



Hon Chris Bishop
Minister for RMA Reform
Parliament Buildings
WELLINGTON

6 December 2024

Dear Chris

I am writing to you about two of the projects that have been announced for inclusion on the list that will be added to Schedule 2 of the Fast-track Approvals Bill. I understand that the bill is yet to be considered by the Committee of the Whole House, and that you intend to have the list added by way of Amendment Paper at that time.

I appreciate that you ran a process with an advisory group to assess and recommend those projects that should be selected for Schedule 2. The terms of reference that governed the advisory group's deliberations described two classes of 'listed projects':

- Part A projects are projects which *might have* applications containing all information requirements in the Bill, ready within the next two or more years, are not ineligible, and which meet the purpose and eligibility provisions of the Bill.
- Part B projects are projects that are likely to meet the purpose of the Act, but for which there is *insufficient information ready* to determine whether the project meets ineligibility and eligibility criteria.

The advisory group was able to request further information and the assistance of special advisers but had to provide its advice on all 384 project applications by the beginning of August. It has emerged, from official information requests, that the meetings of the expert advisory group were of relatively short duration. For projects confronting well understood design and planning matters, this may well have been sufficient. But not all of the projects can be categorised in this way. I am concerned that in some cases, the information available to the advisory group may have been inadequate.

In that regard, I would like to draw your particular attention to Project Kea and the Silverstream Forest Development, both of which were included in the potential list of projects for Schedule 2. In quite different ways they raise questions that you might like to consider.

If these projects had been submitted as referral applications to you, clause 14 of the bill (as reported back from select committee) would have required that they were accompanied by certain information, including the following:

- An explanation of how the project meets the criteria in clause 22B.
- A description of the anticipated and known adverse effects of the project on the environment.
- Prohibited activities involved.

- A list of persons likely to be affected by the project, and any consultation with them.
- A description of whether and how the project would be affected by climate change and natural hazards.

Further, you as Minister would have been required to assess them against the criteria in clause 22B. Importantly, this may include consideration of:

- How the project will support climate adaptation and reduce risks from natural hazards,
- Whether it is consistent with local and regional planning documents, and
- Whether the project contributes to a well-functioning urban environment, which includes supporting the reduction of greenhouse gas emissions, and resilience to the likely and future effects of climate change.¹

Your recent announcement about what projects would appear in Schedule 2 made no reference to whether the distinction between Part A and Part B projects has been maintained. If the distinction has not been maintained, it would appear that being listed in Schedule 2 will in all cases mean direct referral to an expert panel. If that is the case, no Schedule 2 projects will be subject to ministerial consideration and the scrutiny that would otherwise have accompanied them.

The two projects I am raising would, I believe, have benefited from your assessment and I am writing to ask that you satisfy yourself that their inclusion in Schedule 2 is appropriate.

The proposed Silverstream Forest Development is situated in an area that has been the subject of concerns relating to flood risk that my office has been asked to investigate. In the course of my enquiries, it has become clear that the flood modelling that the local authority has relied on in this catchment is out of date. I have been clear in my correspondence with both the Upper Hutt City Council and Greater Wellington Regional Council that any potential development in the vicinity will need to rely on updated modelling to properly understand the risk profile of any developments. Both have agreed that this should happen.

Before including this development in any schedule, you should satisfy yourself that the inadequacy of the modelling was made known to the advisory group and that they have resolved that the project remained suitable for Schedule 2. If they were unaware of the matter, I would suggest that this highlights a problem with the speed of the procedure adopted. In a hurried process without public input, important information may not surface.

Project Kea raises concerns of a different nature. If approved, it would be the first facility of its kind to be established in New Zealand that uses waste as a feedstock, at scale, for energy generation. Given the novelty of this proposal and the precedents that could be set, it would be appropriate for the benefits and risks, particularly the environmental ones, to be thoroughly considered the first time through. I must say that I am surprised that a project of this nature was included for consideration alongside urban subdivisions and roads – things we have been doing for decades and know a lot about.

It would be extremely difficult for any advisory group to subject a proposal of this nature to a thorough assessment within the limited timeframes available to it. I would be interested to learn

¹ See the definition in the National Policy Statement for Urban Development 2020, Policy 1.

of the skills and information available to the advisory group in considering this project and how much time was devoted to it.

But my concern about Project Kea is not limited to the question of timeframes. Novel technologies and processes raise questions the country has not previously confronted. And they raise issues that are not confined to adjoining landowners. Project Kea raises important questions about what burning waste on a large scale means for waste management, the transport of that waste, materials efficiency and emissions in the wider economy.

These are the sorts of questions that are well-suited to Ministerial call-in under the RMA, which was the process that Project Kea was going through prior to the fast-track announcements. Careful, rigorous scrutiny to which the public has access through such a process can build confidence in new technologies. To hurry them through on a 'trust us' basis may end up being self-defeating.

On the face of it, it is difficult to see how it could be reasonably determined that either of these projects could meet the threshold for referral, without the relevant criteria being properly assessed by you in a decision to refer them to an expert panel. I believe you should consider the risks you are taking on your shoulders by including these projects in the Schedule to be attached to the bill. There may be other projects that raise similar concerns and risks.

I invite you to use the time available before the amendments are made to the bill to reconsider the inclusion of the Silverstream Forest Development and Project Kea projects in Schedule 2. That would be in the spirit of ministerial accountability that will rest on you for future referrals.

You have said that 'expert panels have the ability to decline approval for projects'. Whether that is so is the subject of some debate but if you are correct, it is a discretion that has been severely circumscribed. To decline a project, a panel must satisfy an extraordinary threshold, namely, that the adverse impacts of the project would be sufficiently significant to outweigh the purpose of the Act, even after any conditions are applied.

I would suggest that the purpose of the Act makes this nearly impossible, except in the most extreme cases. When pressed, officials could only point to a hypothetical application to construct a nuclear reactor as an example of the sort of project that might not pass a panel's assessment. In the absence of a less extreme weighting of the scales, it is all the more imperative that the projects I have raised (and any similar ones) are subject to an application for referral or an equally robust process.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'S' and 'U' joined together, with a horizontal line extending to the right.

Simon Upton

Parliamentary Commissioner for the Environment
Te Kaitiaki Taiao a Te Whare Pāremata