



# Briefing: Meeting with Environment Canterbury Regional Council

Date submitted: 26 February 2024

Tracking number: BRF-4222

MfE priority: Urgent

Actions sought from Ministers		
Name and position	Action sought	Response by
Hon Chris BISHOP <b>Minister Responsible for RMA Reform</b>	Read before meeting with Environment Canterbury Regional Council on 29 February 2024	N/A
Hon Penny SIMMONDS <b>Minister for the Environment</b>		

Actions for Minister's office staff
N/A

Appendices and attachments
1. Talking points for your meeting with Environment Canterbury Regional Council (ECan) Chief Executive Dr Stefanie Rixecker and Chair Peter Scott.

Key contacts at Ministry for the Environment			
Position	Name	Cell phone	First contact
Principal Author	Erica Finnie		
Responsible Manager	Josh Wineera		
General Manager	Gina McGrath		<input type="checkbox"/>

Minister's comments

# Meeting with Environment Canterbury Regional Council

## Key messages

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1. The purpose of this briefing is to provide you with supporting materials for your meeting with Canterbury Regional Council, known as Environment Canterbury (ECan) Chief Executive Dr Stefanie Rixecker and Chair Peter Scott. The meeting will be held on Thursday 29 February 2024 at 3.30pm.
2. Sara Clarke, General Manager System Enablement and Support will also attend.
3. The purpose of this meeting is to discuss freshwater management, farm planning and the wider resource management system, and to establish a relationship between you and ECan (New Zealand's largest regional council by area). Dr Stefanie Rixecker is a member of the Local Government Steering Group which has provided strategic advice to the Ministry for the Environment (MfE) on resource management (RM) matters. Chair Peter Scott has longstanding experience as a councillor, prior to being elected as chair.
4. ECan has significant experience implementing the Resource Management Act 1991 and managing freshwater. They can provide useful feedback on the government work programme. They are keen to understand what your intended timing or ordering of changes might be in the resource management and freshwater management systems, and the impacts this will have for ECan's work.
5. Appendix One provides you with talking points in the following topics:
  - a. Freshwater regulatory requirements
  - b. Farm planning
  - c. Resource management reform and fast-track consenting.

## Background and context

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6. ECan has regularly engaged with the government on the resource management system and freshwater management. Dr Stefanie Rixecker attends monthly meetings with MfE as a member of the Local Government Steering Group (LGSG).
7. LGSG was established in mid-2021 to recognise the statutory role of local government in the resource management system and reflect the need to build a lasting relationship between central and local government focused on resource management. The Steering Group comprises local elected members and council Chief Executives (or other senior officers), staff from Local Government New Zealand (LGNZ), Taituarā, Te Uru Kahika, and the Ministry for the Environment. Information about LGSG was provided to Minister Bishop in BRF-4186.
8. ECan received a letter from Minister Bishop in early February 2024 advising of the Government's plans to develop fast-track consenting (FTC) legislation and introduce

changes to the National Policy Statement for Freshwater Management (NPS-FM) 2020 early this year. The letter invited ECan to have input into this process and noted that officials would be in touch to seek a meeting to discuss the proposals and understand its perspective.

9. MfE hosted an online meeting for local government on 7 February to seek feedback on the proposed FTC bill and changes to NPS-FM. Olivia Cook, Principal Strategy Advisor at ECan attended.
10. MfE met with LGSG on 9 February and discussed the proposed FTC bill.
11. ECan is part of the Canterbury Mayoral Forum which is widely held as being an effective leadership body for the region. It is a useful forum for Ministers and officials to connect with local government leaders in Canterbury.
12. You are meeting with LGNZ's Regional Sector on 7 and 8 March at its meetings. The matters the Regional Sector are likely to raise at the meetings are likely to be discussed during your meeting with the ECAN CE and Chair.
13. ECan and the wider Regional Sector work proactively. They are likely to ask what opportunities there will be for the sector to work with officials to inform the upcoming review of national direction for freshwater. The sector works together to provide a unified view and draws on the extensive technical experience from the regional and unitary councils.

## **Freshwater management**

14. ECan's notification of its Land and Water Regional Plan (LWRP) in 2012 introduced a new approach to freshwater management (via farm environment plans, output controls, and zone committee oversight). However, this approach has not delivered as expected.
15. Issues of concern, after a decade of the LWRP, include the following:
  - a. Many rivers and streams have elevated levels of nitrate, phosphorus, bacteria, and toxic algae, largely arising from animal effluent (there are currently 17 river warnings for nine rivers in the region)
  - b. Elevated nitrate levels afflict groundwater in many parts of the plains and are projected by LAWA to increase. Minimum Acceptable Values (MAVs) are being exceeded in several districts
  - c. Many of the shallower lakes have poor or declining water quality (both high-county lakes, such as those in the Otuwharekai/Ashburton basin, and low-lying lakes, such as Hood, Forsyth, and Wainono)
  - d. Pasture encroachment on braided river margins has led to river narrowing, heightened flood risk, and litigation around the definition of river boundaries (eg, the Rakaia River)
  - e. Summertime river low-flows are declining because the groundwater allocation rules have not controlled the increased pumping of groundwater, mainly for irrigation, exacerbated by climate change.

16. In 2023, a case study of the Otuwharekai Lakes identified several vulnerabilities in the LWRP freshwater system (BRF-3093, BRF-3256).
17. These included poorly specified plan rules, a flawed farm environment plan (FEP) system, over-reliance on output controls alone to manage diffuse discharges, and poor accountability and transparency in the FEP consenting, auditing, monitoring, and enforcement processes.
18. ECan has acknowledged many of these and the need to address them. In the meantime, in lieu of an effective regulatory mechanism for these lakes, ECan is working directly with farmers, Ngāi Tahu, and others, through the Otuwharekai Working Group, to achieve voluntary nutrient reductions.
19. Scientific reports commissioned for this work (partly funded by MfE) indicate that voluntary reductions alone are unlikely to meet the lake nutrient targets, suggesting that additional measures, regulatory and/or fiscal, will be needed.
20. A different freshwater issue concerns ECan's role in monitoring and enforcing the Water Conservation Order (WCO) on the Rakaia River. The Minister for the Environment is a party to the litigation around this and has been separately briefed on the matter (BRF-4076).

### **Regional Planning Framework**

21. ECan is currently reviewing its regional planning framework, including its freshwater management policies, plans, and processes. MfE is working with ECan to discuss how they may do this to limit duplication burden on farmers and growers.
22. ECan is working with Ngāi Tahu and catchment communities to set environmental outcomes that align with current national policy statements, standards, and regulations, and meet social, cultural, economic, and environmental aspirations.
23. This year, ECan will notify a new Regional Policy Statement (RPS) and an amended LWRP to give effect to the National Policy Statement for Freshwater Management 2020 (NPS-FM 2020) including Te Mana o te Wai.
24. In 2028, ECan will follow this by notifying an Integrated Regional Plan, incorporating the LWRP, the Regional Coastal Environment Plan, and bespoke river regional plans.
25. To progress this work efficiently and effectively, ECan may seek some certainty around the timing of the Government's reform programme.

### **Freshwater-Farm Plans (FW-FPs)**

26. Freshwater farm plans (FW-FPs) provide an alternative to the traditional framework of the RMA by allowing farmers and growers to develop solutions tailored to each farm. They also allow farmers and growers to use their own industry plans to meet FW-FP requirements (where those industry plans align with what is specified in the FW-FP regulations).
27. FW-FP regulations came into force on 1 August 2023. The regulations do not apply to a region until turned on by an Order in Council. So far, they have been applied to

Southland and Waikato (from 1 August 2023), West Coast and Otago (from 1 February 2024), and Manawatu-Whanganui (from 1 April 2024).

28. ECan implemented regulated farm environment plans (FEPs) for all farming activities unable to meet permitted activity criteria of the Canterbury Land and Water Regional Plan, which became operative in 2015.
29. ECan is currently deciding how they will align the farm environment plan programme with FW-FP implementation.

### **RM Reform and Fast-Track Consenting**

30. The fast-track bill is part of the Government's phased approach to reforming the resource management system. The phases are:
  - a. repeal of the Natural and Built Environment Act and Spatial Planning Act (now complete).
  - b. introduction of a fast-track consenting regime and targeted amendments to the Resource Management Act 1991 (RMA) by late 2024.
  - c. replacement of the current RMA with new resource management legislation based on the enjoyment of property rights, while ensuring good environmental outcomes (proposed for introduction in late 2026).
31. There may be questions about the role of local government in the FTC process.
32. The first major step in the proposed fast-track process is for applications to be assessed by the 'joint ministers'. Relevant local government bodies will be consulted on the joint ministers' decision to refer and will possibly be consulted on Expert Panel decisions.
33. Once approvals have been granted, the role of local government would likely be the same as if the approvals had been granted under a normal process. Local government has provided feedback on the FTC proposals seeking cost recovery for local government's time spent on applications.
34. Other decisions regarding the role of local government have not yet been made, but current thinking is for the role of local government to largely mirror the role provided for under the original COVID-19 Recovery (Fast-track Consenting) Act 2020.

### **The application of the Te Mana o Te Wai hierarchy in the NPS-FM 2020 in resource consenting in Canterbury**

35. ECan have produced a Technical Advice note on impacts of the NPS-FM, including Te Mana o te Wai, for resource consent processing. This note puts a significant onus on applicants to provide an assessment against relevant NPS-FM provisions, such as the hierarchy of obligations. The RMA requires consent applicants to assess any relevant provisions of a national policy statement in applications for resource consent.
36. This note is one of the examples referred to in advice on proposed changes to the application of the hierarchy to consent applications and decisions.

## Operational RMA intersects

37. ECan may want to discuss some operational RMA matters. We have provided talking points to support discussion about these matters:
- a. Last year the previous Minister for the Environment called in a consent that ECan was processing for a Waste to Energy plant in Waimate. The consent was referred to the Environment Court for a decision. ECan is now assisting the EPA with this.
  - b. Minister Simmonds, you have just asked for advice on intervening on a consent for a large solar farm in Mackenzie District that ECan are processing. MfE officials are discussing this consent with ECan, so it may end up being a topic of conversation at the meeting.
  - c. We have also been informed by ECan that they are considering applying to the Minister for the Environment for approval to use the Streamlined Planning Process in the RMA to make a change to the Canterbury Land and Water Regional Plan (CLWRP) to enable some water “takes”, following the Supreme Court decision *Aotearoa Water Action v Canterbury Regional Council*. This will remove a barrier to some development, especially urban development, which currently exists in Canterbury. Officials are discussing this with ECan and if they decide to progress with an application, advice will be provided.

## Recommendations

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We recommend that you:

- a. **note** the background material provided in this briefing ahead of your meeting with ECan.
- b. **note** the talking points for the meeting provided as Appendix 1.

## Signatures

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Gina McGrath  
Acting General Manager – System  
Enablement and Support  
26 February 2024

Hayden Johnston  
General Manager – Natural Environment  
Policy  
26 February 2024

## Appendix One: Talking points for your meeting with Environment Canterbury Regional Council (ECan) Chief Executive Dr Stefanie Rixecker and Chair Peter Scott

### **Freshwater farm plans**

- We want to ensure that the freshwater farm plan system is practical and fit for purpose.
- We have seen some great leadership from regional councils, industry and catchment groups in encouraging the development of freshwater farm plans that support strong freshwater outcomes.
- MfE has reached out to councils in those regions where farm plan regulations are live to suggest councils may want to take a “light touch” approach to be applied to the implementation of freshwater farm plans at the moment.
- Councils who have already begun to implement the freshwater farm plan system will continue to be supported while any improvements to the system are considered.
- We are working with industry and councils to ensure we use the current system to streamline farm planning data – so farmers submit related data fewer times and councils can monitor local freshwater outcomes more efficiently.

### **Freshwater planning deadline and Te Mana o Te Wai**

- We have extended the deadline for councils to notify draft freshwater plans by three years, from 2024 until 2027. This will avoid unnecessary duplication and compliance costs.
- I am aware of some councils applying the hierarchy of obligations, which sits in the objective and Te Mana o Te Wai provisions of the NPS-FM, to their decision-making on individual resource consents. The Government is considering changes to:
  - prevent consent authorities to require individual resource consent applicants to demonstrate that their individual proposed activity adheres to the hierarchy of obligations
  - remove the hierarchy of obligations from consent authorities’ decision-making on resource consent applications. This would be an interim measure, while a review and replacement of the NPS-FM is undertaken.

### **Freshwater management**

- We have begun work to review and replace the National Policy Statement for Freshwater Management (the NPS-FM), which is expected to take 18 to 24 months and will include a full consultation process.

- We are committed to ensuring that New Zealand's freshwater systems are protected using a pragmatic and balanced approach which provides for and recognises the interests of all water users.
- We want to provide farmers and landowners with the tools they need to grow the economy, while still achieving environmental outcomes.
- I am interested in your thoughts as we review and replace the NPS-FM. What approach to freshwater management will work best for primary production and regional economies?
- I acknowledge the investment that ECan and all partners and stakeholders have invested over many years in freshwater planning.
- I am also interested in hearing more about your priorities, and the areas where you think we could make improvements to the NPS-FM and associated regulations such as the NES for Freshwater:
  - What are your thoughts on how policy can enable farmers and the regional sector to improve freshwater outcomes?
  - How can national policy better support freshwater management at the catchment scale?

## **RMA Reform**

- We intend to undertake a phased approach to reforming the resource management system.
- We completed the first phase in December 2023, with the repeal of the Natural and Built Environment and Spatial Planning Acts.
- In the second phase, our intent is to amend the RMA to make it easier to consent new infrastructure including renewable energy, allow farmers to farm, build more houses, and enable aquaculture and other primary industries.
- This will include introducing new fast-track consenting legislation in March to replace the interim fast-track pathway.
- We will also make targeted amendments to the RMA by late 2024.
- The third phase of the reform will replace the current RMA with new resource management legislation based on the enjoyment of property rights, while ensuring good environmental outcomes. That work is on a longer timeframe.

## ***Proposed new fast-track regime***

- After we've introduced new fast-track legislation in March, the plan is for it to go through a select committee process and be enacted later in 2024.
- The fast-track legislation builds on previous and existing legislation.

- The Ministry for the Environment has carried out targeted engagement with groups representing Māori, local government, infrastructure, development, and environmental interests, as well as technical experts.
- The development of FTC legislation is happening quickly, but it builds off previous or existing fast track consenting legislation – so we have been interested to hear what parts of previous regimes local government thought worked well.

### ***Purpose of the fast-track bill***

- Our aim is to make it easier to get resource consent for a range of projects, including housing and infrastructure, and to promote development such as renewable energy generation.
- Approvals the bill will cover:
  - As with previous regimes, it is proposed that the fast-track process be used for resource consents, notices of requirement, or certificates of compliance under the Resource Management Act.
  - In addition, the new fast-track regime will include approvals required under other legislation to provide a 'one-stop shop' for infrastructure and development projects.
  - Decisions have not been made on what this will include, but some examples could be approvals under the Heritage New Zealand Pouhere Taonga Act 2014, Conservation Act 1987, Wildlife Act 1953 or Reserves Act 1977.

### ***Eligibility for the fast-track process***

- A broad range of nationally and regionally significant projects will be able to access the fast-track process.
- This could include infrastructure, housing, resource extraction, aquaculture and other developments.
- While the range of eligible activities will be deliberately broad, the bill will clearly set out any ineligible activities.

### ***Applications***

- The first major step in the proposed fast-track process is for applications to be assessed by the 'joint ministers': Minister for Infrastructure, Minister of Transport or Minister for Regional Development.
- Projects will be assessed against a set of criteria to determine their potential benefits for our economy and environment.
- When assessing projects, the joint ministers must consult with other relevant portfolio ministers, local authorities and post-settlement governance entities.
- Following assessment, the joint ministers will decide whether to refer eligible projects to an Expert Panel.

- The joint ministers will have broad discretion to decline projects they consider unsuitable.
- To provide certainty for applicants and other system users, the bill will support a strong presumption that projects referred to the Expert Panel will have their necessary approvals granted.

### ***Expert Panel stage***

- Once the joint ministers have decided to refer a project, an Expert Panel will be stood up to consider the application in more detail.
- Decisions about the composition and operation of the Expert Panels have not yet been made, but generally speaking they should include a range of skills and experience relevant to the particular project.
- The key role of the Expert Panel will be to apply any necessary conditions to ensure a project meets environmental and other outcomes.
- The Expert Panel will have only a limited ability to decline a project once referred.
- If an Expert Panel cannot agree on acceptable conditions, they may refer a project back to joint ministers, but there will be a very high threshold for doing so.
- The Expert Panel will need to make decisions within timeframes to be specified in the bill.
- As part of their decision-making process, the Expert Panel will have to invite submissions from relevant persons or groups (yet to be determined).
- There will be no requirement to hold hearings – this will be at the discretion of the Expert Panel.
- Decisions about an appeals process have not yet been made.

### ***List of projects to be included in the bill***

- In addition to the standard application process, the bill will contain a list of individual projects that will be automatically referred to an Expert Panel.
- Before being included in the bill, listed projects will be assessed against the same criteria as projects that are the subject of independent applications.
- The Expert Panel will apply conditions.
- Decisions about the list of projects to be included in the bill have not yet been made.
- I am interested in hearing local government's feedback on proposed projects to be included in the bill.

### ***Protections for Treaty settlements and other arrangements***

- The bill will ensure protections for Treaty of Waitangi settlements and other legislative arrangements.

### ***Role of local government***

- Relevant local government bodies will be consulted on the joint ministers' decision to refer and will possibly be consulted on Expert Panel decisions.
- Once approvals have been granted, the role of local government would likely be the same as if the approvals had been granted under a normal process.
- Other decisions regarding the role of local government have not yet been made, but current thinking is for the role of local government to largely mirror the role provided for under the original COVID-19 Recovery (Fast-track Consenting) Act 2020.

### ***Timeline***

- The fast-track bill is intended to be introduced to Parliament by 7 March 2024.
- The bill will then proceed through the House, including a select committee process of at least four months.
- The bill is expected to be enacted by the end of 2024.

### ***Operational RMA intersects***

- Environment Canterbury staff are working with the EPA on processing a resource consent that Environment Canterbury requested was called in for a Waste to Energy plant in Waimate. When all the consents have been applied for, the consent will be considered by the Environment Court for a decision.
- Officials have informed me that Environment Canterbury is processing a resource consent that has been notified in the Mackenzie District for the largest solar farm proposed in New Zealand that. I am interested in exploring whether there would be benefit in calling in that consent.
- Officials have informed me that Environment Canterbury is considering applying for Ministerial approval for a Streamlined Planning Process to make a change to the Canterbury Land and Water Regional Plan (CLWRP) to enable some water "takes", following the Supreme Court decision *Aotearoa Water Action v Canterbury Regional Council*.