

Ashleigh Watson

From: Catherine Maffey <Catherine.Maffey@mfe.govt.nz>
Sent: Wednesday, 21 August 2024 8:48 am
To: Rebecca Perrett; Shawnee Westerman
Subject: Fw: classification RE: Main themes for Thurs SC
Attachments: Note for Select Committee Opening Remarks.docx

FYI - this is relating to a meeting today with MBIE (Vic) and Kevin. Vic asked for the response to the advisor report to provide a response to overall themes. Kevin did not want to do this in writing and keep it to the simple table we are doing but speak to it instead. He has now come up with talking points below.

Cat Maffey (she/her)

Analyst | Kaitātari

Resource Management Reform | Te Whakahoutanga RM

Ministry for the Environment | Manatū Mō Te Taiao

Catherine.Maffey@mfe.govt.nz | mfe.govt.nz

Ministry staff work flexibly by default. For me, this means I work Monday - Wednesday (8.30am-3pm) and Thursday - Friday (8.30am-2pm).



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From: Kevin Guerin <Kevin.Guerin@mfe.govt.nz>
Sent: Wednesday, August 21, 2024 8:14 AM
To: Vic Johns <vic.johns@mbie.govt.nz>; Susan Hall [EXTERNAL] (MBIE) <Susan.hall@mbie.govt.nz>; Martyn Pinckard <Martyn.Pinckard1@mfe.govt.nz>
Cc: Francis van der Krogt [EXTERNAL] (MBIE) <Francis.vanderKrogt@mbie.govt.nz>; Catherine Maffey <Catherine.Maffey@mfe.govt.nz>
Subject: classification RE: Main themes for Thurs SC

While I would prefer not to provide additional text to the committee, which might convey misleading impressions of advice that is still in some flux, I have added talking points for the session to this note. Hopefully this provides a good basis for a short chat this afternoon :)

Kevin

Session on Independent Advisors' reports

Pack of documents

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 - b. response to general questions
 - c. corrections to the DR.
2. We can go through these in whichever order you prefer and address any additional matters you wish to raise.

Key Themes in Response to Independent Advisors

3. The main question raised in these reports is a lack of clarity around how the panel can decline an approval. We acknowledge this issue and have identified two components and their interaction – the purpose and the decision criteria for each Act, in schedules 4 to 12.
4. We consider that changes to the purpose cannot be the main response as the nature of the approvals and conditions in each Act vary. However, we do think it's worth clarifying another area of some uncertainty. This is a perception that the purpose is process focused rather than substantive in nature. We propose a change to address this.
5. The main response we suggest in relation to the grounds for decline is adding specific criteria for when the expert panel may, in accordance with the purpose of the Bill and its policy intent, decline different types of approvals. We are working up these options and seeking policy approvals. We recommend that the committee instruct us to work with PCO on drafting.
6. On other matters raised in the reports, most of these either align with our advice in the DR, would require changes that do not align with the policy intent, or can be worked through in drafting. We have highlighted in the response where we recommend further changes or have identified options if the Committee wishes to add additional provisions to better cover off issues.

-----Original Appointment-----

From: Vic Johns <vic.johns@mbie.govt.nz>

Sent: Tuesday, August 20, 2024 2:53 PM

To: Vic Johns; Kevin Guerin; Susan Hall [EXTERNAL] (MBIE)

Cc: Francis van der Krogt [EXTERNAL] (MBIE); Catherine Maffey

Subject: Main themes for Thurs SC

When: Wednesday, 21 August 2024 3:00 pm-3:30 pm (UTC+12:00) Auckland, Wellington.

Where: Microsoft Teams Meeting

As discussed, an opportunity for Susan and Kevin to discuss framing of major themes for SC on Thursday.

Vic

021 554 462

Microsoft Teams [Need help?](#)

[Join the meeting now](#)

Meeting ID: 468 824 858 152

Passcode: LLZLeL

Dial in by phone

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Join on a video conferencing device

Tenant key: 830083302@t.plcm.vc

Video ID: 135 884 292 6

[More info](#)

For organizers: [Meeting options](#) | [Reset dial-in PIN](#)

From: Kevin Guerin <Kevin.Guerin@mfe.govt.nz>

Sent: Tuesday, August 20, 2024 2:27 PM

To: Vic Johns <vic.johns@mbie.govt.nz>; Catherine Maffey <Catherine.Maffey@mfe.govt.nz>

Cc: Francis Van Der Krogt <Francis.vanderKrogt@mbie.govt.nz>; RM PMO <RMPMO@mfe.govt.nz>; Susan Hall <Susan.Hall@mbie.govt.nz>

Subject: Re: classification Pack for SC

I'm free at 3 or 4, but not 3:30.

Kevin Guerin, Chief Advisor

From: Vic Johns <vic.johns@mbie.govt.nz>

Sent: Tuesday, August 20, 2024 1:39:05 PM

To: Catherine Maffey <Catherine.Maffey@mfe.govt.nz>; Kevin Guerin <Kevin.Guerin@mfe.govt.nz>

Cc: Francis van der Krogt [EXTERNAL] (MBIE) <Francis.vanderKrogt@mbie.govt.nz>; RM PMO <RMPMO@mfe.govt.nz>; Susan Hall [EXTERNAL] (MBIE) <Susan.hall@mbie.govt.nz>

Subject: RE: classification Pack for SC

Thanks for following this up. Obviously you have to deliver on the requests of the SC, so we will just wait to review the material once you've filled it in.

I had a quick meeting with Susan just now to catch up on everything FTA-related. Susan is unable to attend the SC on Thursday, but she suggested that she and Kevin get together tomorrow afternoon to talk over the high level/verbal response.

Kevin, if that's something you'd be available for, Susan has time free tomorrow afternoon, any time between 3 and 4.30.

Regards,

Vic Johns

POLICY DIRECTOR

Resource Markets Branch, Ministry of Business, Innovation & Employment

Ph: 9(2)(a)

I am not usually at work on Wednesdays.

From: Catherine Maffey <Catherine.Maffey@mfe.govt.nz>

Sent: Tuesday, August 20, 2024 11:47 AM

To: Vic Johns <vic.johns@mbie.govt.nz>

Cc: Francis Van Der Krogt <Francis.vanderKrogt@mbie.govt.nz>; RM PMO <RMPMO@mfe.govt.nz>; Kevin Guerin <Kevin.Guerin@mfe.govt.nz>

Subject: Re: classification Pack for SC

Hi Vic

Thanks for your email. Our understanding is that the Committee is expecting us to provide a response to the actual recs in the the two reports, and this is what we have set up to do in the (very) rough draft I sent around this morning.

I have spoken with Kevin and we do however think it would be helpful to provide a more general/high level response to the reports as a whole and make comments on any high level themes, and Kevin considers that this is best done verbally at the session on Thursday.

Regards,

Cat Maffey (she/her)

Analyst | Kaitātari

Resource Management Reform | Te Whakahoutanga RM

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From: Vic Johns <vic.johns@mbie.govt.nz>

Sent: Tuesday, August 20, 2024 11:06 AM

To: Catherine Maffey <Catherine.Maffey@mfe.govt.nz>

Cc: Francis van der Krogt [EXTERNAL] (MBIE) <Francis.vanderKrogt@mbie.govt.nz>
Subject: RE: classification Pack for SC

Kia ora Catherine,

Good start on this – what a week! I was wondering about the format of the response to the SC advisors. Are we constrained to go through recommendation-by-recommendation? It seems like a difficult thing to draft (both in terms of the quantity of information required, and the awkwardness of “challenging” other advisors’ recommendations in that level of detail).

I wondered whether there was a way to respond to the main themes of their feedback so it’s a higher level response.

This is just coming from me at this stage – I don’t know whether Susan (who will be signing this out at our end) has any concerns about your approach. But I thought I’d ask the question, so I am better equipped to talk it over with Susan.

I have a catch up with Susan at 1pm, so if you find time to give me your thoughts on this before then, I’ll let you know what comes out of that chat. Feel free to phone me on 9(2)(a) if that’s easier – I’m free except 11.30-12.00.

Ngā mihi,

Vic Johns

POLICY DIRECTOR

Resource Markets Branch, Ministry of Business, Innovation & Employment

Ph: 9(2)(a)

I am not usually at work on Wednesdays.

From: Catherine Maffey <Catherine.Maffey@mfe.govt.nz>

Sent: Tuesday, August 20, 2024 9:43 AM

To: Amelia Smith [EXTERNAL] (DOC) <ajsmith@doc.govt.nz>; Sarah Godwin [DOC] <sagodwin@doc.govt.nz>; Laura Richardson [EXTERNAL] (mch) <Laura.Richardson@mch.govt.nz>; Sarah Wilson [EXTERNAL] (LINZ) <SWilson@linz.govt.nz>; Francis Van Der Krogt <Francis.vanderKrogt@mbie.govt.nz>; Susan Hall <Susan.Hall@mbie.govt.nz>; Susan Bowler [EXTERNAL] (LINZ) <SBowler@linz.govt.nz>; Michael Nielsen [EXTERNAL] (MPI) <Michael.Nielsen@mpi.govt.nz>; Nick Svensen [EXTERNAL] (MPI) <Nick.Svensen@mpi.govt.nz>; Vic Johns <vic.johns@mbie.govt.nz>; Patricia McKay <Patricia.McKay@mbie.govt.nz>

Cc: Kevin Guerin <Kevin.Guerin@mfe.govt.nz>; Martyn Pinckard <Martyn.Pinckard1@mfe.govt.nz>; Thomas O’Flaherty <Thomas.OFlaherty@mfe.govt.nz>; RM PMO <RMPMO@mfe.govt.nz>; Rebecca Perrett <Rebecca.Perrett@mfe.govt.nz>; Shawnee Westerman <Shawnee.Westerman@mfe.govt.nz>; Emily Allan <Emily.Allan@mfe.govt.nz>; Greg Underwood <Greg.Underwood@mfe.govt.nz>; Lisa Johnston <Lisa.Johnston@mfe.govt.nz>; Kate Mitchell <Kate.Mitchell@mfe.govt.nz>; Natalie Pike <Natalie.Pike@mfe.govt.nz>; Christine Lanham <Christine.Lanham@mfe.govt.nz>; Zsofia Hellyer <Zsofia.Hellyer@mfe.govt.nz>; Katie Lynch-Watson <Katie.Lynch-Watson@mfe.govt.nz>

Subject: classification Pack for SC

Kia ora everyone,

We are busily working through the requests made by SC last week and we are intending to provide an Aide Memoire to the committee by the COB tomorrow/Wed. This will be a joint sign out by MBIE and MfE and I am hoping to get a draft of all the content circulated to you all by the COB today (and sign out tomorrow afternoon) - all going to plan. I have reached out to those that have direct content relating to their work but please let me know if you would like/need to contribute to other matters or if I have missed something.

We are intending that the AM will basically be a one-two page cover for the following attachments:

1. Response to advisors reports
2. Response to their general questions
3. Corrections to the DR (typos, incorrect content etc)

I have attached the above documents to ensure we are all on the same page with what was asked of us. Please let me know if anything is missing or there are errors etc.

Thanks,

Cat Maffey (she/her)

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Notes for Select Committee

Session on Independent Advisors' reports

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Presenting the DR

7. Kevin and Susan will lead most of the presentation of the DR on behalf of MfE and MBIE, with DOC alongside given the breadth of the issues for which they are responsible. Discussion on schedules will be led by relevant agencies. For each section of the report we will draw on relevant experts from across agencies. We understand that PCE and the independent advisor will raise their views as relevant.

Pace and progress

8. We noted in our first conversations with you that this Bill was developed at pace and that it needed substantial further work. We have made significant progress on that work in the DR in front of you, informed by so many submissions, written and oral.
9. Some work clearly remains to be done, and that is a mixture of ensuring that changes in policy intent, such as the move to the panel as decision maker, flow through to all aspects of the Bill and technical issues around implementation, such as what mechanisms need to be in place on day 1 for the Bill to operate.
10. Where that work has not been completed yet, our intention is to work with PCO to do so as far as possible in the RT version of the Bill for your consideration in two months time. It is possible that some issues will need to be addressed through Amendment Papers but we aim to minimize that.

Key changes proposed in the DR and remaining work required

11. There are some important changes proposed in the DR, reflecting a combination of further work by officials and drafters, and further policy decisions by Government. The former focus on proposals such as bringing common approaches up from the schedules to the Bill where they are common across approvals. We will cover these issues the first time it comes up in each case.
12. The latter are the more significant and include:
 - decision-making powers**
 - a. changing referral decisions from a group of Ministers to the Minister for Infrastructure
 - b. changing the decision makers on substantive approvals from Ministers to the Expert Panel
 - c. changing how Māori expertise is described and removing appointments by relevant iwi authorities unless required by settlements (plus s.6 reports and engagement)
 - addressing environmental considerations**
 - d. requiring consultation with the Minister for the Environment and relevant portfolio Ministers
 - e. expanding panel expertise to include environmental matters.
13. These decisions flow on to a need to make it more explicit how decisions are to be made on approvals and conditions, now that these decisions are delegated to the Expert Panel. You will see this reflected in recommendations around the purpose itself and panel decision-making.
14. The intent is clear, that decision-makers will give greatest weight to facilitating the delivery of infrastructure and development projects with significant regional or national benefits. In doing so they will also weight factors under the relevant legislation and if those factors are significant enough in relation to benefits then the overall result may be that the set of approvals for a project is declined, in whole or part. The DR proposes that we work with PCO to ensure that the architecture of the Bill as a whole achieves this intent.
15. We are also working through the mechanics of operating the Bill from day 1, including cost recovery provisions, forms to be filled in, information requirements etc. Not all of these details are captured

in the DR or can be addressed in the RT version, nor do they all need to be as some will be more suited to regulations. We will be able to advise further on this when you consider the RT version.

Backup text

16. As an illustration, only, without constraining PCO's discretion, one option for conveying the policy intent more clearly would be to change the purpose clause to replace the words "provide a fast-track decision making process that facilitates" with the word "facilitate"
17. The Fast-Track Approvals Bill does not currently work through exactly how applications made under the Bill that relate to allocable resources will interface with the priority order of applications under parent legislation, with limits on allocation or with existing allocations. This work is underway, reflecting a particularly complex set of circumstances in this area that has not allowed for it to be completed yet.

DRAFT