Key concerns with the Fast-track Approvals Amendment Bill

1. The Bill is being framed primarily as a grocery competition measure. This is *far* from an accurate representation. Grocery competition is a very small component of the Bill.

2. There are significant **substantive concerns**:

    a. the Bill proposes that a new Government Policy Statement be created, which allows Ministers to state what 'regional and national benefits' means, and which must be considered in referral and substantive (panel) decisions. This confers significant discretion on Ministers to determine what eligible projects proceed to panel decisions, and to influence the outcome of those decisions, because it removes the concept of 'regional and national benefit' from an objective test capable of testing in the courts to one heavily reliant on Ministerial preference.

    b. The Bill proposes that the Minister, if requested by a panel, can approve a 'modification' to an application after it is referred. There is a risk that a project is significantly altered after it passes the referral gateway. This is of concern because the Minister only has to be satisfied that a project 'still has significant national or regional benefits', not the broader range of considerations that inform a referral decision under section 13 (eg affected persons who need to be informed of a referral application, whether the proposal is eligible, whether it involves prohibited activities etc). The change could encourage more modest applications to be made when initially seeking referral, and to then seek Ministerial approval for modification later on. There are no constraints in the Bill on how significant the modifications are allowed to be.

3. Other concerns are about **constrained timeframes, which will affect the quality of information, decisions and conditions**. For example:

    a. the time frame in which comments on a referral application must be provided would be reduced from 20 working days to 15 working days.
    b. the timeframe for panels to reach a final decision on an application would have a maximum of 60 working days (as opposed to "a time frame that the panel convener considers is appropriate, having regard to the scale, nature, and complexity of the approvals sought in, and any other matters raised by, the substantive application"). This is arbitrary and too short for complex and large projects having extensive environmental impacts.

4. Others issues relate to a further erosion of submitter **standing**. In particular:

a. Currently, a panel can invite comment from anyone it considers 'appropriate'. This includes NGOs and community groups. The Bill proposes to allow a panel to invite such comments only where a local authority or relevant administering agency does not 'intend' to cover a particular matter (or if their comments will not 'sufficiently' address the matter).
b. This has significant risks. For example, councils will rely on applicants to pay for their comments (under cost-recovery provisions), which might compromise the extent of their investigations.
c. It is not clear what would actually happen if a council *intends* to provide comment but *does not end up doing so* (or does not provide *adequate* comment, which is likely given short timeframes for providing it). It appears that the 'clock keeps ticking'. There is a risk that there is a total information gap if panels cannot request comment by others in the event council/administering agencies do not provide sufficient comments of their own.

5. **Appeal** rights are also to be constrained. The Bill would prevent appeals on points of law from anyone invited to provide comment by a panel (for a substantive decision) or the Minister (for a referral decision), unless they're a person from which the panel/Minister 'must' invite comments. In practice, this would prevent NGOs and community groups from appealing to the High Court on points of law, even if panels have chosen to seek comment from them. This is likely to backfire, since it would simply channel litigants into judicial review, which may take longer and be more costly to resolve. That is exactly what has happened with similar fast-track housing legislation in Ireland, which has now been abandoned.

6. There will also be the ability for applicants to complain about the 'suitability' of panel members, including where an applicant feels that they are not 'impartial'. Such concerns need to be taken into account when a panel is being established. This has the clear potential to erode the independence of a panel convener. Applicants should have no influence over the makeup of an independent panel.

7. Other concerns are more **constitutional** in nature.

    a. The Bill would enable the Minister to give general direction to the EPA in relation to the EPA's performance and exercise of its functions, duties, and powers under the Act. The Minister would have to consult the EPA before giving a direction and could not give a direction that relates to a particular substantive application. However, the potential scope for interference in how the EPA discharges its

independent statutory functions is of concern (eg treatment of data and information, engagement with the public etc).

b. The Minister would be able to recommend the making of an Order in Council to amend the description of a 'listed' project in Schedule 2. Although the scope of these projects are not allowed to be 'substantially different', there is no mention of the extent of environmental impacts when determining whether that is the case. And in principle this is extremely concerning, because it allows primary legislation to be directly amended by the Crown. This is a blatant use of a Henry VIII clause, which usurps the role of Parliament and bypasses proper democratic scrutiny of statutes in the House. This is constitutionally questionable.

8. Some residual changes fix technical errors, make minor clarifications, and make processes more efficient (eg allowing some processes to overlap rather than being strictly sequential). For example:

   a. the EPA can start working to determine whether a substantive application has any competing applications or there are any existing resource consents before deciding whether the substantive application is complete and within scope.
   b. an application can be given to a panel convener before a ministerial decision is made on whether the application is eligible and within scope (although this risks inefficiency if it is subsequently determined the application *is not* eligible).
   c. the EPA can seek further information from an applicant, instead of having to return the substantive application if it is incomplete or not within scope.

9. The intention is to pass the legislation by the end of the year, meaning an incredibly small window for submissions and consideration by select committee.