fast-track proposal should have a specified life, or a sunset clause tied to the passing of new RMA replacement legislation.

Add a stronger Environmental component to the Ministerial approval group and to the Advisory Board.

The three Ministers installed as the decision makers all come from what might be termed the "harder edge" of the economic and development side of the Ministerial line-up.

It is worth considering either the Environment or Conservation Ministers as full-time members joining the

Ministers of Transport, Infrastructure and Economic development on the Ministerial decision-making panel given that the environmental impact should be a consideration in any decision.

Similarly, it is worth considering a heavily credentialled and recognized environmental expert to the current advisory panel.

Make it clear how decisions are reached

These are likely to be issues clarified when the final bill is drafted, or in the accompanying regulations, but it remains unclear how projects will be classified into either the **2a** or **2b** categories and does the panel need to explain why?

Similarly, if a project does not make the fast-track approval process, then it should be explained why not? Presumably if it is accepted for fast-track and then is approved, the approval and conditions will be made public.

There is a need for a transparent process. One of the problems with Ministerial approval is the perception that “pet” projects will be a priority by individual Ministers, so it needs to be very clear how these decisions are reached and why?

It is also unclear the mechanics of how those decisions will be reached by the Ministerial panel. Is it a majority decision or should it be unanimous?

Timeframes should be known

One of the major issues with consenting processes in recent years is the lack of certainty around timeframes for consents.

Many of the projects submitted for Fast-Track approvals will be large-scale and complex but those proposals should also be at a stage where they are fully developed and have clearly met the fast-track criteria. If they don't meet those two tests, then it is reasonable to assume they won't be forwarded to the Advisory Board and beyond.

There are also tight timeframes for the Advisory Board to make its recommendations to the Government panel, so there will need to be room for extensions should further information be required.

In these cases, the onus should be on submitters. If the Advisory Board asks for clarification or additional information within a set timeframe, and that deadline is not met or the request is not satisfied, the application should either be rejected or go to the back of the queue for reassessment.

The timeframes for decisions from the Advisory Boards do appear very tight and may need to be revised given the likely rush of projects into the fast-track process and the complexity of those projects.

It is noted that there is no timeframe given for advice from relevant ministries or for a decision from the Government panel. Both need to be defined as there is little point in creating a fast-track approval pathway that still has an open-ended timeframe for decisions.

Advisory Board Resources paid at market rates

There is a heavy workload and significant pressure on the resources of the Advisory Board. They are also likely to need to call on additional advice and expertise in considering the applications.

One of the issues for current fast-track processes is the difficulty in attracting suitably qualified panelists to

provide the expertise required to make decisions on individual projects.

This is at least partially linked to the low per diem payments that are linked to standard local and central government per diem arrangements.

Market payment rates should be applied for this expertise.

The cost should be met by the applicant as it will still be much less costly than a protracted environmental process subject to multiple requests for additional information, subsequent delays and potential multiple court challenges. Entry into the fast-track approval process is a privilege where the applicant can carry the costs of that entry.

Master/Spatial Planning should carry extra weight in assessment criteria

Perhaps the most positive element of the previous government's now scrapped RMA legislation was the emphasis on spatial planning.

The fact that land use and transport planning are not aligned continues to cause major issues across New Zealand's urban landscapes with multiple cities suffering congestion issues as commuters hit the transport networks from residential suburbs far removed from centres of work.

These issues are well-known but still continue.

Large chunks of north and west Auckland, for example, continue to be developed for residential housing without supporting upgrades to public transport or roading networks. This is best observed in development around Riverhead/Coatesville where once rural roads are now loaded with traffic 7 days per week.

Fortunately, growth is now being better planned to provide the complementary social and hard infrastructure that large-scale developments require and this approach – not yet enshrined in new legislation – should be encouraged by being given greater weighting in fast-track legislation.

Infrastructure provision - roads, public transport, telecommunications, schools, hospitals, houses and distribution networks – is interlinked.

If infrastructure provision is not taken into account appropriately you end up with a state-of-the-art project like Transmission Gully, which has significant holes in cellphone coverage.

Offer better compensation for land acquisition

Land acquisition rules are a significant issue for any project that may be entering the fast-track approvals process. This is particularly the case for significant transport corridor infrastructure and in connecting potential renewable energy projects to transmission networks.

Landowners rightly object to the impact these projects can have on their properties. In some cases, it takes longer to acquire the land and consents for new electricity generation projects than it does to actually build the generation assets.

Negotiating easements has long been a recognised problem for necessary electricity network upgrades or enhancements – Transpower helicopters have been shot at by landowners in extreme cases – while councils wishing to build new roads constantly run into issues and inflated costs in acquiring land.

New Zealand does have legislation that enables compulsory acquisition but it is rarely used and is a lengthy and therefore costly legal process.

Developing a suitable compensation regime for the fast-track process and for future legislation should speed up the process of consenting/delivery while also – over the longer-term – reducing costs.

The cost of buying land up-front – particularly in urban settings – should be more than repaid by using value capture tools to reap the benefits of land value increases associated with developments in proximity to, and enabled by, the new infrastructure.

A system that has worked well was adopted for the massive Crossrail project in London:

- Voluntary acquisition offers around designated stations began at 1.2 x current valuation for a limited period
- At the end of that period the voluntary offer dropped to 1.1 x current valuation – again for a limited period
- When that expired acquisition became compulsory at current valuation only

Property owners were incentivised to sell at a value that recognised the imposition on the landowner with the move to compulsory taking well signaled.

The cost of acquisition above current valuations was more than offset by the repayments from value capture from the rezoning and uplift in development around those stations. The commercial value of the uplift was so well recognised by the commercial sector that private sector payments contributed one-third of the initial cost of the project.

Reconsent Existing Operations

The EMA supports the BusinessNZ recommendation to include reconsenting existing large-scale infrastructure or commercial/industrial operations in the fast-track bill. It took nine years to reconsent the existing hydro assets on the Waikato River.

Extend Consent Lapse Date

The EMA supports the Property Council recommendation to extend the life of a fast-track consent from two to five years given the complexity of major projects and getting them started.

Summary

The EMA is very supportive of the The Fast-track Approvals Bill and the recommendations in this submission are made to improve the Bill.

We recognise and support the need to more rapidly approve and deliver critical infrastructure, especially in the current environment, where we are rapidly losing to overseas markets the knowledge, skills and expertise required to deliver these projects. That loss of necessary skills is at all levels from the ground up.

Infrastructure is a foundation for economic, financial and social wellbeing and will boost our flagging economy.

But we reiterate that this proposed Bill highlights the need for a long-term, settled consenting regime for New Zealand.

The EMA would also like to appear before the select committee to further discuss this submission.

For questions or clarifications on this submission, please contact:

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About the EMA

Established in 1886, the EMA is New Zealand's largest business association representing more than 7,000 businesses in the upper half of the North Island. Combined, our members are responsible for employing around 25% of the country's workforce.

We are the unapologetic voice of the business community, advocating strongly on behalf of our members and the wider business community to ensure their voices are heard by government and decision-makers. In collaboration with our nationwide network, including BusinessNZ, Business Central, Business Canterbury and Business South, we represent and support over 76,000 member companies.

As a not-for-profit association, we provide trusted, expert and affordable advice to our members. Delivering a wide range of services, including learning and training courses, health and safety advice, employment support, and HR and PX services, we support our members to upskill and build capability in their teams.

More broadly, we aim to create an ecosystem of support for all businesses in New Zealand, enabling them, their people and their communities to prosper.