



Submission on the COVID-19 Recovery (Fast-track Consenting) Bill

To the Environment Committee
20 June 2020

Submitter details

- 1 This submission is from the Parliamentary Commissioner for the Environment, Simon Upton.
- 2 The Parliamentary Commissioner for the Environment is an independent Officer of Parliament established under the Environment Act 1986. The Commissioner has broad powers to investigate environmental concerns and is wholly independent of the government of the day.
- 3 The Commissioner wishes to appear before the Environment Committee to present his submission.
- 4 The Commissioner's contact details are:

Phone: 04 471 1669
Email: pce@pce.parliament.nz

Summary of Submission

- 5 In the time available since the introduction of the Bill I have not been able to consider the implications of the Schedules setting out the, 'Listed projects' and, 'Permitted activities and standards'. Accordingly, this submission should not be interpreted as an endorsement of those provisions.
- 6 This submission mainly focusses on the relationship between this Bill and the Resource Management Act 1991 (RMA) as reflected in the proposed purpose statement set out in clause 4 of the Bill.
- 7 It also seeks changes to clause 19.

Clause 4

- 8 As I understand it, the Minister wishes to expedite a variety of employment-rich initiatives that will support recovery from the economic damage caused by the current pandemic but to do so in a way that still upholds the environmental ambitions of the RMA. This is admirable. I believe it could be achieved even more clearly.
- 9 Clause 4 currently reads:

The purpose of this Act is to urgently promote employment growth to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, **while continuing to promote the sustainable management of natural and physical resources** [Emphasis added].



- 10 Under clause 7, the term ‘sustainable management’ has the meaning given in section 5(2)¹ of the RMA.
- 11 The combined effect of clause 4 and the definition of sustainable management is that the purpose of the Bill is:
- “...to urgently promote employment growth to support New Zealand’s recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand”,
- [while at the same time continuing to promote]*
- “managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –
- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.
- 12 Read together, the provisions are somewhat convoluted and include several overlaps (for example, by both supporting the, ‘recovery from the economic and social impacts of COVID-19’ and enabling people and communities to provide for their, ‘economic [and] social wellbeing’.
- 13 Further layers of duplication result from clauses 27(3)(a), 29(2)(a) and 31(6)(a) of Schedule 6, which require the Panel to consider whether certain decisions would both, ‘promote Part 2 of the RMA and the purpose of the [Bill]’ (given that section 5 of the RMA, which sets out the definition of sustainable management, is in Part 2 of that Act).

¹ Section 5(2) reads:

In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.



- 14 As a separate point, the words, 'continuing to promote' do not make it clear how any conflict between sustainable management and the additional matters included in the purpose of the Bill should be resolved. In particular, it is not clear whether continuing to 'promote' sustainable management means that the matters set out in paragraphs 5(2)(a), (b) and (c) of the RMA should be prioritised if they conflict with employment growth or the certainty of ongoing investment.
- 15 In my view, the aspects of sustainable management which need to be included in the purpose of the Bill are the environmental imperatives set out in paragraphs 5(2)(a),(b) and (c) of the RMA. Clause 4 should be replaced by a simplified provision which makes it clear that those matters will continue to be non-derogable, as the *King Salmon* jurisprudence has confirmed.
- 16 As an aside, this would then enable the words 'promote Part II' in clauses 27(3)(a), 29(2)(a) and 31(6)(a) of Schedule 6 to be replaced with 'consistent with sections 6 and 7' since the key 'bottom lines' enshrined in section 5 of the RMA would already be captured in the purpose of this Bill. (The current wording in those clauses creates an overlap in terms of the elements of Part II that are covered by the purpose of the Bill).

Change sought

1. Replace clause 4 with a new provision that reads:

The purpose of this Act is to urgently promote employment growth to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while -

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment

Clause 19

- 17 Clause 19 of the Bill sets out the matters the Minister can consider in deciding whether to refer a project. These matters are intended to assist the Minister to determine whether or not a project will help achieve the purpose of the Bill.
- 18 The first point to note is that paragraph (c) does not belong in the list. Whether or not a project will progress faster under the Bill is not relevant to whether it will meet the purpose of the Bill. Accordingly, it should be relocated to clause 18.



- 19 In addition, it is worth noting that the listed matters do not expressly cover all of the matters that are relevant under Part II of the RMA. This is not particularly concerning given that the Minister can consider ‘any other matter’ under paragraph (f). However, it could be helpful to clarify that those matters are directly relevant. Otherwise there is a small risk that the list could ‘colour’ the way the purpose of the Bill is interpreted, narrowing its meaning.

Changes sought

2. Relocate the matter set out in clause 19(c) in clause 18.
3. Add a further provision which expressly covers, ‘any additional matter set out in section 6 or section 7 of the Resource Management Act 1991’.