

## IN CONFIDENCE

Office of the Minister for the Environment

Office of the Associate Minister of Local Government

Cabinet Economic Growth and Infrastructure Committee

### **Review of Environment Canterbury: Release of discussion document for public consultation**

#### **Proposal**

1. We propose that Cabinet agree to the release of a discussion document for public consultation as part of the statutory review of Environment Canterbury (ECan). The discussion document outlines our proposal to create a mixed model governance structure for ECan of elected and appointed members when the Commissioners' terms expire in October 2016.

#### **Executive summary**

2. In 2010, in response to concerns about the capacity and capability of ECan to carry out its functions effectively, the Government passed the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act (the ECan Act) 2010, which gave the responsible Ministers the power to appoint Commissioners to run ECan until the local government elections in 2013, in place of elected councillors.
3. Under the guidance and leadership of the Commissioners, ECan has been transformed into a high functioning and well-regarded organisation. The ECan Act was extended for a further three years in 2013 in order to not disrupt the good work in progress by the Commissioners and to provide continuity during the earthquake recovery process. The Commissioner's terms are set to expire in October 2016.
4. The ECan Act requires a review to ensure a smooth transition to new governance arrangements. A review of ECan was commenced on 1 March 2014 by the then Ministers for the Environment and of Local Government [CAB Min (14) 6/8 refers].
5. The review covers ECan's governance structure, membership and additional resource management powers and functions under the ECan Act. Since assuming our portfolios after the 2014 general election, we have re-examined the potential options for ECan.
6. A key requirement for Canterbury's future governance is an arrangement that retains and builds on the progress made by the Commissioners, and ensures the skills and experience needed to address regional issues. We propose to introduce a mixed model governance structure (the mixed model) for ECan. The mixed model would have seven members elected from constituencies and six members appointed by the Government. We consider that the proposed change is the next logical step for Canterbury and ECan's governance arrangements. The mixed model proposal would need to be implemented through legislation.
7. The mixed model would be in place for at least the next local government term (which runs from October 2016 to October 2019), during this period the responsible Ministers could give further consideration to the next steps for ECan. For example, this could include consideration of a return to a fully elected council or other options.

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8. We propose to release a discussion document (attached) as soon as practicable to inform public consultation on the mixed model for ECan. Public consultation would run for approximately six weeks. The submissions and feedback we receive would guide a detailed proposal for ECan. We would then return to Cabinet in May 2015 to seek approval for a final policy decision.

### Background

#### *Ministerial review of Environment Canterbury*

9. In 2010, in response to concerns about the capacity and capability of ECan to carry out its functions effectively, the Government passed the ECan Act, which gave the responsible Ministers the power to appoint Commissioners to run ECan until the local government elections in 2013, in place of elected councillors.
10. The ECan Act was amended in 2013 to extend the Commissioners' terms until 2016 in order to maintain the good work in progress by the Commissioners and to provide continuity during the earthquake recovery process. Therefore, ECan's governance structure is due to revert to the fully elected regional council model that existed before 2010 at the local body elections in 2016.
11. In accordance with section 17A of the ECan Act, the previous Minister of Local Government and Minister for the Environment began a review of ECan on 1 March 2014 [CAB Min (14) 6/8 refers]. The review covers:
  - the governance structure of ECan;
  - the membership of ECan; and
  - ECan's additional resource management powers and functions.
12. Since assuming our portfolios following the general election, we have taken time to consider the range of possible options for Canterbury's regional governance arrangements after October 2016, including the option of a Water Authority as recommended by the independent review of ECan in 2010 (known as the Creech Report), and the fully elected regional council model ECan would revert to by default under the ECan Act.
13. To guide the assessment of options for regional governance and help identify a model that is effective and fit-for-purpose, we have developed five goals for the future governance arrangement to deliver on. These are:
  - high quality leadership;
  - economic growth;
  - strong environmental stewardship;
  - strong accountability to local communities; and
  - value for ratepayer money and efficiency.

#### *Placement of Commissioners at Environment Canterbury*

14. ECan is the regional council for Canterbury. As a regional council, ECan is responsible for managing freshwater, land, air, coastal waters, civil defence and emergency management, soil erosion, flood control and transport (among other functions).

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15. In 2009, in response to concerns in the region about the council's ability to effectively carry out its functions, the Minister for the Environment and the Minister of Local Government commissioned a review of ECan.
16. The report outlining the findings of the review (the Creech report) detailed serious issues with the capacity and capability of ECan to process resource consents on time and to implement key planning frameworks crucial to the effective management of resources in the region, such as the Canterbury Water Management Strategy. These issues were attributed in part to the political impasse which existed in the council between the competing interests of rural and urban-based elected members. Some communities felt that they were underrepresented in decisions affecting natural resources in their own communities and region wide.
17. The review found other issues with ECan's leadership, pointing to poor engagement with city and district councils, iwi and other key stakeholders.
18. Due to unprecedented requests from the Canterbury public, the recommendations of the review and requests from Canterbury's Mayors for Government intervention, the Government passed the ECan Act to replace ECan's elected members with seven Commissioners to act as the organisation's governing body.
19. The ECan Act also gave the Commissioners modified resource management powers. Part 3 of the ECan Act empowered ECan to:
  - make changes to a plan or regional policy statement, or make a variation to a proposed plan or regional policy statement, through a limited appeals process;
  - impose a moratorium on the granting of specific water and discharge consent applications; and
  - directly consider applications for Water Conservation Orders received from the Minister for the Environment, with alternative criteria and a limited appeals process.
20. The Government carefully appointed Commissioners based on their collective skills and experience in organisational change, freshwater management, local authority governance and management, tikanga Māori and knowledge, and understanding of the Canterbury region and its people.
21. Under the leadership of the Commissioners, ECan has been transformed into a well-functioning and effective organisation. Key achievements under the Commissioners include:
  - implementing the Canterbury Water Management Strategy;
  - continuing to implement the zone committee process to allocate and manage freshwater from river catchments;
  - improving compliance with statutory timeframes for resource consents from 23 per cent in 2007/08 to 98 per cent in 2014;
  - completing the Natural Resources Regional Plan;
  - strengthening the relationship with Ngāi Tahu; and
  - taking a leading role in earthquake recovery initiatives such as the Natural Environment Recovery Programme, the Lyttleton Port recovery plan and the repair and realignment of public transport infrastructure in Greater Christchurch.

***The challenges of freshwater management are complex and ongoing***

22. ECan has made considerable progress in recent years under the Commissioners. However, there are further long-term challenges facing Canterbury that require the right mix of skills and expertise, specialist attention and a fit-for-purpose governance structure.
23. The primary challenge continues to be around effective freshwater management. Canterbury is one of New Zealand's most significant centres of agricultural production, which is dependent on water for irrigation from the region's aquifers and iconic braided rivers. Freshwater from these sources is also used to supply business and homes, and for electricity generation, industry, recreation and ecological conservation. These differing and often conflicting uses have put pressure on freshwater, which needs careful management to ensure it is used efficiently, effectively and sustainably.
24. Intensification of agricultural production and the increasing severity of dry conditions due to the impacts of climate change will put even more pressure on freshwater in Canterbury in the future. It is important that the economic potential of Canterbury's water is realised without unacceptably compromising environmental and cultural (including recreational) uses.
25. Balancing economic, cultural and environmental interests in water rests on continuing the achievements under the Commissioners in the effective allocation and management of water, through mechanisms such as the Canterbury Water Management Strategy, zone committees and the National Policy Statement for Freshwater Management. To achieve this, Canterbury needs a regional governance structure in place that has the appropriate focus, skills, capability and collaborative culture to manage freshwater issues into the future.

***There will be changes to roles and responsibilities for earthquake recovery***

26. ECan's transformation to a leading local government organisation is also supporting post-earthquake resilience in Canterbury. This is likely to be of increased importance as the Canterbury Earthquake Recovery Authority winds down aspects of its role. The Government needs to transition its role from leading the recovery to establishing long term recovery arrangements. The next stage of the recovery involves increased local responsibility.

***A smooth transition to a new structure for ECan is important***

27. The end of the Commissioners' terms will represent a significant change. It is vital that the change is carefully managed and well-coordinated so that it does not interrupt the excellent progress made so far in Canterbury. There is a risk that returning ECan to a fully elected council immediately could stall or delay the progress in freshwater management over the past six years. This risk arises from specific issues around transitioning back to a fully elected council immediately, including:
  - the removal of the significant knowledge and experience of the Commissioners at a single point in time;
  - transferring institutional knowledge of priorities, projects and work programmes to new members of ECan's governing body;
  - the uncertainty to employees the change in governance may bring;
  - continuing the good relationships with city and district councils, Ngāi Tahu and other key stakeholder groups; and

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- the risk of competing interests and lack of a shared vision on the Council once again preventing effective governance and decision making.

### Next Steps

#### ***We propose a mixed model governance structure for ECan***

28. To mitigate the risks we see with an immediate transition back to a fully elected council, we propose to introduce a mixed model governance structure (mixed model) for ECan, which would provide for both elected and appointed members at the Council for the next local government term (which runs from October 2016 to October 2019). During this period the responsible Ministers could give further consideration to the next steps for ECan. The mixed model will not change the current functions and activities of ECan.
29. The model could take effect at the end of the Commissioners' terms. ECan could be governed by seven members elected from six geographical constituencies in Canterbury, and six members appointed by the Government. This would mean elected members would have a majority on the Council.
30. The main advantage of the mixed model for ECan is the Government could use its appointments to complement the experience brought by elected members and fill any gaps in expertise. This would provide certainty in the transition back to elections for ECan that the progress, knowledge and expertise of the Commissioners is not lost after October 2016, especially in the area of freshwater management. There could also be a provision to recognise Ngāi Tahu nominations in the Government's appointments. This would be determined in line with the Government's wider work with iwi on freshwater management.
31. Though the proposal would be a new governance arrangement for local government, there are other examples of mixed governance models to draw on, such as district health boards. New legislation would be needed to put the mixed model in place.

#### ***We consider that the mixed model meets the goals of the review***

32. We consider that the mixed model best meets the goals of the review outlined in paragraph 13. We have considered other options, such as a Water Authority and reverting ECan to a standard regional council but have discounted them from the review. A Water Authority would require significant structural change, that we consider too disruptive to other functions in Canterbury, such as transport and the earthquake recovery process. A fully elected regional council model for ECan would provide little continuity between the Commissioners and a new Council, and would risk losing the positive momentum of the last six years, especially in freshwater management.
33. The mixed model would be in place for at least the next local government term. In 2019, the responsible Ministers would have the option to review the mixed model arrangement to determine whether it should continue.
34. The transition from Commissioners to the mixed model will need careful consideration and planning. The risks associated with the transition to a mix of elected and appointed members could be mitigated through the appointed member appointment process and ensuring support is provided to newly elected members through briefings or an induction process.

***Representation arrangements could be further refined***

35. Local representation under the mixed model would be different to other regional councils and the model that existed at ECan before the Commissioners were appointed. There would be fewer elected members and they would represent larger constituencies. We will look to refine the details of representation arrangements through further analysis and public consultation in Canterbury.
36. The table below shows possible representation arrangements for the elected members, including constituencies and the member to population ratios for each constituency.

Constituency	Population	Members	Member-Population Ratio
North Canterbury	70,240	1	1:70,240
Christchurch	361,900	4	1:90,475
Mid Canterbury	82,300	1	1:82,300
South Canterbury	59,770	1	1:59,770
<b>Total</b>	<b>574,210</b>	<b>7</b>	<b>1:82,030</b>

**Table 1: Possible constituencies and member ratios**

37. The above arrangements would be broadly in line with the current arrangements for other regional councils and the requirements of the Local Electoral Act 2001. Representation arrangements could be developed by ECan and finalised by the Local Government Commission as part of the transition process to the mixed model.

***We propose to release a discussion document for public consultation on the proposal for a mixed model governance structure***

38. A copy of the draft discussion document is attached. If Cabinet agrees to the release of the document, we will make a joint announcement on the proposal and intended release of the discussion document. The discussion document would be released immediately following the announcement.
39. The discussion document provides information to city and district councils, iwi, the public and other key stakeholders about the mixed model proposal and invites feedback on aspects of the proposal. The document includes details on how the mixed model for ECan would work, and invites comments on the proposal through a series of questions. For example, readers are asked about whether they think the goals of the review are appropriate, and whether there are better governance options that address the goals more effectively.

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40. The discussion document is primarily focused on ensuring ECan is well-placed to provide good freshwater management outcomes for Canterbury. It also gives context to Canterbury's national significance as a centre of agricultural production, ECan's past issues and the decision to appoint Commissioners. The discussion document then focuses on the progress Commissioners have made and the need to manage continuing and future challenges for the region.
41. The additional resource management powers and functions ECan has under the ECan Act are also being considered as part of the review, and the discussion document invites feedback on whether these powers should be retained after the expiry of the ECan Act. We consider that the Government's Resource Management Act (RMA) reform programme will provide the necessary flexibility to manage regional RMA responsibilities.
42. The proposed RMA reforms, if passed, would include an option for councils to request ministerial approval for a streamlined planning process with limited appeals. The provisions for placing moratoria on planning applications and the process for Water Conservation Orders were temporary measures intended, for example, to prevent over-allocation of water resources or to protect over-allocated water bodies, before a planning framework for freshwater management had been put in place. Since much of this framework is now established, these powers are unlikely to be needed by any new governing body.

***We will return to Cabinet to seek final policy approvals following public consultation, before seeking to introduce legislation to the House in August 2015***

43. The public consultation period would last for approximately six weeks after the release of the discussion document. The discussion document will be made available on the Ministry for the Environment and Department of Internal Affairs websites, and through the [www.govt.nz](http://www.govt.nz) portal.
44. We intend to meet with all councils in Canterbury during the consultation period to discuss the proposal.
45. Following public consultation, we will prepare a detailed proposal for ECan's governance arrangements beyond October 2016 based on the feedback and submissions received. We will return to Cabinet in May 2015 to seek final policy approvals.
46. Subject to Cabinet approval, we will then direct officials to work with the Parliamentary Counsel Office to draft the necessary legislation to allow the proposal to be implemented. We expect a bill could be introduced to the House in August 2015. There will be a tight timeframe for legislation, as it will need to be passed by early 2016 to allow representation arrangements for elected members to be finalised and for ECan and the Electoral Commission to prepare for elections in October 2016.

### **Consultation**

47. The Minister of Local Government has agreed to the submission of this paper in accordance to the delegation of all matters relating to ECan to the Associate Minister of Local Government.

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48. The Economic Growth and Infrastructure Committee noted our intention to consult with the Canterbury Mayoral Forum and Ngāi Tahu on the proposal and discussion document as part of the review [CAB Min (15) 5/12 refers]. Consultation on the proposal and discussion document took place on 27 February 2015, and included an invitation to provide feedback on the draft discussion document.
49. With the exception of Christchurch City, the Canterbury Mayors are broadly supportive of the mixed model for ECan. The ECan Commissioners are unanimous in their support for the proposal. Most Mayors expressed that the model will provide for the appropriate balance between local representation and specialist input on freshwater management issues.
50. The Canterbury Mayoral Forum was consulted on an alternative mixed model proposal of 5 elected and 4 appointed members. However, it is our view that this option does not provide enough elected members to ensure adequate representation in Canterbury.
51. Ngāi Tahu expressed support for the mixed model, and noted the positive partnership that has been built between ECan and Ngāi Tahu under the Commissioners. However, Ngāi Tahu has sought assurance of iwi representation at the Council table.
52. Feedback from the Canterbury Mayoral Forum and Ngāi Tahu has been incorporated into the discussion document.
53. The following departments and agencies were given the opportunity to comment on this paper: the Treasury, New Zealand Transport Agency, Ministry of Transport, Ministry of Justice the Department of Conservation, the Canterbury Earthquake Recovery Authority, the Ministry of Business, Innovation and Employment, Te Puni Kōkiri, Ministry of Health, State Services Commission and the Ministry for Primary Industries. The Department of Prime Minister and Cabinet was informed.

### **Financial implications**

54. There are no financial implications for this paper. The cost of releasing the discussion document for public consultation will be met by the Ministry for the Environment and Department of Internal Affairs from within existing baselines.

### **Legislative implications**

55. There are no immediate legislative implications from this paper. The mixed model proposal would need to be implemented through legislation.

### **Regulatory impact analysis**

56. The Regulatory Impact Analysis (RIA) requirements apply to this paper as it recommends narrowing options for further consideration.
57. The Regulatory Impact Analysis Team at the Treasury (RIAT) has had limited time to provide independent quality assurance on the discussion document. RIAT considers that it does not appropriately incorporate the substantive RIA elements because the status quo and problem definition is not clearly or fully described. Alternative feasible options, which were previously contemplated, have also not been presented for public consideration.
58. A RIS will be prepared when Cabinet is invited to make final decisions. However, there is a risk that the RIS might not fully meet the RIA requirements because of the quality of consultation.

### Human rights, disability and gender implications

59. There are no human rights, disability or gender implications.

### Publicity

60. Subject to Cabinet approval, the Minister for the Environment and Associate Minister of Local Government will make a joint announcement on the proposal for Environment Canterbury and release of the discussion document for public consultation.

### Recommendations

61. The Minister for the Environment and the Associate Minister of Local Government recommend that the Committee:
1. **Note** that on 24 February 2014 Cabinet approved the terms of reference for the statutory review of Environment Canterbury;
  2. **Note** that the review of Environment Canterbury aims to ensure that Environment Canterbury has a governance structure that is able to continue the progress made by the Commissioners that were appointed in 2010, and that the Council is governed by people with the skills and expertise to meet ongoing and future challenges in freshwater management in Canterbury;
  3. **Approve** the content of the attached discussion document;
  4. **Authorise** the responsible Ministers to make minor editorial changes to the discussion document prior to its public release;
  5. **Agree** to the immediate release of the discussion document for public consultation, which will last approximately six weeks; and
  6. **Note** that the responsible Ministers will return to Cabinet in May 2015 with a detailed recommendation for Environment Canterbury's future governance arrangements.

Hon Dr Nick Smith  
Minister for the Environment

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Hon Louise Upston  
Associate Minister of Local Government

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