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Christchurch City Council submission on the *Fast-Track Approvals Bill*

Introduction

1. Christchurch City Council (the Council) thanks the Environment Committee for the opportunity to submit on the Fast-Track Approvals Bill (the Bill).
2. The Council acknowledges the intent of the Bill to create a 'one-stop-shop' to support the efficient delivery of infrastructure and development projects with significant regional and national benefits. While we agree that there is a need to ensure the efficient delivery of these significant projects, we have serious concerns that the process does not require robust evaluation and has the potential to result in significant detrimental impacts to the wider environment if not resolved.
3. As a key infrastructure provider for Ōtautahi for projects that have significant regional benefit we see that the Bill has the potential to be advantageous in supporting us to respond to and manage growth by enabling the efficient delivery of large infrastructure and development projects.
4. The key focus areas of the submission below are:
 - the need to ensure an appropriate balance between enabling efficient delivery of significant infrastructure and managing significant effects on the environment.
 - appropriate recognition of Te Tiriti o Waitangi
 - the discretion and extent of Ministerial power afforded in both the referral and substantive decision-making processes.
 - key implications for Council including, managing impacts on Council infrastructure, ensuring alignment with local strategic direction, and allowing for sufficient opportunity to be involved in the process.

Submission

Purpose of the Bill

5. The purpose of the Bill is to '*to provide a fast-track decision making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits.*' We note the intentional omission of any references to environmental objectives from the purpose of the Bill.
6. The Council is concerned by the lack of reference to environment objectives – noting that this is a fundamental shift in environmental legislation, setting a clear direction that environmental impacts are subordinate to delivering economic growth.

7. We see that environmental objectives, such as responding to and managing effects from climate change (noting international obligations), reducing emissions, protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna and managing water quality, should be an important part of any environmental legislation in Aotearoa. We are very concerned by the lack of reference to these objectives in the purpose of the Bill, and as a consequence a lack of consideration of adverse environmental impacts through the decision-making process. Therefore, while we agree that there is benefit in having a process that facilitates efficient delivery of significant projects and drives economic growth, this should not be at the expense of achieving good environmental outcomes.
8. Specific amendments regarding both the purpose of the Bill and the recognition of environmental objectives more broadly are detailed in Appendix 1.

Joint Ministers

9. The lack of environmental focus is further reflected in the 'joint ministers' responsible for decision-making under the Bill. Unlike the COVID-19 Recovery (Fast-track Consenting) Act 2020, the Minister for the Environment has been excluded from the Ministers responsible for making decisions on projects. We have significant concerns regarding this exclusion, and see considerable risks associated with this.
10. We request that the Bill is amended to include the Minister for the Environment along with the other joint ministers responsible for decision-making.

Te Tiriti o Waitangi

11. Persons acting under the Fast-track Bill, must do so in a manner that is "consistent with obligations under Treaty Settlements". The Bill therefore does not require the expert panel or Ministers to consider Te Tiriti o Waitangi or the principles in decision-making. We are concerned by the lack of recognition of Te Tiriti in the Bill and that this may result in approvals or consents, which are inconsistent with Te Tiriti.
12. We are similarly concerned that Schedule 4, subclause 12(1)(g)(i) excludes section 8 of the Resource Management Act (RMA) 1991. To ensure consistency with the RMA, we request that this subclause is amended to include section 8 of the RMA.

Project eligibility

Schedule 2A – listed projects

13. As Schedule 2A has yet to be populated, it has been difficult to comment on the appropriateness of Schedule 2A. We request that there is adequate engagement with the public, including local authorities, on Schedule 2A through the Parliamentary process.
14. Notwithstanding this, the Council wishes to put forward a programme of works in the Ōtākaro Avon River Corridor (OARC) that deliver on the vision of the Ōtākaro Avon River Corridor Regeneration Plan, which emphasises a restored natural environment and strengthened connections between people, the river and the land. The delivery of the OARC Regeneration Plan is being delivered in partnership with Ngāi Tūāhuriri as mana whenua, who have indicated early support for including this programme in a Fast Track consent process. The programme comprises land stabilisation and enhancement, stop banks to mitigate flood hazards, and stormwater management areas to improve water quality and subsequent ecological restoration to return the area to a delta environment. In doing so, it facilitates the regeneration of the area and outcomes defined by Te Ngāi Tūāhuriri, the Crown and Council, which are of significance for the region. Further information will be submitted as part of a formal request.

Schedule 2B – referred projects

15. We support the need for criteria to determine the eligibility of referred projects – noting that it is essential to provide a clear framework and process for decisions. However, as drafted the proposed criteria for determining project eligibility are very broad – affording the Ministers a significant degree of discretion when selecting what projects are referred.
16. Of particular note is how ‘*significant regional or national benefits*’ has been defined. While Clause 17(3) provides direction on what may be considered when determining significant regional or national benefits, there is significant discretion afforded to the Ministers to determine what projects meet this threshold, having regard to the reference to “may consider” and broad scope of the criteria.
17. We seek that amendments are required to ensure that assessment of project eligibility is transparent, fair and even-handed. Specific amendments detailed in Appendix 1.

Decision-making process

18. The final decision to grant or decline any applications sits with the Ministers after considering the Expert Panel’s (the Panel) recommendations. Ministers can also ask the Panel to reconsider any recommendations, commission additional advice or seek further comments from affected parties. This is a notable change from the COVID-19 Recovery (Fast-track Consenting) Act 2020, where it was the role of the Panel to decide applications.
19. Our key concern with the substantive decision-making process is the ability for the Ministers to overturn the Panel’s recommendations with what appears to be limited justification. For example, the drafting of subclause 25(4) states that the Ministers ‘*must not decide to deviate from a Panel’s recommendations unless they have undertaken analysis of the recommendations and any conditions included in accordance with the relevant assessment criteria*’. This provides the Ministers with significant discretion to overturn the Panel’s recommendations without necessarily needing appropriate evidence or justification as to why.
20. The Bill should be specific about what analysis and/or evidence the Ministers must have to undertake to deviate from the Panel’s recommendations, particularly if there will be significant environmental effects. We are of the view that Ministers should only be able to deviate from the Panel’s recommendations in extenuating circumstances where specific criteria or rationale have been met, including appropriate technical input. We seek amendments to the Bill to provide clearer parameters around when and how the Ministers can overturn the Panel’s recommendation.
21. This would be supported by Ministers being required to provide reasons for their decisions – this is both in relation to the substantive decision-making process as well as the referral process discussed above. By Ministers having to clearly articulate the rationale for their decisions in a report, it not only ensures greater transparency but also provides clear documentation as to why decisions were made.

Implications for Council

Timeframe for providing comments on projects

22. The proposed process enables Councils to provide comment on both listed and referred projects. While supportive of this, we are concerned at the 10-working day timeframe for Councils to make comment on projects. These projects are likely going to be of large scale and have substantive technical evidence that will require considerable staff time to assess and provide commentary, and co-ordinate an all-of-Council response.
23. We seek that the timeframe to provide comments is amended to 20 working days. This more appropriately reflects the time required for Councils, and other persons under Schedule 4, clause 20(3), to give due

consideration and respond.

Cost recovery provisions

24. The Council strongly supports the proposed cost recovery provisions. The Bill provides for local authorities to recover costs from the Environmental Protection Agency for supplying information in relation to current or anticipated applications (Schedule 4, clause 9), and from the applicant for Schedule 3 and 4 processes (Schedule 3, clause 14). The inclusion of these cost recovery provisions in the primary legislation are necessary and welcomed.
25. For completeness, we recommend that the cost recovery provisions are also extended to enable local authorities to recover any costs from an applicant for pre-engagement required under clause 16.

Alignment with local strategic direction and planning processes

26. While every application must provide an assessment of the activity against any relevant provisions in any plan or proposed plan (Part 1, clause 12(1)(h)), there is no requirement that the decision-maker must consider these. This raises an issue around the integration of existing strategies, policies and plans, set at a local level, and the potential for misalignment in strategic direction.
27. We are concerned that the fast-track process will be able to override local direction and enable developments that are inconsistent with the direction sought through robust local planning processes. This could have significant unintended consequences, particularly around where growth occurs, and the relevant infrastructure necessary to support the growth.
28. In Christchurch, for example, the Greater Christchurch Spatial Plan (GSCP) sets the direction on where future growth and infrastructure should be focused. It provides clear direction on areas where, as a sub-region, we would anticipate growth occurring, particularly through intensification. If an approval or consent through the fast-track pathway was granted that was inconsistent with this direction, such as a large-scale development outside the areas identified, it could significantly impact on the delivery of the GSCP and the desired direction of growth for the sub-region and the city and take investment away from areas intended for growth.

Managing impacts of fast-track development on Council infrastructure

29. Approvals and consents under the fast-track process could have significant implications on Council infrastructure – both now and in the future. It is therefore fundamental that in both the referrals process and the substantive decision-making process that decision-makers must consider the impacts of proposals on Council infrastructure – both in terms of serviceability and standard.
30. The Bill should provide greater attention as to whether the proposal can in fact be reasonably serviced in the eligibility criteria and in the assessment of applications. It should also consider whether the proposal aligns with local infrastructure planning identified in plans such as the GSCP. There is a considerable risk that the fast-track process could result in proposals being approved in areas that cannot be reasonably serviced or do not align with infrastructure planning at the local level.
31. For example, in Christchurch a major wastewater constraint has been identified within parts of Aranui, Shirley and Prestons areas. This significantly limits development potential as the vacuum sewer systems that service these areas are at or near capacity. There are no immediately feasible alternative options to service greater intensification of these areas. If a development was approved through the fast-track process in any of these areas, it would have major consequences for the Council in terms of service provision. This may be beyond an extension or localised upgrade and may require replacement of the system. This example demonstrates the necessity to consider if, and how, projects will be serviced as a key part of the eligibility process and the assessment of applications.

32. Where it has been determined that fast-track developments can be reasonably serviced or are consistent with local direction, we would still seek that any infrastructure required for fast-track developments that will vest in or be managed by the Council must be built to standards required by the Council. This can be achieved if the conditions of consent require those assets to be constructed to the Council's standards. If local authorities do not have this discretion and infrastructure is not built to Council standards, this could have significant implications and costs for Councils both in the short and long term.

Conclusion

33. The Council appreciates the opportunity to submit on the Fast-Track Approvals Bill. We look forward to further discussion with Government and its agencies around the implementation of the Bill.

For any clarification on points within this submission please contact Mark Stevenson, Manager Planning (mark.stevenson@ccc.govt.nz)

Yours faithfully



Phil Mauger

Mayor of Christchurch