

4.30pm

Priority Urgent



THE DEPARTMENT OF INTERNAL AFFAIRS

Te Tari Taiwhenua

Local Government Briefing

Hon Rodney Hide
Minister of Local Government

Copy to: Hon John Carter
Associate Minister of Local Government

Title: Briefing for your meeting with the Minister for the Environment on the approach to investigating issues with Environment Canterbury

Date: 19 October 2009

Key Issues
This briefing (prepared in co-operation with the Ministry for the Environment) outlines the proposed approach to investigating issues with Environment Canterbury for your meeting with the Minister for the Environment on 20 October 2009. A draft terms of reference for a joint review is attached.

Action sought	Timeframe
Note the contents of this briefing and the attached draft terms of reference for discussion with the Minister for the Environment; and agree that the attached draft terms of reference be forwarded to Environment Canterbury for discussion, subject to changes agreed to by you and the Minister for the Environment.	20 October 2009

Contact for telephone discussion (if required)

Name	Position	Telephone		Suggested first contact
		direct line	after hours	
Antony Moss	Manager (Regulatory Policy)	(04) 494 0636	027 476 0361	✓
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DMS file reference: PLG-2500-3_4 622116DB
Ministerial database reference: LGC200903339

Purpose of briefing

1. This briefing outlines an approach to investigating the performance of Environment Canterbury (ECan) for your meeting with the Minister for the Environment on 20 October 2009. It aligns with the briefing that the Ministry for the Environment (MfE) have provided their Minister.
2. A draft terms of reference for a statutory investigation led by MfE in conjunction with a non-statutory assessment led by the Department of Internal Affairs (DIA) is attached as Appendix 1.

Background

3. Following the results of the 2007/2008 Survey of Local Authorities, the Minister for the Environment agreed to an investigation of resource consent processing practices in the Far North District Council and ECan under section 24A of the Resource Management Act 1991 (RMA). The Minister also indicated a desire to undertake a broader section 24A investigation of ECan, but under section 24A this is limited to examining the exercise of a council's powers under the RMA only.
4. On 18 September 2009, the Canterbury Mayors (led by Bob Parker) wrote a letter to you outlining a number of serious concerns about ECan. Issues included concerns with resource consent processing functions, development and regulation of plans and policies, administration of water allocation and monitoring, lack of consultation, poor decision-making and leadership, and a generally inflexible and confrontational approach to issues. The Mayors did not ask for any specific action.
5. DIA began an initial assessment into whether the Mayors' concerns, and any other issues relating to ECan, met the threshold for initiating the statutory process for appointing a review authority under section 254 of the Local Government Act 2002 (LGA02). You have decided, at this stage, to put on hold consideration of whether or not to appoint a review authority.
6. The Minister for the Environment last week agreed to jointly review ECan. This will involve a section 24A investigation by MfE in conjunction with a non-statutory assessment led by DIA. The non-statutory assessment can gather further information to determine whether ECan meets the threshold for statutory intervention.

Approach to reviewing the performance of Environment Canterbury

7. It is proposed that the joint review of ECan involve a statutory investigation of ECan's resource consent processing functions and responsibilities under the RMA and a non-statutory assessment looking at wider issues under the LGA02 or other statutes.
8. A joint terms of reference (TOR) that includes investigating resource consent processing, ECan's performance under the RMA and a non-statutory assessment is attached in **Appendix 1**. The content of the TOR was developed by MfE and DIA and has been discussed with the Treasury and the Ministry of Agriculture and Forestry.
9. Officials understand that you and the Minister for the Environment intend to meet with the Chair of ECan (Alec Neill) and the Chief Executive (Bryan Jenkins) to discuss the draft TOR prior to the review commencing.

10. On-site work for the review is planned to take place over a three week period in November 2009 with a report being drafted before the end of the year. The final report back to Ministers would be in January 2010. At this stage, it is expected that findings and recommendations would be presented in a combined report.

Statutory RMA investigation

11. The section 24A part of the review will be led by MfE. MfE expects to hire one or two external investigators. The skill set required is primarily qualifications, skills and experience in resource consent processing and RMA matters and experience in working with local government. Experience in evaluation and performance assessment and organisational improvement is also vital. MfE advises that the expected budget cost for this part of the investigation is \$35,000.
12. Under section 24A of the RMA, this investigation may make recommendations to ECan on any of ECan's functions, powers or duties under the RMA. If ECan fails to act appropriately in response to any of the inquiry's recommendations, the Minister for the Environment may appoint persons to perform any of ECan's RMA functions. The Minister for the Environment may also direct ECan to prepare or change a regional plan in response to the investigation's recommendations.

Non-statutory assessment of wider issues

13. The non-statutory assessment of ECan would be led by DIA and would consider if there are wider governance, policy or implementation issues with ECan that may be contributing to overall poor performance. DIA considers that this assessment could be carried out by a single contractor with qualifications, skills and experience in working with local government. This person would ideally be one of the contractors working on the RMA investigation.
14. The on-site part of this assessment would take place concurrently with the RMA investigation. This assessment could add to the findings of the RMA investigation by making recommendations to ECan on wider issues falling outside the scope of the RMA investigation.

Proposed timeline for review

Task or activity	MfE	DIA
Terms of Reference agreed by officials and Ministers	23 October	23 October
Terms of Reference discussed with ECan	30 October	30 October
Selection and contracting of Investigators	6 November	6 November
Finalise material to be pre-circulated to ECan	11 November	11 November
Contact relevant parties at ECan to talk through process	12 November	12 November
On site work to take place	16-27 Nov	23-27 Nov
Interim work reports submitted (weekly)	16-27 Nov	23-27 Nov
Draft reports to Ministry/Departments	11 December	11 December
Report reviewed by MfE/DIA to contractor for finalising	18 December	18 December
Final report circulated to Ministers	Mid January	Mid January
Report discussed with ECan and released	February	Early February

Follow up from the review

15. If ECan does not adequately respond to the review's recommendations, and there is evidence to suggest that there are serious issues with ECan that are resulting in significant and sustained poor performance, statutory intervention would be considered under either the RMA or the LGA02. Possible options include:
- the Minister of Local Government initiating the statutory process for appointing a review authority under the LGA02; or
 - the Minister for the Environment appointing one or more people to exercise or perform any functions, powers or duties in place of the local authority under section 25(1) of the RMA.
16. The review may recommend that ongoing monitoring or support be provided for ECan to ensure improvement of performance. The proximity of the October 2010 local elections would be a factor to consider when deciding on further action.

Recommendations

17. The recommendations are that you:
- a) **note** the contents of this briefing and the attached draft terms of reference for discussion with the Minister for the Environment; and
- b) **agree** that the attached draft terms of reference be forwarded to Environment Canterbury for discussion, subject to changes agreed to by you and the Minister for the Environment. **Yes/No**

Marilyn Little
Director Policy
Local Government & Community Policy

seen by the Hon.Rodney Hide

Hon Rodney Hide
Minister of Local Government

/ /2009

Draft Terms of Reference

1. Nature of Review

- 1.1. This review has two components. The first component is a statutory investigation under section 24A of the Resource Management Act 1991 (RMA) that seeks to identify what has led to Environment Canterbury's poor performance record over the last year in resource consent processing. It also aims to identify any broader planning, policy and governance matters that may have contributed to the poor performance record of Environment Canterbury during the period from 2007/2008 survey period in meeting statutory requirements under the RMA.
- 1.2. The second component is a non-statutory assessment of whether there are wider issues with ECan's governance, policies or implementation that are contributing to poor performance under the Local Government Act 2002 (LGA02) or other statutes.

2. Scope of the Review

Investigation of Environment Canterbury's performance under the RMA

2.1. The review will cover the following factors :

- Applications : guidance for applicants and use of section 92
- Analysis of consent processing systems and practices
- Council staffing and use of resources
- Administrative systems and tools
- Internal audits and monitoring
- Customer relationships and feedback.
- Other contextual matters.
- The approach of the council to managing significant and/or cross boundary resource management issues, including resource allocation
- Whether the current planning framework is capable of delivering the vision and objectives of the Canterbury Water Management Strategy in an effective and efficient manner.

Assessment of Environment Canterbury's wider performance under the LGA02 or other legislation

- The approach of the council to meeting its legal obligations.
- Adequacy of the council's management and decision-making processes.
- Financial management

3. Methodology for Review

Investigation of Environment Canterbury's performance under the RMA

- 3.1. The review will be undertaken by two external investigators. It is expected that they will have qualifications, skills and experience in resource consent processing and RMA matters and experience in working with local government.
- 3.2. Project management and oversight will be provided by the Monitoring Compliance and Review Team at the Ministry for the Environment. Project support will be provided by Ministry for the Environment's Resource Management Practice Team.

Assessment of Environment Canterbury's wider performance under the LGA02 or other legislation

- 3.3. The assessment will be carried out by one external consultant (to be confirmed by the Department of Internal Affairs). This person may have qualifications, skills and experience in working with local government.
- 3.4. Project management and oversight will be provided by the Local Government and Community Policy Group at the Department of Internal Affairs.

On site work

- 3.5. The team of consultants will spend up to three weeks with Environment Canterbury undertaking discussion with council staff and assessing databases, file information and council administrative systems.
- 3.6. Discussions with council staff will be based around a set of interview questions focussed around council practices and procedures. These questions, along with requests for the documents and files required for the review, will be pre-circulated to Environment Canterbury prior to investigators arriving on site.
- 3.7. The following council staff will need to be available on request during the review period:
 - Chief Executive
 - Investigation and Monitoring Director
 - Regulation Director
 - Resource Planning and Consents Director
 - Operations Director
 - Managers under the above Directors
 - Planning Administrators
 - Customer Services staff (if applicable).

4. Reporting

- 4.1. The findings (including any recommendations) from the review will form the basis of a draft report to be discussed with Environment Canterbury before being finalised and presented to the Minister for the Environment and the Minister of Local Government. A copy of each final report will be provided to Environment Canterbury.
- 4.2. The RMA investigation may result in recommendations being made to Environment Canterbury on ways to improve its performance under section 24A(b) of the RMA.
- 4.3. The non-statutory assessment would result in recommendations being made to Environment Canterbury on ways to improve its governance, policy or implementation processes under the Local Government Act or any other enactment. This may include ongoing monitoring.
- 4.4. In response to the review's report, the Minister for the Environment and the Minister of Local Government may consider whether there is a case for further intervention under the RMA or the LGA02, if necessary.

5. Timeframe for the review

- 5.1. The review is planned to take place over a two or three week period in November 2009 with a report being drafted before the end of the year.
- 5.2. Any final recommendations on ways to improve council performance will be reported to the councils following officials briefing the Ministers on the final report.

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Freely Released by the Minister of Local Government