

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: Implications of appointing commissioners to Environment Canterbury

Date: 12 February 2010

Key issues

Implications for appointing commissioners to Environment Canterbury through special legislation.

Action sought

Note the content of this report

Timeframe

By 15 February 2010

Contact for telephone discussion (if required)

Name	Position	Telephone		Suggested first contact
		direct line	after hours	
Rosalind Wilton	Acting Manager (Regulatory Policy)	495 7247	021 356 750	✓
Peter Hodge	Senior Policy Analyst	495 7212		

Return to: Peter Hodge
DMS file reference: PLG-2500-3_4 2031213DA
Ministerial database reference: LGC201000188

Purpose

1. This report outlines Local Government implications of an in-principle decision by Ministers to use special legislation to appoint commissioners to Environment Canterbury (ECan).
2. You are meeting the Minister of Agriculture on Monday 15 February (9.10 – 9.30 am) to discuss these matters.

WITHHELD UNDER SECTION 9(2)(g)(i)

Comment

5. The key aspects of this plan, from a local government perspective, are the decisions to fast track legislation to appoint commissioners and give them powers. This might involve amending the Local Government Act 2002 (LGA02), and possibly the Resource Management Act 1991, or a specific bill. Possible implications are outlined below.

Local Government work programme – current and future priorities

6. If legislation proceeds, the Department may need to consider the resources it has available to do this work and other local government priorities, and discuss this with you.
7. The proposal to establish a separate regional water authority, if considered and implemented in isolation, would risk narrowing the range of options available to the Government in relation to planned work on local government structure, protections and functions.

8. The decision by Ministers to defer consideration of a regional water authority gives the Government time to consider the proposal in a wider national context, including Auckland water management decisions.

Integrity of the local government framework

9. Appointing commissioners to a local authority conflicts with a key principle of the local government system, that communities have the right to decide their local affairs through their elected representatives.
10. Under the LGA02, intervention is only considered when there is evidence of serious failure, mismanagement or mis-governance. The Minister has the power to appoint commissioners but only in limited circumstances which do not appear to apply to ECan.
11. Using special legislation to appoint commissioners would mean that the specific LGA02 requirements relating to intervention need not be met. However, Ministers will need to be sure that there is a strong and exceptional case for intervention.
12. The review team found that ECan failed to effectively manage freshwater issues, and had not put in place an operative region-wide planning framework. It considered that ECan's performance on water policy and management "falls well short of what is essential", and that effective water management in Canterbury will not progress without Government intervention.
13. These findings, and the economic and environmental benefits that will result when a regional regulatory framework is established, appear to provide Ministers with a basis for appointing commissioners.

Reaction of Canterbury residents

14. There is a risk that Canterbury residents perceive that the Government, in appointing commissioners, is removing the democratic rights of Canterbury people without consultation. This could generate opposition among the public generally and from groups who perceive that their interests might be threatened.
15. Ideally, Ministers would discuss the in-principle decisions, and the reasons for these decisions, with key Canterbury stakeholders, and gain their views. Final decisions, drawing on these views, could then be made.
16. If this is not feasible, Ministers could consider measures that might assuage public concern. For example, Ministers could explain to the public the reasons for the intervention, and the exceptional nature of the situation.
17. Ministers could also specify a shorter time frame (than the 2013 local body election) for the commissioners to complete their work and return the Council to democratic governance. This would have to be balanced against the need to allow the commissioners a realistic period in which to conduct their work on water conservation orders and the NRRP.

Recommendation

18. The recommendation is that you **note** the content of this report. **Yes / No**

Anne Carter
Deputy Secretary
Local Government and Community Branch

seen by the Hon Rodney Hide

Noted

Hon Rodney Hide
Minister of Local Government

/2010

Proactively Released by the Minister of Local Government