



Office of Hon Rodney Hide

MP for Epsom
Minister of Local Government
Minister for Regulatory Reform
Associate Minister of Commerce

4 March 2010

Hon Dr Nick Smith
Minister for the Environment
Parliament Buildings
WELLINGTON

Dear Nick

Thank you for the opportunity to comment on the draft Cabinet paper "Response to Review of Environment Canterbury".

My comments on the draft paper are as follows.

Threshold for intervention

The paper notes that the threshold for central government intervention in local government affairs is high (paragraph 9). I consider that the paper should also state that with ECan the threshold has been met, and explain how it has been met. The explanation could be couched in the following way:

"The threshold for intervention in the affairs of local government is high, whether intervention occurs through the Local Government Act 2002, or through special legislation (as is proposed with ECan). This is because intervention conflicts with a key principle of the local government system, that communities have the right to decide their local affairs through their elected representatives.

Intervention is only considered when there is serious failure, mismanagement or mis-governance. Under the LGA02 the Minister of Local Government has the power to appoint commissioners but only in limited circumstances - these circumstances do not apply to ECan.

With ECan, the case for intervening includes the following:

- *the Council has failed to effectively manage Canterbury freshwater (a natural resource of regional and national importance);*
- *it does not have a fully operative regional planning and policy framework for resource management (this has resulted in ad hoc and unsatisfactory arrangements for managing freshwater); and*
- *there is an "enormous and unprecedented" gap between what needs to be done to effectively manage Canterbury freshwater, and ECan's ability to do so (as highlighted by the ECan review team's report)."*

Reason for appointing commissioners

The Cabinet paper refers to the commissioners being given powers to review and make recommendations to you, as Minister for the Environment, on existing and proposed water conservation orders. The paper discusses this matter in detail.

It would be useful for the Cabinet paper to state that the main reason for intervention is a failure of governance on the part of ECan's elected council, in relation to freshwater management, and that there is a compelling need to address the consequences of that failure. These consequences are primarily the lack of a fully operative regional planning and policy framework for resource management, and the lack of effective institutional arrangements to support such a framework.

I suggest that the Cabinet paper notes that reviewing water conservation orders is not part of the rationale for intervention, although it may be a symptom of ECan's failure to effectively manage freshwater.

Making sure that the commissioners are set up to succeed, not fail

Intervention is a serious step for the Government to take. Cabinet needs to make sure, as best it can, that the intervention will be successful. As it stands, the Cabinet paper proposes that the commissioners carry out a big and complex workload - governing ECan and a range of other responsibilities, such as leading institutional change, finalising the Natural Resources Regional Plan, and reviewing water conservation orders.

The Government can make sure that the commissioners are set up to succeed by:

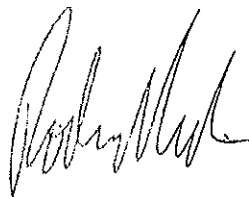
- developing a realistic terms of reference and workload;
- having a five member commission (to replace the 14 member elected council);
- selecting commissioners who are able to work full-time on ECan business, or at least devote a considerable amount of their time to the task;
- ensuring that some commissioners have extensive experience of local government affairs, in either governance or senior management roles, preferably in situations where a change in strategic direction and organisation was required;
- selecting a chairperson who is a recognised leader, at a regional or national level, with a track record of successfully leading complex organisations and undertakings.

Clear explanation to Canterbury residents

The paper notes that there are significant risks associated with removing the democratic and legal rights of Canterbury people. I consider that the Cabinet paper should note that the Government should explain to the Canterbury public the reasons for the intervention and the exceptional nature of the situation.

I look forward to continued progress on these issues.

Yours sincerely



Hon Rodney Hide
Minister of Local Government

Procedurally Released by the Minister of Local Government