

Submission of

# **Te Tira Whakamātaki**

on

# **The Fast Track Approvals Bill**

18 April 2024

Addressed to:

Environment Select Committee

For further information please contact:

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Environment Select Committee

Tēnā koutou,

### **Re: Te Tira Whakamātaki's submission on the Fast Track Approvals Bill**

1. We are Te Tira Whakamātaki, a Māori environmental not-for-profit, dedicated to safeguarding our natural heritage through Indigenous-led solutions and Indigenous knowledge. Our team comprises experts in mātauranga, Māori scientists, policymakers, and kaitiaki. We provide this submission to voice our **deep concerns and strong opposition** to the proposed Fast Track Approvals Bill. This Bill is unconstitutional, undemocratic, undermines Te Tiriti o Waitangi ("Te Tiriti"), ignores international agreements, and poses severe threats to our environment and our people, who are inextricably connected.
2. We also wish to note our support for the National Iwi Chairs Forum and the Environmental Defence Society's submissions, particularly the amendments proposed by the National Iwi Chairs Forum.

### **Inappropriate Concentration of Power**

3. We express strong opposition to the extensive and unrestrained powers granted to the Ministers for Infrastructure, Regional Development, and Transport under the Fast Track Approvals Bill. We advocate for these powers to be transferred to qualified, independent experts including equitable representation of Māori who are better equipped to ensure evidence-based decision-making, free from political influence.
4. The criteria outlined in the Bill for ministerial decision-making on project referrals and approvals are prone to political misuse. This vulnerability could lead to decisions that are not based on rigorous evidence or that fail to consider the broader implications for the environment, both in the short-term but importantly long-term, and Māori rights and interests.

### **The Bill violates Te Tiriti o Waitangi**

5. Te Tiriti o Waitangi guarantees Māori tino rangatiratanga over their lands, villages, and all their taonga. The Fast Track Approvals Bill, by allowing unilateral decisions on developments affecting these taonga without engagement or consent from Māori, directly contravenes these guarantees. This approach not only infringes upon the substantive rights afforded to Māori under Te Tiriti but also disrespects the partnership principle that is supposed to govern Te Tiriti relations.

### **Case Law Precedent:**

6. **New Zealand Māori Council v Attorney General [1987]**: The Court of Appeal recognised that the Treaty principles require the Crown to act reasonably, fairly, and in good faith. Fast-tracking development projects without meaningful Māori engagement will violate these principles, undermining the protections and commitments established under Te Tiriti.
7. **Pakiret v Attorney General [1999]**: This case further underscores the judicial recognition of Māori interests in their lands and taonga. The court's decision in Pakiret emphasised that the government must protect Māori interests and ensure that their rights are not compromised by governmental

actions or policies. In the context of the Fast Track Approvals Bill, bypassing the requirement for thorough consultation processes and reducing the involvement of Māori in decisions that directly impact their lands and taonga is disregarding this judicial precedent. Such unilateral decision-making processes is unconstitutional and disrespects the partnership model Te Tiriti envisaged, potentially causing irreparable damage to the preservation of taonga.

8. The Bill's focus on consistency with Treaty settlements overlooks the substantial number of Iwi and hapū whose Treaty claims remain unsettled. This oversight not only marginalises these groups but also disregards the foundational principle of Te Tiriti o Waitangi, which does not condition the exercise of tino rangatiratanga and the protection of Māori lands, villages, and taonga on the completion of Treaty settlements. The Bill must respect the rights of all Māori, ensuring no Iwi or hapū is left vulnerable to unilateral development decisions that could detrimentally affect their taonga.

### **Unrealistic Proposed Timeframes**

9. As noted in the Iwi Chairs Forum Submission, the proposed timeframes outlined in the Fast Track Approvals Bill are unrealistic, particularly in the context of ensuring meaningful consultation and involvement of hapū/iwi/Māori. These timeframes do not allow adequate opportunity for thorough environmental impact assessments, nor do they accommodate the depth of consultation required to genuinely involve Iwi, hapū, and Māori communities as active participants and decision-makers in processes that directly impact their lands and taonga.

### **The Bill disregards international commitments**

10. **Biodiversity and Environmental Protection:** The Bill conflicts with New Zealand's obligations under the Convention on Biological Diversity and the Kunming-Montreal Global Biodiversity Framework, which call for the conservation of biological diversity and the sustainable use of its components. Fast-tracking development without thorough environmental impact assessments could lead to significant biodiversity loss, contrary to these international commitments.
11. **Indigenous Rights:** The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), to which New Zealand has expressed commitment, asserts the rights of Indigenous peoples to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions while retaining their right to participate fully, if they so choose, in the political, economic, social, and cultural life of the State. The Bill's provisions for bypassing thorough engagement processes with Māori could be seen as failing to uphold these rights, particularly the right to free, prior, and informed consent on matters that affect them.
12. **Conservation of Migratory Species and Wetlands:** The Bill's approach could also contravene the Convention on Migratory Species of Wild Animals and the Ramsar Convention on Wetlands, which New Zealand has ratified. These conventions require the protection of habitats essential for migratory species and wetlands of international importance, respectively. Expedited consenting processes that overlook thorough environmental assessments could threaten these critical habitats.

### **Implications of Ignoring Established Environmental and Cultural Protections**

13. The Fast Track Approvals Bill's expedited approach to environmental management poses a direct threat to Aotearoa's ecosystems, which are already under significant stress. By sidelining established environmental safeguards, the Bill enables developments that carry potentially severe adverse impacts, thereby directly contradicting the imperative for enhanced care of our environment. This approach not only signals a potential crisis for biodiversity, ecosystems, and cultural heritage but also risks the integrity of sacred sites and Aotearoa's broader natural heritage.
14. The Supreme Court's judgments in both *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd [2014]* and *West Coast ENT Inc v Buller Coal Ltd [2013]* highlight the critical demand for comprehensive environmental and cultural impact assessments and emphasize the balance between development benefits and environmental protection. In *West Coast ENT Inc v Buller Coal Ltd*, the Supreme Court underscored the importance of maintaining this balance, reflecting a judicial recognition that economic development cannot come at the expense of environmental degradation.
15. The Bill's mechanism for fast-tracking consents critically risks sidelining these essential evaluations, stripping the robustness of processes that ensure developments are environmentally and culturally sustainable. By bypassing detailed impact assessments, the Bill not only contravenes established legal precedents that safeguard environmental and cultural values but also undermines New Zealand's commitment to maintaining its natural heritage. This neglect may result in irreversible damage to ecosystems and cultural sites, impacting not just current but future generations.

#### **Recommendations**

16. To ensure the Fast Track Approvals Bill aligns with the principles of environmental stewardship, Te Tiriti o Waitangi, and sustainable development, we propose it be revised to include the following key features of responsible fast-track legislation:
  - **Robust, Independent Assessment of Proposals:** Robust, independent assessment of proposals is an essential feature of good practice in large-scale application assessment. We seek to incorporate this requirement into the FTA Bill to ensure that decisions are evidence based.
  - **Rights and Interests of Iwi and Hapū:** The legislation must explicitly recognize and provide for the rights and interests of Iwi and hapū. This should reflect the purposes and principles in relevant natural resource legislation and planning/policy instruments, such as sections 6(e), 7, and 8 of the Resource Management Act (RMA) and section 4 of the Conservation Act. We suggest including a Tiriti o Waitangi clause that requires all persons exercising functions and powers under the FTA Bill to 'give effect to' Te Tiriti o Waitangi.
  - **Incorporate Explicit Māori Consultation and Involvement:** The Bill must be amended to ensure that iwi, hapū, and Māori communities are not merely consulted but involved as decision-makers in the consenting process for projects affecting their lands and taonga. This involvement should be a fundamental requirement, aligning with the principles of self-determination and sovereignty guaranteed under both Te Tiriti and international commitments such as the United Nations Declaration on the Rights of Indigenous Peoples.
  - **Active Participation of Iwi/Hapū:** The legislation should provide for and incentivise the active participation of iwi/hapū from the outset of any infrastructure and development projects. This includes involvement in pre-application processes and prior to any approval, ensuring that Māori have a decisive role in the planning and approval stages of developments that affect their lands and taonga.

- **Review and Extend Timeframes:** Amend the Bill to provide realistic timeframes that reflect the necessity for thorough consultation and detailed environmental and cultural impact assessments. The current fast-track approach undermines the ability to conduct these essential evaluations comprehensively, risking decisions that could have detrimental effects on the environment and Māori cultural heritage.
- **Full Public Notification and Transparency:** All projects considered under this legislation should be fully publicly notified, including opportunities for submissions and hearings by an independent expert panel. The lack of public scrutiny through the Select Committee process of projects listed in Schedule 2 demands this transparency to maintain public trust and ensure community input.
- **Environmental Sustainability and Health:** The legislation must recognize and provide for the sustainable health and well-being of our people and the environment. This includes mandating comprehensive environmental and cultural impact assessments that consider both the immediate and long-term effects of proposed developments on biodiversity, ecosystems, and cultural heritage.

## Conclusion

The proposed Fast Track Approvals Bill, in its current form, is unconstitutional. It significantly undermines the principles of fair governance, transparency, and respect for Indigenous rights as outlined in Te Tiriti o Waitangi, judicial direction and international law. By integrating the above key features into the legislation, we can ensure that the Fast Track Approvals Bill not only respects the environmental and cultural integrity of Aotearoa but also upholds the rights and partnerships established under Te Tiriti o Waitangi. We urge the Committee to reconsider the proposed Bill in light of these significant concerns and ensure that any legislative changes support sustainable development and foster a genuine partnership with Māori, as envisaged by Te Tiriti o Waitangi.

Please contact us if you have any further questions or wish to discuss the context of our submission; email [TeTaiawatea@ttw.nz](mailto:TeTaiawatea@ttw.nz).

Ngā mihi,



Melanie Mark-Shadbolt  
Chief Executive

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