Submission

by

THE NEW ZEALAND INITIATIVE

to the Environment Committee

on the

Fast-Track Approvals Amendment Bill

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1. INTRODUCTION

1.1 The New Zealand Initiative welcomes the opportunity to comment on the Fast-track Approvals Amendment Bill (FTAAB).

1.2 The Initiative is a Wellington-based think tank supported primarily by major New Zealand businesses. In combination, our members employ more than 150,000 people. We undertake research that contributes to the development of sound public policies in New Zealand, and we advocate for the creation of a competitive, open and dynamic economy and a free, prosperous, fair and cohesive society.

1.3 The Initiative's members span the breadth of the New Zealand economy; a well-functioning and efficient approvals regime for infrastructure and development projects is important to them. The views expressed in this submission are those of the author rather than the New Zealand Initiative's members.

1.4 The Initiative supported the Fast-track Approvals Act 2024 (the principal Act) as a pragmatic response to New Zealand's longstanding difficulties in delivering nationally and regionally significant infrastructure and investment. In our April 2024 submission on the Fast-track Approvals Bill, we considered it to be a necessary step to streamline decision-making for projects with significant economic benefits. However, the Bill had shortcomings, and we recommended several improvements. A few were adopted, including that expert panels be the final decision-makers.

1.5 We maintain the view that the fast-track mechanism is no substitute for comprehensive reform of the resource-management framework. We continue to advocate for Resource Management Act (RMA) replacement that, in the words of our April 2024 submission on the Fast-track Approvals Bill, "efficiently enables beneficial projects to proceed, while respecting property rights and protecting important environmental and conservation values".

1.6 The FTAAB aims to refine the operation of the principal Act. It adds competition-enhancing supermarket developments to the list of projects eligible for the regime, and it adjusts the principal Act's processes to save time, reduce duplication, and clarify responsibilities.

1.7 We see the FTAAB as an opportunity not only to accelerate worthy investment but also to embed stronger disciplines of transparency, accountability and economic efficiency in the fast-track system itself.

1.8 We are disappointed, however, that the FTAAB is being rushed with only 10 days allowed for submissions and there is no regulatory impact statement (RIS). This makes it difficult to robustly assess the Bill's quality and its likely impacts.

2. GROCERY COMPETITION PROVISIONS

2.1 Although the Government has presented the FTAAB as a response to supermarket competition, its substance is primarily a set of process adjustments to the principal Act. The grocery component has been integrated into that broader initiative and then promoted as the FTAAB's central feature.

2.2 According to the FTAAB's explanatory note, the Government's request-for-information process revealed that "one barrier to entry into the grocery sector was the uncertainty that these types of projects may be referred based on improving market competition". In response, the FTAAB clarifies that grocery retail competition is a relevant factor when assessing whether a project has significant regional or national benefits, and introduces a power to issue Government Policy Statements (GPS's) under the principal Act, one of which will focus on grocery competition.

Partial Diagnosis and Low-Hanging Remedy

2.3 The Government has correctly identified one factor contributing to slow or uncertain grocery market entry, being "uncertainty at the referral stage". The FTAAB provides a partial improvement in this regard. Clarifying that grocery competition can be considered at referral may make it marginally easier for Ministers to justify projects under the principal Act. This is a small but genuine step forward.

2.4 However, the FTAAB addresses only one of several countervailing constraints. The more substantive barriers to entry lie further downstream: restrictive planning instruments, transport vetoes, fragmented approvals across various planning instruments, and the absence of a rule-based approach to assessing economic benefits.

2.5 This limited scope is understandable. Solving the issues in planning and consenting requires coordinated reform across several statutes, which is a more complex and politically costly process. The Government has therefore opted for a low-hanging repair: a visible procedural adjustment rather than a more substantive fix.

2.6 The Initiative's proposed Fast-track Supermarket Entry and Expansion Omnibus Bill (May 2025) put forward an integrated framework to overcome these deeper barriers.[1] Our proposal would have replaced discretion with rules and delegation:

- projects meeting defined scale and competition thresholds (a qualifying network of stores and any associated distribution or logistics facilities) would automatically qualify for referral; and
- referrals could be initiated by non-political administrative bodies, ensuring decisions were based on objective pass–fail criteria rather than political discretion.

2.7 Such a rules-based system would provide both predictability and neutrality. By contrast, the FTAAB continues to rely on interpretive discretion to deliver certainty. This is a paradox that risks reproducing the same unpredictability it intends to resolve.

The GPS: Well-Intended but potentially counterproductive

2.8 The new power to issue a GPS is, in our view, more problematic. It intends to guide ministerial and panel discretion toward competition-enhancing outcomes. The approach is sound in principle. In practice, however, the instrument has limited legal effect and may even be counterproductive.

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[1] The New Zealand Initiative, *Supermarket Entry and Expansion Omnibus Bill*, May 2025, https://www.nzinitiative.org.nz/reports-and-media/reports/fast-track-supermarket-entry-and-expansion-omnibus-bill/#:~:text=It%20released%20drafting%20instructions%20for%20a%20Fast-track%20Supermarket,supermarket%20chains%20from%20entering%20the%20New%20Zealand%20market.

2.9 Because a GPS is a secondary legislative instrument, it cannot override or displace restrictive provisions in primary legislation, mirroring the limitations seen with the National Policy Statement on Urban Development (NPS-UD). It offers guidance, not overriding direction.

2.10 The draft GPS on Grocery Competition also appears to reinforce the very discretion that the instrument tries to manage under the principal Act. We understand that panels already show inconsistency in how they interpret 'regional or national benefit', often questioning the commercial viability of applicants' businesses. The GPS's strict requirement coupled with vague language (demanding "sufficient evidence of long-term regional or national benefits"), invites further subjectivity. In effect, it provides panels with more interpretive ammunition to second-guess the value of business to society, rather than establishing clear rules or statutory overrides to enable resource use for productive purposes.

2.11 Panels accustomed to weighing applications where substantial environmental effects are at stake will want more evidence on the benefit side than may be appropriate when considering a supermarket in an existing urban environment.

2.12 The GPS compounds this issue by placing new evidentiary burdens on applicants. By demanding proof of 'long-term regional or national benefits', it encourages panels to apply subjective judgements about scale and time horizon, which in turn may exclude exactly the sort of incremental, commercially led projects that create footholds for new competitors and stimulate economic activity.

2.13 The GPS's emphasis on 'long-term regional or national benefits' may also inadvertently block Schumpeterian-type entry that drives innovation and competition: where a new firm enters precisely to displace incumbents. If a new supermarket aims to capture market share from less efficient rivals, it should not be forced to prove that its entry yields a net benefit to the sector.

2.14 The GPS could usefully remind panels that they should not second-guess projects' commercial viability, and remind the Minister to include such instruction in any letter of direction to the panel.

Defining trade competition to enable greater supermarket competition

2.15 If this amendment to the Fast Track process has the specific purpose of enabling greater retail grocery competition, we suggest that the FTAAB specify definitions of trade competition and trade competitors that would help facilitate retail grocery entry.

2.16 Current law distinguishes narrowly between direct competitors and related commercial interests: the RMA only excludes direct trade competitors, not those with aligned commercial interests, landlords and property owners can still lodge objections. While a rival supermarket cannot object to a new entrant on competition grounds, its landlord or the owner of a shopping centre hosting that supermarket may do so. And so can the owner of a site that would be an alternative location for the applicant's activity. For instance, the owner of a development that wished to be the landlord of a McDonald's in Wanaka was allowed to oppose a new McDonald's elsewhere. Similarly, the landlord of an existing supermarket or the owner of a shopping centre that relies on that supermarket for foot traffic can oppose a proposed rival, even though, in economic terms, they are clearly acting as trade competitors. These parties are not legally considered 'trade competitors', even though their commercial incentives and the effects of competition are identical.

2.17 Similarly, since the decision in Discount Brands (Westfield v North Shore), effects of trade competition have been considered to be separate from any retail distribution effects that are consequent to effects of that trade competition. So a new supermarket's winning customers away from an incumbent supermarket would not be considered a harm per se, under the current framework. However, if fewer customers at that incumbent supermarket harmed the amenity provided in or the vitality of that incumbent's neighbourhood, those harms would be counted. The effect has been that consent applications for new supermarkets are bundled with consultancy reports demonstrating that catchments are underserved, so effects on those amenities would be no more than minor. And it means that a supermarket that intends to take customers from an underperforming incumbent could be blocked by the resource management system.

2.18 Neither trade competitors nor trade competition are defined in the RMA. Their definitions have flowed from practice and precedent. We suggest defining them explicitly for consent applications progressed through the Fast Track Act, enabling an easier path for new retail grocery entry. The Committee may find better wording that we have; other wording to similar effect may be preferable.

2.19 For purposes of applications progressed through this Act, 'Trade competition' should mean rivalry between persons in any market (as that term is used in section 3 of the Commerce Act 1986) for the supply or acquisition of goods or services, whether actual or potential, direct or indirect, and includes rivalry on the demand or supply side.

2.20 For purposes of applications progressed through this Act, 'Trade competitor' could mean any person who is, or is likely to be, in trade competition with
(a) the applicant; or,
(b) any person who would carry out activities enabled by the approval; and includes any related person or associated entity that controls, is controlled by, or is under common control with, such a person (including franchisors, licensees, and property holding entities within the same corporate group).

2.21 For purposes of applications progressed through this Act, a person could be defined as a 'Landlord trade competitor' if the person:
(a) owns, controls, or manages land or premises used by, or intended for use by, a trade competitor in the relevant market; and
(b) has a material financial interest in the commercial performance of that competitor at that location (including through rent indexed to turnover, exclusive dealing, or restrictive covenants); or
(c) has, within the preceding 12 months, negotiated for or offered to lease premises to a trade competitor for the same or substitutable activity in the relevant catchment.

This deeming rule codifies what the courts already recognise for property arms of incumbents (e.g., Foodstuffs' property company) and deliberately extends it to independent current or potential landlords who have a material interest in suppressing a rival's entry.

2.22 Finally, for purposes of applications progressed through this Act, 'effects of trade competition' could be defined to include any effect on market shares, prices, margins, turnover, customer flows, trade patterns, land values, lease values or yields, commercial viability of existing businesses, or the role and function of commercial centres to the extent those effects arise from changes in competition; and —

(a) includes 'retail distribution effects', being effects on the distribution of retail spending or patronage between centres or stores and any consequent changes in tenancy mix or occupancy; but
(b) excludes physical effects on the environment that do not depend on competitive outcomes (e.g., traffic, noise, built form, stormwater), which remain relevant under Schedule 5.

For the avoidance of doubt, effects on amenity are not “effects of trade competition” only to the extent they arise from direct physical consequences of the proposal (e.g., design quality, traffic-generated noise) and not merely from changes in patronage, business mix, or spending patterns.

2.23 With those definitions in place, decision-making instructions for panels could be added to the Fast Track Amendment Act and mirrored in Schedule 5 for RMA approvals under Fast-track:

Disregard rule:

When making any decision under this Act, a panel must not have regard to trade competition or the effects of trade competition. For the purposes of this section, “effects of trade competition” include “retail distribution effects” and amenity effects arising solely from changes in patronage, business mix, or spending patterns.

Positive competition benefits (mandatory consideration):

Despite the disregard rule, a panel must have regard to the benefits to consumers and the public of increased competition, including lower prices, improved quality and variety, innovation, convenience, and dynamic efficiency, while continuing to disregard any detriment to individual competitors.

Standing and submissions:

(a) A trade competitor (including a landlord trade competitor) may submit or be heard only if directly affected by an environmental effect that is not an effect of trade competition.
(b) Surrogates are prohibited; submitters must file a statutory declaration disclosing trade competitor status and any direct or indirect assistance from a trade competitor.
(c) Where a panel (or the Environment Court on review) declares a contravention, costs and damages equivalent to RMA s308I are available.

Consequence and Policy Risk

2.24 On balance, the referral clarification is a modest net improvement (useful but narrow), whereas the GPS mechanism risks being a net negative. It adds procedural texture without substantive power, and may deepen the unfavourable discretion it aims to guide.

2.25 That said, the Government may be correct, and these changes could prove sufficient. At this stage, however, there is no evidence to support that optimism. Early indications from panel behaviour suggest the opposite: that additional discretion and evidentiary thresholds could exacerbate inconsistency rather than reduce it.

2.26 The larger policy risk is interpretive. If, after these reforms, progress stalls, the danger is that the Government will conclude 'removing barriers to entry' does not work and reverts to structural intervention (such as direct state participation or market-share regulation). That

would be the wrong lesson. A lack of progress would not mean that entry-based reform had failed, but rather that entry was never properly enabled because substantive barriers remained untouched.

Recommendations

2.27 To ensure the grocery reforms achieve their intended effect, the Committee should:

- Clarify the benefit test. Panels should be prohibited from second-guessing commercial viability and should presume competition-enhancing entry to be in the public interest without requiring quantified consumer-surplus studies.
- Clearly define trade competition and trade competitors for purposes of applications progressed through the Fast Track, as described above.

2.28 If this approach fails to deliver new entrants, the Government should revisit the land-use and planning barriers that remain binding. A dedicated process, such as the competitive streamlined planning process (CSPP) track outlined in the Initiative's Fast-track Supermarket Entry and Expansion Omnibus Bill, should then be developed to achieve genuine cut-through. Of course, this is not something that can be incorporated into the current legislation. We would like the Committee and Government to be aware of this, in case the FTAAB fails to encourage entry and alternatives are considered.

2.29 These observations should be read alongside the submission's broader analysis of the FTAAB in the following sections.

3. CHANGES TO IMPROVE ADMINISTRATIVE EFFICIENCY

3.1 The slow delivery of major projects impedes national productivity. Long and complex consenting and appeal processes, overlapping agency responsibilities, and fragmented statutory frameworks have deterred and delayed public and private investment costs. The principal Act was designed to provide an interim solution pending fuller replacement of the RMA.

3.2 Experience with the principal Act's first months of operation has revealed both strengths and weaknesses. Timeframes appear to have shortened for those projects that have advanced through it, but procedural bottlenecks continue to delay many others that remain in the queue. There is also public concern that the fast-track process could be misused or politicised. The FTAAB should therefore serve a dual purpose: it must make the system work better while maintaining confidence that fast-track decisions are fair, evidence-based, and directed towards genuine public benefit.

3.3 This submission approaches the FTAAB through the lens of good law-making, as articulated in the Regulatory Standards Bill (RSB). That benchmark encapsulates principles (clarity, proportionality, transparency, accountability, and respect for individual rights) that distinguish sound, durable regulation from expedient but fragile policymaking.

3.4 The FTAAB is intended to improve administrative efficiency, but it does not ensure that the projects it advances will deliver net benefits to New Zealanders. And it is unclear whether the FTAAB will address public concerns about fast-tracking, which risk being exacerbated by the rushed process for its consideration and passage.

The Case for a Net Benefit Test

3.5 The core statutory test for fast-track eligibility remains whether a proposal has 'significant regional or national benefits'. Yet neither the principal Act nor the FTAAB defines 'benefits', requires decision-makers to weigh costs or adverse effects, or insists on any formal cost-benefit analysis. In practice, some decision-makers are requiring elements of cost-benefit analysis, but this is inconsistent and unsystematic.[2] The principal Act allows them to treat any economic or employment gain as a 'benefit', even if associated costs exceed the value created.

3.6 From an economic and policy standpoint, this is a critical omission. Public resources should be directed to projects that produce net benefits, meaning benefits that exceed their costs once externalities and opportunity costs are considered. To assess benefits without considering costs is inconsistent with the principles of efficiency and proportionality.

3.7 Recent debate about the breadth of the fast-track regime has shown how easily the term 'regional and national benefits' can be stretched[3]. A statutory or policy requirement to demonstrate net benefit would discipline that discretion.

3.8 The FTAAB creates two clear avenues for Parliament to address this issue. First, clause 12, which amends section 22 of the Act, could be further refined to require Ministers to be satisfied that a project's net regional or national benefits are significant. Secondly, the new GPS power introduced by clause 5 provides a mechanism to issue guidance requiring applicants and panels to consider formal cost-benefit analysis when assessing benefits. However, the evidential burden should be proportionate to environmental risk. For projects with minimal physical effects - such as retail developments - the net benefit assessment should focus on externalities rather than requiring applicants to justify commercial viability.

3.9 This recommendation should not slow the process. On the contrary, by requiring applicants to present quantified, verifiable evidence of both benefits and costs, it would reduce speculative or poorly prepared proposals and provide panels with a consistent evidential baseline. It would also make decisions more defensible in the event of a challenge.

3.10 However, there is a fundamental tension here – and one that may be unavoidable where projects like supermarkets in an existing urban environment are evaluated under the same process as an open-cast mine with real environmental effects to mitigate. In the case of a supermarket's entry, cost-benefit analysis would be overkill. Requirements to produce such reports can themselves be the barriers to entry that the legislation wishes to ease. Evidence of the entrant's willingness to pay reasonable costs for reasonable roading improvements necessary for linking the site to the transport network ought to mean no cost-benefit analysis would be needed. Perhaps cost-benefit assessment could be restricted to cases where environmental costs are likely to be more than minor, and effects of supermarkets within existing urban environments could be deemed to be minor. Better solutions could perhaps be found if submitters had more than ten days to consider the matter.

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[2] For example, see the differing approaches taken to the Delmore residential subdivision (where the panel insisted on something close to a formal CBA / net-benefits approach) versus that for Bledisloe Wharf (where the panel leaned heavily on the applicant's Economic Impact Analysis). See: https://www.cooneyleesmorgan.co.nz/fast_track_act_lessons

[3] For example, *Billion-dollar backtrack by fast-tracked seabed mine*, Newsroom, 11 October 2025 https://newsroom.co.nz/2024/10/11/billion-dollar-backtrack-by-fast-tracked-seabed-mine/; and *Seabed mine hearing exposes fast-track cost check concerns*, Newsroom, 3 November 2025, https://newsroom.co.nz/2025/11/03/seabed-mine-hearing-exposes-fast-track-cost-check-concerns/

Alignment with Principles of Good Law Making

3.11 The RSB establishes broad principles of responsible regulation in the following areas (section 8): rule of law; liberties; taking of property; taxes fees and levies; role of courts; and good law-making. Within the over-arching principle of good law-making there are several criteria, which are discussed below in the context of the FTAAB. Our verdict is mixed.

3.12 **Clarity and rule of law.** The FTAAB strengthens clarity. Its revised definitions, clearer sequencing of responsibilities, and consistent cross-references should make the Act easier to administer and to interpret. The codification of timeframes for the Environmental Protection Authority (EPA) and panel actions should promote predictability. However, restricting consultation and appeal rights might not be entirely consistent with the rule of law.

3.13 **Protection of rights and proportionality.** Some reductions in consultation periods and the limitation of appeals to questions of law inevitably narrow participation. The need for efficiency may justify these trade-offs, but the case should be made explicitly.

3.14 **Economic efficiency.** The FTAAB's principal purpose (reducing delays and administrative duplication) advances efficiency. Yet procedural efficiency must be accompanied by allocative efficiency: allowing resources flow to projects with positive net returns as assessed by those affected. The omission of a net-benefit test, therefore, represents a missed opportunity. In this respect, the FTAAB's objectives could be better aligned with the economic-efficiency principle they seek to serve.

3.15 **Transparency and accountability.** The creation of GPS's and ministerial-direction powers (clauses 5 and 48) could either enhance or erode transparency depending on how they are exercised. We recommend that statutory obligations be consulted upon and that all GPSs, ministerial directions, and reasons for priority designations be published. This would maintain confidence that fast-track decisions are guided by objective criteria, not by private representations.

3.16 **Certainty and consistency.** The FTAAB's fixed timelines, staged-project provisions, and clearer parallel processing rules should be positive. Predictable processes should reduce transaction costs and investment risk.

3.17 **Proper process and review.** The FTAAB does not provide for a sunset clause or even a formal post-implementation review. Given the novelty and significance of the fast-track regime, a statutory requirement for independent review within five years of it coming into effect would be consistent with best regulatory practice.

4. CLAUSE-BY-CLAUSE DISCUSSION

4.1 **Clause 5 – Government Policy Statements:** This clause introduces a new section 10A, empowering the Minister to issue one or more GPS's to guide the administration of the fast-track regime. These GPSs may articulate objectives, priorities, or expectations relevant to how referrals and decisions are to be made.

In principle, this could be a positive reform. It would allow governments to signal their strategic direction transparently, rather than through ad-hoc ministerial discretion or

confidential correspondence. If properly implemented, GPS's could become the principal instrument through which economic, environmental, and social trade-offs are articulated. For example, a GPS could specify that projects must demonstrate *net* regional or national benefits, or set parameters for the use of cost-benefit analysis.

However, the benefits of a GPS depend entirely on how the power is exercised. Without statutory obligations for consultation and publication, a GPS could just as easily become a mechanism for opaque ministerial direction. We therefore recommend that all GPSs be subject to public consultation, be published in the *Gazette* and on the EPA website, and include a statement of the evidential and analytical standards expected of applicants and panels. These safeguards would align the new provision with the principles of transparency and accountability in the RSB, ensuring that the GPS process enhances, rather than undermines, the legitimacy of the regime. Furthermore, any GPS issued under new section 10A must itself be assessed for consistency with the RSB's liberty principle. That principle requires individuals' liberty to invest or undertake lawful activity should not be unduly diminished except to protect the liberties or rights of others.

We note that the effectiveness of the GPS mechanism depends heavily on design. As discussed in section 2, the draft Grocery Competition GPS illustrates how poorly framed guidance could cause problems. Our recommendations therefore focus on ensuring GPS's support clarity rather than create uncertainty.

4.2 **Clause 6 – Consultation and Notification:** This clause clarifies who must be consulted and who merely notified before a referral application is lodged. This is a welcome clarification, as confusion over these obligations under the 2024 Act led to inconsistent practice and avoidable delay. We support the intent to provide certainty and proportionality.

Nonetheless, consultation remains essential. Compressing or re-classifying consultation risks reducing the quality of input, which can ultimately prolong decision-making if issues are left unresolved until later stages. We therefore support Clause 6, provided that clear guidance is issued, potentially through a GPS, requiring early engagement with affected persons at the information-gathering stage. Properly handled, this reform could reduce friction without sacrificing the quality of participation.

4.3 **Clause 9 – Comment Period Reduction:** This clause shortens the inter-agency comment window for referral applications from 20 to 15 working days and formalises the requirement that comments be provided in writing. The intent is to accelerate referrals while maintaining inter-agency accountability.

Reducing the comment period will require government agencies to have good information and project management systems, as well as to adequately resource the comment processes, including ensuring there is sufficient knowledge and expertise within their agencies to respond both promptly and accurately.

4.4 **Clause 12 – Referral Criteria and the Definition of Benefits:** This clause amends section 22 of the principal Act to require Ministers, when considering referral applications, to have regard to any GPS and to whether a project promotes competition in the grocery industry.

As discussed in sections 2 and 3 of this submission, the definition of 'benefit' remains conceptually weak and has led to inconsistent panel interpretations. The same reasoning

applies to clause 12's referral test, which should be reframed in terms of net benefits consistent with Treasury guidance.

Without this reframing, a project with large but offsetting environmental or fiscal costs could still meet the statutory threshold. From an economic-efficiency standpoint, this is unsound. A system designed to accelerate decision-making should also ensure that decisions are worth accelerating.

We therefore recommend that section 22 be amended to provide that the minister should be satisfied that economic efficiency goals will be furthered by progressing the proposal through to the panel. In some cases, no CBA should be needed to make that case because external costs are *de minimus*, but that prioritisation in other cases *could* require a CBA.

If such an amendment is not adopted, the new GPS power should be used to implement the recommendation. Either approach would anchor the regime in standard economic practice and uphold the proportionality principle embedded in the RSB.

4.5 **Clause 19 – Staged Projects:** This clause inserts a new section 37A, allowing listed projects to be referred to and considered in stages. This addresses a procedural bottleneck in the principal Act, which forced proponents to compile full documentation for all project components before any could proceed. For large infrastructure works, this approach imposed heavy upfront costs and delayed early works that posed minimal risk.

We support this amendment. Staging provides flexibility, enabling early delivery of benefits while maintaining oversight of later stages. It also allows iterative learning and better integration with financing and procurement processes. To safeguard against fragmentation or scope creep, however, each staged approval should be required to demonstrate internal consistency with the overall project rationale, scope, and net benefits.

4.6 **Clause 21 – Priority Project Determinations:** This clause empowers Ministers to determine, at an earlier stage, whether a project should be treated as a 'priority project'. This could be particularly useful in projects that are nationally significant and time-sensitive, such as energy-transition or disaster-recovery initiatives. Earlier determination improves certainty for investors and coordinating agencies.

Yet the discretion to confer priority status carries reputational and constitutional risks if not transparently exercised. We recommend that all priority designations be accompanied by a published statement of reasons explaining the economic, environmental, or social basis for priority, with reference to the relevant GPS. Publication would enhance accountability and ensure consistent application of the criteria across projects and sectors.

4.7 **Clauses 24–29 – EPA Processes and Panel Formation:** This cluster of clauses refines the administrative relationship between the Minister, the EPA, and expert panels. It clarifies information-request powers, allows parallel processing of related applications, and imposes a 15-working-day deadline for the establishment of a panel once an application is referred.

We consider these as practical and well-targeted improvements. Fixed deadlines and concurrent processing reduce idle time, providing applicants with predictable milestones. The new provisions would also eliminate redundant sequential steps. The only caveat is that the drive for speed must not compromise the careful matching of panel expertise to project type; the 15-day deadline should not be a trigger for rushed appointments.

4.8 **Clause 33 – Panels Inviting Comments:** This clause amends section 53(3) of the principal Act, which allows a panel to seek comments "…. from any other person the panel considers appropriate". Under the Bill, this would be restricted to inputs where local authorities or government agencies do not intend to comment on a particular matter, or where panels believe their input would not sufficiently address the matter.

This proposed amendment, we believe, is intended to guard against unnecessary compliance generated by parties who have an automatic right to input when they are not directly and materially affected. We understand this motivation, but in combination with the restrictions on appeal rights, we are concerned about restricting the ability of a panel to seek comments from other persons. For example, there may be significant issues surrounding property rights, where it might be helpful for a panel to obtain information from affected parties or experts.

A better approach might be to amend Section 53(3) to allow a panel to invite comments from any person likely to be directly and materially affected by the application.

4.9 **Clause 48 – Ministerial Directions to the EPA.** This clause introduces a new section 93A, which allows the Minister to issue written directions to the EPA regarding the performance of its functions under the Act. The aim is to improve coordination and ensure that the EPA's operational processes align with government priorities. However, this provision sits uncomfortably close to the boundary between policy guidance and administrative interference.

The EPA's credibility depends on its independence in applying the law. Ministerial direction may be justified in clarifying priorities or resolving systemic issues, but it should never influence the outcome of individual cases. We therefore support Clause 48 only if coupled with strict transparency obligations. Every direction should be published in the *Gazette* and on the EPA's website within five working days, together with a brief statement of purpose. That step should reconcile ministerial accountability with institutional independence and would align the provision with the transparency principle of good law-making.

4.10 **Clause 50 – Appeals Limited to Questions of Law:** This clause confirms that appeals from panel decisions may be brought only on questions of law. This restriction reflects the regime's core objective of finality and expedition. It prevents re-litigation of factual disputes that panels are best placed to determine.

On balance, we accept this limitation, provided panels are required to publish comprehensive, reasoned decisions that demonstrate how relevant evidence and submissions were assessed. Transparent reasoning reduces the risk of judicial review and supports the rule-of-law principle that decisions must be intelligible and justifiable. We also recommend that the Ministry for the Environment (MFE) monitor appeal outcomes and publish periodic summaries to ensure the legal-question threshold remains appropriate in practice.

4.11 **Clause 54 – New section 117A (Order in Council to amend project descriptions)**: Clause 54 introduces a new section 117A enabling the Governor-General, by Order in Council, to amend the description of a project listed in Schedule 2 of the Act. In effect, this provision confers on the executive the power to amend primary legislation without returning to Parliament. This is an example of what is commonly known as a 'Henry VIII' clause.

We acknowledge that schedule-updating powers of this type are not unusual in New Zealand's legislative practice and are often used for technical adjustments. Our concern is not with minor updates but the potential for it to be used for more substantive changes.

Anything beyond minor or technical updates should be determined by Parliament, which is the proper forum for altering the scope of statutory regimes that affect rights, obligations, and the allocation of public resources. Orders in Council receive significantly less scrutiny than legislation, involve no Select Committee process, and can be made with little or no stakeholder consultation. If used broadly, this mechanism could be perceived as diminishing the role of Parliament and lowering the transparency of decisions about project eligibility.

Clause 54 does restrict the use of Orders in Council to ensure changes are not 'substantially different' but this nevertheless goes beyond 'minor or technical updates'. To maintain constitutional balance and preserve public confidence in the regime, the Initiative recommends that: (a) the scope of the clause be expressly limited to minor or technical amendments; (b) all Orders in Council made under s117A be accompanied by a public statement of reasons; and (c) any Order with more than minor effect be subject to a mandatory confirmation process by Parliament. These safeguards would provide necessary discipline while preserving the administrative flexibility the Government seeks.

4.12 **Clause 56 – Objections to Panel-Member Suitability:** This clause introduces a right for applicants or local authorities to raise concerns about the suitability of prospective panel members, representing a novel approach within New Zealand's administrative framework. It is intended to allow potential issues of conflict, bias, or inadequate expertise to be resolved before a panel is constituted.

This is a significant departure from established practice. In judicial and quasi-judicial settings, challenges to decision-makers apply only at high thresholds and are determined independently of the party seeking removal. In our view the wording of clause 56 risks creating pressure on panel convenors and could invite perceptions that applicants are influencing panel composition.

We submit that Clause 56 should not proceed but if it does it must restrict the grounds for complaint to reasonable concerns about impartiality, conflict of interest, or manifest lack of relevant expertise. It should also provide that complaints and their outcome should be publicly disclosed, in the interests of transparency and accountability.

A more principled solution, and one consistent with established practice in (for example) competition proceedings, is to improve panel composition rather than create a mechanism for objections. The underlying difficulty is not the absence of an objection right but the absence of guaranteed expertise on panels that are increasingly expected to evaluate economic evidence, market-entry effects, and assessments of net public benefit. In analogous settings – such as High Court hearings under the Commerce Act – panels routinely include members with specialist economic expertise to ensure that submissions about market structure, dynamic efficiency, and consumer benefit are properly understood. We recommend the same approach here. Every fast-track panel should include at least one member with demonstrable training and experience in economics relevant to project evaluation. This would materially improve decision quality, reduce the risk of panels second-guessing commercial viability, and avoid the procedural risks and perceptions of influence created by clause 56.

4.13 **Clauses 57–62 – Schedule Amendments:** The remaining Schedule amendments correct cross-references, streamline information requirements (particularly for freshwater activities), and update the descriptions of listed projects. They are technical rather than substantive but contribute to the Bill's overall clarity and coherence. We support these housekeeping amendments as consistent with good law-making principles.

5. RECOMMENDATIONS

5.1 Taken as a whole, the FTAAB is intended to improve the structure and efficiency of the 2024 Act. However, refinements are required if it is to meet the standards of good law-making and deliver on its promise of both speed and legitimacy. The following recommendations arise directly from the preceding sections' discussions:

5.2 Section 2 – Grocery Competition Provisions

Adopt a rules-based system for supermarket entry (as in the Initiative's proposed Omnibus Bill), removing political discretion and enabling automatic qualification for referral based on objective thresholds.

Avoid vague GPS wording that increases discretion and subjectivity when panels interpret "long-term regional or national benefits."

Ensure GPS guidance does not impose excessive evidentiary burdens on supermarket entrants.

A GPS should remind panels not to second-guess commercial viability, and the Minister should reinforce this in any direction letter to panels.

Defining trade competition & restricting its consideration:

- Define "trade competition" for Fast-track purposes.
- Define "trade competitor", including related entities and landlords/prospective landlords.
- Define "effects of trade competition" to include retail distribution effects and amenity effects arising from patronage changes.
- Insert statutory decision-making instructions that panels:
    - must disregard trade competition and its effects, including retail distribution and amenity effects arising from changed patronage.
    - must positively consider pro-competitive consumer benefits.
- Restrict standing so competitors (including landlord competitors) may submit only on *true environmental* effects.
- Require statutory declarations disclosing trade-competitor involvement.
- Provide consequences for surrogacy or non-disclosure, e.g., RMA s308I-style penalties.

Clarify the benefit test, prohibiting panels from second-guessing commercial viability, and presume competition-enhancing entry is in the public interest.

Define trade competition and trade competitors as above.

If the reforms do not deliver new entrants, government should address land-use and planning barriers, potentially through a Competitive Streamlined Planning Process (CSPP).

5.3 Section 3 – Changes to Improve Administrative Efficiency

Introduce a formal net-benefit test, either by amending section 22 directly or via the GPS.

Ensure evidential burdens are proportionate to environmental risk.

- Limit or waive CBA requirements for low-impact urban supermarket projects.
- Consider deeming such supermarket environmental effects "minor."
- Consider restricting CBA to cases where environmental effects are more than minor.

Ensure reduced consultation and appeal rights are explicitly justified on rule-of-law ground.

Require statutory obligations to consult on and publish all GPSs, ministerial directions, and reasons for priority designations.

Introduce a sunset clause or require independent review within five years of the regime's operation.

5.4 Section 4 – Clause-by-Clause Recommendations

Clause 5 (GPSs)

- All GPSs must be:
    - subject to public consultation,
    - gazetted and published online, and
    - include evidential and analytical standards panels must use.
- Every GPS must be tested for consistency with the RSB liberty principle.
- GPSs must be drafted to support clarity and avoid uncertainty, recognising risks illustrated by drafting of the Grocery GPS.

Clause 6 (Consultation and Notification)

- Issue clear guidance (likely via GPS) requiring early engagement with affected persons.
- Ensure Clause 6 does not reduce genuine consultation quality.

Clause 9 (Comment Period Reduction)

- Agencies should adopt strong information-management and resourcing disciplines to meet shorter timeframes.

Clause 12 (Referral Criteria)

- Amend section 22 so Ministers must be satisfied that economic efficiency goals are furthered, with CBA required where appropriate.
- Alternatively, require this through the GPS if statutory amendment is not adopted.

Clause 19 (Staged Projects)

- Require that staged approvals remain consistent with overall project rationale, scope, and net benefits.

Clause 21 (Priority Projects)

- Publish statements of reasons for all priority designations.

Clauses 24–29 (EPA Processes)

- Ensure the 15-day panel-formation deadline does not result in rushed or inappropriate appointments.

Clause 33 (Panel Inviting Comments)

- Amend Section 53(3) to allow panels to invite comments from any person likely to be directly and materially affected by the application.

Clause 48 (Ministerial Directions)

- Support Clause 48 only if the following safeguards apply:
  - Immediate publication (within 5 working days) on the Gazette and EPA website;
  - Statement of purpose accompanying each direction;
  - Clear boundary that directions cannot influence individual cases.

Clause 50 (Appeals)

- Require panels to publish comprehensive, reasoned decisions addressing major factual and legal issues.
- Recommend that MFE monitor appeal outcomes and publish summaries.

Clause 54 (Schedule Amendments by Order in Council)

- Limit the Order in Council power (s117A) to minor or technical amendments only.
- Require public statements of reasons for all Orders.
- Require parliamentary confirmation for amendments that are more than minor.

Clause 56 (Complaints about panel members)

- Preferably, withdraw Clause 56 entirely with a focus on improving panel composition to ensure there is strong expertise.
- If retained, restrict grounds to impartiality, conflict, or manifest lack of expertise and require public disclosure of complaints and outcomes.

Clauses 57–62 (Schedule Amendments)

- Support, in principle, the amendments as housekeeping.

5.5 Together, these recommendations should not unduly slow the fast-track process. They should make it more defensible, transparent, and economically rational. They would align the FTAAB with the principles of the RSB and ensure that every project advanced through the regime demonstrably increases New Zealand's prosperity while maintaining the integrity of governance.

6. CONCLUSION

6.1 The Initiative welcomes the Government's continuing effort to make New Zealand's consenting system faster, more predictable, and more investment friendly. The FTAAB contains commendable improvements: tighter timeframes, clearer definitions, and stronger administrative discipline. Those changes will save both applicants and agencies time and cost.

6.2 Yet process efficiency alone does not guarantee good outcomes. The defining measure of success for any regulatory system is whether it directs effort and resources to projects that *increase national welfare*. By explicitly requiring assessment of *net benefits*, Parliament can ensure that the fast-track mechanism advances that goal.

6.3 A clear, evidence-based net-benefit test would align the principal Act with best practice, uphold the principles of the RSB, and reassure the public that the fast-track regime is being used to promote genuine public benefit rather than private advantage. It would also strengthen New Zealand's reputation for transparent, economically rational decision-making.

6.4 We would welcome the opportunity to appear before the Committee to elaborate on these recommendations and to discuss how the proposed amendments could be implemented without disrupting the FTAAB's timetable for enactment.

ENDS

APPENDIX

We here provide potential drafting notes in case Parliament wishes to progress suggestions we have made around defining trade competition and trade competitors. We note that it varies slightly from the suggestions in the submission above; rather than defining "landlord trade competitor" directly, it includes landlords in the definition of trade competitor. There are many ways of solving the problem.

A. Policy intent and problem definition (for the Explanatory Note)

1. Status quo under the RMA. The Resource Management Act 1991 (RMA) instructs consent authorities not to have regard to trade competition or the effects of trade competition (e.g., s104(3)(a)(i)); guidance used in practice repeats this prohibition. However, courts have allowed consideration of "retail distribution" or "centre amenity" effects where those are said to flow from retail spend shifting—creating a pathway for incumbents to contest entry using planning processes. Part 11A limits participation by trade competitors and surrogates, but the Act does not define "trade competition" and the case law uses ordinary meanings.

2. Fast-track purpose & the Bill. The Amendment Bill expressly aims to give grocery developments that improve competition access to fast-track and to anchor decision-making to a Government Policy Statement (GPS). This provides a clear policy mandate to (a) shut down use of retail-economics objections that are in substance trade competition, and (b) require consumer benefits from added rivalry to be weighed.

3. Why change is needed. In practice, retail impact assessments often convert diversion-of-trade into asserted "amenity" harm, drawing panels into modelling spend shifts rather than physical effects (traffic, noise, built form). For groceries in particular, these debates can delay or deter entry, compounding problems identified by the Commerce Commission and Government.

B. Where to locate the amendments

- Primary legislation (preferred): Insert new provisions into the Fast-track Approvals Act 2024 (FTAA) via the Amendment Bill: an Interpretation section, a Disregard of trade competition section, Participation/interest declarations for commenters, and a Pro-competitive benefits consideration. Panels already operate under FTAA decision powers, so clarity belongs in the primary test.
- GPS (operational detail): Use the Grocery Competition GPS to set indicators and evidence expectations for claimed competition benefits; panels must consider a relevant GPS when making decisions.

C. Draft provisions

[New] s X1 – Interpretation (Fast-track Approvals Act 2024)

relevant market has the meaning given in section 3 of the Commerce Act 1986.

trade competition means rivalry between persons in a relevant market for the supply or acquisition of goods or services, whether actual or potential, including rivalry to secure demand, patronage, tenancies or sites; and includes—

(a) diversion of custom/patronage, changes in turnover, profitability or market share; and

(b) retail distribution effects (changes in the distribution of retail spend between outlets or centres); and

(c) neighbourhood or centre amenity effects that arise solely or primarily from the effects in (a) or (b) (such as increased vacancies or reduced footfall);

but does not include physical effects on the environment that do not depend on competitive outcomes, including traffic, noise, emissions, stormwater, or built form.

trade competitor means any person who is, or within 24 months intends and is reasonably likely to be, in trade competition with the applicant (or with a person who would carry out activities enabled by the approval) in a relevant market, and includes—

(a) a parent, subsidiary or related company, a franchisor or licensee, or a property/holding vehicle associated with such a person; and

(b) a lessor (landlord) or proposed lessor of premises used or intended for use by a trade competitor; and

(c) any person acting in concert with, at the request of, or with material financial support from a trade competitor (an associate or surrogate for the purposes of this Act).

Note: paragraph (c) aligns with the policy of Part 11A of the RMA restricting competitors and surrogates.

[New] s X2 – Disregard of trade competition and related effects

(1) When making any decision under this Act, an expert panel must not have regard to trade competition or the effects of trade competition.

(2) Without limiting subsection (1), the panel must disregard —

(a) loss of trade, diversion of custom, or changes in turnover or market share for existing businesses;

(b) retail distribution effects; and

(c) neighbourhood or centre amenity effects that arise solely or primarily from paragraphs (a) or (b).

(3) Nothing in this section prevents the panel from considering actual physical environmental effects unrelated to trade competition.

Purpose: codifies the existing RMA s104(3) disregard and closes the "retail distribution/amenity-via-trade" pathway for Fast-track decisions.

[New] s X3 – Pro-competitive benefits as a positive consideration

In deciding an application under this Act, the panel must have regard to the extent to which the proposal is likely to enhance competition in a relevant market, and the resulting benefits to consumers, including lower prices, improved range, quality, service and innovation — giving such benefits appropriate weight having regard to the evidence.

Purpose: aligns Fast-track with the Commerce Act objective of competition for the long-term benefit of consumers and the Government's stated aim of increasing supermarket competition.

[New] s X4 – Participation by trade competitors, associates and landlords

(1) A trade competitor (including a lessor or proposed lessor under s X1(b)) and any associate/surrogate may provide comments only on physical environmental effects that do not relate to trade competition or its effects.

(2) The panel must disregard any comment or evidence from any person to the extent it relates to trade competition or its effects.

(3) The convener may require statutory declarations of interests (including funding, franchising, leasing, or other relationships with competitors) from commenters before a hearing.

Purpose: ports the RMA Part 11A policy into Fast-track comment processes and expressly captures landlords/prospective landlords.

[Optional GPS hook] s X5 – Government Policy Statement (Grocery Competition)

(1) The Minister may issue a GPS specifying indicators of substantial improvements in local grocery competition and evidence expectations for applicants.
(2) A panel must consider a relevant GPS when determining a substantive application.

Note: The Bill already contemplates GPSs that panels must consider; this clause focuses a GPS on grocery competition.

D. Explanatory material (to accompany the clauses)

- **Definitions**. The RMA does not define "trade competition" or "trade competitor". Courts have treated these expressions by ordinary meaning and have been prepared to look through structure (e.g., franchisor/property arms) when identifying a competitor. The draft definitions provide clarity for Fast-track and expressly include landlords and prospective landlords, addressing observed practices where would-be lessors of incumbents oppose entry at rival locations.
- **Closing the retail distribution/amenity loop**. The retail-distribution line of authority has permitted planning arguments about centre vitality where patronage shifts are asserted. The deeming in s X2 makes clear that, for Fast-track decisions, those amenity sequelae are to be treated as effects of trade competition and therefore disregarded, while still allowing consideration of physical environmental effects (traffic, noise, etc.). This focuses panels on environmental externalities and avoids re-litigating competition via the RMA/FTAA process.
- **Positive competition benefits**. The Government's fast-track grocery policy and the Commerce Act's consumer-benefit purpose justify an express positive consideration for enhanced competition. Panels are not doing a full Commerce Act analysis; they are acknowledging and weighing credible consumer benefits.
  New entrants are not required to provide evidence; their entry is presumed to provide positive competition benefits.
  Incumbents expanding into new areas may be required to provide a Competition Benefit Statement (short, proportionate), covering matters that could include, for example:
  - Market/catchment (as per Commerce Act s3 market definition concepts).
  - Status quo: existing rival stores in the travel-time catchment, barriers to entry (e.g., exclusivity covenants, site scarcity), and expected change in store choice. Draw on the Commerce Commission's grocery market study where relevant.
  - Mechanisms of benefit: expected price/quality/range effects, direction of concentration (e.g., additional independent full-line competitor in the catchment). (Panels can rely on this qualitatively; the GPS can give exemplars.)

E. Participation and process safeguards (practical drafting notes)

- Interest declarations: prescribe a short statutory declaration form disclosing whether the commenter is a competitor, landlord/prospective landlord, or associate/surrogate (funding/support links), mirroring the surrogates policy in Part 11A.

- Topic management: direct panels to strike out / disregard material that is, in substance, about the effects of trade competition as defined in s X1 (including retail distribution and loss-of-custom amenity arguments).
- Physical-effects carve-back: keep explicit text (s X2(3)) ensuring panels still consider traffic, noise, emissions, built form etc. (i.e., environmental externalities), aligning with how s104(3) is applied in practice.