



Nick Smith

2009 P. 224 30 MARCH, 2010

First Reading: Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill

Mr Speaker, I move that the Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill now be read a first time.

New Zealand's most strategically important natural resource is our freshwater. At nearly 80,000 cubic metres per person, water is to us what oil is to Saudi Arabia. Better still, if wisely managed it is infinitely renewable.

The problem is that water has been so plentiful that we have not had to be too sophisticated historically in how we have allocated or managed the resource.

Nowhere is this debate as hot as in Canterbury where over 50 per cent of New Zealand's irrigation currently occurs. You've got people flexing their muscles over water while the weakened referee Environment Canterbury is struggling to maintain order.

Long standing, systemic issues relating to the performance of ECan have reached a critical stage. Evidence of failure has been apparent for well over a decade and concerns surrounding ECan were included in the Ministry for the Environment's briefing to me as the incoming Minister for the Environment.

Based on these concerns and ECan's performance in the 2007/2008 RMA Survey of Local Authorities (which found that ECan was worst out of 84 local councils and was only complying with statutory timeframes in 29 percent of cases) I decided to fully investigate their performance.

The review was undertaken by an independent Review Group, chaired by Wyatt Creech and including Doug Martin, Doug Low and Greg Hill.

The review unanimously found ECan has been unable to deliver a robust, clear and effective framework for the management of natural resources (particularly fresh water) in the region and recommended the action being taken today.

Mr Speaker, the Canterbury community has lost faith in the ability of ECan to deliver on its statutory responsibilities.

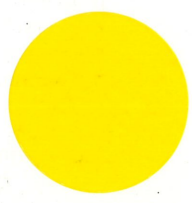
The Minister of Local Government and I have held meetings with ECan, with Canterbury mayors and chief executives, and their councils, with key stakeholders and with Ngai Tahu.

The views of people to me were clear. People told me:

- § That it's been patently obvious for a number of years that something needed to be done
• § That the report is comprehensive and accurate and ECan is not listening to its community.
• § That a dysfunctional ECan is holding back the region, economically and environmentally.
• § That the report included sound recommendations for administrative change.

Environment Canterbury 2009 (last sentence)

3rd



Mr Speaker, ECan's relationships with freshwater-stakeholders and parties such as Ngai Tahu and Canterbury's territorial authorities are compromised to a degree that undermines ECan's efforts to remedy the resource management issues in the region.

It is my take, that there is a broad consensus in support of the Review Group's findings in relation to the institutional governance of ECan and almost unanimous support for strong central government leadership on this issue.

The Review Group report recommends that Government establish a stand-alone Canterbury Water Authority. The Government believes further consideration is required before such structural arrangements are put in place. There is nothing in this Bill giving effect to this recommendation.

The threshold for intervention in the affairs of local government is high. Intervention is only considered when there is serious failure, mismanagement or mis-governance. With ECan, the Government intervention is required because of three things:

First, the Council has failed to effectively manage Canterbury freshwater (a natural resource of regional and national importance)

Second, it does not have a fully operative regional planning and policy framework for resource management - this has resulted in ad hoc and unsatisfactory arrangements for managing freshwater

And third, there is an "enormous and unprecedented" gap between what needs to be done to effectively manage Canterbury freshwater, and ECan's ability to do so (as highlighted by the ECan review team's report).

These problems straddle the roles and functions of ECan under the Local Government Act and the Resource Management Act. The existing powers provided under statutes are not sufficient to address these problems:

There is a compelling case for immediate and direct action by Government. Intervention is required to address a failure of governance on the part of ECan's elected Council, particularly in relation to freshwater management.

If we do not act the economic, social and cultural well-being of Canterbury will continue to suffer.

This Bill provides the power to appoint and empower Government appointed commissioners. These commissioners will provide the governance and leadership necessary to rapidly bring the region's resource management framework into line, and to solve the immediate problems with ECan.

Commissioners are a transitional measure and will be empowered to rapidly address the institutional and planning problems that are preventing effective resource management governance and decision making in Canterbury.

The planned ECan election in October 2010 would be deferred until such time as the commissioners have completed their task. Under any circumstances the next regional council elections in Canterbury will take place no later than the elections scheduled for late 2013.

The explicit intent is for the commissioners to withdraw and to be replaced by elected representatives as soon as their task is achieved and the present systemic issues are resolved.

Commissioners will be tasked with making institutional adjustments to ensure ECan is able to manage its duties effectively. They will additionally be tasked with 'fixing' the water problem. This requires an effective operative regional water plan. It is only through such a plan that ECan can make strategic decisions about resources and lay the ground rules against which future decisions will be assessed. This will enable ECan to make robust and sustainable resource management decisions in an efficient and timely manner.

The Commissioners will need to be experienced and capable individuals, collectively

holding a wide and deep set of expertise and experience. That is why I have appointed Dame Margaret Bazley as Commission Chair Designate.

The Commissioners will have power to appoint and delegate appropriate people with the necessary status and experience in resource management to advise and/or decide on resource management matters.

The Commissioners will be required to draw on the wisdom and opinions of the mayors of Canterbury, seeking mayors' guidance regularly and thus ensuring they are aware of the different viewpoints throughout Canterbury on key issues.

Central Government support will also be available, so that commissioners are informed by the deliberations of the Land and Water Forum and are able to draw upon the wider New Start for Fresh Water work and decisions.

Additionally, commissioners will be given unique powers and will operate under an altered decision making framework for the duration of their appointments.

The collaborative Canterbury Strategic Water Management Study has recently led to the development of the Canterbury Water Management Strategy. This strategy has gained the broad support of stakeholders across the region (including the territorial authorities) and has generated a good deal of momentum towards the collaborative development of a robust and durable framework for managing fresh water in Canterbury.

The strategy proposes significant changes to the institutional and resource management frameworks in Canterbury.

I firmly believe that Government's response to the recommendations of the Review Group should capitalise on the momentum provided by the Strategy.

Mr Speaker, I propose to achieve this by requiring the Commissioners to have particular regard to the vision and principles of the Strategy, which will be included as a schedule in the Act, when making decisions and recommendations on the framework for managing fresh water in Canterbury.

The vision and principles of the Strategy are subtly different from, but consistent with, the sustainable management purpose of the RMA. Requiring commissioners to have particular regard to the vision and principles of the Strategy when making decisions on fresh water management is unlikely to significantly tilt the playing field in favour of any particular outcome. However, it will ensure that any decisions the commissioners make on the planning framework are taken in the context of this recent and well-supported expression of community aspirations.

Mr Speaker, in order to empower commissioners to expedite decisions on the Natural Resources Regional Plan and Regional Policy Statement, I propose that there only be appeals to the High Court on points of law with no appeals on the merit of the commissioners' (or their delegates') decisions. This differs from the current situation where appeals on merit are available to the Environment Court.

In the absence of an operative planning framework for managing water in Canterbury, the region's water conservation orders have set the benchmark around which the Natural Resource Regional Plan has begun to develop and consents have been granted. There is such a stark contrast in Canterbury between the way resources subject to water conservation orders are managed versus those that are not subject to water conservation orders, that I'm concerned at the sustainability of the overall resource management outcomes. I consider that the attributes of the Canterbury region justify a move to ensure that the region's water resources are managed in a more integrated way.

Accordingly in Canterbury, during the period of intervention, the Bill provides that the Minister for the Environment would be required to direct applications for new Water Conservation Orders and applications to vary or revoke existing water conservation orders to the appointed commissioners rather than a Special Tribunal. The commissioners would follow normal statutory procedures for inviting submissions and conducting hearings, although the provision for submissions (appeals) to the Environment Court on the merit of their recommendations would be replaced with the ability to appeal to the High Court on points of law.

In addition, commissioners' recommendations on Water Conservation Orders would be

made against a decision-making framework that ensures that decisions on fresh water management in Canterbury are made against a backdrop of sustainable management, augmented by the vision and principles of the Canterbury Water Management Strategy. Decisions on applications to vary existing water conservation orders would be subject to the same 'sustainable management' test. As Minister for the Environment I would have the final decision making role on water conservation orders in accordance with existing RMA provisions.

I believe that it is important to the success of this intervention that the resource management planning framework in Canterbury is allowed to develop in a consistent and integrated manner. For this to happen, key resource management decisions, including decisions on water conservation orders, will need to be made in accordance with the same over-arching statutory test.

An application for a water conservation order over the Hurunui River is currently under consideration by the Environment Court. The threshold for Government intervening in matters before the judiciary is rightfully very high. In this case I consider that intervention is necessary to promote consistent planning outcomes and to avoid the potential need for subsequent revision of the recommendations of the Environment Court (and the time, cost and uncertainty associated with this).

Accordingly I propose that the application for a water conservation order over the Hurunui River be referred to the commissioners. The Environment Court process would cease and the commissioners would consider the application, and submissions on it, against the same amended criteria I referred to earlier.

The original applicant would have an opportunity to revise its application in light of the new decision-making criteria and, in order to ensure that the process is equitable but also efficient, I propose to allow persons who made submissions to the special tribunal on the application for a water conservation order over the Hurunui to make submissions to the commissioners and to participate in hearings.

Currently, there are certain ground water zones and other fresh water resources in Canterbury that are nearing or beyond full allocation. In many of these over-allocated catchments, consents for new water takes are still being granted, further jeopardising the economic, environmental and social well-being of communities.

Mr Speaker, to stop this, I propose that commissioners be given the power to recommend targeted moratoria, subject to the approval of the Minister for the Environment. These moratoria would enable commissioners to refuse to accept new applications and to put existing applications on hold for a defined area for a defined time period.

These moratoria would not affect applications that have either been decided or are subject to appeals to the Environment Court - those applications would proceed in accordance with existing statutory processes and criteria. Both the commissioners and the Minister for the Environment will be given the power to reactivate existing applications that have been placed on hold and to require the acceptance of new applications at any time.

The situation we find in ECan is unprecedented. Government intervention is not only warranted but, based on my conversations with the people of Canterbury is, as Ngai Tahu told me, regrettably supported. Doing nothing is not an option.

I am confident that the above proposal is the minimum required to turn ECan around, and that such intervention is not only in the interest of the well-being of the people of Canterbury, but is indeed in the interest of all New Zealanders.

Mr Speaker, I commend this Bill to the House.



Nick Smith Environment