COVID-19 Recovery (Fast-track Consenting) Bill

Climate Justice Taranaki Submission to the Parliamentary Environment Committee, 21 June 2020

Climate Justice Taranaki is deeply concerned about the COVID-19 Recovery (Fast-track Consenting) Bill, its rushed Select Committee process, content and implications.

A lost opportunity

1. As a social and environmental justice community group, we can see urgent needs and opportunities for investments and incentives which create benefits for people and the environment post-COVID. But the Bill represents a lost opportunity. It also is counter to the increasingly strongly held and well espoused views of many New Zealanders, who are increasingly concerned about our impacts on the environment, climate change, social wellbeing and inter-generational equity.
2. Our group strongly advocates for environmental benefits, in particular **climate change mitigation, adaptation and resilience**, to be set criteria, alongside social wellbeing and employment opportunities, that must be considered for any project applications.
3. In Taranaki, tangata whenua and communities have been severely impacted by the non-notified aspect of the RMA process, lax management and rampant regulatory capture of territorial authorities by the fossil fuel industry[1, 2], resulting in widespread social and environmental harm.
4. It is no longer acceptable for a consent to be granted because the proposal is perceived to have less than minor adverse environmental effects, or for the public or affected parties to argue the opposite. The burden of proof must be on the proponents to show that there would in fact be **environmental and social benefits** as a result of a proposed project.
5. The **precautionary principle** must be applied in favour of environmental and social protection, if there is any uncertainty.

Purpose

6. We do not see clear rationale for the purpose of the Act. Promoting "*employment growth*" in a hurry is not the most effective way of supporting the "*recovery from economic and social impacts of COVID-19*" and it does not guarantee "*ongoing investment*". The proposed fast-tracking of consenting process for infrastructural projects risks jeopardizing the "*sustainable management of natural and physical resources*", making the purpose of the Bill irrational.
7. There is no mention of environmental benefits under the criteria for projects (s18 of the Bill) that may be referred to an expert consenting panel. The Minister is not required to consider environmental costs or benefits in depth when considering whether a project would help achieve the purpose of the Act. S19 states that "*the Minister may consider, at whatever level of detail the Minister considers appropriate, any or all*" of the matters listed.

8. On the contrary, environmental benefits and social wellbeing must be in the purpose. S19(b) "*the project's effect on the social and cultural wellbeing of current and future generations*" must come first and foremost as a project criterion, rather than s19(a) which focuses on short-term economics.

9. To ensure human health is being considered, the Minister of Health should be included under s21(6) and Schedule 6 s17 as do the relevant district health boards. Schedule 6 s9 must incorporate information and assessment of effects on human health, health equity and hauora Māori. Effects on human health and wellbeing must also be incorporated into Schedule 6 s11.

Erosion of democracy and natural justice

10. The Minister for the Environment (jointly with the Minster of Conservation for projects in the coastal marine area) holds exclusive power in deciding whether projects are to be declined or referred to the Expert Consenting Panel for fast-track consent processing. A panel's function is largely limited to imposing conditions on the consent and designations, as stated in the explanatory note of the Bill.

11. For each project, the Minister appoints the panel convener who in turn appoints the chairperson of the panel. If the convener is a Judge or retired Judge, s/he may choose to be the chairperson who holds the casting vote in the event of an equality of votes. The process gives too much power to the Minister and a handful other selected ones.

12. The Bill excludes public and limited notification and hearing processes for consent applications. Inputs are by invitation from the panel to a limited list of organisations and owners and occupiers of the land on and adjacent to where the project is proposed (Schedule 6 of the Bill)[3].

13. The reality is that adverse effects from harmful projects often bear down on people and communities beyond the owners and occupiers of the land and the immediate neighbours. Clearly Schedule 6 and Section 24 (2e) need to be expanded to specify **affected and potentially affected parties** to be invited for comments. Section 23(5) should also specify **'public interest'** as a reason to decline an application.

14. The people of Taranaki have the bitter experience of living through decades of non-notified consenting of oil and gas activities, notably hydraulic fracturing, which have irreversibly damaged the land, water, air, as well as people's health, livelihoods and quality of life[4, 5, 6, 7].

15. There is no opportunity for appeals against a panel decision in the Environment Court. Appeals are limited to a point of law appeal to the High Court and a further right of appeal to the Court of Appeal (S42 of the Bill). This significantly hampers the ability for groups and individuals to appeal a decision.

16. Other than the 11 listed projects, there is no limit on the number or scope of proposals from the private sector and industries to the Minister to be 'referred' for fast-tracking, without any public knowledge or scrutiny.

Constraints on community, iwi and hapū as Treaty partners

17. The Bill gives any invited commenting persons or organisations only 10 days to comment on the application. "*When you do this kind of fast-tracking you simply aren't able to have that kind of robust scrutiny and you're not able to ensure that it has the best impacts on the environment*," warned Forest & Bird conservation manager Jen Miller[8].

18. Only four so-called peak NGOs out of many community groups have been identified for commenting on applications, and only in regards to 'referred' projects (Schedule 6 s17(6)). What about others such as Ora Taiao[9] with expertise in environmental and human health as well as health equity issues?

19. In respect to iwi and hapū engagement, Schedule 4 (s6) allows the agency to proceed with planning works on Permitted activities, if "*no response*" was received from entities to be engaged with, in the 30 days before the works commence. This ignores the limitation of capacity for parties to respond in a very short time, and risk violating **iwi and hapū interest** as partners of te Tiriti o Waitangi.

Permitted to degrade

20. We have already destroyed or degraded so much of our natural ecosystems and biodiversity through reckless development. We are in the midst of the 6th mass extinction. It is surely time to **repair the damage and restore environmental health** and its life-supporting capacity for ourselves, future generations and other species.

21. Yet the Bill permits environmentally damaging activities, with weak permitted activity standards (Schedule 4, s11 and 12). For example, s12(4d) could in reality permit an increasingly rare, clean fresh water source to be degraded so much that it'd only be fit for farm animals. S12(6c) permits earthworks to drain a natural wetland by 10 centimetres, occur within 25 metres of any part of a natural wetland. S16 permits temporary disturbance of a watercourse during fish spawning periods if the precaution of avoiding such periods is deemed unnecessary or impracticable.

22. We have a **wetland crisis** in Aotearoa New Zealand and three quarters of our native freshwater fish are threatened with extinction. Surely rather than permitting further drainage and degradation of wetlands and fresh water ecosystems, the government should be supporting, even fast-tracking, projects that protect, repair and restore natural wetlands and freshwater ecosystems. Such projects will also generate employment, support COVID recovery and foster community wellbeing.

23. While it is good that outstanding water bodies, wāhi tapu and sites of cultural or historical significance are excluded from permitted activities (section 31(3a) of the Bill), the permitted activity standards do not consider **cumulative impacts** of activities nearby that could affect them. For example, the permitted degradation of receiving waters (schedule 4, s12) could potentially result in degradation of an outstanding water body 25 metres downstream. Cumulative effects, while clearly defined in the RMA and the EEZ-CS Act, are seldom assessed, resulting in continuous degradation of our natural environment – 'death by a thousand cuts'.

Concluding remarks

24. We are strongly opposed to the fast-tracking of infrastructure projects by skipping standard resource consenting processes that could lock us into decades of environmental and social harm, with little if any benefit for those who are the most in need.

25. Notably Rod Carr, Chair of the Climate Change Commission advised[10], "*As the Government turns its mind to the economic recovery, we encourage you to put a climate change lens across the measures you choose to implement. We believe the Government can maintain its commitment to a productive, inclusive, sustainable, and climate-resilient economy. Applying the values of manaakitanga (respect and care for others) and kaitiakitanga (active guardianship) can help us to find our way as a country…*

26. *Smart investment decisions in low-emissions practices, technologies and infrastructure can create jobs and will ensure people are better off both now and in the future. Smart decisions will also reduce exposure to the physical impacts of climate change. Conversely, investments that lock New Zealand into a high-emissions and exposed development pathway will only compound today's crisis with a future one."*

27. We strongly believe that if we are to recover from the current social, economic and climate crises, we cannot afford to 'return to normal'. The old normal, epitomised by 'shovel-ready' and 'fast-tracking' projects for short-term gain, is what created the problems. A new normal would be a just and kind society respectful of each other and the planet, thoughtful in all its decisions and caring for the least privileged including future generations.

[1] https://www.pce.parliament.nz/publications/drilling-for-oil-and-gas-in-new-zealand-environmental-oversight-and-regulation
[2] http://www.terrenceloomis.ac.nz/latest-publication.html
[3] http://legislation.govt.nz/bill/government/2020/0277/latest/LMS345700.html?search=sw_096be8ed819aa454_invitation_25_se&p=1
[4] https://climatejusticetaranaki.files.wordpress.com/2018/04/ccheung-cjt-slides-for-dowse-25mar18-v2.pdf
[5] http://www.taranakienergywatchnz.org/seismic/
[6] https://jury.co.nz/category/petrochem/
[7] https://festival.docedge.nz/film/a-broken-earth/ (before 5 July 2020)
[8] https://www.rnz.co.nz/news/political/419102/fast-tracking-projects-involves-trade-off-environment-minister
[9] https://www.orataiao.org.nz/
[10] https://ccc-production-media.s3.ap-southeast-2.amazonaws.com/public/letter-to-Minister-Covid-Response-7-April-2020-1.pdf