

Regulatory Impact Statement

Environment Canterbury governance arrangements

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Department of Internal Affairs and the Ministry for the Environment.

The key costs/risks of the proposal (a transitional mixed-model governance structure for ECan) are:

- Public consultation was confined to a proposal for the preferred option of a mixed-model governance structure, rather than the range of options in the RIS. Questions in the discussion document encouraged comment on other solutions and many submitters did so. This still limits our ability to present full community views on other options in this Regulatory Impact Statement which were not described in the discussion document.
- While based on the District Health Board model, the proposed governance model has an element of uncertainty as to its effectiveness as it has not been used previously in a local governance context.
- The appointment of councillors is seen by some as an unwarranted intrusion into Canterbury's affairs by central government
- Increased variability in regional council arrangements as Canterbury would have a different structure to other regions.

The preferred option has been designed to ensure progress and momentum continues through an important stage in Resource Management Act plan making. At the same time, it provides for a staged return to democracy with a majority of elected councillors providing local representation.

The preferred option also reflects proposals from ECan's Commissioners and is widely supported by the territorial authorities, the Canterbury Mayoral Forum and other key Canterbury stakeholders.

Appointed councillors could provide both a balance of skills to complement those of elected councillors and the necessary continuity and momentum to progress the organisational capability building and work programmes started by the Commissioners.

Peter Brunt
Director, Resource Management System
Ministry for the Environment
Date: /May /2015

Executive summary

1. This Regulatory Impact Statement (RIS) provides an overview of options for the governance arrangements for Canterbury Regional Council (ECan¹) after the expiry of its current governance arrangements in 2016.
2. The Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (the ECan Act), provides for the governance of ECan by Government appointed Commissioners with special resource management powers to address issues relevant to the efficient, effective, and sustainable management of fresh water in the Canterbury region.
3. Without further regulatory intervention, ECan's governance would revert to the elected regional councillor governance and the general arrangements that existed prior to the Act. Local authority elections will take place in 2016, at which time the Commissioners will have been in office for six years. Under the status quo, their extensive expertise will be lost to ECan at a single point in time.
4. Although the Commissioners have made good progress, there is further work to do, especially in the area of fresh water management. Key statutory documents governing the allocation and use of freshwater will require further work to fully implement. Implementation of the National Policy Statement for Freshwater Management (NPSFM), and the final chapters of the Land and Water Regional Plan are not expected to be completed until at least 2020. The quality of decision making and momentum under the Commissioners needs to be maintained in order not to disrupt this work.
5. It is essential then, that the transition from the Commissioners is well managed and provides some certainty that the new council can make critical decisions effectively and that ECan's current work programmes do not stall or lose direction.
6. The Department of Internal Affairs and Ministry for the Environment have undertaken an assessment of options for ECan's future governance arrangements as part of a ministerial review required under section 17A of the ECan Act.
7. We recommend that, for a transitional period to the local authority elections in 2019, special legislation should provide for a mixed-model governance structure comprising seven elected and up to six appointed councillors with a chair elected from among them. Time does not allow for ECan to complete a full representation review. Therefore, electoral boundaries would be prescribed in the new legislation. The Remuneration Authority would recommend salaries for all members.
8. In the short term, the mixed model governance structure would provide assurance that ECan is equipped with a fully effective decision making body, with continuity of institutional knowledge and momentum, to substantially complete the Commissioners' planned work programme. In the long term, if the planning frameworks for freshwater management and earthquake recovery have been effected as planned, this model would provide a mechanism for transition to a fully elected body in 2019.

¹ ECan is the abbreviation for Environment Canterbury, the operating name for the Canterbury Regional Council.

9. The recommendation for the special powers is that ECan should retain its special powers under Part 3 of the ECan Act. Even if Resource Management Act 1991 (RMA) reforms are in place prior to October 2016, differences in the process to the ECan Act powers could mean implementation of the RMA reforms is disruptive to ECan's planning programme when time is of the essence in incorporating the final sub-regional chapters of the Land and Water Regional Plan and implementing the Canterbury Water Management Strategy and the NPSFM.

Status quo and problem definitions

Status Quo

10. In 2010, in response to concerns about the capacity and capability of ECan to effectively carry out its functions, the Government passed the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (the ECan Act), which replaced elected councillors at ECan with seven appointed Commissioners.
11. The Commissioners were appointed in response to an independent report on ECan (Creech report) commissioned by the Government in 2009, which found the council was failing to meet statutory timeframes on resource consents, and making insufficient progress on establishing a planning framework to manage natural resources. These issues were attributed in part to the political impasse to which Canterbury is prone due to the even split between urban (environmental) and rural (economic) interests.
12. The Government appointed Commissioners based on their collective skills and expertise in organisational change, freshwater management, local authority and governance management, tikanga Māori and knowledge and understanding of the Canterbury region and people.
13. The key outcomes the Commissioners were tasked with were:
 - building organisational capability, (for example, improving the percentage of resource consent applications processed within the statutory time frame),
 - to quickly establish an operative natural resources management planning framework that would enable the implementation of the Canterbury Water Management Strategy (Canterbury Water Management Strategy) and stop the chaotic nature of consenting relating to fresh water resources.
14. The Commissioners were given modified resource management powers to address issues relating to freshwater management in Canterbury and to streamline the planning process. Part 3 of the ECan Act empowered ECan to:
 - make changes to a plan or regional policy statement, or make a variation to a proposed plan or regional policy statement, through a limited appeals process;
 - impose a moratorium on the granting of specific water and discharge consent applications; and
 - directly consider applications for Water Conservation Orders received from the Minister for the Environment, with alternative criteria and a limited appeals process.

15. Under the leadership of the Commissioners, ECan has been transformed into a well-functioning and effective organisation. This reflects the skills, knowledge and expertise brought to ECan by the Commissioners. Key achievements under the Commissioners include:
 - progressing the planning framework and implementation of the Canterbury Water Management Strategy;
 - establishing a collaborative zone committee process to reach agreement on the allocation and management of freshwater in each river catchment;
 - improving compliance with statutory timeframes for resource consents from 23 per cent in 2007/08 to 98 per cent in 2014;
 - completing the Natural Resources Regional Plan;
 - strengthening relationships with Te Rūnanga o Ngāi Tahu and other key stakeholders; and
 - taking a leading role in earthquake recovery initiatives such as the Natural Environment Recovery Programme, the Lyttelton Port Recovery Plan and the repair and realignment of public transport infrastructure in Greater Christchurch.
16. In 2013, the Commissioners' terms were extended for three years to avoid disruption to the good progress being made at ECan, and in light of new challenges created by the Canterbury Earthquakes.
17. The Crown's statutory intervention in ECan's governing body and the Commissioners' terms are to end at the local authority elections in October 2016. Without regulatory change, ECan will return to a fully elected governance structure. The Act's provision for special resource management powers will also expire.

Problem Definition

18. The expiry of the ECan Act at the local body elections in October 2016 would mark the end of government intervention and this of itself has the capacity to create issues for any new governing body. ECan's Commissioners will have been in position for six years and, assuming the Commissioners do not themselves stand for election, their collective skills, expertise and institutional knowledge will be lost at a single point in time at ECan's leadership level.
19. Without any ongoing institutional knowledge or the assurance of a balance of specialist skills, the new governing body could be left at a disadvantage in managing ECan's extensive work programme and the particularly complex issues surrounding freshwater management in Canterbury. In addition, the new leadership would not have available to them the resource management powers and processes under Part 3 of the ECan Act.
20. Secondly, some of the issues that first necessitated the appointment of the Commissioners are enduring, and while many of the Commissioners' achievements are structural and self-sustaining, fresh water management, in particular, was identified in the Creech report as a long term issue requiring ongoing special consideration.

21. The second generation Land and Water Regional Plan and other plans will not be complete by October 2016, nor will the Canterbury Water Management Strategy or NPSFM be fully implemented. These are key components of comprehensive regional freshwater decision making and management. In addition, ECan is progressing a new Air Plan to meet the requirements of the National Environmental Standards for Air Quality (which must be met by 2016) and the Coastal Plan is now 15 years old and must be replaced. (Note: the Coastal Plan is outside the special powers and must be dealt with under the RMA Schedule One process, with no limit on appeals). ECan's planning programme is so extensive that much needed work on the Coastal Plan is unlikely to be completed until 2019.
22. Some improvements to ECan's arrangements have taken longer than originally anticipated because of unexpected disruptions to the region as a result of the earthquakes. One example is that ECan's office building was badly damaged and the organisation is currently spread over a number of different offices, with some staff still working from home. ECan is currently managing the building of its new multi-million dollar office block and hopes that it will be ready for occupation in 2016.
23. The earthquakes have also added to ECan's planning work programme, for example, requiring the development of Natural Environment Recovery Programme and the Land Use Recovery Plan. ECan is leading a number of agencies in establishing the Lyttton Port Recovery Plan. This is a significant planning project, regionally and nationally, and is still at a preliminary draft stage.
24. Canterbury also faces political challenges around freshwater management because of its finite water resources and the need to support agriculture and other industries yet balance environmental impacts. The historic competing environmental, economic, cultural and recreational interests were poorly managed in the past due to governance dysfunction which led to long delays in the creation of and, a failure to implement, the Canterbury Water Management Strategy.
25. If ECan returns to a fully elected model at the next elections, there is still a real risk that a near-even division of urban and rural representatives will be elected which could see a return to the same deadlocked decision making which slowed the progression of the Canterbury Water Management Strategy and resulted in such poor performance in resource consenting. Additionally, there will be no guarantee of the spread or depth of skills being available to lead on the complex issues facing Canterbury. Currently, that risk is not palatable with so much work still to do in establishing critical planning frameworks and an imminent peak expected in resource consent applications.
26. Accordingly, it would be sensible to put in place transitional arrangements that would enable ECan to operate as an effective, well informed and well-functioning decision-making body for efficient governance and delivery of natural resource management and policy outcomes. Without this, the risks include:
 - ineffective leadership;
 - loss of good relationships with stakeholders;
 - poor capacity to implement national reforms;
 - political divisions re-emerging within decision making, leading to delays in, for example, establishing a fully operative planning framework; and
 - poor decision making affecting the region's growth, prosperity and environmental integrity.

27. Additionally, a loss of momentum is likely to:

- adversely affect environmental outcomes;
- constrain regional economic growth; and
- result in an uncertain environment for businesses and investors.

Objectives

28. The ECan Act specifies that the Minister for the Environment and the Minister of Local Government must begin a review of ECan on 1 March 2014 covering:

- the governance structure of ECan
- the membership of ECan; and
- ECan's powers and functions under Part 3 of the Act.²

The Minister of Local Government has delegated her powers and functions in relation to the review to the Associate Minister of Local Government.

29. The terms of reference for the review were approved by Cabinet in February 2014 (CAB Min (14) 6/8 refers). The over-arching aim is to provide for a council that is well informed, functional, capable, efficient and accountable to Canterbury's communities.

30. The terms of reference included key questions to be addressed by the review. They are:

- Are elements of the current governance, membership and institutional arrangements important on an on-going basis to good regional governance in Canterbury?
- What are the representation, membership and governance options for ECan that would support strong organisational performance and effective, accountable decision making?
- What, if any, additional transitional support or legislation will ECan require both before and after the [ECan] Act's expiry in 2016?
- What, if any, of the special powers under Part 3 of the [ECan] Act could assist effective regional natural resource management and planning in the future?
- What are the emerging issues for ECan to deal with (particularly in relation to the management of fresh water in Canterbury, [and] what issues will remain after the expiry of the [ECan] Act in 2016?
- What are the risks to ECan's work being dealt with by the temporary commissioners and the freshwater management programme after the expiry of the [ECan] Act, and what are the options for mitigating these risks?

31. These issues were aired in the discussion document "*Environment Canterbury Review: A discussion document*" released on 18 March 2015. Public submissions were invited on the assumptions and proposal outlined and, on the goals of the review.

32. The *goals* set out on the following page form the basis of the analysis in this RIS.

² Part 3 of the Act varies certain resource management powers and functions of ECan.

Framework for Regulatory Impact Analysis

Goals for ECan's Governance

- **high quality leadership** – disciplined and suitably skilled decision-makers who are able to lead on contentious, complex and multi-dimensional issues and manage multiple interests
- **economic growth** – sustainable development of economic growth and the provision of jobs
- **strong environmental stewardship** – economic, recreational, cultural and environmental interests balanced for long-term sustainability
- **strong accountability to local communities** – strong, respectful relationships with communities, iwi and councils, and high levels of local collaboration
- **value and efficiency for ratepayer money** – effective and affordable solutions for Canterbury ratepayers.



What would future success look like?

- Excellence in freshwater management
- Multi-dimensional nature of water issues in Canterbury managed effectively (Canterbury Water Management Strategy principles achieved)
- Communities' values and interests in water balanced (economic/cultural/recreational/environmental).
- Excellence in non-freshwater services such as planning and consenting, and planning and contracting public transport services.
- Solution-focused decision-making.
- Commissioners' specialist knowledge and expertise of Canterbury governance issues passed on.

Options and impact analysis

33. The analysis below is arranged in two parts. The first part addresses possible options for the structure and membership of an effective governing body for ECan for the next three year period. The second addresses whether the special powers under Part 3 of the Act should continue.
34. The option of a Canterbury Water Authority (offered as a solution in the Creech Report) was considered but is not described here as it was discounted as having too far-reaching impacts to be feasible at this time (Cab Minute (15) 8/4 refers).

PART 1- Governance Structure and Membership

35. Three main options for addressing the issue of governance and membership are identified and analysed in this regulatory impact statement:

Option One: Legislation to establish a transitional mixed-model governance structure for ECan for the next three year period.

Option Two: Legislation to extend the appointment of Commissioners for the next three years.

Option Three: Status quo – return to a fully elected governance structure under the Local Government Act 2002 and Local Electoral Act 2001.

36. Two variations of Option Three are also considered below (**Alternative Options Three (A) and (B)**). These provide some further non-regulatory options.
37. With regard to the goals which form the basis for the analysis, Criteria 2 (economic growth), Criteria 3 (strong environmental stewardship) and Criteria 5 (value for ratepayer money and efficiency) are measured in a similar way. Therefore, they have been considered together for the purposes of the analysis below.

Option One: Legislation to establish mixed-model governance structure for ECan for the next three years

38. The new legislation would give effect to transitional governance arrangements based on a mixed-model governance structure. It would provide a pathway to a withdrawal of the intervention, and return to a fully elected governing body.
39. The mixed-model governance structure is shown in **Appendix 1**. Key features of the proposal are to provide for, through legislation:
 - a mixed-model governance structure for ECan comprising seven elected regional councillors and up to six government-appointed councillors;
 - a chairperson elected by the governing body from its members³;

³ The election of a chairperson by the governing body would be consistent with the LGA02. Schedule 7 of the LGA02 provides that regional council chairs are elected by governing body in one or more rounds of voting. When an election results in a tie for the position of a chair, the tie is resolved by lot.

- collective responsibility and accountability among (elected and appointed) councillors for the decision making and the exercise of governing body powers and functions;
- iwi involvement in the appointments process; and
- selection of appointed councillors on the basis of their individual and collective expertise relevant to their role on the governing body (for example, expertise in fresh water management, local authority governance and management, tikanga Māori and familiarity with the Canterbury region and its people).

40. Local Government Commission determination of the representation arrangements of elected councillors would not be feasible by April 2016. Therefore, four constituencies would be prescribed by legislation as shown in the table below.

Table x: Possible constituencies and member ratios

Constituency	Population	Members	Member-Population Ratio
North Canterbury	70,240	1	1:70,240
Christchurch	361,900	4	1:90,475
Mid-Canterbury	82,300	1	1:82,300
South Canterbury	59,770	1	1:59,770
Total	574,210	7	1:82,030

32. Appendix II contains a diagram showing the model's key features.

Assessment against evaluation criteria:

High Quality Leadership (strongly meets criterion)

33. Option One provides the potential for a staged removal of the Commissioners who have proved effective in transforming ECan from one of the least effective regional councils in 2009 to one of the most capable. Some of the Commissioners have indicated that they may be available for a further term, if required.

34. District Health Boards (DHBs), which are established under the Health Act 2002, are an example of a mixed-model governance structure designed to provide a strong leadership to deal with the complex and specialist demands of running a health authority. The Minister of Health may appoint up to four members to the Boards. The Ministerial appointments are used to balance the DHBs' elected membership in terms a range of criteria. The Minister may only appoint persons who, in the Minister's opinion, have the appropriate knowledge, skills and experience to assist a DHB to achieve its objectives.

35. With the mix of elected and appointed members, Option One has a better chance of a strong capacity to provide effective governance outcomes and to mitigate economic and environmental risks. This is because there are provisions for some continuity in office and the ability to provide additional members of the leadership team with skills complementary to those of the elected councillors.

36. The odd number of elected councillors, complemented by a substantial contingent of more neutral 'experts' is designed to mitigate the risk of a return to deadlocked decision-making for the next three years. After 2019, the critical planning frameworks should be largely complete and earthquake recovery well under way, leaving any political divisions with diluted capacity for significant impact.

Economic Growth; Strong environmental stewardship; Value for ratepayer money and efficiency (Strongly meets criterion)

37. Option One could provide stability, continuity and a unified direction that would be unlikely to be present with a new fully elected governing body, fresh to their roles. This could assist in making timely critical investment decisions. An element of continuity of leadership and established relationships will provide comfort to key stakeholders and confidence to investors during the period of earthquake recovery and strong regional economic growth.
38. A transitional and effective governance arrangement for ECan specifically tailored to Canterbury's current governance needs, provides a strong capacity to mitigate risks to productivity growth in the region and the national benefits of such growth.
39. A new fully elected body would, of course, bring fresh ideas for ECan's future and work programmes. There have been issues in the past when conflicting interests have stood in the way of ECan's progress, to the detriment of environmental stewardship. Option One would mitigate the risk of a return to a politically divided council and will provide an element of continuity to support the strong relationships with key natural resource partners developed by the Commissioners. A fully functioning council, provided with the capacity to make unified and skilled decisions will provide the stability needed to support ECan's ongoing environmental work programmes, eg. Canterbury Water Management Strategy and NPSFM implementation.
40. The option would provide a level of certainty for the agencies and bodies engaged in the earthquake recovery process for the length of that process. ECan led the preparation of the draft Lyttelton Port Recovery Plan and is integral, following a decision by the Minister for Canterbury Earthquake Recovery, in its implementation. ECan also has responsibilities for implementing the remainder of the Natural Environment Recovery Programme.
41. Apart from some minimal start-up costs, provision for some ongoing continuity and limited organisational change is likely to be less costly and more efficient than a new fully elected membership with divergent views on ECan's current work programmes. The ratio of elected to appointed councillors would also mitigate the risk of a return to a politically divided council which could suffer inefficiencies in decision-making capability and momentum.
42. There would be some administrative start-up costs to take into consideration, for a solution that is only temporary. However, this is necessary and in proportion to the need to achieve the over-arching goals of the review to ensure a smooth transition and continuity.
43. ECan had 14 elected members in 2009. The mixed-model governance authority would have up to 13 members. Salaries would be based on Remuneration Authority recommendations, as for all regional councils. Therefore, regional council rates are not

expected to be significantly affected by the remuneration of the mixed-model governance body.

Strong accountability to local communities (Meets criterion)

44. Option One would include a significant democratic local decision making dimension. It would allow for communities, in four constituencies, to democratically elect seven representatives to ECan's governing body. This will provide for an elected member majority on the governing body. This is broadly consistent with the fundamental principles applying to local governance in the Local Government Act 2002 (LGA02). The government appointees on the governing body while appointed by Ministers, would be selected for their knowledge of and interest in Canterbury's welfare and have the same or similar accountabilities to Canterbury's communities as the elected members.
45. Option One could provide a pathway to eventual withdrawal of the intervention, and restoration of full democratic participation.

Option costs

46. The direct costs of implementing the proposal for example, administration, training, rebranding, stationery and signage will be borne by ECan but should be affordable within existing budgets. The Department of Internal Affairs and the Ministry for the Environment are satisfied that the cost is proportional to the need to ensure a smooth transition from the intervention.
47. The Government would incur costs implementing and administering the legislative framework for the option and high-level monitoring of its operation, including regular appointment decisions. These would be met within Departmental base-lines.

Option risks and mitigations

48. Option One entails some risks compared to the status quo, because the DHB model has not been used previously in the local government context. Risks remain that the electoral outcomes and appointment processes could generate uncertainty around the roles and responsibilities of elected and appointed councillors, or of dysfunction arising in the governing body. However, those risks could be mitigated through representation arrangements that appropriately balance urban and rural interests, terms of appointment to provide clear definition of roles and responsibilities for the appointed councillors and the availability of dispute resolution processes.
49. While a fully elected governing body will potentially have no issues and make genuine efforts to avoid undue delays and preserve settings and relationships, Option One provides a better opportunity to manage any leadership issues, should they arise. It provides greater security for ECan's organisational wellbeing.
50. The presence of appointed councillors on ECan's governing body risks being viewed as an intrusion into local government powers and to undermine a key principle of the local government system that communities have the right to decide their local affairs and pay for them through their elected representatives. A proportion of the Canterbury community have indicated in their submissions that they see Option One as reducing their ability to choose and replace elected representatives.
51. There is a potential tension between elected members' requirement to act in the local or regional interest, and being required to give effect to national priorities. There are risks

of blurred or unclear accountability and a lack of certainty around the governing body's accountability. There are also inherent tensions between the dual accountabilities of the appointed councillors to the Ministers who appoint them and the ratepayers that pay for them. However, the ratio of elected councillors to appointed councillors has been selected to mitigate this risk and the appointment and accountability provisions will also mitigate this risk. It is not intended that the elected councillors will send regular reports to Ministers once appointed.

Net benefits of option One (relative to status quo)

52. The net benefits of Option One are its distinct governance arrangements tailored to manage the significant challenges of governing Canterbury and managing its valuable natural resources, in circumstances where the standard governance arrangements in the Local Government Act 2002 (LGA02), have proved insufficient in the past. The flexibility provided by the ability to appoint a number of suitably qualified but more politically neutral councillors to complement the skills of the elected members would provide the security of a mechanism to manage the risk of an immediate return to a politically divided council. It would provide the mix of democratic representation and complementary specialist skills on the governing body necessary to ensure ECan operates as a fully-functioning council and can make unified and strategic decisions on matters of regional and national importance.
53. In the longer term, once the planning programme and implementation measures are substantially in place, the transitional features of Option One would provide a pathway to a withdrawal of the intervention, and restoration of full democratic participation.
54. Additionally, under Option One, the measure would provide ECan with the continuity of institutional knowledge and range of skills to act as a regional leader on environmental matters and ensure the stability necessary to support the territorial authorities and other stakeholders in the earthquake recovery process.

Option Two: Legislation to extend the existing governance by Commissioners

55. The current governance arrangements for ECan could be extended for a further period beyond the current expiry in October 2016, through legislation. The option would maintain a governance structure for ECan of appointed Commissioners. The special powers could be retained or removed. Options available in relation to the resource management special powers are discussed in Part 2 below.

Assessment against evaluation criteria:

High Quality Leadership (Strongly meets criterion)

56. Governance of ECan by Commissioners has been a successful intervention that has been tried and tested over the last four years. ECan's organisational capabilities, its integrated resource management planning frameworks, its consent processing timeframes and its relationships have been significantly improved by the Commissioners.

Economic Growth; Strong environmental stewardship; Value for ratepayer money and efficiency (Strongly meets criterion)

57. Option Three, by virtue of the continuity it provides, has the capacity to provide effective governance outcomes and to mitigate economic risk, based on the proven success of the Commissioners.

58. As there would be no complete turn-over of the governing body, this option would be more likely than the status quo to lead to ongoing effective governance arrangements for Canterbury that will likely facilitate Canterbury's growth and contribute to New Zealand's welfare and GDP growth as predicted by New Zealand Institute of Economic Research (NZIER).
59. This option would support the achievement of a fully operative planning framework. If the current Commissioners were reappointed, institutional knowledge would be retained along with commitment to the work programmes for the critical initiatives underway. There would also be limited disruption to the organisation which is familiar with the Commissioner model of governance.
60. The current Commissioners' skills and abilities are a known factor and institutional knowledge would be retained for the environmental work programmes currently underway to support environmental stewardship.
61. There will be more continuity than the status quo to support and improve on the strong relationships established by the Commissioners with their environmental work programme partners.
62. The Commissioners have been effective in keeping inflationary effects under control and minimising rates increases during the currency of their terms in office. The remuneration pool has remained in surplus each financial year.

Strong accountability to local communities (Does not meet criterion)

63. Option Two has little capacity to provide democratic or local decision making on the governing body. However, the collaborative nature of resource management planning inspired by the Canterbury Water Management Strategy means that the community's views are incorporated in decision making on plans. ECan is already operating its own collaborative planning process, a version of which is proposed to be rolled out nationally under the RMA Reforms.
64. The Commissioners have demonstrated an ability to build strong relationships with Ngai Tahu, territorial authorities (which directly represent their ratepayers) and other key stakeholders. These relationships provide a conduit by which regional decision making is influenced. It is likely that Option Two would, at least in the short term, continue to support those critical relationships better than a completely new leadership under the status quo.

Net benefits (relative to status quo)

65. There would be no change in costs for the ratepayer. Less organisational change would be effective and efficient for the ratepayer. There would be stability and continuity on the governing body.
66. The extension of the Commissioners' terms would give the Commissioners an opportunity to finalise the remaining chapters of the Land and Water Regional Plan. ECan is also leading the Lyttelton Port Recovery Plan process which is of great economic importance to the region. ECan made its Natural Environment Recovery Programme in response to the earthquakes and is making excellent progress in its implementation

67. By virtue of business continuity, their extensive combined skills and past performance in their roles, the Commissioners would likely have better capacity to act as a unified leader on resource management matters and ensure stability in the region to support the earthquake recovery process.

Net Costs

68. This option would involve continued and significant intervention by Government in ECan's governance. It defers resolution of the current problems as it provides no clear exit mechanism from the intervention.

69. Extending or entrenching the existing arrangements would mean that the region's electors would not have the opportunity to democratically elect councillors to ECan's governing body, inconsistent with the principles relating to local government in the LGA02.

70. The people of Canterbury clearly have an incentive to elect competent councillors and democratic processes, such as election campaigns, serve to inform people about the effectiveness of each councillor.

71. This option does not provide a desirable long-term solution or a pathway to achieving such a solution.

Option Three: Return to Local Government Act 2002 regional council governance structure (status quo position)

72. Option Three would restore the governance arrangements for ECan to the national framework under the LGA02. It would return ECan's governance structure to the arrangements that applied before the intervention of the ECan Act. This option would provide the region's electors the opportunity to elect all representatives to ECan. The option is consistent with the position in that the ECan Act, and its purpose of enabling a temporary statutory intervention in ECan's governance and the appointment of Commissioners.

73. These arrangements involve a governance structure comprising members elected under the Local Electoral Act 2001, and a chair elected by and from the members. The option could be substantively implemented without the need for legislation, although a new process may be required to determine ECan's representation arrangements for the 2016 local authority elections which could be complex to resolve.

74. Arrangements for the retention, or otherwise, of the Part 3 special powers would also need to be considered. If any of the powers were to continue, legislation would be required. (The special powers are considered in detail in Part 2 of the analysis section of the RIS, below).

Assessment against evaluation criteria:

High Quality Leadership (Uncertain capacity to meet criterion)

75. This option would provide no guarantees as to the mix of skills available to meet the unique circumstances facing Canterbury in 2016. There would be no opportunity to supplement those skills with appointed councillors.

76. There would be no continuity of institutional knowledge of ECan's critical work programmes, unlike other regional councils where on average about 30 per cent of members continue in office after an election.

Economic Growth; Strong environmental stewardship; Value for ratepayer money and efficiency (Uncertain capacity to meet criterion)

77. Primarily because of the lack of continuity, but also the possible imbalance of skills among elected councillors, this option could create risks for economic growth in Canterbury and limit the ability of the region to contribute to New Zealand's GDP and economic growth as predicted by NZIER. The greatest risk would be if the election resulted in an even mix of representatives for rural and urban interests which could create a return to deadlocked decision making, this could affect ECan's ability to facilitate such growth and could reduce investment certainty in the region.
78. With regard to environmental stewardship, this option, by virtue of the fact of the lack of institutional knowledge on the part of the new governing body, and the fact that new relationships would need to be made at leadership level, could disrupt ECan's ability to support the earthquake recovery processes. The potential for ECan to return to deadlocked decision making could lead to an initial loss of confidence for territorial authorities and other key stakeholders and investors.
79. A wholly new elected body with no further Government support has disadvantages for environmental management. This option would involve a complete and abrupt change in governance arrangements. This option would create governance arrangements with a lack of institutional knowledge, lack of ownership of current environmental work programmes, and lack of continuity on the governing body after the expiry of the Commissioners' current term.

Strong accountability to local communities (Strongly meets criterion)

80. This option meets the objective of providing capacity for democratic local decision making in the governance structure. The governance structure would comprise a fully democratically elected governance structure of representatives elected from constituencies.
81. Returning to an elected governance structure, without transitional Crown support, would represent a return to a normal state of affairs for ECan, and would bring its governing body into line with those of all other regional councils.
82. The people of Canterbury clearly have an incentive to elect competent councillors and democratic processes, such as election campaigns, serve to inform people about the effectiveness of each councillor.
83. A level of political disagreement can be beneficial, if it reflects genuine differences of opinion. This is one of the reasons why regional council leaders are generally elected rather than appointed, notwithstanding that an adversarial approach to decision making can sometimes result.
84. Option Three would meet the objective of administrative practicality as it reverts to standard governance provisions and involves a clear, but unsupported, exit from the intervention. It could be implemented under the existing legislative frameworks for local government. But a new statutory process would likely be required to set the representation arrangements for the 2016 local authority elections.

Costs, benefits and risks

85. There would be up to 14 newly elected members on the governing body.
86. Statistics held by the Department for Internal Affairs for the 2010 local elections confirm that incumbent members generally have a higher chance of being elected than new candidates. Incumbent members of regional councils comprised 75 per cent of total members elected at the 2010 local authority elections. Incumbency means that skills acquired on the governing body are retained. Under Option Three, there would be no continuation of members unless one or more of the Commissioners stood for election.
87. An abrupt and complete change with a resulting lack of continuity and institutional knowledge on ECan's governing body would put the Council's momentum at risk. The Department and Ministry's assessment is there is a strong need for ECan's governing body to retain specialist expertise and institutional knowledge after the expiry of the Commissioners' current term.

Alternative Option Three (A): Fully Elected Body with Commissioner advisors

88. As an alternative to Option Three (fully elected council), it may be possible to prevail upon the newly elected council to appoint commissioners as advisors to address some of the continuity issues.
89. Under this alternative to Option Three, the Commissioners would end their terms on a date in mid-October 2016 and the following day, ECan would be governed by a newly elected governing body. However, ECan could engage one or more of the current Commissioners to provide governance advice and support to the new governing body for a transitional period. The Commissioners' role would be advisory; they would not have any decision-making powers or be able to vote on council resolutions.
90. The alternative Option Three is a voluntary option. Its success would depend on the support of the new governing body and on the availability of the Commissioners to act in the role. Because the option is voluntary rather than regulatory, the role of central Government in the governance arrangement may be limited and no assurances can be made that any such assistance would be sought or given.

Analysis of alternative Option Three (A)

91. The strength of this option is that it may provide some continuity and contribute to a smooth transition to the new governing body. It could go some way to managing the risks described for Option Three. The Commissioners understand ECan's freshwater management and earthquake recovery work. The Option, if used, would enable the Commissioners to share their knowledge and expertise with the new governing body. The Commissioners could provide a useful interface between new members and ECan's stakeholders. It would be a relatively simple and low cost option to implement initially because it does not involve changing the law. The option is also flexible because the arrangement could last as long or short a period as necessary.
92. The potential weakness of the option is the voluntary nature of it, meaning it relies on the invitation and continued support of the new governing body. In addition, the presence of the Commissioner(s), while providing additional skills and continuity may not fully mitigate the risk of political divisions reemerging (for example, the risk of highly adversarial decision-making on freshwater management issues). This is because the Commissioners would be in an advisory rather than decision making role. Criterion 5

relating to efficiency would not be met as ECan would also have to bear the ongoing cost of remunerating the Commissioner(s).

93. In view of the large impending work programme, including that relating to earthquake recovery, the risks of this Option do not appear acceptable.

Alternative Option Three (B): Fully elected governing body with intervention under the Local Government Act 2002 (LGA02)

94. A further alternative to Option Three (a fully elected council) would be for the responsible Ministers to use powers under the LGA02 to provide assistance to ECan.
95. The Minister of Local Government has various powers to step in to help councils deal with problems or avoid them altogether. The Minister can request information from a council, call an election or, appoint any one of a Crown Review team, Crown Observer, Crown Manager or a Commissioner.

Analysis of alternative Option Three (B)

96. The key strengths of the option are that it enables central government to act quickly and proportionately if problems emerge with the newly elected council.⁴ Any of the Local Government Act provisions could be used with little delay (no legislative change would be needed), if the situation required action. The range of provisions is such that the right level of support and/or guidance could be provided to match the particular challenges faced. It would be a relatively simple and initially a low cost option to implement because it does not involve changing the law.
97. This option has the advantage that appointments are made by the responsible Minister and do not rely on the agreement of the new council. However, any of the actions in the menu of options could also be put in place with the new council's agreement. The significant risk to the future stability of regional governance in Canterbury could be addressed by the current Commissioners asking the responsible Minister to initiate one of the actions on the menu of options, which could then remain in place for a transitional period after the 2016 local election. Alternatively, a Crown Review Team could be appointed, with the new Council's agreement, to monitor and report on the transitional period.
98. A Crown Observer would be similar to (but more formal than), the option of having a Commissioner work alongside the Council (described in Option Three (A) above). A Crown Observer could be appointed to monitor a council's progress on addressing a significant problem, help the council address the problem and, if necessary, recommend further action to the Minister.
99. A Crown Manager can be appointed to have a more active remedial role to take responsibility for and provide direction to a council on specific functions or direct a council to the extent needed to resolve a significant problem and, if necessary, recommend further action to the Minister.
100. The weakness of the option is that it may not provide certainty about ECan's longer term governance arrangements. The lack of certainty is because the next steps would depend on what the LGA review process or appointee advises. The powers are also weighted towards managing specific problems, but can also be used where there is evidence of a potential problem. These issues may limit the capacity of the option to proactively enable some of the critical success factors identified above.

⁴ These powers were not available when the Commissioners were appointed. The assistance and intervention changes to the LGA applied learnings from the ECan Act, and ensure the local government legislation has the flexibility to deal with problems.

101. Finally, it would not be encouraging to the newly elected Council to immediately appoint Crown oversight and it may be received as bad faith on the part of Government.

Table I: Summary of Options One to Three assessed against the review's goals (As they are measured in a similar way, criteria 2, 3 and 5 are grouped)

	Option	Criterion 1: High quality leadership	Criterion 2: economic growth Criterion 3: Strong environmental stewardship Criterion 5: Value for money and efficiency	Criterion 4: Strong accountability to local communities	Risks
1	Mixed-model governance structure (preferred)	Strongly meets criterion	Strongly meets criterion	Meets by providing majority of local elected members on the governing body.	<ul style="list-style-type: none"> • New and untested governance structure, could generate uncertainty • Significant change in local government powers; risks of blurred or unclear accountability • Tension between elected and appointed councillors.
2	Extend Commissioners' terms	Strongly meets criterion	Strongly meets criterion	Does not meet criterion	<ul style="list-style-type: none"> • Partially conflicts with key principle of local government: communities decide their local affairs through local representatives
3	Status quo (return to a fully elected governance structure)	Uncertain capacity to meet criterion	Uncertain capacity to meet (especially in the short term)	Strongly meets criterion	<ul style="list-style-type: none"> • Continuity is an issue as this would create governance arrangements with a lack of institutional knowledge or ownership of current work programmes. • Potential for political divisions to return that would limit its ability to operate effectively • Environmental and economic risks from uncertainty/ potential lack of confidence of stakeholders in the new governance structure until relationships established.
3A; and 3B	Fully elected structure with voluntary appointment of Commissioners	Uncertain capacity to meet criterion	Meets Criterion	Strongly meets criterion	<ul style="list-style-type: none"> • Partial loss of skills and continuity • Commissioners advisory, not decision makers. • Appointment by newly elected council means continuity/ other advantages are not guaranteed. • Length of appointment not guaranteed.

Option analysis-sensitive information					
GOVERNANCE OPTIONS		Impacts on Canterbury Communities <i>Costs and benefits</i>	Impacts on Government <i>Costs and benefits</i>	Impacts on Local Government <i>Costs and benefits</i>	Net Impact and Assessment against objectives
Main options	Option One: Mixed-model governance structure	<ul style="list-style-type: none"> - Reduced democratic representation - Reduced independence - Uncertainty beyond 2019 – not a final solution + Provides both continuity and skills within ECan’s leadership (assuming some Commissioners remain) + Reduced risk of loss of momentum/direction + Mitigates potential representation divisions resulting from population imbalances that affect decision making 	<ul style="list-style-type: none"> - Inconsistent with national frameworks for local government - Resource and regulatory effort involved in the intervention + Specific, fit for purpose framework for Canterbury challenges + Good economic, cultural and environmental outcomes flow to the national economy + Ensures good progress and outcomes maintained in relation to national priorities (eg Canterbury rebuild) 	<ul style="list-style-type: none"> - Inconsistent approach to local governance + Good local government and resource management practice developed in Canterbury + Specialist expertise provides the ability to complete critical planning frameworks and provide support for earthquake rebuild + Current structures/ distribution of functions retained + Good regional leadership reduces costs for Canterbury Councils 	<ul style="list-style-type: none"> o Aspirations for democratic representation is balanced with the need for a breadth of specialist expertise and continuity through the reappointment of some Commissioners. o Responds to time critical need for specific arrangements for Canterbury o Effective resource management system for the region and to facilitate earthquake recovery. o Managed and incremental transition from current arrangements
	Option Two: Extend the Commissioners’ terms	<ul style="list-style-type: none"> - Limited opportunity for local democratic decision making and accountability - Reduced participation in decision-making - No opportunity for eligible candidates to stand for elections + Efficient governance + Limited regulatory change/ transition costs 	<ul style="list-style-type: none"> - Inconsistent with national frameworks - Resource and regulatory effort involved in the intervention + Specific measure for unique Canterbury challenges + Strong local-central govt relationships 	<ul style="list-style-type: none"> + Certainty and speed in completing regional strategy and planning frameworks 	<ul style="list-style-type: none"> o No clear transition/ transition deferred o Policy direction not set locally o Responds to time-critical needs of Canterbury o Decision-making certainty but reduced capacity for local democratic input
	Option Three: Status quo (return to a fully elected council)	<ul style="list-style-type: none"> - Uncertainty for collaborative arrangements and part completed projects + Standard local representation + Policy set locally + Full opportunity to elect representatives, and stand for election + Broad community support for this option (from submissions) 	<ul style="list-style-type: none"> - Uncertainty of outcomes for investments - Uncertainty for economic, cultural and environmental outcomes + National consistency 	<ul style="list-style-type: none"> - Uncertainty for future of regional strategies and plan-making - Uncertainty for part completed collaborative projects 	<ul style="list-style-type: none"> o No continuity of leadership o Risk of imbalance of skills to deal with complexity of water management and to prevent a return to past issues o Risks of representation divisions resulting from population imbalances o Risks of political divisions
	Alternative options	Option Four (A)&(B): Fully elected council - voluntary use of Commissioners or Government assists using LGA02 powers	<ul style="list-style-type: none"> - Government intervention continues for unknown time + Full opportunity to elect representatives, and to stand for election + Could management any problems that may emerge 	<ul style="list-style-type: none"> - If appointed, some re-assurance but the uncertainty of whether the arrangement can/will be used may be too great. 	<ul style="list-style-type: none"> + No difference to status quo

Part 2

Options for ECan's resource management powers

102. At the date of the RIS, there are 3 feasible options for freshwater management powers that could be specified for the new governing body from October 2016:

- **RM Option One:** ECan has standard RMA powers like all other regional councils.
- **RM Option Two:** ECan retains limited appeal powers provided by Part 3 of the ECan Act.
- **RM Option Three:** ECan retains all powers provided by Part 3 of the ECan Act.

103. In addition, there is a further non-regulatory option (**RM Option Four**) that may be available if the RM Reforms are passed by October 2016. This would involve ECan transitioning to one of the new RM reform processes:

- The collaborative planning process (CPP); or
- The streamlined planning process (SPP).

104. Since the special powers are just one function of the governance structure, they are explained below but have not been analysed to the same level of detail as the governance structure.

RM Option One: ECan has standard powers under the RMA (ECan Act expires-status quo)

105. If there is no legislative intervention, ECan would be left with the same resource management powers as other regional councils. This means that, if ECan wanted to make or vary a plan or regional policy statement, it would have to follow the standard RMA Schedule One process, which, among other things, allows submitters to lodge an appeal to the Environment Court.

106. Water Conservation Order (WCO) applications in the Canterbury region would be heard by an independent tribunal rather than ECan, and would be considered against national criteria rather than the criteria the ECan Commissioners use (Having special regard to the principles of the Canterbury Water Management Strategy). There would be no power to impose moratoria, which would remove ECan's current ability to prevent specified resource consent applications from being considered prematurely, risking, for example, over-allocation of water resources.

107. At an organisational level, ECan would need to develop some new internal processes, and make changes to its website and promotional/ guidance materials to reflect the changes to ECan's planning regime, at precisely the same time as the leadership of the organisation was facing change.

Analysis of option

108. Reverting to the same resource management powers as other councils would not take ECan back to where it was in 2010. Since the ECan Act Part 3 powers were first given to the Commissioners, the Canterbury Water Management Strategy has been embedded in ECan's regional plans and strategies to give it legal force.

109. The re-analysis of plan-making by the Environment Court, while adding to the time taken to complete plans, arguably adds a quality lens to planning decisions by councils by providing independent oversight of council decisions. However, this cannot be a replacement for good quality plan making with up front consultation, which does not result in litigation at the end of the process.
110. ECan would have less control over its resource management plan making. The return of appeal rights could put at risk the current pace of progress on the large ongoing planning work programme set out in ECan's Long Term Plan and undermine ongoing collaborative processes.
111. In 2016, there will still be much work to do to finalise ECan's comprehensive planning framework for freshwater management. Loss of the additional powers could mean:
- Delays and uncertainty for changes to plans or new plans (that have not been notified), if submitters make appeals to the Environment Court, the work of the zone committees would effectively be wasted, consensus would likely crumble, and well-resourced parties could advocate for their own interests in the Environment Court rather than through upfront collaboration.
 - That a moratorium cannot be applied to manage any influx of consent applications before a comprehensive water management framework is in place. Applications would have to be processed within national statutory time frames, potentially upsetting ECan's strategy for freshwater allocation and protection.
112. ECan would have less control over WCO amendments or new applications in the Canterbury region and there could be inconsistencies in criteria applied to decisions. Environmental protection groups or individuals disappointed by zone committee progress could make an application to the Minister for the Environment for a WCO that would be decided by a special hearings panel, without particular reference to the principles of the Canterbury Water Management Strategy. This could undermine the confidence currently held in the collaborative zone committee processes.
113. Currently, stakeholders and the public have confidence in the collaborative water management initiatives because they know the planning programme can be actively progressed using the Part 3 powers and their decisions will be implemented by the Commissioners.
114. Not having a complete planning framework in place also impacts on the speed and certainty of ECan's resource consenting function at a time when an increase in consents relating to earthquake recovery can be anticipated.
115. As mentioned above, the intended RM reforms will provide a mechanism (yet to be finalised) for streamlined planning and collaborative planning for all councils. Once in place these options would, be available to ECan without the need for special legislation. However, there are likely to be differences in the new procedure to the one available under the ECan Act, which could require careful transition to avoid delays in the planning programme and confusion to stakeholders.
116. Removing ECan's special powers will not achieve the objective of sustaining ECan's progress and effectively providing for future challenges. The majority of the freshwater objectives, limits, and rules are yet to be agreed by each of the 10 zone committees and notified in the plan. This could take until 2020 to complete, even with the current powers. Without the powers, appeals could drag the process out much longer and

undermine the purpose of the collaborative process run by ECan. The result would be a plan developed through the courts. All the work of the zone committees would effectively be wasted, consensus would likely crumble, and well-resourced parties could advocate for their own interests in the Environment Court rather than through upfront collaboration.

RM Option Two: ECan retains some Part 3 powers eg, limited rights of appeal

117. With this option (which would require legislation to give effect to it) ECan would keep only some of the additional powers. Some submitters have indicated that the limited appeal rights are the most important of the powers. This is because a significant number of planning decisions will need to be made post-2016 to complete the freshwater management framework. It has also been the most used of the powers.
118. WCO powers are, arguably, the least useful of the powers in the context of the work currently facing ECan. However, there is one amendment application being considered currently. As provided for in the ECan Act, having been commenced under the ECan special process, it will continue to be dealt with under that process until withdrawn or completed.

Analysis of option to retain restriction on appeals to the Environment Court

119. It is unlikely that ECan's freshwater management plans will be completed until 2020 at the earliest. Retaining the planning powers until the end of the mixed-model governance structure in 2019, would facilitate timely completion of a robust planning framework for the strategic and comprehensive management of fresh water. It may also go some way to preserving public and stakeholder confidence in participation in the ongoing collaborative decision-making process.
120. After 2019, the Part 3 powers would, under current provisions of the ECan Act, continue to apply to plans that had reached the stage of notification, by which time public engagement has already informed a new draft plan. If this provision was lost, it would be inefficient to have to change to a new process to complete the plan and could lose the public's confidence in participation. It would probably result in a strong disincentive to commence plans in the year or so leading up to the local body elections in 2019, which is not desirable.
121. While this option supports ECan's capacity to deliver resource management functions by retaining the most valuable additional resource management powers, the powers were originally intended to complement each other, providing ECan with an overarching view and control of the planning framework to ensure freshwater management is coordinated, rather than disjointed. Removing certain powers, and keeping others, may mean freshwater planning is not as coordinated as it could be and there is less confidence in the collaborative processes.
122. Due to the lack of continuity (mixture of RMA and Part 3 powers), this option may affect public confidence in ECan and the collaborative processes. In particular, it may create additional confusion for officers and the public at a period of peak activity in consenting for earthquake recovery.

RM Option Three: ECan retains all its Part 3 powers

123. ECan would retain all its powers under Part 3 of the ECan Act. New legislation would be necessary to re-establish the powers for ECan from 2016. The option could be temporary (eg, until RM Reforms are established), permanent, or until the end of the mixed-model structure in 2019.

Analysis of option

124. It is unlikely that ECan's freshwater management plans will be completed until 2020 at the earliest. Maintaining existing processes for council planning officers while ECan transitions to its new governance structure could support both a seamless transition and strong organisational performance and capacity to deliver resource management functions. This could be valuable at a time of organisational change to ECan's leadership and at a time of increased consenting relating to earthquake recovery.

125. After 2019, the Part 3 powers would, under current provisions of the ECan Act, continue to apply to plans that had reached the stage of notification, by which time public engagement has already informed a new draft plan. If this provision was lost, it would be inefficient to have to change to a new process to complete the plan and could lose the public's confidence in participation. It could result in a disincentive to commence plans in the year leading up to the local elections in 2019, which is not desirable.

126. By maintaining the special powers, there is a better prospect of maintaining consistency and confidence in the collaborative planning processes developed so far, both for the public and ECan's stakeholders. The water management programme could be completed under the same processes as it began with, which would assist a seamless transition at an operational level.

127. Canterbury's processes for plans, regional policy statements and WCOs would, however, remain inconsistent with the national resource management regime. Also, there would be no appeals to the Environment Court, to provide independent oversight to ECan's plans. As with RM Option Two, the removal of this scrutiny may cause concern if the members of a fully elected governing body did not have appropriate plan-making and technical experience.

128. A limited risk exists that the difference in processes from the national framework may create difficulties for developers from other regions looking to invest in Canterbury during a period of peak activity in consenting for earthquake recovery.

RM Option Four: ECan transitions to one of the RM Reforms processes

129. At the date of this RIS, while Resource Management Act reforms are planned, there are uncertainties as to what form the reformed processes will take and whether or when they might be passed.

Transition to the Collaborative Planning Process (CPP)

130. This option is only available if the RM reforms are passed prior to the expiry of the ECan Act. Even if the timing is aligned perfectly there could be some risks.

131. The CPP does not provide the same powers as under the ECan Act:

- The planning process under the CPP is very different, for example appeal rights are different under the CPP (points of law to the Environment Court and the option for

appeals on merits where a plan deviates from review panel recommendations). The change in process will create confusion and disrupt progress. ECan and stakeholders in Canterbury have invested a lot of time in freshwater planning, with a common understanding of the planning process to be followed. This common understanding would be undermined and goal-posts shifted. Potentially some stakeholders would engage differently (or would have engaged differently at earlier stages of the process) with an understanding of the different process.

- There would be no moratorium or WCO powers.

132. It is proposed that to deem an existing planning process “collaborative” the following must be satisfied:

- A plan must not have been notified as the parties would be too invested in the current process. The regional plan in ECan has been notified as has one of the zone committee plan variations (Selwyn / Waihora). More plans and plan changes may be notified leading up to the expiry of the ECan Act. A special exception would need to be made for ECan.
- Regional councils must apply to the Minister for the Environment to have a process deemed “collaborative”. Given the “shifting of goal-posts” described above, this will necessarily involve some form of consultation with stakeholders. During this application period there will be considerable uncertainty of process and freshwater planning may stall during this period. The application process would also be far more resource intensive for the Minister for the Environment, the Ministry ECan, and stakeholders) than simply continuing the ECan powers.

Transition to the Streamlined Planning Process (SPP)

133. As with the option above, this will only be available if the RM reforms are passed prior to the expiry of the ECan Act. However, if it is available, the SPP is not a replica of the special powers under the ECan Act for plan making and may not be seen as an adequate substitute for these.

134. The proposed SPP relies on the Minister’s agreement before any special plan making powers can be used, unlike the ECan Act where the process is set out in the legislation and is certain.

135. In addition, in the absence of appeals, the Minister will approve the council’s draft decision. While the removal of any appeals (including to the High Court on a question of law) will provide a potentially faster process, the requirement to obtain the Minister’s approval to the draft decision on the plan adds a new step and an area of uncertainty. Because of the absence of appeal rights, there may also be an increased risk of judicial review.

136. The proposed SPP will also take longer at the front end because it requires a request to be made by the council, consultation and then a direction from the Minister before any streamlined plan making process could be followed.

Summary of Options on special powers

137. The various options available for the proposed mixed-model governance structure in respect of the special resource management powers in Part 3 of the ECan Act are summarised in Table II below.

Table II: Summary of RM Options One to Four assessed against the review's goals

Option	Features	Criterion 1: High quality leadership	Criterion 2: economic growth	Criterion 3: Strong environmental stewardship	Criterion 4: Strong local accountability	Criterion 5: Value for money/ efficiency	Risks
1	Status Quo-Standard RM powers <ul style="list-style-type: none"> • Statutory timeframes for consents • Appeals to Environment Court • WCOs heard by independent panel 	√	√	√	√√		<ul style="list-style-type: none"> • Poor continuity-some plans made under different regime. • No opportunity to speed up the process • Risk of return to 2009 scenario
2	Extend all special powers <ul style="list-style-type: none"> • Moratoria • Limited appeals • WCO control 	√√	√√	√√	√√	√√	<ul style="list-style-type: none"> • Good continuity means greatest likelihood the planning programme in the Long Term Plan will be largely in place by the next local authority elections in 2019.
3	Extend some special powers <ul style="list-style-type: none"> • Limited appeals to Environment Court 	√	√	√	√	√	<ul style="list-style-type: none"> • Powers intended as a package. If participants of ECan's collaborative processes don't like the likely outcome, they could beat the plan coming into force with consent or WCO applications.
4	Other non-regulatory options that may be available in the future						
	Collaborative Planning Process (Up-front public engagement intended to improve the quality of plans with less scope for/risk of, litigation after Council makes final decisions)			√	√√		<ul style="list-style-type: none"> • Different to special powers so poor continuity-some plans made under different regime
	Streamlined Planning Process Limited appeals to Environment Court if criteria apply, on application to Minister.			√	√		<ul style="list-style-type: none"> • Different to special powers so poor continuity-some plans made under different regime

Consultation

138. The terms of reference for the review set out a consultation process for the review. The process included:

- Involving ECan in the review;
- Working closely with the Canterbury Mayoral Forum and seeking its input at key junctures of the project
- Seeking local authorities, and other key stakeholders' input
- Seeking input from Ngāi Tahu; and
- Seeking input and the views of the people of Canterbury through a discussion document.

139. The main vehicle for public consultation on the review was the discussion document. The consultation also targeted consultation with Canterbury councils, as representatives of their communities, and key stakeholders in Canterbury governance matters. The scope of the discussion document was limited to the option of a mixed model. Consultation on the regulatory impacts of the other options in this RIS was limited to questions eliciting other models and arrangements preferred by the submitters. Many submitters did provide alternatives to the mixed model option.

140. Other consultation included:

- consultation meetings between the lead Ministers and elected representatives of each of the Canterbury territorial authorities, the Chair of Te Runanga o Ngāi Tahu and the Environment Canterbury Commissioners in April/May 2015
- consultation meetings with Ministers and opportunities for the Canterbury Mayoral Forum to contribute to provide feedback on the draft terms of reference for the review and draft discussion document for the review before these were finalised
- meetings between Department of Internal Affairs and Ministry for the Environment officials and senior council officials and some elected representatives of each of the Canterbury Councils in August 2015.
- consultation with Government agencies.

141. The consultation presented a wide range of views, including support for the mixed model as a transitional next step for ECan, and opposition to it. The meetings assisted with the problem definition and better understanding the key issues for Canterbury. The discussion document help generate more specific feedback around the proposals. Those in opposition generally favoured a return to a fully elected council in 2016. Local Government New Zealand suggested that the Commissioners be retained until 2019.

Overview of submissions received

142. A total of 534 submissions were received on the discussion document. Of the submission that were received:

- Sixteen submitters support the mixed-model.

- Nine submitters support it in part.
- Five hundred and five submitters oppose the mixed-model.
- Four submitters did not specify their support or opposition.

143. 503 of the 534 submissions support a return to a fully elected council in the 2016 local body elections. 503 submissions of these submissions were received from individuals, while 31 were received from organisations. 475 of these submissions were made using an online submission tool.

Submissions from local authorities

144. Thirteen submissions were received from local authorities (nine Canterbury councils, Horizons Regional Council, Waikato Regional Council, Otago Regional Council and Canterbury Mayoral Forum).
145. Six of the nine submissions received from Canterbury councils support the mixed model proposal. Five councils support the proposal as it is set out in the discussion document, however Ashburton District Council advocates for the ratio of elected: appointed members to be 8:5, rather than 7:6, to provide for greater accountability of the members to their constituents.
146. Christchurch City Council opposes the mixed model proposal and instead supports a return to a fully elected council at the 2016 elections. The City Council proposes that a review of ECan's functions be conducted, with a view to establishing a water authority (as recommended in the Creech report) and relocating transport and other functions to local authorities in 2019. This idea of a review of ECan's functions is supported by Ashburton District Council and Hurunui District Council.
147. Selwyn District Council neither supports nor opposes the mixed model due to lack of clarity on a number of issues, including whether the Government intended to re-establish a fully elected council in 2019. The Council supports the proposal made by Local Government New Zealand (LGNZ) in their submission to retain the ECan commissioners for the 2016-2019 local government term, before returning to a fully elected council in 2019. The LGNZ proposal is also supported by Horizons Regional Council (which opposes the mixed model).
148. No consensus was obtained on the proposal from Waimate District Councillors. Although some councillors support the mixed model, others propose a number of alternative models, including establishing a water authority and creating unitary authorities in Canterbury.
149. Waikato Regional Council and Horizons Regional Council oppose the mixed model as this represents a significant change in the way local government operates. Otago Regional Council accepts the "*necessity for a transition arrangement in Canterbury with the aim of reducing disruption in a return to a representative model for the region*", but does not see the need for a permanent regional governance model that is different to the rest of the country.

Submissions from other organisations

150. 18 submissions were received from other organisations (excluding councils)
- Te Rūnanga o Ngāi Tahu supports a model that would provide for a 50/50 mix of Ngāi Tahu representation and government appointment representation, alongside elected representation. This would, in their view, better achieve Treaty partnership objectives.
 - Genesis Energy, Trustpower, Irrigation New Zealand Incorporated, Waitaki Irrigators Collective, Property New Zealand, Central Riccarton Residents Association and Hurunui Water Project New Zealand Ltd support the mixed model, as it allows for the progress of the Commissioners in freshwater management to be built on. Irrigation New Zealand suggests that further thought be given to the role of zone committees under the new model.
 - Federated Farmers supports the mixed model, but recommend that the ratio of elected: appointed members be 8:5, rather than 7:6.
 - As stated above, LGNZ opposes the mixed model and instead support an extension of the ECan Commissioners' term for another three years, before a return to a fully elected council at the local body elections in 2019
 - Human Rights Commission believe the mixed-model would be a significant improvement (on the current model), but that a fully elected model is more consistent with the principles of participation and democracy.
 - Forest and Bird, Artists for Saving our Water, North Canterbury Fish and Game Council, and Malvern Hills Protection Society oppose the mixed model and support a return to a fully elected council at the next elections, on the basis that there is no evidence to suggest the Government appointed councillors can better provide better leadership and management of freshwater than elected councillors. This view is also supported by the Labour Party.
 - University of Canterbury and the New Zealand Law Society oppose the mixed model due to the lack of justification for treating ECan differently to other councils, and the lack of accountability of the appointed councillors to ratepayers.

Special resource management powers

151. 24 (of the 534) submissions received commented on whether the Commissioners' unique resource management powers should be retained. Nine submitters support retention of the powers, while 15 were opposed.
152. Canterbury Mayoral Forum and four (of the five councils that commented on this question) support a continuation of the Commissioners' powers under a new governance structure.
153. Their views are supported by a number of organisations, including Te Rūnanga o Ngāi Tahu and Federated Farmers. Federated Farmers, particularly supports the limited appeals process as the process encourages greater commitment to the collaborative process and reduces costly litigation and lengthy delays in plans becoming operative.
154. Genesis Energy, Trustpower and Irrigation New Zealand, as well as 12 individual submitters (who also oppose the mixed-model proposal), oppose the retention of

ECan's special powers. Genesis Energy and Trustpower submit that the special powers were legislated in order that the Natural Resources Regional Plan could become operative, and these powers are no longer needed for this purpose.

Agency consultation

155. The following Government agencies were consulted on the final proposal and mechanism for the mixed-model governance option and either, did not respond or, expressed comfort with the proposal: the Treasury, New Zealand Transport Agency, Ministry of Transport, Ministry of Justice the Department of Conservation, the Canterbury Earthquake Recovery Authority, the Ministry of Business, Innovation and Employment, Te Puni Kōkiri, Ministry of Health, State Services Commission, Ministry of Civil Defence and Emergency Management and the Ministry for Primary Industries. The Department of Prime Minister and Cabinet was informed.

How consultation is reflected in the proposals

156. While there was strong support for the status quo option of a return to democracy, (Option Three), that option is not preferred because our assessment is that it would provide fewer net benefits.

157. However, the mixed-model proposal was modified to be end date specific, with provision for fewer appointed members if these become unnecessary. The elected membership proposals were retained because the distribution of population in Canterbury makes it particularly challenging to set new constituency boundaries without a complex and costly review. Therefore, representation arrangements would be set in legislation for the next three years and the new governing body will conduct a representation review before the next elections in 2019.

158. Canterbury Mayoral Forum and Te Rūnanga o Ngāi Tahu would be consulted on the selection and nomination of the government appointments.

159. The Part 3 special powers would be retained for a further transitional period to enable the completion of the resource management planning framework and to provide certainty through the period of earthquake recovery.

160. The implementation plan would include measures for handover arrangements, such as induction training for new members and some of the Commissioners (if available), working alongside the new governing body for a short period.

157. Measures could be adopted to ensure appointed councillors are accessible to communities.

Conclusions and recommendations

158. The preferred option is the mixed-model governance structure (Option One), combined with continuation of the original package of special powers in Part 3 of the ECan Act (Resource Management Powers Option Three).

159. In the Department and Ministry's view, the proposal for a mixed-model governance structure has strong merit as an option for addressing the issues of an abrupt loss of ECan's governing body and the risks that might present to continuity and momentum at a critical time for Canterbury in terms of freshwater management and earthquake

recovery. It also provides an exit mechanism for the Commissioners in anticipation of a return to a fully elected model. In 2019, much of the critical planning framework for freshwater management and earthquake recovery will be in place and the effects of any future political divisions will have been mitigated.

160. The net benefits of Option One, when measured against the status quo (a return to a fully elected governing body for ECan at the 2016 local authority elections) is that it mitigates the risk (in the short term) of a return to the politically divided council of the past. It will provide the necessary specialist skills on the governing body to ensure ECan operates as a fully-functioning council and can make unified and strategic decisions on matters of regional and national importance. It will have the capacity to act as a unified leader on resource management matters and ensure stability in the region to support the territorial authorities and other stakeholders in the earthquake recovery process. The mixed-model in Option One retains a significant element of democratic governance and appropriate skills and knowledge on ECan's governing body to ensure the Commissioners' continuity is carried forward and certainty for the region's return to a position of economic growth and prosperity. However, it would represent a significant departure from the governance arrangements for regional councils in the LGA02 in the short term.
161. With regard to resource management special powers we recommend that the package of measures in Part 3 of the ECan Act should continue during the currency of the mixed-model governance structure. It would not support Government's aims for continuity and momentum to make a significant change to the resource management settings in Canterbury at this time.
162. At some time in the future, intended resource management act reforms could provide measures for further streamlining and simplifying plan-making. However, the timing of these measures cannot be guaranteed to dove-tail with the mixed-model governance structure. Even if they were to be available in 2016, differences in the processes to the ECan Act special powers could cause significant and unnecessary complication at a time when there is a need for stability to maintain stakeholder and investor confidence in the region.

Implementation plan

163. The preferred option would, if agreed by Cabinet, be given effect through a proposed Environment Canterbury (Democratic Transition) Bill. This would be introduced in August 2015.
164. The preferred option would require legislation to be in place by April 2016 to enable the necessary preparations to be made ahead of the local authority elections in October 2016. ECan will be subject to the same level of monitoring as other regional councils. Attention will be paid to how the governance arrangements are bedding in. The existing Commissioners will provide a final report to the Ministers after their departure from ECan once the new appointed (and elected) members have been fully inducted.
165. Since there is no time for a meaningful representation review before April 2016 when the preparations commence for the October elections, four electorates would be specified in the legislation. This will give good regional council candidates a better opportunity to prepare for the elections. A full representation review will then be

required to be conducted by the new governing body ahead of the 2019 local government elections.

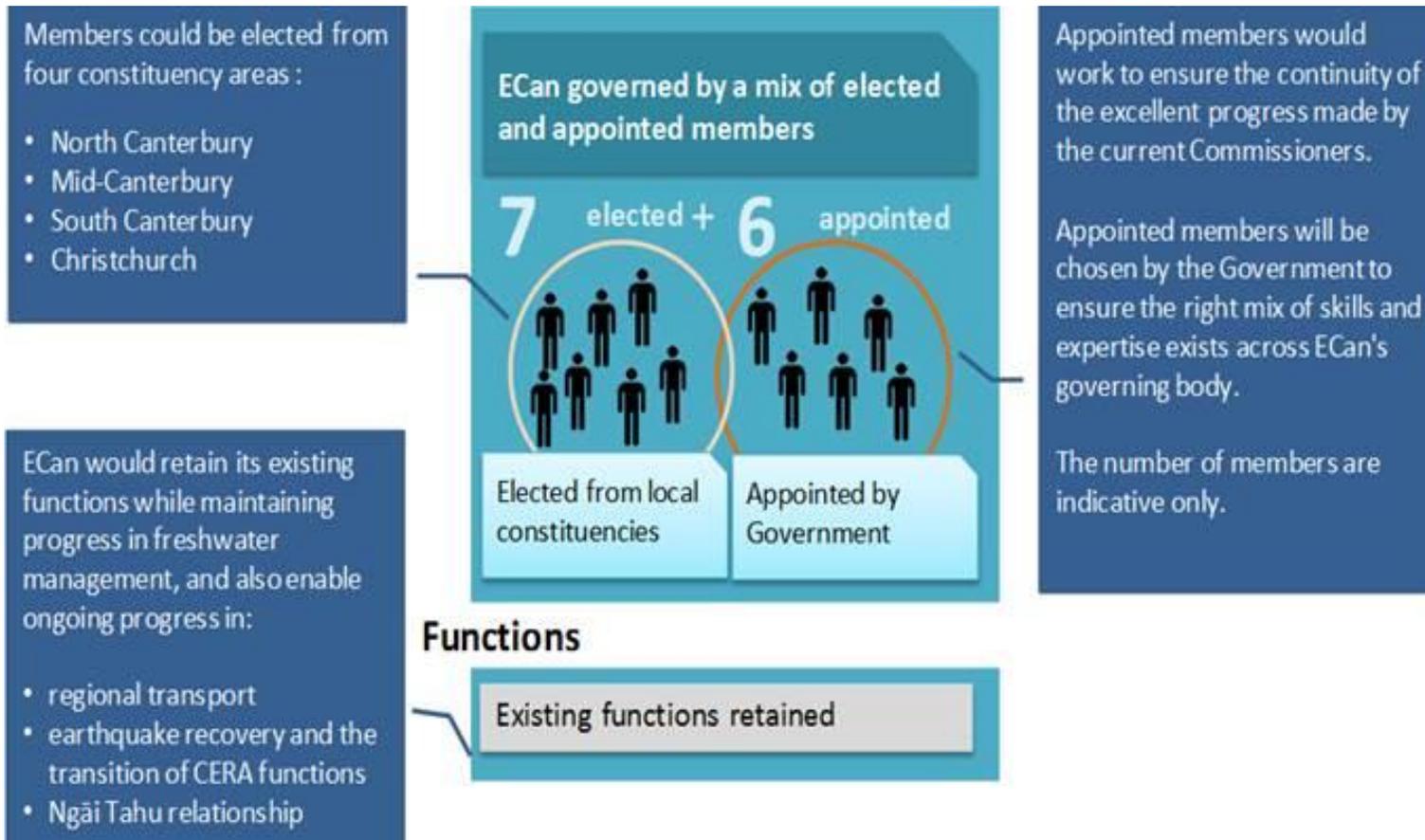
166. An appointments process with clear selection criteria would be used to identify suitable candidates for the government appointments on the governance body. This aims to guarantee both institutional knowledge being retained by reappointed Commissioners and a full range of complementary skills within the leadership.
167. The appointment process would allow for the fact that some Commissioners may not stay on and that the nature of appointed councillors is somewhat different from Commissioners as:
 - There would be less work to do (responsibilities split across 13 instead of 7 councillors)
 - The appointment process and accountability arrangements would set role expectations that deal with the specific challenges of working on a mixed council where elected councillors are accountable to the public, and appointed councillors are responsible to the Ministers. The appointment process would seek to align their roles/responsibilities as closely as possible to reduce tensions in decision making.
168. The arrangements would commence from the day on which new councillors are sworn into office following the 2016 local authority elections (with appointed councillors taking office one month later, to allow for a balance of skills to be identified and accommodated)
169. **Appendix II** shows the timeline and features of proposed implementation.

Monitoring, evaluation and review

170. The Department and Ministry would monitor any new legislative and regulatory arrangements. ECan's performance would be monitored as for any other regional council. Subject to Government policy decisions, the Minister of Local Government and Minister for the Environment would be responsible for the legislation.
171. Terms of appointment outlining the objectives for ECan governance will be provided to the appointed governing body councillors. Responsible Ministers will maintain an interest in the high level decision making performance of the new structure. It is not intended to oversee the detailed content of ECan's decisions.
172. Where performance issues or disputes arise it is intended that additional Government assistance would be available to resolve these in accordance with the provisions of Part 10 in the LGA02. The Minister would also have the ability to remove and replace appointed councillors.



Appendix I: The main elements of the mixed-model governance structure.



Appendix 2: Implementation timeline

The timeline below shows proposed steps for implementing a mixed model, from the enactment of legislation in late March 2016 to the adoption of the first annual plan under the mixed-model in June 2017

