To: The Environment Select Committee

From: Wood Processors and Manufacturers Association

Date: 19 April 2024

Subject: Fast-track Approvals Bill submission

Contact for correspondence:
Mark Ross
Chief Executive, Wood Processors and Manufacturers Association
mark@wpma.org.nz
027 442 9965

1. Introduction

1.1 The Wood Processors and Manufacturers Association welcomes the opportunity to make a submission on the Fast-track Approvals Bill (the Bill) and recommends that the Bill proceed.

1.2. Our support is predicated on the understanding that the benefits accruing from enactment of the Bill include improved natural and economic resilience, increased regional and high-value employment, more effective adoption of the economic and social changes expected of New Zealand as a global citizen and an exporter of high-value goods.

1.3 Matters of national and regional significance are a political responsibility, taken after consideration of relevant and available expert advice. The Bill making political judgement and direction-setting explicitly is supported and recommended for adoption as and when changes are made to the RMA and other legislation.

1.4 As worded, the purpose of the Bill suggests a focus on new and additional projects whereas the national interest can and is supported at times by reinvestment in existing infrastructure such as encouraging growth for established companies within the wood processing and manufacturing industry.

1.5 The Fast-track consent processing needs to include reconsenting of large industrial activities, as these processes can often impact very significant projects.

1.6 Wood processing investments are capital intensive and long lived. Once established the 'sunk cost' and "make good" implications can be considerable, meaning that much of the focus of WPMA members has been on renewing and upgrading existing operations, with excessive cost and uncertainty resulting in less focus on new and innovative investments.

1.7 Hence, WPMA is requesting a broader interpretation of the application of the Bill, that facilitates both investment and **reinvestment** in infrastructure and development that provides significant economic and social national benefits.

Wish to Be Heard

The Wood Processors and Manufacturers Association would appreciate the opportunity to be heard in relation to our submission.

Recommendations

Our recommendations on the Bill are provided as follows:

Recommendation:

Amend Clause 3 to "...that facilitates investment and reinvestment in infrastructure and development providing significant national benefits.

Recommendation:

Amend 14(3)(e) to "(i) a description of the reasonable and anticipated conditions pertaining to the avoidance or mitigation of the adverse effects of the development and operation of the project and (ii) the expected adverse effects of the project on the environment after the described conditions have been applied.

Recommendation:

For reasons outlined, amend Clause 14(3)(s) to: an outline of the types *(and duration)* of resource consents, *(the conditions expected to be imposed in relation to resource consents,*) and any designations,....".

Recommendation:

For reasons outlined, add at the end of Clause 14(3)(v) "...natural hazards *(over the planned duration including after-care of the project.)*

***Recommendation:* Delete Clause 14(3)(f).**

Recommendation:

Amend Clause 14(3)(h) to "a list of persons the applicant considers are likely to be *(directly and significantly)* affected by the...." .

***Recommendation:* Delete Clauses 14(3)(u) and (w) and Clause 14(5).**

Recommendation:

Amend Clause 15(3) to "....application is incomplete, the responsible agency must immediately return the application to the applicant with the basis for its rejection listed in sufficient detail to provide specific guidance to the applicant, up to and including abandonment of the project.

Recommendation:

Amend Clause 17(3)(e) by deleting the word "primary" from the subclause.

Recommendation:

Amend Clause 17(3)(h) by adding after "natural hazards" '....and unforeseen events.'

Recommendation: **Delete Clause 17(3)(j)**

Recommendation: **Delete Clauses 21(2)(d) and (g).**

Recommendation: **Delete Clause 24(3)(b)&(c)**

Recommendation:

Either delete Clause 3(2)(a); or precisely define the "knowledge and skills" required of a local authority AND make their inclusion on an expert panel conditional of such knowledge and skills being required for matters specific to the project.

Recommendation:

Delete Clause 7(1)(e) as an unnecessary and potentially distortionary duplication of the primary intent of the THE BILL, that expert assessment is by those with the knowledge and skills required for matters specific to the project including the technical expertise relevant to the project.

Recommendation:

Amend Schedule to define the obligation inherent in subclauses (a) - (g) by including the phrase "significantly adverse" to each clause and changing the requirement to cover such matters from "must" to *'may*'.

Recommendation:

Amend Clause 36(1)(a) to include "methods of undertaking the work *(detailed in the proponents notice of requirement)* if-".

Recommendation: **Delete Clause 36(2)**

2. Discussion Points

2.1 Clause 14: Referral application

Clause 14(3)(e) requires from the applicant "a description of the anticipated and known adverse effects of the project on the environment."

A logical (and expert) application of this obligation to a project proposal would be a 'description of the adverse effects' after taking account of reasonable and usual conditions intended to avoid or mitigate unreasonable levels of environmental effect.

Considerable effort and investment have been made in developing and promulgating 'best practicable option' (BPO) conditions and codes of practice for many common activities which can and should be the assumed basis in assessing the environmental risks of a project.

Many of the projects offering national benefit are the same or similar throughout the country, for example, landfill design, water treatment and the management of the effects of stormwater runoff. Making clear that BPO 'conditions', and the consequential effects of applying those conditions can be assumed a precedent should improve the efficiency with which the Bill operates.

It will improve the investment certainty available to project proponents and allow both them and those assessing a project to focus on matters of exception and or unique to the particular project. Note that Schedule 4, Clause 12(k) includes "the conditions that the applicant proposed for the resource consent" as part of the information required to be submitted.

Clause 14(3)(s) raises similar issues, with the effects of a project including the ability to invest in avoidance or mitigation of adverse environmental effects often constrained by the duration or conditions applied to a Resource Consent. Concerns related to duration extend to "review" obligations, recognising that the economics of a project can be affected by a change in regulatory obligation ahead of the reasonable and expected design life of plant and equipment. The expected duration of investment entailed in a project is a relevant consideration in respect of climate change and natural hazards management.

As an example, wood processing offers many public benefits being low net emissions, a high-value regional employer, adding value to commodities that are otherwise exported in raw form, provides domestic resilience in terms of the supply of building materials, residues for sustainable packaging and biofuel. Waste minimisation through recycling of paper is dependent on domestic wood processing capacity. All of the public benefits are matters of national priority, a benefit to other parts of NZ's exporting sectors and (as shown during the pandemic, a value at times of national crisis. The public benefits of domestic wood processing are understood and recognised in other countries to the extent that they act to support their domestic wood processing capacity. The public benefits of NZ's domestic wood processing augment the private commercial

benefits to wood processing investors but not to the extent that they justify private sector investment by themselves.

Recommendation:

Amend 14(3)(e) to "(i) a description of the reasonable and anticipated conditions pertaining to the avoidance or mitigation of the adverse effects of the development and operation of the project and (ii) the expected adverse effects of the project on the environment after the described conditions have been applied.

Recommendation:

For reasons outlined above, amend Clause 14(3)(s) to: an outline of the types *(and duration)* of resource consents, *(the conditions expected to be imposed in relation to resource consents,*) and any designations,....".

Recommendation:

For reasons outlined above, add at the end of Clause 14(3)(v) "...natural hazards *(over the planned duration including after-care of the project.)*

The benefit of the proposed Clause 14(3)(f) requirement for a "general assessment of the project in relation to existing NPS and NES's is not obvious and therefore not supported. To the extent that NES and NPS information is applicable to a project it is likely to be applied, if not by the applicant, then by the 'experts' convened to assess the project. Our submission is that the Purpose of the Bill will be more readily achieved by focusing the application and its assessment on matters specific to a project (c/f comments above in respect of Clause 14(3)(e)) than on general pre-existing documentation.

***Recommendation:* Delete Clause 14(3)(f).**

Clause 14(3)(h) requires the applicant to list persons likely to be affected by a project. Greater clarity in relation to the determination of who is sufficiently "affected" to be notified and or consulted in relation is recommended, recognising that such matters can and have been comprehensively debated in relation to current and past planning law. Our understanding is there is an expectation that the Bill will reduce the current requirement for broad and public consultation if enacted, an outcome we support.

Recommendation:

Amend Clause 14(3)(h) to "a list of persons the applicant considers are likely to be *(directly and significantly)* affected by the...." .

Clauses 14(3)(u) and (w) relate to past actions and enforcement. As such the proposed obligations inherent in these Clauses risk negating the Purpose of the Bill by requiring consideration of decisions made under other legislative frameworks. The requirement in (w) brings into question the assumption of innocence and the likely improvements in

understanding, technology or practice inherent in the established concept of “Best Practicable Option”.

The inclusion of a statutory obligation to require the applicant to detail past projects and past issues of compliance and enforcement may overlook the efficiency and effectiveness of the proposed assessment of projects by an “expert” panel. It is not unreasonable to assume that experts of sufficient calibre and experience will be aware of past practice and will avail themselves of that knowledge in making their determination and recommendations.

Similar concern (of informal or unintentional predetermination) arises in respect of Clause 14(5) applications in “approved form”. A combination of the Purpose of the Bill and the use of expert panels likely negates the need for “approved forms”, presumably drafted to reflect the past and current experience of officials.

Recommendation: **Delete Clauses 14(3)(u) and (w) and Clause 14(5).**

2.2 Clause 15: Responsible agency decided whether referral application is complete.

Clause 15(3) includes an obligation on the responsible agency to return an inadequate application with “reasons” for the rejection. An approach more conducive to the Purpose of the Bill would be to require the responsible agency to provide their reasons for rejection in the form of a list of issues and concerns and a proposed resolution for each.

As currently proposed, Clause 15(3) could have the effect of discouraging a project on the basis of an assessment by (inexpert) officials for reasons a more expert panel would not support. To the extent that officials’ rejection of a project is based on obvious and easily assessed deficiencies, it is not unreasonable that the specific reasons for rejection be listed.

Recommendation:

Amend Clause 15(3) to “....application is incomplete, the responsible agency must immediately return the application to the applicant with the basis for its rejection listed in sufficient detail to provide specific guidance to the applicant, up to and including abandonment of the project.

2.3 Clause 17: Eligibility criteria for projects that may be referred to panel

As discussed above in relation to the Purpose Clause of the Bill, facilitation of a broader range of projects than just those associated with public expenditure could achieve desirable ‘national benefit’ at a faster rate.

Investments in building materials manufacture is an example of “industry” that can and does contribute to “resilience”, “climate change mitigation”, regional employment’ and the development of natural resources but where there is little if any direct public sector

investment. Making provision for a broad a range of endeavour to be considered (if only initially) avoids the risk of limiting the benefits of the Bill being limited to what is already known and understood by regulators.

The concern discussed immediately above, of unnecessarily constraining what projects might be considered applies in relation to 17(3)(h), “natural hazards.” While natural hazards are unquestionably a valid consideration, pandemics and an apparent increase in global conflict suggests “resilience” could usefully be considered in a broader context.

Unnecessary constraint on the utility of the Bill could similarly arise where existing local or regional planning documentation reflective of current / prevailing law and regulation results in outcomes inconsistent with the Purpose of this Bill. To the extent that existing planning documentation reflects an optimal outcome in terms of ‘sustainable management of the environment’, a combination of the project’s proponents vested interest in an efficient process and the projects ‘expert’ review will ensure the outcomes if not the wording of existing planning documents prevail.

Recommendation:

Amend Clause 17(3)(e) by deleting the word “primary” from the subclause.

Recommendation:

Amend Clause 17(3)(h) by adding after “natural hazards” ‘....and unforeseen events.’

Recommendation: **Delete Clause 17(3)(j)**

2.4 Clause 21: Decision to decline application for referral

For reasons of predetermination on the basis of past and current statute discussed above in relation to Clause 14(3)(u) and (w), we are opposed to a decision to reject being based on past history.

In addition to the questions raised above in relation to changing technology, knowledge and practice, a statutory obligation to consider “poor compliance history” would require some better definition by which the person or organisation so labelled is defined. The broad interpretation of “....declined for any other reason.” raises similar concerns.

Recommendation: **Delete Clauses 21(2)(d) and (g).**

2.5 Clause 24 Notice of joint Ministers decision on referral application.

It is not clear what useful purpose is served by the proposed requirement that the Ministers detail their reasons for accepting an application for referral or the other “matters” the Minister might specify. Our assumption would be that an application of

sufficient merit to justify referral provided sufficient information to satisfy whatever purpose is intended by way of Clause 24(3)(b)&(c)

Recommendation: **Delete Clause 24(3)(b)&(c)**

2.6 Schedule 3: Expert Panel

Clause 3 of Schedule 3 prescribes the makeup of the expert panel convened to provide independent assessment of the content and merit of a project. Clause 7(1) details the skills and experience required of members of the panel such that collectively they have (b) "the knowledge and skills required for matters specific to the project including the technical expertise relevant to the project; and (e) if appropriate, conservation expertise.

Subclause (2)(a) of Clause 3 states that "The membership of a panel must include 1 person nominated by the relevant local authorities;" without any qualification in terms of a requirement that the local authority nominee need only be appointed "if appropriate" or has the knowledge and skills required for matters specific to the project including the technical expertise relevant to the project.

The inclusion of a statutory requirement that 'expert' panels include a representative of local authorities is questioned on the basis that:

- The 'value judgement' inherent in determining the national and regional interest is proposed to be made by Ministers under the Bill. There is a risk of confusion, duplication or misdirection where local authorities 'values' mean their assessment of significance differs from those elected to central government.

- It is not clear that "local authorities" represent a specific or recognised skill set. To the extent that local authorities are the manifestation of the Local Government Act and other statute, their fundamental requirements and obligations can be generally determined by way of competent legal advice, with legal advice being a requirement for the Chair of any Panel.

- To the extent that 'town & country planning' is a recognised discipline it can be recruited to an expert panel where relevant and desirable. While T&CP skills may be common or even prevalent in local authorities, there is no suggestion that the local authority member proposed for inclusion on an expert panel has such qualifications.

- To the extent that local authorities understand and represent significant regional if not national benefits they are likely to be project proponents. The potential for conflict of interest where a project proposed by a local authority is assessed and recommended by a representative of local authorities who "must" be included on the Panel if the proposed wording of Schedule 3, Clause 3 is enacted.

A similar but more general concern arises in respect of the specific reference to a Panel including “conservation expertise”, accepting that reference is qualified by a requirement that it is appropriate. The effect of Clause 7(1)(e) could have the unintended effect of elevating “conservation” considerations out of proportion to other matters. That concern could be exacerbated where a ‘conservation’ expert was held to have an ‘advocacy’ obligation under Sections 6(b) & © of the Conservation Act.

Recommendation:

Either delete Clause 3(2)(a); or precisely define the “knowledge and skills” required of a local authority AND make their inclusion on an expert panel conditional of such knowledge and skills being required for matters specific to the project.

Recommendation:

Delete Clause 7(1)(e) as an unnecessary and potentially distortionary duplication of the primary intent of the Bill, that expert assessment is by those with the knowledge and skills required for matters specific to the project including the technical expertise relevant to the project.

2.7 Schedule 4 Clause 14: Matters to be covered in assessment of environmental effects

A number of the requirements included in Clause 14(a)-(g) of Schedule 4 are subjective, including reference to “landscape and visual” effects, “aesthetic” considerations and “unreasonable” emissions of noise.

To the extent that such matters cannot be easily quantified and are frequently a matter of personal value they are difficult obligations for a project proponent to quantify and potentially costly to comply with. The fact of their inclusion as obligatory obligations (“must include”), they represent a basis by which achievement of the Purpose of the Bill, significant regional and national interest, could be unintentionally constrained.

Clause 17 of Schedule 4 (scope of information required) clarifies the requirement to provide information sufficient to the scale and significance of anticipated effects on the environment. We support the approach detailed in Clause 17 but remain of the view that subjectively defined information obligations need to be specifically curtailed as a clear guide to both investors and regulators as to the Government’s intent.

Recommendation:

Amend Schedule to define the obligation inherent in subclauses (a) - (g) by including the phrase “significantly adverse” to each clause and changing the requirement to cover such matters from “must” to *‘may*’.

2.8 Schedule 4: Clause 36

Clause 36(1)(a) enables determination of a project proposal after having regard to "whether adequate consideration has been given to alternative sites, routes or methods of undertaking the work." A potential risk associated with this requirement is the inference that those assessing a Project understand it in great or greater detail than the proponent. There is also the risk that consideration of "alternative" methods leads to protracted assessments or discourages the proponent from submitting a fully developed proposal.

Recommendation:

Amend Clause 36(1)(a) to include "methods of undertaking the work *(detailed in the proponents notice of requirement)* if-".

Clause 36(1)(2) makes provision for "....effects on the environment to offset or compensate for any adverse effects...". The implication is that some assessment or calculation of the net environmental costs and benefits of a Project can be determined and recompensed by 'offsetting' actions and investments.

A potential risk with provision for 'offsetting' arises where the costs and benefits involved are in large measure a matter of judgement and fashion. An additional risk arises where the subjective nature of 'offsetting' is seen as an opportunity to extract value over and above the fair and reasonable 'avoidance or mitigation' of the adverse effects of the proposed project. To the extent that the Purpose of the Bill is the achievement of regional and national benefits, the projects it facilitates need to be seen as worthwhile and inherently delivering "offsetting" value of the same or greater than their environmental, social and economic cost.

Recommendation: **Delete Clause 36(2)**
Schedule 4: Process for approvals under RMA 1991

5. EPA to refer consenting application and notice of requirement to panel.

(1) Within 5 working days of receiving a consent application or notice of requirement, the EPA must determine whether the application or notice.

There is concern that the EPA will not be able to meet the 5 working day requirement to assess new applications given their current performance waning in other areas, such as hazardous substance application approvals. The EPA make no secret of the fact that constrained funding has slowed the agency's work. Hence, it is important to ensure that the EPA's performance is improved to make sure that timeline requirements within the RMA are not a hinderance to approval of fast-track consents under the Bill.

END

Wood Processors and Manufacturers Association

About us:
The Wood Processors and Manufacturers Association (WPMA) was established in 2014 through a merger of the Wood Processors Association and the Pine Manufacturer's Association. We are a voluntary funded industry association with a strong focus on promoting wood as the heart of a future zero-carbon economy.

Our members are leaders in the New Zealand wood industry converting harvested logs into a wide range of products including sawn lumber, pulp, paper, panels, laminated products, mouldings, and engineered wood, through to the development of bioenergy solutions.

Total sales of industry products both domestically and globally in 2023 were approximately $5 billion. The industry employs close to 30,000 staff, mostly in the New Zealand regions.

https://www.wpma.org.nz/