



Cabinet

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CAB Min (10) 11/11

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MINUTE

Minute of Decision

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Response to Review of Environment Canterbury

Portfolio: Environment

On 29 March 2010, Cabinet:

Background

- 1 **noted** that fresh water in Canterbury is economically, environmentally, socially and culturally significant to the Canterbury region and to New Zealand;
- 2 **noted** that on:
 - 2.1 15 February 2010, Cabinet invited the Minister for the Environment and the Minister of Local Government, in consultation with the Minister of Economic Development, the Minister of Agriculture, and the Minister of Conservation, to develop the government's response to the report entitled *Investigation of the Performance of ECan under the Resource Management Act and Local Government Act*, and to submit a paper to Cabinet on 1 March 2010 addressing the government's response and next steps [CAB Min (10) 5/13];
 - 2.2 8 March 2010 Cabinet considered the issue again and:
 - 2.2.1 deferred decisions on the submission attached to CAB (10) 86 but invited the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office for the preparation of a Bill to give effect to the proposals;
 - 2.2.2 invited the Minister for the Environment to submit to Cabinet on 22 March 2010, if possible:
 - 2.2.2.1 a final proposal;
 - 2.2.2.2 a draft Bill to give effect to the proposals;
 - 2.2.2.3 a paper on the appointment of the proposed commissioners;

[CAB Min (10) 8/4]

Statutory investigation

- 3 **noted** that the poor past history of the management of fresh water in Canterbury and poor performance in meeting statutory consent processing timeframes led to the decision being taken for a statutory investigation of the Canterbury Regional Council under the Resource Management Act 1991 (RMA) and a non-statutory assessment of its performance under the Local Government Act 2002 and other statutes;
- 4 **noted** that the findings of the Review Group appointed by the Minister for the Environment and Minister of Local Government, chaired by Wyatt Creech, are that there are major failings in the way that the Canterbury Regional Council is managing fresh water, and that there are long running institutional problems;

Response

- 5 **agreed** with the conclusion of the Review Group that the Canterbury Regional Council's performance on freshwater policy and management falls well short of what is required, and warrants appointment of commissioners in place of the current Council;
- 6 **agreed** to use legislation to appoint commissioners in place of the Canterbury Regional Council's councillors to take over all of the governance functions of Environment Canterbury, and to give the commissioners additional powers to allow them to expeditiously resolve resource management planning issues in Canterbury;
- 7 **agreed** that legislation be pursued to appoint commissioners;

Legislation

- 8 **agreed** that the legislation provide for:
 - 8.1 replacement of the elected Council of the Canterbury Regional Council with four to seven commissioners, and removal of the elected Council from office;
 - 8.2 commissioners becoming the governing body of the Canterbury Regional Council and having all the duties, powers, and functions of the Canterbury Regional Council councillors provided under all relevant legislation;
 - 8.3 the Minister for the Environment and the Minister of Local Government appointing Commissioners, a chairperson and a deputy chairperson, and setting the terms of reference for the commissioners in consultation with relevant Ministers;
 - 8.4 Canterbury Regional Council local body elections not being held in 2010;
 - 8.5 commissioners' appointments to expire in November 2013, or earlier as determined by the commissioners when their task is complete, and for elected councillors to again take office under the Local Government Act 2002;
 - 8.6 commissioners to have, collectively, demonstrated organisational change and water management competencies, local authority governance and management, knowledge of the Canterbury region and its people, and knowledge of tikanga Maori (Ngai Tahu customary values and practice);

- 8.7 a requirement that commissioners establish mechanisms where they can seek advice from Canterbury territorial authority mayors on issues that impact on the roles, functions, and performance of Canterbury Regional Council;
- 8.8 the Vision and Principles of the Canterbury Water Management Strategy being included as a Schedule to the legislation;
- 8.9 commissioners' (or their delegates') decisions on the RMA planning framework (proposed regional plan and policy statement) to be made after having particular regard to the Vision and Principles of the Canterbury Water Management Strategy, in addition to existing statutory criteria;
- 8.10 limited appeal rights on the commissioners' decisions on the RMA planning framework, and on the commissioners' recommendations on water conservation orders; no provision for appeals on the merits of these decisions, but provisions for appeals to the High Court on points of law;
- 8.11 requiring the Minister for the Environment to direct applications for new Canterbury water conservation orders (WCO) or applications to alter existing water conservation orders in Canterbury to the commissioners rather than a Special Tribunal;
- 8.12 making recommendations to the Minister for the Environment on whether to make, amend, or revoke a WCO, the commissioners (or their delegates) must:
 - 8.12.1 accord primacy to the purpose and principles of Part 2 of the RMA;
 - 8.12.2 have particular regard to the Vision and Principles of the Canterbury Water Management Strategy, in addition to existing statutory criteria;
- 8.13 the Minister for the Environment to refer the application for a WCO over the Hurunui River to the commissioners and for the current Environment Court processes with respect to that application to cease;
- 8.14 persons who made submissions to the special tribunal for the Hurunui River WCO application (including those who made submissions to the Environment Court) to be given an opportunity to make submissions to the commissioners and participate in hearings on the application;
- 8.15 the commissioners to consider the Hurunui River WCO and submissions on it against the decision-making criteria in paragraph 8.12 above;
- 8.16 commissioners to put in place, subject to the approval of the Minister for the Environment, targeted moratoria, which would enable commissioners to refuse to accept new consent applications and/or to put current consent applications on hold for a defined resource in a defined area for a defined period of time;
- 8.17 the Minister for the Environment and the commissioners, in any area and at any time, to revoke a moratorium;
- 8.18 after a moratorium has been lifted, that all applications are to be processed by reference to any new planning framework that has been put in place;

- 8.19 a suitable period of time for applicants whose applications were put on hold to amend their applications as necessary to reflect the new planning framework under which they will be considered without prejudice to their position in the processing queue;
- 8.20 resource consents that are due to expire during the intervention period to be deemed to continue until a suitable period after the end of the moratorium, with that additional period of time giving the holders of those resource consents an opportunity to seek to apply for replacement consents;

Proposed appointments

- 9 **noted** that the Minister for the Environment and the Minister of Local Government intend to appoint Dame Margaret Bazley as the Chairperson-designate of the commissioners;
- 10 **noted** that the Minister for the Environment and the Minister of Local Government intend to submit a paper to Cabinet on 12 April 2010 on the appointment of the commissioners;

Implementation

- 11 **agreed** that any support which is required from central government for commissioners will come out of baseline funding;
- 12 **authorised** the Minister for the Environment, the Minister of Agriculture, and the Minister of Local Government to resolve any outstanding transitional issues necessary to implement the policy;

Publicity

- 13 **noted** that the Minister for the Environment and the Minister of Local Government intend to make announcements on the agreed government response following Cabinet's agreement to the introduction of the Bill to give effect to the proposals and before the Bill is introduced to the House of Representatives (the House); [CAB Min (10) 11/10]
- 14 **noted** that the Minister for the Environment may release the paper under CAB (10) 131, subject to appropriate withholdings, after the legislation has been considered in the House.

Rebecca Kitteridge
Secretary of the Cabinet

Reference: CAB (10) 131; CAB (10) 130

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