

**Submission**

Of the

**Otago University Students’ Association**

on the

**Fast-track Approvals Bill**

To the

**Environment Committee**

Prepared by

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| To: | Environment Committee |
| From: | Otago University Students’ Association (OUSA) |
| Date | 19/04/2024 |
| Subject | Fast-track Approvals Bill |

# Introduction:

* 1. The Otago University Students’ Association would like to thank you for the opportunity to submit to the Environment Committee on the Fast-track Approvals Bill.
	2. If the opportunity arises, we would like to speak to this submission in person.
	3. This submission is written on behalf of the Executive of the Otago University Students’ Association and the 20,000 tauira across the country it represents. The University of Otago Students’ Association is compelled to write on the Fast-Track Approvals Bill due to the profound effect it will have on future of Aotearoa and its citizens.

# Position:

* 1. The Otago University Students’ Association agrees that resource consent reform, and specifically a fast-track process for resource consent is of great benefit to New Zealand. However, it finds the Fast-track Approvals Bill far exceeds what is necessary to achieve this goal and contains elements that consolidate Ministerial power, are undemocratic, sidestep existing environmental legislation, and fail to honour the Crowns obligations under Te Tiriti o Waitangi. On these considerations the Otago University Students’ Association asks the Environment Committee to revise the Fast-track Approvals Bill.

# Executive Summary:

* 1. The Otago University Students’ Association proposes to the Environmental Committee recommendations to Fast-track Approvals Bill (**Bill**) that;
		1. Revise the purpose of the Bill to account for the need of sustainable management
		2. Retain its principle as a “fast-track” for consent approval
		3. Seek to minimise unnecessary Ministerial overreach
		4. Seek to empower the expert panel to have greater and final decision-making authority
		5. Seek to make the Bill more environmentally friendly
		6. Seek to make the Bill more consistent with Te Tiriti o Waitangi
		7. Seek to increase democratic participation in the fast-track process
	2. The Otago University Students’ Association presents these recommendations based on the following considerations:
		1. That current consent application process is slow and stifling economic development and thus reform is necessary
		2. That the proposed measures in the Bill give Ministers more authority than needed to execute the intended goal, leaves them subject to accusations of political manipulation is in opposition to New Zealand’s democratic ideals
		3. That an expert-panel will possess greater technical experience, independence and community experience and knowledge than a Minister or group of joint Ministers
		4. That the Bill fails to give sufficient consideration of the environmental impact of its provisions and that the environment is too fragile and important to not be given the necessary consideration
		5. That the Bill fails to honour the Crown’s commitment to te Tiriti o Waitangi in its narrow focus on customary rights and land returned in Treaty settlements, further in its limitations imposed on efforts by iwi and hapū to exercise tino rangatiratanga

# Recommendations:

* 1. The Otago University Students’ Association presents the following recommendations on the revision of the Fast-track Approvals Bill to the Environment Committee;
	2. The Bill should not be progressed to its second reading in its current state.
	3. The Bill be revised according to public submissions but should eventually progress to its second reading.
	4. The intention of the Bill requires revision; namely,
		1. The Purpose of the Bill should be revised to “The purpose of the Fast-track Approvals Bill is to provide a streamlined decision-making process to facilitate the delivery of infrastructure and development projects with significant regional or national benefits, while still providing for sustainable environmental management.”
		2. The Bill should be revised to place greater weight on the importance of the environment, environment considerations, and responsible environmental management
		3. The Bill should be revised to reflect the necessary environmental considerations among Minister, joint Ministers and expert panel.
		4. The Bill should be revised to reflect and attempt to honour the Crowns obligations under Te Tiriti o Waitangi beyond honouring Treaty Settlements.
		5. The Bill should be revised to provide a process by which consent applications can be fast-tracked rather than a wider ranging resource management reform
	5. The provisions regarding decision making should be revised;
		1. The joint Ministers should include the Minister for the Environment and Minister for Conservation.
		2. The expert-panel should be given final authority to make decisions regarding the approval of project fast-track applications.
		3. The expert panel, should have the ability to accept, conditionally accept, or reject an application.
		4. There should be a great role of iwi and hapū to exercise in decision-making regarding
	6. If the select committee decides that Ministers maintain the final decision-making authority, this authority be minimised, through;
		1. Not allow Ministers the ability to ignore the recommendations of the expert panel.
		2. Not allowing the Ministers to ask the expert panel to revise their recommendations, unless in cases of unforeseen events.
		3. Allowing the joint Ministers, rather than relevant Minister, appoint the panellists
	7. Regardless of whether Ministers retain final authority, the joint Ministers should retain the authority;
		1. To accept or reject the initial project fast-track application based on the proposed revision of the purpose of the Bill.
		2. To enable a final panel review of the panel’s decision should new information relevant to the application come to light.
	8. The Bill’s attitude towards environmental regulations should be revised:
		1. The role of the expert-panel, as proposed in the Bill should be broadened to also consider the total impact of a project or application, including its impact on the environment, the community and other key factors.
		2. The scope of the Bill should be narrowed to approvals, concessions and authorities contained in the Resource Management Act 1991.
		3. The Minister for the Environment and the Minister for Conservation should be considered for membership of the joint Ministers.
	9. The Bill should be revised to be more consistent with Te Tiriti o Waitangi:
		1. The Bill should contain a written obligation to Te Tiriti o Waitangi.
		2. Panel membership should not be limited to a single iwi representative where multiple iwi might be interested in a given consent but expanded to allow all relevant iwi be involved in decision making.
		3. The expert panel should be granted decision-making authority.
		4. All aspects contained in a Treaty Settlement, not just land, should be protected.
		5. Iwi should retain their authority to reject proposed modified agreements.
	10. The Bill should be revised to be more democratic and then general definitions of terms should follow:
		1. There should not be a dual entrance track for fast-track applications.
		2. The public should be able to submit on individual fast-track applications within the panel, however, the panel should retain its right to reject submission from similar groups at its discretion.
		3. What constitutes a similar group should be defined in the Bill.
		4. Similar groups should have some ability to appeal on their difference and need to submit on fast-track applications.

Once again, thank you for considering our submission,

The Otago University Students’ Association Executive

# Supplementary Explanation:

## Agrees on the principal of reform:

* 1. Many in New Zealand agree that the current consent application process is simply too slow and is stifling necessary economic development.
	2. Of relevance to students at the University of Otago is the development of adequate and sustainable housing. The rise of rent and housing prices across the market is largely attributed to the limited supply of accommodation in the necessary markets. A fast-track process would allow for the faster delivery of housing projects which will increase competition in the market and (hopefully) deliver low rents and house prices.
	3. The replacement of New Zealand’s aging public infrastructure would also be expedited by a fast-track approval pathway for applications.
	4. An efficient and encompassing fast-track process would be of value to current students but also the country.
	5. The Otago University Students’ Association agrees on the necessity of a fast-track process for resource consent.

## Opposition to proposed ministerial power:

* 1. The Otago University Students’ Association’s primary concern in the Fast-Track Approvals Bill is the power given to Ministers in the approval process.
	2. The proposed measures in the Fast-Track Bill include giving unaccountable decision-making authority to a handful of Ministers whose sole focus is development. Ministers determine whether applications progress to an expert panel, play a role in choosing the panellists, challenge the panel’s recommendations, can suggest the panel reconsider its recommendations and still possess the final say on project applications.
	3. During the Covid-19 pandemic a fast-track consenting was enabled through the COVID-19 Recovery (Fast-track Consenting) Act 2020. However, even during the substantial threat of pandemic, economic recession, housing and infrastructure crisis the COVID-19 Recovery (Fast-track Consenting) Act 2020 did not propose the level of Ministerial overreach present in the Bill. It is the opinion of the Otago University Students’ Association that the level of authority being proposed is not proportionate to the problem it seeks to solve.
	4. Further, the proposed fast-track structure leaves the relevant Ministers open to accusations of political manipulation, bias and pre-determination. This calls into question not only the long-term validity of consents but also the perception of successful fast-track applicants as they might be accused of having orchestrated with the relevant Minister in some way.
	5. Finally, granting such extreme and largely unchecked power is in opposition to the New Zealand’s democratic principles. New Zealand prides itself on its open and transparent democracy. This transparency is a product of intense political scrutiny and action to minimise the unnecessary consolidation of power. The Ministerial authority present in the Fast-track Approvals Bill is an example of this unnecessary consolidation.

## Opposition to proposed role of expert-panel:

* 1. The Otago University Students’ Association is concerned with the proposed role of the expert-panel.
	2. The role of the expert-panel, as it is currently presented, is beyond toothless and almost makes you ask when it is due for dentures. As mentioned, all decision-making authority lies with the relevant Minister. The panel is only able to issue recommendations regarding the project application, the relevant Minister can challenge these recommendations and ask the panel to revise its recommendations if they are too onerous. But in the end the Minister can choose to ignore the recommendations of the expert-panel.
	3. Further, the consideration of the panel is limited to the purpose of the Bill namely “the delivery of infrastructure and development projects with significant regional or national benefits” above anything else. There is no consideration given to the environmental impact of projects, only the broad “regional or national benefit.” This appears to neglect the important environmental considerations in the issuing of a consent.
	4. The expert-panel in its proposed form would only contain one iwi representative however this seems to ignore the simple fact that multiple iwi authorities will have interests in the rohe of proposed activity. This is wholly inadequate in ensuring that iwi are able to demonstrate the rangatiratanga entitled to them under Article Two of Te Tiriti o Waitangi.
	5. Further, hapū and iwi and community representatives culturally, politically and professionally require the ability to seek community input. Restrictions placed on wider input undermines the representative's ability to execute their role appropriately.

## Preference for an expert-panel in decision making:

* 1. The Otago University Students’ Association believe that the expert panel is the more suitable than the Ministers to make decisions in the fast-track approval process.
	2. An expert panel can provide substantial and robust reasoning, technical analysis and expertise but most importantly an independent and transparent approval process.
	3. Panel decision making does not necessarily compromise the oversight of the relevant Ministers as they could still be able to enable a second review after the first decision if the joint Ministers can demonstrate further information has come to light and may change the panel’s decision.
	4. Panel decision making further, reduces Ministerial workload as the Ministers would no longer have to draft a report regarding their decisions. The Minister would also be able to progress multiple fast-track approvals concurrently at greater ease by deferring them to multiple panels, rather than reviewing the applications themselves. Further, if the Minister were making decisions, it is likely that greater support would be needed for Ministers to reach decisions. This would mean an additional cost to the relevant Ministry and thus the taxpayer.
	5. Panels also allow iwi, hapū and other Māori groups to exercise more decision-making authority compared to Ministerial decision-making. Further, certain existing Treaty settlements include the need for iwi or hapū participation in decision-making through appointment of hearing commissions or themselves acting as panel members. However, as mentioned previously and will be discussed below the panel format provided in the Bill might not meet the needs of iwi and hapū.

## Limits for Ministerial power:

* 1. If the select committee were to decide that the principal of Ministerial decision-making is acceptable, despite objection by this submission, the Otago University Students’ Association would recommend the Environment Committee consider means of limiting Ministerial decision making.
	2. Examples of this limiting could include; expanding Minister decision making to the joint Ministers with the inclusion of the Minister for the Environment and Minister for Conservation.

## Greater Consideration of the Environment:

* 1. Aotearoa New Zealand is home to some of the most beautiful and fragile ecological systems in the world. It is a vital part of our economy as it sets our tourism, agriculture, horticulture, forestry and fishing industries apart from international competitors. However, the value is not that the environment allows these industries to be successful but simply that it allows these industries to exist at all.
	2. The environment provides further non-productive value in its provision of recreational, spiritual and connection. Ecosystem processes have been estimated to contribute NZ$57 billion to human welfare in 2012 alone.
	3. One must also consider the intrinsic value to Aotearoa of knowing that we live in the beautiful country in the world, and the satisfaction and confidence that brings to those who live and visit our country.
	4. So much of New Zealand’s ecosystem has already been destroyed with only 22% of Aotearoa’s original vegetation remaining, 90% of our wetlands and 80% of our active sand dunes have been lost, 63% of rare ecosystems are threatened and 46% of our large lakes are in poor or very poor health. From 2012 to 2018, 13,000 hectares of native vegetation have been lost due to development efforts. Further 79 species extinctions have been recorded and there is ongoing risk to our remaining flora and fauna. 94% of our reptiles, 90% of seabirds, 74% of land birds, 76% of freshwater fish and 46% of plants are currently threatened or at risk. The statistics paint a picture of ecological distress across Aotearoa.
	5. 33% of New Zealand’s species are classified as “data deficient” meaning there is a lack of necessary information to determine whether New Zealand species are threatened with extinction. Thus, the ecological impact of increased economic development, particularly if projects pursue prohibited actions under other legislations as facilitated under the Bill, is potentially untold.
	6. New Zealand has committed to international conservation work in the Convention on Biological Diversity and Kunming-Montreal Global Diversity Framework. The removal of environment protections described in the Bill does not seem consistent with the intentions of these international agreements and further might jeopardise New Zealand’s ability to align with such commitments.
	7. While each of these previous points concerns the economic value of a healthy environment, the more important argument is that New Zealand’s ecosystems are continuing to be pushed to their limits. Ecosystems can only be pushed by manmade activities so far before their collapse. The economic loss of soil erosion is estimated at NZ$250-300 million a year and damages to waterways risks our valuable primary sector. Yes, the threat to commercial interests is not insignificant however what is more important is the health and wellbeing of our nation.
	8. Prioritising economic development at the cost of the unchecked ability to inflict massive environmental harm is frankly not worth the price. New Zealand is beginning to observe the impact of its neglect of climate change in numerous extreme weather events such as floods, storms, droughts and fires, rising sea levels.
	9. In Dunedin specifically, the 2015 St Kilda and South Dunedin Floods were exasperated by a high-water table caused by rising sea levels because of climate change, further the regular flooding around the Leith will continue to threaten student wellbeing.
	10. Finally, speaking on behalf of specifically University of Otago Students’ but also young people across Aotearoa. There is a common understanding that the natural environment is not ours to exploit for our short-term gain, but rather ours to nurture and protect so that future generations can enjoy as we have. This Bill does not feel in line with this understanding, and risks the future of Aotearoa for short term economic gain.

## Opposition to allowing work arounds to conservation legislation and regulations:

* 1. One-third of Aotearoa is public conservation land and the Bill would reduce the public’s right to administer and manage that public land. The public conservation land belongs to all current and future citizens of New Zealand and must be utilised in their best interest.
	2. As mentioned previously, the environment provides countless benefits to our nation and the unscrutinised and unchecked ability of ministers to endanger the environment for industrial benefit should not be remotely considered.
	3. Most of the existing legislation that the Bill attempts to circumnavigate has been scrutinized and developed in such a way to strike a balance between commercial and conservationist interests. As such, they should be continued to be applied to projects under the fast-track process.
	4. The University of Otago Students’ Association opposes the provisions contained in the Fast-track Approvals Bill as it would allow Ministers to ignore existing regulations regarding conservation efforts and environmental protection.

## Role of Te Tiriti o Waitangi:

* 1. The Bill fails to embed any written obligation to Te Tiriti o Waitangi. This fails to honour the Crown’s obligation under Te Tiriti o Waitangi. ‘Customary rights,’ as defined in the Takutai Moana Act and protected in the Bill, would only protect the exercising of cultural practices. This falls far below the Crown’s obligations; specifically, obligations to respect tino rangatiratanga as agreed in Article Two of Te Tiriti o Waitangi and the United Nations Declaration on the Rights of Indigenous Peoples which requires the for free, prior and informed consent before any activity applied under the Bill.
	2. The Bill offers weak protection for Treaty settlements as only land returned in settlements is specifically protected while other equally relevant parts of settlements such as wāhi tapu and recognition of special interests in areas receive comparatively fewer protections. Exclusive protection of Treaty settlements will also alienate hapū who have yet to settle which will increase pressure for those currently engaged Treaty settlement process.
	3. As previously mentioned, there are issues concerning the appointment of a sole iwi authority and their appointment to the expert panel.
	4. Perhaps most concerningly, Treaty settlement entities or iwis are compelled to agree to modified arrangements. This overrides the authority of the iwi by not allowing the rejection of an agreement.
	5. The University of Otago Students’ Association both in support of our Māori tauria also commitment to Te Tiriti o Waitangi opposes the aspects of the Bill that fail to address the Crown’s obligation to Te Tiriti o Waitangi.

## Oppose dual track for application process:

* 1. The Otago University Students’ Association questions the need for a dual track application process whereby certain projects will be priority over others as they are entered into the Bill after the select committee review. To be frank, this section is more of a headscratcher than anything else. It poses the following questions:
		1. Why should the public grant a blank cheque for no obvious reason regarding what projects get special treatment when they are unable to submit and be consulted on the specific projects once they begin their application.
		2. If the reasoning is to encourage the select committee to review the Bill itself rather than the specific programs contained, why should the Ministers be afforded the same privilege of selecting the programs themselves with less public scrutiny?
		3. Why would the decision-making authority not consider all projects on equal merit and subject to equal scrutiny?
	2. Seeing no obvious answer to these questions, the Otago University Students’ Association sees no value in the Bill including a dual track system for fast-track approvals.
1. Public Consultation:
	1. The Bill as it stands does not allow the public to be involved in consultation over projects that will be regionally and nationally significant, with potentially insufficient environmental analysis. Further, local iwi and hapū, environmental experts nor the public are required for consultation. This seems antithetical to the democratic ideals of New Zealand whereby interested parties should not only be able to make themselves heard but encouraged to do so.
	2. The Otago University Students’ Association strongly opposes the aspects of the Bill that seem at odds with New Zealand’s democratic ideals, particularly as it relates to consultation.