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Submission on Fast-Track Approvals Bill

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INCORPORATED

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INTRODUCTION

1. **Ngāti Kahungunu** has the third largest iwi population (82,239[1]) and the second largest tribal rohe and coastline, from Paritu on the coast north of Wairoa and extending inland across the Wharerata ranges down towards Tararua ranges and Turakirae on the southern Wairarapa coastline.

The mission of Ngāti Kahungunu Iwi Incorporated is:

"To enhance the mana and well-being of Ngāti Kahungunu".

2. The iwi authority maintains an independent position to advocate for the rights, interests and practices of Ngāti Kahungunu. Tāngata whenua hold significant connection to the natural environment, this includes an obligation to tiaki (care and protect) the natural environment for future generations.

3. Ngāti Kahungunu has exercised the rights, responsibilities, and obligations of rangatiratanga in our rohe from before 1840 to the present day. The rangatiratanga and indigenous rights of Ngāti Kahungunu does not derive from the Crown or Parliament and was reaffirmed and guaranteed by Te Tiriti o Waitangi. Ngāti Kahungunu whanau hapū and iwi have never relinquished their rights and interests to their lands, waters, estates, forests, fisheries and taonga.

Position

4. Ngāti Kahungunu strongly opposes the Fast Track Approvals Bill (FTA Bill).

5. The FTA Bill purports to be a fast-track legal framework. It is not. Rather, it is an environmental destruction, Bill. It rides roughshod over almost all the country's current environmental protections. A framework founded on sustainability is essential for kaitiakitanga and future generations.

6. The proposed framework provides the opportunity for industry and development speculators and lobbyists, to lobby Ministers and the potential to effectively purchase approval. Providing the most significant opportunity to erode democracy and ignore evidence and best information and mātauranga available. The FTA Bill signifies a significant backwards step in best practice sound decision making and the value of mātauranga Māori, research, education, and academic rigour in a civilised and developed society. No such power has been afforded to the executive through legislation in this country's history, a unprecedented and dangerous trajectory.

7. The FTA Bill bears no resemblance to existing fast track processes. It places excessive and unfettered powers to approve projects in the hands of development Ministers and unjustifiably removes public participation and checks and balances. From the experience of Ngāti Kahungunu the existing fast track processes are already inherently flawed and evidently demonstrated significant waste financially in approving developments that have failed due to the hastily processed nature and by foregoing previously mentioned logical checks and balances.

[1] https://tewhata.io/ngati-kahungunu-collective/

8. The FTA Bill in its current form is disproportionately pro-development, constitutionally flawed, negligent, concentrates power in three Ministers and has far-reaching adverse implications for:

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

    b. Ngāti Kahungunu customary rights, interests, and responsibilities, including Te Tiriti o Waitangi; and

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

9. While Ngāti Kahungunu supports appropriate development, this must only be allowed within sustainable environmental and cultural limits to protect the mana, mauri, health, wellbeing of our taiao, and to support sustainable economic opportunities for 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.

10. 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 local experts including iwi and hapū are a material cause of <u>delays</u> in the current approval regime under the RMA or other natural resource legislation. A delay would denote something is late or postponed, ensuring the afore mentioned recognition is neither later nor a postponement. This would only be true from the perspective of an applicant and or those who have no interest in the above recognition, which in turn would also amount to disregard for the interests of future generations and the consequences of a myopic shortsighted perspective. Tangata whenua have every right as well a kaitiakitanga obligation to ensure decisions are robust and sustainable, irrespective of the culture of impatience and self-interest.

11. There appears to be an assumption that all applications are sound and without fault until proven otherwise. That a robust and reasonable processes is at fault and that conditions and mitigation can address any potential issues. This is not the case, and a grotesque fallacy, mitigation is already the common default for tangata whenua and relevant cultural interests while 'avoiding' adverse effects is rarely applied, causing potentially irreversible damage. Increasing this approach and application is perpetuating a significant cultural bias and further erosion of the indigenous culture of New Zealand.

12. The FTA Bill proposes to override, disapply, modify and/or dilute existing approval processes under Aotearoa's major environmental legislation. This is unacceptable.

13. 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, water, and resource use. We need to restore, enhance, and protect what we have left, instead of finding ways to further degrade the taiao for few to profit today, at expense of the many and future generations.

14. These are fundamental concerns held by Ngāti Kahungunu Iwi. In providing 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 Ngāti Kahungunu, and 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.

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

Key Matters of Concern

Weak Rationale

16. The FTA Bill is a distraction from what is needed to address the problems for which there is actual evidence. The Bill along with subsequent overtures by Ministers and Government to potential applicants seems more a response to lobbyists and the problems they specifically face rather than those the nation face as a whole. Statements by Ministers that the election results provide a mandate for change again does not equate to a mandate for ultimate power and discretion to the degree outlined in the FTA Bill.

17. The Ministry for the Environment stated that analysis was not as thorough as "*would usually be expected for a Bill of this significance*".[2] The Ministry also specifically advises against taking most of the key design measures in the Bill.

Faster and Faster Fallacy

18. The Board of Inquiry under the Resource Management Act precedes the current and proposed fast track legislation it was intended as a streamlined or faster process.

19. Ngāti Kahungunu has gained considerable experience from our involvement in Tukituki Catchment Proposal, that included the Ruataniwha Water Storage Scheme. After this legislative change further legislation was created to assumedly make decisions 'faster', through the current fast track process. Ngāti Kahungunu has also had experience through the current fast track process.

20. The current and proposed streamlined or fast-track processes are flawed and are not fit for purpose unless the purpose is exploitation at any cost. They increase the risk for poor decision making, contravene Te Tiriti o Waitangi and associated 'Principles' including the Principle of Partnership that should exist with local governance and management. Regrettably, the relevant governmental entities are marginalised in favour of panels, leading to a neglect of valuable

[2] Ministry for the Environment *Supplementary Analysis Report: Fast Track Approvals Bill* (2024) at 5.

knowledge and relationships that should exist and nurtured with iwi and hapū. Instead, individuals with potentially limited local knowledge and minimal connections to the local community are favoured. The appointment of 1 to 3 Māori individuals on these panels is not necessarily helpful, as they are under increased pressure and their role or job becomes increasingly more challenging and compromised. Consequently, the job specifications and expectations are even less likely to be in align with the appropriate tikanga.

21. What these the two previous processes and current FTA Bill have in common is the underlying belief that proposals will proceed eventuate faster. This sentiment is exemplified through prevalent discourse and subsequent endeavours aimed at expediting processes. When the assumption should more accurately be, that a decision should occur faster. Whatever that decision might be which, could mean that a proposal could be declined faster. What is apparent is when a proposal is declined speculators including Ministers typically assume the process is at fault and fair checks and balances often referred to as red tape including environmental and cultural interests have "got in the way".

22. These relevant decisions are not an Olympic track event where faster is better. Despite this assumption and imbalance, appropriate checks and balances have in many instances prevented short sighted projects from proceeding. Hastily approving projects is a risk for future generations and sustainable decision-making processes and outcomes.

23. The inclination towards expediting processes through Fast Tracking is based on speculation and theoretical assumptions lacking substantial evidence.

Elevation of legislative purpose fundamentally opposed

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

25. Ngāti Kahungunu 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.

26. Ngāti Kahungunu specifically oppose the establishment of a separate process for approval within the FTA Bill altering or overriding the following legislation:

    a) resource consents, notices of requirement, and certificates of compliance (Resource Management Act 1991)
    b) concessions (Conservation Act 1987)
    c) authority to do anything otherwise prohibited under the Wildlife Act 1953
    d) archaeological authority (Heritage New Zealand Pouhere Taonga Act 2014)
    e) marine consents (Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012)
    f) land access (Crown Minerals Act 1991)
    g) aquaculture activity approvals (Fisheries Act 1996).

27. The FTA Bill will also create conflict and ambiguity for regulations and legislation not considered in its development.

28. The FTA Bill is anticipated to introduce potential conflicts and uncertainties concerning regulations and legislation that were not taken into account during its formulation, particularly with regard to health-related consequences and issues. This aspect will be elaborated on further in our submission.

29. 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.

30. 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.

Overriding Conservation protections

31. The FTA Bill presents a concerning shift by superseding critical conservation safeguards and altering the approval process outlined in the Wildlife Act 1953. The ability to provide for offsetting and even compensation[3] for impacts on wildlife is a major departure from the Act, which does not allow authorisation of harm to wildlife. Offsetting is a flawed and generally inequitable and inefficient approach. There are no parameters around the extent of harm that can be caused – even to Threatened, Data Deficient and At-Risk species. The approach provided for in the FTA Bill will increase the risk of species being pushed towards extinction where they inconvenience new highways, mines, or dams.

32. The inclusion of access arrangements under the Crown Minerals Act 1991 as an "approval" eligible for expedited processing under the Bill raises notable concerns. Such approvals grant access to 'Crown-owned' conservation land for mining purposes, potentially permitting mining activities on stewardship land, conservation parks, forest parks, local reserves, and other locations without public notification. Particularly worrisome is the lack of explicit provisions in the Bill to prohibit project referrals aiming to undertake open coast mining, such as coal extraction, in areas like national parks or national reserves.

Concentration of Power

33. Ngāti Kahungunu strongly opposes the extensive and largely unrestrained powers the FTA Bill confers upon the Ministers for Infrastructure, Regional Development and Transport to approve

[3] Schedule 5, cl 1(2)(e).

projects. Suitably qualified and independent experts should be authorised to assess proposals. Ministers do not have the expertise to make a better, more informed, decision than independent experts.

34. 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. This self-delegation of power is undemocratic and unprecedented, raising concerns when Ministers assert a mandate for absolute power, post-election, a departure from past practices in the country and reminiscent of regimes often criticised for authoritarian tendencies. The FTA Bill's provisions mark a departure from democratic principles.

Undemocratic Silencing of Public Participation and other Checks and Balances

35. The FTA Bill dispenses with almost all opportunities for the public to be involved in decisions having significant effects on New Zealand's environment and natural resources. This is undemocratic and unconstitutional. This exclusion of public engagement, particularly for projects that would typically involve public input due to their impact, is detrimental to both communities and our taiao.

36. Ngāti Kahungunu opposes the stringent restrictions on who can participate under the FTA Bill. While iwi may be included local communities and other affected groups, are excluded from participating in the decision-making process under the FTA Bill.

37. When making referral decisions, Ministers must invite written comment from local government, other relevant Ministers and various Māori entities.[4] However, there is no obligation and no clear pathway for cost recovery which effectively diminishers their potential involvement. There does not appear to be any requirement to notify owners or occupiers of land who potentially have property rights affected by a project.

38. Public notification is not allowed by panels either.[5] Panels must invite comment from a narrow range of people and groups and can choose to invite comments from any person that they consider "appropriate". But there is no requirement that the public be involved in the process. Nor is the Parliamentary Commissioner for the Environment – our independent watchdog – to be consulted or even informed. The Minister for the Environment, who is meant to be democratically accountable for environmental outcomes, is not a relevant Minister from which the panels must seek feedback. These omissions denote a lack of environmental accountability.

39. It is particularly concerning that certain projects listed in the Bill will bypass statutory assessments and proceed to panel consideration without scrutiny or public input. The projects to be referred to panels are likely to have significant adverse environmental effects and warrant the additional

[4] Clause 19.
[5] Schedule 4, cl 20.

scrutiny provided through submissions and expert evidence from non-governmental organisations.[6]

Eligibility, Previously Declined Projects, and Legitimising Political Interference

40. Some projects will be explicitly listed in the Bill and proceed to consideration by a panel, without the need for any statutory assessment as to whether they are appropriate or eligible for fast-track.[7]

41. The absence of listed projects in the initial Bill implies that specific projects, potentially numerous, may completely evade public scrutiny despite being enshrined in law, deviating from standard legislative procedures. That is not how law should be made. It is the Select Committee's role to examine the content of our law, based on detailed submissions from experts, stakeholders, and the public.

42. Ngāti Kahungunu expresses concern over previously declined projects exploiting the FTA Bill to circumvent prior decisions without addressing the reasons for rejection, raising ethical concerns over the misuse of legislative powers. It will be an insult to all those who participated in good faith in previous consenting processes, if those decisions are overturned by legislation.

43. Ngāti Kahungunu is strongly opposes the practice of declined projects using the FTA Bill to reapply under the pro-development assessment criteria without addressing the adverse effects that led to their initial rejection.

44. It seems counterintuitive to the objectives of the FTA Bill and could potentially serve as a means for abuse of authority to permit a project previously rejected by both an Expert Panel and Joint Ministers to swiftly re-enter the fast-track system. This practice may exacerbate inefficiencies within the system.

45. Additionally, the Bill grants Ministers the authority to select projects for expedited processing, allowing the government to act as the developer, the regulato, and the final decision maker, consolidating power within the executive branch in a manner deemed inappropriate under existing law.

46. The eligibility criteria for referrals, defined by the term "significant regional or national benefits," are subjective, subject to Ministerial discretion and overly encompassing, applying to almost all activities. It is advisable for the Bill to adopt a more precise and specific approach in its criteria.

47. In only a small number of cases, projects are explicitly excluded or *not eligible* from fast-tracking due to environmental considerations. Of particular concern is the inclusion of prohibited RMA activities in the fast-track process. These prohibitions target the most environmentally hazardous activities, which the Bill seeks to facilitate.

[6] Even prohibited activities – which by definition are environmentally harmful – are eligible for fast-tracking and therefore little public scrutiny.
[7] Clause 18 and 21.

48. There should be no allowance for the endorsement of projects that could elevate greenhouse gas emissions, lead to species extinctions, contaminate freshwater sources, pose risks to human health, pollute water bodies protected by water conservation regulations, or contravene international laws pertaining to marine dumping. Such actions are unequivocally unacceptable.

49. While Ministers have the authority to reject projects based on environmental considerations, the decision is subject to their discretion and is contextualised within the developmental objectives of the Bill.

50. It is deemed inappropriate that decision-makers for referrals are Ministers overseeing Regional Economic Development, Infrastructure and Transport without the inclusion of the Minister for the Environment (or the Minister of Conservation in the coastal marine environment).[8]

Ruataniwha Dam and Other Irrigation Schemes

51. Specifically, Ngāti Kahungunu is concerned that projects like the Ruataniwha and the Wakamoekau Irrigation dams are being touted as projects for reconsideration. They should not considered for Fast Track or any other process, they are not feasible, they fail the test on every front, environmentally, socially, culturally and economically.

52. The Ruataniwha dam proposal underwent a thorough a process and $20 million dollars of public money was invested to support and advance this scheme. Despite an exhaustive process, where 22,000 pages of information was submitted, there was a considerable imbalance with the majority of resources at a rough scale of 20:1 on the side of those who supported the dam. However, the evidence still proved that the dam was not feasible, and the relevant land and water provisions could not sustain the necessary operations of the dam and the consequences of intensified land use.

53. The Ruataniwha Dam is not economically viable. indicates that substantial public funding (taxes or rate increases), potentially up to 50% would be necessary to subsidise the distribution costs of water for the project to be considered feasible (refer to page 14 of business case). Moreover, it is probable that the costs have escalated beyond initial estimates.

54. The Board of Inquiry soundly rejected the proposed approach to managing land use and nutrient run off into our waterways; that is ignoring nitrate-nitrogen levels. The proposed approach was promoted as it was necessary to support intensified land use which was turn necessary to pay for the costly operations of such a large irrigation dam. The decision on water quality targets and limits do not support the desired intensified land use.

55. The proposal for the dam should have been halted immediately due to the foreseeable challenges related to land use and irrigation, which would likely contravene catchment water quality regulations. Nevertheless, the project proceeded with unwavering determination, like a “proud cut gelding”.

[8] Despite that Minister being responsible for core legislation being overridden by the Bill.

56. There seemed to be an assumption that once construction commenced, cessation was no longer an option. The FTA Bill and Ministers seemed appear to be aimed at reviving an outdated and unsustainable initiative, lacking a comprehensive understanding of the issues outlined herein.

57. Numerous farm conversions have transpired despite an unfavourable regulatory landscape, and escalating land use intensification, leading to heightened irrigation demands on an already over-allocated resource. Several farmers have opted to sell their lands to large corporate entities, thereby reducing the number of sustainable farms. These large entities are now seeking additional public funds and sympathy due to their unsustainable land use practices demanding more water. This trend is primarily driven by the allure of establishing vast irrigation farms and previously receiving substantial backing from the Hawke's Bay Regional Council and the central government. Despite significant political support and public financing, the endeavour ultimately faltered, prompting the Hawke's Bay Regional Council to abandon their plans and divest their interests, including intellectual property rights. The current owners are now in default and are appealing for additional public funding.

58. Ngāti Kahungunu has observed and compiled data on groundwater quality, including conducting sampling from wells ourselves. A significant portion of the readings already surpass the official Drinking Water Standard and are showing a downward trend. Introducing an irrigation dam is more likely to worsen the outcome, no amount of off-setting, mitigation or conditions will change this. Central Hawke's Bay registers some of the lowest, if not the lowest, groundwater quality readings within Ngāti Kahungunu and possibly along the entire east coast.

59. The escalating health risks and hazards attributed to rising nitrate-nitrogen levels in groundwater, particularly in drinking water sources, demand immediate attention. These elevations have been associated with an upsurge in various health conditions, including cancer.

60. Any decision maker with an once of intelligence or moral integrity would not endorse a Ruataniwha dam proposal.

Health and Gastro Outbreak Concerns

61. Bad resource management decisions possess the potential not only to jeopardize lives but also, more significantly, to terminate lives, either through direct means such as a gastro outbreak or indirectly through inadequate planning and development in flood-prone and hazard-prone regions.

62. Water storage projects, as mentioned earlier, pose inherent risks despite being commonly advocated to enhance irrigation and land utilization. It is crucial to acknowledge the potential implications on groundwater, especially on drinking water sources and consequent health outcomes, a facet often overlooked by proponents. The following table, Table 1, highlights the prevalence of detrimental health consequences in the Hawkes Bay Region and Aotearoa from 2010 to 2020. Concluding this submission, a compilation of references addressing water quality and its associated health impacts is provided for further exploration.

Table 1. Rates of adverse health impacts in the Hawke's Bay Region and Aotearoa, 2010-2020

Pathogen prevalence and antibiotic resistance					Ref
	Cases per 100,000 population				
	Hawke's Bay (average across all ethnic groups)	Aotearoa (average across all ethnic groups)	Aotearoa (Māori population)	Aotearoa (European/other population	
Infection with *S. aureus*	**54.7**	n.d.	50.7	25.7	[33]
Infection with MRSA	**26.8**	n.d.	38.5	11.2	[34]
Reproductive outcomes					
	Rate per 1000 live births				
	Hawke's Bay (average across all ethnic groups)	Aotearoa (average across all ethnic groups)	Aotearoa (Māori population)	Aotearoa (European/Other population	
Premature births (20-36 weeks gestation)	**84.0**	75.0	80.1	74.0	[35]
Infant mortality	**5.9**	5.1	7.0	4.2	[35]
Infant mortality due to congenital abnormalities	**1.4**	1.2	n.d.	n.d.	[35]
	Rate per 1000 live births				
	Hawke's Bay (average across all ethnic groups)	Aotearoa (average across all ethnic groups)	**Hawkes Bay (Māori population)**	**Hawkes Bay (non-Māori population)**	
Low birth weight (<2.5 kg)	n.d.	59.0	**80.0**	**55.0**	[36, 37]
Cancers					
	Cases per 100,000 population				
	Hawke's Bay (average across all ethnic groups)		Aotearoa (average across all ethnic groups)		
Bladder cancer	**10.3**		8.3		[38]
Colorectal cancer	**45.0**		40.6		[38]

63. Ngāti Kahungunu has already experienced the most significant gastro outbreak in the recorded history of this country. Ngāti Kahungunu have made repeated efforts to avoid or minimise such catastrophes, sometimes in opposition to government and developer interests.

64. Ngāti Kahungunu expressed opposition to the resource consent and positioning of the Brookevale Bores, which were central to the outbreak. As a result, Hastings District Council agreed through the consent to remove the bores in 2018. The Gastro outbreak occurred in 2016.

65. Relevant to this is the submissions and Environment Court water quality case by Ngāti Kahungunu.

66. Ngāti Kahungunu opposed Hawke's Bay Regional Council's proposal to remove policies that protected the water quality of the Heretaunga and Ruataniwha Aquifer Plains systems respectively.

67. The Heretaunga Aquifer is primary source of Hastings and Havelock Norths drinking water. In 2015 the Environment Court decision *Ngāti Kahungunu v Hawkes Bay Regional Council Decision*

[2015] NZEnvC 50 ENV-2013-WLG-000050 sided with Ngāti Kahungunu. The Court said the council's argument was "*fundamentally flawed*" and "*illogical*" and that best practice for land use needed to be developed to maintain water quality and ensure that the sustainability principles of the Resource Management Act (RMA) are fulfilled.

68. If the interests and expertise of Ngāti Kahungunu had been heeded, then this catastrophe could have been avoided. We view the fast-track legislation as potentially exacerbating or creating comparable risks.

69. The FTA Bill creates a pathway for poor decision-making and the power of Ministers to fast track not only development but further significant gastro outbreaks. The aftermath of the Havelock North gastro outbreak tragically led to loss of life and left many individuals grappling with enduring health issues.

Cyclone Gabrielle and Flood Concerns

70. Ngāti Kahungunu more recently experienced some of if not the worst flooding in the last hundred years due to Cyclone Gabrielle. The devastation and loss of life could have been reduced if not avoided through sound planning and decision-making. The FTA Bill does not support this process and favours development first.

71. Prior to Cyclone Gabrielle has been opposed to encroachment on flood plains and has promoted "making room for rivers". This approach is opposed to stop banks and farming encroaching on natural flood plains and river margins due to development aspirations.

72. Cyclone Gabrielle highlighted a worse case scenario, that resulted in mass devastation. Ngāti Kahungunu already opposed a fast-track proposal of a development with the flood plains of the Ngaruroro. Development proposals within flood plains are illogical and do not add value to the array of solutions to avoid and minimise and future catastrophe due to our rivers flooding.

73. To not learn from the devastation of Cyclone Gabrielle would be a missed opportunity and arguably a demonstration inept capacity. There are no safeguards within the FTA Bill that provides confidence that this will not occur and every indication that the situation will only get worse. At risk are people's lives.

Impact on hapū

74. Excluded from the opportunity to directly comment to the joint Ministers and the Expert Panel are hapū that do not constitute a Treaty settlement entity on their own, lack a Mana Whakahono a Rohe, or are not party to a Joint Management Agreement (JMA) pertinent to the respective projects. This exclusion applies to the majority of hapū across the country, as only a limited number of hapū possess JMAs and Mana Whakahono a Rohe agreements.

75. While Ngāti Kahungunu choose to include comments from our hapū in the comments we are invited to provide to an Expert Panel and have welcomed this through existing processes. This undermines hapū rangatiratanga and puts a heavy burden and responsibility on iwi. Additionally, we want to make clear that it is not the role of iwi authorities to facilitate hapū engagement on FTA Bill processes. This should be a role of 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 us that was not invited or warranted. From the experience of Ngāti Kahungunu this is a substandard process and further places the burden of proof and the often the responsibility to uphold legal provisions on iwi due to being the subject of those provisions. This culturally bias due to the burden of upholding provisions that are not Māori are readily conducted by local or central government organisations.

76. 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.[9] 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.

Te Tiriti o Waitangi

77. 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.

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

The process and decision-making criteria for RMA approvals are inappropriate.

79. The process and criteria proposed by the FTA Bill for approvals are significantly lacking. The fast-track procedure, initiated upon referral by Ministers, often appears to merely validate projects without thorough scrutiny. When a Minister extends an invitation for a proposal, it inherently signals interest or support. Consequently, it is logical to assume that the Minister would maintain support for the proposal, this law gives ultimate power to Ministers then potentially apply that support more formally through approving said proposal. Considering this, one may question the necessity of such a pretence.

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

80. It is not appropriate that the development purpose of the Bill should take priority, and not be qualified by any consideration of the natural environment. The purpose and principles of the RMA, national direction, council plans and other RMA provisions are all second order considerations with less weight. The RMA and its instruments should not be slide lined.

81. There is a notable absence of reference to section 8 of the Resource Management Act (RMA). Consequently, Panels are not obligated to consider the principles of the Treaty of Waitangi/Te Tiriti o Waitangi in their recommendations.

82. Panels are not directed to consider the importance of reducing greenhouse gas emissions. It is imperative that they do so to assist New Zealand in fulfilling its international obligations for emissions reduction.

83. Ministers can choose to accept or reject panel recommendations and proceed down a different route. It is deeply problematic that Ministers (who do not have the right expertise), rather than expert panels (who do), make the final decisions. It reduces panels to advisory bodies that can be ignored. It is also inappropriate for development-focused Ministers to be the ones making these calls.

84. Ministers possess the authority to accept or dismiss panel recommendations and opt for an alternative course of action. The practice of having Ministers, who may lack specialized expertise, rather than expert panels, make final decisions raises significant concerns. This practice diminishes the role of panels to mere advisory bodies whose recommendations can be disregarded. It is also inappropriate for development-focused Ministers to be the ones making these calls.

85. Direct involvement of political figures in decision-making processes concerning specific development projects exposes Ministers to substantial legal and political liabilities. The criteria for defining and handling conflicts of interest remain ambiguous.

Prohibited activities not ineligible.

86. Moreover, it is regarded as highly inappropriate that activities presently classified as prohibited under the Resource Management Act (RMA), such as discharging raw wastewater into rivers, burning hazardous substances, and releasing contaminants into the air, are not encompassed within the ineligibility criteria. This omission undermines the decision-making processes of communities, iwi, and hapū that influenced the formulation of regional or district plans.

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

88. 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.

Timeframes

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

90. 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.

91. 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".[10] 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.

92. 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 required 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.

Strategic Planning

93. 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.

94. 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

95. 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

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

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.

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

Aotearoa's International Reputation

97. 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.

98. 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.

99. 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.

Conclusion and Recommendations

100. The Bill represents a monumental shift in environmental consenting in this country. It is a radical disruption of the system which will undoubtedly lock in environmental degradation for decades to come. There is simply no need for the Bill. It should not be passed.

101. Ngāti Kahungunu Iwi Incorporated wish to speak to our submission and provide further input if the opportunity arises. For any additional information on this submission, please contact Ngaio Tiuka, Pouarataki – Te Taiao me ona Rawa (Director of Environment and Natural Resources), ngaio@kahungunu.iwi.nz.

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Appendix 1 – Water Quality and Health Effects

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