



Further options for investigation of Environment Canterbury

Date:	19 October 2009	MfE Priority:	Urgent
Security Level:		Number of Attachments:	One
		MfE Ref No:	09-B-02965

Action Sought

	Action Sought	Deadline
Minister for the Environment Hon Dr Nick Smith	Note that a joint investigation of Environment Canterbury will be undertaken as per contents of this Briefing; and Agree to the Terms of Reference attached in Appendix 1 .	Meeting between Minister's Smith and Hide on Tuesday 20 October 2009.

Ministry for the Environment Contacts

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Director- Approval to send to Minister's office

Director	Date
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Executive Summary

Officials from Ministry for the Environment and the Department of Internal Affairs have developed a joint terms of reference for the performance review of Environment Canterbury (ECan). Following a meeting with ECan's Chair (Alec Neill) the investigation will be outsourced to independent contractors. It will include a statutory investigation (under section 24A of the Resource Management Act) and a non statutory assessment (for consideration of non RMA issues). On site work will commence in November with a report back to Ministers (complete with recommendations) expected to be ready in January 2010.

Recommended Action

We recommend that you:

- (a) **Note** that a joint investigation of Environment Canterbury will be undertaken as per the contents of this Briefing Note; and
- (b) **Agree** to the Terms of Reference attached in **Appendix 1**.

Yes/No

Kevin Currie
Director, Environmental Protection

Date

Hon Dr Nick Smith
Minister for the Environment

Date

Purpose

1. This briefing was jointly prepared with the Department of Internal Affairs. Minister Hide has received the same information. It outlines the joint approach to investigating issues with Environment Canterbury (ECan), and considers the nature and process of a statutory investigation led by Ministry for the Environment (MfE) in conjunction with a non statutory review led by the Department of Internal Affairs (DIA).

Background

2. Following the results of the 2007/2008 RMA Survey of Local Authorities the Minister for the Environment agreed to an investigation of resource consent processing practices in the Far North District Council and ECan under section 24A of the Resource Management Act 1991 (RMA). Dr Smith also indicated a desire to undertake a broader section 24A investigation (including policy) of ECan.
3. On 18 September 2009, the Canterbury Mayors (led by Bob Parker) wrote a letter to Minister Hide outlining a number of serious concerns about ECan. Issues included concerns with resource consent processing functions, development and regulation of plans and policies, administration of water allocation and monitoring, lack of consultation, poor decision-making and leadership, and a generally inflexible and confrontational approach to issues. The Mayors did not ask for any specific action.
4. DIA began an initial investigation into whether the Mayor's concerns, and any other issues relating to ECan, meet the threshold for initiating the statutory process for appointing a review authority under section 254 of the Local Government Act 2002 (LGA02).
5. The Minister for Local Government has decided, at this stage, not to appoint a review authority or follow any statutory process for intervention.
6. The Minister for Local Government and the Minister for the Environment met last week and agreed to jointly investigate ECan. This will involve a section 24A investigation by MfE in conjunction with a non statutory review by the DIA. The non statutory review is to gather further information to determine whether ECan meet the threshold for statutory intervention.

Approach to performance review of Environment Canterbury

7. It is proposed that the joint performance review of ECan will involve a statutory investigation of ECan's resource consent processing functions and other related responsibilities under the RMA and a non-statutory assessment to look at wider issues under the LGA02 or other statutes.
8. A joint terms of reference (TOR) that includes reviewing resource consent processing, ECan's performance under the RMA and a non statutory assessment is attached in **Appendix 1**. These TOR were developed by MfE and DIA. The concept of the investigation has been discussed with the Treasury and the Ministry of Agriculture and Forestry.
9. Officials understand that both Ministers will meet with the chair of ECan (Alec Neill) and the Chief Executive (Bryan Jenkins) to discuss (TOR) prior to the investigation commencing.
10. On site work for the investigation is planned to take place over a three-week period in November 2009 with a report being drafted before the end of the year. The final report back to Ministers will be in January 2010. At this stage, it is expected that findings and recommendations will be presented in a combined report.

Statutory RMA investigation

11. The section 24A part of the review will be led by MfE. MfE expects to hire one or two external investigators. The skill set required is primarily skills and experience in resource consent processing and RMA matters and experience in working with local government. Experience in evaluation, performance assessment and organisational improvement is also vital. The expected budget cost for this part of the investigation is \$35 000.

Non-statutory assessment of wider issues

12. The non-statutory assessment of ECan will be led by DIA and will consider if there are wider governance, policy or implementation issues with ECan that may be contributing to overall poor performance. DIA expects to hire one external contractor to collect evidence at an expected rate of \$35,000. This person would ideally be one of the investigators for the RMA investigation, with qualifications, skills and experience in working with local government.
13. The on-site part of this assessment will take place concurrently with the RMA investigation in November 2009. This assessment could add to the findings of the RMA investigation by making informal recommendations about ECan to Ministers on wider issues falling outside the scope of the RMA investigation.

Timeline for investigation

Task or activity	MfE	DIA
Terms of Reference agreed by officials and Ministers	23 October	23 October
Terms of Reference discussed with ECan	30 October	30 October
Selection and contracting of Investigators	6 November	6 November
Finalise material to be pre-circulated to ECan	11 November	11 November
Contact relevant parties at ECan to talk through process	12 November	12 November
On site work to take place	16 Nov-4 Dec	23-Nov-4 Dec
Interim work reports submitted (weekly)	16-Nov-4 Dec	23-Nov-4 Dec
Draft reports to Ministry/Departments	11 December	11 December
Report reviewed by MfE/DIA to contractor for finalising	18 December	18 December
Report to ECan for factual review	18 December	18 December
Final report provided to Ministers	Mid January	Mid January
Report discussed with ECan and released	February	Early February

Follow up from the investigation

14. Under section 24A of the RMA, this investigation may result in recommendations being made to Ministers about ECan on any of ECan's functions, powers or duties under the RMA.
15. If there is sufficient evidence to suggest that there are wider governance, policy or implementation issues with ECan that are resulting in significant and sustained poor performance, statutory intervention can be considered under either the RMA or the LGA. Possible options include:
 - initiating the statutory process for appointing a review authority under the LGA 2002; or
 - appointing one or more people to exercise or perform any functions, powers or duties in place of the local authority (section 25(1) of the RMA).

16. If ECan fails to act appropriately in response to any of the investigation's recommendations, the Minister for the Environment may appoint persons to perform any of ECan's RMA functions. The Minister for the Environment may also direct ECan to prepare or change a regional plan in response to the investigation's recommendations. The steps to follow this are set out in section 25 of the RMA.
17. Following the investigation there may be ongoing monitoring or support provided for ECan to support implementation of recommendations to ensure improvement of performance.

Draft TOR for a Review of Environment Canterbury's Performance

1. Purpose of Review

- 1.1. This review has two components. The first component is a statutory investigation under section 24A of the Resource Management Act 1991 (RMA) that seeks to identify what has led to Environment Canterbury's poor performance record over the last year in resource consent processing. It also aims to identify any broader planning, policy and governance matters that may have contributed to the poor performance record of Environment Canterbury during the period from 2007/2008 survey period in meeting statutory requirements under the RMA.
- 1.2. The second component is a non-statutory assessment of whether there are wider issues with ECan's governance, policies or implementation that are contributing to poor performance under the Local Government Act 2002 (LGA02) or other statutes.

2. Scope of the Review

Investigation of Environment Canterbury's performance under the RMA

2.1. The investigation will cover the following factors :

- Applications : guidance for applicants and use of section 92
- Analysis of consent processing systems and practices
- Council staffing and use of resources
- Administrative systems and tools
- Internal audits and monitoring
- Customer relationships and feedback.
- Other contextual matters including:
 - The approach of the council to managing significant and/or cross boundary resource management issues, including resource allocation
 - Whether the current planning framework is capable of delivering resource management in Canterbury in an effective and efficient manner.

Assessment of Environment Canterbury's wider performance under the LGA02 or other legislation

- The approach of the council to meeting its legal obligations.
- Adequacy of the council's management and decision-making processes.
- Financial management

3. Methodology for Review

Investigation of Environment Canterbury's performance under the RMA

- 3.1. The investigation will be undertaken by two external investigators. The skill set required is primarily skills and experience in resource consent processing and RMA matters and experience in working with local government. Experience in evaluation, performance assessment and organisational improvement is also vital.

Assessment of Environment Canterbury's wider performance under the LGA02 or other legislation

- 3.2. The assessment will be carried out by one external consultant. This person will have qualifications, skills and experience in working with local government.

On site work

- 3.3. The team of consultants will spend up to three weeks with Environment Canterbury undertaking discussion with council staff and assessing databases, file information and council administrative systems.
- 3.4. Discussions with council staff will be based around a set of interview questions focussed around council practices and procedures. These questions, along with requests for the documents and files required for the performance review, will be pre-circulated to Environment Canterbury prior to investigators arriving on site.
- 3.5. The two components will be undertaken together as far as practical.
- 3.6. The following council staff will need to be available on request during the performance review period:
 - Chief Executive
 - Investigation and Monitoring Director
 - Regulation Director
 - Resource Planning and Consents Director
 - Operations Director
 - Managers and consenting and compliance staff under the above Directors
 - Planning Administrators
 - Customer Services staff (if applicable).

4. Reporting

- 4.1. The findings (including any recommendations) from the performance review will form the basis of a draft report to be discussed with Environment Canterbury before being finalised and presented to the Minister for the Environment and the Minister of Local Government. A copy of each final report will be provided to Environment Canterbury.
- 4.2. The RMA investigation may result in recommendations being made to Environment Canterbury on ways to improve its performance under section 24A(b) of the Resource Management Act.
- 4.3. The non-statutory assessment would result in recommendations being made to Environment Canterbury on ways to improve its governance, policy or implementation processes under the Local Government Act or any other enactment.
- 4.4. Either set of recommendations may include ongoing monitoring.
- 4.5. In response to the review's report, the Minister for the Environment and the Minister of Local Government may consider whether there is a case for further intervention under the RMA or the LGA02, if necessary.

5. Timeframe for the review

- 5.1. The review is planned to take place over a three week period in November 2009 with a report being drafted before the end of the year.
- 5.2. Any final recommendations on ways to improve council performance will be reported to the councils following officials briefing the Ministers on the final report. This is expected to be in early 2010.