



NEW ZEALAND  
ECOLOGICAL  
SOCIETY

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**SUBMISSION ON:  
FAST-TRACK APPROVALS BILL**

The New Zealand Ecological Society (NZES) was formed in 1951 to promote the study of ecology and the application of ecological knowledge in all its aspects. NZES is the leading professional society in New Zealand for pure and applied ecology and publishes the New Zealand Journal of Ecology, the primary peer-reviewed publication for ecological science and research in the country. We have over 300 members, most of whom work with New Zealand's ecosystems and species through scientific research or applied management and policy. Our members serve as conservation managers, research scientists, applied ecologists, and academics who work within the country's universities, Crown Research Institutes, central and local government, private consultancies, and community groups. Many of our members have extensive experience in consenting processes and conducting and reviewing impact assessments and effects management responses.

NZES has a long standing interest in government policy and funding for the protection and management of indigenous biodiversity, and continues to make comprehensive submissions to the government on these matters. For example, in recent years NZES has submitted on proposed and Exposure Drafts of the National Policy Statement for Indigenous Biodiversity (NPS-IB) (2011, 2020, 2022) and the Natural Built Environment Bill (2021, 2023), the discussion document exploring a biodiversity credit system for New Zealand (2023), the Department of Conservation's Biodiversity Strategy (2019) and draft Threatened Species Strategy (2017).

In summary:

- NZES **opposes** in the strongest terms the Fast-track Approvals Bill (Fast-track Bill, the Bill) on the basis of:
  - Lack of reference to protection or sustainable management of the environment.
  - Extensive overreach of the Bill and unconstitutional Ministerial decision-making discretion.
  - Provisions of key environmental legislation and policy are inappropriately overridden.
  - New Zealand's growth and prosperity can (and must) be achieved within environmental limits, but the Bill lacks the fundamentals to secure this.

Submission on **Fast-track Approvals Bill**, 19 April 2024  
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- Exclusion of participation by appropriate experts and the public.
- The Bill does not give effect to Te Tiriti o Waitangi.
- Seriousness of the long-term consequences of the Bill on New Zealand's natural environment, species, and finite natural capital, and for future generations.
- A legislative agenda that diminishes the importance of the environment will imperil our international obligations to conserve indigenous biodiversity.
- NZES submits that the Environment Select Committee must recommend that the Fast-track Approvals Bill **does not proceed** through further stages in Parliament.
- We wish to be **heard** in support of our submission.

### **Sustainable management of the environment**

The Society is deeply concerned that the Bill lacks reference to protection or sustainable management or use of the environment. Its purpose lacks any reference to the environment and instead aims only to facilitate the delivery of infrastructure and development projects with regional or national benefits. This is in contrast to the CRFA (COVID-19 Recovery (Fast-track Consenting) Act 2020), the purpose of which was to promote employment and stimulate the economy during the pandemic, while continuing to *promote the sustainable management of natural and physical resources*.

Furthermore, the Bill would over-ride almost all democratically instituted safeguards that have been developed to limit peoples' impact on nature<sup>1</sup>. Under the Bill, complex and contentious projects that over-ride those safeguards would be processed with little public oversight, in short timeframes, without information being tested by experts<sup>2</sup>. Panels would be relying on partial or inadequate information and expertise, and Ministers could ignore or override any recommendations that those panels may make<sup>3</sup>.

There is no requirement for people or groups who value and represent the environment to be notified of fast-track approval processes, or to be invited to contribute to them. It is therefore inevitable that experts, and people and groups, with the ability to influence environmental outcomes for the better will be excluded<sup>4</sup>.

Together, these aspects weight decision-making under this bill towards development, with little regard needed for environmental impacts and the wellbeing of communities.

**NZES is deeply concerned** at the extensive reach of the Bill and at the seriousness of the potential long-term consequences for the environment and for people. The eligibility criteria for projects that may be referred to the panel are so broad and vague that any development proposal

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<sup>1</sup> see **Override of key environmental legislation and policy**

<sup>2</sup> see **Ecological impact assessment will be inadequate**

<sup>3</sup> see **Ministerial override of expert panel recommendations**

<sup>4</sup> see **Effective exclusion of public participation**

could qualify. Further, the list of criteria is not exhaustive and their application is subject to Ministerial discretion. The Bill also expressly allows for activities that are prohibited under the Resource Management Act (RMA) to be eligible for referral.

The Bill does not restrict projects that have been declined or overturned by the Courts (including on the basis of environmental matters) from being listed in the Bill or referred into the new fast-track process. This not only unjustly puts aside the matters already tested (and found lacking) through the Courts, but undermines the efforts of communities and stakeholder groups who have spent considerable time, energy, and cost into Court processes.

If the Bill proceeds, we predict that developments will go ahead that have unnecessary, and often very serious, permanent, and intergenerational impacts on New Zealand's unique natural environment, native biodiversity, waters and landscapes, and on the wellbeing of communities who value and depend on them.

**NZES also strongly opposes** the removal of the protections of policies and processes that are needed to safeguard New Zealand's unique natural environment, native biodiversity, waters and landscapes for future generations.

New Zealand's biota are globally unique<sup>5</sup> and have one of the highest levels of endemism in the world – around 82% of plants, 100% of lizards, 95% of insects, 71% of birds, and 86% of freshwater fish are found nowhere else<sup>6</sup>. If they are lost here, they are lost from the world entirely. These unique native species underpin key economic sectors, especially primary production and tourism. But they are also threatened with extinction.

New Zealand has the highest proportion of threatened native species in the world<sup>7</sup>. More than 75% of New Zealand's native species of reptile, bird, bat and freshwater fish are either threatened with extinction or at risk of becoming threatened<sup>8</sup>. Additionally, almost two-thirds of rare ecosystems in New Zealand are threatened with elimination<sup>9</sup>.

The vast majority of these threatened species and ecosystems occur in areas<sup>10</sup> that will be under threat from development if this Bill is passed.

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<sup>5</sup> Myers, N., Mittermeier, R., Mittermeier, C., da Fonseca, G.A.B., & Kent, J. (2000) Biodiversity hotspots for conservation priorities. *Nature*, 403, 853–858.

<sup>6</sup> Gibbs, G. (2006). *Ghosts of Gondwana*. Craig Potton Publishing, Nelson.

<sup>7</sup> Bradshaw C.J.A., Giam X., Sodhi N.S. (2010) Evaluating the Relative Environmental Impact of Countries. *PLOS ONE* 5(5): e10440. <https://doi.org/10.1371/journal.pone.0010440>

<sup>8</sup> Stats NZ (2023). Extinction threat to indigenous species. <https://www.stats.govt.nz/indicators/extinction-threat-to-indigenous-species/>

<sup>9</sup> Holdaway, R.J., Wiser, S.K., & Williams, P.A. (2012) Status assessment of New Zealand's naturally uncommon ecosystems. *Conservation Biology*, 26, 619–629.

<sup>10</sup> Cieraad, E., Walker, S., Price, R., & Barringer, J. (2015) An updated assessment of indigenous cover remaining and legal protection in New Zealand's land environments. *New Zealand Journal of Ecology*, 39, 309–315.

**We submit that** fast-tracking as proposed by this Bill will undermine New Zealand's progress on biodiversity protection.

**NZES submits** that a strong economy is dependent on a healthy environment.

New Zealand's economy relies on the environment in many ways. Biodiversity and healthy ecosystems regulate the climate, prevent erosion, cycle nutrients, capture and filter water, pollinate crops, provide drinking water and reduce the risk of floods<sup>11,12</sup>. These ecosystem services underpin our primary production and tourism sectors<sup>13</sup> and also provide cultural services including recreational opportunities and our sense of national identity<sup>14</sup>.

One study<sup>15</sup> estimated New Zealand's land-based ecosystem services contributed NZ\$57 billion to human welfare in 2012 (27% of the country's GDP in that year). Freshwater wetlands alone were estimated to provide benefits with an estimated value of more than \$5 billion per year in 2012.<sup>16</sup> The tourism industry contributes over \$6 billion to GDP, and is highly dependent on New Zealand's native biodiversity and ecosystems.<sup>17</sup>

The ecosystem services provided by our native biodiversity are already under pressure<sup>18</sup>. Degraded ecosystems can fail to provide these services, and can reach a tipping point in which they are providing disservices (e.g. eutrophication of freshwater systems). Any reduction in the capacity of native biodiversity to provide ecosystem services will result in considerable economic impacts. For example, the economic losses of soil erosion alone (192 million tonnes lost annually) is estimated at \$250–\$300M per year<sup>19</sup>.

**We submit that** fast-tracking as proposed by this Bill will erode rather than sustain the natural capital on which the economy depends.

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<sup>11</sup> McAlpine, K.G. & Wotton, D.M. (2009). Conservation and the delivery of ecosystem services: a literature review. Department of Conservation, Wellington.

<sup>12</sup> Dymond, J.R., ed. (2013) Ecosystem services in New Zealand: conditions and trends. Manaaki Whenua Press, Landcare Research, Lincoln.

<sup>13</sup> Ibid.

<sup>14</sup> Roberts, L., Brower, A., Kerr, G., Lambert, S., McWilliam, W., Moore, K., Quinn, J., Simmons, D., Thrush, S., Townsend, M., Blaschke, P., Costanza, R., Cullen, R., Hughey, K., & Wratten, S. (2015). The nature of wellbeing: how nature's ecosystem services contribute to the wellbeing of New Zealand and New Zealanders. Department of Conservation, Wellington. Pp. 145.

<sup>15</sup> Patterson M.G., Cole A.O. (2013). "Total economic value" of New Zealand's land-based ecosystems and their services. In Dymond J.R., ed. Ecosystem services in New Zealand

<sup>16</sup> Ibid.

<sup>17</sup> Dymond, J.R., ed. (2013) Ecosystem services in New Zealand: conditions and trends. Manaaki Whenua Press, Landcare Research, Lincoln.

<sup>18</sup> Ibid.

<sup>19</sup> Ministry for the Environment (2019). New Zealand Environmental Reporting Series: Environment Aotearoa 2019. MfE and StatsNZ, Wellington.

**NZES submits that** in New Zealand growth and prosperity can be achieved within environmental limits, now and into the future. However, clearly defined limits and rules are an important prerequisite to achieve growth and prosperity within environmental limits. Limits and rules serve to inform developers about the places and conditions under which development proposals are likely to have limited environmental impacts, and therefore a more straight forward consenting pathway. And *when development proposals do not breach environmental limits and rules*, it is possible to provide a timely and efficient process, including due expert scrutiny and public participation, without compromising the achievement of good environmental outcomes.

For these reasons, **NZES requests that** the Environment Select Committee recommends that the Fast-track Approvals Bill does not proceed through further stages in Parliament. The Bill lacks the fundamentals to protect the environment while facilitating growth within limits. These are:

- Making the sustainable management of natural and physical resources a primary purpose, removing the ability for development to override environmental considerations.
- Defining clear environmental limits and rules (bottom lines) designed to protect the natural environment from further harm, and admitting only projects that do not breach those limits and rules to any fast-track process.
- Providing for due public participation and expert scrutiny of environmental effects of all proposals.
- Preventing ministers from ignoring or overriding panel recommendations that safeguard the environment.

### **Te Tiriti O Waitangi**

**NZES is concerned** that the Bill does not require that decision makers give effect to Te Tiriti O Waitangi.

The Bill contains provisions to recognise and provide for some Māori interests, with Treaty Settlements and customary title being recognised. Treaty Settlements and customary title are not the Treaty but a very small and partial redress of the value lost to Māori through historical breaches of the Treaty.

The timeframe for consultation and turnaround are unrealistic. The Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development cannot consult and provide informed comment on a fast-track proposal within five working days. Māori cannot appropriately feed back into proposals that could then be approved without properly understanding what the impacts on Māori will be, including potentially breaching Te Tiriti. No consultation with Māori interests appears to be required for listed projects that default to the fast-track. And most importantly, it appears that Ministers are able to override recommendations arising from consultations.

As a result, the Bill would allow projects to be approved despite being on wāhi tapu and other areas significant to Māori. Intergenerational impacts on, and harm to, Māori culture, traditions and taonga would result.

We note that the Ministry for the Environment suggests that the Bill could fast-track Māori development projects. While we acknowledge this could occur, for the reasons set out above, we submit that the net impacts of the Bill are likely to be negative for broader Māori rights and interests and further alienate Māori from their whenua and resources.

For these reasons, **NZES requests that** the Environment Select Committee recommends that the Fast-track Approvals Bill does not proceed through further stages in Parliament. The basic requirements of any approval process are to:

- Require decisions give effect to Te Tiriti O Waitangi.
- Include proper processes, responsibilities, and adequate timeframes to consult meaningfully and give effect to kaitiakitanga rights of iwi and hapū.
- Ensure that consents are refused that will have negative impacts on the relationship of Māori with their culture, traditions and taonga (not just Treaty settlements).

### **Override of key environmental legislation and policy**

Clause 32 of Schedule 4 of the Bill proposes a hierarchy that clearly favours infrastructure and development objectives over the sustainable management purpose (s5) and matters for consideration under the Resource Management Act (RMA), including matters of national importance (s6), and other matters that require particular regard (s7). National direction is further down the hierarchy, including national policy statements (NPS) for freshwater management (NPS-FM), the coastal environment (NZCPS) and indigenous biodiversity (NPS-IB). Those NPSs have gone through many rounds of careful consultation with many stakeholders, and involved the extensive consideration of evidence, technical working groups, stakeholder engagement and compromise prior to their enactment. **NZES strongly opposes** the override of this environmental law and policy, including the NPS-IB, the NPS-FM and the NZCPS.

RMA s8 (Treaty of Waitangi) is not even included in the hierarchy, effectively meaning that panels are not required to take into account the principles of Te Tiriti when making their recommendations<sup>20</sup>.

Clause 35(5) of Schedule 4 of the Bill removes the safeguard of needing to avoid non-complying activities that would have more than minor adverse effects on the environment, or are contrary to plan objectives and policies.

Prohibited activities under the RMA are the most damaging and dangerous activities, which councils, central government, and the Courts have explicitly banned. Ministers have been advised that these activities often have significant environmental or human health effects<sup>21</sup>. Yet the Bill provides for these activities to be fast-tracked. **NZES opposes** this shocking and irresponsible aspect of the Bill in the strongest terms.

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<sup>20</sup> see also **Te Tiriti O Waitangi** above

<sup>21</sup> Ministry for the Environment Supplementary Analysis Report: Fast Track Approvals Bill (2024).

Climate change responsibilities and undertakings are also ignored. There is also no reference to the importance of reducing greenhouse gas emissions, or the need to align consenting decisions with emissions reduction plans or targets/budgets under the Climate Change Response Act 2002 and Climate Change Response (Zero Carbon) Act 2019. **NZES submits** that this is irresponsible and unacceptable.

NZES is also concerned about the application of the Bill to approvals under the Wildlife Act 1953, Conservation Act 1987, Reserves Act 1977, Freshwater Fisheries Regulations 1983, Fisheries Act 1996, Crown Minerals Act 1991 (access arrangements for Crown land), heritage legislation, and the EEZ Act. **We oppose that application.**

Protection of public conservation land is a public good and **NZES opposes any watering down** of the provisions of conservation legislation and its democratic and consultative processes. Specifically, **NZES opposes** in the strongest terms the following proposals under the Bill:

- Concessions on public conservation land would not need to be consistent with conservation management strategies and conservation management plans, nor do those strategies and plans even require consideration unless specifically written by or with Treaty settlement entities. That would mean that interests and efforts of those who participated in the democratic process to compile those *other* documents would be disregarded and set aside.
- Concessions can be granted even when the application is “obviously inconsistent with”, or does not “comply” with, the provisions of the Conservation Act, and where the concession is not consistent with the conservation purpose for which the land is held.
- The removal of a requirement that an application for a structure/facility be declined where it could reasonably be undertaken outside of public conservation land or in another part of the public conservation land having lower impact (there is only “consideration” of this<sup>22</sup>).
- That there is to be no public notification of application for easements and licences on conservation land, *despite* it being public conservation land.

**NZES submits that** any fast-tracking of development proposals must at a minimum uphold, and not override, the democratically instituted protections and safeguards noted above. Those safeguards have been designed with public input over many decades to limit impacts on the environment, and should not be ridden rough-shod over in the quest for a rapid development at any cost.

**We submit that it is inappropriate to apply** fast-tracking to any category of public conservation land (including Stewardship Land that has not been reviewed and found to have low or no conservation value); any outstanding natural landscape; any freshwater protected by a water conservation order; or any significant natural areas and areas that meet ecological significance criteria. Any development of regional or national significance that impacts such land is likely to have complex effects that require full assessment and public involvement.

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<sup>22</sup> Fast-track Approvals Bill, Schedule 5, cl 5(a).



## **Ecological impact assessment will be inadequate**

The Bill does not require an Assessment of Environmental Effects (AEE) or an ecological impact assessment to accompany proposals, merely a “description of the anticipated and known adverse effects of the projects on the environment” (Clause 14). Without having a full understanding of impacts there can be no certainty that proposed effects management responses and conditions are appropriate and adequate.

There are limited provisions to account for and consider adverse effects on the environment at later stages of the fast-tracking process. While the expert panel can request further information, this information must be provided within 10 working days. This is wholly inadequate as it does not allow for undertaking field surveys, ecological assessments, impact assessments, or improving effects management. The Ministers can also request further information at the referral stage, however, this is at their discretion and the development-focused purpose of the Bill (and the Minister’s portfolios) sends a clear signal that ecological and environmental matters are unlikely to be given due weight.

Further, the ‘expert’ panel members are not required to have skills and experience relevant to environmental management, only those “relevant to the purpose of the Act” (development focused), “matters specific to the project”, Te Tiriti o Waitangi, tikanga and “if appropriate” conservation expertise. Therefore, the expert panel will not be equipped to identify shortfalls in impact assessments or be in a position to fill gaps. **We submit** that this is irresponsible and unacceptable.

Leaving effects management to be addressed by way of conditions removes the ability to apply the effects management hierarchy (which is embedded in the environmental legislation and policy that this Bill overrides, for example, the NPS-IB and NPS-FM), and critically, avoid adverse impacts in the first place (‘avoid’ is the first step in the hierarchy). The hierarchy of matters given consideration by the expert panel when assessing referred projects (Clause 32, Schedule 4) further entrenches the development-focussed purpose of the Bill at the expense of environmental considerations. Therefore, it is likely that referrals will proceed where they align with the purposes of the Fast-track Bill, regardless of whether there are adverse impacts on environmental values. **NZES submits** that not all adverse effects can be adequately addressed through conditions. Compensation does not replace lost values and the ability for biodiversity offsetting to generate sufficient biodiversity gains to balance losses (to achieve no net loss or net gain) is highly constrained by infeasibility, particularly for irreplaceable and vulnerable ecosystems, habitats, and species. Referrals for development activities on public conservation land are particularly likely to encounter this limitation.

The lack of adequate impact assessment and effects management is entirely inappropriate for proposals that will likely have adverse effects on New Zealand’s natural environment, native biodiversity, and finite natural capital.

**NZES submits that** inadequate impact assessment effects management will further degrade our environment, unique biodiversity, and natural capital, which underpins our economy and contributes to the provision of the ecosystem services we depend on for our wellbeing and survival (e.g., provision of food, drinking water, and mitigation of storm events).

### **Overturning of existing decisions and provisions**

NZES is deeply concerned, and opposes, that applications that have already been legally scrutinised and turned down for unacceptable effects (environmental or otherwise) may be fast tracked, and approved with the same or even weaker conditions as those originally proposed. We submit that this is objectionable and may lead to extraordinary environmental damage.

NZES also opposes in the strongest terms the provision in the Bill to allow existing conditions in existing resource consents to be changed or cancelled if material to a new application<sup>23</sup>. We submit that the fact that panels are not required, or able, to give public or limited notification of such changes makes this even more egregious and contrary to natural justice.

### **Inadequate ability for the expert panel to lead to good decisions**

The expert panel cannot themselves make decisions and instead are restricted to providing recommendations, leaving final decision-making to Ministerial discretion.

However, the timeframes under which panels must make recommendations are unworkable and do not provide for fulsome consideration of likely effects of proposals<sup>24</sup>, and thus well-supported recommendations. Overall, panels have just 40 days (possibly extended to 65) to assess the most complex of proposals: a maximum of five working days to invite written comments; ten further working days for comments to be received; and 25 further working days to issue recommendations (extendable by up to a further 25 working days if they cannot do so). **NZES submits that** these timeframes are absurdly tight and, combined with the inability to ensure all necessary information is available, are not conducive to making informed and considered recommendations. We also reiterate (see above<sup>25</sup>) that it is unacceptable that there is no requirement for experts to have the necessary skills and qualifications to consider environmental matters.

Ministers can choose to accept or reject expert panel recommendations, although to reject recommendations brings a requirement to perform their own analysis. What that requirement looks like in detail is unclear.

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<sup>23</sup> Fast-track Approvals Bill, Schedule 4 clause 2(3)(a)

<sup>24</sup> Fast-track Approvals Bill, clauses 20, 21, 39

<sup>25</sup> see **Ecological impact assessment will be inadequate**

**It is deeply concerning to NZES that:**

- There are no standards for the adequacy of any element of panel's assessments under the absurdly tight timeframes; and
- Ministers, who do not themselves have the requisite technical expertise on the potential adverse effects of a project, can choose to accept or reject panel recommendations.

It is therefore clear that the quality and thoroughness of panels' assessments under the Bill are not of concern to this government. Panels will be largely symbolic in a predetermined assessment that a project may proceed at a development Minister's discretion.

**NZES submits that** the expert panel cannot be relied on to make sound recommendations given the likely lack of pertinent information, the heavily restricted timeframes, and the lack of requirement to have relevant experts on the panel.

**Effective exclusion of public participation**

The override of key legislation<sup>26</sup> means that development is to be favoured at almost any environmental cost, and the interests and efforts of those who *have in the past* participated in the democratic process to develop these key safeguards are to be set aside. But in addition, almost all opportunities for environmental interest groups and the public to provide information to panels and to be involved in the *future* decisions that will affect the natural environment are removed by the Fast-track Bill.

When making referral decisions, Ministers must invite written comment from local government, other relevant Ministers and various Māori entities, but there is no requirement to notify anyone else about a referral application or a referral, nor invite submissions from them. Any invitation to provide written comment is at the Ministers' discretion. Panels are required to seek comment from owners and occupiers of affected land and can invite comments from any person at their discretion, but may not issue any public and limited notification of a consent application or notice of requirement. Hence it is possible that members the public may not even learn of a development that directly affects them until it has commenced.

The Department of Conservation has an opportunity to provide feedback on projects but its involvement does not guarantee full informed consideration of environmental impacts. In the NZES's experience, DOC's limited budget and now lean expertise means that it often leaves environmental groups to bring evidence and contest projects with significant environmental impacts. DOC is also highly vulnerable to political direction, and in the past has bowed to political direction not to provide information.

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<sup>26</sup> see **Override of key environmental legislation and policy** and **Ecological impact assessment will be inadequate**

**NZES submits that** projects likely to be referred to panels are likely to have significant, complex, and long-lasting (if not permanent) adverse effects on the environment and on communities. Furthermore, as we have noted<sup>27</sup>, panels are not required to have, and are unlikely in practice to have, the requisite ecological and environmental knowledge to comprehend and weigh these effects. And the timeframes for assessment make it highly likely that effects will not be assessed.

**We submit that** it is essential that such projects with large, complex and/or long-lasting environmental effects are publicly notified, and that submissions and expert evidence is able to be brought by public interest groups and nongovernmental organisations.

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<sup>27</sup> see **Ecological impact assessment will be inadequate**