

Greenpeace Submission to the Environment Select Committee on The Covid-19 Recovery (Fast-track Consenting) Bill

SUBMITTER INFORMATION

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INTRODUCTION

One thing the Covid-19 pandemic has taught us is that you can't trade off the environment for the economy. When nature is degraded, it brings us into closer contact with new diseases¹ that have the power to stop the global economy in its tracks. To prevent future public health emergencies and associated economic crises, we need urgently to restore nature and also prevent climate change, which is itself increasing the likelihood of new infectious diseases.²

We understand that the Government is seeking to quickly create new jobs and build up much-needed infrastructure in the wake of the recession caused by Covid-19. However, this can and must be done without imposing unnecessarily severe restrictions on public participation. It also needs to be done in a way that ensures the infrastructure we do get isn't creating even greater problems for us down the line, by exacerbating environmental degradation and climate change.

While we support Government leadership to urgently deploy infrastructure that will allow us to rapidly reduce emissions and restore nature, we are very concerned that the Bill, as it is currently drafted, does not guarantee this outcome. Instead it opens the door for high-emissions and environmentally-destructive projects to be fast-tracked without sufficient public participation. This is unacceptable.

The Bill must be amended to include much stronger protections for the climate, environment and indigenous rights, as well as increased provisions for public participation and rights to appeal.

¹ Settele et al (2020) COVID-19 Stimulus Measures Must Save Lives, Protect Livelihoods, and Safeguard Nature to Reduce the Risk of Future Pandemics. *Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*. <https://ipbes.net/covid19stimulus>

² See for example the World Health Organisation (<https://www.who.int/globalchange/climate/en/chapter6.pdf>) and The Lancet (<https://www.lancetcountdown.org/2019-report/>)

SUMMARY OF KEY RECOMMENDATIONS

1. Add a climate change bottom line to the law: no projects that increase emissions should be fast-tracked.
2. Clarify that the Minister and Expert Consenting Panel *must* consider the *net* benefits of proposed projects and the potential for said projects to cause harm, either to people's wellbeing or to the environment.
3. Remove SH1 expansion and the Kaikohe irrigation scheme from the list of fast-track projects.
4. Require the Minister to give notice to and seek input from iwi and Treaty settlement entities when considering projects for referral.
5. Ensure that all New Zealanders have the right to provide written submissions on any project that is fast-tracked.
6. Require Expert Consenting Panels to "give effect to" Te Mana o Te Wai.
7. Reinstate the right to appeal to the Supreme Court.
8. Explicitly provide that iwi authorities and organisations acting in the public interest have the right to appeal.
9. Provide that the Expert Consenting Panel should take a precautionary approach when reviewing projects whose impacts on the environment, climate and/or Te Tiriti o Waitangi are uncertain.

WHY PUBLIC PARTICIPATION IS ESSENTIAL

The proposed Bill will override the most significant piece of New Zealand legislation that exists to protect the environment or, in other words, the natural systems that underpin our health, wellbeing and economy. The need to protect and restore nature has never been greater.

The Bill places much power in the hands of the Environment Minister, effectively removing important checks and balances. For this reason, the environmental protections provided in the Bill need to be very robust and stand up, regardless of who is Minister. We are very concerned about the scale of potential infringements on indigenous rights, and damage to the natural world and the climate should an Environment Minister not be inclined to err on the side of protection. Public participation is essential to mitigate the risks that this Bill does more harm than good.

A REMINDER ABOUT THE CLIMATE CRISIS

Climate change is an existential threat, posing grave danger to our health, homes, communities, food security, culture and livelihoods. The impacts of climate change are visible in this autumn's droughts, which have impacted the very essentials of life, from water availability to growing

conditions for food production. It has been understood since the 2006 Stern Review³ that the economic cost of inaction on climate change is far greater than the cost of action. Recent research found that the droughts which affected our rural sector in 2007 and 2013 led to nearly \$5 billion in damages.⁴

The most recent report by the Intergovernmental Panel on Climate Change (IPCC) confirms that we must reduce global emissions by half by 2030.⁵ With less than ten years to dramatically cut our emissions, the post-Covid economic stimulus is our last opportunity to build up the net zero emissions infrastructure we need to prevent this existential threat.

To not consider climate impacts in every infrastructure decision made today is to miss an enormous opportunity to come out of this public health crisis better able to respond to the known crises that await us just around the corner. We note that [information obtained through the Official Information Act](#) shows the Ministry for the Environment warned of this missed opportunity in its advice to the Government regarding the Bill. We encourage you to heed it.

CLIMATE CHANGE IMPACT ASSESSMENT

Paragraph 99 of the 12 May Cabinet paper states: *“The Climate Portfolio division within MfE has been consulted and confirms that the climate implications of policy’ assessment (CIPA) requirements do not apply to this proposal. The emissions impacts are unable to be accurately determined in quantitative terms due to the uncertainty around what infrastructure projects this will affect. The extent of any emissions increase or reduction will be determined by each project granted consent through processes established by this proposed legislation.”*

This justification is unsatisfactory. There is no doubt that a piece of legislation that seeks expressly to increase infrastructure development will have significant bearing on our country’s emissions. Even without knowing now which projects will apply for the fast-track process, it is possible to prevent adverse impacts resulting from this legislation. All that needs to be done is to add an eligibility bottom line which clarifies that no projects which would increase New Zealand’s emissions are able to be fast-tracked.

Whether or not a project helps to reduce emissions is currently only one of a number of matters that the Minister may, but is not required to, consider when choosing whether or not to fast-track a project.

³ Stern, N (2006) The Economics of Climate Change: The Stern Review.

<http://www.lse.ac.uk/GranthamInstitute/publication/the-economics-of-climate-change-the-stern-review/>

⁴ Frame, D.J., Rosier, S.M., Noy, I. *et al.* Climate change attribution and the economic costs of extreme weather events: a study on damages from extreme rainfall and drought. *Climatic Change* (2020). <https://doi.org/10.1007/s10584-020-02729-y>

⁵ IPCC (2018) Intergovernmental Panel on Climate Change, Special Report <https://www.ipcc.ch/>

As it stands, the decision on whether or not to approve a high-emitting project is at the discretion of the Minister of the day or the expert consenting panel appointed by said Minister. This approach is high-risk and sets a dangerous precedent.

Recommendation: Add a climate change bottom line to the law. No projects which threaten our ability to reduce New Zealand's emissions in line with the Paris Agreement and the Zero Carbon Act should be eligible for the fast-track process.

Recommendation: Project applicants should be required under s 20(3) to provide an assessment of the climate change impacts of the project and the extent to which it aligns with or diverges from the need to transition to a net-zero emissions economy.

Recommendation: Include in documents listed under Schedule 6 Clause 9(2) the Climate Change Response (Zero Carbon) Amendment Act 2019, which would require consent applicants to provide an assessment of the activity against the relevant legislative provisions that enshrine in law our commitment to the Paris Agreement.

Recommendation: Require applicants to disclose the carbon budget of their activity as part of information required for listed and referred projects notices under Schedule 6 Clause 9(1).

Recommendation: Require that an activity that causes significant greenhouse gas emissions be included as criteria for ineligibility of projects under Part 2 Clause 18(2).

Recommendation: Explicitly exclude, under the criteria set under Part 2 clause 18(2), any activity that facilitates the extraction of coal, oil and gas.

ELIGIBILITY ASSESSMENT

We are pleased to see the strong emphasis, in s 19, on projects that help New Zealand transition to a low-emissions economy, improve environmental outcomes and help make us more resilient to climate impacts. We are also pleased that cycling and rail projects are specifically listed in the Bill, as they will provide critical transport options as we move to a low-emissions economy.

However, the Bill does not adequately recognise the potential of fast-tracked projects to also cause harm. Nor does it require that environmental considerations will guide the decision-making process. Emissions, resilience and environmental benefits are matters which may be, but are not required to be, considered.

There is a risk that the criteria, as currently written, are too narrowly interpreted or not considered at all. This can be remedied by specifying in the legislation that the Minister and Expert Consenting Panel *must* consider the following:

- In s 19(a), the **net** economic benefit, acknowledging that projects may also cause economic harm to communities or industries.
- In s 19(b), the importance of preserving a life-sustaining environment for future generations.
- In s 19(d), the **net** public benefit of a project, acknowledging that projects can also cause public harm.

The Minister and Expert Consenting Panel *must* also be assured that the projects do not:

- Harm coastal or freshwater quality, air quality, or indigenous biodiversity
- Increase waste
- Adversely affect New Zealand's ability to mitigate climate change
- Harm environmental, economic and social resilience
- Adversely affect New Zealand's and the wider environment

Including these provisions is consistent with the Living Standards Framework and the Government's eight-point Economic Plan.

Recommendation: Update s 19 to clarify that the Minister and Expert Consenting Panel *must* consider the *net* benefits of proposed projects and the potential for said projects to cause harm, either to people's wellbeing or to the environment.

STATE HIGHWAY 1 EXPANSION

Greenpeace questions whether projects such as the expansion of State Highway 1 would be able to pass a climate impact assessment, as has been required since November 2019. We note that Government agencies are required to undertake and report on a greenhouse gas emissions analysis and attach the results to the Cabinet paper. We doubt very much that the SH1 project would have passed this test and it should therefore be removed from the fast-track list.

Sufficient evidence exists to conclude that road expansions are very likely to increase car use and therefore increase emissions.⁶ Numerous studies from the US, Europe and Australia have all found that expanding or building new roads induces demand.⁷

As the Productivity Commission advised in its *Low Emissions Economy* report, "investment skewed towards roading ... has led to high private vehicle travel and inefficient vehicle choices.

⁶ See for example Williams-Derry, C. (2007). Increases in greenhouse-gas emissions from highway-widening projects. *Sightline Institute*. Retrieved from: https://www.sightline.org/research_item/climate-analysis-gge-new-lanes-10-07/#:~:text=Adding%20lanes%20to%20a%20highway%20will%20increase%20total%20global%20warming,100%2C000%20tons%20over%2050%20years.

⁷ See for example Duranton, G., & Turner, M. A. (2011). The fundamental law of road congestion: Evidence from US cities. *American Economic Review*, 101(6), 2616-52.

Better pricing of vehicle externalities, and greater investment in infrastructure for low-emissions modes would lead to more efficient outcomes and lower emissions.”⁸

Furthermore, where the impacts on the climate, environment or Tiriti rights are still uncertain, the Minister and Expert Consenting Panel should be required to adopt a precautionary approach, favouring the protection of the environment, climate and indigenous rights.

Including SH1 expansion in the Bill sets a very dangerous precedent and immediately erodes our confidence in the ability of this Bill to prevent harmful projects from progressing in future.

Recommendation: Remove State Highway 1 expansion from the list of fast-track projects in the Bill.

Recommendation: Require that the Expert Consenting Panel apply a precautionary approach - favouring environmental / Tiriti rights protections - in cases where environmental, climate or Tiriti impacts are uncertain.

KAIKOHE IRRIGATION SCHEME

New Zealand’s freshwater is in crisis. Between 95% and 99% of rivers in urban, pastoral, and non-native forest areas are heavily polluted; the majority of them are un-swimmable; 76% of our native freshwater fish are threatened with extinction; 90% of our precious wetlands have been destroyed. Nitrate contamination of drinking water, now associated with increased risk of colorectal cancer, continues to rise.⁹ It is imperative that the Government does not fast-track infrastructure projects that, it is clear, will worsen this critical situation.

Substantial evidence exists that there are severe negative ecological impacts from dams. The full and long list of impacts associated with irrigation schemes are not covered in this submission. However, in summary, damming and diverting rivers alters natural flows and physically obstructs the water course. These negative impacts are then compounded by additional nutrient, pathogen and/or sediment pollution that arises from the land-use intensification associated with irrigation. A peer-reviewed scientific report reviewed 165 papers on dam impacts and found that 92 percent of them reported declining or negative ecological measures as a result of dams.¹⁰

As a result of these and other negative impacts, irrigation schemes have been extremely contentious with many local communities, iwi and environmental organisations in recent

⁸ New Zealand Productivity Commission (2018) *Low emissions economy*
https://www.productivity.govt.nz/assets/Documents/lowemissions/4e01d69a83/Productivity-Commission-Low-emissions-economy-Final-Report-FINAL_2.pdf

⁹ Ministry for the Environment, 2020. Our freshwater 2020.

¹⁰ Poff, N.L. and Zimmerman, J.K., 2010. Ecological responses to altered flow regimes: a literature review to inform the science and management of environmental flows. *Freshwater Biology*, 55(1), pp.194-205.

decades. For this reason and in light of the degraded state of New Zealand's freshwater, Greenpeace submits that no irrigation scheme, regardless of the land-use it is likely to be used for, should be allowed to be fast-tracked.

Including the Kaikohe irrigation scheme in the Bill sets a very dangerous precedent and immediately erodes our confidence in the ability of this Bill to prevent harmful projects from progressing in future.

The best form of water storage is in the soil itself. Greenpeace submits that resilience to drought in our primary production sector can be achieved through investment in regenerative farming. The USDA estimates that 1 percent of organic matter in the top 15cm of soil holds approximately 102,000 litres of water per acre.¹¹ There is a wealth of evidence showing that regenerative organic production systems are more resilient than intensive monocultural production systems¹².

There is significant new infrastructure needed to shift our primary sector towards high-value, diversified, and regeneratively farmed products. Instead of fast-tracking dams, Greenpeace submits that the Government should invest in; small-scale, value-added food, fibre and timber processing facilities; new plant-based food manufacturing facilities to take advantage of this growing market; and in large-scale organic compost and seed facilities to assist farmers in building their soil health and their resilience to drought.¹³

Recommendation: Remove the Kaikohe irrigation scheme from the list of fast-track projects in the Bill.

NOTICE TO AND INPUT FROM IWI

We support the submissions of a number of iwi and hapū calling for notice to, and input from, iwi and Treaty settlement entities when considering projects for referral.

When considering whether to refer a project to the Panel, the Minister is not required to notify or seek comments from Treaty Settlement entities or iwi authorities. The only relevant input at this 'gateway' stage is a report from Te Arawhiti. While this may have been more defensible if the Minister was not seeking any external input at this time and was just assessing the application on the papers, the Bill provides for the Minister to both notify and receive comment from relevant local authorities and other Ministers.

¹¹ United States Department of Agriculture Natural Resources Conservation Service, 2013. Soil Health Key Points. Accessed [here](#)

¹² Lotter, D.W., Seidel, R. and Liebhardt, W., 2003. The performance of organic and conventional cropping systems in an extreme climate year. *American Journal of Alternative Agriculture*, 18(3), pp.146-154.

¹³ For more information, see our Regenerative Farming briefing: <https://storage.googleapis.com/planet4-new-zealand-stateless/2020/05/3e54dd9c-govt-investment-in-regenerative-agriculture-greenpeace-nz.pdf>

In these circumstances, we support the many iwi and hapū who consider that there must also be provision for notification to and input from Treaty Settlement entities and iwi authorities. This is warranted for the following reasons:

- the absence of such notice and input is plainly inconsistent with the principles of the Treaty;
- receiving comment from iwi and Treaty settlement entities would assist with the Minister's decision (alongside the Te Arawhiti report);
- there remains a presumption in favour of grant of consent once a project is referred to the Panel and it is important that the Minister is aware of iwi comments at the 'gateway' stage (as the Minister's role at this stage has a substantive element and is not merely procedural); and
- it would provide early notice of the existence of a project that may be referred to a Panel and will allow iwi and Treaty settlement entities more time to prepare to engage on the project (including selecting a potential nominee for appointment to the Panel), which is particularly important given the very compressed timeframe (10 working days) to provide feedback on a referred project to the Panel.

Recommendation: The Minister should be required to give notice to and seek input from iwi and Treaty settlement entities when considering projects for referral.

PUBLIC CONSULTATION

While we understand the Government's desire to move with speed to create jobs in the wake of Covid-19, we submit that the restrictions on public participation are too significant. The ability of the public to influence major developments is already limited under the current regulatory regime. We have deep concerns about further restrictions being put in place, particularly when there are so few environmental and climate safeguards built into the Bill

Rather than restricting consultation to a handful of organisations, we submit that all New Zealanders should have the right to provide *written* submissions on any project that is fast-tracked. We concede, in the interests of speed, that the submission period can be truncated and that restrictions can be put in place on the right to be heard. But preventing written submissions to a short-list of organisations is an unreasonable restriction on public participation.

Recommendation: Amend s 17(7) to invite written submissions from the public.

RECOGNISING IWI RIGHTS AND INTERESTS IN FRESHWATER

We support a number of iwi and hapū who have expressed concern about the lack of priority shown on the issue of recognising iwi rights and interests in freshwater (and other taonga). This Bill has the potential to continue and perpetuate that failure and undermine any future

recognition of iwi rights and interests in freshwater. This Bill further stresses the importance of the Government urgently prioritising the resolution of iwi rights and interests in freshwater.

In the interim, the potential effect of any projects on our waterways is a matter that a number of iwi and hapū have submitted should receive express recognition and protection under this Bill. This Bill should not be a vehicle through which the outcomes of important future freshwater reforms (many of which have already been signaled) can be avoided by those seeking to engage in activities that affect Te Wai Māori (freshwater).

The Crown's recent announcements regarding the National Policy Statement for Freshwater Management (NPS-FM) provide, among other things, for Te Mana o Te Wai to be "given effect to" by relevant local authorities in making freshwater management decisions. While the Bill provides for a Panel to "have regard to" any relevant provisions of a National Policy Statement (Schedule 6, clauses 27, 29 and 31), this is of a lesser weighting that "give effect to". We support the iwi and hapū who consider that these provisions should be amended to require the Panel to "give effect to" Te Mana o Te Wai.

Recommendation: Require Expert Consenting Panels to "give effect to" Te Mana o Te Wai.

Recommendation: Expressly recognise iwi rights and interests in freshwater.

SUPREME COURT APPEAL RIGHTS

We support the 16 May submission of David Bullock and Davey Salmon on the 12 May Cabinet paper (attached). While we note that some of their concerns have been addressed, a number of them are still relevant, including the matter of rights to appeal to the Supreme Court. As they note, "A legislative bar on bringing [sic] appeals to the Supreme Court associated with the Treaty of Waitangi is inconsistent with Parliament's recognition in s 74(3) of the Senior Courts Act 2003 that significant issues relating to the Treaty of Waitangi are matters of general and public importance."

Bullock and Salmon also note that there are options that would address the Government's concerns about any potential delays caused by the right to appeal to the Supreme Court, without needing to remove this right. These include:

- directing that the Supreme Court must determine applications for leave and appeals urgently, or
- requiring applications for leave to appeal from the High Court to be made directly to the Supreme Court, with the Court of Appeal providing a final determination on the appeal if leave is not granted.

Indeed, they note that the latter is likely to reduce delays as “the Supreme Court’s schedule is such that it [sic] has a greater ability to prioritise and schedule urgent hearings of public importance than does the Court of Appeal.”

Based on the above, there is no logical justification for removing the right to appeal to the Supreme Court. Indeed, to do so is at odds with Te Tiriti o Waitangi.

Recommendation: that the Bill allows for appeals to the Supreme Court of New Zealand.

RIGHTS OF APPEAL

The list of persons with the right to appeal to the High Court is vague and open to interpretation. At present, the list in s 42(1) does not explicitly include iwi authorities or civil society organisations. The provision under s 42(1)(e) - *any person who has an interest in the decision appealed against that is greater than that of the general public* - is very vague and open to interpretation.

Recommendation: That the Bill provides that relevant iwi authorities have rights of appeal under the Bill.

Recommendation: That the Bill provides that organisations reflecting an aggregation of community views acting in the public interest (such as environmental NGOs) have rights of appeal under the Bill.

CONCLUSION

We urge you not to discount the ongoing climate, biodiversity and inequality crises while you work to address the economic impacts of the Covid-19 crisis. As the Lancet and World Health Organisation note, climate change is likely to have major consequences on infectious disease transmission. Thinking ahead to prevent the next public health crisis means acting now to address climate change, biodiversity loss and inequality.

The infrastructure we build today will shape New Zealand society for decades to come. Given that today’s young people will need to deal with the debt of our Covid-19 response, it is critical that this infrastructure creates a fairer, cleaner, more secure and resilient future for our children.