

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-mémoire: Environment Canterbury Cabinet papers on 29 March 2010

Date: 26 March 2010

Key issues

On 29 March 2009 Cabinet will consider two papers relating to Environment Canterbury:

- policy - seeks agreement to appoint commissioners and give them certain powers;
- legislation - seeks agreement to introduce enabling legislation on 30 March.

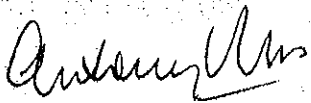
An appointments paper will be considered separately by Cabinet, possibly on 12 April.

Action sought	Timeframe
Note the contents of the attached aide-mémoire	By 11am 29 March 2010.

Contact for telephone discussion (if required)

Name	Position	Telephone		Suggested first contact
		direct line	after hours	
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DMS file reference: PLG2500-3 4 2081141DA
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Antony Moss
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Aide-mémoire: key elements of policy paper

- This paper is a final version of the paper that was presented to Cabinet on 8 March 2010.

Case for intervention

- There is a compelling case for comprehensive and rapid intervention, to address ECan's failure to effectively manage Canterbury's freshwater and put in place a regional planning and policy framework. The high threshold for intervention has been met.

Form of intervention

- Special legislation will dismiss the elected Council and appoint commissioners to govern ECan until the October 2013 election at the latest.
- Several other options are considered and rejected, such as: allowing ECan's elected council to address the issues identified in the ECan review report; using intervention powers under section 25 of the Resource Management Act 1991 (RMA); and appointing a "commissioner/advisor" to oversee the implementation of reforms to freshwater management (this option was proposed by the ECan Council).

Commissioners' powers and responsibilities

- The commissioners will become the governing body of ECan. They will have all the duties, powers and functions of the elected Council under the Local Government Act 2002 (LGA), the RMA and other relevant legislation.
- They will be given powers to finalise the Natural Resources Regional Plan (NRRP), advance a proposed Regional Policy Statement, and make recommendations on water conservation orders. They will be tasked with making sure that ECan is able to provide effective integrated resource management, including freshwater.
- You and the Minister for the Environment will provide the commissioners with terms of reference. The terms of reference will guide the commissioners on how to prioritise and carry out their tasks.

Freshwater management

- The commissioners will have specific responsibilities in relation to freshwater management:
 - to have regard to the vision and principles of the Canterbury Water Management Strategy when making decisions and recommendations on the framework for managing freshwater and water conservation orders;
 - to complete the NRRP as quickly as possible (this will be facilitated by limited public appeal rights);
 - to consider all applications for new water conservation orders and all applications to revoke or amend existing water conservation orders and make recommendations to the Minister for the Environment (this will also be facilitated by limited public appeal rights);
 - to impose targeted moratoriums on existing and new applications for water take in over-allocated and at risk catchments.

Risks

- The paper outlines a number of "risks" associated with the intervention. These include:
 - Temporarily removing the rights of Canterbury people to participate in decision-making relating to resource management for the term of the intervention:
 - The paper emphasises that the intervention is temporary and that the temporary removal of rights is balanced by the need to put in place an effective regional council and resource management framework.

- The heavy workload and complexity of the commissioners' job:
 - The paper notes that the Government will need to appoint the right people as commissioners and provide the commissioners with good support.
- The ECan intervention could increase the number of formal requests for Government intervention in other councils:

Comment:

- Recent decisions on intervention in relation to Environment Canterbury and the Waitomo District Council have established that a high threshold needs to be met before intervention is considered.
- While there may be more requests for intervention, those making the request will have to establish that there is serious failure, mismanagement, or mis-governance before intervention can be considered.

Consultation

- The paper outlines consultation undertaken by Ministers, and the views, as expressed in correspondence to Ministers, of ECan's elected Council, Ngai Tahu and Meridian Energy.
- The paper also notes concerns expressed about the proposed intervention by several Government agencies, including:
 - Ministry of Justice - does not agree with replacing the elected Council, deferring local body elections and removing rights of appeal on the NRRP and water conservation orders.
 - This is because the proposals are constitutionally significant, and have a significant impact on the rights and interests of Canterbury residents.
 - Department of Conservation – agrees that urgent progress needs to be made with Canterbury's water management framework, but considers that the findings of the ECan review do not justify the replacement of the elected Council with commissioners.
 - The Department considers that a better approach would be to put in place commissioners to sit alongside the Council and push through the necessary reforms.

Aide-mémoire: key elements – legislation paper and attached bill

- The Bill will be introduced under urgency on Tuesday 30 March and passed that week.

The legislation paper

- The paper seeks Cabinet agreement to introduce the Bill under urgency on 30 March, subject to the approval of the Government caucus.
- It outlines possible contentious issues in relation to the Bill, such as Government-appointed commissioners becoming ECan's governing body. These issues are discussed in the policy paper.

The Bill

- The Bill is in three parts. Its purpose is to:
 - provide for the replacement of ECan's elected members with commissioners who will act as ECan's governing body until new elected members come into office after the 2013 election (Part 2); and
 - provide ECan with certain extra powers to address issues relating to the efficient, effective and sustainable management of Canterbury freshwater (Part 3).

Part 2

- Part 2 provides for the commissioners to constitute ECan's governing body, and exercise all its functions, responsibilities, duties and powers, and exercise any other powers and functions specified in the legislation and the terms of reference. It also ensures that the 2010 general election of ECan members is not to be held.
- It provides for you and the Minister for the Environment to carry out various responsibilities, including the following:
 - determine the replacement date of the elected council and give notice of it in the Gazette and to ECan's elected members;
 - appoint 4 to 7 commissioners, and of those commissioners appoint a chairperson and a deputy chairperson;
 - provide the commissioners with a written notice of appointment, notify the appointment in the Gazette, and give notice of the appointment to ECan;
 - ensure that the commissioners collectively have knowledge of, and expertise in relation to, matters such as organisational change, freshwater management, local authority governance and management, tikanga Maori, and Canterbury and its people; and
 - approve terms of reference for the commissioners.

Part 3

- Part 3 provides:
 - that the commissioners have the power to impose moratoriums on applications for water take and discharge permits;
 - that Part 9 of the RMA 1991 (which concerns water conservation orders) is largely replaced with a process in which the commissioners can consider water conservation orders; and

- o for additional processes and criteria in relation to proposed regional policy statements and plans.
- In relation to moratoriums on water permits, section 38 excludes sections 76 to 82 of the LGA from applying. These LGA sections relate to decision-making and consultation requirements for local authorities.
- The main reason for the exclusion is to minimise the risk of "gold rush" applications if the commissioners propose moratoriums. The commissioners are still able to consult but are not required to.
- In relation to water conservation orders, Part 3 excludes the jurisdiction of the Environment Court from hearing submissions in relation to reports prepared by ECan on WCOs. It also provides that submitters may only appeal to the High Courts on questions of law in relation to ECan reports on WCOs.

Noted



Hon Rodney Hide
Minister of Local Government

29/3/2010