



Investigation of Environment Canterbury

Date:	17 September 2009	MfE Priority:	Urgent
Security Level:	IN CONFIDENCE	Number of Attachments:	3
		MfE Ref No:	09-B-02799

Action Sought

	Action Sought	Deadline
Minister for the Environment Hon Dr Nick Smith	<p>Note that you have agreed to investigate Environment Canterbury under section 24A of the RMA.</p> <p>Agree that officials should scope out the possibility of a wider joint investigation of Environment Canterbury under both the LGA and the RMA.</p> <p>Note the timelines associated with the outlined process.</p> <p>Refer this to the Minister for Local Government and Regulatory Reform for information.</p>	You are announcing the review of Environment Canterbury's resource consent processing performance on 22 September

Ministry for the Environment Contacts

Name	Position	Telephone		1st Contact
		(cell)	(work)	
Amy-Jane Millward	Senior Analyst, Monitoring, Compliance and Review		439 7471	✓
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Deputy Secretary- Approval to send to Minister's office

Deputy Secretary	Date
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Executive Summary

Following the results of the 2007/2008 RMA survey you agreed to investigate Environment Canterbury's resource consent processing performance under section 24A of the Resource Management Act. Further to this, you asked officials to scope out the possibility of carrying out a joint investigation under both the Local Government Act 2002 (LGA) and the Resource Management Act 1991 with the Department of Internal Affairs.

Officials identified that due to the nature of the process set out in the LGA a joint investigation is unlikely to commence before early 2010. We recommend proceeding with an investigation of resource consent processing as per previous briefings to your office and following up with a wider joint investigation of Environment Canterbury under both the RMA and the LGA in early 2010.

Recommended Action

We recommend that you:

- (a) **Note** that you have agreed to investigate the consent processing performance of Environment Canterbury under section 24A of the RMA.
- (b) **Agree** that officials should scope out the possibility of a wider joint investigation of Environment Canterbury under both the RMA and the LGA. **Yes / No**
- (c) **Note** the timelines associated with the outlined process.
- (d) **Refer** this to the Minister for Local Government and Regulatory Reform **Yes / No** for information.

Sue Powell
Deputy Secretary
Programmes

Date

Hon Dr Nick Smith
Minister for the Environment

Date

Purpose of Report

1. You have already decided to investigate the performance of Environment Canterbury. The purpose of this briefing is to outline potential scope for a wider review of Environment Canterbury (ECan). This includes scoping out a review of policy and confirming timelines and resources associated with the review.

Background:

2. To date, you have agreed to investigate Environment Canterbury's resource consent processing performance under section 24A of the Resource Management Act 1991 (RMA); due to their particularly poor results in the RMA survey of local authorities 2007/2008.
3. In addition to resource consent processing issues Environment Canterbury has a history of struggling to adequately address freshwater management and does not have an operational planning framework currently in place. Further information on this is attached in **Appendix 1**.
4. Water is a very complex and controversial issue in Canterbury. ECan has been widely criticised for its management of water resources. The Canterbury Mayoral Forum released a Draft Water Management Strategy for public consultation on 3 September 2009. Submissions close on 2 October 2009.
5. You have since requested officials scope out what a wider review of ECan may look like, including options for reviewing policy. You have also requested information on timelines and resourcing.
6. Previous Ministers have also considered investigating ECan.

Joint investigation under both the LGA and the RMA

7. The DIA provided a briefing to the Hon Minister Hide on Monday 14 September outlining options and the process for Ministerial intervention in the operation of a local authority under the Local Government Act 2002. A copy of this briefing is attached in **Appendix 2**.
8. The DIA briefing recommends that if Minister Hide chooses to pursue the appointment of a review authority, he should take an initial paper to Cabinet outlining his intention and the review process. This would be followed by a further Cabinet paper seeking agreement.
9. DIA officials would take the lead on papers and material for a joint RMA/LGA investigation. Ministry for the Environment officials support this approach as the LGA has a more prescriptive process for intervention than the RMA, and recognise the importance of ensuring procedural requirements are met.

Resourcing and implications of a joint investigation

10. A joint investigation with the DIA would be comprehensive. We envisage the Ministry would engage external experts to carry out the on-site part of the joint investigation and follow up reporting. It is estimated two external consultants would be needed to carry out the RMA part of the review; one with practical experience in sound practices

and the other a RMA specialist. We expect the outsourcing of this work would be in the vicinity of \$100 000. In-house project planning, preparation, administration and project management work would require a minimum of 2 FTE's for a period of 6 months.

11. Appointment a review authority and the statutory requirement of 20 working days for comments means that a joint investigation would probably not commence until early 2010.

Advantages of a joint investigation under both the LGA and the RMA

12. There is merit in having a coordinated investigation. MfE is of the opinion that there is a combination of governance, policy and implementation issues that are contributing to current issues in ECan. A broader joint investigation will allow those issues to be canvassed.
13. In terms of recent progress on water issues, the Canterbury Mayoral Forum has released a Draft Water Management Strategy for consultation. The draft proposes changes to the water management framework in Canterbury that would have implications across the two statutes.
14. In general terms, management of water quality and quantity is the responsibility of the regional councils under the RMA. Unusually, this strategy proposes new governance arrangements to improve water management within the region and therefore is largely outside of the framework of the RMA. For this reason it makes sense to look at ECan issues using the LGA and the RMA in tandem.
15. A joint investigation will enable a holistic analysis of the problems thereby enabling identification of robust options for addressing the problems. It will also present central government as being 'joined up' and is likely to have more cross-governmental support.
16. A joint investigation may also mean sharing administrative tasks and resources which may be more efficient. Project planning will be able to be carried out concurrently. This will give departments a chance to make sure relevant cross-overs are identified.

Possible risks of a joint investigation under both the LGA and the RMA

17. The main disadvantage of a completely joint approach is timing. It will require possibly two Cabinet papers and an alignment of terms of references proposed by both departments prior to commencing the LGA review authority process. We anticipate that a joint investigation would not commence until **early 2010**. We have some concerns over results of the 2007/2008 RMA survey becoming outdated if we take no action before next year. However, in the following section of this note we recommend a two stage approach which would mean action on investigating resource consent processing in October 2009 preceding a wider investigation in 2010.
18. Strong coordination across MfE and the DIA would be necessary to manage a joint investigation. This would also include managing of expectations and outcomes. It is possible that departments may want to take different approaches to following up with information obtained and departments may be seeking different outcomes. Ministry for the Environment would be looking to identify problems with a view to assisting solutions wherever possible.

19. A decision to appoint a review authority can be legally challenged. A successful challenge would result in going back to 'square one' for a wider investigation under the RMA. This risk can be mitigated by investigating resource consent processing first. This would mean the Ministry has still achieved some progress, even if the RMA/LGA joint investigation does not go ahead. We would also still have the option of having a wider investigation into ECan's functions, powers and duties under just s24A the RMA (however, findings would not be as comprehensive or robust as a joint approach).

Recommendation: A two stage process for investigation

20. We recommend a **two stage** process for investigation of Environment Canterbury.
21. **Stage one** would be proceeding with the investigation of resource consent processing under s24A of the RMA as outlined in 09-B-02512. This investigation could commence in mid-October. It would be straightforward and evidence-based as per the existing terms of reference. A report on resource consent processing in ECan would be ready by the end of the year. We expect this will cost approximately \$60,000 for external consultants and would use two internal FTE resources for a period of six weeks. It may be that some findings from this investigation can feed into a wider, joint investigation with the DIA.
22. **Stage two** would be addressing broader policy and governance issues, potentially through a joint investigation with the DIA.

Resourcing and implications of a two stage investigation

23. We envisage the Ministry would engage external experts to carry out the investigatory work for both possible investigations. Two external consultants and two FTE's would be needed per stage. We expect the outsourcing of **all** investigation work to have a total cost of **\$160 000**.
24. As outlined above, an investigation of resource consent processing can commence in mid October 2009. We estimate stage two (the joint RMA/LGA investigation) will commence early 2010.

Media attention

25. Two recent media articles are particularly relevant to this briefing (attached in **Appendix 3**). On 9 September the Timaru Herald reported that "a spokesman for Mr Hide told the Herald that ECan's current state had not been flagged as one that needed intervention from central government".
26. On 15 September the Otago Daily Times reported that ECan have achieved 80% compliance with statutory timeframes with consent applications *received and processed* over the past 12 months. These statistics do not include those applications which were received prior to the 12 month period and for which decisions were issued within the 12 months. The article also notes that ECan still has a significant backlog of about 1500 consents.

Appendix 1: Further information on Policy matters

Canterbury has over 8,500 existing consents granted in nine over-allocated 'red zone' catchments. A significant number of new water take consent applications have been lodged in already over allocated or at risk of over allocation catchments.

The availability, planning for, management and use of water in the Canterbury region is and continues to be a source of concern to many groups both inside and outside the region. The key issues were highlighted in the Canterbury Strategic Water Study 2002 (prepared for the Ministry of Agriculture and Forestry, Environment Canterbury and the Ministry for the Environment) and in the recent Environment NZ 2007 report. This concern is also evident from the principal regional resource management agency, Environment Canterbury.

The Canterbury Water Management Strategy was released on 3 September 2009 with submissions closing 2 October 2009. The process has been supported by government, particularly MAF.

Environment Canterbury's ability to respond to freshwater management issues has been inadequate. The problems and challenges facing Environment Canterbury are evidenced in the following way:

- There is only patchy coverage in terms of plans in place in Canterbury under the Resource Management Act 1991 (RMA).
- The absence of agreed strategic catchment planning (though Environment Canterbury has a four-stage process they feel achieves this).
- Allocation of groundwater not being undertaken through operative statutory planning mechanisms, resulting in possibly unnecessary litigation.
- Long timeframes for processing resource consents particularly, but not exclusively, on significant projects. Concerns of recreation and conservation interests over the adequacy of river flows have resulted in a nationally unrepresentative number of Water Conservation Order applications / inquiries. This instrument is being used the public as a proxy for planning controls.

ECan has attempted to address the problems of water allocation through a Variation to its proposed Natural Resources Regional Plan.

In April 2008 Ministry for the Environment officials advised Ministers Mallard and Anderton of their options to inquire into and make recommendations on allocation of Canterbury's freshwater resources. A Commission of Inquiry was proposed for the future planning, management and allocation of freshwater resources. This is still an option. A COI is estimated to cost in the vicinity of \$400 000 - \$500 000.

The Ministry of Agriculture and Forestry asserted that a Commission of Inquiry is adversarial and would generate unnecessary contention. They state that "a formal inquiry would, inevitably, become adversarial with stakeholders seeking to maximise their own strategic advantage". Its preferred option at the time was a joint Ministerial/Environment Canterbury appointed "review panel" which would provide advice to Ministers and Environment Canterbury.

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: Powers and Process for Ministerial Intervention in a local authority under the Local Government Act 2002

Date: 14 September 2009

Key issues

This briefing outlines options and process for Ministerial intervention in the operation of a local authority under the Local Government Act 2002.

Action sought

Note the contents of this briefing.

Timeframe

At your convenience

Contact for telephone discussion (if required)

Name	Position	Telephone		Suggested first contact
		direct line	after hours	
Marilyn Little	Director Policy	(04) 494 0589	021 228 8118	✓
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Return to: Danny Shaw
DMS file reference: PLG-2500-3_4 1833138DA
Ministerial database reference: LGC200903024

Purpose of briefing

1. This briefing outlines options and process for Ministerial intervention in the operation of a local authority under the Local Government Act 2002 (LGA02) and for a combined intervention with the Resource Management Act 1991 (RMA).

Background information

2. On 9 September 2009, you met with the Associate Minister of Local Government and Department of Internal Affairs officials to discuss options for responding to concerns raised by Canterbury mayors about the operation of the Canterbury Regional Council (known as Environment Canterbury). Issues for the region include its RMA consenting performance and the upcoming vote of no confidence in the regional council chair.

Options for Ministerial intervention

3. The LGA02 provides the options for intervention outlined below.

Institute a review by the Local Government Commission

4. You may require the Local Government Commission to consider, report on, and make recommendations to you on matters relating to a local authority. The local authority is required to respond to the Commission's recommendations. If, following the review, you consider that the local authority continues to perform inadequately, you could appoint a Commissioner to replace the local authority, as outlined below.

Appoint a Commissioner or person to act on behalf of local authority

5. You may appoint a Commissioner to perform and exercise the powers and duties of a local authority or call a general election of the local authority. A Commissioner can only be appointed if:
 - the local authority is unable to perform and exercise its duties and powers because it cannot hold meetings due to the lack of a quorum; or
 - the local authority requests the appointment of a Commissioner to perform and exercise its duties and powers.
6. This provision of the LGA02 has not been used. The equivalent provisions under earlier legislation were used in 1999/2000. In that case the Rodney District Council requested the appointment of a Commissioner because it considered it was at risk of not meeting its statutory obligations.
7. You may appoint a person to act on behalf of a local authority, or initiate a review. The local authority must be refusing to perform and exercise its duties and powers, and thereby impairing good local government or endangering public health or safety.

Appoint a review authority

8. Under the as yet unused section 254 of the LGA02, you may appoint a review authority to review, consider and report on the performance of a local authority, either generally or in respect of any particular matter. There is a high threshold for the appointment of a review authority, however, the grounds are less specific than for the appointment of a Commissioner. A review authority can be appointed if:
 - there has been a significant or persistent failure by the local authority to meet its statutory obligations;

- there has been significant and identifiable mismanagement of the resources of the local authority; or
 - there is a significant and identifiable deficiency in the management or decision-making processes of the local authority.
9. We understand that you favour using this option. Part 1 of Schedule 15 of the LGA02 sets out the statutory process for appointing a review authority, which is outlined below.

Process for appointing a review authority

Consultation

10. Before appointing a review authority, you are required to allow 20 working days for comment from the local authority in question, Local Government New Zealand (LGNZ), and the Society of Local Government Managers (SOLGM).
11. You must also consult with any relevant Ministers and/or the Auditor-General if there are specific matters to be reviewed that are likely to concern them.
12. The local authority may comment on the need for the review, matters proposed to be reviewed, and any steps it is taking, or intending to take, that may remove the need for the review. After considering comments, you are required to give the consulted parties written notice of your final decision.

Appointment of review authority

13. A review authority may consist of one or more of the following: the Secretary for Local Government; Local Government Commissioners; the nominees of LGNZ or SOLGM; or persons with relevant expertise.
14. Notice of the appointment of a review authority and its report deadline must be published in the *Gazette*. While each case will need to be considered on its particular circumstances, we would generally consider two months to be a reasonable minimum timeframe for a review authority to investigate and report on issues. You must provide for the appointees' remuneration as you think fit, and any reasonable expenses incurred in the course of a review.

Report of review authority

15. A report by the review authority may contain any recommendations that it thinks fit. You may, by written public notice, require the local authority to implement any of the recommendations in the report. You must first obtain the local authority's views on the practicability of implementing the recommendations and on the time within which they may be implemented.
16. If you consider that any of the report's recommendations have not been satisfactorily implemented, you may appoint a person to assist the local authority or take over its functions to ensure they are implemented. You may, on the recommendation of the review authority, appoint a Commissioner to act in place of the local authority, and/or call a general election of the local authority.

Comment

17. The Department has not assessed whether Environment Canterbury's performance is poor enough to meet the statutory grounds for intervention. We consider that we need to do so before you make any decisions on intervention. A decision to appoint a review authority can be legally challenged by the local authority.

18. If intervention in the form of a review authority is considered for Environment Canterbury, there may be similar requests for Ministerial intervention in other local authorities who are perceived to be performing poorly.

Consideration of combined review of LGA02 and Resource Management Act functions

19. A combined review under the LGA02 and RMA is possible. Following the 2007/2008 survey of local authority consent processing performance, the Minister for the Environment agreed to exercise his powers under section 24A of the RMA to investigate Environment Canterbury's resource consent processing functions. This investigation is on hold so that the option of a combined review can be considered.

Resources and next steps

20. The Department would need to divert staff and resources to support the appointment and activities of a review authority, with subsequent impacts on the current work programme. As the review authority provisions have not been used before, there is no existing operational and process guidance, and this would have to be developed. It is not clear at this stage what level of resources would be required.
21. If you ultimately wish to pursue appointing a review authority, the Department can provide advice on the grounds for review, the scope of the review, the consultation process, and detailed advice on establishing a review authority. We would work with the Ministry for the Environment to consider a process for a combined review under the LGA02 and RMA.
22. If you proceed with the review authority option, we recommend that you take an initial paper to Cabinet that outlines your intention and the review process and then a further Cabinet paper, seeking agreement, should you decide to proceed. Depending on the outcomes, you may also want to seek Cabinet decisions on whether to require the local authority to comply with the review authority's decisions.

Recommendations

23. The recommendations are that you:

- a) **note** that the Department has not yet assessed whether Environment Canterbury's performance meets the statutory grounds for an intervention, such as appointing a review authority;
- b) **note** that a combined review of Environment Canterbury under both the Local Government Act 2002 and the Resource Management Act 1991 is an option;
- c) **direct** the Department to investigate whether Environment Canterbury's performance is poor enough to meet the statutory grounds for intervention; and
- d) **note** that the Department would need to divert staff and resources to support the appointment and activities of a review authority, with subsequent impact on the current work programme.

Yes/No

Anne Carter
Deputy Secretary
Local Government & Community

**Hon Rodney Hide
Minister of Local Government**

/ /2009

Appendix 3: Recent media articles

Article 1: 9/9/09 Timaru Herald

Local government minister Rodney Hide will not intervene in Environment Canterbury, despite its recent problems.

ECan's September 24 council meeting will decide the fate of chairman Sir Kerry Burke, after he failed to get a motion of no-confidence off the table at a council meeting in Timaru.

The motion, which Sir Kerry lost by six votes to eight, prompted Jo Kane to stand down as deputy chairwoman, although she has indicated she would run for chairmanship if she has her fellow councillors' support.

However, a spokesman for Mr Hide told the Herald that ECan's current state had not been flagged as one that needed intervention from central government.

He said although he was aware of ECan's predicament, he felt it did not warrant their involvement at this stage.

Environment Minister Nick Smith had threatened intervention in ECan, but explained the Herald his grievances were over their slow processing of resource consents. Dr Smith would not comment on the regional council's political situation.

Internal affairs spokesman Tony Wallace said the local government minister may appoint a commissioner to perform local authorities' duties or call a council general election if there had been significant and identifiable mismanagement of the resources of the local authority, or if it was unable to perform and exercise its duties.

"It takes a pretty serious trigger to qualify for central government intervention and it hasn't been reached yet," Mr Wallace said. "As of the moment, a motion of no-confidence (in the chairman) is not sufficient for intervention."

He said the last time the government intervened in a local authority was in 2000 after the Rodney District Council proved unable to function.

Article 2: 15/9/09 Otago Daily Times

Published on Otago Daily Times Online (<http://www.odt.co.nz>)

ECan faster at consent processing

By David Bruce

Created 15/09/2009 - 05:00

Environment Canterbury has picked up the pace processing resource consents after finishing bottom of a Ministry for the Environment list in June and coming under fire about the time it was taking.

Of the consent applications decided over the past 12 months, nearly 80% met the statutory processing time frames, Environment Canterbury (ECan) acting chief executive Ken Taylor said yesterday.

That compares with just 29% in the ministry report covering the 2007-08 financial year.

A year ago, ECan thoroughly reviewed its consent processing procedures.

"It's great to see the improvements we made, and are continuing to make, are paying off," he said.

Yesterday's figures related to applications for consents receipted in the past 12 months.

ECan still had "a significant backlog" of about 1500 consent applications to work through.

Most of those had been notified.

"Every one we complete is a step in the right direction, but it does affect our timeframe compliance statistics because they have all been in the system for a long time," Mr Taylor said.

About 30% of the backlog consents were on hold with the agreement of the applicant.

ECan processes more than double the number of consents each year than any other regional council - about 3000.

"This has put real pressure on processing in recent years and we have struggled to keep up," he said.

It was not only the volume, but the fact anything to do with water tended to be complex and took more time because of the potential environmental impact and effect on people.

Between 2002 and 2008, consent applications increased from just over 2000 to 3763 a year, the largest increase in New Zealand, reflecting the demand for water in Canterbury.

Land consented for irrigation in the region increased at an average of 11% a year.

At the same time, groundwater zones in Canterbury were beginning to show the effects of dry summers and a growing number of water users sharing a scarcer resource.

Source URL (retrieved on 17/09/2009 - 12:37): <http://www.odt.co.nz/the-regions/canterbury/74016/ecan-faster-consent-processing>