

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: Aide memoire for Cabinet paper "Response to Review of Environment
Canterbury"

Date: 5 March 2010

Key issues

The Minister for the Environment is taking a substantive paper on the response to the review of Environment Canterbury to Cabinet on 8 March 2010.

Action sought

Note the contents of the attached aide memoire.

Timeframe

Before Cabinet meeting at
11am Monday 8 March 2010.

Contact for telephone discussion (if required)

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Aide memoire for the Minister for the Environment's Cabinet paper "Response to Review of Environment Canterbury"

- This aide memoire provides you with information for Cabinet's consideration of the paper "Response to Review of Environment Canterbury" on 8 March 2010.

Background

Outline of the paper

- The paper provides evidence of significant problems with Environment Canterbury (ECan), including:
 - a lack of an operative regional planning and policy framework for resource management;
 - historical failure to meet statutory resource consent processing timeframes;
 - criticism from Resource Management Act 1991 (RMA) commissioners and the Environment Court about the approach taken by ECan to managing fresh water;
 - failed legal disputes that have been costly for ratepayers;
 - serious concerns about ECan's performance raised by Canterbury mayors;
 - failure to effectively implement the Waitaki Catchment Water Allocation Regional Plan;
 - political divisions between councillors, which are likely to have affected ECan's ability to make decisions on planning and policy frameworks; and
 - findings of the report of the ECan review, which identified major failings in the way ECan is managing water in Canterbury and long-running institutional problems.
- Based on the above evidence, the paper finds that the current council is not capable of addressing ECan's problems and central government intervention is therefore appropriate. The paper notes that because existing intervention powers under the Local Government Act 2002 (LGA02) and the RMA do not enable an effective and timely response, special legislation is required.
- The paper seeks Cabinet approval of the following key policy decisions:
 - special legislation to replace ECan's elected council with three to five appointed commissioners, who will become the governing body until new councillors can be elected at the 2013 election;
 - cancellation of ECan's local election in October 2010;
 - the Minister for the Environment and the Minister of Local Government, in consultation with other relevant Ministers, appoint the commissioners by 1 April 2010; and
 - the commissioners are to have all the duties, powers and functions of the former council, with additional powers to more quickly advance the proposed Natural Resources Regional Plan (NRRP) and to review and make recommendations on proposed and existing Water Conservation Orders (WCOs).
- The paper outlines the key elements of a draft terms of reference for the commissioners, which would require them to:
 - review and improve ECan's long-term governance and institutional arrangements;
 - expedite the process of finalising an operative resource management planning and policy framework;
 - consult regularly with the Canterbury territorial authority mayors; and
 - provide advice to Ministers on any recommendations for future institutional change.

- The Commission's terms of reference will be drafted by officials and agreed to by you and the Minister for the Environment.

Risks

- The paper identifies a number of risks associated with the proposal, including:
 - enactment of the legislation under Urgency, which does not provide for public comment or consideration by Select Committee;
 - removal of existing democratic rights that allow Canterbury citizens to participate in ECan's decision-making via both the election of decision-makers and via rights to appeal decisions on the NRRP and WCOs. The paper notes that this is justified in ECan's situation;
 - replacing the elected council in its entirety, when the Review Group found that ECan's functions and general governance outside of resource management matters are adequate. The Review Group found that this is necessary to ensure effective governance and accountability;
 - the potential that the commissioners will be overworked, and the broad scope of their task may lead to neglect of the council's lower priority functions;
 - an increase in the number of formal requests for intervention in other regions;
 - transfer of responsibility for ECan's problems to central government, when success of the proposal will not be easy; and
 - securing commitment from people with the correct range of skills and knowledge to be commissioners.

Outcomes

- The desired outcomes for the intervention, as set out in the paper, are that:
 - Canterbury's natural resources are managed in a comprehensive and holistic manner, which results in resilient outcomes that effectively balance social, cultural, economic and environmental outcomes;
 - the institutional framework for managing natural resources in the Canterbury region is integrated, effective, transparent and supports robust decision-making; and
 - there is an efficient and enduring resource management planning framework in Canterbury, which facilitates good-quality, cost-effective and timely decisions that effectively balance social, cultural, economic and environmental outcomes.

Comment

Case for Intervention

- The threshold for intervention in the affairs of local government is high, whether intervention occurs through the LGA02, 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.
- We consider that the threshold for intervention in ECan has been met, and that the Council's performance warrants the appointment of commissioners. The case for intervening in ECan through special legislation is as follows:
 - the Council has failed to effectively manage Canterbury's freshwater (a natural resource of regional and national importance);

- the Council 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 the region's freshwater, and ECan's ability to do so (as highlighted by the ECan Review Group's report).
- We believe that the proposed intervention can achieve the desired outcomes provided that the commissioners:
 - are appointed with the correct range of skills and knowledge, with as least one member of the Commission with considerable practical experience in running a council, either as an elected representative or a chief executive;
 - are able to commit the time needed to achieve organisational change, with at least some commissioners working full-time;
 - have a manageable workload, with flexibility to delegate council tasks as necessary and access to independent advice.

Issues of concern

- The paper suggests that the commissioners may require support from central government officials. It is the duty of ECan's Chief Executive and council officers to support the governing body and we do not support the creation of a parallel support structure. However, commissioners should have access to independent advice on particular matters.
- We are concerned that three to five commissioners may not be able to manage the broad and complex workload that is currently carried out by 13 councillors and a Chair. The commission's workload would include sitting on numerous committees and making the large number of decisions necessary to allow ECan to operate effectively, as well as resolving planning and resource management issues and providing advice to Ministers.
- The central rationale for the proposal to appoint commissioners for ECan is to address failure of the Council's governance. The paper also comments on constraints caused by the region's existing and proposed WCOs, and suggests various options for changing the legislative framework for WCOs in Canterbury. We believe this is a weakness in the paper, as it takes emphasis away from the core issue of ECan's governance and resulting institutional failure.

Responses from Canterbury stakeholders

- ECan, Ngāi Tahu, Meridian Energy and Bede O'Malley (Chairman of the Canterbury Water Management Strategy and Mayor of Ashburton District) have provided formal responses to the findings and recommendations of the ECan report. These were in response to your open forum meeting with the Minister for the Environment and Canterbury stakeholders on 24 February 2010. Summaries of their responses are attached (Annex A).

Noted

seen by the Hon Rodney Hide

Hon Rodney Hide
Minister of Local Government

Summary of responses from Canterbury stakeholders

ECan's elected representatives

- ECan's councillors have suggested an alternative proposal for addressing the Review Group's recommendations. Their proposal involves:
 - the appointment of a commissioner advisor, to work alongside existing councillors, with specific duties to manage water and implement the Review Group's LGA02 recommendations. The commissioner's functions and powers would be determined by a negotiated agreement between ECan's councillors and the Minister for the Environment; and
 - the establishment of an Advisory Group to assist the commissioner and councillors in implementing the Review Group's recommendations and explore options for managing water in Canterbury. The Advisory Group would be made up of members of Local Government New Zealand, Ngāi Tahu, the Canterbury Mayoral Forum and the Chair of ECan.
- On 3 March 2010, ECan released a media statement outlining their alternative proposal.
- As noted in the Minister for the Environment's paper, the appointment of commissioners to take over specific functions within ECan is unlikely to meet all the desired outcomes for intervention. This is because this option would split governance functions, and may not allow natural resources to be managed in a comprehensive and holistic manner. Retaining the current council is also unlikely to deliver the improvements to the institutional framework of ECan that are sought by the Government.

ECan's management team

- ECan's management team have prepared a separate response to the report, focussing on the operational aspects of the Review Group's recommendations. They acknowledge that there is urgent need for significant organisational improvement and have identified four key areas of focus, with suggested actions:
 - stakeholder engagement – proposed actions include: establishment of a focus group with stakeholders to explore areas for improvement; a review of the geographic location of staff; and promotion of a more outward focused organisational perspective;
 - Iwi/Ngāi Tahu relations – proposed actions include: better resourcing of Iwi relations; and working with Ngāi Tahu to determine actions for positive change;
 - RMA functions – proposed actions include: undertaking an independent review of ECan's land and water planning; reviews of the Planning and Consenting Directorate and Legal Team; identifying and accelerating consents caught in delayed time frames; and working with the Ministry for the Environment on ways to prioritise and accelerate the NRRP appeals process; and

- structural change – ECan propose to discuss potential structural changes with staff from the Ministry for the Environment.
- ECan's management team have assigned a Director to respond to the recommendations of the Review Group's report. ECan's managers intend to provide Ministers with a comprehensive response for discussion in the near future. This will include the following papers:
 - a critique of the report;
 - a detailed list of responses to the report's recommendations; and
 - a summary of historical requests to central government for assistance.

Bede O'Malley – Mayor of Ashburton District and Chairman of the Canterbury Water Management Strategy (CWMS)

- Mayor O'Malley notes that the Government's response to the Review Group's report needs to align with the CWMS and capture its progress. Mayor O'Malley disagrees with much of the Review Group's criticisms of the CWMS, noting in particular that the CWMS is well aligned with RMA frameworks and has been carefully designed to encourage collaboration and require decision-making.
- The Minister for the Environment's paper proposes that the commissioners be required to have particular regard to the vision and principles of the CWMS when considering the framework for managing freshwater in Canterbury.

Ngāi Tahu

- Ngāi Tahu believes that ECan has failed to give effect to its broader statutory responsibilities to Ngāi Tahu in terms of consultation and engagement. Ngāi Tahu considers this failure should form a key component of the problem definition informing the Government's response to the report. Ngāi Tahu supports the temporary appointment of commissioners in place of the council. It also believes a comprehensive reform of natural resource management in the region, including the possible establishment of a water entity, warrants consideration by the Government. Such reform should give effect to the Treaty partner status of Ngāi Tahu and consider improvements to the current arrangements concerning Ngāi Tahu's participation in regional council matters.

Meridian Energy

- Meridian Energy noted that the significance to New Zealand of productive uses of water in the region, including hydro generation, needs to be reflected in considering intervention. It recommends that experience of hydro generation and an understanding of its role nationally should be considered for commissioner appointments.