

## **CANTERBURY WATER MANAGEMENT STRATEGY**

### **Briefing notes for Ministers**

**20 November 2014**

The **Canterbury Water Management Strategy** (CWMS) was agreed in 2009 – by the previous, elected Regional Council. It was negotiated over the period 2005-9 with the ten Canterbury District Councils (including Christchurch City), Ngāi Tahu, Fish & Game, Forest & Bird, Federated Farmers, and Irrigation NZ.

The Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, under which the ECan Commissioners were appointed, requires Environment Canterbury (ECan) to have particular regard to the vision and principles of the CWMS in considering any proposed regional policy statement or plan.

Apart from a vision and principles, the CWMS parties also agreed on detailed targets, covering four time periods (from 2010, by 2015, by 2020, and by 2040) and ten subject areas:

- Ecosystem health and biodiversity
- The natural character of braided rivers
- Kaitiakitanga
- Drinking water
- Recreational and amenity opportunities
- Water-use efficiency
- Irrigated land area
- Energy security and efficiency
- Regional and national economic benefits
- Environmental limits

The overall aim of the Strategy is to reconcile or simultaneously achieve these competing objectives. Though this is difficult and challenging we believe we are making progress.

### **Storage**

Six major pieces of infrastructure are at various stages of consideration or implementation.

- The Hurunui Water Project has been granted a consent to take water from the Waitohi River, a tributary of the Hurunui, thus protecting the Hurunui River itself and Lake Sumner. Detailed engineering design is currently underway, prior to a final financial assessment.
- Waimakariri Irrigation Ltd has been granted a consent to build above ground storage north of the Waimakariri River.

- Lake Coleridge is now being used to store irrigation water as well as generate electricity. Irrigation water is being returned to the Rakaia River and abstracted lower down by the Barhill/Chertsey Scheme. Central Plains Water is constructing the first stage of its distribution canal prior to abstracting Coleridge water from the Rakaia. This will allow the retirement of a number of groundwater wells in the Selwyn catchment west of SH1.
- Various parties are discussing the possibility of Rangitata water currently abstracted by the Rangitata Diversion Race (and conveyed as far north as Highbank on the south side of the Rakaia) being transferred south to assist irrigation in the Orari/Opihi/Pareora zone.
- The most challenging area in infrastructure terms is the area south of the Orari and north of the Pareora. A desktop study sponsored by ECan earlier this year concluded that it would not be economic to bring water across Burke's Pass, whilst meeting Ngāi Tahu's cultural requirements. This and other options will be considered further as the limits and costs of bringing water from the north (Rangitata) and south (Hunter Downs) become clearer.
- Hunter Downs Irrigation has a consent to take water from the Lower Waitaki to extend the area under irrigation potentially as far north as the Pareora River. This will also assist the replenishment of Wainono Lagoon. Detailed engineering design work is expected to be completed by the end of this year.
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## **Environmental Limits**

A completely revised Regional Policy Statement is now in place. In accordance with the Resource Management Act, this provides an overview of the resource management issues of the region and policies and methods to achieve the integrated management of the region's natural and physical resources. In particular stronger requirements have been imposed on territorial authorities in respect of preserving indigenous biodiversity.

As of November 2012, the first limits on the discharge of nitrate have been imposed through the Land and Water Regional Plan (LWRP). Six outstanding appeals on points of law are close to resolution. The LWRP typically prevents land-owners from leaching more nitrate per hectare than the average they lost between 2009 and 2013. This amount is calculated using Overseer (a software programme developed jointly by MPI, Landcare Research and the fertiliser industry).

The LWRP also provides for the progressive development of catchment-level limits tailored to the requirements of individual water bodies. Such limits are now in place in respect of the Hurunui/Waiau catchments, (on the basis of which Ngāi Tahu Properties was recently declined consent to fully develop the former Balmoral Forest land). Similar catchment level plans have been proposed by other Zone Committees, including Selwyn/Waihora (whose plan is currently the subject of public hearings) and Ashburton (where rules in respect of the Hinds catchment will go to public hearing early next year). Similar plans are soon to be notified in respect of the South Waitaki Coastal Streams and Lake Forsyth/Wairewa.

Through the combination of general (LWRP) and catchment-specific limits, ECan is meeting its obligations under the National Policy Statement for Freshwater Management.

## **Zone Committees**

ECan has established ten Water Management Zone Committees in partnership with the respective territorial authorities. Each of the Zone Committees is a joint committee in terms of the Local Government Act. Each is charged with recommending detailed means of achieving the CWMS limits in respect of their zone. All ten committees have completed detailed Zone Implementation Plans.

For example, the Christchurch/West Melton Zone Committee comprises a Christchurch City Councillor (Cr Pauline Cotter), a Selwyn District Councillor (Cr Debra Hasson), an ECan Commissioner (Rex Williams), three Ngāi Tahu reps (representing the Tuahuriri, Taumutu and Rapaki runanga) and seven community members, jointly selected by the three councils. It has focussed especially on the health of the Heathcote and Avon rivers and also on the general issue of the discharge of stormwater.

The Selwyn/Waihora Zone committee has spent three years developing detailed proposals in respect of the Selwyn catchment (i.e. the catchment that ultimately drains into Lake Ellesmere/Waihora). The development of its proposals involved over sixty public meetings. Its work also dovetails well with the Whakaora Te Waihora project being pursued jointly by ECan and Ngāi Tahu and funded significantly by the Ministry for the Environment, which has thus far added in excess of 200,000 plants around the perimeter of Lake Ellesmere.

The Waimakariri Zone Committee has focussed particularly on projects relating to the Waimakariri River and on urban stormwater issues. It is expected to prepare detailed catchment rules by 2017/18.

## **Good Management Practices**

In addition to imposing specific nutrient discharge limits and other specific rules, ECan and its partners are seeking to improve land management practices, such as stream planting, effluent management, and soil moisture monitoring. In conjunction with industry and environmental NGOs, Landcare Research, Lincoln University, Ngāi Tahu and several other regional councils we have embarked on a project to agree on good land management practices and to derive nutrient discharge limits accordingly. Some catchment level plans already require such practices (e.g. Selwyn/Waihora). Others contemplate nutrient limits based on improvements that will go beyond the adoption of GMPs, e.g. Hinds catchment, where it is proposed that dairy farms reduce nutrient losses by 15% below GMP levels by 2020, 25% below GMP levels by 2025, 35% below GMP levels by 2030, and 45% below GMP levels by 2035.

By the middle of next year the project is expected to recommend a matrix of nutrient discharge limits, reflecting different climate zones, soil types and farm types. ECan then intends to notify a change to the LWRP to incorporate these differentiated limits into the LWRP. Hearings on this proposal are expected to occur in 2016.

## **Information Sharing and Monitoring**

Water quantity data is available through ECan's website and is also the subject of a stand-alone annual report. Water quality data is also available through ECan's website and through LAWA ([www.lawa.org.nz](http://www.lawa.org.nz)) the Land and Water website through which most regional councils are co-operating.

A standard LWRP requirement involves the preparation of individual Farm Environment Plans. In the order of 7,500 such plans will ultimately be required across Canterbury. The matters required to be covered in such plans are set out in a schedule to the LWRP. While some farmers may choose to prepare their own plans, many will work through industry organisations such as Dairy NZ or Fonterra, or irrigation schemes such as RDR. Accordingly ECan has approved a number of templates for such Plans.

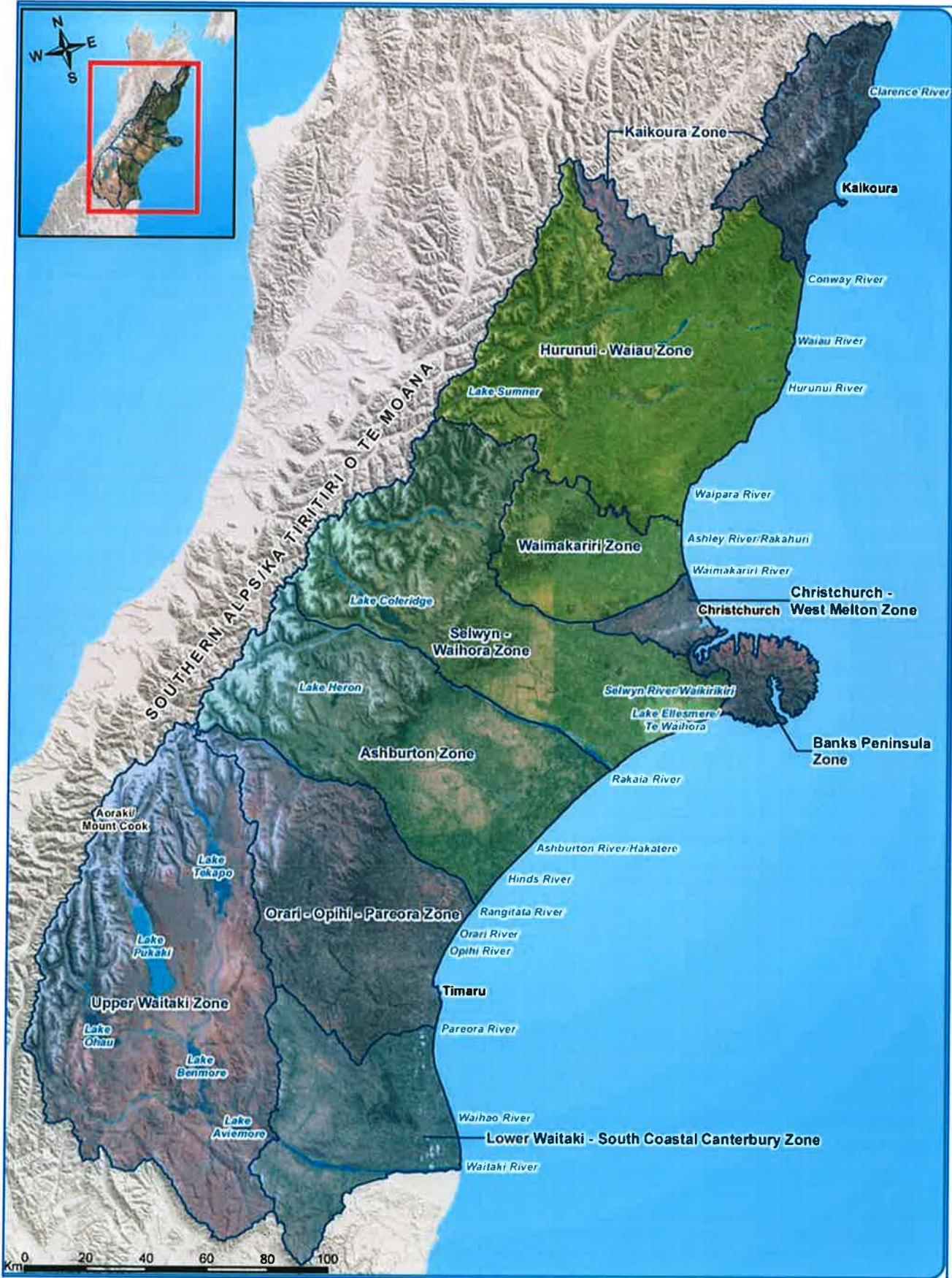
Last year we sponsored a detailed study of the value to kayakers of various Canterbury rivers. This study will assist Zone Committees and ECan in their planning as well as providing a model for other recreational groups in terms of the kinds of information that both groups and planners appreciate.

Next year ECan will publish an update on progress in terms of the CWMS targets. This will refresh the similar study we published last year. But this time we will focus particularly on the 2015 targets.

The annual Canterbury Region Water Use Report now reflects widespread compliance with the Metering Regulations that came into force in 2011, requiring water takes over 25l/s to install water meters. While water usage fluctuates between years depending in particular on rainfall, data from the last two years suggest that typically in the order of roughly half the total water allocated is used in a year that is not especially dry. Put another way, this suggests that the problem of "over-allocation" in a quantity sense is essentially confined to dry years. Which in turn reinforces ECan's priority focus on improving water quality.

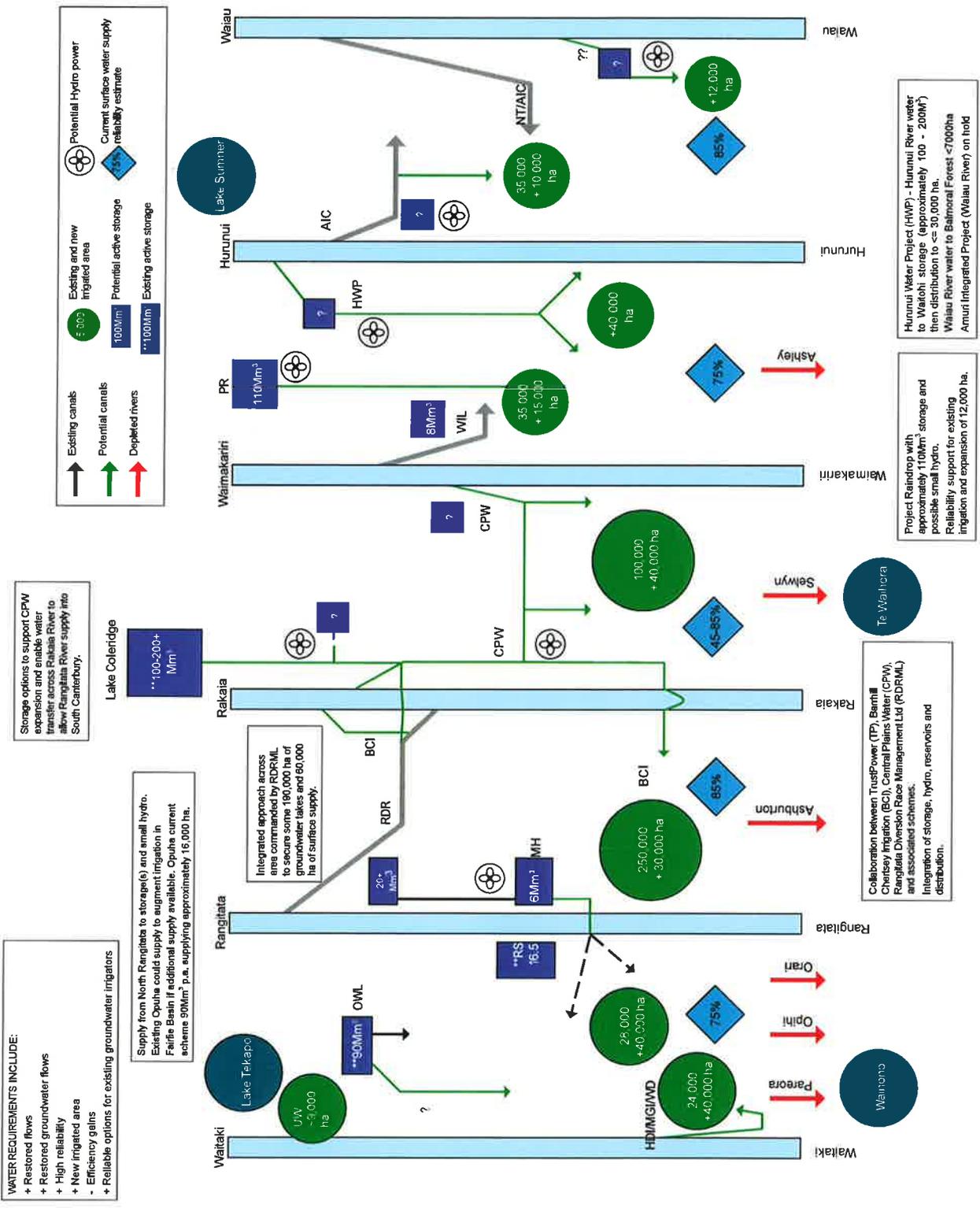
# Canterbury Water Zone Map

View the Canterbury Water zone map, and click through to see zone committee information.





# Regional Water Infrastructure - vision for integration



Date produced: 25 June 2014. All features subject to change. Some options based on confidential information. Technical, commercial and consent arrangements are at an early stage of formulation and may not have any level of feasibility study completed.



## SUBMISSION OF THE CENTRAL RICCARTON RESIDENTS' ASSOCIATION INC ON ECAN GOVERNANCE STRUCTURE

Our Association acknowledges that ECAN has operated more efficiently and effectively since the introduction of commissioners and competent staff have been allowed to get on their work.

We believe the mixed governance model is right for Environment Canterbury at this time as we do not want a return to the political in-fighting of the previous (Neil/Burke) regime which would inevitably lead to a situation in the future where there would be no elected representatives at all allowed.

We think that the Government's proposed governance structure for Environment Canterbury is **too large** and believe that a better number would be four members elected across Canterbury at the local elections in October 2016 and three or four appointed by Government. Our reasons are that when there are bigger numbers there is a much greater chance of politicians recycled from Parliament or city/district councils finding their way on to the ECAN council. This type of person generally sees any public trough as a career option. The last "democratically elected" council was notorious for the endless squabbling by National and Labour councillors (some standing under a different umbrella) fighting over the spoils of office.

Fewer government appointed members would also lead to less opportunity for the appointment of party political hacks who are not really interested in serving the people but rather serving themselves.

A smaller-sized council would not only mean less opportunity for competing factions to spring up but also a smaller overall operating cost (including the remuneration of councillors) both of which have to be good news for the ratepayer.

# Megan Woods

## Member of Parliament for Wigram and Labour Spokesperson for the Environment and Climate Change Issues

1 May 2015

- 1.1 As Labour's Spokesperson on the Environment, I welcome this opportunity to submit my views and the views of my Canterbury Labour colleagues (Hon Ruth Dyson, Hon Clayton Cosgrove, Rino Tirikatene and Poto Williams) on the Ministry for the Environment and Department of Internal Affairs' Environment Canterbury Review (ECan).
- 1.2 The discussion document proposes a mixed-model of governance for Environment Canterbury (ECan) that is comprised of a mix of community-elected councillors and Government appointed members.
- 1.3 Canterbury's regional governance must be democratically elected. The proposed mixed-model governance structure for ECan does not achieve the level of democratic representation enjoyed by other regions in New Zealand. The concept of a mixed-model governance structure is unacceptable and does not deliver democracy to Environment Canterbury. Denial of the most basic democratic rights continues to disadvantage Cantabrians, contrary to other regions on the country.
- 1.4 The Minister has been long aware that the current governance structure does not sit well with the people of Canterbury. This was previously highlighted in the process of the Environment Canterbury (Temporary Commissioners and Improved Water Management) Amendment Bill in 2013. Cantabrians attended select committees to express their firm objection to having their vote removed and their democratic rights taken away. The initial extension of the date was already a snub to ratepayers in denying them participation. The mixed-model governance only serves to further affront the people of Canterbury in that they cannot be permitted to have a fully elected council.
- 1.5 The permanent, long-term solution to Environment Canterbury's governance model should not be any different or any less democratic than that of any other council in New Zealand. Despite Chapter 2 of the discussion document purporting to address why ECan does not have democratic representation, there is no coherent case made as to why Canterbury will have lesser levels of democracy than other regions in New Zealand.
- 1.5 The government's protracted appointment of commissioners is unprecedented in New Zealand. When the previous Government dismissed a council and appointed Commissioners in Rodney in April 2000, democratic elections were held within a year and democratically elected councillors were in place by March 2001.
- 1.6 The case that is made in the discussion document (p.22) that DHBs provide a model of mixed governance to model ECan on are misleading. DHBs are responsible for central government health funding at the local level whereas regional councils are locally elected representatives who make decisions concerning funding that is collected by local

government. There is no other body where central government has intervened for such a protracted period of time where it has no direct relationship to funding.

1.7 The logic applied to the Government's decision to proceed with a mixed governance model sets a dangerous precedent for other councils that may experience similarly challenging times in the future.

1.8 We submit that a fully elected Regional Council be installed from the results of the 2016 triennial elections.



# Federated Farmers of New Zealand

## Submission to the Ministry for the Environment and the Department of Internal Affairs on the Environment Canterbury Review

1 May 2015



# **SUBMISSION ON THE ENVIRONMENT CANTERBURY REVIEW**

To: *the Ministry for the Environment and the Department of Internal Affairs*

Name of submitter: Combined Canterbury Provinces, Federated Farmers of New Zealand

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## Introduction

1. Federated Farmers thanks the Ministry for the Environment and the Department of Internal Affairs for the opportunity to submit on the Environment Canterbury Review.
2. Federated Farmers of New Zealand is a voluntary primary sector organisation that represents farming and other rural businesses. Federated Farmers has a long and proud history of representing the needs and interests of New Zealand's farmers and their communities.
3. Federated Farmers aims to add value to its members' farming businesses by ensuring that New Zealand provides an economic and social environment within which:
  - Our members may operate their businesses in a fair and flexible commercial environment;
  - Our members' families and their staff have access to services essential to the needs of the rural community; and
  - Our members adopt responsible management and environmental practices.
4. The economic importance of the agricultural sector to New Zealand's economy is well recognised. Its direct and indirect contribution to New Zealand's economy is about 15%. Land-based primary sector exports comprise about 70% of New Zealand's total exports. Regional governance and particularly the regulation of land and water use will affect farm businesses and have impacts on district, regional and national economies.
5. This submission was developed in consultation with the members and policy staff of Federated Farmers. It is important that this submission is not viewed as a single submission, but as a collective one, that represents the opinions and views of our members.

## **The Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 and the Environment Canterbury (Temporary Commissioners and Improved Water Management) Amendment Act 2013**

6. Federated Farmers supported the passing of the two Environment Canterbury Acts because they enabled the Canterbury Regional Council to pursue the full range of its Resource Management Act (RMA) functions and work towards the integrated management of natural and physical resources in the region.
7. Implementation of the Canterbury Water Management Strategy and the development of its collaborative processes needs to be able to continue, free from political divisiveness, particularly in the context of setting water quantity and quality limits in sub-regional plans.
8. Federated Farmers, supports the limited appeals process (points of law only to the High Court) because this encourages greater commitment to the collaborative process. It also reduces costly litigation and lengthy delays in plans becoming operative.
9. Federated Farmers considers that the revised arrangement for Water Conservation Orders provides a more balanced approach which enables due weight to be placed on a community's economic, social and cultural wellbeing. The revised arrangement was pivotal to enabling the amendment of the Rakaia Water Conservation order (National Water

Conservation (Rakaia River) Amendment Order 2013). The amendment enables water stored in Lake Coleridge, under certain conditions, to be exempt from the flow regime specified in the Conservation Order, so that designated 'stored water' released into the river can be later abstracted and used for irrigation.

10. Federated Farmers supports the provision to review Environment Canterbury because it is crucial that the regional council has a governance structure which can effectively oversee resource management in the region, and a membership which is trusted by the wider community and can work effectively without descending into political divisiveness.

## **Environment Canterbury Review**

### **Key features of the Council**

11. Federated Farmers considers that the new Environment Canterbury (ECan) governance structure should have the following features:
  - The vision and principles of the Canterbury Water Management Strategy should continue to be enshrined in law;
  - The council must contain a sufficient skill-base to deal with the range of issues critical to the region and to interact effectively with Council staff, especially in the areas of water science, the operation of farm systems and planning;
  - The council should ideally engage in consensus decision making (consistent with the operation of the Zone Committees), especially over the water issues that are so crucial to the economic and environmental wellbeing of the region and its people;
  - The council should contain sufficient rural/geographic representation to ensure that appropriate weight is given to primary production as the principal driver for the regional economy. In this context, it is crucial to manage the tensions between farming activities and the high population of essentially urban people within the Selwyn and Waimakariri Districts adjacent to Christchurch.

### **Number and Source of Councilors**

12. It is suggested in the Environment Canterbury Review discussion document that there be a 13 person mixed council, with a 7:6 split between elected members and members appointed by Government. The Government appointments would be made after the election, providing the opportunity to cover any skill gaps among the elected members with appropriately skilled, appointed members.
13. Federated Farmers recommends a 13 member council, with 8 elected members and 5 appointed. A sufficient number of elected councilors is needed to ensure adequate geographical representation in the rural areas and sufficient urban councilors to make it difficult for any particular urban faction to have excessive influence. It would be highly desirable for at least two of the current Commissioners to be appointed to the new council, to capture institutional knowledge and enable the current work programme to continue smoothly.

## **Special Resource Management Powers**

14. The special resource management powers exercised by the current Commissioners include a limitation on the appeal process, specifically a lack of ability to appeal to the Environment Court. Federated Farmers supports a continuation of this limitation, to speed up planning processes, reduce litigation (and accompanying cost), and increase commitment to the early stages of planning processes. However, in the event of unworkable/impractical plan provisions making it through to the Council hearing stage, we do need some ability to find pragmatic solutions. To improve the early stages of the formal RMA process, and provide mechanisms for dealing with issues of merit, we recommend the following:
  - i. A more inclusive First Schedule consultation process, where key stakeholder groups routinely have the opportunity to provide feedback to Council on its draft plans (the recent practice of including Federated Farmers in this process is appreciated).
  - ii. The draft plan would then be screened by an expert technical panel, including farm systems expertise, in order to refine the plan and ensure that it would be reasonable and workable, before notification. This would include a check on the adequacy of the s32 Report.
  - iii. An opportunity to comment on draft decisions at the end of the hearing processes, similar to the Board of Inquiry process.
  - iv. The right of appeal to the High Court on points of law would continue.
15. Alternatively, consideration could be given to the addition of a process similar to that being trialled in Auckland at present which involves formal evidence-sharing and mediation prior to the Council hearings.
16. The process of reconciling disparate views and interests is also part of the Zone Committee process and should be progressed as far as possible at this stage. However, a formal mediation process prior to Council hearings would involve a much greater range of participants, such as the primary sector bodies and environmental NGO's, and would involve exchange of evidence, some of which would have been acquired post the Zone Committee process.
17. Federated Farmers also supports a continuation of the revised process for Water Conservation Order applications and amendments, because it provides a more balanced approach that enables due weight to be placed on a community's economic, social and cultural wellbeing. The revised process was pivotal in enabling the amendment of the Rakaia Water Conservation order (National Water Conservation (Rakaia River) Amendment Order 2013). The amendment enables water stored in Lake Coleridge, under certain conditions, to be exempt from the flow regime specified in the Conservation Order, so that designated 'stored water' released into the river can be later abstracted and used for irrigation.

## **Public Passenger Transport**

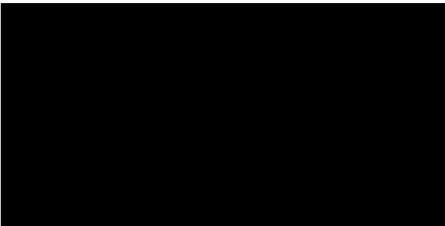
18. Although this issue was not raised in the Environment Canterbury Review discussion document, Federated Farmers considers the Environment Canterbury should not manage public passenger transport and that this should be the role of City and District Councils where they have public passenger transport systems. This would enable Environment Canterbury to focus on its core RMA responsibilities.

## **Ongoing Dialogue**

19. Federated Farmers would appreciate the opportunity for ongoing dialogue about the Environment Canterbury Review, to clarify the points we have raised or to discuss other matters.

## **Conclusion**

Federated Farmers thanks the Ministry for the Environment and the Department of Internal Affairs for the opportunity to submit on the Environment Canterbury Review. We look forward to ongoing dialogue about the Environment Canterbury Review.



Chris Allen  
Chair, Canterbury Regional Policy Committee  
National Board Member  
Federated Farmers of New Zealand

1 May 2015



Peter Brundt  
Director, Resource Management Systems  
Ministry for the Environment  
By email [ecanreview@mfe.govt.nz](mailto:ecanreview@mfe.govt.nz)

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Dear Peter

## Environment Canterbury Review: discussion document

Genesis Energy Limited, trading as Genesis Energy ("Genesis Energy") welcomes the opportunity to submit on "Environment Canterbury Review: a discussion document" released for consultation by the Ministry for the Environment and Department of Internal Affairs.

Genesis Energy is an electricity generator and energy retailer with approximately 1890 MW of installed generation capacity and more than half a million retail customers. Genesis Energy owns and operates the Tekapo Power Scheme in the upper Waitaki Valley. The operation of the Tekapo Power Scheme is reliant on water allocated through the planning processes that are a function of Environment Canterbury. It is in this context that Genesis Energy is affected by and interested in the outcomes generated by Environment Canterbury's governance structure and functions.

### **Genesis Energy's Interest in Canterbury Governance.**

Genesis Energy's primary interest in Canterbury Governance is in relation to its nationally significant Tekapo Power Scheme.

The Tekapo Power Scheme sits at the head of the Waitaki Valley and comprises the Tekapo A (25MW) and Tekapo B (160MW) power stations, Lake Tekapo and its associated inflows, and the Tekapo Canal. The Tekapo Power Scheme generates approximately 980GWh per annum of renewable electricity (equivalent

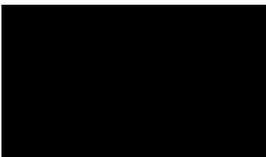
to the amount of electricity used annually by 120,000 households). In generating this electricity the Tekapo Power Scheme makes an important contribution to New Zealand's security of electricity supply.<sup>1</sup>

The continued operation of Tekapo Power Scheme is totally reliant on being able to store water in, and manage lake levels of, Lake Tekapo, and on being able to reticulate water from Lake Tekapo through two power stations and the Tekapo Canal. Those operations are authorised by a series of resource consents to dam, take, divert and discharge water. The consents expire in 2025.

Genesis Energy considers it vital that governance arrangements facilitate adequate provision through local planning processes for these matters of national significance and national interest.

Our detailed comments are set out in the attached format as requested on the MfE website. We are happy to meet with you to discuss our comments further, or to provide other information that may assist your review. In that regard, if you would like to meet, please contact me on (04) 8300012 or [sarah.stevenson@genesisenergy.co.nz](mailto:sarah.stevenson@genesisenergy.co.nz).

Yours sincerely



Sarah Stevenson  
Environmental Policy Manager

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<sup>1</sup> In addition, most of the water entering Lake Tekapo passes through all eight power stations in the Waitaki Power Scheme meaning, in total, Lake Tekapo inflows contribute approximately 7,680 GWh per annum of renewable electricity to the national grid

## Critical issues for Canterbury

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**In your view, what are the most significant regional issues for Canterbury (for example, resource management or governance issues)? Please explain.**

In the view of Genesis Energy, freshwater management is the single most significant issue facing the Canterbury Region. The scale of the issues being addressed in terms of water quantity allocation and quality in Canterbury, and the scale and nature of competing demands for that resource, is significantly greater than that confronted by other regions.

In terms of immediate work, the National Policy Statement NPS – Freshwater Management requires councils to give effect to a National Objectives Framework, setting values, objectives, and attribute limits for water quality. In the near future, ECan will be required to consider a potential trade-off between local interests and matters of national significance, namely electricity generation, as part of the Waitaki Allocation Plan review in 2016.

Hydro generation provides 55% of New Zealand's electricity generation and is the primary contributor to New Zealand's target of 90% renewable energy by 2025. Reaching that target is important if New Zealand is to maintain its competitive international advantage, leading the world in renewable energy generation. If hydro generation capacity is reduced, it will in turn result in increased consumer electricity prices, and increased CO<sub>2</sub> emissions – given that the most cost-effective form of generation to replace the type of flexibility offered by hydro schemes is fossil fuel (gas and coal) generation stations.

## The way forward for Canterbury governance

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**Do you agree with the goals for ECan's governance? (These are: high quality leadership, economic growth, strong environmental stewardship, strong accountability to local communities, and value and efficiency for ratepayer money.) Please explain.**

We agree with the goals, but suggest it is also important for the goals to reflect matters of national importance such as electricity generation. Canterbury has 12% of New Zealand's freshwater and 60% of its hydro-generation storage capacity. With nationally significant hydro storage and infrastructure, and a National Policy Statement for Renewable Energy Generation, there is a statutory obligation for ECan to demonstrate strong accountability to the Nation in the

management of hydro-generation capacity, as well as strong accountability to local communities.

**In your view, are some of the goals more important than others? Please explain.**

High quality decision making is paramount, as was demonstrated through the initial review by Wyatt Creech and through the performance of the commissioners since 2010. It is through strong leadership, informed by a good grasp of the fundamentals of governance, that matters of national importance can be best balanced and provided for through decision making processes.

**Do you think the proposal is suited to Canterbury and meets the goals for ECan? Please explain.**

Yes.

ECan officers have done a commendable job of managing the work programme both strategically and in its delivery, driving progress in freshwater management in Canterbury. The increase in capacity and capability within ECan stands the organisation in very good stead and will provide an important touchstone for appointed and elected members moving forward.

However, there still needs to be stability in the transition from the current arrangements to the mixed model in order to maintain strong, well informed leadership. In the interests of stability moving forward, some indication of the nature of the review in 2019 should be provided.

**In your view, is there a governance model that better addresses the goals for ECan? Please explain.**

No comment.

**Are there any considerations we need to give when transitioning to the proposed mixed- model governance structure? Please explain.**

Transition and induction processes are paramount to ensure an effective transition and continued high quality leadership. The incumbent Commissioners have a high level of expertise and knowledge which has enabled them to take a leadership rather than a representative role, and which has contributed in no small part to the progress ECan has made in managing freshwater.

In order to maintain that momentum, new decision makers should be trained to represent aspects of national interest where relevant (eg, as required by National Policy Statements). In particular, in the case of Freshwater Management, the

final decisions regarding exceptions to bottom lines are a responsibility of local government.

The Making Good Decisions programme for RMA matters provides a good model on which to base a training package for ECan representatives. It could be tailored to cover ECan institutional knowledge.

**Should the mixed-model governance structure retain the special resource management powers currently used by the commissioners? If so, for how long? Please explain.**

No.

The special powers in the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 were legislated in order that the Natural Resources Regional Plan could become operative. That time has passed, and a bespoke process for Environment Canterbury alone is not justified.

Genesis Energy considers merit appeals to be an important safeguard in the planning process, providing a check on local decision making. We note that a small minority of decisions are appealed, they usually represent truly “intractable problems”, and are often resolved through mediation before ever reaching the Courtroom.

In the Canterbury context, given the tensions inherent in balancing matters of national significance and local importance, the usefulness of merit appeals is particularly relevant. We believe Canterbury and the Nation would be best served if the plan preparation process reverted to the standard Schedule 1 process, noting that the upcoming resource management reforms may prescribe the option of an alternative collaborative process.

In terms of the upcoming reforms, we would support an alternative process provided it was a choice available to Council, subject to Ministerial approval based on clear criteria, and provided the collaborative forum set up to consider the matter represented all stakeholders, including infrastructure providers. We also consider it would be appropriate that should consensus not be reached through the collaborative process, the plan preparation process should revert to the standard Schedule 1 process, with the opportunity for merit appeals to the Environment Court.

## Other comments

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Is there any further information you wish the Government to consider? Please explain.

Not at this stage, although we are happy to discuss further.



Human Rights  
Commission  
*Te Kāhui Tika Tangata*

1 May 2015

ECan Review  
Ministry for the Environment  
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By email: [ecanreview@mfe.govt.nz](mailto:ecanreview@mfe.govt.nz)

Dear Reviewers

## **ENVIRONMENT CANTERBURY REVIEW: A DISCUSSION DOCUMENT**

I write to provide the comments of the Human Rights Commission (the Commission) on one of the matters canvassed in Environment Canterbury Review: A Discussion Document.

### **The proposal**

The discussion paper sets out a proposal to change the method of appointment of Environment Canterbury (ECan) Commissioners. It is proposed to move from the current situation where the government appoints all the ECan Commissioners to one where there would be a mixture of election of the majority of the members of ECan plus appointment by the government of the other members. The diagram at figure 5 of the discussion document notes that this could involve 7 elected and 6 appointed members, although it is noted that the numbers are intended to be indicative only

### **The Commission's comments on the proposal**

In October 2012 the Commission made a submission to the Local Government and Environment Select Committee which was considering the Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill. The Commission recommended that the Bill be withdrawn and a human rights approach taken to improving water management in Canterbury that respected citizens' rights, elected local government and reflected the Land and Water Forum's collaborative model. A copy of this submission is attached.

The Commission's current view is that a mixed representation model is a significant improvement on the current system. However, a fully elected model would be preferable and more consistent with principles of participation and democracy and we believe this should be the ultimate goal for the ECAN governance structure. In the event that a mixed model is retained, a significant majority of members should be required to be elected and only a minority appointed. In addition, there should be a statutory requirement that appointees should be appointed only for the specific purposes of ensuring a broad and appropriate cultural, social and professional skill set across the committee and selection of appointees should be explicitly required to be based on this criteria. Only where there are potential gaps in the skill set/experience of the elected members should appointees be selected to supplement the Commissioner membership.

Yours sincerely



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**HUMAN RIGHTS COMMISSION**

**SUBMISSION ON THE  
ENVIRONMENT CANTERBURY (TEMPORARY COMMISSIONERS  
AND IMPROVED WATER MANAGEMENT) BILL**

**Local Government and Environment Committee**

**23 October 2012**

**Contact person: Sylvia Bell**



## 1. Introduction

- 1.1 The Human Rights Commission (the Commission) welcomes the opportunity to comment on the Environment Canterbury (Temporary Commissioners and Improved Water Management) Amendment Bill (the Bill).
- 1.2 The Bill will extend the Act's governance arrangements and special water management decision making powers for a further 3 years. The extension is justified on the grounds that circumstances relating the earthquake recovery and governance challenges continue to exist in Canterbury on a scale that sets it apart from other regions.
- 1.3 The Commission does not agree with this. In particular, the Commission refers the Select Committee to the advice of the Prime Minister's Chief Science Adviser<sup>1</sup> on the steps that should be taken to diminish the sense of powerlessness that follows a natural disaster. Following the advice of the Ecan Commissioners, the Ministries and the initial advice of two Ministers the hybrid model of partly-elected, partly-appointed Commissioners was the option that would have been best for the health of the people of Canterbury and for democracy in the region.
- 1.4 The Commission had concerns both about the substance of the original Act and the way it was enacted but was unable to comment as the legislation was introduced and passed under urgency in a single day. Our view continues to be that the undemocratic way in which the original legislation was introduced, and its continuance, is simply wrong from a human rights perspective.
- 1.5 The cabinet paper accompanying the original Act stated that the deferral of the 2010 election should only be a temporary measure because it constrained the right to public participation<sup>2</sup>. While it suggested that the proposal complied with domestic human rights standards and the relevant international obligations<sup>3</sup>, it was also quite explicit that the intent was to return to a democratically elected Council as soon as the Commissioners' task was completed.
- 1.6 In the first cabinet paper on the amendment Bill, the Minister of the Environment, David Carter, and Amy Adams, the Minister of Local Government, stated that any option except a return to a fully elected Council would limit the democratic rights of residents of Canterbury compared to the rest of the country and violate Art.25 of the International Covenant on Civil and Political

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<sup>1</sup> "Psychosocial effects of the earthquakes", Chief Science Adviser's Advice to Government of 10 May 2011 reported by The Press 10 May 2012 <http://www.stuff.co.nz/the-press/opinion/perspective/6892800/Psychosocial-effects-of-the-earthquakes>

<sup>2</sup> Office of the Minister for the Environment, cabinet paper on Environment Canterbury ((Temporary Commissioners and Improved Water Management) Amendment Bill 2010 at para 13

<sup>3</sup> Ibid. at para 9

Rights (ICCPR).<sup>4</sup> In effect the current proposal means the Government would be in breach of its international obligations and its commitment in the ICCPR to protect, promote and fulfil the rights of people in New Zealand. While this may lead to international criticism, the greater concern is how the Government will justify whether it has discharged its duty to the New Zealanders who paid a high price to defend these rights.

1.7 Both Ministers recommended a mixed model governance structure which would have maintained the momentum of what had been achieved and eventually lead to a fully locally elected democratic body. This option was not adopted and a decision was made to simply roll over the existing Act. Ironically, despite being even more intrusive than what was originally proposed, the eventual option was considered to comply with our international commitments.<sup>5</sup> We find it difficult to understand how Ministers could inform their cabinet colleagues that a proposal which was originally described as contravening both domestic and international human right obligations, subsequently complied with them.

1.8 The Human Rights Act (the HRA) requires the Commission to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society. The Commission considers that the Bill breaches some of the international human rights commitments the Government has made and has significant implications for the rule of law in New Zealand. It is also inconsistent with the Government's own freshwater strategy and has the capacity to undermine some of the recommendations suggested by the Land and Water Forum.

1.9 This submission addresses the following issues:

- international human rights standards;
- participation;
- accountability;
- introduction of the original legislation;
- inconsistency with the Regulatory Impact Statements developed both for the Bill and the principal Act;
- potential changes to the Local Government Act;
- inconsistency with s.27(1) New Zealand Bill of Rights Act 1990 (NZBORA).

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<sup>4</sup> Minister of Local Government & Minister for the Environment, Cabinet paper on Environment Canterbury (Temporary Commissioners and Improved Water Management) Amendment Bill 2012 at para 60.

<sup>5</sup> Minister of Local Government & Minister for the Environment, *Cabinet paper on Environment Canterbury (Temporary Commissioners and Improved Water Management) Amendment Bill: Approval for Introduction* at para 23

## 2. International standards

- 2.1 The ability to participate in the political process - including the development of legislation - is fundamental to liberal democracies such as New Zealand and has long been considered integral to stable and responsive governance.
- 2.2 Political participation is also a central component of international human rights norms<sup>6</sup>. Article 25 of the ICCPR - the right identified in the first cabinet paper accompanying the present Bill - states that every citizen shall have the right and the opportunity to take part in the conduct of public affairs without unreasonable restrictions, directly or through chosen representatives.
- 2.3 The right to participate is reinforced in other international treaties applying to specific population groups such as the Convention on Elimination of All Forms of Discrimination against Women (CEDAW)<sup>7</sup>, the Convention on the Elimination of Forms of Racial Discrimination (CERD)<sup>8</sup> and the Convention on the Rights of People with Disabilities (CRPD)<sup>9</sup>.
- 2.4 The right to water is itself a basic human right. The right to an adequate standard of living in the International Covenant on Economic Social and Cultural Rights (ICESCR) has been interpreted as including the right to water "since it is one of the most fundamental conditions for survival"<sup>10</sup> and the right to water is specifically referred to in CEDAW<sup>11</sup>, the Convention on the Rights of the Child (CRC)<sup>12</sup> and CRPD<sup>13</sup>.
- 2.5 The Declaration on the Rights of Indigenous People (DRIP) refers to water in the context of spiritual relationships<sup>14</sup> and notes the obligation of States to consult and cooperate with indigenous people about any project relating to the development, utilisation or exploitation of ... water<sup>15</sup> and the conservation and protection of the environment and productive capacity of resources<sup>16</sup>.
- 2.6 The international framework also emphasises the importance of the Government ensuring that the needs of the most vulnerable New Zealanders are recognised and taken into account. This is particularly relevant in the context of Canterbury where the vulnerable groups identified in the international treaties noted above are particularly affected by the impact of the earthquakes.

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<sup>6</sup> Steiner, H *Political Participation as a Human Right* (1988) Human Rights Yearbook, Vol.1

<sup>7</sup> Art.7(b) CEDAW

<sup>8</sup> Art.5(c) CERD

<sup>9</sup> Art.3(c); Art.29(b) CRPD

<sup>10</sup> Institute for Human Rights and Business (2011) *More than a Resource: Water, Business and Human Rights*

Accessible at [www.ihrb.org](http://www.ihrb.org)

<sup>11</sup> Art.14 CEDAW

<sup>12</sup> Art.24CRC

<sup>13</sup> Art.28CRPD

<sup>14</sup> Art.25 DRIP

<sup>15</sup> Art.32 DRIP

<sup>16</sup> Arts.26 & 29 DRIP

### 3. Meaningful participation

- 3.1 Transparency and empowerment are essential to genuine participation. There must be an opportunity for citizens to be able to influence decisions, particularly those that are likely to have an impact on their lives. This “ability to be heard” is a significant way of combating the notion that decisions are predetermined.
- 3.2 The enactment of legislation without the opportunity for public participation effectively undermines the democratic process. In 2009 the United Nations issued a Guidance Note on Democracy which observed that the way in which a government operates and provides for people to have a say in the policy process has a direct impact on how its citizens perceive the degree of legitimacy of their country’s democratic system<sup>17</sup>.
- 3.3 In the case of Canterbury, the fact that many people consider they have not been adequately informed of, or able to contribute to, decisions about the future of Christchurch has fuelled resentment against public authorities – something that is recognised within government. For example, following its financial review of CERA and the Earthquake Commission earlier this year the Finance and Expenditure Committee commented that it would like to see them keep the public *“better informed about the about the processes they are involved in by providing consistently accurate information, to minimise the inevitable uncertainty and distress for the people of Canterbury.”*
- 3.4 In our view the present legislation has the potential to further exacerbate the resentment that has arisen in Canterbury as result of autocratic decision making<sup>18</sup>. Cantabrians need to be involved in - not excluded from - decision making in order to restore the mitigate the semnse of powerlessness that follows a natural disaster and mitigate psychosocial harm.
- 3.5 The Prime Minister’s Principal Science Adviser, Sir Peter Gluckman, in his advice to the Prime Minister on the Canterbury Earthquake noted:

*“..., it is fair to state that the potential exists for the emotional effects of disaster to cause as great a degree of suffering as do the physical effects such as injury, destruction of infrastructure and loss of income.*

*In fact, they are often interrelated. Indeed, it is clear that recovery is primarily judged in terms of people feeling that they are coping with their lives and livelihood, not just in physical terms.”*

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<sup>17</sup> *Guidance Note of the Secretary-General on Democracy* (2009) at para 7

<sup>18</sup> Section 22 of the Act which states that “2010 election for members of ECan must not be held” is a good example of this.

*“A feeling of self-efficacy and community efficacy assists the population in reactivating their coping mechanisms. Local governance, empowerment and ownership have been shown to facilitate recovery.*

*Then inevitable tensions and conflicts in achieving this are obvious (long-term versus short-term, public versus private, local versus national interests) and cannot be avoided - rather, they have to be openly handled with sensitivity.*

*It follows that, from the psychosocial perspective, those involved in directing the recovery should create governance structures that understand and actively include community participation and enhance individual and community resilience. Such approaches will be most likely to be effective in re-establishing coping and functioning communities.”<sup>19</sup>*

#### **4. Accountability**

4.1 The State has primary responsibility to deliver the human rights to New Zealanders that it has committed itself to. To ensure that this is done, there needs to be accessible and effective remedies.

4.2 It is not only the State that has responsibility for delivering human rights to New Zealanders. Other actors are also accountable. A State cannot abrogate its human rights responsibilities by devolving responsibilities to others - such as the appointed Commissioners - and then claim that it is no longer responsible for delivery of water management services<sup>20</sup>.

4.3 Although the need for a coherent, integrated national policy on freshwater management and new governance arrangements is almost universally accepted - and has been for some time - accountability about freshwater management in New Zealand remains elusive.

4.4 As New Zealand has ratified all of the major human rights instruments relating to water, the Government must take the necessary steps to ensure that everyone can enjoy safe, sufficient, acceptable, accessible and affordable water not derogate from that responsibility by introducing legislation that sacrifices human rights for administrative expediency.

#### **5. The Act**

5.1 The way the Act was enacted and aspects of its substance raises significant questions about the rule of law and democratic process.

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<sup>19</sup> Ibid 1

<sup>20</sup> Institute for Human Rights and Business (2011) *More Than a Resource: Water, Business and Human Rights* accessible at [www.ihrb.org](http://www.ihrb.org)

- 5.2 It was introduced under urgency, was not sent to a Select Committee and did not allow for any formal public input. The Act itself was described by public law expert Philip Joseph as a “constitutional affront” that abrogated the rule of law in a number of ways.
- 5.3 Aspects of the legislation which were, or continue to be, concerning are:
- The application of a new strategy to existing proceedings - effectively altering the substance of the relevant law with retrospective effect;
  - Allowing subordinate legislation (the Act allows regulations to be made by Order in Council on the recommendation of the Minister) to take precedence over primary legislation, in this case the Resource Management Act<sup>21</sup>. As the New Zealand Law Society noted: *It is a fundamental component of the rule of law that legislation should be enacted by Parliament. The use of legislative power to authorise regulations that effectively delegate a broad legislative power to the executive for a significant period is inconsistent with this principle of the rule of law.*<sup>22</sup>
  - Removing access to the Environment Court except for appeals on points of law. Prior to this there was a right to appeal to the Environment Court on the merits, a right that has been described as “critical” to the resolution of environmental and resource management issues.<sup>23</sup> By removing it, the Act undermines access to justice.
- 5.4 Effective engagement with all the relevant stakeholders generates better decisions and is the key to robust legislation. In a situation such as this where the local communities are already traumatised by measures introduced in response to the earthquakes, extending this legislation effectively perpetuates the problems identified in 2010 and reinforces the inability of those directly affected to contribute in a meaningful fashion to legislation that affects them personally. It also consolidates provisions that abrogate the rule of law – a situation that is simply unacceptable in a modern democracy.

## 6. Consistency with Regulatory Impact Statements

- 6.1 The Regulatory Impact Statement which accompanied the original Act was strongly critical of the introduction of the legislation, suggesting that it could result in unintended consequences which would require subsequent intervention.
- 6.2 It also noted that there were significant risks associated with suspending the planned elections and that the suspension of such a right should only be considered in exceptional

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<sup>21</sup> Section 31 – this is done by way of a type of clause known as a Henry VIII clause which is constitutionally objectionable when used for general legislative purposes: Joseph, P “Environment Canterbury legislation” *New Zealand Law Journal* (2012) at 195

<sup>22</sup> New Zealand Law Society, Letter to Attorney-General on Environment Canterbury 28/ 9/2010 available at [www.lawpoints@lawsociety.org.nz](mailto:www.lawpoints@lawsociety.org.nz)

<sup>23</sup> Joseph, supra fn 14 at 195

circumstances. Once the immediate problem – the deadlocked decision-making that had arisen out of seemingly irreconcilable regional differences between the councillors – was resolved the Commissioners would withdraw and be replaced by elected representatives not later than the elections scheduled for 2013. It explicitly stated, “*Democracy would reassert itself as soon as the present systemic issues facing ECan have been averted.*”<sup>24</sup>

- 6.3 The Regulatory Impact Statement on the Bill states that the changes brought about by the Act resulted in considerable momentum in the area of water management and led to a strategic, collaborative and integrated approach that was addressing ECan’s systemic problems<sup>25</sup>. It suggests that if the proposed amendment does not go ahead, the situation could revert to that which existed before the Act was introduced – something that is seen as particularly concerning in light of the Canterbury earthquakes and the need for stable regional governance and effective leadership<sup>26</sup>.
- 6.4 Given the acknowledged recognition of the potential to violate the ICCPR the Commission considers that allowing the Act to continue is wrong. A speedy resolution is not always the answer to political issues such as water management and there do not appear to have been “unintended consequences” warranting further intervention. In addition, extending the Act effectively undermines the Government’s own freshwater policy programmes and the work of the Land and Water Forum<sup>27</sup>- something that the initial Regulatory Impact Statement was concerned about.
- 6.5 The Terms of Reference appointing the Commissioners required them to contribute to the Government’s consideration of long term regional governance and institutional arrangements for Canterbury. In response, the Commissioners suggested a transitional model of mixed governance which would have included both elected and government appointed members and eventually led to a fully locally elected democratic body. As indicated in the introduction to this submission, this option was considered by cabinet but not adopted.
- 6.6 Despite the fact continuing the existing situation was recognised as undemocratic and having the potential to breach New Zealand’s human rights commitments the Government elected to go with an option which was easier to implement from an administrative perspective. This was

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<sup>24</sup> Regulatory Impact Statement (2010)

<sup>25</sup> Regulatory Impact Statement (2012) at [para 7]

<sup>26</sup> Ibid. at [para 30]

<sup>27</sup> The Land and Water Forum is a group of primary industry representatives, environmental and recreational NGOs, iwi and other organisations with an interest in freshwater and land management. In 2009 the Forum was asked by the Government to conduct a stakeholder-led collaborative process to recommend reform of New Zealand’s freshwater management. In September 2010 the Forum reported back to Ministers identifying shared outcomes and goals, and options to achieve them. It then undertook public engagement on its recommendations throughout New Zealand and in April 2011 provided Ministers with its findings, recommendations and thoughts. This year it provided the Government with a report setting limits for water quality and quantity, and improvements to decision-making. A second report, due in November, will provide advice on how to manage to limits, including allocation of fresh water resources, and additional tools to manage the effects of land use on water

even though it meant overriding the recommendations of the two relevant Cabinet Ministers and meant *that the region's electors would not have the opportunity to democratically elect members to ECan's governing body, [which was] inconsistent with the principles relating to local government in the Local Government Act 2001.*<sup>28</sup>

6.7 The most recent Regulatory Impact Statement on the Bill also notes that the suggested option does not satisfy the criterion of democratic, local and balanced decision making that meets the needs of the region's community and, while it facilitated the earthquake recovery process (because the Commissioners have demonstrated an ability to build strong relationships with CERA and councils on earthquake response and recovery matters), it limits local democratic involvement in earthquake recovery processes.<sup>29</sup>

6.8 Both of the Regulatory Impact Statements were strongly critical of the lack of a public consultation process with stakeholders and communities in Christchurch - an approach that is in stark contrast to the most recent report of the Land and Water Forum which is based on intensive consultation. The writers noted<sup>30</sup>:

*The way in which limits are set is critical to the confidence that people have in them ... we suggest a collaborative approach to freshwater governance effectively dovetailed with existing legal processes has the potential to lead to more effective, durable and practical solutions than standard approaches. Done well, collaboration can lead to longer term solutions that are more resilient and adaptive to change. Collaborative approaches allow parties to deal with each other directly, allow an open exploration of all the values and interests of the participants early in the planning process, and can lead to a more durable and resilient outcome.*

6.9 The Commission considers that no good reason has been provided for extending the present legislation. The lack of public consultation about content - or the continuing need for the legislation - is an abuse of the democratic process and does not reflect the real needs of Cantabrians (and could even do real harm). Nor does it benefit New Zealand as a whole.

## **7. Links with proposed changes to the Local Government Act 2002**

7.1 The amendment also needs to be considered in light of the changes to the Local Government Amendment Bill that have been proposed as part of the wider local government reforms.

7.2 Some of the proposed changes to the LGA Amendment Bill will make it easier for the Minister to intervene in local government affairs, effectively eroding the autonomy of elected local representatives. This is because the Minister will be able to intervene in the affairs of a local

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<sup>28</sup> Ibid. at [para 89]

<sup>29</sup> Ibid. at [paras 94 &95]

<sup>30</sup> Second Report of the Land and Water Forum: Setting Limits for Water Quality and Quantity Freshwater Policy and Plan Making Through Collaboration (April 2012) at [para 21] p.4

authority if they have reasonable grounds for believing that there is, or there may be, a “significant problem” that the authority is unable or unwilling to effectively address. What is “significant” will no longer be assessed by the local authority but left to the judgement of the Minister.<sup>31</sup> The possibility of greater Ministerial intervention has the potential to undermine democratic control of local government.

7.3 The LGA Amendment Bill also proposes removing the reference to promoting the social, economic, environmental and cultural well being of communities from the purpose section of the principal Act. The so-called “well beings” are important provisions that clarify and confirm the role and responsibilities of local government in relation to economic, social and cultural rights. Any erosion of recognition of these obligations (which are effectively human rights obligations) risks undermining New Zealand’s international commitments.

7.4 As with the ECan legislation, the effect of what is proposed would conflict with a central purpose of local government - namely the establishment of democratic local decision-making and action by, and on behalf of, communities. The increase in ministerial discretion and decrease in local government autonomy runs counter to the spirit of the Commonwealth Principles which emphasise partnership between spheres of government and co-operation among local and national government. As the Principles note:

*Effective democracy demands respects between the different spheres of government and recognises the defined roles that they play in serving their citizens.*<sup>32</sup>

7.5 The Commission is concerned that the legislative proposal for removing aspects of governance from the hands of democratically elected officials under the LGA Amendment Bill are so similar to the effect of the ECan legislation that the situation in Canterbury could become permanent even if the ECan Act itself is repealed in 2016. This possibility will be even more worrying if the references to “the four well-beings” in the LGA Act are removed.

## **8. Breach of s.27 of the NZBORA**

8.1 The section 7 NZBORA vet by the Attorney-General noted that the original Act had been assessed for compliance with the NZBORA and issues such as limiting the right of appeal to the Environment Court (which had the potential to conflict with the right to natural justice affirmed in s. 27(1) NZBORA) considered. The Attorney-General concluded that, as the Act did not limit natural justice or the ability to seek judicial review, it did not breach the NZBORA. It followed that as the substance of the Bill is not altered, the same conclusion applies here.

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<sup>31</sup> Clauses 255 & 256 (1)(b) Local Government (Amendment) Bill 2002

<sup>32</sup> Commonwealth Local Government Forum, *Time for Local Democracy - The Aberdeen Agenda: Commonwealth Principles on Good Practice for Local Democracy and Good Governance*, Commonwealth Local Government Forum (2005) at 6

8.2 The Commission does not agree with this. The Act not only changes the legal test for the creation, amendment or revocation of water conservation orders, it seeks to fast track regional plans by revoking appeal rights to the Environment Court and vests all regional governance decision making in the Commissioners rather than elected councillors. In our view this far exceeds what is necessary to address the problems in Canterbury.

8.3 We would argue that the Act infringes s.27(1) NZBORA and cannot be justified under s.5 of that Act. Section 5 provides that:

*...the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*

In deciding whether a limitation can be justified, the following issues will be taken into account:<sup>33</sup>

- whether the limiting measure serves a purpose sufficiently important to justify curtailment of the right or freedom;
- if so, whether the measure is rationally connected with its purpose;
- it impairs the right or freedom no more than is reasonably necessary to achieve its purpose; and
- the limit is proportional to the importance of the objective

8.4 While we recognise that there may have been a legitimate reason for seeking to resolve the issues relating to claims to water, the continuation is out of proportion with what was necessary to achieve this.

8.5 For a legislative response to be reasonable and proportionate it must impact on the relevant right or freedom no more than is reasonably necessary to achieve its objective. As Professor Joseph notes:

*A proportionate response to concerns about Environment Canterbury would have been to remove water issues from its brief, establish a separate authority to develop a Water Management Strategy, and leave the elected councillors to attend to their other regional-council tasks.*<sup>34</sup>

8.6 The Commission therefore does not consider that the original legislation was a proportionate response to the problem and the s.5 test is not satisfied. The ECan Act and, as a result, the proposed amendment contravene the right to access to justice in s.27(1) NZBORA.

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<sup>33</sup> *R v Hansen* [2007] 3 NZLR 1 (SC) at 28

<sup>34</sup> *Supra* fn 2 at 195

8.7 Although the Act is theoretically concerned with water management, the effect is to replace the elected regional council with Commissioners who can perform **all** the functions of the council - not just those involving water. As the New Zealand Law Society noted in a letter to the Attorney General protesting against the introduction of the legislation, *people in Canterbury are, in matters of local government, not being treated equally with citizens in other regions.*<sup>35</sup>

8.8 This cannot be addressed as discrimination for the purposes of the NZBORA since there is no prohibited ground, but it nevertheless raises issues of equality that resonate poorly in the context of earthquake struck Canterbury.

## 9. Conclusion

9.1 The Commission is concerned about the content of the Act, the way in which it was originally enacted and the intention to extend it. As legislation, it has significant implications for the rule of law and (in our view) contravenes the NZBORA in a way that is out of all proportion to what it sets out to achieve. Further, by removing the possibility of being able to influence the substantive provisions, it undermines the right to democracy and the ability of Cantabrians to participate in public affairs that are integral to international human rights law.

9.2 We recommend that the Bill is withdrawn and a human rights approach taken to improving water management in Canterbury that respects citizens' rights, elected local government and reflects the Land and Water Forum's collaborative model. In making this recommendation we note that we substantially agree with the original advice of the two Ministers and the Ecan Commissioners.

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<sup>35</sup> New Zealand Law Society, Letter to Attorney-General on Environment Canterbury 28/ 9/2010 available at [www.lawpoints@lawsociety.org.nz](mailto:www.lawpoints@lawsociety.org.nz)

## ENVIRONMENT CANTERBURY REVIEW

### Hurunui Water Project Limited Submission

30 April 2015

#### Contact information

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#### About Hurunui Water Project

Hurunui Water Project Limited (HWP) is a farmer-shareholder based irrigation company that has developed over some 14 years and is centred around the township of Hawarden in the Hurunui District of North Canterbury. The company is charged with delivering storage-based irrigation to the District while being mindful of environmental outcomes and effects. This work has involved a huge amount of interaction with the Canterbury Regional Council (ECan) under the RMA, and other more specific Canterbury strategies and plans. HWP has, from its earliest days, embraced a collaborative way of working within the District and in recent years, through the Zone Committee. This has led to HWP applying for resource consents with a high degree of public process while working within ECan's consenting system.

HWP is therefore well placed to constructively comment on the discussion document outlining the proposal from Government for the Environment Canterbury Review. Our comments are as below:

#### Critical issues for Canterbury governance

- 1. In your view, what are the most significant regional issues for Canterbury (for example, resource management or governance issues)? Please explain.**

Prudently managing the resources to achieve both short term and long term outcomes is hugely significant. This requires a pragmatic approach in the shorter term while ensuring persistent progress toward the long term goals.

In the case of the water resources, The National Policy Statement for Freshwater Management and the Canterbury Water Management Strategy are pivotal in this regard. To effectively implement the policies and achieve the desired strategic outcomes will require consistently effective governance.

## The way forward for Canterbury governance

**2. Do you agree with the goals for ECan's governance? (These are: high quality leadership, economic growth, strong environmental stewardship, strong accountability to local communities, and value and efficiency for ratepayer money.) Please explain.**

Hurunui Water Project agrees with the goals set out above for ECan's governance. We also draw your attention to the importance of the linkage between; governance structure, leadership and organisational effectiveness. ECan as an organisation, and at all levels of staffing, needs to be effective and efficient. Experience indicates that this is particularly difficult to achieve in a local body political framework with a short 3-year electoral cycle. In this regard ECan has developed rapidly while working under the Commissioner structure and it is important that these gains are maintained as the organisation reverts to the local government model.

**3. In your view, are some of the goals more important than others? Please explain.**

The goals in our view are neither binary (either – or), nor possible to preferentially weight. Rather the goals taken together, if they are continually re-balanced and regularly re-prioritised, form the essential governance framework for the Canterbury province.

It is clear that the area of freshwater management is long term in nature, has an element of inter-generational cause and effect, and is susceptible to poor decisions being very slow to correct. ECan must therefore be effective in this area.

**4. Do you think the proposal is suited to Canterbury and meets the goals for ECan? Please explain.**

The principle behind the proposal, to move to a mixed-management model, provides a sound governance approach to achieve the goals for ECan.

We are however concerned that the effectiveness gains achieved over the past 5 years will be lost and we outline below the reasons for this concern:

In many instances the regulatory and consenting considerations at ECan Governance level require a very sound knowledge of the details. The potential knowledge gap is in itself a key issue to address during any transition.

The significant step change, from the present Chair plus six Commissioners to seven elected councillors and six Commissioners, provides the possibility of:

- A knowledge gap interrupting the progress being made and potentially derailing the important work streams that are underway.
- A change back to a governance style where competing interests and/or ingrained prejudices are put ahead of engendering thorough debate by interested parties, to seek outcomes in a reasoned manner that reaches compromise.
- Confusion between governance and management roles in ECan

The Commissioners have, at least in the Hurunui – Waiau Zone that we are familiar with, developed a close understanding of the issues in the zone. In the water management area often “the devil is in the detail” and the Commissioners involved have developed the necessary understanding of that detail.

ECan staff in the most senior levels through to technical and administrative roles have, under the Commissioners, been empowered to assume authority and take responsibility. This has significantly improved both organisational efficiency and the value placed on ECan by the community.

The close and coordinated involvement of Commissioners and ECan staff has developed effective working relationships with the local community. This has resulted in ‘grass roots’ democracy evolving in a positive manner that is not easily emulated and only continues with consistent maintenance.

There is a maturity in the debate at the zone level that is permitting parties with widely divergent views to have their say, listen respectfully to other points of view and then seek innovative and/or compromise outcomes.

Our concern then, is that moving to seven councilors in four constituency areas, could detract from the positive local input and solution-seeking approach that was developed after the Commissioners were appointed.

**5. In your view, is there a governance model that better addresses the goals for ECan? Please explain.**

The practice that developed whereby Commissioner’s took on specific responsibility for different facets of the regional council’s areas of responsibility and regional areas, proved effective. In the important area of water management this enabled the Zone Committees to generally work well. It is difficult to envisage how elected members could maintain sufficient neutrality to have the same level of constructive and independent involvement in the Zone Committees.

We therefore propose that one of the key duties of the six remaining Commissioners be to represent ECan at the Zone Committees. Elected councilors may wish to attend and hopefully this would assist them to recognise the value of the process and maintain it into the future.

To reinforce this aspect of “local democracy at work” in Zone Committees, the Zone Committee structure requires a level of statutory backing. For example when a Zone Implementation Plan (ZIP) is agreed by a Zone Committee, it then needs to be recognised as the absolute foundation for the Plan. This statutory and regulatory recognition could then be reinforced by the appointed Commissioners, having a formal role in ensuring the Zone Committee process remains robust as the ZIP is developed, and then overseeing the development and drafting of the resultant Regional Plan to ensure that the Plan encapsulates the intentions embodied within the ZIP.

**6. Are there any considerations we need to give when transitioning to the proposed mixed-model governance structure? Please explain.**

The idea of the proposed four constituency areas and seven elected councilors is somewhat concerning to us. The balance must not shift back to having undue emphasis placed on numerical representation either at voting or constituency levels.

The balance between city and regional/rural representation is key to maintaining an effective organisation. The Regional Council, at least in the very important area of rural freshwater management, requires a region-wide focus as it is geographical features that dictate outcomes, rather than population effects.

Along with the 10 papatipu rūnanga of Ngāi Tahu with their guardianship role, the farming and rural people have detailed knowledge and are directly affected. Therefore, close involvement from these groups must be maintained and more weight given to their input than from other opinions that are developed with a more cursory understanding of the real issues.

In the fresh water management area, at least in the Hurunui-Waiiau Zone where we have direct experience, the present Zone Committee is working effectively. There are medium-term key issues being addressed within the period contemplated under the Environment Canterbury Review. We would not like to see the present Commissioner (who is intimately involved within the District) suddenly replaced, particularly if that replacement was along “party political” lines. We sincerely believe that this would seriously disrupt the trust and openness that has been developed between normally adversarial parties within the catchment zone.

In addition to maintaining the number of Commissioners at six, it is important that at least a majority of that number is made up from existing Commissioners.

**7. Should the mixed-model governance structure retain the special resource management powers currently used by the commissioners? If so, for how long? Please explain.**

The length of time that the special resource management powers currently used by the Commissioners is retained, is related to the time taken to resolve some of the current problems with the RMA. Presently the ‘clumsy’ nature of the RMA makes it difficult to ensure that fully balanced

consideration is given to resource applications at the outset and this encourages a stepped process that adds time and cost for all proponents without achieving any better outcomes.

In the event the RMA cannot be improved, then the special powers of the Commissioners should be amended to provide for wider grounds of appeal on regional plans. The current “narrow points of law provision” only results in a hearings process that is less robust than if the potential for wider appeal was possible.

The best outcome would be to first amend the RMA to place more focus on having all matters considered early in all consent applications, and then amend the special resource management powers currently used by the Commissioners, to reflect the revised RMA. However, if this is not possible then the amendment to the ECan Act described in the above paragraph should be considered. (Our comments in relation to the Commissioner’s role in the Zone Committee in 5. above, also relates to this matter).

## Other comments

### **8. Is there any further information you wish the Government to consider? Please explain.**

HWP is not making the observations just from the narrow point of view of an irrigation company. There have been real achievements by all parties, particularly with respect to environmental outcomes, as a result of the strong local involvement working under the ECan Commissioners.

The proposal to introduce seven councilors and retain six Commissioners is sound.

There are some areas to be mindful of with this transition, if the effectiveness that has been gained is not to be forfeited.



**SUBMISSION: DISCUSSION DOCUMENT -  
IMPROVING OUR RESOURCE MANAGEMENT SYSTEM**

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**(Andrew Curtis, CEO IrrigationNZ)**

IrrigationNZ is happy to provide further comment as required.

**OVERVIEW**

1. IrrigationNZ (INZ) is a national body that promotes excellence in irrigation. INZ represents the interests of over 3,600 irrigators (irrigation schemes and individual irrigators) totaling over 360,000ha of irrigation (over 50% of NZ's irrigated area). It also represents the interests of the majority of irrigation service providers (over 140 researchers, manufacturers, distributors, designers, installers and consultants).
2. A discussion on the future of Environment Canterbury was held at INZ's quarterly 'Irrigator Forum'. Over 30 representatives from Canterbury irrigation schemes and irrigator user groups were present. The following submission reflects the consensus from this.

## **SUBMISSION SUMMARY**

- A. Support the proposed mixed-model governance structure for Environment Canterbury**
- B. Support Environment Canterbury continue to be responsible for the function and services of a typical Regional Council**
- C. Reject the new hybrid governance model continue with the powers set out under the Environment Canterbury Act**
- D. Require the existing commissioners [at least three] transition to the new appointed member positions**
- E. Require further consideration and subsequent clarity as to how the sub-regional community decision making processes (zone committees) continue and improve their effectiveness under the new mixed-model governance structure**
- F. Require an additional area of Central Canterbury (Selwyn zone) be added to the four proposed constituency areas, but accept this will be subject to a representation review process**

### ***Specific Comments***

- A. Support the proposed mixed-model governance structure for Environment Canterbury**
  - 3. INZ believes in a democratic approach to local government decision making, however INZ also believes in the principles of good governance. A mixed model makes much sense for the successful delivery of both. Key to this is the elected representatives recognising their collective strengths and weaknesses, and subsequently being involved in the appointment of individuals to address this.
  - 4. Government needs to better consider how the appointment process would work. There are two key points to consider in doing this and both involve how to avoid accusations of governance capture or interference, either by a majority of the elected representatives or alternatively the government of the day.
- B. Support Environment Canterbury continue to be responsible for the function and services of a typical Regional Council**
  - 5. After careful consideration INZ believes that Environment Canterbury should continue to be responsible for the function and services undertaken by a Regional Council. Whilst there is merit in the creation of a dedicated Canterbury Water Authority, there is no logical existing structure with whom the other minority

functions and services could be transferred. It would be inefficient to create a new structure for these, and they should therefore remain within Environment Canterbury.

6. There is however an argument for the public transport component to be transferred to the respective city and district councils. Conversely there is also much merit that a region wide approach remains. INZ is undecided as to which option is best as this falls outside of the organisations purpose.

**C. Reject the new hybrid governance model continue with the powers set out under the Environment Canterbury Act**

7. INZ believes that a collaborative approach to community decision making is the most effective means of achieving enduring outcomes for freshwater. However until greater weight is given to the collaborative agreement there is much risk. The 'one stop shop' hearings process may undermine the agreement and importantly the considerable social capital created through it. This scenario has already occurred in the Hurunui and to a much lesser extent the recent Selwyn-Waihora decision. INZ strongly believes that 'merit appeals' should be allowed where the hearings decision differs from that of the collaboration.
8. The appropriate mechanism for implementing the considerations raised above is through the RMA reform process, not a re-jigging of the Environment Canterbury Act. The new Environment Canterbury mixed-model governance structure should therefore not continue with, or an adaption thereof, the powers set out under the Environment Canterbury Act.

**D. Require the existing commissioners [at least three] transition to the new appointed member positions**

9. Over the last five years there has been much intellectual capital built up by the Environment Canterbury commissioners, notably in the implementation of the Canterbury Water Management Strategy and in the Christchurch rebuild. INZ believes it is important this knowledge is successfully transferred to the new mixed governance model. The best mechanism to achieve this is for at least three commissioners to remain as appointed members.

**E. Require further consideration and subsequent clarity as to how the sub-regional community decision making processes (zone committees) continue and improve their effectiveness under the new mixed-model governance structure**

10. The discussion document fails to address how the continuously improving zone committee process will fit within the mixed-model and continue to evolve within it.

The zone committees, with a couple of exceptions that are now back on track, have become the ultimate democratic process - local people understanding and buying-in to local issues and subsequently finding local solutions for them.

11. INZ believes the point above is critical to the success of any future governance model for the region. Without proper consideration of this five years of good work could be quickly unraveled.
12. The solution likely involves the elected representatives becoming actively involved in the zone committees, as opposed to being alienated and feeling they have to make a point of difference to allow for their re-election.

**F. Require an additional area of Central Canterbury (Selwyn zone) be added to the four proposed constituency areas, but accept this will be subject to a representation review process**

13. With the exception of public transport, the services and functions of Environment Canterbury are predominantly focused upon the rural environment. It is therefore important that the seven elected representatives better reflect this. INZ suggests that the rural area is re-looked at and instead broken down into four rural constituencies (North Canterbury, Central Canterbury, Mid Canterbury and South Canterbury) and Christchurch.

**INZ SUBMISSION ENDS**

SUBMISSION

**We are.  
LGNZ.**

< Strengthening  
local democracy  
and the value of  
local  
government >



# Environment Canterbury Review

Local Government New Zealand's submission to the Government's  
review of Environment Canterbury

May 2015

## Contents

Contents	2
We are. LGNZ.	4
Introduction	4

Our response	4
General comments	5
What is local government?	5
Taxation and representation	6
The Rationale for the Mixed Governance proposal	6
Balancing local representation and specialist skills	6
Complex challenges	7
Specialist skills and expertise	7
Providing for future priorities and challenges	8
Continuity	8
General comments	8
An alternative approach	9
Conclusion	10

## We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver the local government sector's vision: "Local democracy powering community and national success." Our submission is guided by the strength of our commitment to that vision.

## Introduction

Thank you for this opportunity to make a submission on the Government's plan for changing the governance arrangements of Environment Canterbury. We appreciate the opportunity but, at the same time we are disappointed, as the National Party's Local Government Policy Statement published prior to the 2014 election stated:

*We are committed to seeing elections happen but we do not want to lose the gains made by the ECan Commissioners. The options we will propose range from a return to full elections to a mixed model of elected and appointed members.*

Since only one course of action is proposed there is a risk that the Government will be seen to have already made up its mind. It is unfortunate that fully elected options were not discussed in the document.

While we fully support the statement made in the Discussion Paper that future governance arrangements "need to be shaped in a way that avoids a return to ECan's past problems," our submission does not support the Government's proposed mixed governance model. This lack of support should not be seen, in any way, as a criticism of the performance of the current commissioners, who have led Environment Canterbury very well over recent years. As the discussion document notes, the Commissioners have rebuilt relationships with the region's territorial authorities, established a new model for the allocation of water and provided important oversight during the post-quake reconstruction phase. We accept that there will be specific circumstances where democratic models may have to be suspended, but only on the condition that such steps are temporary.

## Our response

LGNZ's disagreement with the introduction of a mixed governance structure for the Canterbury Regional Council is both principled and pragmatic.

**As a matter of principle** it is important to remember that the regional council is a local government, in other words a democratically elected body that levies a local tax and is accountable to local voters and community members. Local governments play an important constitutional role by virtue of their separation from central government. In that sense, they are very different from District Health Boards (DHBs) with differing accountabilities for elected and appointed members.

**From a pragmatic perspective**, we do not believe there is sufficient time to put in place a meaningful and legitimate representative model, whether a fully elected approach or a partly elected approach. There is simply not enough time to develop constituencies that will be meaningful to Cantabrians and even if constituencies are put in place by the legislation it will not smooth the path to full democracy. Consequently, our submission recommends the following:

- The Commissioners' term at Environment Canterbury is extended for another three years until October 2019.
- The Local Electoral Act 2001 (LEA 2001) is amended to reintroduce area weighting to strengthen the representation of rural communities in Canterbury. Consideration should also be given as to whether such weighting should apply to all regional councils.
- A full and comprehensive representation review process is undertaken in the first two years following the 2016 local government elections to ensure fair and effective representation of communities across Canterbury.
- Full democracy is returned to Environment Canterbury by October 2019, or preferably earlier, and that the elections are conducted on the basis of the amended LEA 2001.

LGNZ is guided by a vision that recognises the contribution of local democracy to community and national success. Our submission is in two parts: The first is concerned with the general nature of local government, its relationship with central government and the differences between councils and District Health Boards. The second part addresses specific issues raised in the submission and the practicalities of introducing a mixed governing body for the region.

## General comments

### What is local government?

Parliament is responsible for the legislative and regulatory frameworks that allow for the operation of both central and local government. Each has different but complementary roles. Where central government is charged with protecting and enhancing the interests of the nation, local government has similar objectives concerning regions and localities. Both spheres of government need to play their roles if New Zealand is to continue to prosper.

The well-being of our communities requires collaboration between central and local government in relation to a broad range of issues that range from resilience to employment. Yet, despite the value of working together the constitutional distinction is extremely important as local government contributes to the system of checks and balances that ensure public power and authority is exercised responsibly. It does this by providing citizens with an opportunity to voice diverse views and strengthen the plurality of our democracy. Councils contribute to this in at least two ways:

1. the ability to elect individuals and political groupings that promote policies which may be at odds with the policies held by the government of the day; and
2. The ability to develop and implement policies and programmes to address local issues that are not being effectively addressed by central government agencies.

This role was expressed elegantly by Professor John Roberts, the Emeritus Professor of Public Administration at Victoria University between 1966 and 1988, when he stated:

*The growing power of government, as evidenced by its ever increasing intervention in the economic and social affairs of the people, constitutes another reason for the existence of an efficient system of local authority. Whilst central and local government must share, as collaborative partners, the total task of governing the nation, an effective local government structure is an important counterweight to the growth of central government power.*  
(Professor John Roberts, VUW 1968)

Professor Roberts understood the importance of a strong system of local government that both enabled citizens to have a level of self-government over local affairs and reduced the risk of authority being over-concentrated in any single sphere of government. He was influenced by the American economist Herbert Simon who observed that “a democratic society is only sustainable if power is dispersed.”

## Taxation and representation

One of the fundamental principles underpinning our democracy is the principle of “no taxation without representation.” We trace the emergence of this principle to the Magna Carta which, in countries like New Zealand, has fundamentally influenced the way in which we organise representation and government. The influence was certainly present when the first Municipal Corporations Act was passed by New Zealand’s Legislative Council in 1842 (the second statute enacted in New Zealand) as it was when the citizens of Port Nicholson lobbied Governor Hobson for the right to establish a town council a few years earlier:

*The British law prevails to such an extent as to make the imposition of taxes, without the consent of the people expressed through their representatives, an arbitrary and even an illegal exercise of the sovereign power.*

The concerns raised by the early Wellington settlers are no less important today. LGNZ accepts, reluctantly, that where a major failure in governance has occurred there is a place for appointed commissioners, but only for a limited period. Governing bodies with the right to collect and allocate taxes without being accountable to the people who pay those taxes is both constitutionally and morally unacceptable. Given that this year is the 800<sup>th</sup> anniversary of the Magna Carta it would be concerning if New Zealand was to act in a way that was fundamentally in conflict with its basic premise. It is also worth noting that a number of municipal councils were also signatories to the Magna Carta, which guaranteed them a level of authority to manage local affairs free from intervention from the Crown.

## The Rationale for the Mixed Governance proposal

The Discussion Paper makes the following arguments in favour of the mixed governance model:

1. A mixed model would help ensure the right balance between local representation and specialist skills and expertise for good quality decision-making.
2. A mixed governance model would help to sustain Environment Canterbury’s progress and best provide for future priorities and challenges.

Each of these is discussed below

### Balancing local representation and specialist skills

The Discussion Paper, rightly, notes the level of expert and specialist skills that the Commissioners have brought to Environment Canterbury and highlights the importance of ensuring that such skills are not lost. The Document highlights the DHB model in which the Government selects a proportion of members on the basis of their specific skills to complement the elected board members. While we do not wish to comment on the effectiveness of the DHBs we would like to point out a number of critical differences between boards and councils.

- DHBs are a form of decentralised service providers funded by the Government from the country’s national taxes and are consequently accountable to the Minister of Health, for both financial prudence and performance. The role of elected board members on DHBs is largely concerned with improving responsiveness to local issues and needs, particularly in relation to services where some level of discretion is permitted.

- Councils, by contrast, are primarily democratic bodies that are required to make policy judgements about the effective use of locally and regional raised public resources where accountability is downward focused to voters and local tax payers. The difference in roles between DHBs and councils is also reflected in their relative levels of remuneration.

We cannot agree with the statement on page 23 that reverting Environment Canterbury to a standard regional council would be too significant at this stage to be progressed. To the degree that special resource management powers are required then we see no problem with such powers continuing to be located with the council as a corporate body, regardless of the make-up of the governing body. Environment Canterbury's very competent and experienced staff are more than able to manage such responsibilities.

### **Complex challenges**

The Document argues that it is the complex nature of the challenges facing Environment Canterbury which justify the introduction of the mixed governance approach. The level of complexity is overstated, for example, the reference to the allocation of the anticipated \$330 million of annual expenditure on roading and transport fails to acknowledge that this funding is the responsibility of the territorial authorities, other than the public transport component. We do, however, acknowledge the regional council's role in water management and the implementation of the NPS for Freshwater Management, both of which are complex and important. Other regional councils face these challenges.

A possible challenge for a mixed governance model is remuneration. For example, members of DHBs receive between \$16,000 and \$26,000 per annum, depending upon the size of the population serviced by each board. In contrast, elected members on Environment Canterbury are likely to expect more than \$60,000pa once democracy is restored.<sup>1</sup> Whether elected and appointed members should have the same level of remuneration is an issue yet to be resolved. An argument exists to provide the elected members with higher levels of remuneration on the basis of their additional responsibilities as community representatives.

### **Specialist skills and expertise**

Some comment is required on the statement that "specialist skills and expertise (are) required for good quality decision-making." This issue involves the distinction between governance and management and the nature of our institutional arrangements for making decisions. We do not expect elected representatives to be qualified accountants, qualified engineers or qualified water scientists. Expertise of this nature should be, and is being, provided by officials, whether in-house or contracted. Where necessary councils can, should an area of decision-making require a high level of technical knowledge, delegate responsibility to committees with appointed members. The role of elected members is governance. It is their job to set the direction, resolve differences over values and set priorities and most of all supervise management.

Ensuring elected members understand the nature of their governance role, ask the right questions and have clear expectations about the quality of official advice, is a priority for LGNZ and is a large component of our governance training programme undertaken jointly with the Institute of Directors. With access to support and information, democracy works. We sometimes forget that New Zealand's local governments have been successfully running towns, cities and regions for the last 170 years – we see no evidence to suggest that the democratic model is broken or that governing in today's environment is necessarily more difficult that it would have been in the mid 19<sup>th</sup> Century, for example.

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<sup>1</sup> Actual remuneration will depend upon the application of the Remuneration Authority formula which takes into account population and expenditure. The formula will not have been applied since 2010.

## Providing for future priorities and challenges

The proposal expresses concern that a fully elected body could create a situation in which competing interests and a lack of a shared vision would “once again prevent effective governance and decision-making” and that a path is needed to manage differing urban and rural perspectives. We have a number of concerns with this statement.

- It implies that the mixed governance model is not a temporary measure but is proposed as a permanent arrangement, as presumably the lack of a shared vision would re-occur once the term of the mixed body is concluded.
- The mixed model could lead to greater discord than noted above as there is a possibility that at least the seven elected members will be selected on the platform of returning the councils to full democracy and not cooperating with the appointed members. The result may easily be a repeat of the previous discord.

In LGNZ’s view the answer to both these issues lies in re-establishing full democracy on the basis of a fair and effective representation system that ensure representation of all the region’s communities.

### Continuity

Continuity is advanced as a major rationale for the introduction of a mixed governance model. We are not convinced, and neither are we certain, that the proposed timeline will work.

The proposal appears to suggest that the provision for seven elected members in the 2016 elections will ensure a continuity of approach and philosophy when the council returns to full democracy in (presumably) 2019. Unfortunately, this may not be the case as the constituencies on which those seven members will be elected will not exist in 2019. The new constituencies will be significantly different and there is no guarantee that any of the seven will be returned.

The document also argues for a continuation of appointed members so that the Council’s constructive relationship with mana whenua at both a governance and operational level will continue. We would like to acknowledge the good work that has been achieved by the council and the commissioners on rebuilding the relationship with Māori in the region, however, relationships cannot simply rely on individuals. Relationships must be owned by the council as a whole as individuals, both appointed and elected, change.

The proposal also assumes that central government policies will not change but again this is not a given. A change in government is almost certain to bring a different set of environmental priorities and will inevitably result in a change in the appointed members at Environment Canterbury to reflect the policy preferences of the new Minister and the new government. In our view, long term commitment to an agreed set of outcomes for the region is just as likely, if not more likely, to be achieved through elected representatives operating within the planning and decision-making rules set out in the various statutes that govern the operation of local government.

## General comments

It is a basic principle that accountability for performance, especially in organisations that spend public money, must be clear and unambiguous. Where accountability is ambiguous, people are unable to identify those responsible for particular decisions. Where this is not the case, moral hazard can result as decision-makers are able to act in a manner inconsistent with their organisational mandate, or, in the case of the elected members, the policies on which they were elected.

Mixed governance models make it difficult for voters to assess the performance of their elected representatives as it can be unclear as to where responsibility lies for decisions. How, for example, do voters determine the relative contributions of the appointed and elected members should there be a need to call the council to account for a policy or programme failure? In fact, the lack of clear accountability runs directly counter to government policy over the last few decades which has sought to make accountability more transparent.

The issue is not one that is relevant to DHBs as the boards allocate national taxes which are allocated directly by the Minister of Health, who is clearly responsible for the overall budget and has clear and agreed performance measures that boards must comply with. The argument that the DHB model is applicable to local government shows a great misunderstanding of the differences between DHBs and local authorities and their different accountabilities.

Environment Canterbury is a regional council and as such has a broad purpose to enable democratic local decision-making and action by, and on behalf of, communities, as well as providing good quality local infrastructure and local services to meet the current and future needs of communities. It also has full rights, powers and privileges to enable it to fulfil this purpose. Under the Local Government Act 2002, the role of a regional council is potentially much larger than the environmental and regulatory roles prescribed in the Resource Management Act.

To meet their statutory purpose members of the governing bodies are likely to be faced with making important policy choices that will affect the social and economic future of their regions. Members will be faced with making judgements about the allocation of resources, however, it is not clear appointed members will have a mandate to contribute to these decisions. Ultimately voters provide elected members with the mandate to allocate local taxes on their behalf. The shift to a mixed governance model, certainly if it is to extend beyond a very limited time period, means that regional councils will no longer be a form of local government. Should this occur, legislative change, such as removing the right of such regional bodies to levy a tax, needs to follow.

There are also practical difficulties. The document suggests that the representation review process will occur in early to mid 2016. Unfortunately, this is far too late as representation reviews are required to be completed in August 2015 with the final arrangements confirmed in early April 2016. The timing is essential to allow electoral officers to prepare voting papers and to give prospective candidates the information necessary to assist them to decide whether to stand or not. Given the timing of this consultation, any consequential legislation will need to also include the specific constituencies and number of elected members for each constituency and will need to be enacted ideally by early April 2016.

## **An alternative approach**

Our submission argues against the draft recommendations of the review on both principled and pragmatic grounds. The essence of our pragmatic objections is that the proposed timeframe for putting in place the mixed model is too short and is likely to lead to a less than optimal arrangement. We also note that the failure of the council to undertake a representation review means that a return to full democracy on the basis of the LEA 2001 is now no longer possible as reviews must be completed by mid August this year and given population movement within the region it will be a complex issue to redesign constituencies with substantial popular interest.

Yet, even if a mixed governance approach could be established for the next local government term, attention must be given to the basis on which the 2019 elections will be held. We need a representative system that ensures all communities are fairly represented on regional councils – this is not just an issue for Canterbury.

The discussion document notes that the discord in Environment Canterbury prior to the appointment of commissioners was related to the mix of urban and rural seats on the governing body and the difficulty of forging a uniform vision. This is an issue LGNZ raised when the Government adopted a population formula for setting constituencies in 2002 and we have repeated our concerns on a regular basis since. It is not such an issue for territorial authorities as they are smaller and because they are able to establish community boards to provide representation for areas that otherwise would be under-represented.

Since the amendment of the Local Electoral Act in 2002, regional council constituencies have been defined on a purely population basis, which has resulted in the under-representation of rural communities, especially in regions that contain large urban centres, such as Christchurch and to a degree Hamilton. In the case of Canterbury, the effect of the new representation formula was to increase the number of urban representatives and decrease the number of rural representatives on the regional council even though it is responsible for New Zealand's largest region.

Increasing the level of rural representation through some form of rural weighting (similar to the formula which existed before 2002) should reduce the governance issues faced by Environment Canterbury prior to the appointment of Commissioners and remove the need for Government appointees in the future. LGNZ is happy to work with the Department of Internal Affairs on the design of an alternative formula for determining representation on Environment Canterbury which will ensure that the rural communities of Canterbury will also have an equitable voice around the table of the governing body. Changes in the nature of representation may also require a review of the way in which some regional responsibilities are undertaken.

To put the governance of the Canterbury region on a sustainable footing we recommend the following process:

1. Continue with Commissioners at Environment Canterbury until a full representation review is completed.
2. Amend the Local Electoral Act 2001 during 2016/17 to introduce an area weighting for determining regional council constituencies.
3. Undertake a full and substantial representation review, reviewing both the number of elected members and constituencies during 2017/18.
4. Return the council to full democracy by October 2019 at the latest.

## Conclusion

LGZ finds the argument in support of the mixed governance model for Environment Canterbury unconvincing. It fails to provide a long term solution to the region's governance and risks creating both short term problems and a concerning precedent.

We recommend an alternative approach that will provide a sustainable and democratic leadership for the regional council. New Zealand has had democratically elected local government since the first Municipal Corporations Act of 1842. The suggestion that we are facing challenges more than 170 years later that are too difficult or complex for democratically elected governments to resolve is problematic.

Returning the regional council to full democracy requires putting in place a sustainable representation model that ensures all communities within the regional council's boundaries are adequately represented.

As the submission argues, effective representation is difficult in Canterbury, as in some other regions, due to a distribution of rural and urban populations. As a result, many rural areas are effectively under-represented. Addressing this requires a change to the LEA 2001, the re-introduction of an area weighting

when designing constituencies and sufficient time to undertake an effective representation review.

In concluding our submission we would like to highlight the following statement published by the Government in 2001 which clearly shows local government's unique nature – it is important that this isn't lost.

*Local government's unique proposition is that it has the capacity (within its powers as defined by parliament) to act as the agent of the local community allowing it to make choices that reflect local values and priorities. (DIA 2001)*