FAST TRACK APPROVALS BILL

Dr VIRGINIA TAMANUI SUBMISSION TO ENVIRONMENT SELECT COMMITTEE

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SUBMITTER INFORMATION

Name: Mangapārae Papakainga, Nga Uri o Urikore Tamanui

Iwi / hapū: Aitanga a Mahaki/Ngati Wahia/ Nga Uri o Urikore Tamanui

Address: 11 Te Whiwhi Street Whatatutu, Gisborne

Email: virginia.tamanui@gmail.com

Phone: 021526234

Contact: Dr Virginia Tamanui (Kaitiaki Matua)

INTRODUCTION

1. This submission is made by Dr Virginia Tamanui (Kaitiaki Matua) on the Fast Track Approvals Bill (**FTA Bill**).

2. The submission covers:

   (a) who we are;

   (b) our position;

   (c) a statement of key matters of concern; and

   (d) a statement of key features of responsible fast-track legislation.

Mangaparae Papakainga Trust

3. Mangapārae Papakainga, Nga Uri o Urikore Tamanui. Whatatutu, Tairāwhiti Gisborne: Reforesting our whenua, our whānau initiative.

   Te Kooti Arikirangi Te Turuki prophesied over the lands at Mangatū concerning its erosion which our whānau in 2017 interprets, underpins the basic need for kaitiakitanga and healing in the wake of colonization, land loss, deforestation, farming and mismanagement of our whenua that has led to an erosion of our ways of knowing and being associated with uninterrupted tenancy, and caring for the whenua, over many generations. Our whānau led and managed restoration project hopes to address the loss of this mātauranga and, to have an opportunity, to demonstrate our commitment of relationship with our whenua toward wellness and flourishing for the land and the people.

   Our interests in the legislation affected by the Fast Track Approvals Bill, is that this legislation directly affect our vision to improve the health, wellbeing of our land's waters and peoples.

POSITION

4. We are **strongly opposed** to the FTA Bill in its current form as it is disproportionately

pro-development, constitutionally flawed, concentrates power in three Ministers and has far-reaching adverse implications for:

(a) Aotearoa New Zealand's taiao (environment);

(b) ourMangapārae Papakainga, Nga Uri o Urikore Tamanui customary rights, interests and responsibilities, including our Tiriti o Waitangi settlement interests; and

(c) our ability to exercise mana motuhake and kaitiakitanga within our rohe, as guaranteed by Te Tiriti o Waitangi.

5. While Mangapārae Papakainga, Nga Uri o Urikore Tamanui supports appropriate development, this must only be allowed within sustainable environmental limits to protect the health, wellbeing, and economic opportunities of both current and future generations. The pro-development premise of the FTA Bill prioritises development above all else. This is a fundamentally unsound approach. It is wholly inconsistent with our rights and obligations as kaitiaki and is directly at odds with international best practice and consumer expectations.

6. However, we reject any suggestion that existing provisions for the recognition of the health and wellbeing of the environment and/or the rights, interests and participation of iwi/hapū are a material cause of delays in the current approval regime under the RMA or other natural resource legislation. Experience from around Aotearoa shows that the fully-informed and active involvement by iwi and hapū from the outset of infrastructure and development projects (ie, in the pre-application stage and on an ongoing basis) is a key element in the successful and efficient progress and approval of those projects.

7. Further, Mangapārae Papakainga, Nga Uri o Urikore Tamanui is not, in principle, opposed to fast-track processes that reduce timeframes through more efficient, streamlined and considered approval processes. But, unlike existing fast-track legislation, the FTA Bill is not about streamlining or making more efficient, existing approval processes. Rather, the FTA Bill proposes to override, disapply, modify and/or dilute existing approval processes under Aotearoa's major environmental legislation for projects with "significant regional or national benefits". This is unacceptable.

8. Our taiao is already degraded from decades of inappropriate development and unsustainable practices and is also facing major risks from climate change and the cumulative effects of existing land and resource use. We need to restore and protect what we have left, instead of finding ways to further degrade the taiao.

9. These are fundamental concerns held by Mangapārae Papakainga, Nga Uri o Urikore Tamanui. In providing the below feedback on provisions of the FTA Bill, we are not expressing support for the FTA Bill or the policy intent behind it. Rather we have significant concerns with the unduly hasty manner in which the FTA Bill has been developed, including a complete lack of informed engagement with Mangaparae Papakainga or other iwi and hapū. The projects proposed to be listed in Schedule 2A

will also be subject to even less public comment and scrutiny, including from those communities directly impacted. This is both untenable and at odds with this Government's statements about empowering local communities.

10. We trust the Select Committee will carefully reflect on our submission in its consideration of the FTA Bill.

STATEMENT OF KEY MATTERS OF CONCERN

Elevation of legislative purpose fundamentally opposed

11. The FTA Bill applies a pro-development purpose in the assessment of the effects of proposed activities. The purpose statement of the Fast-track Bill is also to be weighted above the purpose and provisions of the statutes within scope.

12. Mangapārae Papakainga, Nga Uri o Urikore Tamanui fundamentally opposes this approach, which will result in the purposes, principles and provisions required under existing legislation either being significantly diluted or disregarded in the assessment of applications.

13. Provisions or policy concepts in, or arising from, existing legislation (such as sections 6(e), 7(a) and 8 of the RMA, section 4 of the Conservation Act, section 12 of the EEZ Act and Te Mana o Te Wai in the National Policy Statement for Freshwater Management), and the weighting afforded those matters when making decisions, requires consideration of the environmental, social and cultural effects of resource use.

14. It is entirely inappropriate to remove those existing environmental safeguards, which in many situations are relied upon by iwi and hapū to safeguard their rights, interests and aspirations. These are important matters for all iwi and hapū, particularly those who are yet to settle their historical Treaty claims with the Crown and cannot rely on Treaty settlement protections.

Amendment sought

15. Mangapārae Papakainga, Nga Uri o Urikore Tamanui seeks an amendment that retains the application of existing legislative purposes, principles and provisions under the FTA Bill, while streamlining or making more efficient, existing approval processes.

Inappropriate concentration of power

16. Mangaparae Papakainga strongly opposes the extensive and largely unrestrained powers the FTA Bill gives the Ministers for Infrastructure, Regional Development and Transport to approve projects. Suitably qualified and independent experts should be authorised to assess proposals under this legislation. Ministers do not have the expertise to make a better, more informed, decision than independent experts.

17. As drafted, the Ministerial decision-making criteria, both in terms of decisions to refer projects, and to approve or decline projects, is vulnerable to real or perceived political capture and misuse.

Amendment sought

18. Robust, independent assessment of proposals is an essential feature of good practice large-scale application assessment. Mangaparae Papakainga seeks that it is incorporated into the FTA Bill.

Undemocratic silencing of public participation

19. Mangapārae Papakainga, Nga Uri o Urikore Tamanui opposes the extraordinary constraints placed on who can participate under the FTA Bill. While Nga Uri o Urikore Tamanui is included as a whanau/hapu local communities and other affected groups are excluded from participating in the decision-making process under the FTA Bill.

20. This exclusion of public participation, for projects that (in all likelihood given their nature and scale) would normally be subject to public participation is hugely harmful, for both our communities and our taiao.

Amendment sought

21. Mangapārae Papakainga, Nga Uri o Urikore Tamanui seeks full public notification of all projects considered under this legislation if it is enacted.

22. The lack of public scrutiny through the Select Committee process of projects (yet to be) listed in Schedule 2 makes full public notification, including opportunities for submissions and a hearing by an independent expert panel a bottom line.

Impact on hapū

23. Among those who are excluded from the ability to provide direct comment to the joint Ministers and the Expert Panel are hapū who are not a Treaty settlement entity in their own right, do not have a Mana Whakahono a Rohe or a Joint Management Agreement (**JMA**) relevant to the projects concerned, or are not participating as part of Ngā Hapū o Ngāti Porou where an application affects their takutai moana interests. That is most hapū in this country as very few hapū have JMAs and Mana Whakahono a Rohe.

24. While the FTA Bill provides for iwi authorities to include our Mangaparae Papakainga hapū comments in the comments they are invited to provide to an Expert Panel, this undermines our hapū rangatiranga and puts a heavy burden and responsibility on iwi authorities. Additionally, we want to make clear that it is not the role of iwi authorities to facilitate our hapū engagement on FTA Bill processes. This should rightly be the role of the project applicant in the pre-application stage, and the agency responsible in the referral application and Expert Panel stages. It is inappropriate and wrong to make iwi authorities the “scape goat” of this process by discharging a function on them that was not invited or warranted.

25. The Bill does direct an applicant to undertake engagement with “relevant hapū” before lodging a referral application, and to include a record of the engagement and a

statement explaining how it has informed the project.[1] It is inappropriate for hapū to then be excluded from commenting on the project directly to decision-makers, including ensuring the record of engagement with hapū is accurately reflects the engagement undertaken (if any) to properly inform environmental effects.

Amendment sought

26. At the very minimum, Mangapārae Papakainga, Nga Uri o Urikore Tamanui seeks that all relevant hapū, are notified of all relevant projects, with the opportunity provided directly to respective hapū to make comment at every stage set out in the FTA Bill.

Unconstitutional

Te Tiriti o Waitangi

27. There is no requirement for decision makers to "take into account" or to "give effect to" the principles of the Treaty of Waitangi in the FTA Bill, or to protect and uphold iwi and hapū rights and interests guaranteed in Te Tiriti o Waitangi. While the Bill provides iwi and hapū limited protection for treaty settlements and recognised customary rights these are much more limited than the rights and interests guaranteed by Te Tiriti o Waitangi.

28. The Crown has an obligation to make decisions in a way that is consistent with Aotearoa's founding document, Te Tiriti o Waitangi.

Amendment sought

29. Mangaparae Papakainga seeks that you include a Tiriti principles clause that requires all persons exercising functions and powers under the FTA Bill to 'give effect to' Te Tiriti o Waitangi and its principles.

Listed project process

30. One problematic aspect of the FTA Bill is the "listed projects" that will be automatically referred to an Expert Panel, bypassing the need to apply to Ministers to make a referral decision (Schedule 2A listed projects), or, while still required to apply for referral, are legislatively "considered to have significant regional or national benefits" (Schedule 2B listed projects).

31. Listed projects were not included in the FTA Bill when introduced and referred to the Select Committee. Instead the Government is undertaking a separate process to consider projects for inclusion in Schedule 2A and 2B.[2] This completely excludes the public from any input into what projects will proceed under this bill. Projects proposed for inclusion in Schedule 2 of the FTA Bill should have been subject to public scrutiny through the Select Committee. To not provide this opportunity is unconstitutional.

32. The process also technically creates a loophole for Category 2A listed projects as the

[1] FTA Bill, Section 16(1)(a).

[2] Refer to press release with this information.

eligibility criteria in section 17 does not apply to them as they are considered eligible by virtue of inclusion in Schedule 2A of the FTA Bill. If exploited, listed projects could take place in areas deemed ineligible, such as National Parks. Mangaparae Papakainga have no confidence that the Government will honour the eligibility criteria in their behind-closed-doors assessment of Category 2A projects. Nor is there, arguably, any recourse to prevent a project from exploiting the loophole where it has been included in error.

Amendment sought

33. Mangaparae Papakainga seeks that Schedule 2 is removed from the FTA Bill entirely or brought into the Select Committee process so that listed projects can be the subject of public scrutiny.

Te Tiriti o Waitangi settlements and recognised customary rights clause

34. Under clause 6 all persons exercising functions under the FTA Bill must act in a manner that is consistent with the obligations arising under existing Treaty of Waitangi settlements; and customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 o the NHNP Act.[3]

No amendment sought

35. Mangapārae Papakainga, Nga Uri o Urikore Tamanui supports clause 6, and seeks its retention, as a limited baseline recognition of iwi and hapū rights.

36. We want to be clear that preserving this clause is not the panacea for upholding and protecting the rights, interests and aspirations of iwi and hapū in the FTA Bill.

Impact on iwi and hapū yet to settle Treaty of Waitangi grievances

37. The Bill provides limited acknowledgement of iwi and hapū who are yet to settle Treaty of Waitangi grievances. The use of the term ‘existing’ Treaty settlements in section 6 means any iwi and hapū who have not at least entered into a deed of settlement are barred from their future settlement arrangements being captured by 6. Nor does the section 17 ineligibility criteria protect land under consideration for return through settlement.

38. While recognised negotiation mandates, or current negotiations for, Treaty settlements are to be covered in the agency report prepared under section 13, this is no substitute for the more protective mechanisms in sections 6 and 17 of the FTA Bill.

39. Mangapārae Papakainga, Nga Uri o Urikore Tamanui reiterates the role that provisions or policy concepts in, or arising from, existing legislation (such as sections 6(e), 7(a) and 8 of the RMA, section 4 of the Conservation Act) play as safeguarding iwi and hapū rights, interests and aspirations.

Amendment sought

40. Mangapārae Papakainga, Nga Uri o Urikore Tamanui seek deletion of the word ‘existing’ from section 6(a), and the addition of land under consideration for return through settlement to the section 17 ineligibility criteria, as providing limited baseline recognition of the rights of iwi and hapū yet to settle Tiriti o Waitangi grievances. As above, this is not a panacea.

Ineligibility criteria

Flawed, and inconsistent, analysis supporting ineligibility criteria

41. In terms of iwi, hapū and Māori landowner interests, in general under the FTA Bill, activities:

    (a) on areas with a high conservation status under conservation legislation;

    (b) on 'identified Māori land’ (defined under section 4 of the Bill) or land returned under a Treaty settlement;

    (c) in an area of a recognised takutai moana right,

    are ineligible for the FTA process, unless agreed to in writing by the relevant landowner.

42. In addition, FTA applications must not include an activity on Māori customary land or land set apart as a Māori reservation under Te Ture Whenua Māori Act 1993.

43. The eligibility criteria – the first fundamental opportunity to prevent inappropriate projects progressing under the FTA Bill – are hugely inadequate. In practice:

    (a) many iwi are yet to settle their Treaty claims and many applicants under the takutai moana legislation are still waiting to have their rights recognised;

    (b) only limited conservation land has been the subject of fulsome assessment. Consequently not all all high-value land is protected by high conservation status.

44. The ineligibility criteria in section 19 are also inconsistent. While some high value conservation land is protected, this does not extend to water conservation orders, which are national park equivalents in water. “Schedule 4” (Crown Minerals Act) Crown land situated in and around the Coromandel Peninsula, and the internal waters of the Coromandel Peninsula is also not identified as ineligible for inclusion in FTA applications.

Prohibited activities not ineligible

45. Further, we consider it is highly inappropriate that activities currently categorised as prohibited activities under the RMA (example activities include discharge of raw wastewater to rivers, the burning of hazardous substances and associated discharge of contaminants to air) are not included in the ineligibility criteria. This directly overrides community and iwi and hapū decision-making that informed the content of those regional or district plans.

46. A consequence of this proposal is that projects that breach limits and targets in regional plans (i.e water quality limits and targets, where those have been set to address deteriorating water quality at a local level) would be considered eligible.

47. Projects that breach those limits and/or disrupt the achievement of those targets fundamentally undermine the environmental system, in this example the catchment, that they sit within. The impact is of serious consequence.

Applications from previously declined activities

48. There is nothing in the FTA Bill that prevents:

    (a) an application that was previously declined through an RMA process; or

    (b) an application that was declined by Expert Panel and Joint Ministers,

    from re-applying as a 'referral application' with no, or few, changes that do not address the adverse effects of the activity. Mangaparae Papakainga is fundamentally opposed to declined projects using the FTA Bill to submit a fresh application taking the benefit of the pro-development assessment criteria, where no effort has been made to address the adverse effects of the activity that were the reason for decline.

49. It also seems contradictory to the purpose of the FTA Bill, and a potential tool for abuse of power, to allow a project declined by an Expert Panel and Joint Ministers to promptly re-enter the fast-track system, given the inefficiencies in such an approach.

Amendment sought

50. Mangapārae Papakainga, Nga Uri o Urikore Tamanui seeks that:

    (a) all land listed in Schedule 4 of the Crown Minerals Act is included in the FTA Bill's section 18 ineligibility criteria;

    (b) activities categorised as prohibited activities under the RMA are included in the FTA Bill's section 18 ineligibility criteria;

    (c) projects declined under the FTA Act by Joint Ministers are ineligible to re-apply for a minimum period of 24-months;

    (d) projects declined due to adverse environmental effects (under the RMA or other legislation within scope of the FTA Bill) must show that the project will not have the adverse effect the subject of decline, before being accepted for listing or referral.

No amendment sought

51. Mangapārae Papakainga, Nga Uri o Urikore Tamanui also seek that:

    (a) the ineligibility criteria at section 18 are otherwise retained; particularly

        (i) projects on 'identified Māori land' or land returned under a Treaty settlement,

unless agreed to in writing by the relevant landowner (section 18(a)); and

(ii) projects including an activity on Māori customary land or land set apart as a Māori reservation under Te Ture Whenua Māori Act 1993 (section 18(b)).

Timeframes

52. Process timeframes in the FTA Bill are inappropriately short.

53. The timeframe for iwi (including the role they are expected to play to facilitate hapū comment) and takutai moana rights-holders to comment on proposed projects is entirely unreasonable and impractical.

54. Even the most well resource post-settlement governance entities will struggle to meet this timeframe and produce meaningful comment that supports decision-makers to understand "the actual and potential effects on the environment of allowing an activity".[3] Input from iwi and takutai moana rights holders is critical information for the Panel in making its recommendation to the joint Ministers, and must not be compromised.

55. The unreasonableness and impracticality of the timeframe for iwi comment is further aggravated by the level of detailed information we expect an applicant will be require to submit in support of projects of this scale, and to which iwi will need to respond. We expect this problem to be exacerbated by the:

(a) increasing level of detailed information that must be supplied by an applicant to the Expert Panel, compared to its initial application for referral.

(b) high likelihood that multiple proposals will be considered simultaneously in a region.

Amendment sought

56. Mangapārae Papakainga, Nga Uri o Urikore Tamanui seeks that invitations to comment or provide information from invited groups are extended to **20 working days** as a minimum.[4]

Strategic planning

57. The FTA Bill demonstrates an alarming lack of strategic foresight and planning across the motu. It is probable that most of the projects being fast-tracked will have no strategic relationship to one another and will be implemented in a way that does not optimise regional and national benefits for Aotearoa. In its current form, the FTA Bill has the potential to incentivise poor planning outcomes that will create long-lasting problems that will need to be addressed at great cost.

[3] FTA Bill Schedule 4, clause 34(1).

[4] This will require included amendment to section 19(5); Schedule 4, clause 21(1); Schedule 4, clause 28 and Schedule 12, clause 5(b).

58. Shifting how we plan for development to a more long-term strategic focus within Taiao centric limits was pivotal to the review of the RMA undertaken as part of the Randerson Report. We understand the basic premise of this review was well received by the current Government when they were in opposition.

Climate change

59. Full and adequate consideration of FTA Bill applications is particularly critical with the additional environmental challenges presented by climate change, including warming oceans and sea level rise, now and in the immediate future. Continued sustainable management of resources in this changing and dynamic environment, to support strong economic growth in the medium to long term, requires robust environmentally sustainable baselines to underpin and inform the assessment of FTA proposals. These matters are not adequately provided for in the bill. Instead, the FTA Bill disincentivises good practice to address developing environmental impacts.

60. Ensuring resource users are operating within sustainable limits is critical for both our international reputation as a country focused on environmental sustainability and also to support industries to maintain their social license to operate.

Aotearoa's international reputation

61. Ultimately, the FTA Bill is a bad business case. It promotes a "development at any cost" philosophy that appears driven by a "build it and they will come" mentality seeking to accelerate resource extraction and exploitation. This is very short-sighted as the outcome of this policy direction will have damaging long-lasting effects.

62. The FTA Bill's enablement of projects such as mining on conservation land, drilling for oil and gas, seabed mining, major irrigation schemes and intensive pastoral farming to grow New Zealand's economy is an outdated approach for short-term political gain, that will ultimately result in significant long-term losses, including economic loss.

63. The approach fundamentally undermines our reputation internationally. Often trading on the back of iwi and hapū taiao leadership, Aotearoa has an exemplary international reputation and has made significant investment in the clean-green brand image, which will be negatively impacted.

KEY FEATURES OF RESPONSIBLE FAST TRACK LEGISLATION

64. Responsible fast-track approval processes under new legislation must, as a minimum:

    (a) recognise and provide for the sustainable health and wellbeing of the environment;

    (b) recognise and uphold existing Tiriti settlement frameworks and arrangements (in terms of purpose, principles and processes);

    (c) recognise and provide for the rights and interests of iwi and hapū in relation to te taiao (including purposes and principles in relevant natural resource legislation

and planning/policy instruments – eg, sections 6(e), 7 and 8 of the RMA and s 4 of the Conservation Act – noting that most Tiriti settlement arrangements have been expressly constructed with reference to those existing statutory frameworks); and

(d) provide for and incentivise the active participation of iwi/hapū from the outset of any infrastructure and development projects (ie, pre-application and pre-any Ministerial approval).