

Questions & Answers

1. What led Ministers to initiate the Review Group Report into the performance of Environment Canterbury?

First, the Ministry for the Environment has had concerns about Environment Canterbury for nearly a decade, and specifically noted the problems in its Briefing to the Incoming Minister in November 2008. On 27 February 2010 former Environment Minister Trevor Mallard stated that “Everyone knew there was a problem here. It was quite late in the term and in a time when there was not the ability to put in the group to do what Wyatt Creech has effectively done and then deal with the results”.

Secondly, Environment Canterbury came in 84th of 84 councils in the 2007/2008 biennial survey for resource consent processing with 29% of consents processed within the statutory timeframe. The Environment Minister Nick Smith also triggered a review of the Far North Council but this concluded the Council had effectively addressed its problems.

Thirdly, criticisms of the approach taken by Environment Canterbury to managing fresh water in Canterbury have been repeatedly highlighted in decisions of both its own commissioners and the Environment Court. These decisions such as those in 2005 and 2007 over ground water allocations led to the unusual step of Environment Canterbury issuing media statements criticising such decisions.

Fourthly, the Minister of Local Government received significant correspondence from concerned ratepayers and others, including the Canterbury region’s Mayors, alerting him to serious concerns with Environment Canterbury’s performance.

2. What did the Review Group Report recommend?

The Review Group – Wyatt Creech (Chair), Doug Martin, Gary Hill and Doug Low – unanimously concluded that “*the institutional failure in Environment Canterbury requires comprehensive and rapid intervention on the part of central government to protect and enhance both regional and national well being. Failure to intervene would lead to continued lack of progress in water management in Canterbury*”.

The Review Group recommended:

- The establishment of a Commission, by special legislation, to replace the Environment Canterbury Council and to manage the organisational change.
- A specialist Canterbury Regional Water Authority to manage water in the region for the long term.

3. What response has there been to the Review Group Report?

Responses include:

“There is need for swift, drastic action but there must be a firm commitment to elections in 2013 or earlier.” – **Lawrence Yule, President Local Government New Zealand.**

“Ngāi Tahu regrettably recognises the need for intervention in ECan and reluctantly support installing commissioners as a temporary measure, that while not optimal for the important principle of democracy is a necessary practical solution in the circumstances.” – **Anake Goodall, CEO, Ngāi Tahu.**

“To solve the water problems in the region we need something very clear-cut, relatively simple and forcefully implemented. I don't see that ECan council is up to the job.” – **Murray Rodgers, Chair Water Rights Trust.**

“I think if we are going to move ahead in Canterbury with water, we need some change” – **Graeme Sutton, Chair Irrigation New Zealand.**

“The Creech Report included sound recommendations for administrative change at ECan, but a new water authority would further fragment the resource's management.” – **Chris Todd, Conservation Manager, Forest and Bird South Island.**

“In our view the Report needs to be taken seriously and Government will have to act on it.” – **Gary Taylor, Director Environmental Defence Society.**

“It's been patently obvious for a number of years that something needed to be done.” – **Dr Helen Brookes, Chair Waitaki First.**

“What I think is the council needs a total reorganisation retaining the best but exiting the weakest links.” – **Michael Morrow, Mid-Canterbury President Federated Farmers.**

“The report is comprehensive and accurate and ECan is not listening to its community.” – **Mark Oldfield, Environment Canterbury Councillor.**

The 10 Canterbury Mayors and their councils were unanimous in their support for the findings of the Review Group

“Confidence in local government to handle the water issue is at an all time low – whatever side of the argument you sit on”- **Bob Parker, Mayor of Christchurch.**

“We were just the straw that broke the camel's back. It's disappointing the previous Government didn't act on those concerns” – **Bede O'Malley, Mayor of Ashburton.**

“It was unanimous among the mayors that the Beehive must act and address water management issues” – **Alex Familton, Mayor of Waitaki.**

“A dysfunctional ECan is holding back the region, economically and environmentally.” – **Janie Annear, Mayor of Timaru.**

“I think the mayors feel the Canterbury region’s potential for development has not been realised.” – **John O’Neill, Mayor of Mackenzie.**

“Water management is becoming one of the hottest topics in the region and the cause of many of our problems.” – **John Coles, Mayor of Waimate**

Environment Canterbury

“There is agreement that the historic approach to water management in Canterbury is not adequate to address water management in Canterbury.”

“Environment Canterbury Councillors offer to enter into negotiated agreement between the Councillors and the Minister for the Environment on what is to be delivered for water management to achieve the Government’s direction on water.”

“ECan requests the appointment of a commissioner advisor.”

– **Alec Neill, Chair, Environment Canterbury**

4. What other examples are there of Government intervening in elected statutory bodies?

a) Rodney District Council in May 2000

Local Government Minister Sandra Lee appointed a Commissioner, Grant Kirby, to replace the elected Council following a Ministerial review. The Government introduced and passed the Local Government (Rodney District Council) Amendment Bill which suspended elections of Councillors and clarified the role of commissions, through all stages under urgency on 2 May 2000, with the support of the National Party and all parties in Parliament. This intervention was at the Council’s request.

b) Auckland District Health Board 1989

In 1989 the then Health Minister Helen Clark used her powers under Section 62 of the Area Health Boards Act 1983 to replace the elected Auckland District Health Board and installed a commissioner, Harold Titter. Miss Clark said it was her responsibility to see that the public health service was effective. She said her move was in the public interest. The move was welcomed by the National Opposition at the time.

c) Hawke’s Bay District Health Board 2008

In February 2008 a Commissioner was appointed by then Health Minister David Cunliffe to replace the Hawke’s Bay District Health Board under the New Zealand Public Health and Disability Act 2000. This decision was immediately subject to judicial review. The judicial review was dropped when it was agreed that the disestablished board would form an advisory committee making decisions with the commissioner.

d) School Boards of Trustees

Ministers of Education have regularly used their powers to replace elected boards of trustees with commissioners. The Minister can decide to dissolve a board of trustees where she has reason to believe that there are reasonable grounds for a risk to operation of the school, student welfare and/or student educational performance.

As at 29 March 2010, of New Zealand's 2500 schools, 30 had commissioners. The most recent appointment of a commissioner by the Minister of Education was at Hokitika School on 19 March 2010.

5. Who did the Government consult in coming to its decisions?

Upon the release of the Review Group Report last month, Ministers Smith and Hide travelled to the Canterbury region on 24 February to meet with Environment Canterbury Councillors and senior management, the 10 Canterbury Mayors, key water stakeholders and Ngāi Tahu.

The Ministers also had meetings in Canterbury with all 10 territorial authorities earlier this month and another meeting with Environment Canterbury representatives on 16 March.

The overwhelming view of the 10 city and district councils was that central government intervention was required to address the important issue of water management in Canterbury.

6. What will be the cost for Canterbury ratepayers of the intervention by the Government?

There will be no additional cost to ratepayers for the Commissioners. The Government is committed to ensuring that the cost of governance by the commissioners will be no more than that of the current cost of the Council.

7. How will Cantabrians continue to be able to have a say about their region?

The Commissioners will be responsible for the governance of Environment Canterbury subject to the rules and processes as set out in the Resource Management Act and Local Government Act. The Commissioners will be required to work with the Mayors and the people of Canterbury to achieve the region's outcomes. The Bill returns Environment Canterbury to the regular local government election cycle for 2013 (or potentially earlier if the commissioners finish their work sooner).

8. Why does the Government want to pass the legislation under urgency?

Several stakeholders including Environment Canterbury, Ngāi Tahu and the region's territorial authorities have requested a rapid response on the grounds that it is important to minimise disruption and uncertainty, first and foremost to the staff of Environment Canterbury but also to the community. The Government agrees that there is a need for urgency in order to minimise the debilitating effects of uncertainty.

9. What is the Canterbury Water Management Strategy and why is it being given legal status?

The Canterbury Water Management Strategy has been developed co-operatively by the Mayors, Councils and water stakeholders of Canterbury in response to growing concern about the effectiveness of water management.

The strategy began in 2000 as the Canterbury Strategic Water Study and has received support from Canterbury's Mayors, Government and Environment Canterbury over the subsequent years. It is well supported throughout the region and by irrigators, recreationalists and environmentalists.

The Environment Canterbury Temporary Commissioners and Improved Water Management Bill gives formal legal status to the strategy and requires the Commissioners to give formal recognition to it in their decisions on the regional plan, and to water conservation orders in the region.

10. What are the additional powers to be given to the Commissioners over and above those of a Regional Council?

First, the Commission is being given the power to fast-track the completion of the regional plans in Canterbury. This means that appeals on the plan will be limited to points of law to the High Court and not to the Environment Court. This is necessary to get a plan in place and operating.

Secondly, the Commission is being given the power to provide a targeted moratorium on water take consents in areas that are, or are near to being, fully allocated, subject to the approval of the Minister for the Environment. The purpose is to enable a constraint on new water takes in areas under pressure until a proper water plan is in place.

Thirdly, the Commission is being given the power to determine water conservation orders in the Canterbury region under new criteria including the Canterbury Water Management Strategy and Part II of the RMA. These would otherwise go to a Special Tribunal appointed by the Minister for the Environment and be subject to decisions of the Environment Court. Final decisions remain with the Environment Minister.

11. Why has the Government not used the existing powers of the Environment Minister under the Resource Management Act or the Local Government Minister under the Local Government Act?

The Environment Minister does have powers under Section 25A to appoint commissioners to take over the RMA functions of the Council, and legal tests to do this have been met in the Review Group Report. However, real practical difficulties would exist for the chief executive and 500 staff of Environment Canterbury to have Commissioners responsible for the RMA functions and councillors for the remainder when these do not neatly split.

Under the Local Government Act 2002 the Minister of Local Government's power to appoint commissioners is limited to specific circumstances.

Special legislation is also needed to give the Commissioners the additional powers to improve Canterbury's water management.

12. How does the intervention in Environment Canterbury align with the Government's broader programme around freshwater management and development of an Environmental Protection Authority?

The appointment of Commissioners gives Environment Canterbury some breathing space to:

- Solve the institutional problems in Environment Canterbury
- Make immediate progress on the impasses to water management in Canterbury. This will be based on the widely supported Canterbury Water Management Strategy.

During this period, Government will continue its collaborative approach to water management in New Zealand including the Land and Water Forum and the New Start for Freshwater programme.

In addition, over the next few months, the Government will also be considering the role of an Environmental Protection Authority. This Authority will focus on the effective, efficient and transparent management of natural resources at a national level. Government doesn't expect an EPA to deal with local consenting and planning issues which will continue to be the responsibility of local councils.

Until these programmes are completed Government was not prepared to implement the establishment of a separate Canterbury Water Management Authority as recommended in the Review Group's Report.

13. Why has the Government not taken up the "negotiated agreement" proposal put forward by Environment Canterbury?

First, the Government is not satisfied that an advisor-Commissioner would have sufficient authority to effectively address the problems with Environment Canterbury, particularly as a number of Councillors disagree with the approach.

Secondly, the Government believes the combination of Commissioners and additional powers is required to rectify the problems and that giving additional powers to the existing Council that has lost community confidence would not have public support.

Thirdly, the Government believes that there would be real difficulties with such an agreement being maintained after the local elections in October, posing questions over the role of the Commissioners beyond that period, despite a clear view that more than six months will be required to correct the problems with Environment Canterbury.

14. What does this mean for the water conservation order proposal for the Hurunui River?

The application was considered by special tribunal but this decision was appealed to the Environment Court and is awaiting a hearing.

This Bill refers the Hurunui Water Conservation Order to the new Commissioners and requires the decision to be made in respect of the sustainable management provisions of the RMA and the principles and vision of the Canterbury Water Management Strategy. The final decision on the WCO will, as before, be made by the Minister for the Environment.

The Bill enables the applicant to revise their application and all people who made submissions on the original WCO to make further submissions even if they were not a party to the Environment Court.

The reason for this is to ensure a consistent approach to water issues in Canterbury and to give Commissioners the full set of powers required to effectively manage this resource.

15. What are the next steps following today's announcement?

First, the passing of special legislation which is expected this week.

Secondly, the Government needs to finalise the terms of reference and membership of the Commission.

Thirdly, the Commission officially takes charge from the Council on a commencement day to be determined by Order in Council at some time in the next month.