

**NOTES: ENVIRONMENT CANTERBURY PRESS CONFERENCE  
30 March 2010**

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Proactively Released by the Minister of Local Government

## Background to the ECan review

- The 2007/08 RMA Survey of Local Authorities found that ECan was complying with statutory timeframes for processing resource consents in just 29% of cases.
- In September 2009 ten Canterbury mayors wrote to the Minister of Local Government outlining serious concerns with ECan's performance and "the potential for these issues to impact on the future well-being and prosperity of Canterbury".
- The Minister for the Environment decided to conduct a statutory investigation of ECan's resource consent processing practices and a broader review of ECan's resource management performance under the Resource Management Act 1991 (RMA).
- Concurrently, the Minister of Local Government decided to conduct a non-statutory assessment of whether there were wider issues with ECan's governance, policies or implementation under the Local Government Act 2002 and other legislation that ECan operates under.
- The Ministers agreed terms of reference for the joint review, and appointed a review team headed by Wyatt Creech and involving Martin Jenkins, Morrison Low, and Greg Hill.
- The review team provided its report to the Ministers in February 2010.

## The review's key findings and recommendations

### *Key findings*

- The review identified major failings in the way that ECan is managing Canterbury's freshwater. It highlighted long-running institutional problems with ECan.
- It characterised the gap between what needs to be done in Canterbury to effectively manage fresh water, and ECan's ability to do so, as "enormous and unprecedented".
- The review team considered that Canterbury's lack of a fully operative overarching planning and policy framework for managing the region's natural resources has resulted in a piecemeal, fragmented, inefficient and ineffective approach to freshwater management.
- The review advised that remedying the situation requires "comprehensive and rapid intervention" by central government, and that failure to intervene will result in a continued lack of progress in Canterbury's water management.

### *Key recommendations*

- Create through special legislation a separate "Canterbury Regional Water Authority".
- Replace ECan with a commission to manage the organisation change until the October 1010. The freshwater management functions would be transferred to the new regional water authority, while ECan would continue to deal with the remaining functions.
- Provide ECan with a transitional framework to manage freshwater in the short-term.
- The commission to carry out a fit for purpose review of ECan's planning and consenting directorate, establish a new triennial agreement and a Canterbury local authorities chief executives' forum, and review Canterbury's public transport functions.

## ECan Cabinet papers – key recommendations

Note: this is a condensed version of the recommendations in the policy and legislation Cabinet papers. Some of the technical RMA-related recommendations have been left out.

### *Policy paper*

- Agree that the legislation provide for:
  - the replacement of the elected ECan Council with four to seven commissioners, and the removal of the elected Council from office;
  - the commissioners becoming ECan's governing body and having all the duties, powers and functions of ECan councillors provided under all relevant legislation;
  - the Minister for the Environment and the Minister of Local Government appointing Commissioners, a chairperson and a deputy chairperson, and setting the terms of reference for the commissioners;
  - ECan local body elections not being held in 2010;
  - the commissioners' appointments to expire in November 2013, or earlier as determined by the commissioners when their task is complete, and for elected councillors to again take office;
  - the commissioners to have collective experience in organisational change and water management, local authority governance and management, knowledge of the Canterbury region and its people, and knowledge of tikanga Māori;
  - the commissioners to establish mechanisms to seek advice from Canterbury territorial authority mayors on issues that impact on ECan's roles, functions and performance;
  - the Vision and Principles of the Canterbury Water Management Strategy being included as a Schedule to the legislation;
  - the commissioners' decisions on the RMA planning framework to be made after having particular regard to the Vision and Principles of the Canterbury Water Management Strategy, in addition to existing statutory criteria;
  - limited appeal rights on the commissioners' decisions on the RMA planning framework, and on the commissioners' recommendations on water conservation orders; no provision for appeals on the merits of these decisions, but provisions for appeals to the High Court on points of law;
  - requiring the Minister for the Environment to direct applications for new Canterbury water conservation orders or applications to alter existing water conservation orders in Canterbury, to the commissioners rather than a Special Tribunal;
  - the Minister for the Environment to refer the application for a WCO over the Hurunui River to the commissioners for their consideration, and for current Environment Court processes with respect to that application to cease;
  - the commissioners to put in place, subject to the approval of the Minister for the Environment, targeted moratoria on water take and discharge consents.

*Legislation paper*

- Approve for introduction the "Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill", subject to approval of the Government caucus.
- Agree that the Bill be introduced under urgency on 30 March 2010.
- Agree that the Bill not be referred to select committee and that it be enacted, if possible, by 1 April 2010.

Proactively Released by the Minister of Local Government

## **ECan Bill – Minister of Local Government’s statutory responsibilities**

The Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill provides for the Minister of Local Government and the Minister for the Environment to do the following:

### *Replacement day*

- determine the replacement date of the elected council and give notice of it in the *Gazette* and to ECan’s elected members;

### *Appoint commissioners*

- appoint 4 to 7 commissioners as the governing body of ECan;
- of those commissioners appoint a chairperson and a deputy chairperson;
- if necessary, appoint additional commissioners after the first appointment of commissioners;
- if necessary, appoint a commissioner to replace a commissioner who vacates office;
- if necessary, terminate the appointment of a commissioner as chairperson or deputy chairperson, and remove a commissioner by written notice at any time;

### *Process for appointing commissioners*

- provide the commissioners with a written notice of appointment, notify the appointment (and the commissioners’ terms of reference) in the *Gazette*, and give a copy of the notice to ECan;
- provide the chairperson and the deputy chairperson with a written notice of appointment, notify the appointment in the *Gazette*, and give a copy of the notice to ECan;

### *Commissioners’ terms of reference*

- specify terms of reference for the commissioners;
- at any time amend the terms of reference;

### *Commissioners’ qualifications*

- ensure that the commissioners collectively have knowledge of, and expertise in relation to, organisational change, freshwater management, local authority governance and management, tikanga Maori, and Canterbury and its people.

## Key messages

- The report of the independent review to investigate performance issues at Environment Canterbury, under the Resource Management Act 1991 and the Local Government Act 2002, identified major failings in the way that ECan is managing Canterbury's freshwater. It also highlighted long-running institutional problems.
- The report found that there is an 'enormous and unprecedented' gap between what needs to be done to effectively manage water in Canterbury and ECan's ability to do so.
- The Government has decided to intervene by appointing Commissioners to govern ECan. This decision has not been made lightly. Intervention is necessary but is also temporary.
- In making this decision, the views of a range of Canterbury stakeholders, including Canterbury mayors and Ngai Tahu, have been sought and carefully considered.
- Special legislation, with a firm expiry date of 2013, will give the Commissioners time to address ECan's and Canterbury's complex issues as from 1 May 2010.
- The appointment of Commissioners to oversee operations will ensure the restoration of trust and confidence in ECan's ability to deliver effective governance for the people of Canterbury.

## Possible questions and answers

### *Intervention*

*What's been decided?*

The Government is appointing Commissioners to replace the ECan elected council. The Government is doing this through special legislation.

The Commissioners will temporarily take over all governance functions of ECan. They will also be given powers to address blockages to the efficient, effective and sustainable management of Canterbury freshwater.

*Why are you intervening?*

The ECan review identified major failings in the way that ECan is managing Canterbury's freshwater. It also highlighted long-running institutional problems. The report found that there is an 'enormous and unprecedented' gap between what needs to be done to effectively manage water in Canterbury and ECan's ability to do so.

Government intervention is needed to turn ECan around and put in place an effective resource management policy and planning framework for Canterbury. This intervention is not only in the interests of Canterbury people, but also the interests of all New Zealanders.

The Government is concerned that without urgent and robust intervention, ECan would continue to not perform effectively, and the management of freshwater would deteriorate further.

*How will you intervene?*

The Government will today introduce a bill under urgency seeking to dissolve the current council and temporarily replace them with Commissioners. The Government will then vet and appoint Commissioners.

*Why don't you use existing powers of intervention under the LGA and RMA?*

The Government investigated the option of using the existing powers of intervention of the Local Government Act 2002 and the Resource Management Act 1991. The existing provisions either do not apply to this situation, or are not sufficient to enable an effective and timely response.

*What consultation did the Government carry out?*

After the ECan review report was released, the Minister for the Environment and I went to Canterbury and met with Environment Canterbury, Canterbury mayors, Ngai Tahu and key water stakeholders. We have also received written submissions from a wide range of interested parties.

## **Local authority elections**

*What's happening about the 2010 elections for ECan?*

The Bill will stop the 2010 elections from occurring. The issues at ECan are too big and complex for Commissioners to fix these before the scheduled election in 2010. The next elections for ECan will be held as scheduled in October 2013.

## **Local accountability**

*Will the Commissioners be responsible to the people of Canterbury?*

The Commissioners will be responsible to the people of Canterbury, just as the previous Councillors were, except for the fact that they are not elected. The Commissioners will be subject to the rules and processes in the Resource Management Act 1991, the Local Government Act 2002, and other legislation under which ECan operates.

The Commissioners will be expected to engage with the community on significant issues. Existing public consultation and participation requirements will remain in place. The commissioners will be tasked with improving ECan's working relationships with the Canterbury territorial authorities, as the Bill requires the commissioners to seek advice from the mayors on local issues that affect ECan.

## **The Commissioners**

*Who are the new Commissioners?*

The Commissioners will be announced shortly. They will be appointed by the Minister for the Environment and myself after Cabinet approval.

*What are the criteria for selecting commissioners?*

The Bill provides that the Commissioners must collectively have knowledge of, and expertise in relation to, organisational change, freshwater management, local authority governance and management, tikanga Maori (as it applies in Canterbury), and the Canterbury region and its people.

*What will be their function and powers?*

The Commissioners will first and foremost be charged with governing ECan – making sure that ECan continues to do its business.

They will also have several other responsibilities, such as implementing an operative natural resources regional plan, making recommendations to the Minister for the Environment on water conservation orders, and making sure that ECan is able to effectively do its job.

*How will they be paid?*

The Commissioners will be paid out of the same total determination for ECan's councillors, as set by the Remuneration Authority. ECan will also pay for expenses incurred while the Commissioners are in office.

## **Freshwater management**

*Why is effective freshwater management important in Canterbury?*

The Canterbury region contributes a significant proportion of the nation's renewable hydro electricity generation capacity. It is important in terms of agricultural and horticultural production. Around 70% of New Zealand's fresh water resource is in Canterbury, and is subject to many competing demands.

The scale and nature of competing demands for water is significantly greater in Canterbury than anywhere else in New Zealand.

*Why is the Government not taking up the ECan review report's recommendation of a separate regional water authority for Canterbury?*

Creating a separate water authority would be a big step, and one to be considered carefully. It would have significant implications for the way that freshwater and natural resources are managed in Canterbury. It would also have significant implications for the structure of local government at the national level. The proposal would have to be considered in relation to what would work best for Canterbury, and also in the national context of local government.

*Will appointing Commissioners to ECan undermine the Canterbury Water Management Strategy?*

No. A lot of energy and effort has gone into the creation of the Strategy. Commissioners will be fully briefed on the Strategy. When Commissioners consider the natural resources regional plan and water conservation orders, they must have regard to the vision and principles of the Strategy.

## **ECan's organisation**

*What does this mean for ECan?*

ECan officers will advise the Commissioners in the same way that they would advise an elected council. Like elected councillors, the Commissioners will be responsible for the governance of ECan.

*How will this decision affect the staff at ECan?*

There are no implications for ECan at this stage. Decisions on the best organisational structure and staffing are for the Chief Executive of ECan, not for central government, to decide.