

30 April 2015

Environment Canterbury Review
Ministry for the Environment
PO Box 10362
Wellington 6143

Dear Sir/Madam

RE: Environment Canterbury Review - discussion document

1. Summary

- 1.1 Thank you for the opportunity to make a submission on the Government's plan for the future governance of Environment Canterbury. The Christchurch City Council Community Boards have been consulted on this submission and the Council approved the submission on 30 April 2015.
- 1.2 The Christchurch City Council (the Council) acknowledges the achievements of the Canterbury Regional Council (Environment Canterbury) in building relationships with territorial authorities, implementing a new model for the allocation of water; and leading aspects of the earthquake recovery.
- 1.3 One of the issues for the Council with this discussion document, is the disparity between the findings of the initial review of Environment Canterbury's (ECan) performance in the 2010 'Investigation of the Performance of Environment Canterbury under the RMA and LGA'¹ (referred to as the Creech Report), and the terms of reference for the current review. The Creech Report referred to the inequitable under-representation of Christchurch City at the regional level and the need for "advice on the governance and institutional arrangements in Canterbury". These matters are not reflected in the discussion document.
- 1.4 The Council continues to support, as it did in the Creech Report, a Canterbury Regional Water Authority and the allocation of public transport functions to local authorities. The Creech Report recommended that a review be undertaken to consider "the optimum arrangement for the management and operation of the public transport fleet within the region."² However this recommendation has not been picked up by the terms of reference for the current review and it has only been after pressure from the Canterbury Mayoral Forum that the Ministry of Transport has now responded by announcing it is convening a working party to consider the matter, comprising representatives from the New Zealand Transport Agency (NZTA) and the Christchurch, Selwyn and Waimakariri Councils.
- 1.5 The City Council is able to control roads, footpaths, its substantial planned investment in offroad cycleways as well as on-road cycleways, public transport infrastructure, and to plan subdivisions and additional housing. And yet we cannot determine public transport standards not even the routes. This matter is purely an urban function, affecting only Christchurch and its neighbouring districts (Selwyn and Waimakariri) and Timaru. Clearly it does not impact the Waitaki or Kaikoura in any way, shape or form and its function and control should clearly be an urban function. The current system splits the transport

¹ <http://www.mfe.govt.nz/publications/rma/investigation-performance-environment-canterbury> (pages 5-6)

² <http://www.mfe.govt.nz/publications/rma/investigation-performance-environment-canterbury> (page 71)

planning and implementation function in a way which makes little sense to users and funders alike. The Council cannot emphasise strongly enough that at a time of major rebuild and expansion that the integration of all transport networks is essential. One implication is that the Council may not be able to retain ownership of any public transport provider, and the Council will address this issue in conjunction with its community.

- 1.6 Likewise the issue of air quality and odours. Based on the frequency of calls about urban odours and emissions it seems clear the community does not understand where responsibility for air quality lies. Therefore, alongside transport, the Council would request the transfer of responsibility for air quality.
- 1.7 The Council understands that reviewing and transitioning these functions may take longer than the available time before the 2016 election. The Council is happy to work with Selwyn and Waimakariri District Councils on the transport function to bring about a solution that all are happy with. However, the Council cannot emphasise strongly enough that those functions must be urban in responsibility where these affect urban areas. The Christchurch City Council cannot support urban transport and urban air quality and odour remaining the responsibility of a regional body. Of the two, the transport function is the most urgent. The current situation makes no sense and causes duplication, confusion and outcomes that do not best serve our citizens.
- 1.8 If a mixed governance model is the only option for the future governance of ECan, as the discussion document indicates, then a planned transition of transport functions to elected local authorities at least allows this function to return to democratic ratepayer representation.
- 1.9 The Council believes there is considerable discrepancy between the Government's intentions at the time it appointed the Commissioners and this current discussion document. The Cabinet Paper prepared in response to the Creech Report noted that "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."³
- 1.10 The Council is disappointed (as the community is likely to be) that it was not until 2014 that a review of ECan was signaled, with terms of reference that focused only on "the operation and membership of ECan, its additional resource management powers and functions, its relationships with territorial authorities and Ngai Tahu and its role in the Canterbury Earthquake recovery". This is a far cry from what might have been expected from the government's statements in 2010.
- 1.11 From the Council's point of view it is extremely disappointed that the Government has failed to carry through with its original intention to replace the ECan Commissioners with elected representatives as soon as their task was completed. This is a rushed, superficial review that has not addressed the matters the Government initially said it would and the mixed-member governance arrangement seems to be a hastily comprised stop-gap measure. The Canterbury region deserves more than this.
- 1.12 The Council notes that the discussion document does not consider, or seek views on, a range of options. The Council reminds the government that the 2014 National Party local government policy⁴ states that "National will consult the public on the future of Environment Canterbury, and will **propose a range of options** from a return to full elections, to a mixed model of elected and appointed members." The discussion document does not propose a range of options.
- 1.13 Discussing more than one option is a legal requirement for local and regional governments

³ <http://www.mfe.govt.nz/publications/rma/investigation-performance-environment-canterbury> (page 3, para 15)

⁴ <https://www.national.org.nz/policies>

operating under the Local Government Act 2002 (LGA) and the Resource Management Act (RMA). If ECan were leading this review options would have to be presented and discussed. The Council does not expect that government consultation would provide less than this especially when consulting on a regional government matter of such significance to regional and local government and the Canterbury community.

- 1.14 The discussion document refers to the contribution ECan has made to earthquake recovery and water management. However, the Council notes that ECan's earthquake response, for example the Land Use Recovery Plan (LURP), was significantly enabled by the Greater Christchurch Urban Development Strategy (UDS) - a collaborative partnership between Christchurch City Council, Selwyn District Council, Waimakariri District Council and Environment Canterbury with New Zealand Transport Agency and Te Rūnanga o Ngāi Tahu. The UDS partners began an in-depth planning and development programme in 2006 which provided the strategic direction, land use planning and the tools that together form a solid platform enabling the LURP to implement earthquake recovery.
- 1.15 Similarly, the implementation of the Canterbury Water Management Strategy (CWMS) over recent years has been greatly enabled by the planning undertaken prior to 2010. The CWMS was already being vigorously promoted by the Canterbury Mayoral Forum, ECan and territorial authorities in 2010 and ECan was taking a leading role in the development of the strategy and its institutional framework.
- 1.16 Our submission covers the following points:
 - the review process and the discussion document
 - the right to representation where there is taxation
 - comments on functions
 - possible risks for the region arising from the proposed mixed governance model, and
 - preferred governance proposals.

2. The review process and discussion document

- 2.1 The Council does not consider that the discussion document provides a clear problem definition for the current situation. While it is understood that a temporary emergency situation required the suspension of the representation rights of those paying taxes in 2010 and 2013 this is not the current situation in Canterbury and there is no longer an urgent, over-riding reason for any model other than a full democratic representative model consistent with the rest of New Zealand's regional councils.
- 2.2 The focus on the one mixed-governance model option indicates that planning for a return to a full democratic process and a handover of the Commissioners' expertise and knowledge is not well advanced, which is of concern to the Council. In fact, the discussion document does not identify any specific time by which the proposed mixed-governance model will finish and it may be intended to be a permanent change. It would have been useful for the document to have clarified this.
- 2.3 Consultation on one option is not a satisfactory basis for introducing new legislation. Nor is there any indication that the Government has even considered yet, let alone prepared for discussion, the nature and extent of the legislative changes that would be required if its proposal is adopted. It is ironic to note that in the Government's own officials have advised that "Options that rely on introducing legislation in a very short timeframe increase the risk of poor or misdirected intervention resulting in unintended consequences and the need for subsequent intervention to remedy those consequences"⁵.
- 2.4 This approach to the matter is reflected in the fact that of the twenty-five pages of the discussion document, only two are set aside for explaining the specific details of the

⁵ p.7 Regulatory Impact Statement

proposal to establish a mixed-governance model for ECan. Given the document itself notes that the proposal "would involve the setting up of a new type of governance arrangement in the local government context"⁶ this seems woefully inadequate. Not only that, but rather than describing how the mixed-governance model would work in practice, the Government simply refers to a similar arrangement that is already in use in New Zealand's District Health Boards (DHB). The Council's response is that without sufficient information, it is unable to properly consider whether or not the model will meet the objectives claimed for it. As it is, the Council is left to assess for itself the merits of the proposal.

- 2.5 District Health Boards are established under Part 3 of the New Zealand Public Health and Disability Act 2000. They are Crown Agents, for the purposes of the Crown Entities Act 2004, which quite tightly prescribes their objectives and functions. They answer to the Government whereas local authorities are accountable to their communities, provided they comply with the obligations imposed on local authorities in the Local Government Act 2002. The board of a DHB exists to carry out Government policy through the directions of the responsible Minister, notwithstanding the ability of the community to elect a number of its members. The Minister is responsible for the appointment and removal of non-elected members.
- 2.6 The matter of taxation without representation is not relevant to DHBs as their income comes from national taxes, allocated directly by the Minister of Health, with clear and agreed performance measures that boards must comply with.
- 2.7 In contrast, the purpose of the Local Government Act 2002 is to provide for "democratic and effective local government that recognizes the diversity of New Zealand communities"⁷. To that end, the Act provides a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them, and also to play a broad role in meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions⁸. The Government is being disingenuous in suggesting the mixed-governance model proposed for ECan would be similar to the current DHB structure.

3. Right to representation where there is taxation

- 3.1 New Zealand has had a western-style system of local government since the 1840's. The first principles of this system include:
 - local autonomy and decision-making with communities able to make decisions about issues directly affecting them, and for which they pay
 - there are local differences and local issues that are best met by designing local solutions
 - open and transparent processes
 - local diversity reflects a range of different needs and priorities, and Councils need the autonomy to respond to community needs.
- 3.2 Accountability - the discussion document notes that funding arrangements will continue under the proposal with the mixed-governance regional council able to set rates and territorial authorities able to collect rates on behalf of the council, as is current practice. The result of the mixed-governance model proposal is that six of the thirteen governing members of ECan will be influencing decisions on the allocation of rates and charges without being accountable to those who paid.
- 3.3 Accessibility - furthermore, accessibility by Canterbury residents to members of the proposed mixed-governance board may, in fact, be limited. Access for the community to board members to voice community concerns may be reduced to the elected members

⁶ Pg 21 ECan Review - a discussion document

⁷ LGA 2002 (section 3)

⁸ LGA 2002 (section 3 (b)-(d))

given that the appointed members are accountable to the Minister while only elected members are accountable for their decisions to the community they are taxing.

- 3.4 Both the original ECan (Temporary Commissioners and Improved Water Management) Act 2010 and the 2013 Amendment are based on what the community understood, and accepted, as a 'good faith' promise of a return to full democracy in 2016. The community understood that the original Act was intended to give ECan and the Canterbury region some time to 'bed in' the Canterbury Water Management Strategy (CWMS) and that the Amendment in 2013 was a temporary emergency response to the earthquakes. Instead, the discussion document offers a mixed-governance model with no timeframes for a return to full democracy.

4. Review of functions

- 4.1 The Council notes there are a range of functional-related reviews and submissions underway including, amongst others, the CERA Transition Board, ECan Long Term Plan, ECan Draft Air Plan, Canterbury Mayoral Forum - public transport which may impact on the future of the region. The Council will provide comment on these separately as appropriate.
- 4.2 However, the Council does not support the contention in the review terms of reference that consideration of the functions of the regional authority are out of scope for the review and wishes to re-iterate this here. The Creech Report outlined a programme of action regarding the functions of ECan which the Council continues to support. In particular the Creech Report recommended a Canterbury Regional Water Authority (in recognition of the regional and national importance of Canterbury's water quality and supply) and a review of the transport functions of ECan (particularly matters of public transport) given the concentration of transport functions in urban areas, especially Christchurch.
- 4.3 In terms of the function of public transport, the Council wishes to note that the management of public transport is a significant matter for local authorities concerned with the quality and efficiency of transport networks for their communities within their boundaries. Christchurch City Council contends that the planning and management of public transport should be integrated into the function of the local authority. This would allow for the greater integration of public transport routes into the wider multi-model transport network; improve the function of public transport in the urban environment; and ensure greater alignment with land use planning (including parking) and the delivery of services and infrastructure.
- 4.4 The Local Government Act 2002 (LGA) allows for the transfer of public transport responsibility from the Regional Council to a local authority in accordance with section 17. Section 17 (1) states: "(1) A regional council may transfer one or more of its responsibilities to a territorial authority in accordance with this section." Any possible risk for the Government associated with a transfer of responsibilities is mitigated by Part 10 of the LGA which provides the Minister for Local Government with powers to intervene in the affairs of local authorities in certain situations. These powers provide a significant back-stop for the Government. Democracy is worth the risk.
- 4.5 On another regional transport related matter Council also wishes to note a concern regarding the equity of representation on the Regional Land Transport Committee. Christchurch City Council has the largest rating base yet retains only one vote (the same voting rights as the smaller local authorities) on the Committee which will allocate an anticipated \$330 million over the next ten years⁹ from the New Zealand Transport Agency to regional transport in Canterbury. For example, Ashburton District Council (population 31,041 in 2013), Timaru District Council (population 43,929 in 2013) and Waimate District

Council (population 7,536 in 2013) each have one vote. Christchurch City, with a population of 341,469¹⁰ in 2013 has one vote.

- 4.6 The Council contends that the legislative terms of this regional transport function are not representative for the ratepayers of Christchurch City. The ECan Review - discussion document has not considered either of these matters which go to the heart of the issue regarding population-based democratic representation.
- 4.7 Similarly, air quality is a concern for local authorities. The Council wishes to acknowledge ECan's work on the draft Air Plan and the Council is addressing specific concerns about air quality through our Air Plan submission. The Council endorses a 'partnership approach' for urban Christchurch to support air quality planning and service delivery alignment.

5. Mixed governance model risks

- 5.1 The Local Government Act includes the following principles for good governance:
- clarity in governance roles
 - effective, open and transparent processes
 - separation of regulatory and non-regulatory functions.
- 5.2 The Council wishes to comment on the role differentiation mentioned in the discussion document. The discussion document notes that the end of the Commissioners term in 2016 "removes their significant knowledge and experience" and that the mixed governance model would "help to strike the right balance between local representation, and specialist skills and expertise for good decision-making"¹¹. This suggests that elected members will have a different role to appointed members with elected members bringing local representation and appointees bringing specialist expertise and good decision-making to the role. This suggestion of role differentiation does not provide clarity for the governance role.
- 5.3 Furthermore, the potential cross-over of governing member's specialist, technical roles with operational matters may increase confusion and difficulty for board members, and for staff, where this causes a failure to separate regulatory and non-regulatory matters.
- 5.4 The Council is concerned that the mixed-governance model will reduce 'effective, open and transparent processes' rather than "provide the necessary stability for Canterbury from 2016" because of the proposed mix of:
- elected members, with their accountability back to their constituents, and
 - appointed members, with their accountability back to the Minister.
- 5.5 The risk is that the mixed-governance model delays decision-making which would not be helpful to the Canterbury community. With the proposed model, not only are there different constituencies to be represented but there is also government policy concerns. For example, delay may be caused for appointed members by potential changes to the Minister, a change in government priorities, or a change in government with associated changes in environment policy directions.

6. Alternative Governance Model

- 6.1 The Council's preferred alternative is a return to a full democratic model and population-based representation as soon as practicable on the basis that, according to the discussion document, the Commissioners have achieved their task.

¹⁰ <http://www.ccc.govt.nz/cityleisure/statsfacts/census/population.aspx#jumplink1>

¹¹ Pg 8 ECan Review - a discussion document

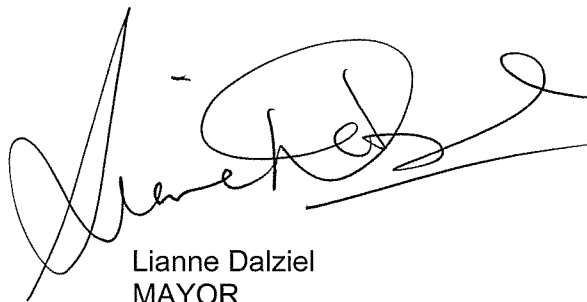
- 6.2 If this is not possible by the October 2016 elections the Council is happy to work with the Ministry of the Environment and the Department of Internal Affairs on an alternative proposal for a transitional period to a full democratic model to allow for a representational review and the transition of transport functions. It may be that the first term of the Board is a four year term to bring ECan into the same election cycle as other councils. However, if the Government is determined to go down the mixed-model path (and it appears that it is) then the Council believes there are better options than just adhering to the DHBs' "similar arrangements".
- 6.3 If the community must tolerate a non-elected Council in Canterbury for a longer period, it makes even more urgent a review of functions. The Council would like that to start with the urgent issue of transport and will work with anyone at any speed to make this an urban function. The Council would like to follow that up very quickly with the air quality function. Both are essential functions to a brilliant new city.

The Council again thanks the Ministry of the Environment and the Department of Internal Affairs for the opportunity to make a submission on the future governance of Environment Canterbury. If you require clarification on the points raised in this submission or additional information, please contact Michael.Theelen@ccc.govt.nz.

Yours faithfully



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