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## Office of the Minister for the Environment

**Chair**

**Cabinet**

### **Update to Cabinet on progress following review of Environment Canterbury**

#### **Executive summary**

1. This paper updates Cabinet on events since 19 February 2010 when the report and recommendations of the Environment Canterbury (ECan) review were made publicly available.
2. In this paper I:
  - set out the broad options for a government response
  - note that I do not wish to make any decisions before (a) considering the formal responses of ECan and Ngai Tahu to the report and recommendations of the review; and (b) discussing options with my Cabinet colleagues
  - advise that I will be presenting a proposed Government response to Cabinet on 8 March 2010.

#### **Background**

3. Evidence of serious regional government underperformance has been evident in Canterbury for well over a decade. The Ministry for the Environment made these concerns clear in its first briefing to me as the incoming Minister for the Environment.
4. The 2007/2008 Resource Management Act 1991 (RMA) Survey of Local Authorities found that ECan was only complying with statutory timeframes in 29 percent of cases.
5. While having political balance on regional councils is healthy and normal, political tensions at ECan appear to dominate to an unhealthy degree. The political divide between ECan's councillors appears to have materially affected ECan's ability to produce a robust and certain planning framework against which the public can design and lodge applications for resource consent.
6. Concerns with ECan's performance eventually prompted all the Mayors in the Canterbury region to send a joint letter to the Minister of Local Government on 18 September 2009 emphasising the seriousness of this issue and noting that it had the potential to impact on the future well-being and prosperity of Canterbury.
7. In November 2009, I decided to investigate the performance of Environment Canterbury in accordance with 24A of the RMA. After discussing my intentions with the Minister of Local Government, we decided to expand the scope of the review of ECan to include Local Government Act and related issues.

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8. The review was undertaken by an independent Review Group, chaired by Wyatt Creech and including Doug Martin, Doug Low and Greg Hill.
9. The Review Group has recently completed their review and found a significant gap – characterised as “enormous and unprecedented” – between what needs to be done in Canterbury to appropriately manage water and ECan’s ability to do so.
10. On 15 February 2010, Cabinet invited the Minister for the Environment and the Minister of Local Government, in consultation with the Minister of Economic Development, Minister of Agriculture and Minister of Conservation, to develop the government’s response to the report and to submit a paper to Cabinet on 1 March 2010 addressing the government’s response and next steps [CAB Min (10) 5/13 refers]. Subsequently it was decided that the Minister of Local Government should be consulted on the paper, and that I should submit the paper to Cabinet.
11. The report and recommendations of the review were publicly released on 19 February 2010.
12. On 24 February, the Canterbury Mayoral Forum issued a press release urging Government to take immediate steps to address the serious issues that are raised in the report, and to implement its recommendations. The Canterbury Mayors have made their view clear that any intervention by the Government should be consistent with the direction of the Canterbury Water Management Strategy(CWMS); emphasising that they did not want 10 years of work to be lost.
13. The Minister of Local Government and I held meetings with ECan, Canterbury Mayors and CEOs, key stakeholders and Ngai Tahu in Christchurch on 24 February 2010.
14. I left these meetings with the impression that there was broad consensus in support of the review group’s findings in relation to the institutional governance of ECan and almost unanimous support for strong central government leadership on this issue. There is less consensus on whether the review group’s recommendation to establish a stand-alone Canterbury Regional Water Authority is appropriate.
15. The threshold for the kind of direct central government intervention in local government recommended by the review group is rightfully high. I think that it is very important that we give ECan and Ngai Tahu an opportunity to reflect on the recommendations of the report and to provide a formal response to Government before we decide what course to take.
16. ECan and Ngai Tahu will provide me with a formal response to the report by Wednesday 3 March.

## **Comment**

17. I agree with the Review Group’s findings that ECan has created real policy confusion and inertia in Canterbury. At this stage it would appear that the situation will not improve without some form of central government intervention.

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18. My officials are currently evaluating the range of options available to Government for addressing the issues raised by the review group. They are broadly:
  1. invite ECan to lift its performance in light of the outcomes of the review
  2. make use of existing RMA intervention powers to secure improved performance in addressing key resource management issues in Canterbury
  3. use special legislation to appoint a commission in place of ECan's councillors until the 2013 local body elections. The legislation would give the commissioners enhanced powers to address the matters raised in the review group's report and require them to investigate and report to Government on the review group's recommendations for institutional reform in Canterbury
  4. implement fully the recommendations of the review group, including the recommendation to establish a Canterbury Regional Water Authority.
19. I am tending towards option 3 however, as noted in paragraph 15, I do not wish to confirm this view before considering the responses of ECan and Ngai Tahu.
20. The review group noted particular problems with fresh water management in the Canterbury region. I consider that these issues are nationally significant and have directed my officials to work with officials from the Ministry of Agriculture and Forestry to develop options for addressing immediate and pressing fresh water management issues in Canterbury as part of any response.
21. I intend to provide Cabinet with a paper on 8 March 2010 setting out a proposed Government response to the outcomes of the ECan review.

## **Financial implications**

22. Not relevant to this paper – will be addressed in paper to Cabinet on 8 March 2010.

## **Human rights**

23. Not relevant to this paper – will be addressed in paper to Cabinet on 8 March 2010.

## **Legislative implications**

24. At this stage it appears likely that an effective and timely Government response to the issues identified in the review of Environment Canterbury will require enabling special legislation. A slow Government response will increase uncertainty and confusion in Canterbury. If enabling special legislation is needed, I would hope to have it enacted before the end of March 2010. These timeframes are very tight and to ensure they can be met, I seek authorisation to direct the Parliamentary Counsel Office to commence drafting in advance of policy decisions by Cabinet on 8 March 2010. I will seek Cabinet's agreement to a timetable for progressing any special legislation on 8 March 2010.

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## **Regulatory impact analysis**

25. Not relevant to this paper – will be addressed in paper to Cabinet on 8 March 2010.

## **Publicity**

26. The contents of this paper are of significant interest to the public and I intend to publicly release this paper on the Ministry for the Environment's website once Cabinet has determined the appropriate Government response to the review group's recommendations.

## **Recommendations**

27. The Minister for the Environment recommends that Cabinet:
  1. note that the report and recommendations of the review of Environment Canterbury was released on Friday 19 February 2010
  2. note that the Minister of Local Government and Minister for the Environment met with Environment Canterbury, Canterbury Mayors and CEO's, stakeholders and Ngai Tahu in Christchurch on Wednesday 24 February 2010 to discuss the report and recommendations of the review of Environment Canterbury
  3. note that Environment Canterbury and Ngai Tahu will provide a formal response to the report and recommendations of the review of Environment Canterbury on Wednesday 3 March 2010
  4. note that Minister for the Environment considers that the situation in Canterbury is unlikely to improve without some form of central government intervention
  5. note that officials are currently evaluating the range of options available to Government for addressing the issues raised by the review group
  6. note that Minister for the Environment considers that the fresh water management issues in Canterbury are nationally significant
  7. note that the Minister for the Environment has directed Ministry for the Environment officials to work with Ministry of Agriculture and Forestry officials to develop options for immediately addressing pressing fresh water management issues in Canterbury as part of any Government response to the review of Environment Canterbury
  8. invite the Minister for the Environment to report back to Cabinet by 8 March 2010 with a proposed government response to the review of Environment Canterbury
  9. agree that it is important that the Government responds rapidly to the review of Environment Canterbury
  10. agree that any special legislation that is necessary to enable a timely and effective Government response to the review of Environment Canterbury should be enacted before the end of March 2010

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11. authorise the Minister for the Environment to direct the Parliamentary Counsel Office to commence initial drafting in advance of policy decisions by Cabinet on 8 March 2010 in order to enable special legislation, if required, to be enacted before the end of March 2010
12. note that I will seek Cabinet's agreement to a timetable for progressing any special legislation on 8 March 2010.

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Hon Dr Nick Smith  
**Minister for the Environment**

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