

Environment Canterbury (Transitional Governance Arrangements) Bill

Government Bill

Explanatory note

General policy statement

Purpose

The Environment Canterbury (Transitional Governance Arrangements) Bill establishes a mixed-model governance structure for the Canterbury Regional Council (**Environment Canterbury**) for the transition period during the 2016–2019 local government term. This Bill will facilitate the continued timely development of a robust, clear, and effective framework for the management of natural resources—particularly fresh water and nutrient management—in Canterbury.

The Bill will also ensure that the Canterbury region is supported by a well-functioning regional council with appropriate systems, structures, and capacity as a transitional measure to facilitate a return to a standard, fully elected, regional council in 2019.

Provisions relating to the new mixed-model governance body

The Bill will provide for a mix of 7 councillors to be elected from 4 constituencies across Canterbury communities, and the appointment of up to 6 councillors by the Government. Together these elected and appointed members will form the governing body of Environment Canterbury during the transition period, to ensure a capable and stable governing body with specialist expertise to continue work in freshwater management.

The Bill will provide for the Government to appoint members who complement the skills of the members elected by the Canterbury communities. To that end, it will provide for the Government to make appointments within 28 days after the local election results are officially declared.

The Bill will provide that all members, whether elected or appointed, will have their remuneration set by the Remuneration Authority in the same way that the Authority determines remuneration for all standard regional councils.

To ensure that the region is not left without a governing body if there is a delay in appointments, the Bill will provide for the elected members to make decisions in the event of an emergency.

The Bill provides that the term of the mixed-model governance body will end on the day after the day on which the official election result is declared for the full council following the 2019 local government election.

Provisions relating to alternative Resource Management Act 1991 processes that apply to the mixed-model governance body

The Bill will carry forward the limitation on appeal rights from the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (the **2010 Act**). To achieve this, the Bill provides that appeals can only be made by certain individuals to the High Court on points of law during the process of approving regional plans and regional policy statements applicable to the management of fresh water in Canterbury. The Bill provides that this power will end on resumption day in 2019 unless continued for the purposes of completing a decision.

Provisions repealing other powers and processes

The Bill will repeal the provisions in the 2010 Act that gave Environment Canterbury additional powers to make moratoria on resource consents. It will also repeal most of the special processes in the 2010 Act that allow Environment Canterbury to consider water conservation order applications, instead of a ministerial-appointed special tribunal as is the status quo under Part 9 of the Resource Management Act 1991 (the **RMA**).

However, to ensure there is clarity for applicants about what process their water conservation order application will follow, the Bill contains a number of transitional clauses for these applications. Applications that have reached hearing stage by transition day will continue under the 2010 Act process. All other applications will be dealt with under Part 9 of the RMA.

Departmental disclosure statement

The Department of Internal Affairs and the Ministry for the Environment are required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2015&no=60>.

Regulatory impact statement

The Department of Internal Affairs and the Ministry for the Environment produced a regulatory impact statement on 26 May 2015 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.mfe.govt.nz/node/20907>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. *Part 3 and Schedules 1 to 3* come into force on the day after the day on which the official result of the 2016 election is declared under section 86 of the Local Electoral Act 2001 in relation to Environment Canterbury. This day is defined in *clause 4(1)* as the transition day and is the day on which the elected members of Environment Canterbury come into office.

The rest of the Bill comes into force on the day after the day on which the Bill receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 sets out the purpose of the Bill.

Clause 4 is the principal interpretation provision and sets out terms that are defined for the purposes of the Bill. It also provides for terms defined in the Local Government Act 2002 (the **LGA02**) and the RMA to take their same meanings in this Bill.

Clause 5 provides that the Bill, when enacted, binds the Crown.

Clause 6 provides for the repeal of the Bill on the close of the day on which the elected members of Environment Canterbury come into office at the triennial territorial authority elections in October 2019 (defined in *clause 4(1)* as the resumption day).

However, *subclause (2)* provides for the continuation of *Part 3* if the applications and decisions to which the Part relates have not been completely disposed of (including any appeals in relation to them) before the resumption day (and crystallises the general approach taken under the Interpretation Act 1999 for dealing with incomplete matters on the repeal of legislation).

Clause 7 sets out how this Bill interacts with other legislation applicable to local authorities (for example, the LGA02 and the RMA). The clause provides that, except to the extent that this Bill modifies or is inconsistent with the other legislation, Environment Canterbury is subject to all legislation applicable to local authorities and in the same manner as it applies to those local authorities. For example, *clause 10* provides for the election of 7 of the members of the governing body to be responsible for the decision making of Environment Canterbury during the period in which this Bill is in

force. The clause provides a different process to that which applies to local authorities under the Local Electoral Act 2001. Therefore, that Act does not apply to Environment Canterbury in relation to this limited aspect of the electoral process. However, this Bill is silent on any other part of the electoral process under that Act. This means that, for example, the actual conduct of the election, the counting of votes, and the eligibility of electors remain subject to the same rules as those applying to any other local authority.

Part 2

Governance arrangements during transition period

Transitional governing body

Clause 8 provides that, during the transition period (defined in *clause 4(1)* as being the period between the 2016 and the 2019 local authority triennial general elections), the governing body of Environment Canterbury comprises 7 elected members and up to 6 appointed members. (Under Part 4 of the LGA02, which applies to Environment Canterbury, the governing body of a local authority is responsible for the decision making of the local authority.) The clause further provides for elected and appointed members to be treated equally by—

- requiring any reference in any enactment to a member, or an elected member of a local authority or regional council, to be read, in the case of Environment Canterbury, as including a reference to an appointed member; and
- stating that members have the same functions, powers, responsibilities, and duties as each other member irrespective of whether the person is elected or appointed.

Throughout the Bill, this governing body is referred to as the transitional governing body (*see clause 4(1)* for the defined term) to reflect the fact that it is only in existence in this form for the transition period.

Clause 9 requires the members of Environment Canterbury (being the members of the transitional governing body) to elect a chairperson and deputy chairperson at the first meeting of Environment Canterbury held during the transition period.

Elected members

Clause 10 sets out the process by which the 7 elected members of the transitional governing body are to be elected.

Appointed members

Clause 11 sets out the process by which the appointed members of the transitional governing body are to be appointed. The Minister for the Environment and the Minister of Local Government (defined in *clause 4(1)* as the responsible Ministers) must appoint 3 members no later than 28 days after the transition day and may appoint at

the same time or subsequently no more than 3 other members. The Ministers must appoint persons who satisfy the criteria in *subclauses (2) and (3)*.

Clause 12 requires appointments to be made by written notice. Each appointment must be notified in the *Gazette*.

Procedural matters relating to transitional governing body

Clause 13 sets out when members come into office.

Clause 14 sets out when members leave office.

Clause 15 provides for the responsible Ministers to remove, in their complete discretion, an appointed member.

Clause 16 provides for the filling of vacancies in the office of appointed members. (The Bill is silent on vacancies in relation to elected members. Accordingly, *clause 7* applies and vacancies in the office of elected members are filled as required under the LGA02.)

Clause 17 requires the first meeting of Environment Canterbury during the transition period to be called by the chief executive as soon as practicable after the 3 initially appointed members come into office.

Remuneration of members

Clause 18 requires the Remuneration Authority to make a determination, essentially following its normal processes, in respect of the remuneration, allowances, and expenses payable to—

- the members of Environment Canterbury holding office during the transition period; and
- chairpersons of committees of Environment Canterbury holding office during the transition period.

However, *subclause (3)* provides that, in doing so, the Remuneration Authority must not determine any amount payable that differentiates on the basis of whether a member is an elected or an appointed member.

Subclause (3) also places responsibility on Environment Canterbury to pay both elected and appointed members in accordance with the Remuneration Authority's determination.

Part 3

RMA arrangements during transition period

Clause 19 defines the term proposed plan or regional policy statement for the purposes of this Part of the Bill.

Clause 20 is an application provision. It sets out—

- how the RMA applies to the performance or exercise by Environment Canterbury of its functions and powers under this Part during the transition period so far as they are relevant to any proposed plan or regional policy statement; and
- how Part 9 of the RMA applies to water conservation order applications made before the transition day (*see clause 21* for how applications made on or after that date are dealt with).

Water conservation orders

Clause 21 applies Part 9 of the RMA, without modification, to any water conservation applications made on or after the transition day. Water conservation application is defined in *clause 4(1)* as meaning both an application for a water conservation order in respect of a water body in the Canterbury region and an application to revoke or vary a water conservation order in respect of a water body in the Canterbury region.

Clause 22 deals with water conservation applications made at any time before the transition day. These applications are currently subject to the processes set out in the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (defined in *clause 4(1)* as the 2010 Act) and, on the transition day, may be at various stages of those processes. *Clause 22* requires the completion of such applications to be carried out in accordance with the relevant clause in *Schedule 1* of the Bill.

Approval of proposed plans and regional policy statements

Clause 23 requires Environment Canterbury, when considering any proposed plan or regional policy statement (within the meaning of that term in *clause 19*) to have particular regard to the vision and principles of the Canterbury Water Management Strategy (the text of which is set out in *Schedule 3*) in addition to the matters relevant under the RMA to its decisions made under clause 10(1) of Schedule 1 of that Act. This provision replicates the requirements in section 63 of the 2010 Act.

Clause 24 sets out the rights of appeal that a person has in respect of a decision made by Environment Canterbury during the transition period under clause 10 of Schedule 1 of the RMA in respect of which Environment Canterbury was required to have particular regard to the vision and principles of the Canterbury Water Management Strategy in accordance with *clause 23*.

The clause provides an appeal right to the person only if the person made a submission under clause 6 or 8 of Schedule 1 of the RMA on the proposed plan or regional policy statement concerned. The appeal right is limited to an appeal to the High Court on a question of law. This provision replicates the matters in sections 64 to 67 of the 2010 Act.

Clause 25 sets out those provisions of the RMA that apply for the purposes of an appeal under *clause 24*. This provision replicates the requirements in section 54 of the 2010 Act (as applied by section 68 of that Act).

Clause 26 sets out procedural matters in relation to any appeal to the Court of Appeal of a decision from the High Court on appeal under *clause 24*. This provision replaces

the requirements in section 55 of the 2010 Act (as applied by section 68 of that Act) to reflect the fact that an appeal is a civil procedure.

Part 4

Miscellaneous provisions and amendments to 2010 Act

Subpart 1—Miscellaneous provisions

Clause 27 requires Environment Canterbury to report to the responsible Ministers, for each 6-month period of the transition period, on progress made in respect of the issues relating to the management of fresh water within the Canterbury region.

Clause 28 applies only if, after the 2016 election, an emergency exists before the initial appointed members take office under *clause 11(1)(a)*. The clause provides that the elected members constitute the governing body only until the appointed members take office. It also provides for matters at the first meeting of Environment Canterbury (in this underpopulated form).

Clause 29 provides for 2 matters relating to the 2019 election. The first makes it clear that nothing in the Bill prevents Environment Canterbury from readying itself in accordance with the Local Electoral Act 2001 for the 2019 election. The second requires Environment Canterbury to review its representation arrangements for the purposes of the 2019 election.

Subpart 2—Amendments to 2010 Act

Clauses 30 to 42 make amendments to the 2010 Act to—

- align that Act (which contemplated a return to a fully elected regional council) with the new policy implemented through this Bill (which provides for a regional council comprising both elected and appointed members); and
- remove the transitional provisions from that Act (which are replaced, in part, by the transitional provisions in the Bill); and
- make consequential amendments to terminology.

Schedule 1 sets out the process for completing water conservation applications made before the transition day (*see clause 22*). It provides solutions for applications at the following stages:

- rejected applications not yet notified to the applicant:
- applications in relation to which the Minister for the Environment had not yet made a decision on the process that the applications were to follow:
- applications to revoke or vary determined by the Minister for the Environment to be of minor effect:
- applications in relation to which a hearing is required but has not yet commenced:
- applications already at hearing stage.

Schedule 2 elaborates on the process required in relation to water conservation applications noted above as being already at hearing stage (*see clause 5 of Schedule 1*). These provisions replicate the process set out in the 2010 Act.

Schedule 3 sets out the vision and principles of the Canterbury Water Management Strategy (for the purposes of *clause 23*). This text is identical to the text contained in the 2010 Act.

Hon Dr Nick Smith

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Environment Canterbury (Transitional Governance Arrangements) Act **2015**.

2 Commencement

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- (1) **Part 3** and **Schedules 1 to 3** come into force on the transition day.
- (2) The rest of this Act comes into force on the day after the day on which it receives the Royal assent.

Part 1

Preliminary provisions

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3 Purpose

- (1) The purpose of this Act is to provide governance arrangements for the Canterbury Regional Council that will—
 - (a) operate during the 2016 to 2019 local authority election-cycle period; and
 - (b) replace the governance arrangements that have been in place since 2010 under the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010; and
 - (c) provide for a majority of members of the Council to be elected by the people of the Canterbury region; and
 - (d) provide for the continuation of some of the modified resource management processes that have operated under the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act

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2010 to remain available to the Council in order to further progress issues relating to the management of fresh water within the Canterbury region.

- (2) To this end, this Act—
- (a) replaces the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010; and 5
 - (b) provides for a new governing body for the Canterbury Regional Council comprising a mix of elected and appointed members; and
 - (c) authorises the new governing body to continue to exercise certain of the powers and perform certain of the functions conferred on the commissioners appointed under the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010; and 10
 - (d) sets out rules to manage the interface of this Act with other legislation applicable to local authorities, including (but not limited to) the Local Government Act 2002, the Local Electoral Act 2001, and the Resource Management Act 1991. 15

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- 2010 Act** means the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 20
- 2016 election** means the triennial general election of members of local authorities required by section 10 of the Local Electoral Act 2001 to be held on the second Saturday in October 2016
- 2019 election** means the triennial general election of members of local authorities required by section 10 of the Local Electoral Act 2001 to be held on the second Saturday in October 2019 25
- appointed member** means a member of the transitional governing body who is appointed to office under **section 11**
- Canterbury region** means the region over which Environment Canterbury has jurisdiction 30
- Canterbury Water Management Strategy** means the *Canterbury Water Management Strategy—Strategic Framework*, November 2009
- elected member** means a member of the transitional governing body who is elected to office under the Local Electoral Act 2001 (as modified by **section 10**) 35
- Environment Canterbury** means the regional council named in Part 1 of Schedule 2 of the Local Government Act 2002 as the Canterbury Regional Council

member, in relation to Environment Canterbury or the transitional governing body, means—

- (a) an elected member; or
- (b) an appointed member

proposed plan or regional policy statement has the meaning given by **section 19** 5

responsible Ministers means—

- (a) the Minister for the Environment; and
- (b) the Minister of Local Government

resumption day means the day after the day on which the official result of the 2019 election is declared under section 86 of the Local Electoral Act 2001 in relation to Environment Canterbury 10

RMA means the Resource Management Act 1991

transition day means the day after the day on which the official result of the 2016 election is declared under section 86 of the Local Electoral Act 2001 in relation to Environment Canterbury 15

transition period means the period—

- (a) starting on the transition day; and
- (b) ending on the close of the resumption day

transitional governing body means the governing body of Environment Canterbury during the transition period comprising the members specified in **section 8(1)** 20

water body has the meaning given by section 2(1) of the RMA

water conservation application means—

- (a) an application for a water conservation order in respect of a water body in the Canterbury region; and 25
 - (b) an application to revoke or vary a water conservation order in respect of a water body in the Canterbury region.
- (2) A 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. 30
 - (3) A 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 Act binds the Crown

This Act binds the Crown. 35

6 Repeal of this Act

- (1) This Act is repealed on the close of the resumption day.

- (2) Despite **subsection (1)**,—
- (a) **Part 3** of this Act continues, as if the Part had not been repealed, for the purposes of completing any decision or decisions (including any appeals) to which the Part applies that have not been completed before the resumption day; and 5
- (b) for the purposes of **paragraph (a)**, the transition period is to be treated as if it had not ended.
- 7 Relationship between this Act and other legislation applicable to local authorities**
- The Local Government Act 2002, the Local Electoral Act 2001, the Resource Management Act 1991, and any other legislation applicable to a local authority apply to Environment Canterbury except to the extent that those Acts are inconsistent with, or modified by, this Act. 10
- Part 2**
- Governance arrangements during transition period** 15
- Transitional governing body*
- 8 Transitional governing body**
- (1) During the transition period, the governing body of Environment Canterbury comprises—
- (a) 7 elected members; and 20
- (b) no fewer than 3 and no more than 6 appointed members.
- (2) During the transition period, every reference in the Local Government Act 2002 or any other Act to a member or an elected member of a local authority or regional council must, in relation to Environment Canterbury, be read as including a reference to an appointed member. 25
- (3) Without limiting **subsection (2)**, during the transition period, each member of the transitional governing body has the same functions, powers, responsibilities, and duties as each other member of the governing body, irrespective of whether the member is elected or appointed.
- 9 Chairperson and deputy chairperson** 30
- At the first meeting of Environment Canterbury during the transition period, the members must elect a chairperson and deputy chairperson from among themselves.

Elected members

10 Process for electing members

- (1) The 7 elected members of the transitional governing body must be elected at the 2016 election—
- (a) using the First Past the Post electoral system (as described generally in section 5A of the Local Electoral Act 2001); and 5
 - (b) by the electors described in the rest of this section.
- (2) One member must be elected by electors within the districts of the following local authorities (the **South Canterbury constituency**):
- (a) Mackenzie District Council; and 10
 - (b) Timaru District Council; and
 - (c) Waimate District Council; and
 - (d) that part of the Waitaki District Council that is also within the Canterbury region.
- (3) One member must be elected by electors within the districts of the following local authorities (the **mid-Canterbury constituency**): 15
- (a) Selwyn District Council; and
 - (b) Ashburton District Council.
- (4) One member must be elected by electors within the districts of the following local authorities (the **North Canterbury constituency**): 20
- (a) Waimakariri District Council; and
 - (b) Hurunui District Council; and
 - (c) Kaikoura District Council.
- (5) Four members must be elected, at large, by electors within the district of the Christchurch City Council. 25

Appointed members

11 Process for appointing members

- (1) The responsible Ministers—
- (a) must appoint 3 members of the transitional governing body no later than 28 days after the transition day; and 30
 - (b) may appoint, at the same time or subsequently, no more than 3 other members.
- (2) The responsible Ministers must appoint members who will complement the knowledge and expertise of the elected members so that, collectively, the members of the transitional governing body will have knowledge of, and expertise in relation to, the following matters: 35

- (a) the management of fresh water; and
 - (b) local authority governance and management; and
 - (c) tikanga Māori, as it applies in the Canterbury region; and
 - (d) the Canterbury region and its people.
- (3) The responsible Ministers may appoint a person only if the person— 5
- (a) is qualified to be a candidate for election under section 25(1) of the Local Electoral Act 2001; and
 - (b) is not a member of any other local authority or community board or local board of any local authority.
- (4) However, nothing in **subsection (2)** affects the validity of the appointment of an appointed member once made. 10
- (5) **Section 12** applies to each appointment made under this section.
- 12 Appointments must be in writing and notified**
- (1) The responsible Ministers make an appointment under **section 11** by giving the person concerned a written notice of appointment that states the day on which the appointment takes effect. 15
- (2) As soon as practicable after making an appointment, the Ministers must—
- (a) notify the appointment in the *Gazette*; and
 - (b) give a copy of the notice of appointment to Environment Canterbury.
- Procedural matters relating to transitional governing body* 20
- 13 When members come into office**
- (1) Elected members come into office in accordance with section 115(1) of the Local Electoral Act 2001.
- (2) Appointed members come into office on the date stated in their notices of appointment. 25
- 14 When members leave office**
- (1) The term of office of each elected member ends on the earlier of the following:
- (a) the date on which the member leaves office in accordance with section 116(1) of the Local Electoral Act 2001; and
 - (b) the date on which the member leaves office under clause 5 of Schedule 7 of the Local Government Act 2002. 30
- (2) The term of office of each appointed member ends on the earlier of the following:
- (a) the resumption day; and
 - (b) the date on which the member— 35

- (i) leaves office under clause 5 of Schedule 7 of the Local Government Act 2002; or
 - (ii) is removed from office by a notice given under **section 15(2)**.
- (3) For the purposes of **subsection (2)(b)(i)**, the reference to the chief executive in clause 4 of Schedule 7 of the Local Government Act 2002 must be read as a reference to the responsible Ministers. 5

15 Appointed members may be removed at discretion of responsible Ministers

- (1) The responsible Ministers may, in their complete discretion, remove an appointed member at any time. 10
- (2) The responsible Ministers remove an appointed member by giving the person a written notice of removal that states the day on which the removal takes effect.

16 Filling of vacancies in office of appointed members

If a vacancy occurs in the office of an appointed member, the responsible Ministers may appoint a replacement member in accordance with **sections 11 and 12**. 15

17 First meeting of Environment Canterbury during transition period

- (1) The first meeting of Environment Canterbury during the transition period must be called by the chief executive of Environment Canterbury as soon as practicable after the members appointed under **section 11(1)(a)** come into office. 20
- (2) The chief executive must give all members no less than 2 days' notice of the meeting (unless an emergency exists, in which case the chief executive may give notice as soon as practicable).
- (3) This section is subject to **section 28**.

Remuneration of members 25

18 Remuneration of members

- (1) The Remuneration Authority must, no later than 15 July 2016, determine the remuneration, allowances, and expenses payable to—
 - (a) the chairperson, deputy chairperson, and other members of Environment Canterbury who will hold office during the transition period: 30
 - (b) chairpersons of committees of Environment Canterbury who will hold office during the transition period.
- (2) The Remuneration Authority may also determine the remuneration, allowances, and expenses payable to members of Environment Canterbury with specified responsibilities during the transition period other than those of the persons listed in **subsection (1)**, if requested to do so by Environment Canterbury during that period. 35

- (3) Clauses 6 to 13 of Schedule 7 of the Local Government Act 2002 apply for the purposes of making a determination under this section as modified in the following manner:
- (a) if exercising the power under clause 6(3)(c)(ii) or (d) of the schedule, the Remuneration Authority must not differentiate on the basis of whether members are elected or appointed; and 5
 - (b) the expiry date of the determination must be no later than the resumption day; and
 - (c) clause 7A(4) of the schedule does not apply.
- (4) Environment Canterbury, and not the Crown, is responsible for payments to appointed members made in accordance with a determination made under this section. 10

Part 3

RMA arrangements during transition period

- 19 Interpretation** 15
- In this Part, **proposed plan or regional policy statement**—
- (a) means the Canterbury Land and Water Regional Plan; and
 - (b) means a proposed plan, or change to or variation of any other plan, that—
 - (i) is or has been notified by Environment Canterbury under clause 5 or 26 of Schedule 1 of the RMA at any time before the date of the 2019 election; and 20
 - (ii) is relevant to the management of fresh water within the Canterbury region; and
 - (iii) is consistent with the Canterbury Water Management Strategy; 25
and
 - (c) means any proposed regional policy statement, or change to or variation of a regional policy statement, that—
 - (i) is or has been notified by Environment Canterbury under clause 5 or 26 of Schedule 1 of the RMA at any time before the date of the 2019 election; and 30
 - (ii) is relevant to the management of fresh water within the Canterbury region; and
 - (iii) is consistent with the Canterbury Water Management Strategy; but
 - (d) does not include a proposed regional coastal plan or change to or variation of a regional coastal plan. 35

20 Application of RMA

- (1) Except as otherwise provided in this Part, the provisions of the RMA (including, without limitation, Part 2 of that Act) apply—
- (a) to the performance and exercise by Environment Canterbury of its functions and powers under this Part during the transition period; and 5
 - (b) so far as they are relevant, to any proposed plan or regional policy statement.
- (2) Part 9 of the RMA applies to water conservation applications to which **section 22** and **Schedules 1 and 2** apply to the extent that Part 9 is not inconsistent with, or modified by, that section and those schedules. 10

Water conservation orders

21 Process to apply for applications made after transition day

Part 9 of the RMA applies to a water conservation application made on or after the transition day.

22 Process to apply for applications made before transition day 15

- (1) **Subsection (2)** applies to a water conservation application made at any time before the transition day.
- (2) The application must continue to be processed in accordance with the relevant clause in **Schedule 1** of this Act.

Approval of proposed plans and regional policy statements 20

23 Additional criteria

- (1) In considering any proposed plan or regional policy statement during the transition period, Environment Canterbury must have particular regard to the vision and principles of the Canterbury Water Management Strategy in addition to the matters relevant under the RMA to its decisions made under clause 10(1) of Schedule 1 of that Act. 25
- (2) For the purposes of this section, the **vision and principles of the Canterbury Water Management Strategy**—
- (a) means the text of the vision and principles included in the Canterbury Water Management Strategy as reproduced in **Schedule 3**; but 30
 - (b) does not include any amendments to that text.
- (3) To avoid doubt, the inclusion of the text of the vision and principles of the strategy in **Schedule 3** does not accord the strategy or its vision and principles any status in law other than as provided in this Act.

24 Rights of appeal 35

- (1) This section applies to decisions—

- (a) made during the transition period by Environment Canterbury under clause 10 of Schedule 1 of the RMA; and
- (b) in respect of which Environment Canterbury was required to have particular regard to the vision and principles of the Canterbury Water Management Strategy in accordance with **section 23**. 5
- (2) No person may appeal to the Environment Court under clause 14 of Schedule 1 of the RMA in respect of such a decision.
- (3) However, a person who made a submission under clause 6 or 8 of Schedule 1 of the RMA on the proposed plan or regional policy statement concerned may appeal to the High Court in respect of the decision, but only on a question of law. 10
- (4) For this purpose, a notice served by Environment Canterbury 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 person described in **subsection (3)**. 15
- (5) An appeal under **subsection (3)**—
- (a) must be lodged in accordance with the requirements stated in the notice served under **subsection (4)**; and
- (b) may relate only to a provision or matter raised in the submission of the person lodging the appeal. 20
- (6) **Sections 25 and 26** apply to an appeal under this section.
- 25 Provisions of RMA applying to appeals under section 24**
- (1) Sections 300 to 307 of the RMA apply to an appeal under **section 24**, with the necessary modifications including, in particular, treating every reference to the Environment Court or the Registrar of that court as if it were a reference to Environment Canterbury. 25
- (2) The High Court Rules apply if a procedural matter is not provided for by or under those sections.
- 26 Appeal to Court of Appeal**
- Section 66 of the Judicature Act 1908 and Part 20 of the High Court Rules apply, with the necessary modifications, to a decision of the High Court on an appeal under **section 24**. 30

Part 4
Miscellaneous provisions and amendments to 2010 Act

Subpart 1—Miscellaneous provisions

- 27 Environment Canterbury must report to responsible Ministers on management of fresh water** 5
- (1) During the transition period, Environment Canterbury must report to the responsible Ministers on progress made in respect of the issues relating to the management of fresh water within the Canterbury region—
- (a) for the 6-month period starting on the date of the first meeting of Environment Canterbury during the transition period; and 10
- (b) for each following 6-month period.
- (2) Environment Canterbury must provide a report for each period as soon as practicable after the end of the period.
- (3) Each report must contain at least the following information:
- (a) progress on the Canterbury Land and Water Regional Plan; and 15
- (b) progress on any other plans relating to the management of fresh water within the Canterbury region; and
- (c) progress on the implementation of the Canterbury Water Management Strategy.
- 28 Governance arrangements if emergency before appointed members take office** 20
- (1) This section applies if, and only if, after the 2016 election,—
- (a) an emergency exists; and
- (b) the emergency exists before all the members appointed under **section 11(1)(a)** take office (the **initial appointed members**). 25
- (2) Until all the initial appointed members take office, the transitional governing body comprises the elected members only, and this Act applies accordingly, with any necessary modifications.
- (3) Despite **subsection (2)**,—
- (a) the members elected as chairperson and deputy chairperson (at the first meeting of Environment Canterbury after the 2016 election) hold office only until a chairperson and deputy chairperson are elected in accordance with **subsection (4)(b)**; and 30
- (b) a schedule of meetings must not be adopted beyond the date on which all the initial appointed members are expected to take office. 35

- (4) As soon as practicable after all the initial appointed members come into office, the transitional governing body must hold a meeting, the business of which must include—
- (a) the making and attesting of the declarations required by the appointed members under clause 14 of Schedule 7 of the Local Government Act 2002; and 5
 - (b) the election of a chairperson and deputy chairperson; and
 - (c) a general explanation, given or arranged by the chief executive, to the appointed members, of the matters in clause 21(5)(c) of Schedule 7 of the Local Government Act 2002; and 10
 - (d) the fixing of the date and time of the next meeting of Environment Canterbury, or the adoption of a schedule of meetings.
- (5) For the purposes of **subsection (4)(b)**, this Act and the Local Government Act 2002 apply as if the meeting were the first meeting of Environment Canterbury following the 2016 election. 15
- (6) To avoid doubt, the chairperson and deputy chairperson appointed in accordance with **subsection (2)** hold office only until the meeting referred to in **subsection (4)** takes place, but may be reappointed to those positions at that meeting.
- 29 Matters relating to 2019 election** 20
- (1) To avoid doubt, nothing in this Act prevents Environment Canterbury from taking any step that must be taken under the Local Electoral Act 2001 for the purposes of the 2019 election.
 - (2) However, Environment Canterbury must review its representation arrangements in accordance with section 19I of that Act, irrespective of whether it would be mandatory for it to do so under the requirements of that section in relation to the 2019 election. 25
- Subpart 2—Amendments to 2010 Act**
- 30 Amendments to 2010 Act** 30
- This subpart amends the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010.
- 31 Section 3 amended (Purpose)** 35
- In section 3(a), replace “new elected members come into office following the next election” with “the elected members of Environment Canterbury come into office in accordance with the Environment Canterbury (Transitional Governance Arrangements) Act **2015** following the 2016 election”.

- 32 Section 4 amended (Interpretation)**
- (1) In section 4(1), definition of **2016 election**, replace “ECan that (subject to section 11 of the Local Electoral Act 2001) must” with “local authorities required by section 10 of the Local Electoral Act 2001 to”.
- (2) In section 4(1), repeal the definitions of **next election** and **resumption day**. 5
- (3) In section 4(1), insert in its appropriate alphabetical order:
transition day means the day after the day on which the official result of the 2016 election is declared under section 86 of the Local Electoral Act 2001 in relation to Environment Canterbury
- 33 Section 6 replaced (Expiry and repeal)** 10
- Replace section 6 with:
- 6 Repeal**
This Act is repealed on the close of the day before the transition day.
- 34 Section 17 amended (Term of office)**
- In section 17(1), replace “resumption” with “transition”. 15
- 35 Section 23 and cross-heading repealed**
- Repeal section 23 and the cross-heading above section 23.
- 36 Section 26 amended (Provisions of Local Electoral Act 2001 that do not apply)**
- (1) After section 26(1)(a), insert: 20
- (ab) sections 19I and 19JB:
- (ac) sections 19Z, 19ZB, and 19ZD:
- (2) Repeal section 26(2).
- 37 Section 28 repealed (Continuation of committees and delegations)**
- Repeal section 28. 25
- 38 Section 35 amended (Notification of moratorium)**
- In section 35(c), replace “resumption” with “transition”.
- 39 Section 46 amended (Part 9 of RMA does not apply except as otherwise stated)**
- In section 46(1)(b) and (4), replace “resumption” with “transition”. 30
- 40 Section 55 replaced (Appeal to Court of Appeal)**
- Replace section 55 with:

55 Appeal to Court of Appeal

Section 66 of the Judicature Act 1908 and Part 20 of the High Court Rules apply, with the necessary modifications, to a decision of the High Court on an appeal under section 53.

41 Section 60 and cross-heading repealed

5

Repeal section 60 and the cross-heading above section 60.

42 Schedule 2 repealed

Repeal Schedule 2.

Schedule 1
**Process for completing water conservation applications made before
transition day**

s 22(2)

- | | | |
|----------|--|------------------|
| 1 | Rejected applications | 5 |
| (1) | This clause applies to an application—
(a) that was made before the transition day; and
(b) that the Minister for the Environment had decided under section 48(1)(b)(i) of the 2010 Act to reject; and
(c) in relation to which the applicant had not been notified of the Minister’s decision under section 48(2)(a) of that Act before the transition day. | 10 |
| (2) | The rejection, and the application, must be treated, for all purposes, as a rejection of an application under section 202 of the RMA, and that section applies accordingly, with any necessary modifications. | |
| 2 | Applications where ministerial decision pending
Part 9 of the RMA, without modification, applies to an application in relation to which the Minister for the Environment had not yet made a decision under section 48 or 58 of the 2010 Act before the transition day. | 15 |
| 3 | Applications satisfying section 58 test | |
| (1) | This clause applies to an application to revoke or vary a water conservation order—
(a) that was made before the transition day; and
(b) that the Minister for the Environment had decided met the criteria in section 58 of the 2010 Act; and
(c) in relation to which the applicant had not been notified of the Minister’s decision before the transition day. | 20

25 |
| (2) | The Minister may recommend to the Governor-General that the water conservation order to which the application relates be amended if both Environment Canterbury and the original applicant for the order (if that person can be located) agree to the amendment. | 30 |
| (3) | The Governor-General may, by Order in Council made on the recommendation of the Minister under subclause (2) , amend the water conservation order accordingly. | |
| 4 | Applications where hearing required but not yet commenced | |
| (1) | This section applies to an application that, before the transition day, Environment Canterbury— | 35 |

Schedule 1	Environment Canterbury (Transitional Governance Arrangements) Bill	
	(a) had received from the Minister for the Environment in accordance with the 2010 Act; but	
	(b) had not commenced a hearing into under subpart 3 of Part 3 of that Act.	
(2)	Environment Canterbury must, as soon as practicable,—	
	(a) return the application and any submissions received on it to the Minister; and	5
	(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.	10
(3)	When the Minister receives the application and any related submissions under subclause (2) , 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 Environment Canterbury to the special tribunal.	15
(4)	The special tribunal must, as soon as it is appointed, notify the applicant that the applicant may—	
	(a) revise the original application to take into account the matters that are relevant to the consideration of the application under Part 9 of the RMA; and	20
	(b) within 30 working days after the date of the notice, submit a revised application to the special tribunal.	
(5)	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	25
	(b) serve on each person who made a submission on the application under subpart 3 of Part 3 of the 2010 Act—	
	(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 that section applied for the purposes of section 51 of the 2010 Act).	30
5	Applications at hearing stage to be completed under Schedule 2	
(1)	This section applies to an application in relation to which—	35
	(a) a hearing under subpart 3 of Part 3 of the 2010 Act had commenced before the transition day; but	
	(b) the process (including appeals) had not been completed before that day.	

- (2) The application must be completed in accordance with **Schedule 2** of this Act.

Schedule 2

Process for completing water conservation applications partly heard before transition day

Schedule 1 cl 5

- 1 Consideration of application by Environment Canterbury** 5
- (1) After considering the application and any submissions and other information relevant to the application, Environment Canterbury must determine whether to recommend that the Minister for the Environment should—
- (a) reject the water conservation application; or
 - (b) recommend to the Governor-General that a water conservation order be made under section 214 of the RMA, as applied by **clause 7**. 10
- (2) In considering whether to recommend to the Minister that a water conservation order be made, Environment Canterbury must, subject to Part 2 of the RMA,—
- (a) have particular regard to—
 - (i) the matters set out in **subclauses (3) and (4)**; and 15
 - (ii) the vision and principles of the Canterbury Water Management Strategy; and
 - (b) have regard to the matters specified in section 207(a) to (c) of the RMA.
- (3) Environment Canterbury may recommend to the Minister that a water conservation order be made to recognise and sustain— 20
- (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. 25
- (4) Section 199(2) of the RMA applies to a water conservation order recommended by Environment Canterbury.
- Compare: 2010 No 12 s 50
- 2 Submissions, hearing, and report** 30
- Sections 205, 206, and 208 of the RMA (which provide for submissions, a hearing, and reporting in relation to an application) apply to the application as if—
- (a) every reference to a special tribunal were a reference to Environment Canterbury; 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 **clauses 1(2) and 8(2)**; and 35

- (c) section 208(2)(c) of the RMA excluded the reference to the regional council.

Compare: 2010 No 12 s 51

Appeals on question of law only

- 3 Jurisdiction of Environment Court excluded** 5
- The Environment Court has no jurisdiction under this schedule and no person may make a submission to the Environment Court in respect of a report prepared and notified by Environment Canterbury under **clause 2**.
- Compare: 2010 No 12 s 52
- 4 Right of appeal to High Court on question of law** 10
- (1) The persons listed in **subclause (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 Environment Canterbury recommending that—
- (a) a water conservation order be declined; or
- (b) a water conservation order be made on the terms of the draft order included in that report. 15
- (2) The persons are—
- (a) the person who applied for the order to which the report relates;
- (b) a territorial authority whose district may be affected by the order;
- (c) a person who made a submission to Environment Canterbury on the application: 20
- (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 Environment Canterbury would affect the person or an aspect of the public interest that the person represents. 25
- Compare: 2010 No 12 s 53
- 5 Provisions of RMA applying to appeal procedure**
- (1) Sections 300 to 307 of the RMA apply to an appeal under **clause 4**, with the necessary modifications including, in particular, treating every reference to the Environment Court or the Registrar of that court as if it were a reference to Environment Canterbury. 30
- (2) The High Court Rules apply if a procedural matter is not provided for by or under those sections.
- Compare: 2010 No 12 s 54

6 Appeal to Court of Appeal

Section 66 of the Judicature Act 1908 and Part 20 of the High Court Rules apply, with the necessary modifications, to a decision of the High Court on an appeal under **clause 4**.

Compare: 2010 No 12 s 55

5

*Making or declining to make water conservation order***7 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 water conservation order 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 Environment Canterbury under this schedule; and 10
- (b) the references to the Environment Court were omitted.

Compare: 2010 No 12 s 56

8 Scope and effect of water conservation order made under this schedule 15

- (1) A water conservation order made under section 214 of the RMA, as applied by **clause 7**, may impose restrictions or prohibitions on the performance of any of Environment Canterbury's functions under section 30(1)(e) and (f) of the RMA as those functions relate to water.
- (2) Restrictions or prohibitions imposed under **subclause (1)** may include, in particular, restrictions or prohibitions relating to— 20
 - (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: 25
 - (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.

Compare: 2010 No 12 s 57

Delegations 30**9 New delegations by Environment Canterbury of functions, powers, and duties**

- (1) Environment Canterbury may delegate its functions, powers, and duties under this schedule (except the power to delegate) to—
 - (a) an employee; or 35
 - (b) a hearings commissioner appointed by Environment Canterbury.

(2) Section 34(7) to (10) of the RMA (which relates to delegations under that Act) applies, with any necessary modifications, to delegations made under **sub-clause (1)**.

(3) **Subclause (2)** does not limit clause 32 of Schedule 7 of the Local Government Act 2002.

5

Compare: 2010 No 12 s 59

10 Continued delegations by Environment Canterbury of functions, powers, and duties

For the purposes of completing an application to which this schedule applies,—

(a) any delegation made to a committee or other subordinate decision-making body of Environment Canterbury appointed under the 2010 Act continues on and from the commencement of this clause as if the delegation were made under **clause 9**; and

10

(a) the business or, if relevant, membership or change in membership of any such committee or other subordinate decision-making body is not affected by the repeal of that Act.

15

Compare: 2010 No 12 Schedule 2 cl 5

Schedule 3**Vision and principles of Canterbury Water Management Strategy—
Strategic Framework, November 2009**

s 23

Vision 5

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** 10**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.
- 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:
- 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.

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

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.

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.

**Environment Canterbury (Transitional Governance
Arrangements) Bill**

Wellington, New Zealand:

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