

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: Draft speech notes and key messages for House debate on the Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill 2010

Date: 29 March 2010

Key issues

The Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill 2010 is expected to be introduced under urgency on 30 March 2010. This briefing attaches a draft speech for the first reading debate and draft speaking points for the second and third reading debates, as well as key messages.

Action sought

Note the contents of this briefing.

Timeframe

30 March 2010

Contact for telephone discussion (if required)

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Purpose

1. This briefing provides you with draft speech notes in support of the Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill 2010, which is expected to be introduced in the House on 30 March 2010.

Background

2. The Bill will be introduced by the Minister for the Environment under urgency. For this Bill, you may wish to speak during the first, second and third reading debates. This briefing provides a draft speech for the first reading debate, and draft speaking points for the second and third reading debates. Key messages for the Government's decisions in relation to Environment Canterbury are also attached.

Recommendation

3. The recommendation is that you **note** the contents of this briefing.



Marilyn Little
Director Policy
Local Government & Community

seen by the Hon Rodney Hide

Hon Rodney Hide
Minister of Local Government

1 /2010

Speech for the first reading debate of the Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill 2010

I rise to support the Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill.

Mr Speaker, local government plays a vital role in advancing the well-being of New Zealanders and New Zealand communities. Effective local government provides communities with a say about their resources and the decisions that affect their well-being now, and in the future. A central tenet of our system of local government is the autonomy of local authorities from central government. Locally-elected representatives, who are accountable to their communities rather than to the Government, make decisions in the interests of local citizens and ratepayers.

As Minister of Local Government, I have an important role to play in promoting an effective, efficient and democratic system of local government. This includes leadership on issues where central governance engagement and action is needed to achieve local outcomes.

Central government's ability to intervene in the decisions and workings of individual councils should be, and indeed is, very limited. Such powers may only be used in specific and extraordinary circumstances where the risk to the well-being of local citizens justifies overriding local accountability.

Mr Speaker, it has come to the attention of the Minister for the Environment and me that such extraordinary circumstances currently exist in Environment Canterbury.

Let me explain.

In September 2009, all the mayors from Canterbury's region wrote to me outlining serious concerns with the performance of ECan. This, Mr Speaker, is unprecedented and denotes a serious breakdown in the region's local government relationships. This evidence, along with that of ECan's poor performance in undertaking its responsibilities under the Resource Management Act, provided compelling reasons

for the Minister for the Environment and me to commission a formal review into ECan's performance.

As the Minister for the Environment has outlined, the report identified major capacity issues with ECan, including their inability to deliver a robust, clear and effective framework for the management of Canterbury's natural resources. Most striking was the review's conclusion that there is an "enormous and unprecedented" gap between what needs to be done to effectively manage Canterbury's fresh water, and what ECan has actually been doing. A recommendation of the review was that the existing council should be replaced by a temporary commission as soon as possible.

The Minister for the Environment and I met with Canterbury mayors and chief executives, Ngai Tahu and other key stakeholders to listen to their views about the report's findings. We also considered a number of written submissions from interested parties. We found that the region's stakeholders were generally united in their opinion that central government intervention is temporarily necessary to improve the performance of ECan.

Drawing particularly on the report's recommendations, and the views of Canterbury stakeholders, the Government has concluded that immediate action is needed to address the failure of ECan's elected council, particularly in relation to fresh water management.

The Government has considered a range of options for responding to this issue. We have decided that the replacement of ECan's councillors with commissioners is the best course of action to ensure that:

- Canterbury's natural resources are managed in a comprehensive and holistic manner;
- the framework for managing natural resources in Canterbury is integrated, effective, transparent and supports robust decision-making; and
- the institutional arrangements are in place to effectively support ECan's planning framework.

It's a drastic, but necessary, move to replace ECan's democratically elected council so the well-being of the Canterbury region is ensured. As Canterbury's natural resources (particularly fresh water) are nationally significant, this decision is also in the interests of all New Zealanders. I can assure you that this decision has not been taken lightly, as I am naturally reluctant to intervene in the affairs of local government.

As the governing body of ECan, the commissioners will exercise all functions, responsibilities, duties and powers under the Local Government Act, Resource Management Act and any other legislation.

They will be accountable to the people of Canterbury, and will be expected to engage with the community on significant issues. Existing public consultation and participation requirements will remain in place. Getting an effective relationship re-established with the region's mayors and local authorities is essential to restoring confidence in ECan. The commissioners will therefore be tasked with improving ECan's working relationships with the Canterbury territorial authorities, as the Bill requires the commissioners to seek advice from Canterbury mayors on local issues that affect ECan.

The commissioners will step in to provide the necessary and temporary governance and leadership needed to get ECan working effectively. This is important so they can deliver effective services for the people of Canterbury. They will be tasked with finalising and implementing an operative Natural Resources Regional Plan, solving issues with fresh water management and making institutional adjustments to ensure ECan can better manage its responsibilities. As outlined by the Minister for the Environment, the Bill provides the commissioners with additional powers to help them address the region's issues with speed and expediency.

The appointment of the commissioners is the responsibility of the Minister for the Environment and me. We are aware that the commissioners' task will not be easy. That's why we'll only be considering people of the highest calibre for this challenging and nationally significant role. Naturally, one of the key criteria for selection of

commissioners is knowledge of, and expertise in, local authority governance and management.

Mr Speaker, I wish to highlight the fact that this Bill provides for the necessary but temporary replacement of ECan's elected council in order to get the organisation back on track. The planned local government elections in October will be deferred until the commissioners have carried out their task, which will be no later than the next local authority elections in October 2013. At this time, new councillors will be elected to govern a far more effective organisation.

That remains a priority for the Government. We are committed to them operating in the usual democratic manner.

Mr Speaker, I commend this Bill to the House.

**Notes for the second reading debate of the Environment Canterbury
(Temporary Commissioners and Improved Water Management) Bill 2010**

Part 1 – preliminary provisions

- The Bill is a temporary but necessary measure to provide for the replacement of the elected members of ECan with commissioners who will act as the Council's governing body until they have completed their job, but no later than the next local government elections in October 2013.
- The Bill provides the Council with certain powers that it does not otherwise have to address issues relevant to the efficient, effective and sustainable management of fresh water in Canterbury.

Part 2 – replacement of governing body of ECan

- Part 2 of the Bill:
 - sets out the procedure for removing the elected members of ECan and replacing them with commissioners;
 - prescribes the functions of those commissioners;
 - defers ECan's next triennial general election of members; and
 - sets out how this Part fits with the Local Electoral Act 2001 and the Local Government Act 2002 (LGA02).
- This Part provides responsibilities and powers for you and the Minister for the Environment, including the ability to:
 - determine the replacement date of the elected council and give notice of it in the Gazette and to ECan's elected members;
 - appoint four to seven commissioners as the governing body of ECan;
 - appoint a chairperson and a deputy chairperson from amongst those commissioners;
 - provide the commissioners with a written notice of appointment, notify the appointment in the Gazette, and give a copy of the notice to ECan;
 - specify terms of reference for the commissioners. These will be in addition to, and will not override, provisions within the LGA02 and Resource Management Act 1991 (RMA) (as amended by the Bill). You and the Minister for the Environment will consult with Canterbury mayors and Ngai Tahu before finalising the terms of reference; and
 - ensure that the commissioners collectively have knowledge of, and expertise in relation to, matters such as organisational change, fresh water management, local authority governance and management, tikanga Maori, and Canterbury and its people.
- The Government is currently considering who should be appointed as commissioners. Commissioners are expected to take office on 1 May 2010.

- The commissioners will be carrying out a big and complex workload. You and the Minister for the Environment can ensure the intervention is set up to succeed by:
 - ensuring that the commissioners can devote a sufficient amount of time to the task;
 - ensuring that at least one member of the commission has extensive experience in local government affairs in either governance or senior management; and
 - finding the right person to lead the panel of commissioners.
- The commissioners will have all the rights, duties and obligations of a regional council. They must abide by the consultation and decision-making requirements of the LGA02 and RMA. They will be accountable to the people of Canterbury and must seek their views on significant issues. In addition, commissioners must seek advice from Canterbury mayors. This is intended to rebuild working relationships between the territorial authorities and ECan.

Part 3 – additional functions and powers of ECan

- To make progress on the management of fresh water in Canterbury, the Bill provides ECan with some additional powers under the RMA while the commissioners are in place. They will be given powers to finalise the Natural Resources Regional Plan, advance a proposed Regional Policy Statement, and make recommendations on water conservation orders. They will be tasked with making sure ECan is able to provide effective and integrated resource management.
- Subpart 1 of Part 3 of the Bill specifically provides the commissioners with the power to impose moratoriums on applications for water take and discharge permits. Sections 76 to 82 of the LGA02 do not apply to this Subpart. These sections of the LGA02 relate to decision-making and consultation requirements for local authorities. The main reason for this exclusion is to minimise the risk of "gold rush" applications if the commissioners propose moratoriums. It also allows the commissioners to make decisions expediently. However, the commissioners are still able to consult if they choose, but they are not required to.

Notes for the third reading debate of the Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill 2010

- This Bill represents decisive action from the Government in response to significant and sustained problems with ECan. The independent review to investigate the performance of ECan found an "enormous and unprecedented" gap between what needs to be done to manage water in Canterbury and ECan's ability to do so.
- To quote the Review Group's report:
 - "there is a national risk of failure to act and get an effective framework for managing water;
 - there is a national benefit if water is managed effectively;
 - there is massive complexity of the water challenge; and
 - the scale of the issue and response is too large for local government and therefore requires active central government intervention."
- The Government is deeply concerned that without urgent and robust intervention, ECan would continue to under perform and the situation deteriorate.
- The region's stakeholders were generally united in their opinion that temporary central government intervention is necessary to improve the performance of ECan. The Government's decisions in this Bill have not been made lightly. The actions taken are drastic but carefully considered.
- The appointment of commissioners to replace ECan's elected council is a necessary but temporary measure to ensure the present and future well-being of the people of Canterbury, and indeed all New Zealanders. This measure will provide for holistic and comprehensive management of Canterbury's natural resources. Additional powers will allow the Commissioners to address specific blockages to efficient, effective and sustainable water management. This measure will also restore trust and confidence in ECan's ability to deliver effective government for the people of Canterbury.
- The commissioners' primary responsibility is to govern ECan. They will be responsible for the day-to-day running of the Council, and will be accountable to the people of Canterbury. They will be subject to the same consultation, decision-making and transparency requirements as the elected council.
- The term of the commissioners is only temporary. Local democracy will be restored when commissioners exit at the latest in October 2013 and hand over to an effectively elected council.