

Chair
Cabinet

ENVIRONMENT CANTERBURY (TEMPORARY COMMISSIONERS AND IMPROVED WATER MANAGEMENT) AMENDMENT BILL: APPROVAL FOR INTRODUCTION

Proposal

1. This paper recommends that the Environment Canterbury (Temporary Commissioners and Improved Water Management) Amendment Bill (the Bill) be introduced on 12 September 2012 and enacted by 5 March 2013.
2. The Bill will amend the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (the Act) to extend Commissioner governance of the Canterbury Regional Council (ECan) until the 2016 local authority elections. It will retain the Act's limitation on public rights of appeal against ECan's Resource Management Act 1991 (RMA) plan and policy statement decisions to the High Court to points of law only and ECan's other freshwater management powers. It will require a Ministerial review of the governance arrangement commencing 1 March 2014.

Policy

3. The Bill gives effect to Cabinet's decisions of 27 August 2012 to swiftly pursue legislation that will ensure robust, effective and stable regional governance for Canterbury after the 2013 local authority elections [CAB Min (12) 30/11 refers].
4. ECan is currently governed by Commissioners under the Act. The Act has enabled strong leadership for ECan and significant improvements in its operations. Under the Act, governance by Commissioners is to end when new elected members come into office following the 2013 local authority elections, being held on 12 October that year.
5. Unique circumstances and governance challenges will exist in Canterbury after the 2013 local authority elections that require the continuation of an innovative approach to regional governance. National initiatives in water and land reform require an effective, efficient and stable governance arrangement to achieve the projected outcomes of economic and environmental return.
6. Canterbury's vast and valuable water resources, its significant capacity to support efficient and highly productive agriculture, its size, its history of competing interests for resources and the demands of earthquake recovery continue to set the challenges of its regional governance apart from other regions.

7. There is a strong need for a governance arrangement that maintains ECan's current momentum and effectiveness, particularly in freshwater management after its history of poor performance and dysfunction. Effective decision making and strong collaborative relationships are particularly important during a critical period of earthquake recovery and major Government investments in regional water infrastructure from 2013 to 2016.
8. There are a number of initiatives and frameworks under the RMA that will be either incomplete or in progress by the expiry of the Commissioners' term at the 2013 local authority elections. The second generation Land and Water Plan and other plans will not be adopted by late 2013, nor will the Canterbury Water Management Strategy (CWMS) be fully implemented. These are core components of comprehensive and collaborative freshwater decision making and management in Canterbury.
9. The Bill will amend the Act to extend Commissioner governance until the 2016 local authority elections. It will provide for ECan to continue to have strong, stable and effective leadership. This will help ensure the full and successful implementation of critical regional resource management, economic growth and earthquake recovery initiatives.
10. ECan and the Canterbury region will benefit from retaining the specialist skills and expertise of Commissioners needed to deal with the unparalleled complexities of Canterbury water management and earthquake recovery. The arrangements will manage the risk of the poor performance and dysfunction of the past returning to ECan's governing body in the future.
11. The Bill will establish an effective and enduring regional governance arrangement for Canterbury to help facilitate the region's growth and earthquake recovery. It will support the achievement of a fully operative planning framework. If the current Commissioners were reappointed, institutional knowledge would be retained for critical initiatives currently underway and ECan's joint work programme with Ngāi Tahu.
12. The continuation of the current governance arrangements will facilitate the region's economic growth and earthquake recovery. The current Commissioners have demonstrated an ability to build strong relationships with the Canterbury Earthquake Recovery Authority, Selwyn District Council and Waimakariri District Council on earthquake response and recovery matters.
13. We note that the Bill would not provide Canterbury electors an opportunity to elect councillors to ECan at the 2013 local authority elections. This aspect of the Bill is likely to be contentious for some members of the public and sectors of the community. However, it is essential to maintain effective governance, stability and progress, and ensure the completion of critical workstreams and earthquake recovery processes at this time. Under the Bill, ECan would return to standard governance arrangements following the 2016 local authority

elections

Governing body, appointment and remuneration of Commissioners

14. Under the Bill, ECan's governing body is to have up to seven appointed Commissioners. The governing body is to exercise all the powers and functions of a regional council governing body specified in the Local Government Act 2002, RMA and other relevant legislation.
15. The Commissioners are to be appointed by the Minister of Local Government and Minister for the Environment by notice in the *Gazette*. The Ministers will also appoint one of the Commissioners to the position of chairperson of ECan.
16. The appointment process and criteria for Commissioners specified in the Act will be retained. This means that appointed members must be appointed for their collective knowledge and expertise in matters of organisational change, fresh water management, local authority governance and management, tikanga Māori (as it applies in the Canterbury region) and the Canterbury region and its people.
17. The Commissioners will be remunerated from ECan's own funds at rates set by Ministers, as is now the case under the Act.

Resource management powers

18. The Bill will retain the Act's limitation on public rights of appeal against ECan's RMA plan and policy statement decisions to the High Court to points of law only. It will also retain the requirement for ECan to give particular regard to the CWMS vision and principles for proposed regional policy statements or plans. This will support the incomplete freshwater management work noted above and provide a consistent approach to achieving the desired resource management outcomes for the region.
19. A return to the usual merit appeal rights base could delay or prevent regional plan changes required to implement a fully operative planning framework, including the effective implementation of the CWMS.

Ministerial review

20. The Bill would require the responsible Ministers to begin a review of ECan's governance arrangement on 1 March 2014. The review must cover ECan's governance structure, its membership and its powers and functions.

Administration of legislation

21. The Department of Internal Affairs is to administer the proposed legislation upon enactment.

Regulatory Impact Analysis

22. A Regulatory Impact Statement was prepared in accordance with the necessary requirements and was annexed to the Cabinet paper "Environment Canterbury: Governance Arrangements".

Compliance

23. The Bill complies with:

- the principles of the Treaty of Waitangi;
- the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- the principles and guidelines set out in the Privacy Act 1993; and
- relevant international standards and obligations.

24. The Bill complies with the *Legislation Advisory Committee Guidelines: Guidelines on Process and Content of Legislation (LAC Guidelines)*.

Consultation

25. The following agencies have been consulted on this paper and draft bill: the Treasury, the Ministries of Health and Justice, the Ministry for Primary Industries, the Department of Conservation, Te Puni Kōkiri and the Canterbury Earthquake Recovery Authority.

26. The Department of Prime Minister and Cabinet has been informed.

Binding on the Crown

27. The Bill proposes to amend the Act which binds the Crown. The proposals in the Bill would extend existing Crown prerogatives and responsibilities in respect of the Act.

Creating new agencies

28. The Bill does not create new agencies.

Allocation of decision-making powers

29. The Bill does not involve the allocation of decision-making powers between the executive, the courts or tribunals.

Regulations and deemed regulations

30. No deemed regulations will be needed to bring the Bill into operation.

Definition of Minister/department

31. The Bill does not define "department" or "chief executive" or any equivalents to those.

Commencement

32. All provisions of the Bill come into force the day after it receives Royal assent.

Parliamentary stages

33. The Bill should be introduced by 4 September 2012 and passed by 5 March 2013. We propose that the Bill be referred to the Local Government and Environment Committee on passing its first reading.

34. We propose that the Local Government and Environment Committee's report back date be set at no later than 14 December 2012. This would require a shortened, three month, select committee process and a debatable motion at the Bill's introduction.

35. The swift introduction of the bill, and enactment by 5 March 2013, is necessary so that its amendments may be in place before relevant statutory processes for the 2013 local authority elections commence.

Recommendations

36. The Minister of Local Government and Minister for the Environment recommend that Cabinet:

1. **note** that the Environment Canterbury (Temporary Commissioners and Improved Water Management) Amendment Bill (the Bill) holds priority 4 on the 2012 legislation programme;
2. **note** that on 27 August 2012, Cabinet agreed to the amendments in the Bill, which aims to provide effective and robust governance arrangements for Environment Canterbury following the 2013 local authority elections [CAB Min (12) 30/11 refers];
3. **note** that the Government Caucus was consulted on the proposals in the Bill on 28 August 2012;
4. **approve** the Bill for introduction;
5. **agree** that the Bill be introduced by 4 September 2012; and
6. **agree** that the Government propose that the Bill be:
 - 6.1. referred to the Local Government and Environment Committee for consideration with a report back date of 14 December 2012; and
 - 6.2. enacted by 5 March 2013.

Hon David Carter
Minister of Local Government

/ / 2012

Hon Amy Adams
Minister for the Environment

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