

## Ashleigh Watson

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**From:** Sarah Godwin [DOC] <sagodwin@doc.govt.nz>  
**Sent:** Wednesday, 21 August 2024 10:37 am  
**To:** Catherine Maffey  
**Cc:** Christine Lanham; Malcolm Lucas; Amelia Smith [EXTERNAL] (DOC); Shona Bradley; Rosemary Broad  
**Subject:** DOC content - Pack for Select Committee  
**Attachments:** Response to PCE Report - Conservation Covenants.docx; Response to SC questions - Variations.docx; Corrections to the DR - DOC corrections.docx

**Importance:** High

Mōrena Cat,

Apologies for the delay – please see attached for DOC’s content to feed into the package going to Select Committee.

- Response to PCE Report – Conservation covenants
- Response to SC questions on variations. **Note**, our understanding of the questions asked by the Committee on variations were a little different. Please use our amended questions/responses.
- Corrections for the DR (I’ve done these in track edits)

Please let me know if you have any questions,

Thanks,

**Sarah Godwin** [she/her]  
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Ph: +9(2)(a) [REDACTED]

NOTE: my phone number has changed, I no longer use 9(2)(a) [REDACTED]

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**RESPONSE TO PCE Report – Conservation covenants**

<p><b>Sch 5, Part 4</b></p>	<p><b>Rec 17</b></p>	<p><b>Para 38</b></p>	<p><i>PCE’s REC: I recommend that the committee is cautious about retaining conservation covenants as an approval under this bill. It will create a new approval, having substantial impact on the private property right to create covenants in perpetuity, which is well beyond the scope of this bill.</i></p>	<p><b>Official’s response:</b></p> <ul style="list-style-type: none"> <li>• Conservation covenants have been included in scope of the Bill to enable more development than would be possible under the status quo.</li> <li>• The Departmental Report notes that revoking and amending conservation covenants is not a novel approach and has been enabled already through other existing legislation, for example in the Urban Development Act 2020 for specified development projects.</li> <li>• We have proposed that any changes to conservation covenants requires the landowner’s consent (Recommendation 239 refers). This essentially acts as an ineligibility criterion and applicants will not be able to apply for removal of conservation covenants under the Bill if they do not have the relevant landowner consent. This is an important requirement to uphold private property rights in the Bill.</li> <li>• The Panel will receive a report from DOC detailing information on the values associated with the covenant. This is to inform their decision and when setting conditions to address the proposed change or removal of the covenant.             <ul style="list-style-type: none"> <li>○ For example, conditions could include upgrading fencing of the remaining covenant area to ensure that the impacts of the fast-track project are minimised.</li> </ul> </li> <li>• The Panel will decide what conditions are appropriate in any given case.</li> </ul>
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Environment Committee question	Response to question
<p>What is the scope of what can be a variation to a conservation approval under the fast-track Bill?</p>	<p>The policy intent is that decisions on variations to conditions of conservation approvals (concessions, wildlife authorisations, CMA access arrangements) can be:</p> <ul style="list-style-type: none"> <li>• made by the same decision-makers as in the relevant parent legislation for each approval (rather than Expert Panels), however;</li> <li>• subject to the tests, considerations and requirements of the Fast-track legislation. For example, limited consultation processes under the Fast-track Bill will apply to variations of concession conditions, rather than usual public notification requirements under the Conservation Act.</li> </ul> <p>This approach ensures that Expert Panels do not have to be convened every time a variation is sought, which could compromise efficiency in the fast-track system. This approach also ensures that applicants seeking variations are not subject to more stringent tests than for the original fast-tracked approvals (which would potentially block projects from progressing).</p> <p>Variations to conditions on conservation approvals are limited to changes that do not fundamentally alter the nature of the approvals.</p> <p>There is no bright-line test for this under the status quo as the decision is fact specific and case-by-case. This approach has not been tested in the courts, as DOC is typically able to agree with approval-holders on the appropriate approach. This is intended to be the same under fast-track.</p> <p>For access arrangements, advancing between stages of a mining project can be dealt with as a variation, as the CMA explicitly clarifies this in section 61.</p>

	<p>If a fast-track project needs to change approvals to an extent that would go beyond what can be considered a variation in that case, the applicant can apply for referral to fast-track for fresh approvals.</p>
<p>Schedule 10 – Rec 298 – Does this go beyond the scope of Fast Track?</p>	<p>The “subsequent variations” referred to in rec 298 are only available for access arrangements that have first been approved or varied through the full fast-track process.</p> <p>If a fast-track project minerals operator wishes to progress from exploration to mining, they could, as per section 61, request a subsequent variation (via normal decision-makers) or a new access arrangement (via referral and Expert Panel), depending on how significant the change to the existing arrangement would be.</p> <p>If you were to require all subsequent variations to fast-track mining access arrangements to go through the referral process again, this would risk frustrating fast-tracked mining projects.</p>

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### Corrections

- Rec 98 – remove change to “may” but come back with a proper update to this rec.
- Rec 101...change to OIA or LGOIMA – what ever most appropriate at discretion of PCO? - confirm this with legal
  
- Rec 100 removed. (98 stays as may)
- Rec 163 rec reference to 49 should be 47
- Rec 168 amended to be “remove cl 35” instead of “ this clause”
- Rec 191 same as above – don’t say “this clause”
- In rec 194 – refer to ~~clause-paragraph~~ 1004 (which outlines the information requirements for a concessions application)
- Rec 204 – “this clause” issue again, suggested re-word: We recommend amending Schedule 5 to reflect that the expert panel is the decision-maker for land management approvals.
- Rec 205 – suggested re-word: We recommend that section 49 of the Conservation Act is disapplied for clarity, as the intent of the Bill is to remove public notification requirements.
- Rec 206 – “the schedule” is changed to “schedule 5”, to add clarity.
- Rec 207 – where it says “clause 5 and 6”, clarify that it is “clause 5 and 6, in Schedule 5”.
- Rec 219 – suggested paragraph no. insert for clarity: We recommend that the Bill provides for the information requirements outlined in paragraphs 1091 and 1092, to ensure applicants have certainty on what information is required for a land exchange.
- Rec 233 – “the schedule” is changed to “the Bill”.
- Rec 237 – suggested paragraph no. insert for clarity: “We recommend that the Bill provides for the information requirements outlined in paragraph 1145, to ensure applicants have certainty about what information is required when seeking approval to change/revoke conservation covenants. This information must be provided in order for the substantive application to be assessed as complete and progress to be considered by the expert panel.
- Rec 245 – suggested paragraph no. insert for clarity: “We recommend that the Bill specifies the information requirements outlined in paragraph 1177, to ensure applicants understand what information is required for a wildlife approval. This information must be provided in order for the substantive application to be assessed as complete and progress to be considered by the expert panel.”
  
- ~~Remove Rec 272 (essentially repeats 270)~~
- ~~Rec 296 – suggested paragraph no. insert for clarity: We recommend that the Bill provides for the information requirements outlined in paragraph 1400, to ensure applicants have certainty on what information is required for an access arrangement approval. This~~

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~~information must be provided in order for the substantive application to be assessed as complete and progress to be considered by the expert panel.~~

~~• Rec 200 – change “this clause” to “schedule 10, clause 1”~~

• Rec 268 – include “Heritage NZ”

~~• Remove Rec 272 (essentially repeats 270).~~

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• Rec 291 is not an actual rec - remove from the box

• Typo in para 1366 “not” (EEZ)

1. There is an error in paragraph 1366 of the report referring to a request from Pou Taiao’s submission for schedule 9 to explicitly recognise hapū and iwi who have existing interests in the application area, and those who have applied for customary rights under takutai moana legislation. The second sentence of the paragraph is incorrect in stating that the latter (those who have applied for customary rights under takutai moana legislation) are not invited to provide comment to the expert panel under the clause 13 report. Applicant groups under takutai moana legislation are included as parties to be identified in the clause 13 report, and clause 20(5)(f) includes applicant groups identified in the clause 13 report as being able to comment on an application for a referred project. Clause 9(1) states that schedule 4 will apply to panel procedures for marine consents under the EEZ Act so applicant groups will be invited to provide comments to the expert panel. The second sentence of the paragraph can be deleted without needing anything further.

2. Paragraph 1376 provides the response to paragraph 1366 and states at the last sentence that takutai moana legislation applicants and industry bodies are also enabled to make submissions to the expert panel via the broader consultation requirements detailed in schedule 9 clause 9(1)(c). This is incorrect as takutai moana legislation applicants are not included in section 46 of the EEZ Act as referenced in clause 9(1)(c) of schedule 9. The appropriate response would be to delete the final sentence, and replace it with a sentence saying, “Clause 9(1) of schedule 9 applies the panel procedures of schedule 4 to EEZ applications with relevant modifications, which means relevant applicants under Takutai Moana Legislation will be invited to comment on a marine consent application.”

~~• Rec 296 – suggested paragraph no. insert for clarity: We recommend that the Bill provides for the information requirements outlined in paragraph 1400, to ensure applicants have certainty on what information is required for an access arrangement approval. This information must be provided in order for the substantive application to be assessed as complete and progress to be considered by the expert panel.~~

~~• Rec 300 – change “this clause” to “schedule 10, clause 1”.~~

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• 299 should replace “recommendation” with “decision” - typo

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