

5.30pm

Priority Urgent



THE DEPARTMENT OF INTERNAL AFFAIRS

Te Tari Taiwhenua

# Local Government Briefing

**Hon Rodney Hide**  
**Minister of Local Government**

COMPLETED

**Copy to:** Hon John Carter  
Associate Minister of Local Government

**Title:** Briefing for your meeting with the Minister for the Environment and the Chair and Chief Executive of Environment Canterbury

**Date:** 22 October 2009

<b>Key Issues</b>
This briefing outlines the approach to a joint review of Environment Canterbury (ECan) and attaches an updated terms of reference for your meeting with the Minister for the Environment and the Chair and Chief Executive of ECan on 27 October 2009. A draft letter to the Chair is also attached.

Action sought	Timeframe
<b>Note</b> the contents of this briefing and the attached terms of reference for agreement with ECan on 27 October 2009; <b>sign</b> the attached letter to the Chair of ECan, if you agree; and <b>forward</b> the attached letter and terms of reference to the Minister for the Environment for his signature, if you agree.	As soon as possible

### 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	✓
Danny Shaw	Policy Analyst	(04) 494 5703		

Return to: Danny Shaw  
DMS file reference: PLG-2500-3\_4 622874DB  
Ministerial database reference: LGC200903407

### **Purpose of briefing**

1. This briefing outlines the approach to a joint review of Environment Canterbury (ECan) and attaches an updated terms of reference for your meeting with the Minister for the Environment, Alec Neill (Chair of ECan) and Dr Bryan Jenkins (Chief Executive of ECan) on 27 October 2009. A joint letter to Alec Neill is also attached.

### **Background**

2. 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.
3. 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.
4. We 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.
5. You met the Minister for the Environment last week and agreed to jointly review ECan. This will involve a section 24A investigation by the Ministry for the Environment (MfE) in conjunction with a non-statutory assessment led by the Department of Internal Affairs (DIA). The non-statutory assessment can gather further information to determine whether ECan meets the threshold for statutory intervention. During your further meeting with the Minister for the Environment on 20 October 2009, you agreed to a draft terms of reference for discussion and agreement with ECan.

### **Approach to reviewing the performance of Environment Canterbury**

6. The joint review of ECan would 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.
7. Draft terms of reference that include investigating resource consent processing, ECan's performance under the RMA and a non-statutory assessment are attached in **Appendix 1**. The terms of reference were developed by MfE and DIA, discussed with the Treasury and the Ministry of Agriculture and Forestry, and updated after your recent meeting with the Minister for the Environment.
8. 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*

9. 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 cost for this part of the investigation is \$35,000.
10. 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*

11. 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.
12. 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*

13. 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 could be considered under either the RMA or the LGA02. Possible options include:

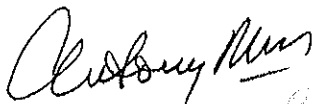
- the Minister of Local Government initiating the statutory process for appointing a review authority under the LGA02; or
  - the Minister for the Environment appointing one or more people to exercise or perform any functions, powers or duties in place of the local authority under section 25(1) of the RMA.
14. The review could 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.

### Next steps

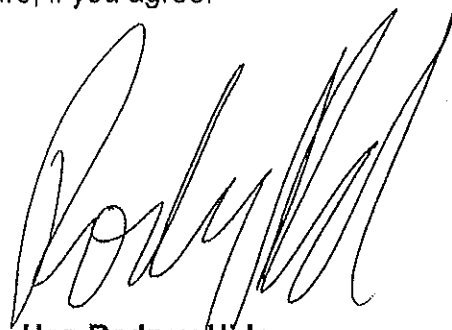
15. We propose that you and the Minister for the Environment write to the Chair of ECan, before your meeting on 27 October 2009, to notify him of the joint review and attach the terms of reference. We propose that this letter be jointly signed by you and the Minister for the Environment. A joint letter to the Chair of ECan is attached for your signature, if you agree.

### Recommendations

16. The recommendations are that you:
- a) **note** the contents of this briefing and the attached terms of reference for agreement with Environment Canterbury on 27 October 2009;
  - b) **sign** the attached letter to the Chair of Environment Canterbury, if  Yes/No you agree; and
  - c) **forward** the attached letter and terms of reference to the Minister  Yes/No for the Environment for his signature, if you agree.



Antony Moss  
Manager (Regulatory Policy)  
Local Government & Community Policy



Hon Rodney Hide  
Minister of Local Government

27/10/2009



## Office of Hon Dr Nick Smith

MP for Nelson

Minister for the Environment

Minister for Climate Change Issues

Minister for ACC

23 OCT 2009

Alec Neill  
Chair  
Environment Canterbury  
PO Box 345  
CHRISTCHURCH 8140

Dear Alec

### Re: Performance review of Environment Canterbury

Following the results of the 2007/2008 RMA survey of local authorities, the Minister for the Environment expressed concern at seeing a significant decline in performance by some councils in meeting statutory timeframes for processing resource consents under the Resource Management Act 1991 (RMA).

We are writing to advise that the Minister for the Environment has requested an investigation of Environment Canterbury under section 24A of the RMA. Section 24A sets out that the Minister for the Environment may investigate the exercise or performance by a local authority of any of its functions, powers, or duties under the Act and may make recommendations. The primary focus of this investigation is the resource consent processing functions of the Council. It will identify what has led to the Council's poor performance over the survey period and identify possible solutions. The investigation will also consider Environment Canterbury's other related responsibilities under the RMA.

In conjunction with this section 24A investigation, the Minister of Local Government has asked the Department of Internal Affairs to conduct a non-statutory assessment of Environment Canterbury, looking at wider issues under the Local Government Act 2002 and other statutes. The two departments have developed a joint draft terms of reference for the performance review of Environment Canterbury. Please find this information attached in the following pages.

Should you have any concerns or queries regarding the section 24A investigatory part of this performance review, please contact Natasha Tod, Acting Manager of the Monitoring, Review and Compliance Team at the Ministry for the Environment on (04) 439 7716 or email [natasha.tod@mfe.govt.nz](mailto:natasha.tod@mfe.govt.nz). For any concerns or queries about the non-statutory assessment of wider issues, please contact Antony Moss, Manager (Regulatory Policy) at the Department of Internal Affairs on (04) 494 0636 or email [antony.moss@dia.govt.nz](mailto:antony.moss@dia.govt.nz).

We ask for your co-operation with this performance review which, we hope, will be valuable to your council's future planning and operation. We look forward to meeting with you on 27 October to discuss the process for the review and the draft terms of reference.

Yours sincerely

Hon Dr Nick Smith  
Minister for the Environment

Hon Rodney Hide  
Minister of Local Government

cc: Dr Bryan Jenkins, Chief Executive

## Draft TOR for a Review of Environment Canterbury's Performance

### **1. Preamble**

1.1. Following the results of the 2007/2008 RMA Survey of Local Authorities, the Minister for the Environment has decided to undertake an investigation of resource consent processing practices in Environment Canterbury (ECan) and a broader review of ECan's performance under the Resource Management Act 1991 (RMA). The Minister of Local Government has also expressed an intention to review ECan's wider performance under the Local Government Act 2002 (LGA02) in response to concerns raised by Canterbury Mayors. The Ministers have agreed to conduct a joint review of ECan's performance under both the RMA and LGA02.

### **2. Nature of Review**

2.1. This review has two components. The first component is a statutory investigation under section 24A of the RMA that seeks to identify what has led to ECan'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.

2.2. 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 LGA02 or other statutes.

### **3. Scope of the Review**

#### *Investigation of Environment Canterbury's performance under the RMA*

3.1. The investigation 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 ECan 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*

3.2. The non-statutory assessment will cover the following factors:

- The approach of ECan to meeting its legal obligations.

- Adequacy of ECan's management and decision-making processes
- Financial management
- The extent to which ECan has met its obligations for collaborating and co-operating with other local authorities

#### **4. Methodology for Review**

##### *Investigation of Environment Canterbury's performance under the RMA*

- 4.1. The investigation will be undertaken by two external investigators. The skill set required is primarily skills and experience in resource consent processing and RMA matters and experience in working with local government. Experience in evaluation, performance assessment and organisational improvement is also vital.

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

- 4.2. The assessment will be carried out by one external consultant. This person will have qualifications, skills and experience in working with local government.

##### *On site work*

- 4.3. 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.
- 4.4. Discussions with council staff will be based on a set of interview questions focussed on council practices and procedures. These questions, along with requests for the documents and files required for the performance review, will be pre-circulated to ECan prior to investigators arriving on site.
- 4.5. The following council staff will need to be available on request during the performance review period:
- Chief Executive
  - Chair
  - Councillors
  - Investigation and Monitoring Director
  - Regulation Director
  - Resource Planning and Consents Director
  - Operations Director
  - Managers and consenting and compliance staff under the above Directors
  - Planning Administrators
  - Customer Services staff (if applicable)

#### **5. Reporting**

- 5.1. The findings (including any recommendations) from the performance review will form the basis of a draft report to be discussed with ECan 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 ECan.
- 5.2. The RMA investigation may result in recommendations being made to ECan on ways to improve its performance under section 24A(b) of the RMA.

- 5.3. The non-statutory assessment may result in recommendations being made to Environment Canterbury on ways to improve its governance, policy or implementation processes under the LGA02 or any other enactment.
- 5.4. Either set of recommendations may include ongoing monitoring.
- 5.5. 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.

**6. Timeframe for the review**

- 6.1. 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.
- 6.2. Any final recommendations on ways to improve council performance will be reported to ECan following officials briefing the Ministers on the final report. This is expected to be in early 2010.

Proactively Released by the Minister of Local Government