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Office of the Minister for the Environment

Cabinet

Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill: Approval for Introduction

Proposal

1. I propose that Cabinet approve the “Environment Canterbury Temporary Commissioners and Improved Water Management Bill” (“the Bill”) for introduction into Parliament on 30 March 2010. I recommend that the Bill should not be referred to a select committee and that it should complete its passage through Parliament by 1 April 2010.
2. This is the second of three papers related to the Government’s proposed response to the Review of Environment Canterbury (“ECan”). The first, “Response to Review of Environment Canterbury”, accompanies this paper to Cabinet and seeks policy approval of the response. The third paper seeks noting of the commissioners to be appointed, and is to be considered at Cabinet on 12 April 2010.

Policy

3. The Bill will implement the policy intervention agreed in the accompanying paper “Response to Review of Environment Canterbury”. The intervention is detailed in that accompanying paper and consists of the following two key elements:
 - a. providing for the replacement of the elected members of ECan with commissioners who will act as ECan’s governing body until new elected members take office following the election scheduled for late 2013, or sooner if the commissioners are able to address the ECan-related issues before this time
 - b. providing the commissioners with the powers available to regional councils under existing statutes – and additional powers – to enable them to rapidly address issues relevant to the efficient, effective and sustainable management of fresh water in the Canterbury region.
4. The Bill is required because the necessary actions to address ECan related issues cannot be undertaken under existing statutes.
5. There are no outstanding issues surrounding the Bill.

Contentious issues

6. The Bill will be contentious. Particular concerns are likely to arise in relation to the following elements:
 - a. deferment of local body elections for ECan in 2010
 - b. Government-appointed commissioners becoming the governing body of ECan instead of elected councillors

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- c. limited appeal rights on the commissioners' decisions on the Resource Management Act 1991 (RMA) planning framework and on the commissioners' recommendations on water conservation orders
 - d. changes to decision making criteria for the RMA planning framework and for water conservation orders
 - e. applications for new water conservation orders in Canterbury or applications to amend or revoke existing water conservation orders in Canterbury being considered by commissioners rather than special tribunals
 - f. the Environment Court process under way on the proposed Water Conservation Order for the Hurunui River being stopped and the proposal being considered instead by commissioners
 - g. the ability for the commissioners to put targeted moratoria in place to prevent the processing and granting of consents for access to water in specific areas in order to safeguard resources in catchments where the water resources are either fully allocated or under intense and increasing demand.
7. The major contentious issues, and rationale for proceeding with them, are discussed in detail in the accompanying Cabinet paper "Response to Review of Environment Canterbury". Specific issues, risks relating to them and how these risks are proposed to be mitigated (where possible) are discussed in the "Risks and transitional/implementation issues" section of the accompanying Cabinet paper.

Regulatory impact analysis

8. A regulatory impact statement was prepared in accordance with the necessary requirements, and is submitted with the accompanying policy paper, "Response to Review of Environment Canterbury".

Compliance

9. The "Environment Canterbury Temporary Commissioners and Improved Water Management Bill" complies with:
- a. the New Zealand Bill of Rights Act 1990
 - b. the Human Rights Act 1993
 - c. the principles of the Treaty of Waitangi
 - d. the principles and guidelines set out in the Privacy Act 1993
 - e. relevant international standards and obligations.
10. The Ministry of Justice has advised that the Bill appears to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.
11. As resource management issues have Treaty of Waitangi implications, consultation with Māori is an important aspect of compliance with Treaty principles when proposing changes to resource management. In this instance consultation with Māori has been limited by time constraints. Targeted discussions with Ngai Tahu have occurred, with valuable feedback received, which has informed the Bill.

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12. The Legislative Advisory Committee (LAC) Guidelines on the process and content of legislation have been considered. The policy objectives have been defined and options other than legislation have been considered in the regulatory impact statement.
13. The planned ECan election in October 2010 would be deferred until such time as the commissioners have completed their task. Under any circumstances the next regional council elections in Canterbury will take place no later than the elections scheduled for late 2013. The explicit intent is for the commissioners to withdraw and to be replaced by elected representatives as soon as their task is achieved and the present systemic issues are resolved. This is a major intervention that significantly affects the ability of Canterbury residents to participate in regional council resource management decision-making. However, this temporary suspension of participation rights is considered necessary to address pressing economic, environmental social and cultural issues and to safeguard the sustainability and future well-being of the Canterbury region.
14. Rights of public participation have been constrained in order to speed the completion of an operative planning framework for the management of natural resources in the region. Rights of appeal on points of law to the High Court have been retained although rights to appeal to the Environment Court on the merits of the commissioners' decisions on plans or policy statements and on commissioners' recommendations on water conservation orders have been temporarily removed.
15. There are changes surrounding decision making powers which have relevance to the LAC Guidelines, and are explained below under "Allocation of decision making powers".

Consultation

16. The Department of Internal Affairs and Ministry of Agriculture and Forestry were involved in preparing the legislation. The Department of Internal Affairs, Ministry of Agriculture and Forestry, Ministry of Justice, and the Treasury were consulted on this proposal. The State Services Commission was provided with a copy of the paper for information and the Department of the Prime Minister and Cabinet was informed.
17. The following government departments were consulted during the preparation of the policy paper: the Department of Internal Affairs, Ministry of Agriculture and Forestry, State Services Commission, the Treasury, Ministry of Economic Development, Department of Conservation, Ministry of Justice, Ministry of Transport and Te Puni Kokiri. The Department of the Prime Minister and Cabinet was informed.
18. Although time constraints have limited opportunities for consultation both within and outside of Government, both I and the Minister of Local Government have met with ECan, Ngai Tahu, Mayors and stakeholders across the Canterbury region. During these meetings we discussed the nature of the problems with ECan and the recommendations of the Review Group. I also presented and sought feedback on four general options for a Government response. Feedback received during these meetings has informed the development of the policy proposal and the Bill.
19. Detail of consultation with government departments and of consultation with Ngai Tahu and stakeholders at various stages in the process leading to this proposal is provided in the accompanying policy paper.

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Binding on the Crown

20. The Bill will be binding on the Crown.
21. The Bill requires the Minister for the Environment and Minister of Local Government to:
 - a. determine the replacement day of elected members and give notice of this
 - b. appoint four to seven commissioners with specified collective knowledge and expertise and notify these appointments
 - c. appoint from among the commissioners a chairperson and a deputy chairperson
 - d. issue Terms of Reference for commissioners and give notice of these.
22. The Bill requires the Minister for the Environment to:
 - a. consider any requests for targeted moratoria from commissioners, and approve these as appropriate
 - b. direct applications for new water conservation orders in Canterbury or applications to alter or revoke existing water conservation orders in Canterbury to the commissioners rather than a Special Tribunal – the Minister for the Environment will retain the role as final decision maker
 - c. refer the application for the proposed Water Conservation Order for the Hurunui River currently before the Environment Court to the commissioners.

Creating new agencies or amending law relating to existing agencies.

23. This Bill will not create new agencies.
24. The Local Government Official Information and Meetings Act 1987 will apply to commissioners just as it currently does to Councillors. Commissioners will be required to comply with all statutes imposing obligations, duties or functions on ECan as if they were elected Councillors.

Allocation of decision making powers

25. The Bill proposes a number of changes to the current decision making powers of government agencies and the courts.
26. Decisions normally made by the elected councillors of ECan will instead be made by the Government-appointed commissioners for the duration of their appointments. This is a critical component of the overall policy intervention.
27. During the period of the intervention, applications to amend existing water conservation orders and to make new water conservation orders will be undertaken by the Government-appointed commissioners (or their delegates) rather than special tribunals. The proposed Hurunui Water Conservation Order, currently before the Environment Court, will be considered instead by the Government-appointed commissioners.

Associated regulations

28. There are no associated regulations required.

Deemed regulations

29. There are no deemed regulations proposed.

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Definition of Minister/department

30. The Bill defines “Minister” as the Minister for the Environment. This specific definition is required to be consistent with the Resource Management Act 1991, where “Minister” is defined as the Minister for the Environment.

Commencement of legislation

31. The Bill will come into force the day after Royal Assent.

Parliamentary stages

32. ECan, Ngai Tahu and the region’s territorial authorities have requested a rapid response to the review of ECan’s performance. It is important to minimise the disruption and uncertainty caused by the ongoing problems with regional resource management in Canterbury highlighted by the review of ECan’s performance.
33. I recommend that Government should respond as quickly as possible to address uncertainty and concerns regarding the sustainability and effectiveness of regional resource management in Canterbury. I therefore propose that:
 1. The Canterbury Regional Council (ECan) Temporary Commissioners and Other Matters Bill should be introduced under urgency on 30 March 2010 and passed if possible by 1 April 2010
 2. the Bill not be referred to select committee.

Recommendations

34. I recommend that Cabinet:
 1. agree that the “Environment Canterbury Temporary Commissioners and Improved Water Management Bill” hold priority 2 on the legislation programme
 2. note that the purpose of the “Environment Canterbury Temporary Commissioners and Improved Water Management Bill” is to provide for the replacement of the elected members of the Canterbury Regional Council with commissioners who will act as Canterbury Regional Council’s governing body until new elected members come into office following the next election; and provide the Canterbury Regional Council with certain powers that it does not otherwise have to address issues relevant to the efficient, effective and sustainable management of fresh water in the Canterbury region
 3. approve for introduction the “Environment Canterbury Temporary Commissioners and Improved Water Management Bill”, subject to approval of the Government caucus
 4. agree that the “Environment Canterbury Temporary Commissioners and Improved Water Management Bill” be introduced under urgency on 30 March

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5. agree that the “Environment Canterbury Temporary Commissioners and Improved Water Management Bill” not be referred to select committee and that it be enacted, if possible, by 1 April 2010.

Hon Dr Nick Smith
Minister for the Environment

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