

Investigation of the Performance of Environment Canterbury under the Resource Management Act & Local Government Act

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Executive Summary

This investigation of the performance of Environment Canterbury (ECan) was undertaken by a Review Group headed by the Rt Hon Wyatt Creech in accordance with Terms of Reference (ToR) established by the Minister for the Environment and the Minister of Local Government. The Terms of Reference were broad in scope, incorporating the performance of ECan in discharging its responsibilities under both the Resource Management Act 1991 (RMA) and the Local Government Act 2002 (LGA) (also including other related legislation), together with wider contextual matters including the adequacy of the current planning framework for delivering the vision and objectives of the Canterbury Water Management Strategy in an effective and efficient manner.

The issue of freshwater management (both ground and surface water) is the single most significant issue facing the Canterbury Region. The Review Group acknowledges that the scale of the issues being addressed in terms of water availability and quality in the Canterbury Region and the scale and nature of competing demands for that resource is significantly greater than that confronted by other regional councils throughout New Zealand. They are correspondingly of much greater significance to the nation's well-being.

The Review Group acknowledges the significance of water and the complexities it brings to ECan in its management role. However, the Group was struck by the 'gap' between 'what needs to be done' to appropriately manage water and 'ECan's capability to do so'. The Review Group membership included some of New Zealand's most experienced assessors of organisational capability. In their experience they had not previously seen a gap between capability and requirement matching this particular situation. In their view, the extent of the gap between the capability of ECan and what is required for it to adequately manage freshwater issues is enormous and unprecedented. A very large backlog of outstanding issues needs to be addressed before water management in the Region reaches a steady state position. While the improvements and efforts made to address longstanding performance issues are acknowledged, the Review Group has concluded that ECan's performance on water policy and management issues (allocation and quality) falls well short of what is essential.

This failure requires comprehensive and rapid intervention on the part of central government to protect and enhance both regional and national well-being. Failure to intervene will lead to continued lack of progress in water management in Canterbury. The Review Group considers that a profound change in approach is required to existing institutional frameworks to address this matter properly. The reasons for this include:

- Around 70% of New Zealand's fresh water resource is in the Canterbury Region, much of which is under demand from competing interests. Unresolved water quality issues persist in the Region in the minds of many stakeholders.

- The Canterbury Region contributes a significant percentage of the nation's renewable hydro electricity generation capacity, and is important in terms of agricultural and horticultural production. All of these activities depend critically on water.
- There are significant issues in relation to the Crown's Treaty obligations, with Ngāi Tahu expressing a very strong interest in the management of water as a Treaty partner.
- Resolving water resource issues is complex and involves controversial and difficult judgments to achieve the appropriate balance between the environmental, economic, social and cultural considerations that must be taken into account. Experience to date indicates that Environment Canterbury has not managed these competing demands and interests effectively. All too frequently, the outcome has been undue delays rather than progress and frustration levels on all sides are high.
- Despite the passage of more than 18 years since the enactment of the Resource Management Act, Canterbury does not have an operative region-wide planning framework. The absence of an over-arching planning and policy framework for the Region has resulted in a piecemeal, fragmented and inefficient approach to the management of freshwater.
- It is a matter of record that, in the absence of a planning framework, the Crown was forced to intervene and establish the Waitaki Water Allocation Board to manage the allocation of water rights in the Waitaki Catchment following competing claims to water from rural interests and electricity generators.
- Most stakeholders spoken with expressed considerable frustration with the long delays in the resource consent approval process and associated very high processing costs.
- Territorial authorities (TA's) within the Canterbury Region unquestionably believe that Environment Canterbury has failed to effectively and efficiently manage freshwater. TA's view this as institutional failure.

While criticism of Environment Canterbury's performance in freshwater management is widespread, the Review Group acknowledges that Environment Canterbury has, in recent times, made significant efforts to improve the situation both at a Council and officer level. While this is commendable, it will not of itself be sufficient to satisfactorily resolve water management issues in the Region.

The most recent initiative to progress the resolution of water management issues in the Region is the Canterbury Water Management Strategy (CWMS). This Strategy has been vigorously promoted by the Canterbury Mayoral Forum, ECan and territorial authorities. ECan has constructively aligned itself to this initiative and played a leading role in the development of the Strategy and its intended institutional framework. ECan has taken this approach after forming the view that a collaboratively developed Canterbury Water Management Strategy is the only realistic pathway with any reasonable chance of success for developing a solution to these complex and controversial issues. The Review Group notes ECan's advice that the Canterbury Water Management Strategy will rely on legislative change to make it workable.

The intentions behind the CWMS are laudable and it is very widely supported throughout the Region, with all stakeholders recognising the imperative of solving the water problem in Canterbury. The CWMS is however at a relatively early in-principle strategic phase of development. The next phase will be to translate these higher level strategic objectives into 'on the ground' policies and an implementation plan. Given the diverse nature of the competing interests involved in water, the next steps in implementation will inevitably become increasingly more difficult. Already some signs of frustration are emerging amongst stakeholders. As implementation of the CWMS advances, the potential risk for failure to achieve its objectives increases.

While there is much to commend in the CWMS it will not on its own be sufficient to resolve the Region's water issues. In saying this, we believe that aspects of the CWMS, notably its vision and objectives, should be a core component of any future institutional change. There is a great deal of positive momentum in the Region following the development of the CWMS and this should be retained and built upon. It will also enable time for other central government initiatives such as the Land and Water Forum, to be completed and the implications for the Canterbury Region of any recommendations made to be considered.

The Review Group has therefore come to the conclusion that an entirely new institutional approach is needed for the management of freshwater in the Region. This will involve a fundamental reform of the structure of decision-making within the Region for all freshwater-related matters. The Review Group recommends that the Government create a new Canterbury Regional Water Authority (CRWA) to assume all water related responsibilities in the Canterbury Region. This recommendation reflects the fact that issues associated with water management in Canterbury will be enduring and will therefore require the full and on-going attention of a specialist body. Only by taking this approach can the Government be certain that a structure is in place that has the willingness and capability to resolve these difficult issues.

The Review Group recommends that:

- The CRWA be established under its own Act of Parliament. That Act should set out the overriding objectives of the new Authority.
- The Authority membership be appointed jointly by the Minister for the Environment and the Minister of Local Government, in consultation with key stakeholders within the Region, with the Chair being a respected person with the necessary credentials from within the Region.
- The governance structure of the Authority be reviewed after three to five years to consider alternatives, including a mix of appointed and elected members.

The creation of an entirely new specialist entity is, we believe, the only way that the Government can be certain that it has an institution capable of dealing with the complexities involved in resolving freshwater issues in the Canterbury Region. The Authority would assume responsibility for all of the functions of Environment Canterbury related to the management of freshwater in the Region. This includes:

- Addressing the complexities involved in balancing the competing interests for the relevant resources.
- Producing relevant plans for the allocation and management of water resources and water quality within a timeframe to be specified in the legislation.
- Allocation, monitoring and enforcement of consents relating to water.
- Addressing the water quality issues that are currently the responsibility of Environment Canterbury.

The Review Group is conscious that, in recommending the creation of a specialist body for managing water issues, the matter of how the balance of ECan's activities are managed arises. The Group assessed the adequacy of the current legislation in dealing with this issue and concluded that the circumstances that apply in this particular case were not anticipated by either the LGA or RMA. It is not appropriate to rely on the statutory intervention provisions of either statute. In particular, Section 25 of the RMA, if used would introduce a person responsible for managing water, but would not replace the council. This would create a confused governance and accountability regime and would not be an enduring solution.

The Review Group therefore recommends that the existing council be replaced by a temporary Commission as soon as practicable under special legislation. This Commission will give ECan and the Region breathing space to allow the CWRA to be soundly established, and provide impetus to urgently addressing water management issues. In addition to the normal governance responsibilities of a regional council, the Commission would be charged with:

- Overseeing the separation of functions and funding associated with the management of freshwater from ECan to the CRWS.
- Progressing ECan's activities related to the management of freshwater until the new CRWS is able to undertake those activities, so as to assure a seamless transfer of functions to CRWS.
- Putting in place the structure necessary to operate those functions that will remain the responsibility of ECan (that is, the non-water related functions).
- Implementing other Review Group recommendations regarding the broader performance of ECan.
- Initiating a review to consider the optimum arrangement for the management and operation of the public transport fleet within the Region. The overwhelming bulk of this activity is within Christchurch. Christchurch City Council (CCC) is strongly of the view that the present arrangement leads to material additional costs due to the overlaps in responsibility between Christchurch City and ECan and that this resource would be better applied to improving public transport services. The Commission would act on that review when completed.

The Commission should be responsible for governing ECan until a new Council is elected. These elections could take place either in 2013, or such earlier time determined by the government.

The Review Group also made a number of findings and recommendations arising from the overall review of ECan in discharging its responsibilities under the Resource Management Act and Local Government Act. The Review Group acknowledges the steps that ECan has taken to improve its performance in recent times. Examples of this include: considerable improvements in the processing of resource consent applications in a more timely manner, as well as other process and systems improvements. ECan is on track to perform significantly better in the next MfE survey. Other examples of improved performance are the work undertaken on the Long Term Council Community Plan, and more robust financial reporting planning and monitoring.

We have identified the following priority areas for further performance improvement. These recommendations apply irrespective of the institutional changes recommended by the Review Group.

In respect of the Resource Management Act, it is recommended that:

- ECan should undertake a 'fit for purpose' review of the Planning and Consenting Directorate, including
 - More resource management 'content' leadership should be introduced in the resource consenting section.
 - A broader range of skills is required in the consenting section – notably planning/resource management skills.
 - ECan needs to more effectively and actively manage the Hearings Commissioners process in terms of accountability, responsibility and timeframe management.
 - ECan should consider cost recovery pre-lodgement of consents, to remove the perceived barrier to more effective pre-application engagement with major applicants.
 - ECan needs to adopt a new case management operating model for large and/or complex consent applications.
 - ECan requires more experienced practicing planners, economists and social scientists on staff to facilitate a better balance between environmental, economic, social and cultural perspectives.
- ECan should institute an 'account management' approach for dealing with major stakeholder groups, in much the same way as exists with most territorial authorities.
- Iwi liaison should be elevated in importance within ECan.
- ECan should undertake a review of its internal legal team to ensure it is fit for purpose.

In respect of ECan's broader responsibilities under the Local Government Act, the Review Group acknowledges that some of the issues relate to an historic failure of collective action by

local government in the region. The Territorial Authorities (TA's) and ECan must all shoulder responsibility for addressing this. Indeed there have been a number of examples in recent times where effective collaboration has been demonstrated, including the Urban Development Strategy and Canterbury Water Management Strategy. We consider that two governance related measures would further enhance collective local government performance for the benefit of the Region as a whole (we note that the Canterbury Regional Water Authority once established will also have a part to play in these measures):

- The establishment of a new Triennial Agreement that improves role clarity and protocols.
- The formal establishment of a Canterbury Chief Executives' Forum that parallels the Mayoral Forum.

In addition to these governance related recommendations, the Review Group recommends a review to consider the optimum arrangement for the management and operation of the public transport fleet within the Region. The Commission would act on that review when completed.

Contents

Executive Summary	i
1. Introduction	1
1.1 Scope of this Review	2
1.2 The Terms of Reference	3
2. Water	4
2.1 Problem Definition	4
2.2 Potential Solutions	10
2.3 Advantages and Disadvantages of Each Option	21
2.4 Water-Related Recommendations	23
3. Resource Management Act Findings	25
3.1 Resource Consents	25
3.2 Policy and Plan Development	36
3.3 Other RMA Implementation	39
3.4 RMA Recommendations	45
4. Local Government Act (and Other Legislation) Results	49
4.1 The approach of ECan to meeting its legal obligations	49
4.2 Adequacy of ECan's Governance	50
4.3 Adequacy of ECan's Management and Decision-Making Processes	52
4.4 Relationships between ECan and Territorial Authorities	64
4.5 Local Government Act Recommendations	66
5. Summary of Recommendations	67
Appendix One: Terms of Reference for the Review Group	72
Appendix Two: Stakeholders Interviewed	75

1. Introduction

This report summarises the results of a performance assessment of Environment Canterbury (ECan) under the Resource Management Act 1991 (RMA) and Local Government Act 2002 (LGA).

The assessment was commissioned by the Minister for the Environment and the Minister of Local Government in response to significant concerns expressed from within Canterbury as to Environment Canterbury's performance in the carrying out of its responsibilities, along with the poor outcome of Environment Canterbury in surveys of performance of responsibilities under the RMA conducted by the Ministry for the Environment for the year 2007/2008.

The Review was commissioned in November 2009. Rather than hold a protracted inquiry, the Ministers sought a high level overview of the performance of ECan across the range of its activities. The assessment was undertaken by a group appointed by the Minister for the Environment (Hon Dr Nick Smith) and the Minister of Local Government (Hon Rodney Hide). The membership of the Review Group was:

Rt. Hon Wyatt Creech (Chair)
Doug Martin
Greg Hill
Doug Low

To ensure that the report covered all aspects of the issues of concern, the Minister for the Environment instructed as follows:

- 1 The Chair was asked to consider the overall position with a special emphasis on the political relationships within the Council and the broader community.
- 2 MartinJenkins was asked to operate as lead Reviewer for the overall Resource Management Act aspects of the ECan's performance review.
- 3 Greg Hill, an experienced planner, was asked to review the detail of ECan's RMA resource consenting performance.
- 4 The Group acted in conjunction with Morrison Low (appointed by the Minister for Local Government) as lead reviewer for the Local Government Act perspective of the review.

While each Reviewer brought different skills to the Review process, the Group itself acted as a single team in consideration of the issues and working to conclusions. The recommendations are unanimously supported by all members of the Group.

The Review draws on a considerable body of work obtained both from interviews and analysis of documents. The interviews included detailed discussions with:

- The Council Chair, individual councillors, councillors as a group, the Chief Executive, Directors, and with council staff.
- A wide range of external stakeholders with differing viewpoints and interests who interact with ECan on a range of levels. This list deliberately included groups known to have widely contrasting views. A full list of stakeholders interviewed is attached as Appendix Two.

The Review has also had the benefit of analysing a range of documents supplied by ECan and external stakeholders. Both MartinJenkins and Morrison Low have considerable experience in designing and assessing organisational performance. In reaching its conclusions this assessment has the benefit of the Review Group's knowledge of practice in other comparable agencies.

The Review Group notes that all matters to do with water management in Canterbury are of much greater difficulty in determining policy and resolving than other issues identified in the Terms of Reference. This is reflected in the way we have structured the Report, with a section focused entirely on water management and the institutional challenges associated with water. There are a number of findings and recommendations arising from the Review that are related to the other matters contained within the Terms of Reference.

1.1 Scope of this Review

This Review has three components. The first component, dealing with issues associated with water management, was one of the contextual matters referred to in the Terms of Reference, but ,as noted above emerged as by far the most significant issue facing the Region, and ECan.

The second component is a statutory investigation under section 24A of the RMA that seeks to identify what has led to ECan's poor performance record over the last survey period and its subsequent performance in resource consent processing. Although much of this relates specifically to challenges associated with water management, it also aims to identify any broader planning, policy and governance matters that may have contributed to the poor performance record of Environment Canterbury during the 2007/2008 survey period in meeting statutory requirements under the RMA.

The third component is a non-statutory assessment of whether there are wider issues with ECan's governance, policies or implementation that are contributing to perceived poor performance under the LGA or other statutes.

1.2 The Terms of Reference

The Terms of Reference defines the scope of the Review as:

Investigation of Environment Canterbury's performance under the RMA and identification of possible solutions. The investigation covers the following matters:

- *Guidance for applicants and use of Section 88 (making an application)*
- *Use of Section 92 (seeking further information)*
- *Analysis of consent processing systems and practices*
- *Staffing and use of resources*
- *Administrative systems and tools*
- *Internal audits and monitoring*
- *Relationships between applicants and submitters and ECan*
- *Relationship of timeframes to quality of decisions*
- *Other contextual matters, including:*
 - *The management of sustainability limits and cumulative effects*
 - *Adequacy of current planning framework for delivering the vision and objectives of the Canterbury Water Management Strategy in an effective and efficient manner*

Assessment of Environment Canterbury's wider performance under the LGA02 or other legislation and identify possible solutions. The non-statutory assessment will cover the following factors:

- *The approach of ECan to meeting its legal obligations*
- *Adequacy of ECan's governance*
- *Adequacy of ECan's management and decision making processes*
- *The relationships between ECan and the territorial authorities in its Region, and extent to which ECan and TA's have met their legal obligations for collaborating and co-operating.*

The full Terms of Reference is in Appendix One.

2. Water

2.1 Problem Definition

The Review Group acknowledges the significance of water and the complexities it brings to ECan in its management role. However the Group was struck by the 'gap' between 'what needs to be done' to appropriately manage water and 'ECan's capability to do so'. Members of the Review Group have had considerable experience in assessing the capability of organisations. The extent of the gap between the capability of ECan and what is required for it to adequately manage freshwater issues is enormous and unprecedented. A very large backlog of outstanding issues needs to be addressed before water management could be regarded as a being in a steady state. While the improvements and efforts made to address what all understand to be longstanding performance issues are acknowledged,, the Review Group has concluded that ECan's performance fall well short of what is essential.

Many of the problems identified, if considered in isolation, are not necessarily symptomatic of an issue that is too large or complex for a regional council, or represent institutional failure to deal with the issue. It is when these problems are considered as a whole that it is apparent to the Review Group that significant, active central government intervention is not only warranted, but urgent. In summary:

- There is national risk of failure to act and get an effective framework for managing water.
- There is national benefit if water is managed effectively.
- There is massive complexity of the water challenge.
- The scale of the issue and response is too large for local government and therefore requires active central government intervention.

2.1.1 Water Management

Scale and Complexity of the Water Challenge

There is general recognition that the Canterbury Region is of fundamental importance to the nation's well-being and that this depends critically on water. It is also recognised that:

- Climate change forecasts indicate a possible reduction in availability of supply from rainfall and soil moisture loss.
- Current demand for water and water-related resource consents is not taking place within a clear strategy.
- The regulatory institutions appear to be unable to respond appropriately to the situation.

There are many, and at times conflicting, stakeholders with legitimate interests in water in Canterbury; some have statutory roles in managing or using water, others seek protection of the water, and others wish to develop water infrastructure for economic gain.

The Canterbury Region contributes a significant percentage of the nation's electricity generation. In addition, it has an estimated 2.62 million hectares of land in agricultural and horticultural production (as at June 2008). This represents 23% of New Zealand's total farm area. The region has 50% of New Zealand's grain, seed and fodder crops, 44% of tussock grasslands and 14% of all grasslands.

The Region has a large and growing share of the dairy trade. It had the second largest number of dairy cows being milked of any region in 2008 (634,000), representing about 15% of the national herd. The Region has experienced the greatest increase in the number of dairy cows since 2002, growing by 239,000 cows (an increase of 60.5% of Canterbury's herd) between 2002 and 2008 (Statistics NZ, Agricultural Production Statistics 2008). The increases in Canterbury contributed to 47% of the national increase in numbers of dairy cows being milked between 2002 and 2008, i.e. Canterbury increased by 239,000 and national herd increased by 506,000.

There is significant opportunity for future agricultural development in Canterbury. Unlocking this potential need not conflict with sound sustainable management of the resource and the operation of high quality standards. It is however contingent on competent strategic long-term planning of the water resource. The storage of water required for future development would mitigate the impact of prolonged drought conditions both on agriculture and ecological systems, and enable farmers to introduce more intensive (and water dependent) production systems.

The current situation is made more complicated and urgent by the impacts of a changing climate. Climate change may increase the amount of water available at times of high flow due to increases in flow from the Alps. This may present opportunities for water supply management, for example through water harvesting. National Institute of Water and Atmospheric research notes that flows in Alps-fed rivers are likely to increase in winter and spring and decrease in summer and autumn since there is expected to be increased winter precipitation (especially rain). Flows in lowland streams in the east are likely to decrease with the drier local climate. This highlights the importance of strategic water management. Managing the seasonal and spatial distributional water issues, in effect storage and supply, is key to Canterbury's future resilience and development.

Lack of Progress in Managing Water in the Past

The lack of an operative region-wide planning regime in Canterbury has led to uncertainty, increased costs, and time delays not only for resource consent applicants, but also submitters, community and environmental groups as well as the public generally. Over-allocated catchments, increasing numbers of resource consent applications, and forecast impacts of climate change make the issue more important and urgent. The current importance to the national economy and future potential of Canterbury agriculture add further weight to the need to 'get it right'.

ECan has a number of specific operative regional plans, but the overarching resource management plan for the Region, the Natural Resources Regional Plan (NRRP), appears 'stuck' in its First Schedule process. ECan is developing (we believe correctly) more specific Regional Environmental Flow Plans. If these Environmental Flow Plans are notified prior to the NRRP being fully operative (which is likely to take some years due to decisions not being released until late 2010 and then the appeals process), it will unsettle things further from a sequencing, consistency, efficiency and prioritisation perspective. The length of time taken to complete the proposed Natural Resources Regional Plan is, we understand, unprecedented in New Zealand. ECan does not believe the RMA can provide the statutory framework for effective water management in the Region, despite the fact that other regional councils with water management challenges do have operative planning frameworks (we accept that these are not as significant in scale but are still basically similar in nature).

ECan has a history of setting timeframes for planning and not meeting them. An example provided by external stakeholders is the *Waipara River and Tributaries Surface Water Allocation Plan*. Some consent applicants were encouraged by ECan to voluntarily put their applications on hold in 2004 to allow ECan to prepare an allocation plan to achieve a consistent allocation approach when the consent applications were processed. Indications were provided that the Plan might be notified to allow the consents to be processed in 2004 or 2005. The Plan has been continuously delayed with ECan missing self imposed deadlines, and as a result potential applicants are still waiting for the Plan to be adopted by the council and notified. In the meantime the consent applications remain on hold.

Timeframes for processing resource consents particularly, but not exclusively, on significant projects have been excessive. We recognise improvements in this area have been achieved recently and discuss them in more detail later in the Report. We have also heard from many external parties that the consenting process is adversarial and expensive for applicants and submitters, and there is a perception of intransigence from ECan officers to accept perspectives that differ from their own, including appointed Hearings Commissioners and the Environment Court (we address this later in the Report).

Concerns of recreation and conservation interests over the adequacy of river flows have resulted in a nationally unrepresentative number of Water Conservation Order applications / inquiries; this instrument being inappropriately grasped by some stakeholders as a proxy for planning (in the absence of plans). Water Conservation Orders are no more strategic a planning tool than resource consents.

2.1.2 Institutional Failure

Environment Canterbury's handling of water issues in the absence of any future-looking strategic framework as to how water should be promoted, developed, protected and managed, represents a significant risk nationally. The institutional response from ECan to the water challenge has been inadequate. In the Review Group's opinion this has driven many of the

current RMA-related problems. ECan has created real policy confusion and inertia, particularly in relation to water, and we do not believe it will improve without central government intervention.

We are aware that the Canterbury Water Management Strategy (CWMS) is intended to address the lack of a region-wide strategic planning framework. We recognise that there is still a great deal of work to be undertaken in turning the strategic vision into tangible outcomes. While the collaborative approach is supported the implementation of the Strategy is problematic, with or without supporting legislation. We would expect that the institutional changes we are recommending would adopt aspects of the Canterbury Water Management Strategy to retain the positive momentum in the Region following its development. We address this later in this Review. There are a number of dimensions to the institutional failure to manage water effectively.

Territorial Authority Relationships

There are significant issues with territorial authority (TA) relationships, as evidenced by the letter from the Region's Mayors to the Minister for Local Government that (in part) triggered this investigation. The relationships between ECan and TA's has historically been less than ideal with tensions going back to the local government amalgamations of 1989. The Review Group acknowledges the efforts made by the new Chair to improve relationships with TA's and other key stakeholders (this was confirmed by Mayors and other stakeholders in the course of the interviews). However, despite that effort, the Mayors deeper concerns raised in their letter remain. This was confirmed at the meeting the Review Group had with Mayors and CE's at Ashburton. It should also be noted that the disproportionate dominance of Christchurch City within the Canterbury Region is not reflected in statutory representation at regional level. This fuels political disquiet that seems to trickle down into both territorial and regional government.

The worthy principles of involvement, collaboration and 'no surprises' set out in the Triennial Agreement have become compromised. The reasons for this cannot be attributed to solely to the behaviour of either ECan or the TA's. They arise from a mutual relationship breakdown. Notwithstanding the above, there are examples where ECan and individual TA's are working together collaboratively. The Review Group is aware of regular meetings of executives from ECan and each TA that seek to improve collaboration and resolve issues. We address TA relationships in more detail in Section 4 of this Review.

On a more positive note, ECan and the territorial authorities in Canterbury (with the exception of Waitaki District Council) have endorsed the CWMS. Indeed, the CWMS has been driven by the Mayoral Forum out of frustration with the lack of progress in advancing water management issues in the Region. This is positive, although some of the CE's and Mayors spoken to through this Review process continue to mistrust ECan's intentions (some believe ECan will "hijack" the CWMS process and implement the way it sees fit regardless of the Mayoral Forum's position). We note that the Waitaki District Council has provisionally withheld its support for the CWMS

subject to certain matters being satisfactorily addressed, including confirmation that zonal committees will have the power to grant resource consents¹.

Poor stakeholder relationships

Consistent and serious concerns were raised regarding the nature and quality of engagement with applicants/submitters, particularly for large complex consent applications or through RMA plan development (the NRRP in particular). Of particular concern to the Review Group is that the issues raised by external parties were consistent in nature, and differ quite strongly from the perspectives of ECan staff when asked about their organisation. Relationships with major applicants canvassed by the Review Group are universally poor. There is clearly a major perception gap between internal and external views of ECan.

Political Process

There is a general perception from external stakeholders that the political dimension at ECan has inhibited effective decision making. The council has historically been evenly balanced, which is broadly reflective of a pro- environment – pro-development split of its constituency. This of itself is not necessarily an inhibitor of effective decision making, but governance is an issue that was raised by almost all external parties interviewed. There is a consistently held view that councillors are so polarised at times that they are dysfunctional as a group. Our investigations revealed that while ECan is meeting its obligations under the LGA it has been unable to establish a firm planning framework (especially with regard to water matters) which flows through to poor relationships and decisions under the RMA. The review Group is of the view that the complexity and conflicting aspects of managing water has been a significant diversion that has resulted in there being not enough leadership, and the Council has been too busy protecting individual / Party perspectives and has failed to pay sufficient attention to leading the Region.

The review found that the process for debating strongly opposing views has been marred by poor behaviour and long standing grievances in some cases. A recent example of poor behaviour is the way that individual politicians responded to the December 2009 findings of the Office of the Auditor General (OAG) regarding conflicts of interest at councillor level for the setting of water user charges².

Lack of Balance between Economic, Social, Cultural, and Environmental Perspectives

A commonly held perception from some ECan staff and many of the external stakeholders spoken to is an imbalance between environmental, economic, social and cultural perspectives. When interviewed by a member of the Review Group, the CEO stated that “*our title is*

¹ <http://www.waitaki.govt.nz/NR/ronlyres/8F880865-03CD-4EF9-833E-3B1C6FEAA49C/70177/Council1512092.pdf>

² <http://www.oag.govt.nz/2009/environment-canterbury/>

Environment Canterbury and this is what we stand for – protecting the environment”, this despite the wider function of the council under the LGA and RMA.

One stakeholder group interviewed considers that “ECan takes a ‘protector of the environment’ rather than an ‘integrated management’ interpretation to their role, i.e. they undertake rigorous environmental analysis in decision making rather than fully evaluate the available options to come up with win-win solutions that satisfy social, environment, economic and cultural components.”

A resource consent decision³ on groundwater consents in the Rakaia – Selwyn area highlighted this issue: *“In effect, the [ECan] Officers adopted almost an “advocacy” role in terms of seeking the decline (until very late in the piece) of all of the consents... We observe that while the Officers are entitled to express opinions as to what they consider the effects might be on granting some or all of the consents, it is not their role to decide the applications... Finally, we note that where a recommendation is made this requires the recommending officer to consider each application in the context of the particular aquifer and area it relates to and to also consider beneficial effects as well as potential adverse effects. It is apparent, that none of the Regional Council Officers have undertaken that exercise...”*

This lack of balance in decision making has, we believe, inhibited the ability of ECan to strategically manage water in the Region. On the other hand, recent Council papers the Review Group examined dealing with policy matters contained appropriate economic and social analysis alongside environmental impact analysis. We note that Councillors interested in development support the use of sound economic advice in developing policy. The Review Group is of the view that the balance that may be embodied in policy does not necessarily flow through to consideration of consents.

Waitaki Plan Implementation

Previous central government intervention for water management in the Waitaki catchment led to the establishment of the Waitaki Water Allocation Board, tasked with creation of a water allocation plan that we understand to be robust and generally supported by external stakeholders. We have been told by multiple external stakeholders, and some staff that ECan has failed to adequately implement the Plan for the Waitaki prepared by the Waitaki Water Allocation Board.

Adequacy of the RMA

Many of the ECan staff and Councillors spoken to stated that the RMA is a major part of the failure to have effective water management in the Region. Environment Canterbury’s primary concern is that it can’t manage water under the RMA, claiming that the RMA is designed for

³ <http://ecan.govt.nz/news-and-notice/notice/HearingDecisions/hearing-decision-rakaia-selwyn-groundwater-interim-decision-120307.pdf> paras 24-26

managing adverse effects of individual applications rather than managing for cumulative effects such as the impact of groundwater draw off from Canterbury plains aquifers on the flows in lowland streams.

In the opinion of the Review Group, and as successfully demonstrated by several other councils, the RMA already provides an adequate framework, as such there is nothing stopping Environment Canterbury from accomplishing now, within existing regulatory frameworks, what it claims cannot be achieved. In the opinion of the Review Group the problem does not exist within the RMA but rather with implementation of the RMA at the regional and district levels in Canterbury. The RMA provides the tools necessary and it is the duty of the councils to determine the capacity and set sustainable limits for their resources, as well as determine those causes that have adverse effects of those resources. ECan's position both reflects and contributes to its focus on managing primarily by consents rather than through the better use of the planning provisions of the RMA.

There are other regions in New Zealand which face strong pressures around fresh water not unlike those facing Canterbury. Hawke's Bay is another Region which has conflicting demands on limited freshwater resources and is facing increasing numbers and severity of drought. Unlike Canterbury, however, Hawke's Bay Region has operative plans in place which enable successful freshwater management, demonstrating that it can be done under the RMA. However, the issue in Canterbury is an order of magnitude greater in size and complexity (hydrology, vested interests and economic consequence) than any other region. We do not believe that ECan will, in the future, change its position regarding the RMA.

2.2 Potential Solutions

The desired outcome for the Canterbury Region is a planning framework that ensures the environmental health of natural resources while enabling continued sustainable economic development and social and cultural wellbeing. This requires the sustainable allocation and use of water resources in a way which provides for the needs of the primary sector, electricity generation and other major water users, while ensuring the needs of ecology, community, tangata whenua, recreation, and other interests are provided for – this is not easy. A long-term sustainable planning framework would, when implemented, provide this,

We have considered three options for institutional change:

- 1 Creation of a Canterbury Regional Water Authority (our preferred option)
- 2 Replacement of Environment Canterbury with a Commission, and the 'call-in' of a regional water plan to be prepared by a ministerially appointed Board of Inquiry.
- 3 Implementation of the Canterbury Water Management Strategy.

We examine each of these three options in the following sections.

Option 1: Canterbury Regional Water Authority

Our preferred option is the establishment of a Canterbury Regional Water Authority. We believe the problems discussed above require active central government intervention through the establishment of a new specialist entity that will give on-going attention to issues of water management in the region. As noted previously, these will be enduring issues. We discuss the rationale for this compared with other options later in this Report, but believe this is the most likely to achieve the improvements in water management and governance necessary in Canterbury.

We see four separate but related parts to the overall solution, each of which we address in more detail below:

1. Special legislation is required.
2. Replace ECan Council with a temporary Commission to manage the necessary organisational change in addition to providing the ongoing governance functions currently carried out by councillors.
3. Create a new statutory agency - the Canterbury Regional Water Authority (CRWA) which would:
 - a. Prepare and implement a plan for water for the Region, with a balance of economic, environmental, social and cultural perspectives.
 - b. Ensure that the positive work already undertaken in developing the CWMS is maintained as much as possible, and that the CRWA aligns with other central government initiatives such as any recommendations of the Land and Water Forum, and the proposed National Policy Statement for Freshwater Management, and any future National Environmental Standards.
 - c. Execute the RMA water-related functions currently undertaken by ECan.
4. Transitional arrangements.

Special Legislation

Reluctantly, the Review Group has concluded that special legislation will be required. The scale and nature of the problem was not anticipated by either the LGA or RMA, so it is not appropriate to rely on the statutory intervention provisions of either (or both) statute:

- The LGA is the Act that establishes a local authority and the establishment of the formal accountability arrangement between Councillors, Chief Executive's and officers. No other Act can intervene directly in this relationship.
- Under Section 254 of the LGA the Minister may appoint a review authority to "*review, consider, and report on the performance of a local authority*", either generally or in relation to a specified matter. Intervention should be considered only if there is prima facie evidence of serious failure, mismanagement or mis-governance on the part of the local

authority in carrying out its statutory responsibilities. We note that this power has not been used before under the LGA. This Section involves a number of process steps that would have to be followed and would run the risk of this Review Group and an LGA appointed review essentially considering the same issues twice, at taxpayers expense. This would lengthen the time required for making any changes, and would cut across the October 2010 local government election cycle.

- Section 255 of the LGA allows the Minister of Local Government to appoint a Commission if the local authority is unable to perform because it cannot hold meetings owing to the lack of a quorum or if the local authority requests it. The first part is not relevant in this case and the Review Group thinks it unlikely that ECan will request a Commissioner on their own volition.
- The RMA (section 25) allows the Minister for the Environment to appoint 1 or more persons (including any officer of the public service) to exercise or perform all or any of the functions of the local authority. These functions are specified in section 30 and 31 of the RMA. This provision would remove the function from the council but would not remove the council itself. The RMA creates a dual relationship between the Minister's appointed person(s) and the chief executive and officers and between the council and chief executive officer, which creates real issues in terms of effective governance and accountability. The Review Group considered such an approach (except for a short period of time) would therefore be de-stabilising. This option would also cut across the local government elections in 2010.

For these reasons the Review Group recommends the use of urgent legislation to replace the present Council with Commissioners.

The legislation needs to:

- Recognise the national significance of water (including value, scale, complexity, and urgency of the need for a management framework).
- Replace the Council with a Commission for a period to be determined by the government. The Commission would be responsible for managing the change to ECan, and transitioning functions to the new entity in addition to providing the ongoing governance functions currently carried out by councillors.
- Create a new entity with functions and responsibilities to be defined in legislation.
- Identify the structure and makeup (e.g. skills, experience etc) of an appointed Board to govern the entity. Require review of governance arrangements after 3-5 years.
- Provide for transitional funding arrangements.
- Require the creation of a plan for water, and define the timing for creation of the plan. The plan should:
 - ensure appropriate weighing of economic, environmental, social and cultural needs with respect to water management in Canterbury

- allow for prioritisation of specific uses in different areas (e.g. irrigation, electricity generation, recreation, etc), as well as preservation, protection and conservation
- Transfer the water-related functions and staff of ECan (e.g. consenting, monitoring, enforcement, scientific investigations etc) to the new entity.
- Recognise that there will be land – water integration issues that will require cross-agency (ECan – CRWA and CRWA - TA) interaction. Integrated resource management is a key feature of the RMA, and cross-jurisdictional management will be an important element of the new approach to water management.
- Require RMA / LGA documents to give effect to the Plan (e.g. other (non-water related) Regional plans, the Regional Policy Statement, district plans, Long Term Council Community Plan's (LTCCP's)).
- Include a transition period until the new Plan is in place.

We consider that this legislation should be prepared as a matter of urgency, and that the Ministry for the Environment working in consultation with the Department of Internal Affairs, other government departments and stakeholders in Canterbury, should be the lead agency. From a practical perspective, special legislation may be best prepared in two tranches:

- 1 A brief statute prepared under urgency that replaces the Council with a Commission. We believe this could occur fairly quickly, and that it is important to undertake that change as quickly as possible following acceptance of the Review Groups recommendations.
- 2 A more substantive statute establishing the CRWA and making the remainder of the changes recommended above. The Commission should continue in its role until local body elections are held, at a date to be determined by the government. It is important that the work of the Commission is not negatively constrained by statutory deadlines.

It is important to note that other legislative and policy reform relevant to water and the Canterbury Region is ongoing and should be considered when developing this legislation, including:

- RMA Phase Two reforms are due to be enacted late 2010 or early 2011 and may impact water management.
- The Land and Water Forum is due to report back to government later in 2010 and is likely to have recommendations that impact water management in New Zealand.
- Electricity sector reforms, especially the proposed Tekapo A and B power station asset transfer between Meridian and Genesis.
- The Minister of Agriculture has been closely engaged throughout the development of the CWMS including provision of staff support to the Strategy development. Officials are considering legislative options needed to give effect to the CWMS. If the recommendations

of this Review are accepted, the legislative change should be incorporated into this work. Much of the work already undertaken through CWMS development would therefore be incorporated into the Plan.

Commission to replace Council

The Review Group recommends that the present Council be replaced by a Commission (perhaps three members) that would drive through the change management and prepare the ECan Council for its new role in time for elections at a date to be determined by the government. Features of the Commission will include:

- The Commission will not be permanent, but will manage through the period of organisational change. We believe that excluding water, the council functions as an effective body, and that the best outcome for the Region is for locally elected politicians to run ECan.
- Its role will be to restructure ECan, including:
 - manage the institutional change effectively
 - maintain the operation and responsibilities of the ‘rump’ of ECan until the new council is elected
 - transition water functions to CRWA, working closely with the CRWA Board to ensure effective transition of staff and functions
 - implement other Review Group recommendations regarding the broader performance of ECan, if deemed appropriate
 - Prepare a plan for the future management, funding and governance of ECan, post-transition of functions to the CRWA, and after elections. This plan will incorporate aspects of the CWMS and align with other central government initiatives related to water.
- Skills / experience required will include:
 - Governance
 - Change management
 - Organisational assessment and design
 - Relationship management and stakeholder management
 - Policy implementation.

Create the Canterbury Regional Water Authority

There is a need to create an entirely new specialist entity. The Canterbury Regional Water Authority (CRWA) is warranted due to:

- The importance and enduring nature of the issue to the Region and the Nation.
- The complexities involved in balancing the competing interests.

- The likely timeframes involved with the allocation of water rights.
- The demonstrated inability of ECan to manage water in the past.
- Institutional failure on the part of ECan in respect to water.

The CRWA would assume responsibility for all of the RMA-related functions of ECan related to the management of freshwater in the Region. Other statutory functions relevant to water, such as flood protection (carried out under the Soil Conservation and Rivers Control Act 1941) could stay with ECan. The ongoing governance structure of the CRWA could be reviewed after three to five years.

The CRWA would be established under its own Act of Parliament, and would be governed in the first instance by a professional board appointed jointly by the Minister for the Environment and the Minister of Local Government. Ideally, the Chair should be a respected person with the necessary credentials from within the Region. As noted above, the review after three to five years could include consideration of a different governance model - such as a mix between appointed and elected members.

The Review Group is conscious that, in recommending the creation of a specialist body, there will be cross-agency integration issues in the Region. However, we believe that this can be minimised through the following key features:

- The CRWA should have the characteristics of a regional authority albeit with a special purpose. This would have the advantage of greater local ownership and stakeholder buy-in than a central government entity. It should have an appointed Board for a defined period, then potentially transition to a model with a mix of elected and appointed members (similar to District Health Boards or Catchment Boards operating under the Soil and Water Conservation Act).
- Statutory (RMA) functions and staff of ECan regarding water will transfer to the CRWA.
- The role of the CRWA will include a mix of economic development, environmental protection, social and cultural needs (as with the current RMA test).
- The CRWA will be required to create and implement a plan for water for the Canterbury Region (including irrigation, electricity, other major water users, recreation and tourism, conservation, fisheries, non-use values etc). The Board will be responsible for developing the Plan, which will include the matters normally considered under RMA planning documents, as well as economic development. The Plan:
 - will be completed within a defined period
 - will be given effect to via RMA plans (including district plans) and the Local Government Act – e.g. LTCCPs

- will integrate with other regional plans (including the remaining sections of the NRRP) and the CWMS for issues such as non-point source pollution that are related to both land use and water quality
- will, where appropriate, draw on the proposed NRRP and CWMS in informing plan and policy development
- will identify, balance and prioritise uses (including non-use of water in some areas)
- The Ministry for the Environment will have an ongoing role in monitoring the implementation of the CRWA's activities, including evaluating the effectiveness of implementation of its plan.
- Standard consultation, hearing, review and appeal rights that apply under the RMA would apply to the CRWA.
- The legislation will provide for reserve powers of the Minister for the Environment and Minister of Local Government as is currently provided for in the RMA and LGA respectively.
- The funding source should be predominantly that which currently funds ECan (including the rating base and user charges). The Government should consider whether there is any need for central funding during the transition period and on an ongoing basis. Ongoing costs could be potentially mitigated through establishment of shared services with ECan.

Transitional Arrangements

The urgency of the current situation in Canterbury means it is not acceptable to wait until the CRWA has been created before moving forward with water planning in the Region. There are a number of options available to ensure ECan has a more effective, albeit temporary water management framework in place. Our preference is Option 1 below:

1 The Minister for the Environment require, using section 25A of the RMA, ECan to complete a plan within a specified period.

Although the NRRP has been extensively criticised for the time it has taken to advance to the current stage it is so far through the process, with all the costs incurred to date, that we believe it needs to be completed as quickly as possible. The most time-efficient transitional arrangement would be to require ECan to select those specific sections of the NRRP pertaining to water allocation and water quality that are the most critical in term of the issues they are dealing with and have the decisions on the submissions completed and released as quickly as possible. The decisions on the NRRP are not due to be released until August 2010. In the opinion of the Review Group, this is too long (and we note that there is no guarantee that August 2010 deadlines will be met) and would not meet short term transitional requirements.

The Minister for the Environment should require this to be completed within three months, which would have the desired effect of forcing completion of the priority sections more quickly than might otherwise occur. We recommend that the decisions on the submissions be drafted and

released as soon as possible – in stages if necessary to get the critical (highest priority) sections operative as quickly as possible. Officers should draft the written decisions (and match to each submitter) that have been made by the Hearings Panel. The Hearing Panel can then review them to ensure they reflect their decisions. This will assist with the speed and efficiency of the issuing the decisions on the submissions.

Given the urgency of the need to have an operative regional plan (albeit for a transitional period) in place very quickly, and taking into account our recommendation that the CRWA be responsible for preparing an overall water management plan for the region, we recommend this option.

2 The Minister for the Environment could appoint, under section 25 of the RMA, a person(s) to replace specific RMA-functions of ECan, and direct that person to prepare a plan for water.

This would be similar to option 1 above, but replace the current Hearings Panel with an appointed expert(s) to develop a Plan. This would not be the most time-efficient means of getting a transitional arrangement in place and may cause procedural difficulties given the process is already well underway. We do not consider that the current Hearings Panel has been the main cause of the slow progress of the NRRP to date, so do not recommend this option.

Option 2: Replace Environment Canterbury with a Commission and ‘call-in’ a Plan

An alternative option we have considered, but do not favour, would not involve the establishment of a separate entity but would retain water functions within ECan. This would involve the following elements:

- Replacement of the Council with an appointed Commission.
- The Minister for the Environment to use his ‘call-in’ powers to require the creation of a regional plan for water via an appointed Board of Inquiry.
- Once the Board has completed a plan, ECan to implement the plan, but ongoing governance to be provided by the commission, not elected councillors.

Replace Councillors with an Appointed Commission

This option would replace the current Council with a Commission. The Commission would be responsible for:

- Ongoing governance roles for all ECan functions.
- Supporting an appointed Board of Inquiry in its development of the regional water plan, and ensuring subsequent implementation of the plan.

- Implementing other Review Group recommendations regarding the broader performance of ECan, if deemed appropriate.

The Review Group has considered the thresholds for appointing a commission under the Local Government Act and appointing a person (or persons) to replace specified functions under the RMA. There is uncertainty as to whether the threshold has been met under the Local Government Act, and do not consider that the RMA would be the appropriate legislative vehicle to permanently replace Council with a commission. This option would therefore require special legislation as per Option 1.

We believe that with the exception of water, the council functions as an effective body (in some areas the Review Group considers ECan to be well ahead of most other local authorities), and that the best outcome for the Region is for the Council; to continue to discharge responsibility for all other functions other than water. This option would not achieve that outcome.

Minister for the Environment 'Call-In' a Regional Water Plan

Under the 2009 amendments to the RMA, the Minister is able to appoint a Board of Inquiry to prepare a plan. We consider that this would result in a very similar outcome from a planning perspective to that discussed above. The Plan:

- Would be completed within a defined period.
- Would be given effect to via RMA plans (including district plans) and the Local Government Act – e.g. LTCCPs.
- Would, where appropriate, draw on the proposed NRRP and CWMS in informing plan and policy development.
- Would consider and balance environmental, economic, social and cultural perspectives.
- Would identify, balance and prioritise uses (including non-use of water in some areas).

The ongoing implementation of the plan would be the responsibility of ECan. We have already expressed our concerns about the willingness and ability of ECan to implement a plan it was not responsible for preparing. The Commission would remediate this, but our observation in speaking with staff is that institutional resistance at staff level (as evidenced by the Upper Waitaki Plan implementation) would be strong.

Advantages of this option include that disruption within ECan would be significantly less than with our recommended option, that the cost of creating a new entity would be avoided, and that cross-agency integration issues the CRWA would face would not occur. The urgency of the current situation in Canterbury means it would not be acceptable to wait until the Board of Inquiry had completed a plan before moving forward with water planning in the Region. The same transition option discussed above is considered appropriate.

Option 3: Implement the Canterbury Water Management Strategy

A third option we have considered but do not recommend, is for central Government to support, through legislative change and potentially funding, the Canterbury Water Management Strategy. The institutional structure outlined in the CWMS would stand, and zonal committees overseen by a regional committee would develop and oversee implementation of plans. Support would be provided through a separate entity.

The CWMS has recently been developed, and is being promoted by ECan as a successful example of non-statutory collaboration between multiple stakeholders. The Review Group agree. This collaboration is recognised as a significant achievement, especially given the troubled nature of water management in recent years. The Review Group however has questions as to whether our concerns with the CWMS will prevent it from being a viable alternative to the establishment of a Canterbury Regional Water Authority. We believe that the best outcome is to dovetail the work undertaken to date for the CWMS with the institutional reform proposed, and to have the new CRWA responsible for adopting the appropriate process and content elements of the CWMS. Some of the issues we believe will impact the CWMS as a stand-alone answer to Canterbury's water problems being implemented include:

- There appears to be no RMA linkage with existing and future policy and planning documents at both regional and territorial levels. We are unclear how it is intended that zonal committee decisions will be implemented given an existing (legally binding) policy and planning framework, including public input through the First Schedule process (plan development) and submissions on notified resource consents provided for under the RMA.
- The Natural Resources Regional Plan, Waimakariri River Regional Plan Change 1 and Hurunui Water Conservation Order are three examples of existing (albeit proposed) RMA instruments that will potentially 'stand in the way' of the CWMS being implemented. We believe the CWMS and ECan's regulatory (RMA) framework suffers from a basic disconnect. Having the CWMS decision-making sit outside the RMA Schedule One processes poses significant risk, especially if decisions would then be given effect to through district and regional plans, and resource consents, as some ECan staff assume.
- The CWMS contemplates removing consents as an option for more effectively allocating water (if it is deemed a better option is available for a consent holder). This is a property rights issue and we believe would be difficult to address through legislative change without setting precedent for the rest of the country.
- There are challenges regarding the proposed 3-way partnership between Ngāi Tahu, ECan, and the Crown in the CWMS. Specifically, Ngāi Tahu considers a 3-way relationship inappropriate when the Treaty provides for the relationship between the Crown and Ngāi Tahu. Ngāi Tahu supports the collaborative approach of the CWMS but implementation won't clarify the Ngāi Tahu - Crown partnership. The CWMS is not capable of implementing Ngāi Tahu issues, therefore the RMA would remain the backup for Ngāi Tahu.

- The CWMS proposes a collaborative approach, which we believe stands a very high risk of failure once it moves toward implementation. There are too many competing interests, with entrenched views, that could derail the process without the backup of a statutory means for decision making should collaboration be unsuccessful. Our earlier comments regarding Waitaki District Council provisionally withholding support for the CWMS are illustrative of the challenges of collaborative decision making.
- There is a complex governance and decision making structure, with the zonal committees overlain by the Regional Committee. It is unclear how the process of final decision making will work in practice, especially if the Regional Committee disagrees with an approach from a particular zonal committee. We have questions around the rights of appeal given this is a document outside the RMA. The make-up of zonal committees (and the Regional committee) is of concern to external stakeholders, as are the decision making processes (i.e. who makes decisions, and how binding are decisions given it is occurring outside the RMA). The governance structure will not enable a whole of Region approach. It will be difficult to get full agreement across the Region and the tension between ECan, TA's and major stakeholders will continue.

2.3 Advantages and Disadvantages of Each Option

Option	Advantages	Disadvantages
<p>Option 1 Canterbury Regional Water Authority (our recommended option)</p>	<ul style="list-style-type: none"> • Recognises the national significance and enduring nature of the issue, requiring the on-going attention of a specialist body • Enables central government leadership in providing for regional and national well-being. • Regional perspectives will be maintained through the membership of the Commission – which would be selected to provide for a balance of environmental, economic development, social and cultural perspectives. • Requires the creation of a region-wide water plan balancing environmental, economic, social and cultural perspectives. • An operative and implemented planning framework will provide the certainty that stakeholders demand. • The planning framework will sit within the RMA statutory framework (unlike the CWMS). • Provides for short term replacement of council with a commission, but reverts to elected councillors for remainder of council functions (which we believe are well executed). 	<ul style="list-style-type: none"> • Creating a new entity will cause major disruption and change at ECan (we recommend the change be undertaken as quickly as possible and that appropriate transitional arrangements are put in place immediately). • Concerns will be raised by some that the creation of a new entity will result in more, not less, bureaucracy. This will include the cost of two agencies (although we identify options for mitigating additional cost) • There will be some cross-agency integration issues between the CRWA and ECan, such as managing non-point source pollution (effects of land use on water quality). • Concerns will be raised by some that there are precedents being set in the creation of a separate entity that undermine the role of regional councils (note that no other region faces such a significant issue and no other region has suffered the same degree of institutional failure as ECan). • Significant effort and cost has gone into developing both the Natural Resources Regional Plan (and others) and Canterbury Water Management Strategy (we recommend the CRWA take the positive aspects of these into account when developing the plan).

Option	Advantages	Disadvantages
<p>Option 2</p> <p>Commission to replace ECan Councillors plus Board of Inquiry</p>	<ul style="list-style-type: none"> • Less disruptive to ECan staff than option 1. • Would continue to have a single entity (ECan) responsible for natural resource management across the Region. • Provides for the creation of a region-wide water plan balancing environmental, economic, social and cultural perspectives. • An operative and implemented planning framework will provide the certainty that stakeholders demand. • The planning framework will sit within the RMA statutory framework (unlike the CWMS). • Would not have CRWA – ECan integration issues that option 1 will have. • Would not be setting a precedent for other regions in terms of the creation of a new entity. 	<ul style="list-style-type: none"> • ECan is generally effective other than with water management, and this option would prevent the council from discharging its other functions. • The lower level of central government intervention through this option would not elevate water to a nationally important issue – which it is in Canterbury. • Water in Canterbury is too big and complex an issue for a regional council; it needs a specialist entity that has no other function other than planning for, and managing freshwater. • Significant effort and cost has gone into developing both the Natural Resources Regional Plan (and others) and Canterbury Water Management Strategy (we would recommend the Board of Inquiry take the positive aspects of these into account when developing the plan).
<p>Option 3</p> <p>Canterbury Water Management Strategy</p>	<ul style="list-style-type: none"> • Significant effort has been expended to generate positive and collaborative relationships for water management. • Strong (but not universal) support has been expressed through territorial authorities and the endorsement of the Mayoral Forum. • Most stakeholder groups spoken with in this Review are supportive of the general thrust of the CWMS and its collaborative approach. • Some central government involvement has occurred, mostly through the Ministry for Agriculture and Forestry. • An institutional structure outside ECan is proposed, which elevates water beyond simply the remit of regional government, and includes a broad range of stakeholders in decision making. 	<ul style="list-style-type: none"> • As the CWMS moves from strategy to detailed planning and implementation the risk of failure is so high as to make it unlikely to succeed in providing the framework for water management. • It provides for a complex governance structure, and seems at odds with the RMA decision making process and planning framework. This is a precedent we believe central government will find difficult to support. • Property rights issues with potential revocation of consents, and issues with Ngāi Tahu and its Crown relationship may be problematic. • Collaboration and consensus based decision making, whilst laudable concepts, are not appropriate for an issue of the scale and importance to New Zealand that water is in Canterbury.

The Review has carefully weighed up the advantages and disadvantages of each of the options. Option 1 is the clearly favoured option because:

- The issues involved with the management of water in Canterbury are of national significance, and are enduring, complex and controversial. Failure to resolve them will be to the detriment of both the Regions and the Nations well-being.
- As a consequence, the issues require the on-going attention of a specialist body with the required capability at all levels in the organisation -- board, executive and technical. The creation of the CRWA provides the opportunity to build an organisation with the capability to address the issues. We emphasise that the CRWA should incorporate appropriate aspects of existing ECan plans, and the CWMS rather than create a plan from scratch.
- The additional costs associated with the establishment of a new entity can be minimised through appropriate shared services arrangements and would be small when weighed against the potential benefits.
- Option 1 recognises that ECan has performed relatively well in respect of the discharge of functions other than water and that it should continue to be responsible for those functions.

2.4 Water-Related Recommendations

Water Recommendation 1: Establish, under its own Act of Parliament, a new entity for managing water in Canterbury, the Canterbury Regional Water Authority, together with appropriate transitional arrangements.

The new Act should:

- Recognise the national significance of water in the Region.
- Identify the purpose, role and functions of the CRWA, which should include a mix of economic development, environmental, social and cultural factors.
- Identify the structure and makeup (skills, experience etc) of an appointed Board to govern the CRWA.
- Require the creation of a strategic plan for water, and define the timing for creation of the plan. The plan should:
 - Balance economic, environmental, social and cultural needs for water in Canterbury
 - Allow for prioritisation of specific uses in different areas (irrigation, electricity generation etc), water trading, conservation etc.
- Transfer the statutory water-related functions of ECan (consenting, monitoring, enforcement, scientific investigations etc) to the new entity.

- Recognise that there will be land – water integration issues that will require cross-agency (ECan – CRWA and CRWA - TA) interaction.
- Require RMA / LGA documents to give effect to the Plan (e.g. other (non-water related) regional plans, the Regional Policy Statement, district plans, LTCCP's).
- Include a transition period until the new plan is in place.
- Include an on-going ongoing role in monitoring the implementation of the CRWA's activities, including evaluating the effectiveness of implementation of its strategic plan.
- Be funded from the sources that currently funds ECan (including the rating base and user charges). The Government should consider whether there is any need for central funding for any part of the process during the transition period.

Water Recommendation 2: Replace ECan with a Commission to manage the organisational change.

We also recommend a separate statute be passed as a matter of urgency to replace the Council with a Commission. The primary function of the Commission would be to oversee the separation of functions and funding associated with the management of freshwater from ECan to the CRWA. This will require a Commission with considerable change management expertise. Pending the establishment of CRWA, the Commission would also be charged with progressing planning associated with the management of freshwater.

Water Recommendation 3: Transitional arrangements to provide an operative framework in the short term.

The most time-efficient transitional arrangement would be for the Minister for the Environment to require ECan under section 25A of the RMA to produce a plan within a defined period. This would require selection of specific sections pertaining to water allocation and quality that are the highest priority and development of an urgent work programme to sections of the NRRP through the First Schedule process as quickly as possible.

3. Resource Management Act Findings

This section considers the Resource Management Act matters contained in the Terms of Reference, other than those discussed in the previous section pertaining specifically to water.

3.1 Resource Consents

3.1.1 Consenting Summary

ECan scored 29% compliance with statutory timeframes for processing resource consents in the 2007/8 MFE - RMA Survey of Local Authorities. ECan has acknowledged that this is unsatisfactory and provided a full report to the Minister for the Environment in June 2009 on its performance and what it intended to do and had done to improve this situation. It has now put in place process and system improvements to address this as well as the overall management of the resource consent process.

There are some valid reasons why the timeframe compliance was so low. However there were also systems and process failures, a lack of a clear understanding of the complexity of the (water) consent applications they were dealing with, the lack of an operative planning framework, as well as 'attitudinal' issues. These are set out below.

Having reviewed the consenting data-base system, discussed the matter with ECan officers (including the CEO, Director, Manager, Investigating Officers as well as a number of applicants), the Review Group believe that real change has occurred. There is a much greater emphasis on timeframe management, and better process delivery throughout the application/consenting process.

Notwithstanding the above, there remains an attitude that prevails throughout the organisation that *"we are not clock watchers"*, but more interested in outcomes rather than outputs. While this is laudable in terms of seeking good outcomes, the RMA does have statutory timeframes that need to be managed alongside quality outcomes. Tools are available under the RMA to address timeframe issues (e.g. sections 37, 88 and 92) and there appears to have been a reluctance to use these.

Overall it is the Review Groups conclusion that ECan is addressing timeframe management. This is through putting in place improved processes and systems to manage the consent process, excellent guidance to applicant (various pamphlets, information booklets and the web site), utilising the tools in the RMA⁴ to ensure quality applications are lodged, and where appropriate applying section 37 time waivers. It is considered that if ECan continues with this approach its survey result in the next MFE survey will be significantly improved.

⁴ Particularly under the 2009 amendment to the RMA – e.g. section 88E

It is also clear that much of the poor performance in meeting statutory timeframes is historic; resulting from a significant backlog of applications (mostly water takes – from ground and surface water). ECan has now processed a significant number of these applications and has either issued decisions or awaiting decisions from the Hearings Panel (mostly External Commissioners). It is also now able to address the backlog of applications due to the considerable slow down in receiving applications over the last 18 months, reflecting the economic downturn. However it does need to be noted that some of the application backlog has been ‘on hold’ for some years, and as reported by some applicants there has been little or no contact from ECan. This has been very frustrating to applicants.

While timeframe management is being addressed, there are a number of other issues regarding: needing to better understand the RMA and its purpose, the **quality** processing of applications (addressing the RMA in its wider ‘environmental’ context) as well as leadership and ‘culture’ issues that need to be addressed. These include:

- 1 The organisation (resource consenting) is science **led** rather than science **informed** – and this has implications in how responses to applications (i.e. the s.42A reports) are prepared and officers attitude prior to, at and after the hearings.
- 2 Processing resource consent applications is viewed more as a ‘technical’ process as opposed to a process of identifying all of the effects including, social, cultural, economic and environmental and weighing them appropriately. This is essentially due to the consenting section having almost exclusively ‘technically’ qualified staff as opposed to staff with planning/resource management qualifications/experience and a view that the consent process is mainly about the adverse natural environmental effects.
- 3 There is insufficient consideration given to the fact that the purpose of the RMA is to weigh environmental⁵, social, cultural and economic matters. ECan’s focus is mostly on ‘natural’ environmental matters.
- 4 There is a ‘we know best’ attitude amongst some senior investigating officers/team leaders and managers in the consenting section.
- 5 There is significant disconnect /silo approach to regulatory consent planning and planning/policy⁶ development.

⁵ It is noted that internal staff at all levels of the organisation referred to their focus as being to protect the [natural] environment. It is noted that the definition of Environment in the RMA is broad - meaning

- a) Ecosystems and their constituent parts, including people and communities; and
- b) All natural and physical resources; and
- c) Amenity values; and
- d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in (a) to (c) of this definition or which are affected by those matters.

⁶ “Planning” is the term given to the policy section, with little understanding that resource consents are part of the planning process.

- 6 A lack of case management of the more complex and/or significant applications/hearings.
- 7 A lack of active management of the Independent Hearings Commissioners process, particularly regarding timeframe management.

3.1.2 Historical Issues - Reasons for Slow Processing of Consents

Due to the numbers of applications received⁷ and the nature of these applications, (most of which were water-related consents) ECan was not able to process the applications within the statutory time limits. Nor did it seek in most cases to extend those time frames provided for under s.37 of the RMA (which can more than double timeframes with the applicant's agreement).

According to ECan the increase in volume was driven by a number of factors including:

- A thriving economy leading to massive rural development based on irrigation and increases in urban and rural residential development.
- The notification of the Natural Resources Regional Plan in 2004 that set, amongst other things, "sustainable take limits" from ground and surface water sources.
- Water resources reaching sustainability limits in some places – and the 'first in first served' approach set out in the RMA⁸.

Due to the above there was a significant increase in both the number and complexity of applications. A number of consent applicants were seeking significant resource use / takes, many from the same source. The science and planning issues are complex, and the Council had not anticipated the 'gold rush effect' that occurred subsequent to notification of the NRRP. We believe ECan should have been able to better anticipate this given land use changes and the associated demand for water that had been occurring for some time.

To appropriately assess these resource consent applications required a strong scientific understanding of the water resource⁹, and also required senior and experienced staff/consultants to process them which at that time were difficult to find¹⁰. ECan therefore decided to 'bundle' multiple applications and assess them simultaneously to enable an integrated and more efficient assessment.

⁷ Between July 2002 and June 2008, the number of applications increase from 2,106 to 3,763 per year – an increase of 79%

⁸ According to ECan, this of itself caused a 'gold rush' effect as applicant's sought to ensure they had access to water. This was exacerbated by the boom in dairy farming and other rural production (which required irrigated land), and the competing demands of energy generators, meant that water became a very valuable resource.

⁹ Still a major source of contention between the Council and applicants with respect to ground water resources, including the structure and nature of the underground aquifers, its recharge, what is a sustainable take, and the cumulative effects of multiple takes.

¹⁰ A shortage of people with the required skills and experience was not unique to ECan but was being experienced across the country.

It took time, up to 12 months in some cases, to 'negotiate' with applicants, arrange the applications into 'bundles' to enable them to be assessed and reported on in a more integrated way (as opposed to assessing hundreds of individual applications) and to address cumulative effects. Due to this, the section 42A report(s) to the Commissioners took significant time to prepare and the hearings also took considerable amounts of time. The Review Group spoke with applicants who have had consent applications lodged with ECan for over five years, and are still awaiting decisions from Commissioners.

Given this situation, it is unsurprising that timeframes under the RMA have not been met. It is apparent that ECan did not avail itself of the opportunity to extend the timeframes enabled by the RMA (pursuant to section 37A (2) where time can be extended by more than the maximum of doubling timeframes, if the applicant agrees). It is understood from a number of applicants that they would have agreed to an extension of time under section 37, but would have sought clear direction about when a decision would be released. Applicant's pointed out that often significant financial decisions needed to be made, and having certainty in terms of the consenting process (mainly timeliness) would have been very helpful.

One of the other matters that ECan has acknowledged is that it accepted incomplete and/or poor quality applications (section 88). Rather than rejecting these, efforts were made to seek improvements to applications without formally seeking additional information via section 92 of the RMA. Whilst laudable in attempting to work with applicants, ECan should not have accepted the applications in the first instance or formally sought additional information (section 92) so as to be in a better position to process the applications.

It also appears that the ECan consent application process often placed unnecessary costs on the applicant, particularly 'smaller operators' and there is no satisfactory accountability process for it. External consultants were frequently used by ECan to assess applications¹¹. As consultants (and internal staff) charge on an hourly basis there appeared, to some applicants, an incentive to 'extend' the process as far as possible.

In short, due to a lack of staff resources and lack of relevant expertise, the sheer number and complexity of the applications, accepting poor quality applications, and not having appropriate systems and processes in place to manage its consent processing function - it was beyond the capacity and capability of ECan to process and determine the applications within the prescribed timeframes.

¹¹ It is acknowledged that at this time it was difficult to obtain and retain qualified staff, and it was efficient to utilise external consultants, often ex ECan officers.

3.1.3 Staffing and Use of Resources

Leadership/Direction

There is a lack of overall resource management content leadership within the Consenting Section. Senior management are not RMA experts, and have backgrounds from outside the sector. Senior management are not able to provide leadership and direction on the RMA and the consenting functions – other than process components. This understanding of the RMA has been left to the third tier managers and team leaders, some of whom have been in ECan for a long time and “do it how they have always done it” (according to some internal staff and external people interviewed).

This issue of leadership of the consenting function is significant, and has had implications in terms of timeframe management as well as the quality of the consenting process. It was also reported from within the council and from external stakeholders/consent applicants, that there is no ‘go to’ person with respect to water management and major resource consent processing. This was contrasted with other issues such as air and coastal matters. It is evident to the Review Group that no one is providing the required leadership and direction in this area.

As has been raised earlier, the composition of the consenting section is largely absent of people qualified and experienced in planning and/or resource management. It is the Review Group’s view that this has in part led to the issues raised above (and some of that that follow). While the consenting section and the plan/policy development section have been placed under one Directorate¹², something supported by the Review Group, this of itself has not appeared to improve the consenting function. In discussions with management it was the officers in the consenting section that were “feeding their on the ground” experiences into the policy development; it did not appear to work in reverse.

Internal finance and resource management processes (user pays) influences this, with several staff commenting that there is a disincentive to do non-chargeable work (unless staff time is specifically budgeted for in advance they are unable to work for other parts of the business). This means that there is no scope for contingency to allow staff to get involved in unplanned activities.

A recent internal restructure separated technical issues from management functions, and the Consents Team now has a staff-focused (Consenting) Manager and Consents QA. The Review Group considers it positive that there is a QA-specific function within consents.

¹² The planning/policy development section has a number of qualified and experienced planners and/or resource management specialists.

Staffing

ECan has recognised the need to increase the staffing numbers within the Consenting Section. Staff dealing with resource consents increased from 35 to 57 between 2003 and 2009¹³. The additional staff are processing current applications as well as reducing the back-log. While this is a positive move, there are issues with the skill set within the Consenting Section.

The Consenting Section consists predominantly of technically qualified staff as opposed to those with planning (in particular) and resource management qualifications and experience. This has created a very science/technical and physical environmental effects focus to processing consent applications. This focus is too narrow and the RMA requires a wider evaluation and a weighing of all aspects to determine if the resource use application is sustainable.

It also appears that due to the skill sets in the Section and a general lack of experience at the officer level, there has been an 'audit / investigation' approach to the applications (as expressed in the officers section 42A reports) rather than an assessment and evaluation of that application in terms of the objectives and policies of the relevant planning and policy documents and the provisions of the RMA – particularly Part 2. The external perspective to this audit approach is that staff often seek reasons to recommend rejecting an application (through auditing it) rather than working with applicants to clarify points within applications and undertaking an assessment in terms of the RMA and the policy/plan documents.

In discussions with a number of the staff in the section, there was a definite attitude (a misunderstanding we believe) that planners should not be involved in processing consent applications. This was because *"it is a technical process and planners develop plans and policy"*. This is wrong and not consistent with accepted and desirable practice in other councils.

Evaluation of resource consent applications, particularly for more complex applications, would be better undertaken by planning/resource management qualified officers, with technical input from technically/scientifically trained staff.

'Seeking perfection' is also a problem from the perspective of external stakeholders, where in their opinion staff have become overly complex at times, especially when regarding collection / analysis of scientific information. Comments were received from external applicants and consultants that *"ECan has too much focus on getting perfect science"*, and that this has driven costs and timeframes up dramatically in some cases. However we recognise there is a need for adequate information to make effective decisions but that this needs to be balanced with the fact that the 'science' is incomplete.

¹³ Information provided by ECan, and provided to MFE in their response to the 2007/8 MFE survey of territorial authority performance.

3.1.4 Use of the RMA

Relationship of Timeframes to Quality of Decisions, and use of External Commissioners

ECan generally uses Independent Hearing Commissioners for significant resource consent hearings (and policy / plan changes). This is strongly supported by the Review Group, although a number of issues have emerged with respect to timeframe management.

A number of the hearings, including the major water takes (e.g. Central Plains, Ashburton River - Valetta Groundwater Zone, and the Rakaia-Selwyn 'renewals') have taken many weeks (or months in some cases) of hearings and considerable time to draft the decisions. It is acknowledged that the major hearings have included multiple applicants, complex science and planning provisions within an unsettled planning/policy framework (e.g. the NRRP is only part way through its First Schedule process).

However, in discussions with ECan staff and applicants/submitters there is considerable frustration at the length of time taken for a decision(s) to be issued. There appears to be a practice of Commissioners not closing the hearing but adjourning it. This has been for a number of reasons, including the possibility of having to seek further information once the Commissioners had reviewed the extensive evidence, through to not wanting to close the hearing so that the 'clock is not started' with respect to the time to release a decision. This issue has largely been resolved through the 2009 Amendment to the Act¹⁴ requiring hearings to be concluded within 10 days after the right of reply.

External applicants spoken with are critical of the hearing process. For example, *"The present formal and legalistic process is very drawn out. Because it is difficult to get commissioners with sufficient expertise, often the same commissioners are sitting on multiple hearings. The hearings follow each other, giving insufficient time to make and present decisions before proceeding with the next hearing."* This is an issue that needs to be addressed by ECan.

Other issues have been raised regarding perceived conflicts of interest from within ECan. The following quote from an external applicant spoken with is consistent with the commonly held view among external parties that ECan staff display an intransigent attitude and are unwilling to accept decisions that are not consistent with their recommendations and perspectives. *"ECan staff who are involved in coordination of evidence at the hearing, are often the same people who then are required to complete consent conditions (if the consents are granted). Having lost the case – if they believed there was insufficient water to grant – presently these same people are writing the conditions and make them 'unmanageable' to protect their earlier view."*

With regard to planning, in particular the NRRP, the Review Group has heard strong and consistent criticism of the timeframes taken to both develop the NRRP and its movement

¹⁴ Section 103A.

through the First Schedule process, and the quality and complexity of officers' reports. We address the NRRP in more detail later in this Report.

Section 88 (guidance for applicants)

ECan officers acknowledge that in the past they have accepted applications that were deficient and did not meet the requirements of section 88 of the RMA (as it was prior to the 2009 RMA amendments). It was reported that this was done due to a 'customer focus'; rather than rejecting the application it was accepted and additional information sought (either formally via section 92, or as more often (as reported to the Review Groups) informally – a phone call or email). This action is another reason why ECan has performed poorly in terms of timeframe management.

ECan officers also report that many applications, especially for water takes, were poorly drafted and had incomplete information due to the 'first in first served' approach in the RMA. The 'gold rush' effect also meant that consultants developing applications (and accompanying AEE's) for clients did not have the time to prepare quality applications. They were aware that ECan would likely accept these applications and additional information sought later – but the applications were then 'in the system'.

ECan are now taking a different approach. In recognising the situation above, and in part due to the 2009 RMA amendments, ECan officers will now **only** accept applications that are fully completed, and will reject applications that are not (i.e. return them to the applicant). While this was possible under the RMA, the 2009 amendment (section 88 (3)) has made it explicit that Councils can return it to the applicant as an incomplete application.

In an effort to ensure better quality applications are received, ECan has undertaken a number of initiatives. These include that discussed below and those set out in the *Systems and Processes* section. ECan has produced (and is continuing to produce and update) information to consent applicants. Examples include:

- The Calm Before the Storm – application guidebook for stormwater discharges.
- When the Cows come home – applying for your dairy shed effluent resource consent.
- Flushed with Success – a guide to keeping your onsite wastewater system authorised.

Section 92 (requesting further information)

Section 92 enables further information to be obtained from applicants subsequent to an application being received. There is often criticism from applicants that "*council officers seek too much information*" when what is really required should be limited to sufficient information to consider and decide on an application. This issue is not unique to ECan. What is the appropriate amount of information is an ongoing issue.

As already addressed ECan acknowledges that it has accepted in-complete applications. This meant that seeking additional information was inevitable. Sometimes formal section 92 information requests were made and other times there were 'informal' requests.

While it is accepted that section 92 requests are legitimate, some applicants considered that ECan officers used this as a technique to stall the processing of applicants. ECan officers spoken do not accept this, stating that the additional information was necessary to fully understand the application. The Review Groups were not in a position to consider this issue in any significant detail. However this issue is likely to be resolved by the 2009 amendments to the RMA.

The relevant amendments to the Act enable councils to request further information only once prior to the decision to notify. In response to this, and the acknowledged poor timeframe performance ECan has introduced a number of measures to ensure applications are complete when received by the council. This should essentially eliminate the need for section 92 further information requests. Other initiatives to reinforce this are set out below.

3.1.5 Systems and Processes

Significant improvements have been made in terms of managing timeframes and consenting processes. In terms of the year to date (2009/10) ECan are reporting in excess of 80% compliance with statutory timeframes (over the last 12 months). This has been achieved through much more active management of the consenting process, improved systems, and a recognition that (for all of the reasons set out earlier) performance has been poor.

Both the Director and the Consenting Manager have introduced system and process improvements to address consent processing and timeframe management. Spire Consulting Ltd has been commissioned (most recently - October 2009) to advise on "*Continuing the Consent Application Processing Performance Improvement*". This work is to specifically assist ECan to continue to improve the efficiency, timeliness and quality of the consent application processing, so as to achieve compliance with the provisions of the 2009 RMA Amendment (Simplifying and Streamlining) Act.

ECan's objectives for the *Continuing Process Improvement* Project include:

- Improve the adherence to RMA timelines to in excess of 95% within 12 months.
- Develop a management reporting 'suite' to detect performance trends early.
- Identify the processing, training and information support required to assist ECan staff to achieve the first objective (above).
- Increase staff confidence to seek and implement improvements.

ECan has also introduced a better consents input and tracking system. Staff have been trained to operate it and specific staff appointed to track consent application progress. 'Flags'

identifying when particular actions need to occur and alerts when time frames are close to being exceeded are a key feature of this system. This appears to be working, and each step of the process is covered, from receiving an application, checking if complete and has sufficient information, and then either accepting it, seeking additional information or returning it, determining notification/non notification, allocating it to an officer, processing it, and issuing either a decision (under delegated authority) or scheduling a hearing.

Daily consent processing meeting

A daily meeting with managers, senior consenting officers and processing staff is held to discuss:

- New applications – whether sufficient information been provided and whether the application should be accepted, returned or further information sought.
- Issues of notification /non-notification.
- Scheduling of hearings.
- Other issues arising with respect to applications.

The Review Group supports this move as evidence of a more proactive and coordinated approach to consents management.

Pre-lodgement Meetings and Cost Recovery

To ensure that applications are adequate and complete when lodged, ECan has instituted some pre -lodgement meetings with major applicants. The purpose is to fully discuss the application, what information is required, ensuring adequate information is provided and provide an overview of the consenting process. This is an excellent initiative and consistent with accepted practice in other councils.

One of the issues raised by ECan is whether it can cost recover the time spent in these pre-lodgement meetings. It was reported that considerable time may be required, particularly for larger and more complex applications where input is required from multiple officers. ECan has a 100% cost recovery policy post-lodgement and the concern was that costs can only be recovered on receipt of an application.

In the Review Groups experience, typically a council will hold an initial meeting free of charge, and following this, any additional officer time is charged for by the council. Applicants are able to decline interaction (and avoid cost) but rarely do, as they receive valuable advice that leads to a more efficient and effective post-lodgement process. This is consistent with the cost recovery policy of the EPA (although we note that the 2009 RMA amendments specifically provide for this). The major consent applicants spoken to all supported pre- lodgement

engagement and indicated that they would be prepared to pay for these meetings on the basis that it would likely result in a more efficient and cost effective consent process.

The Need for Case Management of Major Consent Applications

There has been criticism that ECan doesn't manage major consent applications effectively. This partly stems from a historical lack of engagement with applicants pre-lodgement, but there have also been criticisms of the quality of project management within ECan for large applications (e.g. slow moving, communication issues regarding timeframes and costs to applicants, poor stakeholder management).

Components of case management for significant and /or complex consent applications include:

- Appoint an applicant project manager/coordinator – and that this person be the 'point of contact'.
- Form the team with appropriate skills (including economic, environmental, social and cultural expertise where appropriate).
- Agree the plan of attack for dealing with the consents.
- Significant engagement with applicants and stakeholders, ensuring clear expectation setting from all parties.
- Mobilise the application as a project within its own right once it is received (including all appropriate project management methodologies).
- Ongoing management of the project throughout the lifecycle, from any further information requests, the contracting in of specialists skills if not contained (or available) in-house, preparation of the section 42A report, scheduling the hearing, appointing the Commissioners, liaison with the relevant section in the council (hearings/admin teams, accounting, printing, distribution etc), liaison with the applicant – and ensuring timeframe management.

Other councils have moved to this model. As an example Auckland Regional Council has established a Major Projects team within the Regulatory/Consenting section. Its role is as set out above. Members of the team need to be senior planners with considerable experience.

3.2 Policy and Plan Development

3.2.1 General Observations

RMA Planning at ECan is a significant weakness. In the Review Group's opinion this has driven many of the observed current RMA-related problems. ECan has created real policy confusion and inertia, particularly in relation to water.

ECan has a number of specific operative Regional plans, but the overarching Plan for the Region, the Natural Resources Regional Plan (NRRP), is 'stuck' in its First Schedule process, and the Council is wanting to develop (we believe correctly) more specific Regional Environmental Flow Plans. If these Environmental Flow Plans are notified prior to the NRRP being operative (which is likely to take some years to become fully operative due to decisions not being released until late 2010 and then the appeals), it will unsettle things further from a sequencing and prioritisation perspective. Some of the common criticisms from both internal staff and external stakeholders of ECan's RMA planning include:

- The planning process is extremely slow, both in terms of plan development and management of the First Schedule processes. Project management is reported as a significant weakness in planning.
- Plans, and plan interpretations have historically been very narrow and conservative (refer to our later comments on ECan legal interpretations). External parties consider that officers' reports on plans are poor – generally low quality analysis, pedantic, follow the letter of the law (very narrow) and risk averse.
- There is a lack of economic perspective to balance what is perceived as a pro-natural environment approach in Plans and officers reports, in particular section 32 reports (we address this issue in a later section).
- The NRRP is highly complex, technical, lengthy and very difficult for even well resourced external parties to interpret.
- A perception that ECan has a pre-determined approach to plan consultation, and that it has a history of starting with the end point decided.
- Inconsistency across Planning is a major problem raised by internal staff– e.g. launching the Canterbury Water Management Strategy (CWMS) at the same time as the Waimakariri River Regional Plan Change was notified (which was also notified at the same time as the Central Plains Water consents decision making period; this seems at odds with the decision making process). Staff consider that there is a *“left hand not coordinating with the right hand”* situation, and management not *“owning or coordinating the overall planning framework, and this results in a hodge podge of plans at various stages of their lifecycle and little understanding even from within ECan of how they will all tie together”*.

- Aligned with the inconsistency issues above, multiple planning processes run simultaneously. This is observed to result in multiple outcomes that mean some of the statutory processes will need revisiting. Strategic direction from ECan leadership is required to avoid duplication, achieving beneficial outcomes for all.

We note that not all aspects of the Planning framework are as problematic as described above. Our observation is that the work being undertaken on the review of the Regional Policy Statement and the Regional Environmental Flow Plans is following better process, and this is a view supported by external parties. Fundamental to this is the adoption of a strong project management approach, coupled with a sense of urgency, and supported by collaboration across ECan. The greater use of non statutory and non regulatory tools is an example of areas we see ECan as showing significant promise (we address this in more detail later in this Report).

ECan management recognise that the Planning Group has historically been very slow in preparing plans, and is seeking a move away from the 'plans take as long as they do' mentality, including through:

- Introducing project management as a core competency.
- Increasing the sense of urgency in plan development.
- Increasing collaboration among parts of the organisation to ensure draft plans are grounded in reality (i.e. are workable) before they move into First Schedule processes.
- Moving some staff out of consents into planning to improve cross-functional interaction.
- Changing the balance of planning to be more focused on the end user (solutions focused).

The Review Group does not consider that these initiatives are sufficient to address the failings within the Planning and Consents Directorate (we also note the comments in relation to the Consents-specific issues in earlier sections). ECan needs to urgently address its confused, inconsistent and unsettled policy / plan framework. We consider that ECan is suffering to a degree from historical institutional issues that are beyond the influence of current staff, and whilst we agree that there have been improvements, the Review Group believes that the entire RMA Planning function requires an overhaul to remove systemic failures. Greater clarity would make consent processing (in terms of having an operative policy / plan framework) somewhat certain.

3.2.2. Natural Resources Regional Plan

Central to the criticism of RMA planning at ECan is the Natural Resources Regional Plan, which has been under development for well over a decade. Originally conceived as a Region-wide, issue-comprehensive document that would provide a fully integrated RMA planning framework for the Region, the NRRP has evolved into *“an extremely weak and complex document that is stuck in First Schedule processes.”* The duration of preparation of the NRRP has forced

variations as it has become outdated and overtaken by many issues, especially regarding water.

As discussed in detail in the main body of this Report, the lack of an operative Region-wide planning framework and failure of ECan to adequately recognise the rapid emergence of water as the major strategic issue in the Region has directly contributed to the situation today. The Review Group does not accept ECan's view that the RMA has caused (or directly contributed to) the water-related challenges in Canterbury, and note that other water-challenged regions (such as Hawke's Bay, Tasman and Marlborough) have been able to manage water under the RMA (we accept that the scale of the water issue in Canterbury is significantly larger than anywhere else in New Zealand). We believe it is the failure to comprehensively plan for water use in the Region that is the cause of current challenges, as opposed to the legislative barriers perceived by ECan.

The NRRP is a large plan; both in geography and scope (external stakeholders describe its size and complexity as "*overwhelming*"). Part of the concern raised by internal staff is that to actually implement the NRRP will take massive resources, and that ECan doesn't yet understand the implications of this. Several staff and external parties consider that ECan should identify the main issues that the NRRP currently covers and prioritise, and then prepare the Plan around the priorities.

Some of the fundamental issues with regard to water management and the NRRP include:

- Some internal staff and external parties consider that the allocation model promoted by the NRRP is flawed. ECan is using it to review consents, yet the Environment Court and Hearings Commissioners have repeatedly made decisions contrary to the recommendations of ECan officers.
- Staff are unsure what happens with the CWMS zonal committees with regard to the NRRP if zonal committees develop options that are in conflict with the NRRP (in terms of which would hold precedence)
- RPS-NRRP sequencing is a major risk if the RPS is notified before NRRP decisions are released, especially as the CWMS is intended to be given effect to (partly) by the RPS.
- The NRRP as drafted is very general, and is considered by staff to be of minimal help in guiding decisions of Council.

3.2.3 Regional Policy Statement

ECan is preparing a new Regional Policy Statement (RPS). The responsibility for this sits in the Regional Programme Directorate and not the Planning and Consenting Directorate. The Review Group is unclear (as are most of the staff and external stakeholders spoken to on this matter) how the NRRP and proposed RPS will relate to each other given the stage the

document is at, that different teams are preparing the documents, and that the timeframes are different for each.

ECan acknowledges that this is a risk, particularly if the NRRP decisions on submissions are finally released after the proposed RPS is notified. ECan staff believe the most pragmatic approach is to continue with RPS development. They expect that NRRP timelines will be met (and sequencing issues avoided). ECan staff noted that there is a risk of judicial review but have made a decision to continue with RPS development.

Staff perspective regarding the RPS is that it is a *“document for local government, not just ECan, and is seeking a move toward consensus in the Region.”* As part of this move toward a consensus for resource management in the Region, there is a lot of provision for non regulatory intervention in the RPS (whilst keeping the regulatory ‘backstop’ as a last resort). This includes through giving effect to strategy documents, such as the Biodiversity Strategy, Energy Strategy, and Urban Development Strategy.

The Review Group has not examined the draft RPS as it had not been released when our investigative work was being undertaken. We are, however, encouraged by what appears to be a far more collaborative and constructive approach to policy development, especially with Territorial Authorities.

3.3 Other RMA Implementation

3.3.1 Sustainability Limits & Cumulative Effects

Although ECan has attempted to manage sustainability limits and cumulative effects through its RMA policy and planning framework, the inability to move the NRRP through the First Schedule process has led to de facto management of sustainability limits and cumulative effects through the resource consent process. This is not ideal and has contributed significantly to the drawn out, litigious situation in Canterbury – with particular regard to water. It has also led to ‘science vs. science’ issues, as the lack of an operative planning framework has left the scientific debate open. ECan has been at odds (publicly) with both the Environment Court and Commissioners following decisions that were not consistent with ECan’s perspective at a staff level.

3.3.2 Monitoring

Both individual consent monitoring and enforcement (within the Regulation Directorate) and overall plan effectiveness monitoring (within the Regional Programmes Directorate) have undergone considerable improvement recently.

Consent Monitoring and Enforcement

An issue raised by internal staff has been that historically, when faced with statutory monitoring/enforcement challenges (under the RMA), “*pragmatism went out the window*”, and ECan became very risk averse. This led to adversarial relationships with consent holders – some of which could have been avoided through ECan being more pragmatic and flexible in its dealings.

ECan is now taking a risk based approach to monitoring, which allows prioritisation and flexibility in decision making. The intention is that higher risk activities lead to higher levels of monitoring/oversight, and that taking a pragmatic approach allows ECan to prioritise and deal more effectively with the most significant issues. As an example of a more pragmatic and flexible approach to enforcement, ECan have started using alternative dispute resolution and restorative justice to replace court action.

ECan’s Regulation Directorate (responsible for consent monitoring) is seeking to become much more collaborative in monitoring and enforcement, as an alternative to the ‘command and control’ approach it has historically undertaken. Management identified “*a spectrum between pure enforcement 100% of the time and full collaboration (i.e. giving in too often to polluters etc)*”. ECan is seeking to move along the spectrum from a purely enforcement focus (without considering context in non-compliance) toward collaboration with consent holders who are non-compliant, to ensure an optimal solution for both ECan and the consent holder. The Review Group considers this move to be positive, but notes that this perspective is not yet widely held externally.

Plan Monitoring

Plan implementation monitoring needs significant improvement. Historically, plan monitoring has tended to look backward, at what had (or had not) been achieved after a plan has been operative for a number of years. ECan has recognised the need to look forward and to design the monitoring and evaluation framework at the outset of plan development with the effectiveness measures in mind to allow progress against the plan to be tracked over time.

There is a relatively new Programme within the Regional Programmes Directorate aimed at taking ECan from outcomes evaluation to being focused on policy effectiveness monitoring, with links to priorities through the annual plan and LTCCP processes. This Programme aims to have effectiveness monitoring built into all plans at the outset of plan development. The Review Group considers this approach to be strong, and some of the more innovative work we found within ECan.

The focus of this Programme is now on getting cross-organisational input to thinking about how plans and policies will be implemented, which leads into cost / priority setting during plan development, rather than the historic approach (which is common across New Zealand) of

failing to adequately consider how to evaluate effectiveness until well after the plan has been completed. This requires a cross-disciplinary approach to planning and evaluation; something that we note is made more difficult with the approach to internal user pays within the organisation.

3.3.3 Relationships with applicants and submitters

Consistent and serious concerns were raised regarding the nature and quality of engagement with applicants/submitters, particularly for large complex consent applications or through RMA plan development (the NRRP in particular). Of particular concern to the Review Group is that the issues raised by external parties were consistent in nature, and differ quite strongly from the perspectives of ECan staff when asked about their organisation. Relationships with major applicants canvassed by the Review Group are universally poor.

There is clearly a major perception gap between internal and external views of ECan. All external applicants spoken to raise concerns around perceived intransigence of staff to accept that decisions made by Hearings Commissioners/the Environment Court have set precedent. Concern was also expressed that processes are extremely slow, and that if ECan 'lose' a case, staff actively slow processes down and impose unworkable or impractical conditions (NB: this is anecdotal and we have not been provided any evidence to substantiate this assertion).

Common themes raised by external parties spoken with (regarding both consenting and plan development) include:

- Inconsistency of staff interpretation of council plans/policy, frequently referred to in relation to consents officers.
- Intransigence when confronted with challenging situations *"ECan not getting its own way and deliberately slowing processes down or reacting publicly"*.
- Science led rather than science informed (see earlier comments about technical staff).
- Large numbers of staff are "green" in orientation, which leads to an imbalance of environmental protection over other considerations.
- A vacuum of economic, social or cultural consideration (ref. "green" comment above).
- Consents – planning understanding gap.
- Dysfunctional council from a decision making perspective. Too much focus on minor detail and *"bickering"* at the expense of major decisions.

An exception to this from a planning perspective is the consultation undertaken with Regional Policy Statement development, with a very collaborative approach, especially with regard to TA engagement in the process of developing the RPS.

An example of a good consenting-specific process that keeps stakeholders engaged is a quarterly ECan – Christchurch City Council consenting meeting. This enables both ECan and the CCC to be fully aware of issues in a timely manner and work together to ensure ‘no surprises’ and a collaborative approach to dealing with issues. The Review Group believes this is an example of good practice that ECan should adopt for all significant applicants/stakeholders, similar to an account management function in professional services firms.

From a consenting perspective, we believe that case management of large, complex consents would provide significant improvement to the way that applicants and submitters perceive ECan’s management of consents. This would provide ECan the ability to communicate it’s perspectives to external parties, and to hear and understand issues relevant to the particular stakeholder. We feel that this will help address the significant gap in perception that exists between ECan’s view of itself and that held externally.

3.3.4 Relationships with Territorial Authorities in RMA Decision Making

From an ECan staff perspective, engagement with TA’s at a staff level is fairly positive, and appears to have improved. ECan has nominated a director to be ‘account manager’ for each TA, to ensure that each TA has a single point of contact at a senior level should they have any issues to raise / escalate. In addition, ECan have relationship meetings with each TA fairly frequently. Recently, this has included canvassing each of the points raised in the Mayor’s letter to Minister Hide, and agreeing on an action plan to deal with all points raised. Several ECan staff considered that the points raised in the letter did not reflect the relationship that ECan – TA’s actually have.

The concerning issue with regard to TA engagement is that the territorial authorities spoken to (at the Chief Executive and Mayoral level) feel very strongly that the relationship has been poor to the point of being dysfunctional. This clearly has a strong historical component, but is at odds with the perspectives from inside ECan.

3.3.5 Relationship with Ngāi Tahu in RMA Decision Making

Ngāi Tahu is the iwi with mana whenua status in Canterbury and as such has a statutory relationship with ECan, provided for through both the Local Government Act and Resource Management Act (and other statutes). The relationship between Ngāi Tahu and ECan could be improved through a more proactive, strategic approach from ECan¹⁵. Iwi engagement is not well resourced and given insufficient priority within ECan. There is a single person acting in an iwi liaison function, within the External Relations Directorate.

¹⁵ The views expressed here are those arising from a hui between the Review Group and TRONT staff, and do not necessarily represent the broader Ngāi Tahu perspective.

Given the significant demand placed on iwi consultation and engagement from both an RMA and LGA perspective, and noting relevant provisions of the Ngāi Tahu Claims Settlement Act, this is considered inadequate by Ngāi Tahu. Ngāi Tahu also note that the cost of consultation is very high, is not cost recoverable for them and see themselves as often having to subsidise RMA processes to ensure Ngāi Tahu values are adequately provided for. Ngāi Tahu report frustration with the range of demands for engagement without clearly understood and established systems and processes for their input and monitoring this engagement.

In its submission to the ECan 2009 Annual Plan, Ngāi Tahu requested a review of the iwi liaison function to bring it into line with other councils. Ngāi Tahu consider that there is a lack of clarity within ECan around its role and interaction with iwi, and has asked ECan to review this. Specifically, it is seeking a clear structure with identification of roles, priorities, responsibilities and skills needed on both sides.

From Ngāi Tahu's perspective, the 2002 Local Government Act reforms had a negative impact on the relationship with ECan. The reforms required ECan (and all local authorities) to provide for both iwi with mana whenua status (in this case Ngāi Tahu), as well as Maori generally within the Region. In the view of Ngāi Tahu, ECan struggled to deal with this change and as a result lost their way for a considerable period in terms of their relationship with Ngāi Tahu and Papatipu Rūnanga.

The Review Group is aware that ECan has made some progress in improving its engagement approach with Ngāi Tahu in recent months, and supports this. This includes consideration being given to ECan support for Mahaanui Kurataiao. Mahaanui Kurataiao is based on a similar model developed in Southland in the late 1990's. Te Ao Marama is a jointly funded organisation in Southland that is a single port of call for iwi and all councils, and provides advice on Ngāi Tahu issues and values. Te Ao Marama and councils are guided by an Iwi Management Plan, produced with significant input (including staff secondment from Environment Southland) from Councils.

We are aware that ECan visited Environment Southland recently to consider the approach taken in the Region and is considering the Te Ao Marama model. We also note that the staff member from Environment Southland responsible for developing the iwi management plan has recently joined ECan, although not in this specific capacity. It is noted that ECan are supporting the development of an Iwi Management Plan in central Canterbury. Use of a similar model to Environment Southland would encourage ECan to provide additional staff support to this process.

On a positive note, ECan's Māori Advisory Committee meets quarterly with representatives of eight Rūnanga and Te Puni Kōkiri. The minutes of these meetings indicate they have value for both Ngāi Tahu and ECan and note activities where Rūnanga have been contributing to programmes and policy development. In saying that, a MoU was presented by Ngāi Tahu to ECan in 1999, and still remains unsigned. ECan recently requested that this be signed, but

Ngāi Tahu felt there was significant relationship and trust building initiatives that needed to occur before such a document could be signed.

3.3.6 Non Statutory / Non Regulatory methods

In recent years ECan has put significant effort into a variety of non statutory / non regulatory initiatives. The emphasis on implementing a more collaborative approach with the community to decision making involves building relationships and trust with key stakeholders through interaction outside and before the statutory (RMA) processes by ensuring workable options are put forward that are able to be adapted by community stakeholders.

When asking staff about their perceptions of what ECan does particularly well, the vast majority of examples provided were collaborative, non statutory/non regulatory initiatives including:

- The Biodiversity Strategy
- The Energy Strategy
- The Canterbury Water Management Strategy
- The Resource Care Programme
- The Urban Development Strategy.

The Review Group recognises that the efforts in this, particularly through the Regional Programmes Directorate, enhance the effectiveness of issue-specific implementation. We do consider however that there needs to be statutory (RPS, regional or district plans) backing to such non-statutory initiatives should the collaborative approach fail. The absence of the regulatory planning framework (at the least as a backup) we believe, will lower the likelihood of successful long term implementation.

3.3.7 Considering environmental, economic, social and cultural perspectives in RMA decision making

A commonly held perception from both staff and external stakeholders is an imbalance between the environmental, economic, social and cultural perspectives in RMA decision making. We have already noted earlier in this Report that there is a strong imbalance of scientifically trained staff vs. planners, resource management specialists, economists, social scientists and people with cultural expertise (including iwi relations). We believe this to be especially problematic in the Planning and Consents Directorate, which is where much of the 'weighing' role required in the RMA should be undertaken. One of the fundamental roles of a resource management planner is to weigh all of the evidence/information (in terms of the RMA and the relevant Policy and Plan documents) and make an informed overall judgement/recommendation so as to assist the hearings panel and/or Council in making their resource management decisions.

3.3.8 Quality of RMA legal advice

There is a widely held perspective, expressed by internal and external parties that ECan has suffered from very conservative and narrow legal advice with regard to the RMA. We have no specific evidence other than anecdotal feedback, but several stakeholders have experience with interpretations of the RMA from across New Zealand and consider ECan to be extremely conservative in its approach.

3.4 RMA Recommendations

Some of these recommendations were made without anticipation of the creation of the Canterbury Regional Water Authority; that is, they stand regardless of the broader institutional change recommended by the Review Group. It is appropriate that the Commission charged with executing the changes at ECan consider these recommendations in the light of the other institutional changes it would be responsible for.

RMA Recommendation 1: Fit for Purpose Review of Planning and Consenting Directorate

We recommend a 'fit for purpose' review of the Planning and Consenting Directorate to be undertaken as a matter of urgency. This review should be undertaken by an independent external party familiar with best practice, not from within ECan. The review should consider the following:

- The structure of the current Directorate (including consents) and its appropriateness given the issues we have identified. Particular focus should be given to the third and fourth tier of management within the Planning Group.
- Resource Management Act content leadership should be introduced in the consenting section. This should be either the appointment or secondment of senior planning / resource management specialists into the Consenting Section, at a management level.
- ECan should consider setting aside a portion of all staff time as non-chargeable (suggest 20-25% contingency) to allow staff time to provide more input to policy and planning work and to work together on cross-boundary issues. This would greatly assist cross-organisational integration, and allow adequate time / resources to deal with emerging issues.
- A broader range of skills is required in the Consenting Section – notably planning skills. Officers with the appropriate planning/resource management skills need to be in positions to influence the form and content of the application assessment, the section 42A reports, and the hearings process.
- ECan needs more planners, resource management specialists, economists and social scientists on staff to better provide for a broader range of perspective and allow balance between environmental, economic, social and cultural perspectives. This should be

considered as part of the 'fit for purpose' review we have recommended for the Planning and Consenting Directorate.

- Increasing project management capability within the Directorate.
- Appropriate experience required of staff (including understanding of the consenting, and monitoring and enforcement functions of Council).
- Addressing the policy and planning confusion that ECan currently presents (taking into account the recommended creation of a Canterbury Regional Water Authority).
- How to better integrate planning and consenting functions within ECan (this would also apply to the CRWA).
- Whether to bring the Regional Policy Statement into the RMA Planning and Consenting Directorate to ensure alignment of all RMA related policy and planning documents.

RMA Recommendation 2: Hearing Commissioners

ECan needs to more actively and effectively manage the Commissioners hearing process in terms of accountability, responsibility and timeframe management. We recommend ECan review its Commissioner pool as a matter of urgency and determine if it has sufficient numbers of Commissioners and the right skill set – i.e. planning/resource management, legal and technical. It should also determine if it should 'go back to the market' and seek expressions of interest for external Commissioners to determine who is available.

It would also be an opportune time to consider contracting Commissioners, and to clearly set out their roles, obligations and responsibilities, and to consider performance standards such as decision timeframes (including the issuance of section 37 notices if required).

This process needs to ensure there are a sufficient number of Commissioners, with the right skills and with clear accountabilities and a commitment to meeting agreed timeframes. This should, in part at least, address the issues of timeframe management and over-reliance on certain commissioners.

RMA Recommendation 3: Pre-Lodgement Cost Recovery

ECan should consider cost recovery pre-lodgement, to remove the perceived barrier to more effective pre-application engagement with major applicants – in line with the practice used by most councils.

RMA Recommendation 4: Case Management for Large Consents

ECan needs a 'case management operating model for large/complex consent applications. Significant resource consent applications (e.g. large takes) or applications that have multiple aspects to them (e.g., takes, discharges, structures, joint land use hearing with the territorial authority, etc), should be specifically case managed.

The focus should be on greater clarity around role and strategy and will include significant pre-application engagement and team mobilisation. There should be a senior person appointed to manage the process and to be the 'go to' person for internal experts, the applicant and submitters.

The skills required include: project management ability, strong communications and stakeholder management skills, experience in processing larger scale resource consent applications, understanding of the RMA purpose and processes, and an in-depth appreciation of the Canterbury Policy and Planning framework.

RMA Recommendation 5: Stakeholder Engagement

We recommend that ECan institute an 'account management' approach for dealing with major stakeholder groups, in much the same way as exists with territorial authorities. Senior members of staff would have responsibility for developing and maintaining relationships with specific groups or organisations, including potential applicants, NGOs, and industry groups.

RMA Recommendation 6: Iwi Liaison

The Review Group recommends that iwi liaison be elevated in importance within ECan. We suggest that, in line with other major cross-organisational programmes, iwi liaison should be placed within the Regional Programmes Directorate, elevated in importance (to a management role), rebranded as Iwi Relations, and provided with significantly more resources.

ECan should define and agree roles, responsibilities and priorities with Ngāi Tahu. This includes the provision of appropriately skilled staff and establish budget provisions that allow ECan to acquire technical tangata whenua advice from tangata whenua resource management entities such as Mahaanui Kurataiao (an organisation that is currently jointly funded by Christchurch City Council, Waimakariri and Selwyn District Councils). ECan would also need to work proactively with the Rūnanga of South Canterbury and Kaikōura to establish similar arrangements.

RMA Recommendation 7: Fit for Purpose Review of Legal Team

We recommend ECan undertake a review of its internal legal team to ensure it is fit for purpose (in terms of resourcing, capability and experience), and consider seeking alternative advice from outside the Council, when required.

4. Local Government Act (and Other Legislation) Results

This section considers the Local Government Act (and other legislation) matters contained in the Terms of Reference, other than those discussed in the previous section pertaining specifically to water.

4.1 The approach of ECan to meeting its legal obligations

Regional Councils are bound by many acts covering a wide range of subjects. In addition to the Local Government Act 2002, and in terms of its normal operations the following were seen as significant in the context of the Review.

Soil Conservation and Rivers Control Act 1941

The subject of the Act is a significant focus for ECan in regard to erosion control and river management. There are 63 river rating districts in the Canterbury region. Christchurch has the highest value land at risk of flooding. A new secondary stop bank system has just been consented. This is an innovative concept to detain and direct the water back into the river and is reported to give 1/1000 year protection. We found no issues of concern in terms of ECan meeting its obligations under this Act.

Building Act 2004

ECan has met the accreditation requirements that address process and capability and achieved Registered Building Consent Authority status in respect of large dams, which is its major obligation under the Building Act.

Biosecurity Act 1993

Animal pests including rabbits and wallabies are a significant issue. ECan is taking a new collaborative approach district by district. This is getting better support from landowners. Control of weeds (particularly Nassella Tussock) is active with challenges varying across the region. This also requires high levels of landowner collaboration and support with enforcement as a necessary backstop. We found no issues of significant concern in terms of ECan meeting its obligations under this Act.

Land Transport Management Act 2003

The Regional Transport Committee is supported and functions effectively. There is some concern expressed by Christchurch City about disproportionate representation however that is the product of the statute. Representation appears not to be detrimental to the city's funding programme. The Review has revealed nothing to indicate obligations this Act are not being reasonably fulfilled, although questions were raised by Christchurch City Council regarding where public transport best fits between the two agencies. A detailed assessment of this was not undertaken by the Review Group, but we note the concerns raised by Christchurch City Council. Christchurch City Council is strongly of the view that the present arrangement leads to material additional costs due to the overlaps in responsibility between Christchurch City and ECan, and that this resource would be better applied to improving public transport services. Rather than making specific recommendations to address perceived issues, the Review Group feels that it is appropriate that the Commission initiate a review to consider the optimum arrangement for the management and operation of the public transport fleet within the Region. The overwhelming bulk of this activity is within Christchurch, however we note that three other Districts are also serviced by public transport managed by ECan. The Commission we have recommended to replace ECan would act on that review when completed.

Local Government Act 2002

This is the legislation under which ECan is duly constituted. The review has found that while most functions of local government are being adequately addressed, those policy and regulatory functions as prescribed by the RMA are not. Performance in this area in relation to water matters was found to be significantly poorer than might be expected of a regional council fulfilling its obligations as a responsible local government. The Review also identified that there are some organisational cultural matters and relationships with territorial authorities that need determined and specific attention by management.

4.2 Adequacy of ECan's Governance

4.2.1 Governance

The common theme can be summarised thus: "ECan – the 7-all Council". The council is currently balanced (7:7) in respect of environmental and economic issues. Another divide noted is about long term versus short term which is allied to the environmental versus economic argument. The differences of view are arguably representative of community differences. There is no inherent problem so long as decisions are able to be made. By all accounts and by reviewing a number of key decisions deadlocks do not occur on substantive motions. We note however, that while we were undertaking this investigation, ECan voted 10:2 in favour of endorsing the CWMS.

Some bitterness remains from the relatively recent political history of ECan and the changing of Chair. Most councillors agreed the styles of the previous and new Chairs are very different. The allocation of portfolio responsibilities seems to be generally working well. The new Chair has recently reallocated some portfolios, so those are still settling down. There appears to be some variation in performance by the portfolio leaders – some are very on top of their portfolios and are managing their committees well. Others are taking a more passive approach.

Committees involving wider representation (e.g. Regional Transport Committee), various hearings committees, Finance and Audit and the Regional Planning Committees meet regularly and formally. A number of other standing/portfolio Committees dealing with operational matters do not meet formally but are expected to be convened informally as required by the portfolio Chair. Examples are the Passenger Transport and the Biosecurity committees. In these cases, matters are formally debated and determined at meeting of council with the agenda items being introduced by the committee/portfolio chairs. This does mean a greater level of debating time in full council. Two portfolio chairs would prefer the more traditional committee approach with regular meetings and formal recommendations to Council. Both Councillors had previous experience with TA's that operated significant delegations and it was only the exceptions that were debated in the council meeting.

Almost all external parties interviewed had a negative perception of ECan's governance. There is a widely held view that councillors are so polarised at times that they are dysfunctional as a group. There is insufficient leadership, and the council is too busy protecting individual / Party perspectives and fails to pay sufficient attention to leading the Region. Our investigation did not bear this out. ECan is meeting its legal obligations under the LGA but has been unable to establish a firm planning environment which flows through to poor relationships and decisions under the RMA. The Review found that while the process for debating strongly opposing views has been marred by poor behaviour and reflects past grievances in some cases, the governance of ECan is functional and enables it to meet its statutory obligations. Mostly, the tensions that exist arise from differing political perspectives and not from any fundamental dysfunction.

4.2.2 Staff – Councillor Engagement

The Chief Executive, Directors and Chair of ECan consider that the management side has a clear understanding of the respective roles. Those parties also agree that some of the Councillors struggle to stay on the governance side of the line with some seeking information at an inappropriate level of detail. This was confirmed in the councillor interviews. The principle is well understood in theory but for some, particularly first term councillors, the boundary is uncertain and there is a tendency to want to go too far down into the operational detail.

It was universally agreed amongst senior staff that the new Chair has already made a considerable difference in the relationships between senior officers and elected members including:

- Much better relationship and communication between the new Chair and the Chief Executive.
- Governance/management interface enhanced by attendance of Chair at Directorate meetings two weeks in advance of Council meetings.
- Chair “pops in” to talk with Directors and keeps his own door open – both parties value this direct, informal contact.

4.2.3 Councillor’s views

Several councillors mentioned that undue emphasis was being placed on the CE being Council’s only employee, as if the CE was the only one councillors should talk to. A few Councillors said they were unsure of the degree to which they should be dealing with staff but regardless most had established productive relationships with senior staff related to their committee portfolios.

Staff were generally regarded as highly technically competent and tackling some challenging issues. They were very responsive and supportive with information and at workshops and formal meetings.

The CE has been regarded by some councillors as *“the 15th councillor (in that) he has had a tendency to enter the political debate”*. This is not regarded well by a number of Councillors. It was conceded that he was doing this less frequently in recent times. He is regarded as a highly competent and respected technocrat who at times has difficulty staying at the more strategic level expected of a CE.

4.3 Adequacy of ECan’s Management and Decision-Making Processes

This section makes an assessment of the performance of ECan’s management and decision-making processes across various measures of performance.

4.3.1 Vision, Strategy and Purpose

The Council has a vision and a purpose statement set out in its Long Term Council Community Plan (LTCCP). It has developed a number of strategies which guide ECan’s activities. In some cases the strategies are jointly developed by a number of parties who are working together to achieve common goals. Two recent and high profile examples are the Canterbury Water Management Strategy (CWMS) and the Greater Christchurch Urban Development Strategy (UDS). At the time of writing, ECan was finalising the Environment Canterbury Strategic Plan 2020. In reviewing ECan’s guiding documents, it appears to us that broadly speaking:

- ECan is clear about its vision, purpose and roles.

- It understands that while its own functional responsibilities are particularly focused on natural resource management and regional transport, it has a wider strategy, planning and monitoring role
- It also understands that while its functions have an environmental focus, it has an obligation to consider the “four wellbeings” in its decision-making and to take a sustainable development approach. We discuss concerns regarding how well ECan has given effect to this at a practical level, in terms of its RMA functions, elsewhere in this Report.
- ECan gives appropriate status to the community outcomes.

4.3.2 Integrated Planning and Monitoring

We have reviewed ECan’s general planning and monitoring systems and have concluded the following:

- Starting with the LTCCP, the Council sets its long term strategic direction, priorities, levels of service and levels of funding as its contribution to community outcomes. This exercise takes a “portfolio” view. The portfolios are the “outside in” way of looking at the organisation (e.g. air quality, energy, regional land transport etc), rather than the functional view of the directorates. Portfolio programmes and budget often go across the functional boundaries of the Directorates. Each portfolio has a designated Director and a designated lead Councillor.
- The prioritisation process for the LTCCP is rigorous. Staff applied project planning and prioritisation criteria using a software application in the Council’s computer-based financial project management system (Cognos). The system distinguishes between non-discretionary and discretionary programmes and projects. The discretionary work was scored according to strategic importance, project complexity and business impact, using four criteria for each. The scores were presented to Councillors as part of the agenda papers for the Portfolio meetings leading up to the adoption of the draft 2009-16 LTCCP.
- ECan is conscious of the limitations of this approach. It is a significant input to the prioritisation process, but does not replace assessment of the overall mix of activities, including for example, the relative effectiveness of statutory versus non-statutory methods of achieving outcomes.
- Once the Council made its decisions on priorities and service levels, the internal portfolio teams undertook the next level of detailed planning. This detail is entered into the Cognos budget database. The Annual Plan for 2009/10 comprised year 1 of the LTCCP.
- We reviewed all the relevant documents and traced one project (025906 Ground water quality monitoring – admin, data analysis and reporting) right through the planning (and monitoring) process.

- Performance monitoring is assisted by the following reports:
 - Finance report (monthly) – to Directorate and Council**
 - A summary of portfolio actual vs. budget expenditure and revenue with explanations of significant variances.
 - Tri-annual report (4 monthly) – to Directorate and Council**
 - A non-financial exception report summarising overall performance, detailing parent levels of service that are not on track, including requests for council approval to revise levels of service or budgets to accommodate changed circumstances.
 - Annual report and summary (annually) – to Directorate and Council**
 - As required under the Local Government Act.
 - Parent profit and loss (monthly) – to Directorate**
 - Annual forecast of project by expenditure and funding types.
 - Project World performance report (monthly) – to Directorate**
 - A comprehensive and detailed year to date financial and non-financial report with traffic lights for expenditure, revenue and output performance, with a commentary on progress to date including any issues/problems experienced.
 - CAPEX report (monthly) – to Directorate**
 - The Council’s system enables project (output) information to be combined with financial information with a portfolio view or a Directorate view. Staff and managers are also able to customise their own reports directly off the system.

There are also reports that are more tailored for frontline management (of both functional teams and projects). Additional planning and reporting occurs at Section and Group level and, in some cases specific operational plans (e.g. annual plan to implement the pest management strategy). There is some variation in how the Directorates approach this, but we took a number of random tests to link activities back to the Council’s agreed work programme and could easily do this in every case. We concluded that the variation in approaches to business planning was healthy and enabled each group to articulate their contribution in a clear and meaningful way.

Planning and monitoring needs to be aligned to an effective performance management system in order to close the loop for accountability purposes. This is covered in the following section.

We conclude that:

- ECan appropriately recognises the importance of planning and monitoring.
- They have invested in good quality information and use it.
- Their system is generally well integrated.
- Designing a planning and monitoring system to take both a portfolio and functional view is challenging. ECan has met this challenge with a high quality matrix system.

4.3.3 Role Clarity and Performance Management

The Executive

It is generally accepted that establishing role clarity and a culture of high performance in any organisation starts at the top. The Directorate came across as a strong and united team of high performers. They value each others' strengths and complementary skills (openly identified through a strengths based analysis) and the team culture of challenging each other without inflicting damage. We were given a number of examples of 'border issues' at lower levels in the organisation being appropriately escalated to Directors and constructively resolved by their joint intervention.

The CE is open in his dealings with the team. The Directors are not afraid of disagreement with the CE and tell it as they see it. Most mentioned that while they rate his strategic leadership very highly, he also has a tendency to the academic and going into too much detail. On the other hand, he is open to their feedback and has responded positively. Several mentioned (and the CE also states) that the CE is happy to stay out of the detail if he is confident that the right thing is happening. Several of the Directors reported that this had galvanised them to (a) ensure that what is happening is in tune with the CE's direction and (b) keep the CE well informed.

The CE's response if something is off track is to get directly involved. He is aware that he resorted to this frequently in the past. He considers his current executive team to be more capable and his view is that his direct involvement is minimal now. He also states that there was a series of key pieces of work that were major gaps when he arrived and in the absence of the right capability in the organisation at that time, he led them himself.

Each Director has a set of Strategic Issues agreed with the Chief Executive. These are monitored in their regular one on one meetings alongside progress in implementing their group plans. The organisation has recently implemented a new performance management system (Sonar6) which systematically details each individual's performance expectations (both what and how). The "what" links to the Council's overall plan and the "how" include a direct link to the organisation's values. This system, relatively new, is key to embedding the desired performance attributes within the organisation. It is also key (in conjunction with other mechanisms) to enhancing what the organisation calls "line of sight" – the ability for each and every staff member to trace their individual, team, section, group and portfolio contribution to the Council's overall contribution to community outcomes.

We have also reviewed the Council's system for setting the Chief Executive's performance expectations and reviewing performance. A new system was introduced at the time of the most recent performance review. We found it to be clear, comprehensive and rigorous.

ECan's structure is designed to embed proactive cooperation across the organisation. The way the Portfolio Managers have been set up in the Regional Programmes directory, with a Director assigned to each portfolio, appears to have succeeded in creating an effective matrix without muddying accountability lines. The organisation's line management is functionally based. Having reviewed the systems to support role clarity and performance management in detail, we conclude the following:

- ECan's CE and Directorate are clear about their roles and expectations and are committed to performance management.
- They are taking a coherent approach to matrix management and supporting its workability through a combination of systems and, perhaps most importantly, their personal and collective focus on outcomes and investment in collaboration.
- Performance management is directly and effectively linked to the overall system of planning and monitoring.
- The performance management system has only recently been introduced and it will take some time for its impact to be seen.

4.3.4 Staff Capacity and Capability

The staff are generally considered by the internal (Councillors and executive) interviewees to be highly committed and professional. It is a "*passion driven*" organisation – with the advantages and disadvantages that come with that.

ECan has in-depth expertise in environmental sciences, but less so in the planning discipline, as discussed earlier in the Report. This is particularly so in the sciences relating to water resources. This team has expanded significantly in recent years and this is a reflection of the present challenges facing the region around water issues.

Staff attitudes are the area of most concern expressed to the Review Group by those dealing with ECan including TA's, the energy sector, some land holders, public transport operators and to a lesser extent iwi. Many of the stakeholders who participated in this review consider staff to be arrogant. We are also aware of other positive feedback from participants in some of ECan's collaborative, problem solving approaches to key resource management issues in the region (for example the Urban Development Strategy).

The TA's told us that that many of the consenting and enforcement staff are very inexperienced, academic in their approach, overzealous and do not understand local issues. This together with historically frequent changes in staff is claimed to cause considerable friction, inconsistency, wasted energy and money even over very minor issues. The TA sector describes ECan as an organisation that is always right, arrogant, overzealous and litigious. The litigious claim is not supported by statistics as noted later in the report.

A paper provided by one of the TA's also makes it clear that it does not apply this description universally across all ECan functions and states *"We would like to record that we have found the environmental science and technical section of the Council to be helpful in providing information for our planning. Where we have dealt directly with these staff they have been knowledgeable and very good at being flexible and working in with our requirements. We have appreciated their efforts in providing an efficient service and quality information."*

The TA's have also made claims of surprising abatement notices for sometimes minor matters that would have been better dealt with through discussion and collaboration to find a solution. The Review Group wishes to note here that in the cases it has reviewed there has consistently been evidence of advice of non-compliance, sometimes several times, ahead of the issuing of abatement notices.

While there appears to be no physical or equipment inhibitors to working productively, ECan's staff do have the challenge of the huge territory covered by the region and the logistics of regularly visiting remote sites, constituent TA's and other stakeholders and the need to balance first hand on-site observation and discussion against time required in the office.

Skill Development

In a labour market that has been generally tight in recent years, ECan has developed an internal training programme to develop the skills of staff. The CE also acted when no water resource management was being taught at a tertiary level in Canterbury. He promoted the establishment of a Water Resource Management Centre which is now being set up jointly by the University of Canterbury and Lincoln University. The CE is chairing the advisory board. Tertiary Education Commission funding has been secured.

4.3.5 Organisation Development

The evolution of ECan from July 2003 to its present state is as follows:

- The current CE was appointed in July 2003.
- Almost immediately, he undertook an "interaction analysis" to look at how the parts of the organisation fitted together. This exercise identified problems with structure:
 - unbalanced workloads and spans of control
 - no conceptual underpinning
- The CE addressed what he saw as the immediate problems by establishing a new Operations Directorate in October 2003.

- From there the CE undertook portfolio mapping – this process was completed by July 2004. The previous system of portfolio management had been deliberately set up to create tension – which it did. The portfolio mapping revealed that organisational silos were strong and based in long standing culture (dating from the 1989 reforms).
- At that point the CE determined that a more collaborative approach was needed and he initiated a leadership evaluation exercise.
- A major organisation-wide Appreciative Enquiry event was held at the instigation of the CE in August 2006. This event is described by a senior manager as creating “a cultural footprint” in the organisation – it is seen as a significant turning point.
- CE identified 3rd and 4th tier champions/rising stars – they were the first to put their hand up for the leadership programme when introduced.
- As a result of the event, Appreciative Inquiry (AI) Innovation Teams (e.g. the Sharepoint and knowledge management team, the Leadership programme team, Pulse, the culture team etc) were established
- Leadership programme established for 3rd and 4th tier, which enhanced collegiality amongst 3rd and 4th tier.
- But in the view of the CE – a view that is widely shared by other interviewees – the top table failed to embrace it and there was conflict between section managers and portfolio managers.
- The CE instigated an organisational redesign process, involving intensive and extensive staff engagement on three broad options over 2007.
- One of the options was to restructure according to portfolios as the CE wanted to strengthen portfolios and this was one possible way to achieve that. This option was not adopted in the end.
- A “Talk to Bryan” channel was set up on the intranet. 200 e-mails were received. In the main these were seen to be thoughtful, high quality contributions from committed staff.
- The CE considers that the substantial contribution of staff to the review through the various engagement processes resulted in a better structure (due to the staff input taken on board) and staff buy-in.
- He restructured the organisation in January 2008 and appointed a new second tier (Directorate) – a mix of internal and external appointments.
- In March 2008, the Directorate held a strategy day to examine the strengths and weaknesses of ECan which identified key strategic initiatives for organisational development (OD). Working groups with over 80 staff directly involved were established. These became the “Elephants”:
 - Strategy, prioritisation and integration
 - Leadership

- External focus: collaboration with the community
 - Organisational performance
 - The way we work
 - Information management and knowledge management
- Some of the Council's divisions have also restructured (to a greater or lesser extent) since that time.
 - Internal communications have been poor in the past and there is considerable effort being applied to improve this. Cross-boundary collaboration is driven and supported by the new Directorate. New tools on the intranet are being used – e.g. SharePoint site for team working on urban waterways project.
 - Directors and Section Managers' "brands" have been developed using participatory processes – these are seen to have contributed to increased horizontal collaboration in the organisation.
 - The Elephant programmes have now been concluded. An evaluation of their impact has been undertaken with measurable improvements in key indicators (e.g. staff survey results).
 - They are now being morphed into a single programme pulling together two key streams of activity – service delivery and process improvement. Over recent months the core thinking for these concepts has been developed, building a platform that aims to take the organisation to a new level of capability to deliver on the region's community outcomes.
 - In the HR area, a new Performance Management System has been introduced – Sonar 6. The focus in this area is now on Job Evaluation (with new job descriptions being prepared) and Performance Pay.

We conclude that:

- There has been a proactive set of organisational development initiatives in place designed to improve the overall performance of ECan.
- The initiatives have been well supported by the OD Manager and his team and there has been substantial direct staff involvement and wider engagement and communication.
- The initiatives have delivered demonstrable outputs and measurable improvements in key indicators.
- The organisation is aware that there is work still to be done with particular attention to the cultural change necessary to improve performance – the workstreams on service delivery and process improvement appear well designed to address this.

4.3.6 Decision-making

The enabling of quality decision making is highly dependent on receiving robust information in a timely manner. The nature of ECan is such that there are many decisions to be made on often highly complex issues with high levels of scientific and technical detail.

There are mixed views amongst the Directors about the use of workshops. Some find them a valuable means of communicating complex, often technical, information. Others believe there are too many workshops, covering too many topics, at too detailed a level. There is some concern that the workshops are driven by councillors who don't accept their governance role and want to go too far into the operational detail. "Workshops" may be a misnomer – they appear to be pre-decision information and discussion meetings rather than workshops as such.

Councillor's feedback has varied as has their interest in the level of detail they are comfortable with prior to decision making. A few newer councillors require a lot of detail to the point where, in the view of some of their colleagues, they are getting into the management realm. A few said that pre-circulation of papers is essential before workshops on complex issues and that this sometimes did not happen (although this was the exception). On the whole, workshops are seen as valuable in enabling councillors to fully understand what are often complicated and highly technical issues.

Workshops and council meetings are well supported by officers able to address technical matters.

For complex issues the process of pre-circulation of papers (with sufficient time to read and note questions), workshop and formal meetings seems to work well.

Agenda Papers

Agenda papers and associated reports go through the Directorate (a collective term for all the directors) before going on the agenda. The new Chair attends part of the Directorate meeting two weeks before the Council meeting. This occasioned positive comment in a number of staff interviews. Committee and portfolio chairs are involved with the supporting manager in setting agendas and providing briefings. Committee chairs were generally satisfied with the process. Agenda papers are well presented with technical papers attached. For complex and highly technical items the benefit of the preceding workshop assists understanding.

The four wellbeings

ECan broadly takes into consideration social, economic, cultural and environmental factors under the LGA in two ways:

- 1 The LTCCP is the highest level expression of the framework and policy work of ECan and its connections with social, cultural, economic and environmental well-being. Regarding the final published 2009-19 plan, there is documentation of community outcomes under each of the four well-beings, with the outcomes mapped to each level of service for each of the Council's group of 'activities' (i.e. Air quality, Coastal environment etc). This creates a direct line from the levels of service to the community outcomes which progress the four well-beings. Public feedback through the consultation process influences the Council's priorities in giving effect to the community outcomes.
- 2 Councillors giving effect to their decision making requirements under the Local Government Act 2002 (Part 6, Section 76) with social, economic, cultural and environmental factors being presented and discussed via Agenda papers and noted in meeting Minutes as a record of Council policy decisions.

We were provided with a sample of documents to review specifically in this context. We also assessed other documents in the course of the investigation that were relevant to other aspects of the review. In our view, these confirm that advice to the Council under the auspices of its LGA functions generally takes into consideration economic, social and cultural factors. The degree to which emphasis is given to each of the well-beings varies with the nature of the matters being considered, but for the purposes of the LGA would indicate compliance. Downstream effects of proposed policy are generally clear from the agenda papers examined and able to be taken into account in debating policy proposals.

The nature of ECan's role in respect of the RMA tends to reinforce a higher emphasis on environmental issues and some councillors and many stakeholders we spoke with argue that insufficient weight is given to the other three well-beings when developing policy. Other councillors argue that environmental sustainability is essential if economic development is to continue over the long term.

It was stated by one councillor that economic issues are not a strong focus for ECan maintaining that it is not an "*economic development agency like the TA's*". Certainly in terms of the Local Government Act, there is no requirement for a regional council to be functionally involved in economic development. That is very different from the requirement to understand, consider and balance economic social and cultural implications of its activities. As discussed in Section 2 of this report, there is a strong perception of a lack of economic perspective at a staff level in RMA (and especially water) decision making. ECan has some economic capability in-house but appears to provide insufficient economic consideration in its RMA decision making in both a planning (including consideration of alternative policies through section 32 analyses) and resource consent context.

The health benefits of the “Clean Heat” programme and social benefits of highly integrated public transport in Christchurch and Timaru are well recognised. Cultural awareness is reinforced through the Maori Advisory Committee of Council, and in the examples of Council agenda papers examined the technical thoroughness of the content is of a high standard and the emphasis was reasonably balanced given the context of the paper. We have noted some areas for improvement in the relationship between Ngāi Tahu and ECan.

Consultation

Effective consultation, both formal (special consultative process under the LGA) and informal is an essential part of the decision making process. We reviewed the public consultation on the 2009-19 Long Term Council Community Plan, which ran from 28 March 2009 to 29 April 2009:

- Prior community engagement included a focus group market research project in March 2008. There was also a round of “pre-consultation” conducted in February 2009, where proposed changes to funding policies were discussed at region-wide meetings with stakeholders and resource consent holders. The tools used to encourage community feedback were:
- A “Where is your favourite spot in Canterbury?” promotion was attached to all consultation materials and an incentive (chance to win dinner/accommodation) was provided to encourage participation.
- Twelve “Tell us what you think” pages at the end of the portfolios were used to give some direction on where feedback would be most useful. The document was circulated to the annual plan stakeholder mailing list, as well as all libraries, ECan offices at Kaikoura, Christchurch and Timaru, and TA service centres throughout Canterbury. A two-page tear-out submission form was provided at the front of the LTCCP.
- A special “Living Here” LTCCP summary edition was distributed to all Canterbury households. This includes a submission form which could be mailed back to ECan.
- A LTCCP package went live on the ECan website on March 28. This broke the document into manageable chunks to encourage online submissions. The mailroom@ecan.govt.nz address was available for people who didn’t go via the website, but wanted to send in an electronic submission.
- Displays were arranged at 15 key sites throughout the region. These included boxes of “Living Here” summaries for people to take away.
- News media coverage was encouraged, with targeted news releases on March 28 and ongoing releases throughout the consultation period.
- An advertising campaign used the “Where is your favourite spot”? Promotion to encourage people to make online submissions. It also stated the Customer Services number for people wanting hard copies.

- Councillors supported the process via their connections in communities and the encouragement they offered to potential submitters e.g. meeting with community board members. Councillors received a PowerPoint presentation, Q. and A., key messages and support with logistics (projectors/screens etc) or staff support at meetings as needed.
- There were also stakeholder discussions re specific levels of service issues (e.g. with navigation safety stakeholders), a letter to the consents database list and some joint meetings with Christchurch City Council on water issues.
- Changes that resulted from the consultation process were clearly communicated.

The Review Group is of the view that the LTCCP consultation process was of a high standard.

Councillor's view

From the councillor's perspective:

- In the LTCCP process, Councillors fronted the public meetings. Directors met with a number of stakeholder organisations.
- The consultation process on the RPS seems to have worked well and allowed councillors to participate in public forums.
- ECan is making sound effort but uptake is marginal in some areas. Sometimes little input from Ngai Tahu due to resourcing limitations.

TA's view

From the TA's perspective the consultation process failed for the original Regional Policy Statement due to ECan not sufficiently taking into account the TA's perspectives. TA's are required to give effect to the RPS. It is the view of the TA's that the RPS is being used as a tool to impose constraints on TA's and their communities beyond what was ever intended by the RMA. We note that the RMA review found that the consultation for the new RPS appears much more collaborative and is being promoted by ECan as a "*document for the Region*" rather than ECan's document.

4.3.7 Implementation / Delivery

The last 17 annual Audits undertaken by Audit NZ on behalf of the Office of the Auditor General have been unqualified. Reference to the most recent annual report shows high levels of achievement in most output/outcome areas. The one Community Outcome area with the highest number of targets "*not achieved*" is Water Quality, Quantity and Ecosystems. The view of the Review Group is that this is the most challenging area of ECan's current activities and the results do not indicate neglect of the issues but rather reflect the size and complexity of the issues involved.

4.4 Relationships between ECan and Territorial Authorities

4.4.1 Triennial Agreement

Under the Local Government Act, the local authorities in a region are required to jointly prepare a Triennial Agreement which sets out the manner in which they will relate to each other in undertaking any activities that will or may affect the functions of other councils.

The Canterbury Triennial Agreement includes an undertaking by all signatories in regard to early notification of policy and proposals, opportunities for involvement, a “no surprises” policy, and joint and collaborative engagement with communities. It is clear that the relationships with the TA’s are strained and have been so for a considerable time. The Review Group has noted tensions between TA’s and ECan going back to the reorganisation of 1989. At the working level a willingness of all the signatories to proactively operate in the spirit of the agreement should have addressed most of the relationship issues. This would not address the political and philosophical aspirations of the constituent councils in regard to regional structure and representation however, and it appears that this factor is impacting at organisational levels, and the worthy principles of involvement, collaboration and “no surprises” have become compromised.

The Review Group considers that the Triennial Agreement should be renegotiated. There are clearly outstanding issues of role clarity and process that need to be addressed. A deeper common understanding and a commitment to move forward in a constructive manner would support more effective collective action for the benefit of the region’s communities. It may be desirable to have an independent facilitator for this process. It is noted that a new agreement will be required following the elections later this year however the Review Group believes a proactive commitment to the relationship by all parties should not wait until then.

The Triennial Agreement also places emphasis on the Mayoral Forum (meeting quarterly) as the primary vehicle for communication and coordination. The forum is to be supported *inter alia* by meetings of the Chief Executives of the region. While clearly the Mayoral Forum is important for dealing with policy issues that should rise to the political level, communications and coordination between the councils at officer level are critical. It is at that level that the many operational, collaborative and relationship issues should be addressed. There is currently no Chief Executives’ forum and no regular scheduled meetings between ECan’s Chief Executive and each of the TA CE’s. The Review Group see this as a deficiency in the relationship mechanisms.

4.4.2 Relationships at senior level

Relationships at Chief Executive level are not comfortable. The absence of a regularly meeting Chief Executive's Forum that includes ECan means that there is no clearing house for such sentiments nor the opportunity to build stronger relationships within the peer group.

ECan has allocated responsibilities at Director level for being the key liaison point with specific TA's. Since late last year joint meetings of the executive teams have been regularly scheduled between ECan and each TA. These are reported by ECan (and the one TA CE who was interviewed individually) to be working well and are being used to address the outstanding issues from the Mayors' letter to Ministers. We note that the ECan Chief Executive doesn't generally attend these joint meetings.

4.4.3 Area Committees

The Southern, Northern, Central and Christchurch Area Committees are responsible for District and City Council liaison. It is apparent from discussions with chairs that, while attended by community board members and NGO representatives (e.g. chamber of commerce), the city and district councillors from Christchurch and Timaru seldom, if ever, attend.

Christchurch City's desire to become a unitary authority and "master of its own (expanded) destiny" continues to detract from the relationship. In relation to transport the city considers itself under represented on the Regional Land Transport Committee LTC considering that its programme dominates the region's land transport programme. Both of these issues are legislated and outside the control of ECan but still keep surfacing.

4.4.4 Allegations of litigious behaviour

There have been a number of references to ECan's litigious behaviour towards TA's. This is presumed to relate to the use of abatement notices, a willingness to test matters before the Environment Court and prosecutions. ECan, as a Regional Council, does have enforcement responsibilities set out in the RMA and other legislation. Where a TA is non-compliant and unwilling to remedy the situation ECan is obliged to take action and prosecution may be a necessary resort. Given a responsible and collaborative relationship, prosecution of a TA should be a rare event, as it indeed is. We suspect that the term 'litigious' is misleading, and in fact TA's (and other stakeholders spoken with) mean 'legalistic and rule-bound'.

To provide context the Review Group has noted that for the period 2005/08 NZ local authorities took only three prosecutions of other local authorities. It also notes that of the 174 total prosecutions taken by regional councils, 9.7% of these were taken by ECan. This compares with 9.7% for the Otago Regional Council and 17.4% for the Waikato Regional Council.

4.5 Local Government Act Recommendations

Local Government Act Recommendation 1: Triennial Agreement

The establishment of a new Triennial Agreement that improves role clarity and protocols. We note that the Canterbury Regional Water Authority, once established, will also have a part to play in this.

Local Government Act Recommendation 2: Chief Executive's Forum

The formal establishment of a Canterbury Chief Executives' Forum that parallels the Mayoral Forum.

Local Government Act Recommendation 3: Review of Public Transport Functions

Undertake a review to consider the optimum arrangement for the management and operation of the public transport fleet within the Region. The Commission would act on that review when completed.

5. Summary of Recommendations

Water Recommendation 1: Establish, under its own Act of Parliament, a new entity for managing water in Canterbury, the Canterbury Regional Water Authority, together with appropriate transitional arrangements.

The new Act should:

- Recognise the national significance of water in the Region.
- Identify the purpose, role and functions of the CRWA, which should include a mix of economic development, environmental, social and cultural factors.
- Identify the structure and makeup (skills, experience etc) of an appointed Board to govern the CRWA.
 - Require the creation of a strategic plan for water, and define the timing for creation of the plan. The plan should:
 - Balance economic, environmental, social and cultural needs for water in Canterbury
 - Allow for prioritisation of specific uses in different areas (irrigation, electricity generation etc), water trading, conservation etc.
- Transfer the statutory water-related functions of ECan (consenting, monitoring, enforcement, scientific investigations etc) to the new entity.
- Recognise that there will be land – water integration issues that will require cross-agency (ECan – CRWA and CRWA - TA) interaction.
- Require RMA / LGA documents to give effect to the Plan (e.g. other (non-water related) regional plans, the Regional Policy Statement, district plans, LTCCP's)
- Include a transition period until the new plan is in place
- Include an on-going ongoing role in monitoring the implementation of the CRWA's activities, including evaluating the effectiveness of implementation of its strategic plan.
- Be funded from the sources that currently funds ECan (including the rating base and user charges). The Government should consider whether there is any need for central funding for any part of the process during the transition period.

We also recommend a separate statute be passed as a matter of urgency to replace the ECan Council with a Commission to oversee the change and progress planning for the management of water, pending the establishment of the CRWA.

Water Recommendation 2: Replace ECan with a Commission to manage the organisational change.

We recommend the establishment of a Commission to replace the ECan Council to manage the organisational change.

The primary function of the Commission would be to oversee the separation of functions and funding associated with the management of freshwater from ECan to the CRWA. This will require a Commission with considerable change management expertise. Pending the establishment of CRWA, the Commission would also be charged with progressing planning associated with the management of freshwater.

Water Recommendation 3: Transitional arrangements to provide an operative framework in the short term.

We recommend that the Government provide a transitional framework to manage ECan in the short term.

The most time-efficient transitional arrangement would be for the Minister for the Environment to require ECan under section 25A of the RMA, to produce a plan within a defined period. This would require selection of specific sections pertaining to water allocation and quality that are the highest priority and the development of an urgent work programme to get those sections of the NRRP through the RMA First Schedule process as quickly as possible.

RMA Recommendation 1: Fit for Purpose Review of Planning and Consenting Directorate

We recommend a 'fit for purpose' review of the Planning and Consenting Directorate to be undertaken as a matter of urgency. This review should be undertaken by an independent external party familiar with best practice, not from within ECan. The review should consider the following:

- The structure of the current Directorate (including consents) and its appropriateness given the issues we have identified. Particular focus should be given to the third and fourth tier of management within the Planning Group.
- Resource Management Act content leadership should be introduced in the consenting section. This should be either the appointment or secondment of senior planning/resource management specialists into the consenting section, at a management level.
- ECan should consider setting aside a portion of all staff time as non-chargeable (we suggest 20-25% contingency) to allow staff time to provide more input into policy and planning work and to work together on cross-boundary issues. This would greatly assist cross-organisational integration, and allow adequate time/resources to deal with emerging issues.
- A broader range of skills is required in the Consenting Section – notably planning skills. Officers with the appropriate planning/resource management skills need to be in positions to influence the form and content of the application assessment, the section 42A reports, and the hearings process.
- ECan needs more planners, resource management specialists, economists and social scientists on staff to better provide for a broader range of perspective and allow balance between environmental, economic, social and cultural perspectives. This should be considered as part of the 'fit for purpose' review we have recommended for the Planning and Consenting Directorate.
- Increasing project management capability within the Directorate.
- Appropriate experience required of staff (including understanding of the consenting, and monitoring and enforcement functions of Council).
- Addressing the policy and planning confusion that ECan currently presents (taking into account the recommended creation of a Canterbury Regional Water Authority).
- How to better integrate planning and consenting functions within ECan (this would also apply to the CRWA).
- Whether to bring the Regional Policy Statement into the RMA Planning and Consenting Directorate to ensure alignment of all RMA related policy and planning documents.

RMA Recommendation 2: External Hearing Commissioners

The Review Group believes ECan needs to more actively and effectively manage the Commissioners hearing process in terms of accountability, responsibility and timeframe management. We recommend ECan review its External Commissioner pool as a matter of urgency and determine if it has sufficient numbers of Commissioners and the right skill set – i.e. planning/resource management, legal and technical. It should also determine if it should ‘go back to the market’ and seek expressions of interest for external Commissioners to determine who is available.

It would also be an opportune time to consider contracting Commissioners. This should clearly set out their roles, obligations, responsibilities, and performance standards such as decision timeframes (including the issuance of section 37 notices if required). This process needs to ensure there are a sufficient number of Commissioners with the right skills and with clear accountabilities and a commitment to meeting agreed timeframes. This should, in part at least, address the issues of timeframe management and over-reliance on certain Commissioners.

RMA Recommendation 3: Pre-Lodgement Cost Recovery

ECan should consider cost recovery pre-lodgement, to remove the perceived barrier to more effective pre-application engagement with major applicants – in line with the practice used by most councils.

RMA Recommendation 4: Case Management for Large Consents

We believe that ECan needs a ‘case management operating model for large/complex consent applications. Significant resource consent applications (e.g. large takes) or applications that have multiple aspects to them (e.g., takes, discharges, structures, joint land use hearing with the territorial authority, etc), should be specifically case managed. The focus should be on greater clarity around role and strategy and will include significant pre-application engagement and team mobilisation. There should be a senior person appointed to manage the process and to be the ‘go to’ person for internal experts, the applicant and submitters.

The skills required include: project management ability, strong communications and stakeholder management skills, experience in processing larger scale resource consent applications, understanding of the RMA purpose and processes, and an in-depth appreciation of the Canterbury Policy and Planning framework.

RMA Recommendation 5: Stakeholder Engagement

We recommend that ECan institute an ‘account management’ approach for dealing with major stakeholder groups, in much the same way as exists with territorial authorities. Senior members of staff would have responsibility for developing and maintaining relationships with specific groups or organisations, including potential applicants, NGOs, and industry groups.

RMA Recommendation 6: Iwi Liaison

The Review Group recommends that iwi liaison be elevated in importance within ECan. We suggest that, in line with other major cross-organisational programmes, iwi liaison should be placed within the Regional Programmes Directorate, elevated in importance (to a management role), rebranded as Iwi Relations, and provided significantly more resourcing.

ECan should define and agree roles, responsibilities and priorities with Ngāi Tahu, including provision of appropriately skilled staff and establish budget provisions that allow ECan to acquire technical tangata whenua advice from tangata whenua resource management entities such as Mahaanui Kurataiao; an organisation that is currently jointly funded by Christchurch City Council, Waimakariri and Selwyn District Councils. ECan would also need to work proactively with the Rūnanga of South Canterbury and Kaikōura to establish similar arrangements.

RMA Recommendation 7: Fit for Purpose of Legal Team

We recommend ECan undertake a review of its internal legal team to ensure it is fit for purpose (in terms of resourcing, capability and experience), and consider seeking alternative advice from outside the council, when required.

LGA Recommendation 1: New Triennial Agreement

We recommend the establishment of a new Triennial Agreement that improves role clarity and protocols. We note that the Canterbury Regional Water Authority once established will also have a part to play in this.

LGA Recommendation 2: Chief Executives Forum

We recommend the formal establishment of a Chief Executives’ Forum that parallels the Mayoral Forum.

LGA Recommendation 3: Review of Public Transport Functions

Undertake a review to consider the optimum arrangement for the management and operation of the public transport fleet within the Region. The Commission would act on that review when completed.

Appendix One: Terms of Reference for the Review Group

1. Preamble

- 1.1. Following the results of the 2007/2008 RMA Survey of Local Authorities, the Minister for the Environment has decided to undertake an investigation of resource consent processing practices in Environment Canterbury (ECan) and a broader review of ECan's performance under the Resource Management Act 1991 (RMA). The Minister of Local Government has also expressed an intention to review ECan's wider performance under the Local Government Act 2002 (LGA02) in response to concerns raised by Canterbury Mayors. The Ministers have agreed to conduct a joint review of ECan's performance under both the RMA and LGA02.

2. Nature of Review

- 2.1. This review has two components. The first component is a statutory investigation under section 24A of the RMA that seeks to identify what has led to ECan's poor performance record over the last survey period and performance subsequently in resource consent processing. It also aims to identify any broader planning, policy and governance matters that may have contributed to the poor performance record of Environment Canterbury during the period of the 2007/2008 survey period in meeting statutory requirements under the RMA.
- 2.2. The second component is a non-statutory assessment of whether there are wider issues with ECan's governance, policies or implementation that are contributing to perceived poor performance under the LGA02 or other statutes.

3. Scope of the Review

Investigation of Environment Canterbury's performance under the RMA and identify possible solutions

- 3.1. The investigation will cover the following factors:
 - Guidance for applicants and use of Section 88
 - Use of Section 92
 - Analysis of consent processing systems and practices
 - Staffing and use of resources
 - Administrative systems and tools
 - Internal audits and monitoring
 - Relationships between applicants and submitters and ECan
 - Relationship of timeframes to quality of decisions
 - Other contextual matters, including:
 - The management of sustainability limits and cumulative effects

- Adequacy of current planning framework for delivering the vision and objectives of the Canterbury Water Management Strategy in an effective and efficient manner

Assessment of Environment Canterbury's wider performance under the LGA02 or other legislation and identify possible solutions

3.2. The non-statutory assessment will cover the following factors:

- The approach of ECan to meeting its legal obligations
- Adequacy of ECan's governance
- Adequacy of ECan's management and decision making processes
- Financial management of ECan ***[note that this was removed from the scope of the Review following publication of this Terms of Reference]***
- The relationships between ECan and the territorial authorities in its region, and extent to which ECan and TA's have met their legal obligations for collaborating and co-operating.

4. Methodology for Review

Investigation of Environment Canterbury's performance under the RMA

4.1. The investigation will be undertaken by two external investigators. The skill set required is primarily skills and experience in resource consent processing and RMA matters and experience in working with local government. Experience in evaluation, performance assessment and organisational improvement is also vital.

Assessment of Environment Canterbury's wider performance under the LGA02 or other legislation

4.2. The assessment will be carried out by one external consultant. This person will have qualifications, skills and experience in working with local government.

On site work

4.3. The team of consultants will spend up to three weeks with Environment Canterbury undertaking discussion with council staff and assessing databases, file information and council administrative systems.

4.4. Discussions with council staff will be based on a set of interview questions focussed on council practices and procedures. These questions, along with requests for the documents and files required for the performance review, will be pre-circulated to ECan prior to investigators arriving on site. Further additional information may be requested onsite.

4.5. The following council staff will need to be available on request during the performance review period:

- Chief Executive
- Chair
- Councillors
- Investigation and Monitoring Director
- Regulation Director

- Resource Planning and Consents Director
- Finance and Corporate Services Director
- Regional Programmes Director
- Managers and planning, consenting and compliance staff under the above Directors
- Customer Services staff (if applicable)

5. Reporting

- 5.1. The findings (including any recommendations) from the performance review will form the basis of a draft report to be discussed with ECan before being finalised and presented to the Minister for the Environment and the Minister of Local Government. A copy of each final report will be provided to ECan.
- 5.2. The RMA investigation may result in recommendations being made to ECan on ways to improve its performance under section 24A (b) of the RMA.
- 5.3. The non-statutory assessment may result in recommendations being made to Environment Canterbury on ways to improve its governance, policy or implementation processes under the LGA02 or any other enactment.
- 5.4. Either set of recommendations may include ongoing monitoring.
- 5.5. In response to the review's report, the Minister for the Environment and the Minister of Local Government may consider whether there is a case for further intervention under the RMA or the LGA02, if necessary.

6. Timeframe for the review

- 6.1. The review is planned to take place over a three week period in November 2009, with a report being drafted before the end of the year.
- 6.2. Any final recommendations on ways to improve council performance will be reported to ECan following officials briefing the Ministers on the final report. This is expected to be in early 2010.

Appendix Two: Stakeholders Interviewed

Interviews were conducted with representatives of the following organisations.

Forest and Bird

Fish and Game

White Water New Zealand

Christchurch City Council

Anderson Lloyd

Brent Cowie

Simpson Grierson

Pattle Delamore Partners

Central Plains Water

Ashburton – Valletta Groundwater Applicants

Canterbury Chamber of Commerce

Federated Farmers

Malvern Hills Protection Society

Irrigation New Zealand

Meridian Energy Ltd

Robert Johnston

Selwyn District Council

Red Bus Company

Staff representatives of Te Rūnanga o Ngāi Tahu

A joint meeting of all territorial authority mayors and chief executives (except Waitaki District), or their designated representatives.