CANA submission on the Fast-track Approvals Bill

Submission on the Fast-track Approvals Bill 2024 (FTAB)

Submitter details

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We wish to speak to the Environment Select Committee in support of our submission.

A. Introduction

1. Coal Action Network Aotearoa (CANA) is a group of climate justice campaigners committed to ending the mining and burning of coal in Aotearoa New Zealand. Formed in 2007, we recognise the use of thermal coal as a primary threat to Earth's climate system. CANA promotes climate justice by advocating and acting for a just transition to an Aotearoa free of coal mining and use. We work with local communities threatened by new coal mines and coal projects, and with allies across the climate justice and environmental movements. We are a member of the New Zealand Climate Action Network. Our target date for coal mining and use in Aotearoa to end is 2027.

   Successful campaigns we've been involved in include:

   - Helping to end Solid Energy's plans to mine and burn massive quantities of Southland lignite.
   - Getting Fonterra to commit to, and then bring forward, a date for ceasing the installation of new coal boilers.
   - Getting Fonterra to commit to phasing out existing coal boilers.
   - Encouraging the New Zealand Government to set up a Just Transition Unit to help resource communities depend on fossil fuel extraction to transition to low-carbon jobs.
   - Opposing the expansion of Bathurst Resources' Coalgate mine in Canterbury - this mine has now closed.
   - As part of the Fossil Fuel State Sector coalition, getting the Government to commit to replacing coal boilers in schools with renewable alternatives.

   We have been involved in legal action, direct action and lobbying to achieve these goals. Our members and supporters are members of local communities with experience of the negative effects of coal mining and use, climate activists and

scientists. We work with communities around the motu, other activist groups, and central and local Government to achieve our aims.

2. CANA welcomes the opportunity to submit on the Fast-track Approvals Bill 2024. We believe the Bill is fundamentally flawed, dangerous, and should be withdrawn. To be frank, it exemplifies **the greed, ignorance and autocratic laissez-faire ideology of its sponsors.**

3. CANA strongly opposes this Bill and argues that it is one of the worst pieces of legislation that has ever been introduced to Parliament. In particular, we argue that this Bill is:

- Unworkable
- Undemocratic, likely to foment civil strife;
- A very significant environmental threat that will increase the risk to NZ of droughts, floods and other devastating events exacerbated by climate change,
- Will lead to the appearance of corruption, if not the actual corruption, of Ministers and their parties in the coalition Government.
- Contrary to the Crown's obligations under Te Tiriti o Waitangi

4. In our adult lifetimes, there have been no pieces of legislation as concerning as the Fast-track Approvals Bill 2024. We expect it will **resurrect failed proposals** such coal mining at Te Kuha, the Ruataniwha dam, and sea-bed mining.

5. Many NZ communities were hard-hit by Cyclone Gabrielle, with lives lost and residents forced out of their homes, yet the FTAB barely mentions the need to **mitigate climate change**. This glaring omission further damages the credibility of the Bill.

B. The bill is undemocratic

6. One of the most alarming features of this bill is the level of authority vested in a small group of Ministers. We would also argue that the proposed group is the wrong group of Ministers. The fact that only three Ministers control entry to the process and also make the final decisions, with only a token provision of checks and balances in the form of advisory panels which the Ministers can ignore, is **undemocratic and dangerous**. This consolidation of executive power, without meaningful checks and balances, is a slippery slope towards the undermining of our democratic institutions and creates an unsettling precedent for future legislation.

7. Further, it is a significant legal and political **risk to the ministers themselves** as their integrity will be under constant scrutiny and, even when acting with the best of intentions, ministers will face significant pressure given the lack of proper checks and balances and the removal of the normal separation between ministerial oversight and operational decision-making over specific matters. Ministers will be open to allegations

of bias and predetermination and may find their decision-making subject to multiple judicial reviews.

8. The second aspect of this Bill that CANA consider to be undemocratic is **the lack of right of appeal** (or even public notification). We consider the current right of merit-based appeal to the Environment Court as is provided for under the RMA to be an incredibly important safeguard to ensure that environmentally, socially or culturally detrimental decisions can be challenged. This, when considered in conjunction with the consolidation of power in a small group of (the wrong) ministers, is alarming.

9. We note the inclusion of the list of parties that must or may be invited to comment on listed or referred projects and support the inclusion of the listed persons and organisations. However, we feel this group needs to be significantly increased to enable input by all affected parties, along with public notification and right of appeal similar to that provided under the RMA. We also support the provision for local government and iwi authorities to nominate panel members, but reiterate that the panel system overall will be unworkable and inefficient (see above).

10. The third aspect of this Bill that we consider to be undemocratic is the fact that **Schedule 2 is currently blank**. This prevents parties (including iwi, NGOs and local government entities) from being able to develop a full and comprehensive position on the legislation as there is no clear picture of the government's intentions. **This is farcical, and unacceptable**.

11. No detail has been provided around **a)** when the two lists of projects under Schedule 2 will be made available and whether there will be any opportunity for public comment on its contents and **b)** how the lists of projects will be developed and whether the select committee process will in fact be an opportunity for potential applicants to lobby the government in support of inclusion of their projects. This also creates a serious problem for local government entities who may be required to **fund associated critical infrastructure that is not currently planned** for under regional and district plans.

12. Coal Action Network Aotearoa submits that the Select Committee should advise the Government that it will not complete its consideration of the Bill until the list of projects under Schedule 2 have been made available both to the Committee and to the public.

13. We further submit that, once these lists of projects have been made public and available to the Select Committee, the Select Committee should then reopen submissions on the Bill, either as a whole or, at minimum, on the lists of projects to be included in Schedule 2.

14. Members of the expert advisory group responsible for providing recommendations on what projects to include in the legislation were announced on 10 April, prior to Select Committee consideration of the Bill, let alone its possible passage. We therefore submit that the very existence of this panel is inherently undemocratic, has no viable basis, and that its recommendations therefore have no validity.

C. The bill threatens our natural environment

15. The threat to the environment posed by this Bill cannot be overstated and is profoundly concerning. Of particular concern is the lack of any real threshold for ineligibility on environmental grounds, the potential eligibility for inclusion of projects rejected under the RMA, the primary and overriding weighting given to the purpose of the Bill, and the almost-complete **lack of consideration of climate change**.

16. The Bill is contrary to the National Party's environmental policy, which aspires to safeguard New Zealand's unique natural environment, native biodiversity, waters and landscapes for future generations. Its *Blueprint for a Better Environment* talks about sustainable freshwater, protection of our oceans and marine life, enhancing biodiversity, and opportunities for outdoor recreation. National has said that with clear, cohesive rules that target better environmental outcomes, growth and prosperity can be achieved within environmental limits. The Bill will not achieve those outcomes, and will seriously damage National's credibility with respect to its environment policy. CANA wonders how the National Party can justify shifting so far from this policy.

17. This is the first time under the MMP system where the major party appears to be acting at the behest of its junior partners. This is the "**tail wagging the dog**" scenario that was used as an argument against the MMP system, yet under every previous MMP government, the major party has set the agenda and dominated the policy agenda. It is deeply concerning that this National-led government appears to be beholden to its junior partners. For example, NZ First's tobacco policy appears to be dictated by international tobacco giant Philip Morris (references below).

18. Given the low bar for entry into the process and the ability for projects rejected under the RMA to apply for inclusion, it seems inevitable that projects will take advantage of this system that will have detrimental effects on the natural environment in numerous ways. The limited criteria under which Ministers must refuse to refer a project for fast-track processing (including where there are certain existing rights, requirement for approval under other legislation that cannot be given because of the land's status, and projects that require separate offshore renewable energy permitting legislation to be in place) will offer scant protection to the environment and will not apply in most cases.

19. The only criteria that bear any tangible relationship to environmental effects are the exclusion of prohibited activities under the EEZ Act, and non-mining activity on some classes of conservation land. The potential for mining on conservation land is not entirely clear, but we are gravely concerned for the potential environmental implications should this be permitted.

20. There is no equivalent exclusion for **prohibited RMA activities** and it is gravely concerning that these are expressly allowed to be referred for fast-tracking. Prohibited activities under the RMA are the most environmentally dangerous activities in sensitive locations. The provision in the Bill for these activities is an explicit invitation for

developers to lobby Ministers to refer projects to fast track where central government itself, or councils (following consultation with communities and scrutiny by the Courts), have explicitly banned that activity. There are relatively few prohibited RMA activities, and the rationale for overriding them is unclear. The Ministry for the Environment has pointed out that "prohibited activities often have significant environmental or human health effects. Many prohibited activities are also there to protect existing significant infrastructure."

21. We note that part 2, section 17, subsection (3) (g) and (i) lists as criteria for consideration of national or regional benefits "will support climate change mitigation, including the reduction or removal of greenhouse gas emissions" and "will address significant environmental issues". However, the inclusion of these criteria appears **tokenistic** given that the Bill contains no requirement to preclude referral of projects that would:

    - **Significantly increase greenhouse gas emissions;**
    - **Cause or contribute to the extinction of indigenous species;**
    - **Pollute freshwater;**
    - **Cause serious risk to human health and safety;**
    - **Degrade water bodies covered by a Water Conservation Order; or**
    - **Breach international law (e.g. prohibited projects in the coastal marine area)**

22. The potential inclusion of prohibited activities and activities that could result in any of the above effects is highly likely to have a deleterious effect on the environment. The Bill also does not require consideration of the impacts a project may have on climate change, or the importance of aligning decisions with **emissions reduction plans or targets/budgets under the Climate Change Response Act 2002 (or relevant international obligations such as the Paris Agreement).**

23. Another concerning component of this Bill is that **the Ministers responsible do not include the Ministers for the Environment, Climate Change or Conservation** (with some limited exceptions). The joint Ministers will be supported by technical advice from their own ministerial officials but it is not clear to what extent they will be guided by official advice from the Ministry for the Environment, the Department of Conservation or other relevant entities such as the Climate Change Commission. It is also concerning that the **Parliamentary Commissioner for the Environment** does not have a clear statutory role here.

24. The proposed EPA process is flawed. In addition to its likely unworkability as discussed in Part 1 above, the process is designed in such a way as to ensure that projects proceed. Although panels have the power to recommend that consent for a listed or referred project be declined, assessment criteria in clause 32 of Schedule 4 are drafted in a way that all but guarantees a panel will recommend granting consent.

This is due to the primary weighting given to the purpose of the Bill at the top of the hierarchy of criteria which the panel must consider. This seeks to facilitate the delivery of infrastructure and development projects with significant regional or national benefits. Disturbingly, that objective is not qualified by any consideration of the natural environment.

25. CANA understands that The Ministry for the Environment specifically recommended that the purpose of the Bill include reference to **sustainable management**, not just development, and for matters under the RMA (national direction) to have equal weighting. This recommendation has not been followed. Although RMA national direction is listed in the hierarchy in clause 32, Ministers have already indicated that there is no requirement to comply with that direction. National policy statements for freshwater, the coastal environment and biodiversity have involved extensive evidence, stakeholder engagement and compromise prior to their enactment. This Bill allows these to be ignored or undone completely.

D. The bill is contrary to NZ's international obligations

26. Aotearoa New Zealand takes pride in its "clean green" image. Regrettably this notion has not been borne out by our slow progress on reducing carbon emissions, particularly from the agricultural sector, relative to our international partners. We are also out of step with comparable nations in continuing to extract fossil fuels in spite of our unique geographical potential to shift to entirely renewable energy. It is incomprehensible that this government wishes to regress further down the path of fossil fuel exploration and extraction.

27. CANA would urge the government to exercise caution in relation to our international obligations around climate change. This Bill does the opposite. Climate change is an existential threat to life on this planet and our (increasingly limited) opportunity to prevent its worst effects is currently being squandered by inaction. This Bill represents not only a missed opportunity in respect of climate change, but (implicitly) incentivising intensive agriculture and large-scale dairy conversions, alongside the (explicit) incentivising of fossil fuel extraction, will actively contribute to increased carbon emissions.

28. As a small, geographically isolated country, New Zealand's economic prospects are dependent on our ability to maintain our international reputation and relationships. This Bill risks jeopardising our international obligations and may run foul of our free trade agreements with the UK and European Union.

29. In addition to Aotearoa New Zealand's optimistic view of itself as being "clean and green", we also have a reputation internationally as being a transparent democracy with low levels of corruption. As discussed above, this Bill will potentially undermine our most fundamental democratic institutions, including the separation of powers,

through its **lack of checks and balances and unprecedented consolidation of powers in the hands of three Ministers** . It is disappointing that this government is willing to sacrifice Aotearoa New Zealand's reputation for transparency and accountability in its democratic processes in favour of what might be uncharitably viewed as "**Third World resource politics**". This is a particular concern at the regional level where the test for significance could effectively enable anything to qualify, and leave the responsible Ministers open to allegations of corruption, pre-determination and favouritism.

30. This bill may increase costs to ratepayers, already struggling with stretched household budgets. The ability of central government to fast-track infrastructure projects, without regard for the RMA or regional or district plans, means that projects may be approved in areas that are not earmarked for growth or not appropriately zoned for the approved use. In these cases, local government entities would be required to provide and pay for essential infrastructure (roading, water etc) if not already in place, and if the activity is happening in an area not covered by the relevant local authority's development contributions policy, then it is unclear whether development contributions can be enabled.

31. It will also force local authorities to take time and resources away from the areas where sustainable, high-quality urban growth has been planned for and publicly consulted on, so that it can respond to environmentally risky and undemocratic fast-tracked activities over which it has no say. This will carry a significant cost to councils and likely have flow-on effects to ratepayers.

E. The Bill might open up protected conservation land to development

32. The FTA Bill creates confusion as to whether Crown land protected from surface mining under Schedule 4 of the Crown Minerals Act 1991 (CMA) would be open for mining projects under the Bill. Schedule 4 of the CMA restricts access to high value conservation land, including national parks, nature, scientific and marine reserves, and public land and waters in northern Coromandel Peninsula.

33. Clause 18 of the FTA Bill states, *"A project must not include any of the following activities:*

    (f) an activity that would require an access arrangement under section 61 or 61B of the Crown Minerals Act 1991 for an area for which a permit cannot be granted under that Act:

    (h) an activity (other than an activity that would require an access arrangement under the Crown Minerals Act 1991) that would occur on land that is listed in items 1 to 11 or 14 of Schedule 4 of that Act:"

And Schedule 10 of the FTA Bill (Process under Crown Minerals Act 1991), Clause 3 (Exclusion of this Act) states:

*“Despite **clause 1**, nothing in this Act applies in respect of an application for an access arrangement for any land or offshore area for which a permit cannot be granted under the Crown Minerals Act 1991.”*

34. Clause 18(f) would seem to preclude access to CMA Schedule 4 land, since Section 61 and 61B cover access to Crown-owned minerals on Schedule 4 land and access to privately owned minerals through Crown-owned Schedule 4 land, respectively. Clause 3 of Schedule 10 would seem to confirm this. Yet, Clause 18(h) then restricts CMA Schedule 4 land to exclude land named in items 12 and 13, which cover conservation land and internal waters of the Coromandel Peninsula. There is a contradiction here that needs to be resolved. What activities are anticipated to be approved for the Coromandel Peninsula but not in other Schedule 4 land?

35. Further, under Item (2) Clause 1 of Schedule 3 (Function of the expert panel) it states: *“In assessing proposed approvals, the panel must generally take into account, giving weight to them (greater or lesser) in the order listed,—*

    (a) the purpose of this Act; and

    (b) considerations under other relevant legislation.”

36. This would seem to give primacy to the purpose of the act over existing legislation, including the Crown Minerals Act. So, if a project on Schedule 4 land is somehow referred to the expert panel, the panel cannot reject it even though it should have been excluded.

F. The Bill is contrary to the Crown’s obligations under Te Tiriti o Waitangi and under the UN Declaration on the Rights of Indigenous Peoples

37. The Bill fails to meet, and undermines, the Crown’s obligations and commitments under Te Tiriti of Waitangi in several respects, including that:

    a) The Bill fails to include and to enact the constitutional obligation to honour Te Tiriti o Waitangi.

    b) The Bill only requires the protection of ‘customary rights’ (and some parts of Te Tiriti settlements, with only land returned under Te Tiriti settlements strictly considered). This is a narrowing of rights already affirmed and protected under Te Tiriti o Waitangi.

38. Although the Bill includes limited protections for settlements -only the land returned in settlements is explicitly protected from the overriding nature of the Bill in clause 18. Other parts of settlements receive less protection e.g. commercial assets, protection of wāhi tapu and recognition of special interests in areas like lakes or rivers, resulting in an overall weak and limited protection of the settlements. Further, no protections apply to iwi and hapū that have not settled.

39. The arrangements for expert panels violates Te Tiriti and the United Nations Declaration on the Rights of Indigenous Peoples in at least two ways:

    a) Expert Panels are structured to only have one iwi authority representative, even if multiple iwi authorities are present in the rohe of a proposed activity applied for under the Bill. This represents a major failure to uphold both Te Tiriti and the United Nations Declaration on the Rights of Indigenous Peoples, which affirms the right of Indigenous communities to self-select representation (specifically Article 18) and governance approaches.

    b) Schedule 3, Clause 5(3) states “The relevant Treaty settlement entity or iwi authority may not unreasonably withhold their agreement to a modified arrangement”. This clause specifically targets Māori, overriding iwi authority and self-determination by making tino rangatiratanga unlawful in this particular instance.

40. Reference to section 8 of the RMA is noticeably absent from the Schedule 4, Clause 32 hierarchy, meaning that panels are not required to take into account the principles of the Treaty of Waitangi / Te Tiriti o Waitangi when making their recommendations. They should be so required.

G. Conclusion

41. CANA opposes this Bill in its entirety. It has almost no redeeming features, and there are no minor amendments to it that could make it acceptable. We would urge the government in the strongest possible terms to withdraw and replace this Bill, if indeed fast-track approvals legislation is required, with something more closely aligned to the Covid-19 fast-track process or the fast-track consenting process established in the Natural and Built Environments Act 2023.

42. We argue that the Resource Management Act 1991, despite its acknowledged complexity and inefficiencies, is a fundamentally sound piece of legislation that could be stripped back to its original form and updated to reflect the contemporary realities of impending climate crisis and our modern understanding of Treaty Partnership. The worst thing the government could do for our environment, our democracy, and our international reputation would be to pass this Bill.

43. References:

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