



17 April 2024

David MacLeod
Chairperson
Environment Committee
Parliament Buildings

By email: en@parliament.govt.nz

E te rangatira, tēnā koe

Submission on Fast-track Approvals Bill

1. Thank you for the opportunity to make a submission on the Fast-track Approvals Bill (the Bill).
2. The Ombudsman is an independent Officer of Parliament established under the Ombudsmen Act 1975. My role as Chief Ombudsmen is to provide an impartial, independent check that decision-making at central and local government levels is robust, fair, transparent, and accountable. I also have responsibilities under the official information legislation that assist and encourage people to participate in the making and administration of policy and laws.
3. My purpose in making a submission on this Bill is to:
 - a. Recommend that the Committee make the expert panel subject to the Ombudsmen Act 1975 (and, by extension, the Official Information Act 1982);
 - b. Provide the Committee with advice to inform its consideration of some other aspects of the Bill.

Ombudsmen Act jurisdiction

4. The Legislation Design and Advisory Committee's (LDAC) 2021 guidelines state that:¹

All bodies that exercise public functions should be subject to the Ombudsmen Act 1975 unless compelling reasons exist for them not to be.

... The Ministry of Justice, the Department of Internal Affairs, and the Office of the Ombudsman must be consulted if it is proposed that the right to complain to the Ombudsmen be restricted by legislation.

5. As it is presently drafted, the Bill does not make the expert panels that are convened to advise on applications² subject to the Ombudsmen Act. I am not aware of any rationale for departing from the expectations set out in the LDAC guidelines set out above. As the panel performs a public function, including holding hearings (in some circumstances) and

¹ Legislation Design and Advisory Committee, Legislation Guidelines, 2021 Edition at [28.9].

² Fast-track Approvals Bill, cl 11.

producing a written report with recommendations to joint Ministers, I recommend the Committee make amendments to ensure the panel is subject to the Ombudsmen Act. This can be done by including reference to the panel in Schedule 1 of the Ombudsmen Act.

Application of Official Information regimes

6. The Ombudsman's long-standing view is that the Official Information Act 1982 (OIA) or Local Government Official Information and Meetings Act 1987 (LGOIMA) should apply as broadly as possible as a general regime guiding official information practices across the wider public sector. The courts have long recognised the OIA as being 'constitutional' in nature.³ In addition, the OIA and LGOIMA are vehicles by which New Zealanders may exercise their fundamental freedom to seek and receive information, as enshrined in section 14 of the New Zealand Bill of Rights Act 1990.
7. If the Committee agrees to my suggestion to add the expert panel to the Ombudsmen Act then this will, by default, mean that the panel is made clearly subject to the OIA. This would be my preference.
8. If Committee does not support my recommendation to add the panel to the Ombudsmen Act, I recommend the Committee consider the following comments:
 - a. Under the Bill as drafted information held by the panel would be deemed to be held by Ministers for the purposes of the OIA (by virtue of s 2(2) OIA). This would mean requesters could ask Ministers for any information relating to the panel, and I could investigate a Minister's refusal of such requests. This is a less direct way for information held by the panel to be subject to the OIA, and would require Ministers' time to respond to official information requests. A more direct way would be to include reference to the panel in Schedule 1 of the OIA.
 - b. The Committee may wish to consider clarifying the interaction between LGOIMA and the OIA which is envisaged in schedule 3 cl 16 of the Bill. It seems to me that there may be good reason for the "meetings" provisions in Part 7 of LGOIMA to apply directly to the panel as envisaged in these clauses, but the current drafting leaves the application of other Parts of LGOIMA and the OIA in doubt. This, and the current indirect application of the OIA I have outlined above, is unhelpfully confusing. I would be happy for my staff to discuss how to resolve these technical matters directly with officials once the Committee has had the opportunity to consider my submission.

General comments

9. I recognise the broader objective of the Bill is to ensure the speedy determination of projects of national significance, and that to achieve this it is considered necessary to adjust the current statutory framework.
10. I believe I can offer Parliament some useful advice on two points arising in the Bill, in light of my experience with the principles of good administrative decision making:

³ *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385 (CA), per Cooke P; *Wyatt Co (NZ) Ltd v Queenstown-Lakes District Council* [1991] 2 NZLR 180 (HC).

- a. The Committee may wish to review whether the Bill contains workable and fair timeframes for inviting and receiving comments. For example:
 - i. Joint Ministers must invite and receive comments within a specified timeframe – for instance, 10 working days - from the specified persons and entities on the initial application, before deciding whether to refer the matter to the panel.⁴
 - ii. A panel must receive comments on a consent application or notice of requirement, within 10 working days after the date on which the panel invites the specified person and entities to provide comments.⁵

I appreciate the difficult balancing exercise that would need to be done between progressing consideration of the proposed project, and ensuring sufficient time is provided such that comments may be well-informed and developed to assist the relevant decision-maker. I recognise that the Bill provides a Minister with “absolute discretion” to accept submissions beyond the default timeframes, but this necessarily only applies where a decision has not yet been made. The Committee may wish to consider whether the Bill has struck a workable and appropriate balance in terms of the relevant timeframes.

- b. Schedule 4, cl 24 of the Bill provides that if the panel directs a hearing or part of a hearing be held using remote access facilities, the panel must enable access to the hearing by making it available live and free of charge to the public, and must make available, as soon as practicable after the hearing closes, an audio or video recording of the hearing or written transcript.⁶ To promote further public accessibility, I would support extending this clause to cover live streaming, and availability of recordings and transcripts in all cases, including where there are in-person hearings.

11. Thank you for your consideration and for the opportunity to comment on the Bill. I would be happy to talk to the points in this submission if that would assist the Committee.

Nāku noa, nā



Peter Boshier
Chief Ombudsman

⁴ Fast-track Approvals Bill, cl 19(5). There is an absolute discretion for joint Ministers to consider comments received after this time, as long as the Ministers have not already made decisions on the application (cl 19(6)).

⁵ Fast-track Approvals Bill, sch 4 cls 21 and 22. A similar discretion is contained for the panel to consider comments received after the time specified in the invitation, as long as the panel has not issued its decision (sch 4, cl 21(6)).

⁶ This is subject to the panel’s ability to exclude the public, in accordance with section 48 of LGOIMA (Fast-track Approvals Bill sch 4, cl 20(15)).