

Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill

Government Bill

Explanatory note

General policy statement

Purpose

The purpose of this Bill is to empower Government-appointed commissioners to provide the governance and leadership necessary to rapidly address long standing, systemic, institutional and governance issues with the Canterbury Regional Council (**ECan**). The Bill will provide the commissioners with the necessary powers to enable them to progress as rapidly as possible the development of the Canterbury region's resource management framework.

This Bill will facilitate the timely development of a robust, clear, and effective framework for the management of natural resources—particularly fresh water—in Canterbury. The Bill will also ensure that the implementation and future development of this framework is supported by a well functioning regional council with appropriate systems, structures, and capacity.

Provisions relating to replacement of the governing body of ECan

The Bill will provide for the replacement of ECan's elected council with appointed commissioners who will become the governing body of ECan until the long-standing systemic, institutional, and governance issues are satisfactorily addressed, or until new elected councillors take office following local body elections scheduled for late 2013, whichever is the earlier.

The commissioners will not be able to address these issues before the next triennial election, which is scheduled to be held in October 2010. The Bill will, therefore, defer that election for the Canterbury region.

The commissioners will be expected to provide leadership and direction for institutional change, and leadership to the Canterbury region on resource management matters, specifically those relating to fresh water management.

As the governing body of ECan, the commissioners will have the same statutory duties and powers as the former elected members under the Local Government Act 2002 (LGA), Resource Management Act 1991 (RMA), and other statutes that give regional councils responsibilities. The public consultation and participation requirements of the LGA and RMA will remain in place.

Provisions relating to the additional functions and powers of commissioners

The Bill makes provision for 3 particular aspects of the RMA regime within the jurisdiction of regional councils that are applicable to fresh water management:

- it gives ECan the power to impose moratoria in respect of applications for certain water and discharge permits:
- it sets up a new regime for dealing with applications for water conservation orders in the Canterbury region:
- alters certain aspects of the process for approving regional policy statements or plans.

Moratoria in relation to certain water and discharge permits

The Bill will provide commissioners with the power to impose targeted moratoria, subject to the approval of the Minister for the Environment, to prevent the granting of further resource consents for water takes in groundwater zones and other fresh water resources in Canterbury that are nearing or beyond full allocation. These moratoria will enable commissioners to refuse to accept new applications and to put existing applications on hold in defined areas for a defined time period. These moratoria will not affect applications that have either been decided or are subject to appeals to the Environment Court. Those applications would proceed in accordance with existing statutory processes and criteria. The Bill provides both the commissioners and the Minister for the Environment with the power to revoke a moratorium at any time.

At the end of any moratorium, the Bill requires applications to be processed by reference to any new planning framework that has been put in place. Applicants whose applications were put on hold will be given a period of 6 months after the end of a moratorium to revise their applications in light of the new planning framework without prejudice to their position in the processing queue, with the proviso that the revised application must be similar in scope to the original application. Resource consents that are due to expire during the period in which the Bill is in place will be deemed to continue for a period of 6 months after the end of the moratorium. That additional period of time gives applicants an opportunity to apply for replacement consents against any new planning framework that has been put in place.

Water conservation orders

The Bill requires the Minister for the Environment to direct applications for new water conservation orders (**WCOs**) in Canterbury, and applications to vary or revoke existing water conservation orders in Canterbury, to the commissioners rather than to a special tribunal. The commissioners will follow normal statutory procedures for inviting submissions and conducting hearings, although there will be no provision for submissions (appeals) to the Environment Court on the merit of their recommendations. In addition, the commissioners' rec-

ommendations on water conservation orders will be made against an amended decision-making framework that—

- provides for sustainable management as the primary consideration in determining whether to recommend that an order be made; and
- ensures that appropriate regard is given to the most recently expressed aspirations of the local community, as reflected in the vision and principles of the Canterbury Water Management Strategy (CWMS).

The commissioners' recommendations on water conservation orders will be appealable to the High Court on points of law only. The Minister for the Environment will have the final decision-making role on WCOs in accordance with existing RMA provisions.

In the particular case of the application for a WCO over the Hurunui River, the Bill will promote consistent planning outcomes and avoid the potential need for subsequent revision of the Environment Court's recommendations (and the time, cost, and uncertainty associated with this) by referring the application to the commissioners. The Environment Court process will cease and the commissioners will consider the application, and submissions on it, against the same amended criteria against which applications for new WCOs are to be considered. The original applicant will have an opportunity to revise the application in light of the new decision-making criteria. In order to ensure that the process is equitable, the Bill will allow persons who made submissions to the special tribunal on the original application for a WCO over the Hurunui River (including the parties to the current Environment Court proceedings) to make submissions to the commissioners and to participate in hearings.

Canterbury resource management policy and planning framework

In order to enable the commissioners to address resource management issues in the Canterbury region as rapidly as possible, there will be no provision for appeals on the merit to the Environment Court against the commissioners' decisions on the Canterbury resource management planning and policy framework. However, the Bill does confer a right for specified persons to appeal the commissioners' decisions to the High Court on points of law. Appeals to

the superior courts on the decisions of the High Court will follow normal statutory processes. Any plan variations or plan changes subsequently proposed by the commissioners will be subject to the same revised appeal process (no appeals to the Environment Court on points of merit).

When making decisions on regional plans and policy statements in Canterbury, including any variations or changes subsequently promoted by the commissioners, the commissioners will be required to have particular regard to the most recently expressed aspirations of the regional community on fresh water management, as reflected in the vision and principles of the CWMS.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that the Bill comes into force on the day after the date on which it receives Royal assent.

Part 1

Preliminary provisions

Clause 3 sets out the purpose of the Bill.

Clause 4 is the general interpretation provision (there is another, in *Part 3*, for that Part only). Two terms defined in *clause 4* are critical to understanding the timeframe of the Bill: replacement day and resumption day. The replacement day is the day on which the commissioners appointed under the Bill assume responsibility for the governance of ECan. The resumption day is the day on which the members elected at the **next election** (itself a defined term) resume governance of ECan. Because the Bill in *clause 22* defers the local body elections that would otherwise be held in October 2010 in respect of ECan, **next election** means the next election after the deferred election (which in default of an election called before October 2013 will be the 2013 election).

Clause 5 provides that the Bill binds the Crown.

Clause 6 provides for the staggered expiry and repeal of various provisions of the Bill, and finally, by Order in Council, the repeal of the balance of the Bill.

Part 2

Replacement of governing body of ECan

Clause 7 sets out what *Part 2* of the Bill does. Broadly, *Part 2* deals with the technicalities of appointing commissioners to undertake the governance of ECan for a limited period in place of the elected members.

Termination of office of elected members

Clause 8 provides for the replacement day, the day on which the commissioners assume office. The responsible Ministers must determine the replacement day.

Clause 9 removes the elected members of ECan holding office immediately before the replacement day. They cease to hold office at the close of the day before the replacement day, so that there is no overlap with the commissioners.

Appointment of commissioners

Clauses 10 to 19 focus on the details of the appointment of commissioners. They include the steps that must be taken to appoint the commissioners (*clause 12*), the requirement that the commissioners must have collective knowledge and expertise in certain matters (*clause 14*), their term of office (*clause 17*), and their remuneration (*clause 18*).

Functions of commissioners

Clause 20 constitutes the commissioners as the governing body of ECan for the term of their office with the functions, responsibilities, duties, and powers set out in that clause.

Clause 21 requires the commissioners to establish a process for seeking advice from the mayors of the territorial authorities in the Canterbury region.

2010 election for members of ECan

Clause 22 defers the October 2010 election that would otherwise be held in respect of ECan.

Next election

Clause 23 provides that the members elected at the next election come into office on the resumption day.

Application of other enactments

Clauses 24 to 26 are technical provisions ensuring that the provisions of *Part 2* of this Bill dovetail with the LGA and the Local Electoral Act 2001.

Saving and transitional provisions

Clauses 27 and 28 are saving and transitional provisions.

Part 3

**Additional functions and powers of ECan
after commencement day**

Subpart 1—Preliminary matters

Clause 29 sets out what each of the 4 subparts of *Part 3* does. Broadly, *Part 3* provides new functions and powers for ECan in addition to certain of its existing functions as they relate to fresh water management.

Clause 30 provides that Part 2 of the RMA applies to the exercise by ECan of its functions and powers under this Bill.

Clause 31 confers a power for certain transitional regulations to be made.

Subpart 2—Moratoria on specified
applications

Imposition of moratorium

Clause 32 provides that this subpart applies in addition to the RMA.

Clause 33 defines the terms specified application, permit, and relevant regional plan for this subpart.

Clause 34 provides a power for ECan to impose moratoria over certain kinds of applications for water and discharge permits in relation to any area of the Canterbury region. The matters relevant to making

decisions in relation to the use of this power include the vision and principles of the CWMS.

Clauses 35 and 36 relate to the notification of a moratorium and the power to end a moratorium. Before a moratorium is brought to an end, ECan (or the Minister, if directing that a moratorium be brought to an end) must have regard to the adequacy of the applicable regional plan or proposed plan relating to the management of fresh water.

Effect of moratorium

Clauses 37 to 40 spell out the effect of a moratorium on applications for permits, depending on whether an application is made before a moratorium comes into force, during the currency of a moratorium, or after the end of a moratorium. In general, the existence of a moratorium means that consideration of an application is deferred until 6 months after the end of the moratorium, unless a hearing has commenced or there is to be no hearing of an application. In a case where a request has been made under section 87D of the RMA for the Environment Court, rather than ECan, to determine an application, and that request is granted before a moratorium is in force, the moratorium is of no effect.

Treatment of specified applications at end of moratorium

Clauses 41 to 43 set out the process for the consideration of applications at the end of a moratorium. Applicants must be given the opportunity to revise and lodge their applications again, enabling them to take into account any changes to the applicable regional plan or proposed plan. Whether or not applications have been revised, they must be considered by ECan at the end of the period of 6 months from the end of a moratorium, under the relevant region plan or proposed plan that applies at the time the application is considered. A revised application, if within the scope of the application as first lodged and if it is revised no more than is necessary to take account of changes made to the relevant plan, is to be treated as having been received on the date it was first lodged. *Clause 43* clarifies the application of sections 124 to 124C of the RMA.

Exclusions

Clause 44 excludes the payment of compensation by the Crown or ECan in relation to the application of this subpart.

Clause 45 excludes sections 76 to 82 of the Local Government Act 2002 (which relate to decision-making processes of local authorities under that Act) from applying to ECan in the performance of its functions and exercise of its powers under this subpart.

Subpart 3—Water conservation orders

Clause 46 excludes the application of Part 9 of the RMA to applications under this subpart for Canterbury WCOs. This exclusion operates from the commencement day to the close of the resumption day, whether or not the WCO application is made before, on, or after the commencement day. Despite that general exclusion, section 217 of the RMA continues to apply to a Canterbury WCO. The clause also provides that certain provisions of the Bill continue to apply after the resumption day, as a transitional measure.

Provisions relating to the processing of applications

Clauses 47 to 49 provide for the application of section 201 of the RMA to how WCO applications are to be lodged, the processing of applications by the Minister, and the responsibility of ECan to notify any application submitted for its consideration by the Minister.

Criteria and process for consideration of applications

Clause 50 provides the criteria to be applied by ECan in considering whether to recommend that the Minister reject the application or make a Canterbury WCO. ECan must, subject to Part 2 of the RMA, have particular regard to the specified matters (which replicate the matters set out in section 199 of the RMA) and the vision and principles of the CWMS, and also have regard for the matters set out in section 207(a) and (b) of the RMA.

Under *clause 51*, sections 205, 206, and 208 of the RMA apply to the submission, hearing, and reporting processes of ECan.

Appeals on questions of law only

Clauses 52 to 55 exclude the jurisdiction of the Environment Court under this subpart but confer a right of appeal to the High Court, but only on questions of law, setting out the persons to whom this right applies, with a further right of appeal to the Court of Appeal.

Making or declining to make WCO

Clauses 56 and 57 provide for the application of the relevant provisions of the RMA, with the necessary modifications, to the making of a Canterbury WCO and for the prohibitions and restrictions that may be imposed on the exercise of ECan's functions by a WCO.

Revocations and variations

Clause 58 applies section 216(1) and (2) to applications to revoke or vary a Canterbury WCO, and gives the Minister the power, in certain circumstances, to make a recommendation without submitting the application to ECan.

Delegations under this subpart

Clause 59 clarifies the delegations able to be made by ECan under this subpart.

Transitional matters

Clause 60 sets out the transitional matters covered in the 2 Parts of *Schedule 2*.

**Subpart 4—Process for approval of proposed
regional policy statements or plans***Preliminary matters*

Clause 61 defines the term proposed regional policy statement or plan.

Clause 62 specifies that the provisions of the RMA apply as far as they are relevant to any proposed policy statement or plan, but this application does not override the transitional provision of section 161 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 that provides for a proposed policy statement or plan

notified before 1 October 2009 to be determined under the RMA before it was amended by that Act.

Additional criteria for decision-making

Under *clause 63*, ECan must have particular regard to the vision and principles of the CWMS, in addition to the matters relevant under the RMA.

Procedural arrangements

Clause 64 provides that *clauses 65 to 68* apply only to decisions made by ECan under clause 10 of Schedule 1 of the RMA in respect of which ECan must have particular regard to the vision and principles of the CWMS.

Clause 65 provides for notification of decisions made under clause 11, and *clauses 66 to 68* exclude the jurisdiction of the Environment Court but set out the right of appeal on questions of law to the High Court, with a further right of appeal to the Court of Appeal.

Transitional provision

Clause 69 makes provision for transitional procedures if a proposed regional policy statement or plan is already under consideration before the commencement day and after that day ECan cancels delegations that applied while the policy statement or plan was under consideration. The clause protects the integrity of the planning process if the criteria for consideration of a policy statement or plan are changed as a result of the commencement or expiry of subpart 4.

There are 2 schedules. *Part 1 of Schedule 1* replicates the vision and principles included in the document known as the *Canterbury Water Management Strategy—Strategic Framework*, dated November 2009. *Part 2* describes the status and preparation of that document.

Part 1 of Schedule 2 sets out transitional arrangements applying to WCO applications the consideration of which has not been completed before the resumption day. *Part 2 of Schedule 2* provides transitionally for the Hurunui WCO application. The RMA process for that application ceases on the commencement day and the provisions of *Part 2 of Schedule 2* apply instead to that application.

Regulatory impact statement

In accordance with Cabinet Office Circular CO (09) 08 this explanatory note does not contain a regulatory impact statement for the Bill. A copy of the regulatory statement for the Bill can be found at the following website:

- <http://www.treasury.govt.nz/publications/informationreleases/ris>:
 - <http://www.mfe.govt.nz/laws/ris/ris-ecan.html>
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Hon Nick Smith

**Environment Canterbury
(Temporary Commissioners
and Improved Water Management)
Bill**

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act **2010**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.

**Part 1
Preliminary provisions**

- 3 Purpose**
The purpose of this Act is to—
- (a) provide for the replacement of the elected members of the Canterbury Regional Council with commissioners who will act as the Council’s governing body until new elected members come into office following the next election; and
 - (b) provide the Council with certain powers that it does not otherwise have to address issues relevant to the efficient, effective, and sustainable management of fresh water in the Canterbury region.
- 4 Interpretation**
- (1) In this Act, unless the context otherwise requires,—
- 2013 election** means the triennial general election of members of ECan that (subject to section 11 of the Local Electoral Act 2001) must be held on the second Saturday in October 2013
- Canterbury region** means the region of ECan
- Canterbury WCO** or **WCO** means a water conservation order in respect of a water body in the Canterbury region
- commencement day** means the day on which this Act comes into force
- commissioner** means a person appointed under **section 10 or 15**

CWMS means the *Canterbury Water Management Strategy—Strategic Framework*, November 2009

Environment Canterbury or **ECan** means the Canterbury Regional Council constituted by the Local Government (Canterbury Region) Reorganisation Order 1989 (*Gazette*, 1989, p 2296)

Hurunui WCO application has the meaning given in **Part 2 of Schedule 2**

Minister means the Minister for the Environment

Minister of Local Government means the Minister who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Local Government Act 2002

next election means the next general election of members of ECan held under section 8 of the Local Electoral Act 2001 after the commencement of this Act or the 2013 election, whichever occurs first

permit has the meaning given in **section 33**

proposed regional policy statement or plan has the meaning given in **section 61**

replacement day means the day determined under **section 8**

responsible Ministers means the Minister and the Minister of Local Government

resumption day means the day after the day on which the candidates for membership of ECan in the next election are declared to be elected or, if there is more than 1 day, the last of those days

RMA means the Resource Management Act 1991

specified application has the meaning given in **section 33**

vision and principles of the CWMS—

- (a) means the text of the vision and principles included in the CWMS—
 - (i) as reproduced in **Part 1 of Schedule 1**; and
 - (ii) the status and preparation of which are described in **Part 2 of Schedule 1**; but
- (b) does not include any amendments to that text

WCO application means an application—

- (a) for a Canterbury WCO; and
 - (b) to revoke or vary a Canterbury WCO.
- (2) To avoid doubt, the inclusion of the vision and principles of the CWMS in **Part 1 of Schedule 1** does not accord to the CWMS or its vision and principles any status in law other than as provided in this Act.
- (3) Any term or expression that is defined in the Local Government Act 2002 and used, but not defined, in **Part 2** of this Act has the same meaning as in the Local Government Act 2002.
- (4) Any term or expression that is defined in the RMA and used, but not defined, in **Part 3** of this Act has the same meaning as in the RMA.
- (5) This Act prevails where there is any inconsistency between this Act and the RMA, the Local Electoral Act 2001, or the Local Government Act 2002.

5 Act binds the Crown

This Act binds the Crown.

6 Expiry and repeal

- (1) The following provisions expire and are repealed on the close of the day before the resumption day:
- (a) **Part 2**, except **section 23**; and
 - (b) **subpart 2 of Part 3**, except **sections 33 and 37 to 44**; and
 - (c) **subpart 3 of Part 3**, except **sections 52 to 55 and 60**; and
 - (d) **subpart 4 of Part 3**, except **sections 64 to 69**; and
 - (e) **Schedule 1**.
- (2) **Section 23** expires and is repealed on the close of the resumption day.
- (3) The rest of the Act expires and is repealed on a date to be appointed by the Governor-General by Order in Council.

Part 2

Replacement of governing body of ECan

7 What this Part does

This Part—

- (a) sets out the procedure to be followed in terminating the office of the elected members of ECan and replacing them on the replacement day with commissioners; and
- (b) prescribes the functions of those commissioners; and
- (c) defers the next triennial general election of members of ECan; and
- (d) sets out how this Part fits with the Local Electoral Act 2001 and the Local Government Act 2002.

Termination of office of elected members

8 Replacement day

The responsible Ministers must determine the replacement day and give notice of it—

- (a) in the *Gazette*; and
- (b) to the elected members of ECan.

9 Elected members cease to hold office on close of day before replacement day

- (1) On the close of the day before the replacement day, the elected members of ECan then holding office (the **elected members**) cease to hold office.
- (2) This section applies no matter what the Local Electoral Act 2001 or the Local Government Act 2002 may say.
- (3) An elected member is not entitled to any compensation or other payment or benefit for the loss of office.

Appointment of commissioners

10 Appointment of commissioners

The responsible Ministers must, in accordance with **sections 12 and 14**, appoint 4 to 7 commissioners as the governing body of ECan.

11 First appointment of commissioners takes effect on replacement day

The first appointment of commissioners takes effect on the replacement day.

12 How appointment of commissioners made

- (1) The responsible Ministers must make the appointment by giving the person appointed a written notice of appointment that complies with **subsection (2)**.
- (2) The notice of appointment must—
 - (a) state the date on which the appointment takes effect (which must be the replacement day in the case of the first appointment of commissioners); and
 - (b) state the term of the appointment; and
 - (c) specify the terms of reference for the commissioners.
- (3) As soon as practicable, the responsible Ministers must—
 - (a) notify the appointment (including the terms of reference for the commissioners) in the *Gazette*; and
 - (b) give a copy of the notice of appointment to ECan.
- (4) More than 1 commissioner may be appointed in the same notice of appointment.

13 Amendment of terms of reference for commissioners

The responsible Ministers may at any time amend the terms of reference for the commissioners and as soon as practicable after amendment the responsible Ministers must—

- (a) notify the commissioners of the amended terms of reference; and
- (b) publish the amended terms of reference in the *Gazette*.

14 Commissioners must have collective knowledge and expertise in certain matters

- (1) The responsible Ministers must appoint commissioners who collectively have knowledge of, and expertise in relation to, the following matters:
 - (a) organisational change; and
 - (b) fresh water management; and
 - (c) local authority governance and management; and

- (d) tikanga Māori, as it applies in the Canterbury region; and
 - (e) the Canterbury region and its people.
- (2) However, nothing in **subsection (1)** affects the validity of the appointment of a commissioner once made.

15 Subsequent appointment of commissioners

- (1) The responsible Ministers may appoint additional commissioners after the first appointment of commissioners, except that the total number of commissioners must not be more than 7.
- (2) The responsible Ministers may appoint a commissioner to replace a commissioner who vacates office.
- (3) **Sections 12 and 14** apply to the appointment of an additional commissioner or a commissioner to fill a vacancy.

16 Chairperson and deputy chairperson of commissioners

- (1) The responsible Ministers must appoint 1 of the commissioners to be the chairperson of the commissioners.
- (2) The responsible Ministers must appoint 1 of the commissioners to be the deputy chairperson of the commissioners.
- (3) The responsible Ministers must make each appointment by giving the person appointed a written notice of appointment.
- (4) As soon as practicable, the responsible Ministers must—
- (a) notify the appointment in the *Gazette*; and
 - (b) give a copy of the notice of appointment to ECan.
- (5) The responsible Ministers may terminate the appointment of a commissioner as chairperson or deputy chairperson by written notice to that person.

17 Term of office

- (1) The term of office of a commissioner ends when the commissioner vacates office or on the close of the day before the resumption day, whichever occurs first.
- (2) A commissioner vacates office if he or she—
- (a) is removed by written notice given by the responsible Ministers; or

- (b) resigns by written notice given to the responsible Ministers.
- (3) The responsible Ministers may in their complete discretion remove a commissioner by written notice at any time.
- (4) As soon as practicable, the responsible Ministers must—
 - (a) notify the removal or resignation of a commissioner in the *Gazette*; and
 - (b) give a copy of the notice of removal or resignation to ECan.

18 Commissioners' remuneration and expenses

- (1) A commissioner is entitled to be paid—
 - (a) remuneration by way of salary, fees, and allowances at a rate determined by the responsible Ministers; and
 - (b) travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951.
- (2) ECan must pay out of its own funds all expenditure incurred by a commissioner in carrying out his or her functions under this Act or any other Act, including the remuneration, allowances, and expenses to which the commissioner is entitled under **subsection (1)**.

19 Exclusion of commissioners' liability

A commissioner is not liable for any act done or omitted to be done by him or her in good faith in the performance or intended performance of his or her functions, responsibilities, or duties as a commissioner, or in the exercise or intended exercise of his or her powers as a commissioner.

Functions of commissioners

20 Commissioners constitute governing body of ECan

During their term of office, the commissioners constitute the governing body of ECan and must—

- (a) perform all the functions, responsibilities, and duties, and exercise all the powers, of the governing body; and
- (b) perform any other functions, responsibilities, or duties specified in the terms of reference for the commissioners; and

- (c) exercise the powers and perform the functions set out in **Part 3**; and
- (d) comply with the terms of reference for the commissioners.

21 Commissioners must establish advice process

The commissioners must as soon as practicable establish a process for seeking advice from the mayors of the territorial authorities in the Canterbury region on local issues that affect the exercise of the powers, and the performance of the functions, of ECan.

2010 election for members of ECan

22 2010 election for members of ECan must not be held

- (1) The triennial general election of members of ECan that would otherwise be held on the second Saturday in October 2010 (the **2010 election**) must not be held and to that extent section 10(2) of the Local Electoral Act 2001 does not apply.
- (2) A notice given by an electoral officer in respect of the 2010 election under section 52 of the Local Electoral Act 2001 is of no force or effect.
- (3) If a notice referred to in **subsection (2)** has been given before the commencement of this section, the electoral officer must as soon as practicable give public notice that the 2010 election will not be held.

Next election

23 Members of ECan elected at next election

- (1) The members of ECan elected at the next election come into office on the resumption day.
- (2) **Subsection (1)** prevails over section 115(2) of the Local Electoral Act 2001.
- (3) If the next election is an election held under section 8 of the Local Electoral Act 2001, the provisions of that Act that apply to a triennial general election apply also to the next election held under section 8.

Application of other enactments

24 References to members, chairperson, and deputy chairperson

- (1) During the term of office of the commissioners, every reference in the Local Government Act 2002 and any other Act to—
- (a) a member or an elected member of a local authority must, in relation to ECan, be read as referring to a commissioner; and
 - (b) the chairperson of a regional council must, in relation to ECan, be read as referring to the chairperson of the commissioners appointed under **section 16(1)**; and
 - (c) the deputy chairperson of a regional council must, in relation to ECan, be read as referring to the deputy chairperson of the commissioners appointed under **section 16(2)**.
- (2) This section applies subject to **sections 25 and 26**.

25 Provisions of Local Government Act 2002 that do not apply

The following provisions of the Local Government Act 2002 do not apply to the commissioners or in respect of ECan during the commissioners' term of office:

- (a) section 41(1);
- (b) any provision relating to the election or appointment of, or vacation of office by, the members, chairperson, or deputy chairperson of a regional council, including section 48(a) and (d) and clauses 1 to 5, 17, 18, 25, and 26(4) of Schedule 7;
- (c) any provision relating to the remuneration of members, including section 48(b) and clauses 6 to 13 of Schedule 7;
- (d) clauses 14 and 21 of Schedule 7.

26 Provisions of Local Electoral Act 2001 that do not apply

- (1) The following provisions of the Local Electoral Act 2001 do not apply to the commissioners or in respect of ECan during the commissioners' term of office:
- (a) section 19D:

- (b) any provision relating to the election or appointment of, or vacation of office by, the members of a regional council, including sections 115(3), 116, and 117.
- (2) However, nothing in **subsection (1)** prevents any step being taken that must be taken under the Local Electoral Act 2001 for the purposes of the next election.

Saving and transitional provisions

27 Saving for acts of elected members of ECan

Nothing in this Act affects the validity of anything done by a person in his or her capacity as an elected member of ECan before the replacement day.

28 Continuation of committees and delegations

Nothing in this Act affects the continuation on the replacement day of—

- (a) the business or membership of any committee or other subordinate decision-making body of ECan; or
- (b) delegations by ECan.

Part 3

**Additional functions and powers of ECan
after commencement day**

Subpart 1—Preliminary matters

29 What this Part does

This Part—

- (a) provides, in **subpart 1**, for the application of the purpose and principles of Part 2 of the RMA to the performance of functions and exercise of powers by ECan under this Part and confers the power to make transitional regulations; and
- (b) confers, in **subpart 2**, a power for ECan to impose 1 or more moratoria on specified applications made under the RMA for certain permits; and
- (c) in **subpart 3**, largely replaces Part 9 of the RMA for the purposes of Canterbury WCOs; and

- (d) in **subpart 4**, alters the processes and criteria that apply to the consideration of proposed regional policy statements or plans for the Canterbury region.

30 Application of Part 2 of RMA to this Part

Part 2 of the RMA applies to the performance and exercise by ECan of its functions and powers under this Part.

31 Transitional regulations

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations to—

- (a) prescribe provisions concerning the commencement or duration of the powers and functions of ECan, which may be in addition to or in place of the provisions of this Part;
- (b) provide that, subject to any conditions specified in the regulations, in respect of this Part,—
 - (i) for a specified period of time or in specified circumstances, specified provisions of the RMA (including definitions)—
 - (A) do not apply, despite being applied under this Act; or
 - (B) do apply, despite not applying under this Act;
 - (ii) specified terms have the meaning given to them by the regulations;
- (c) provide for the application of provisions of this Part, with any necessary modifications, despite their expiry and repeal under **section 6**;
- (d) provide for the expiry of any regulations made under this section.

Subpart 2—Moratoria on specified
applications

32 Application of RMA under this subpart

This subpart applies in addition to the RMA, except as otherwise expressly provided.

33 Interpretation

In this subpart,—

permit means a permit within the meaning of **paragraph (a)** of the definition of specified application

relevant regional plan means any regional plan or proposed regional plan relevant to the management of fresh water in an area of the Canterbury region

specified application—

- (a) means an application in relation to the Canterbury region for—
 - (i) a water permit that allows the taking, use, damming, or diverting of—
 - (A) water that would otherwise contravene section 14(2)(a) of the RMA; or
 - (B) heat or energy from water or the material surrounding geothermal water that would otherwise contravene section 14(2)(b) or (c) of the RMA;
 - (ii) a discharge permit that allows a discharge of any—
 - (A) contaminant or water into water that would otherwise contravene section 15(1)(a) of the RMA; or
 - (B) contaminant onto or into land that would otherwise contravene section 15(1)(b) of the RMA; and
- (b) includes an application to change or cancel any conditions of a permit referred to in **paragraph (a)**.

Imposition of moratorium

34 Power to impose moratorium on specified applications

- (1) ECan may, with the prior approval of the Minister, impose a moratorium on specified applications in relation to 1 or more areas of the Canterbury region.
- (2) In determining whether to impose or approve a moratorium in relation to an area of the Canterbury region, ECan and the Minister must have regard to—
 - (a) the vision and principles of the CWMS; and

- (b) the extent to which the fresh water of that area—
 - (i) is subject to high or increasing demand or to diminishing quality; or
 - (ii) is fully allocated, nearing full allocation, or over-allocated; and
 - (c) any other relevant matter.
- (3) The effect of a moratorium is set out in **sections 37 to 40**.

35 Notification of moratorium

ECan must give public notice and notice in the *Gazette* of a moratorium, specifying—

- (a) the area of the Canterbury region to which the moratorium applies; and
- (b) the date on which it commences; and
- (c) the date on which it ends (which must not be later than the day before the resumption day), unless ended sooner under **section 36**.

36 Power to end moratorium

- (1) ECan may end a moratorium at any time in any area to which the moratorium relates, or the Minister may direct ECan to end the moratorium.
- (2) A moratorium may be ended in relation to a part or the whole of the area to which it applies.
- (3) In determining whether to end, or to direct the end of, a moratorium, ECan or the Minister, as the case may be, must have regard to the adequacy of any relevant regional plan for the area to which the moratorium relates.
- (4) ECan must give public notice and notice in the *Gazette* of the end of a moratorium, specifying—
 - (a) the area of the Canterbury region to which the moratorium applies; and
 - (b) if the moratorium will not end in respect of the whole of that area, the part of the area in respect of which the moratorium will end; and
 - (c) the date on which the moratorium will end.

Effect of moratorium

37 Effect of moratorium on specified applications made during currency, or after end, of moratorium

- (1) This section applies to a specified application made to ECan in respect of an area where a moratorium—
 - (a) is in force; or
 - (b) has been in force within 6 months prior to that application being made.
- (2) If the specified application is made while a moratorium is in force, ECan—
 - (a) must not begin to process the application; and
 - (b) must return the application and any fee accompanying it to the applicant as soon as practicable.
- (3) If the specified application is made at any time during the period that ends 6 months after the end of a moratorium, ECan must not begin to process the application until after the end of that period.

38 Specified applications made before moratorium in force

- (1) In the case of specified applications made to ECan before a moratorium comes into force in respect of the area to which the application relates, ECan must not continue to process or determine an application any earlier than the end of the period that ends 6 months after the end of the moratorium.
- (2) However, ECan must continue to process and determine a specified application as if there were no moratorium in force if, before a moratorium comes into force, ECan has decided in respect of the application that—
 - (a) a hearing must be held and the hearing has commenced or been completed; or
 - (b) no hearing is required.

39 Effect of moratorium on applications for which request is made under section 87D of RMA

- (1) This section applies if, before a moratorium is in force in an area to which a specified application relates, the applicant requests ECan under section 87D of the RMA to allow the ap-

plication to be determined by the Environment Court instead of by ECan.

- (2) The specified application is to be treated as one to which **section 38(1)** applies if, before a moratorium comes into force, ECan—
 - (a) declines the request; or
 - (b) has not made a decision on the request.
- (3) However, if ECan decides under section 87E of the RMA to grant a request before a moratorium comes into in force, the moratorium is of no effect in respect of the specified application to which the request relates, unless **subsection (4)** applies.
- (4) If section 87I of the RMA applies, the specified application must be treated as an application to which **section 38(1)** applies.

40 Effect of moratorium on permits granted before moratorium in force

- (1) **Subsection (2)** applies if a permit—
 - (a) has been granted (whether before or after the commencement day) in relation to an area of the Canterbury region where a moratorium subsequently comes into force; and
 - (b) is due to expire during, or within 6 months after the end of, the moratorium.
- (2) The permit is to be treated as expiring on the date that is 6 months after the end of the moratorium.

Treatment of specified applications at end of moratorium

41 Specified applications held over during moratorium may be revised

- (1) If the processing of a specified application is interrupted under **section 38(1)** during a moratorium, the applicant may, in the period commencing with the end of the moratorium and ending 6 months later,—

- (a) revise the application to take account of any changes made to the relevant regional plan since the application was first made; and
 - (b) lodge any revised application again with ECan.
- (2) Not later than 5 working days before the end of a moratorium, ECan must give notice to any applicant whose application is affected in the manner referred to in **subsection (1)**, advising the applicant—
 - (a) of the date on which the moratorium will end; and
 - (b) of the applicant’s right to revise the application and lodge it again with ECan.
- (3) **Subsection (1)(a)** permits revision of a specified application only if, and to the extent that, the application—
 - (a) is revised no more than is necessary to take into account changes made to the relevant regional plan since the application was first lodged; and
 - (b) remains within the scope of the application as it was first lodged.

42 Process to apply to specified applications after end of moratorium

- (1) On the day that is 6 months after the end of a moratorium, ECan must—
 - (a) resume processing any specified applications to which **section 38(1)** applies, including any applications revised and lodged again as permitted by **section 41(1) and (3)**; and
 - (b) process those applications—
 - (i) as having been received on the date that the original application was first lodged; but
 - (ii) under any relevant regional plan applying at the time when the application is considered.
- (2) On the day that is 6 months after the end of a moratorium, ECan must commence processing, in accordance with **subsection (3)**, any specified application to which—
 - (a) **section 37(3)** applies; or
 - (b) **section 38(1)** applies, if the application has been revised, but not in accordance with **section 41(3)**.

- (3) ECan must process an application to which **subsection (2)** applies—
- (a) as if it were a new application made—
 - (i) on the day it was first lodged, in the case of an application to which **subsection (2)(a)** refers;
 - (ii) on the day it was lodged again, in the case of an application to which **subsection (2)(b)** refers; and
 - (b) under any relevant regional plan applying at the time when the application is considered.
- (4) **Subsections (1)(b)(ii) and (3)(b)** apply instead of section 88A of the RMA.

43 Application of certain provisions of RMA

- (1) Section 124(3) of the RMA applies to a permit that is extended by the operation of **section 40**, but only if the holder of the permit applies to ECan for a new permit—
- (a) for the same activity; and
 - (b) on or before the day that the existing permit expires under **section 40(2)**.
- (2) If a specified application is made in the circumstances described in **subsection (1)**,—
- (a) for the purposes of sections 124A to 124C of the RMA, the application is one that is affected by section 124 of that Act; and
 - (b) the references in section 124C(4) and (5) to an application being made more than 3 months before the expiry of the consent must be read as a reference to an application being made on or before the day that the permit is to be treated as expiring under **section 40(2)**.

Exclusions

44 No compensation

No compensation is payable by the Crown or ECan to any person for any loss or damage arising from the application of this subpart.

45 Provisions of Local Government Act 2002 that do not apply

Nothing in sections 76 to 82 of the Local Government Act 2002 applies to ECan in relation to its functions and powers under this subpart.

Subpart 3—Water conservation orders

46 Part 9 of RMA does not apply except as otherwise stated

- (1) Except as expressly provided in this subpart, this subpart applies instead of Part 9 of the RMA to every application for a Canterbury WCO—
 - (a) on and from the commencement day; and
 - (b) until the close of the day before the resumption day.
- (2) **Subsection (1)** applies whether an application is made before, on, or after the commencement day.
- (3) **Subsection (1)** does not limit or otherwise affect the application of section 217 of the RMA to a Canterbury WCO.
- (4) Despite **subsection (1)**, the following provisions continue to apply on and from the resumption day:
 - (a) **sections 52 to 55** (which remove the jurisdiction of the Environment Court in relation to Canterbury WCO applications and provide instead for a right of appeal to the High Court on a question of law); and
 - (b) **section 60** (which provides for the transitional arrangements set out in **Schedule 2**).

Provisions relating to the processing of applications

47 Applications to Minister under section 201 of RMA

- (1) Section 201 of the RMA applies to every application for a Canterbury WCO.
- (2) The application must state the reasons for the application with reference, as appropriate, to the matters provided for in **sections 50(2) and 57(2)** instead of those referred to in section 201(2)(b) of the RMA.

48 Processing of applications

- (1) After receiving a WCO application and any further information that the Minister may require, the Minister—
 - (a) may make any inquiry that the Minister considers necessary; and
 - (b) as soon as practicable, must either—
 - (i) reject the application; or
 - (ii) submit the application to ECan to hear and report on.
- (2) The Minister must notify the applicant—
 - (a) that the application has been rejected, and the reasons for the rejection; or
 - (b) that the application is to be heard and reported on by ECan under this Act.

49 ECan to notify applications

- (1) As soon as practicable after receiving an application from the Minister under **section 48(1)(b)(ii)**, ECan must comply with section 204 of the RMA as if every reference in that section to a special tribunal were a reference to ECan.
- (2) The notice required by section 204(1)(c) is not required to be served on ECan.

*Criteria and process for consideration of
applications*

50 Consideration of applications by ECan

- (1) After considering a WCO application submitted by the Minister under **section 48(1)(b)(ii)** and any submissions and other information relevant to the application, ECan must determine whether to recommend that the Minister should—
 - (a) reject the application; or
 - (b) recommend to the Governor-General that a Canterbury WCO be made under section 214 of the RMA, as applied by **section 56**.
- (2) In considering whether to recommend to the Minister that a WCO be made, ECan must, subject to Part 2 of the RMA,—
 - (a) have particular regard to—

- (i) the matters set out in **subsections (3) and (4)**; and
 - (ii) the vision and principles of the CWMS; and
- (b) have regard to the matters specified in section 207(a) to (c) of the RMA.
- (3) ECan may recommend to the Minister that a WCO be made to recognise and sustain—
 - (a) outstanding amenity or intrinsic values that are afforded by waters in their natural state; or
 - (b) where waters are no longer in their natural state, the amenity or intrinsic values of those waters that in themselves warrant protection because they are considered outstanding.
- (4) Section 199(2) of the RMA applies to a WCO recommended by ECan.

51 Submissions, hearing, and report

Sections 205, 206, and 208 of the RMA (which provide for submissions, a hearing, and reporting in relation to an application) apply to a WCO application made under this subpart as if—

- (a) every reference to a special tribunal were a reference to ECan; and
- (b) the references in section 205(3)(d) and (5) of the RMA to the matters in sections 199, 200, and 207 of that Act were references to the matters referred to in **sections 50(2) and 57(2)**; and
- (c) section 208(2)(c) of that Act excluded the reference to the regional council.

Appeals on question of law only

52 Jurisdiction of Environment Court excluded

The Environment Court has no jurisdiction under this subpart and no person may make a submission to the Environment Court in respect of a report prepared and notified by ECan under **section 51**.

53 Right of appeal to High Court on question of law

- (1) The persons listed in **subsection (2)** may appeal to the High Court, but only on a question of law, in respect of the whole or a part of a report of ECan recommending that—
 - (a) a WCO application be declined; or
 - (b) a Canterbury WCO be made on the terms of the draft order included in that report.
- (2) The persons are—
 - (a) the person who applied for the Canterbury WCO to which the report relates;
 - (b) a territorial authority whose district may be affected by the proposed Canterbury WCO;
 - (c) a person who made a submission to ECan on the application;
 - (d) any other person granted leave to appeal by the High Court on the ground that the person could not reasonably be expected to know that the report of ECan would affect the person or an aspect of the public interest that the person represents.

54 Provisions of RMA applying to appeal procedure

- (1) Sections 300 to 307 of the RMA apply to an appeal under **section 53**, with the necessary modifications including, in particular, as if every reference to the Environment Court or the Registrar of that court were a reference to ECan.
- (2) The High Court Rules apply if a procedural matter is not provided for by or under those sections.

55 Appeal to Court of Appeal

Section 144 of the Summary Proceedings Act 1957 applies to a decision of the High Court on an appeal under **section 53** as if the decision had been made under section 107 of the Summary Proceedings Act 1957.

*Making or declining to make WCO***56 Application of sections 214 and 215 of RMA**

Sections 214 and 215 of the RMA apply, with the necessary modifications, to making or declining to make a Canterbury WCO as if—

- (a) every reference to a report of a special tribunal under section 208 of the RMA were a reference to a report of ECan under this subpart; and
- (b) the references to the Environment Court were omitted.

57 Scope and effect of WCO made under this subpart

- (1) A Canterbury WCO made under section 214 of the RMA, as applied by **section 56**, may impose restrictions or prohibitions on the performance of any of ECan's functions under section 30(1)(e) and (f) of the RMA as they relate to water.
- (2) Restrictions or prohibitions imposed under **subsection (1)** may include, in particular, restrictions or prohibitions relating to—
 - (a) the quantity, quality, rate of flow, or level of the water in a water body:
 - (b) the maximum and minimum levels or flow or range of levels or flows, or the rate of change of levels or flows to be sought or permitted for the water body:
 - (c) the maximum allocation for abstraction or maximum contaminant loading consistent with the purposes of the order:
 - (d) the ranges of temperature and pressure in a water body.

*Revocations and variations***58 Applications to revoke or vary WCOs**

- (1) Section 216(1) and (2) of the RMA apply in respect of an application to revoke or vary a Canterbury WCO.
- (2) Despite anything in this subpart, the Minister may, instead of submitting an application to revoke or vary a Canterbury WCO to ECan under **section 48(1)(b)(ii)**, recommend that the Canterbury WCO to which the application relates be amended if—
 - (a) the Minister is of the opinion that—
 - (i) the application should not be rejected; but

- (ii) because of the minor effect of the amendment, it is unnecessary for ECan to consider the application; and
 - (b) both ECan and the original applicant for the WCO (if that person can be located) agree to the amendment.
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister under **subsection (2)**, amend the WCO accordingly.

Delegations under this subpart

59 Delegation by ECan of functions, powers, and duties

- (1) ECan may delegate its functions, powers, and duties under this subpart (except the power to delegate) to—
 - (a) an employee; or
 - (b) a hearings commissioner appointed by ECan.
- (2) Section 34(7) to (10) of the RMA (which relate to delegations under that Act) apply, with any necessary modifications, to delegations made under **subsection (1)**.
- (3) **Subsection (2)** does not limit clause 32 of Schedule 7 of the Local Government Act 2002.

Transitional matters

60 Transitional provisions

- (1) If an application for a Canterbury WCO is received by ECan before the resumption day and, before that day,—
 - (a) a hearing has not commenced, the application must be returned to the Minister and **clauses 1 to 3 of Schedule 2** apply:
 - (b) a hearing has commenced, **clauses 4 and 5 of Schedule 2** applies.
- (2) **Part 2 of Schedule 2** applies to ECan's exercise of its powers and performance of its functions in relation to the Hurunui WCO application.

Subpart 4—Process for approval of proposed
regional policy statements or plans

Preliminary matters

61 Meaning of proposed regional policy statement or plan

In this subpart, **proposed regional policy statement or plan**—

- (a) means—
- (i) any proposed plan or change to, or variation of, a plan notified by ECan under clause 5 or 26 of Schedule 1 of the RMA—
 - (A) after the commencement of this Act; or
 - (B) before the commencement of this Act, but only if no decision has been made under clause 10 of that Schedule before the commencement of this Act;
 - (ii) any proposed regional policy statement or change to, or variation of, a regional policy statement that is notified by ECan under the clauses mentioned in **subparagraph (i)** after the commencement of this Act; but
- (b) does not include a proposed regional coastal plan or change to, or variation of, a regional coastal plan, whether that plan is notified before or after the commencement of this Act.

62 Application of RMA

- (1) Except as expressly provided otherwise in this subpart, the provisions of the RMA apply, as far as they are relevant, to any proposed regional policy statement or plan.
- (2) However, **subsection (1)** does not override section 161 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (a transitional provision relating to proposed policy statements, plans, or changes to policy statements or plans publicly notified before 1 October 2009).

Additional criteria for decision making

63 Additional relevant criteria

In considering any proposed regional policy statement or plan, ECan must have particular regard to the vision and principles of the CWMS in addition to the matters relevant under the RMA to its decisions made under clause 10(1) of Schedule 1 of that Act.

Procedural arrangements

64 Application of sections 65 to 68

Sections 65 to 68 apply only to decisions—

- (a) made under clause 10 of Schedule 1 of the RMA by ECan; and
- (b) in respect of which ECan must have particular regard to the additional criteria specified in **section 63**.

65 Notification of decision

A notice served by ECan under clause 11 of Schedule 1 of the RMA must include a statement of the time within which an appeal on a question of law may be lodged by a submitter under **section 66**.

66 Right of appeal to High Court on question of law

- (1) No person may appeal to the Environment Court under clause 14 of Schedule 1 of the RMA in respect of any of the decisions referred to in **section 64**.
- (2) However, a person who made a submission under clause 6 or 8 of Schedule 1 of the RMA on a proposed regional policy statement or plan may appeal to the High Court, but only on a question of law, against a decision referred to in **section 64**.

67 Scope of right of appeal

Any appeal under **section 66(2)**—

- (a) must be lodged in accordance with the requirements stated in the notice served under **section 65**; and
- (b) may relate only to a provision or matter raised in the submission of the person lodging the appeal.

68 Appeal procedure

Sections 54 and 55 apply to an appeal under this subpart.

Transitional provision

69 Procedures if proposed regional policy statement or plan under consideration before commencement day

- (1) **Subsection (2)** applies if, on or after the commencement day,—
- (a) ECan revokes a delegation under section 34 or 34A of the RMA of the power to make a decision under clause 10 of Schedule 1 of that Act on a matter raised in a submission on a proposed regional policy statement or plan; and
 - (b) any hearing on that submission has been concluded.
- (2) Despite any other enactment or rule of law, ECan (or any other person to whom the power is delegated under section 34 or 34A of the RMA to make a decision on the submission under clause 10 of Schedule 1 of that Act) may make the decision—
- (a) without holding a further hearing; but
 - (b) only after first considering—
 - (i) the submissions made in relation to that matter; and
 - (ii) the evidence presented at the hearing; and
 - (iii) any reports of an officer of ECan or expert commissioned by the person with authority to conduct a hearing under section 34 or 34A of the RMA.
- (3) Despite any other enactment or rule of law, after the commencement day ECan is not required to give a further opportunity to any person to make submissions on, or be heard in relation to, a proposed regional policy statement or plan solely because of changes in the matters to which ECan must have particular regard when making decisions under clause 10(1) of Schedule 1 of the RMA.
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Schedule 1

ss 4, 6, 34, 50, 63

**Vision and principles of Canterbury
Water Management Strategy—Strategic
Framework, November 2009**

Part 1

Vision and principles

Vision

To enable present and future generations to gain the greatest social, economic, recreational and cultural benefits from our water resources within an environmentally sustainable framework.

Fundamental principles

Primary principles

1 Sustainable management

Water is a public resource which must be managed in accordance with sustainability principles and be consistent with the Resource Management and Local Government Acts.

2 Regional approach

- The planning of natural water use is guided by the following:
 - first order priority considerations: the environment, customary uses, community supplies and stock water
 - second order priority considerations: irrigation, renewable electricity generation, recreation, tourism and amenity
- A consistent regulatory approach to water is applied throughout the Canterbury region, recognising these principles
- Both surface and groundwater are given equal importance

Part 1—continued

- Further development of scientific knowledge of the region's water resources and the impacts of climate change are given priority
- The actual or potential cumulative effects the taking and using water can have on waterways are recognised and managed within defined standards
- A cautious approach is taken when information is uncertain, unreliable, or inadequate
- The need for efficient use of water in existing and new infrastructure is recognised
- There is strong emphasis on the integration of water and land management including protection of indigenous biodiversity and enhancement of water quality
- Current and potential effects of land use intensification is an integral part of decision-making on water takes. This may mean amending regional and district plans.

3 Kaitiakitanga

- The exercise of kaitiakitanga by Ngai Tahu applies to all water and lakes, rivers, hapua, waterways and wetlands, and shall be carried out in accordance with tikanga Maori.

Supporting principles**4 Natural character**

The natural character (mauri¹) of Canterbury's rivers, streams, lakes, groundwater and wetlands is preserved and enhanced—

- natural flow regimes of rivers are maintained and, where they have been adversely affected by takes, enhanced where possible
- the dynamic processes of Canterbury's braided rivers define their character and are protected

Part 1—*continued*

- environmental flow regimes are established for every waterway where abstraction occurs
- that restoration of natural character and biodiversity, is a priority for degraded waterways, particularly lowland streams and lowland catchments
- the interdependence of waterways and coastal ecosystems is recognised.

5 Indigenous biodiversity

- Indigenous flora and fauna and their habitats in rivers, streams, lakes, groundwater and wetlands are protected and valued.
- The aims of the Canterbury Biodiversity Strategy are recognised and supported.

6 Access

- Public access to and along rivers, lakes, waterways and wetlands is maintained and, where appropriate, enhanced. Access may need to be limited in situations including where environmental risk, public safety, security of assets, cultural values, biodiversity and farm management require.

7 Quality drinking water

- All those living in Canterbury have access to high quality drinking water.
- The region's high quality aquifer-sourced drinking water is protected.
- Where Canterbury's drinking water is currently untreated and safe for drinking, it is maintained at that high standard.

¹ Mauri — the life force. In the environment, mauri is used to describe the intrinsic values of all resources and of the total ecosystem.

Part 1—*continued***8 Recreational and amenity opportunities**

- Rivers, lakes, groundwater and wetlands provide opportunities for enjoyment, recreation and tourism.
- High quality water ensures contact recreation such as swimming, fishing, boating and other water sports are able to be enjoyed throughout Canterbury.
- Adequate environmental flows should ensure that recreational users and tourists can enjoy Canterbury rivers.
- Eco-tourism opportunities are recognised and encouraged.

9 Community and commercial use

Water resources are used sustainably to enhance quality of life—

- where water is abstracted, it is used effectively and efficiently:
- land use, industry, and business practices to not adversely impact on natural water quality:
- discharges to waterways are minimised and do not compromise quality:
- land use practices are monitored and best practice approaches are required:
- agricultural stock is excluded from all waterways in catchments where irrigated farming is practised and all lowland streams:
- where acclimatised wildlife in lowland streams cause contamination, they are appropriately managed:
- degraded waahi taonga are enhanced to restore tangata whenua cultural wellbeing.

Part 2

Status and preparation of Canterbury
Water Management Strategy—Strategic
Framework November 2009

- 1 The vision and principles of the CWMS, as set out in **Part 1**, are reproduced from the Canterbury Water Management Strategy—Strategic Framework, November 2009 (**CWMS**).
 - 2 The preparation of the CWMS was supervised by a multi-stakeholder Steering Group under the overall leadership of the Canterbury Mayoral Forum.
 - 3 The membership of the Canterbury Mayoral Forum and of the Steering Group is set out in Annex A of the CWMS.
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Schedule 2

ss 46, 60

Transitional provisions**Part 1****Transitional provisions for certain
Canterbury WCO applications***Processing of applications if hearing not
commenced***1 Process applying if hearing not commenced****Clauses 2 and 3** apply if ECan,—

- (a) at any time after the commencement day, receives a WCO application from the Minister under **section 48(1)(b)(ii)**; but
- (b) by the day before the resumption day, has not commenced to hear that application under **subpart 3 of Part 3**.

2 Preliminary responsibilities of ECan and Minister

(1) ECan must, as soon as practicable,—

- (a) return the application and any submissions received on it to the Minister; and
- (b) give public notice and a notice to the applicant and any submitters that the application—
 - (i) has been returned to the Minister; and
 - (ii) is to be dealt with under Part 9 of the RMA by a special tribunal.

(2) When the Minister receives the application and any related submissions under **subclause (1)**, the Minister must—

- (a) appoint a special tribunal under section 202 of the RMA to hear and report on the application; and
- (b) forward the application and copies of any submissions received from ECan to the special tribunal.

3 Role of special tribunal

(1) The special tribunal must, as soon as it is appointed, notify the applicant that the applicant may—

- (a) revise the application made under **subpart 3 of Part 3** to take into account the matters that are relevant to

Part 1—*continued*

- the consideration of the application under Part 9 of the RMA; and
- (b) within 30 working days of the date of the notice, submit a revised application to the special tribunal.
- (2) At the end of the 30-working-day period, the special tribunal must—
- (a) comply with section 204 of the RMA in relation to the application or revised application, if one is received; and
 - (b) also serve on each person who made a submission on the application under **subpart 3 of Part 3**—
 - (i) a notice that complies with section 204(2) of the RMA; and
 - (ii) advice that, unless a new submission is received in accordance with that notice, the special tribunal will consider the submission as if it had been submitted under section 205 of the RMA (as applied by **section 51**).

*Processing of applications if hearing
commenced*

4 Process applying if hearing commenced

- (1) This clause applies if, on or before the resumption day, ECan has commenced a hearing on an application for a Canterbury WCO made under **subpart 3 of Part 3**, but has not completed the process under those provisions.
- (2) Despite the expiry and repeal of **Schedule 1** and certain provisions of **subpart 3 of Part 3** by or under **section 6**, those provisions continue to apply to that application as if they were still in force.

Further transitional matters

5 Committees and delegations

The expiry and repeal of the provisions of **subpart 3 of Part 3** do not affect the continuation, on the resumption day, of—

Part 1—*continued*

- (a) the business or membership of any committee or other subordinate decision-making body of ECan appointed on or after the replacement day; or
- (b) delegations by ECan made after the replacement day.

Part 2

Hurunui WCO application

6 Interpretation

In this Part of this schedule,—

Hurunui report means the report on the Hurunui WCO application by a special tribunal under section 208 of the RMA dated 14 August 2009

Hurunui River means the waters of that part of the Hurunui River in respect of which the Hurunui WCO application applies, namely—

- (a) the main stem of the upper Hurunui River and all of its lakes, tributaries and contributing waters (including hydraulically connected groundwaters), from its source in the Main Divide of the Southern Alps down to immediately above its confluence with the Mandamus River (at or about NZMS 260 M33 736238) (**Upper Hurunui Waters**); and
- (b) the main stem of the lower Hurunui River from immediately above its confluence with the Mandamus River (at or about NZMS 260 M33 736238) down to the sea (**Lower Hurunui River**)

Hurunui WCO application means the WCO application in respect of the Hurunui River made under section 201 of the RMA on 30 August 2007 jointly by the New Zealand Fish and Game Council, the North Canterbury Fish and Game Council, and the New Zealand Recreational Canoeing Association

revised application means a revised application (if any) for a Hurunui WCO submitted under **clause 9(b)**.

Part 2—*continued*

7 Jurisdiction of Environment Court removed in relation to Hurunui WCO application

Despite anything in the RMA or any other enactment, on and from the commencement date, the Environment Court does not have jurisdiction to conduct, or to continue to conduct, an inquiry in respect of the Hurunui report.

8 Minister to forward Hurunui WCO application to ECan

Not later than 20 working days after the commencement day, the Minister must forward to ECan—

- (a) a copy of the Hurunui WCO application; and
- (b) a copy of all submissions made to the special tribunal under section 205 of the RMA in respect of that application.

9 Notice to applicant and submitters

As soon as practicable after ECan has received the documents from the Minister under **clause 8**, ECan must give notice in writing to the applicant and the submitters that,—

- (a) by virtue of **section 46 and clause 7**, the Environment Court has no jurisdiction in relation to the Hurunui report; and
- (b) the applicant may, not later than 30 working days after the date of the notice, submit a revised application to take into account the matters that must be considered under **sections 50 and 57**; and
- (c) on the expiry of that 30-working-day period, submitters may make a submission on any revised application submitted under **paragraph (b)**; and
- (d) ECan will consider and report on the revised application, if there is one, or otherwise on the Hurunui WCO application, in accordance with this clause and **clauses 10 to 14**.

Part 2—*continued***10 Notice to submitters**

As soon as practicable after the expiry of 30 working days from the date of the notice given under **clause 9**, ECan must notify submitters in writing—

- (a) that a revised application has been submitted, setting out—
 - (i) a description of the revised application; and
 - (ii) where the revised application and any relevant information held by ECan may be viewed; and
 - (iii) in relation to any revised application, that the submitters have 30 working days in which to make a written submission on the revised application and serve it on—
 - (A) the applicant; and
 - (B) ECan; and
 - (iv) that unless a submission is received in accordance with **clause 9(c)**, ECan will consider the submission on the Hurunui WCO application made by the submitter to the special tribunal as if it were a submission made on the revised application; or
- (b) if no revised application is received by the due date, that—
 - (i) no revised application has been submitted; and
 - (ii) the submissions already lodged with ECan will be considered in relation to the original application.

*Process for ECan's consideration***11 Time limits, further information, and submissions**

- (1) The provisions of the RMA set out in **subclause (2)** apply to ECan's consideration of the Hurunui WCO application or any revised application as if—
 - (a) every reference to a consent authority were a reference to ECan; and

Part 2—*continued*

- (b) every reference to an application for a resource consent were a reference to the Hurunui WCO application or any revised application; and
 - (c) every reference to a resource consent were a reference to a water conservation order in respect of the Hurunui River; and
 - (d) the reference in section 96(6)(a) of the RMA to the time allowed by section 97 of that Act were a reference to the time allowed by **clause 10**.
- (2) The provisions of the RMA are:
- (a) section 37 (which relates to waiver and extension of time limits); and
 - (b) section 92 (which relates to further information that may be requested); and
 - (c) section 96(5) and (6) (which relate to the making of submissions); and
 - (d) section 98 (which requires the applicant to be advised of submissions).
- (3) A person who makes a submission opposing the making of a WCO in respect of the Hurunui River must specify the reasons why the person considers that the proposed order is not justified in terms of **sections 50 and 57**.
- (4) ECan may by written notice to a submitter require further information that ECan considers necessary in relation to a submission.

12 Right to make submission or be heard

No person may make a submission to, or be heard by, ECan under this Part other than—

- (a) the applicant; or
- (b) persons who made a submission to the special tribunal hearing the Hurunui WCO application.

13 Hearing

- (1) ECan must conduct a hearing into the Hurunui WCO application or revised application.

Part 2—*continued*

- (2) Sections 39 to 42, 99 to 100, and 101(1) to (3) of the RMA apply with the necessary modifications to a hearing under this clause, as if every reference—
 - (a) to a consent authority were a reference to ECan; and
 - (b) to a resource consent were a reference to a water conservation order.
- (3) Without limiting the provisions referred to in **subclause (2)**, a hearing must be held in public at a place that is near the Hurunui River, as determined by ECan.

14 Consideration and reporting by ECan

- (1) After receiving any information and conducting any hearing that it considers necessary, ECan must—
 - (a) consider the Hurunui WCO application or revised application in accordance with **section 50**; and
 - (b) report on the application; and
 - (c) give notice of that report.
- (2) Section 208 of the RMA applies to the report and its notification as if—
 - (a) every reference to a special tribunal were a reference to ECan; and
 - (b) section 208(2)(c) of that Act excluded the reference to the regional council.

*Further transitional matters***15 Application of provisions of subpart 3 of Part 3 to Hurunui WCO application**

The following provisions of **subpart 3 of Part 3** apply to the Hurunui WCO application, ECan's report on it, and to the making or declining of an order in respect of the Hurunui River as if they referred to that application, report, or order, as the case may be:

- (a) **sections 52 to 55**, which relate to appeals; and
- (b) **section 56**, which relates to the making or declining of an order; and

Part 2—*continued*

- (c) **section 57**, which provides for the scope and effect of an order; and
- (d) **section 59**, which relates to the delegation of functions, powers, and duties by ECan.