

Regulatory Impact Statement

Environment Canterbury governance arrangements

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Department of Internal Affairs and the Ministry for the Environment.

In the Department and Ministry's view, the investigations, analysis and consultations completed to date are sufficient for Cabinet to make time-critical decisions on the governance arrangements for the Canterbury Regional Council (ECan) after the 2013 local authority elections and the expiry of its current governance arrangements.

We recognise that there has not been a Crown led public consultation process with Canterbury stakeholders and communities on the options in the RIS. This limits our ability to present community views on the options in this analysis. However, we note that the preferred option is based on proposals from ECan. The Canterbury Mayoral Forum (a forum of the Chair of ECan and the Mayors of Canterbury's ten territorial authorities) has noted in a letter to the Minister of Local Government that collectively, it does not have a preferred option for ECan's future governance arrangements, but highlights the importance of balanced representation for rural and urban parts of the region. We understand that a clear majority of Mayors supported the option of ECan's future governing body comprising elected and appointed members.

In our view, it would be appropriate for further specific consultation to be undertaken with ECan, Canterbury's territorial authorities, Local Government New Zealand and Ngāi Tahu on aspects of proposed arrangements before any legislation is introduced to the House of Representatives. Any legislation would provide substantive opportunities for public and stakeholder input through select committee, representation review and appointment processes.

In the Department and Ministry's view, none of the options considered are likely to have the effects that Government has said require a particularly strong case to justify consideration of regulatory intervention. In particular, none of the options would be likely to significantly:

- impose additional costs on businesses;
- impair private property rights, market competition, or the incentives on businesses to innovate and invest; or
- override fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee Guidelines).

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Background

1. This Regulatory Impact Statement (RIS) provides an overview of options for the governance arrangements for Canterbury Regional Council (ECan¹) after the 2013 local authority elections and the expiry of its current governance arrangements.
2. The Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (the Act) provides for the governance of ECan by appointed Commissioners until the 2013 local authority elections. The Act also provides ECan with unique powers to address issues relevant to the efficient, effective, and sustainable management of fresh water in the Canterbury region. In particular, it limits the public rights of appeal to the Environment Court against certain resource management decisions. These powers also expire at the 2013 local authority elections. Without regulatory change ECan's governance is to revert back to the elected regional councillor governance and the general arrangements that existed prior to the Act.
3. The Department and Ministry have undertaken an assessment of options for ECan's future governance arrangements. The work responds to and builds on the proposals the current ECan Commissioners provided to the Minister of Local Government in April 2012.

Context

4. In 2010, ECan's democratically elected governing body of 14 regional councillors was replaced with seven Government appointed Commissioners under the Act.² The Act and these appointments addressed ECan's serious, wide ranging and systemic performance issues. It provided a legislative response to the 2010 report of the Review Group, headed by the Rt Hon Wyatt Creech and established by the then Minister for the Environment and Minister of Local Government, which concluded that:

*"The extent of the gap between the capability of ECan and what is required for it to adequately manage freshwater issues is enormous and unprecedented. A very large backlog of outstanding issues needs to be addressed before water management in the Region reaches a steady state position. While the improvements and efforts made to address longstanding performance issues are acknowledged, the Review Group has concluded that ECan's performance on water policy and management issues (allocation and quality) falls well short of what is essential."*³
5. ECan was clearly unable to perform and exercise its duties and powers, most critically those under the Resource Management Act 1991 (RMA). There were longstanding problems due to entrenched political divisions, competing and adversarial approaches within ECan, institutional and technical deficits and ingrained organisational culture issues. Canterbury's 10 territorial authorities were unanimous in expressing to Ministers their lack of confidence in ECan. Ngāi Tahu, many

¹ ECan is the abbreviation for Environment Canterbury, the operating name for the Canterbury Regional Council.

² The Commissioners were appointed by responsible Ministers (the Ministers of Local Government and for the Environment) for terms commencing 1 May 2010.

³ *Investigation of the Performance of Environment Canterbury under the Resource Management Act & Local Government Act*, February 2010, Rt Hon Wyatt Creech et al.

stakeholders and residents were also strong in their criticisms of ECan's effectiveness.

6. The Commissioners are tasked with governing ECan until the 2013 local authority election and reforming its capability, effectiveness and integrity, with a focus on its freshwater management functions. The Commissioners have extensive collective expertise in matters of governance, leadership, resource management and also have strong connections with Ngāi Tahu.
7. The Commissioners' leadership has been highly effective, having addressed ECan's systemic problems with a reform of its decision making, conduct and organisational capability. The Department and Ministry, which have monitored ECan's performance under the Commissioners for Ministers, are of the view that ECan's decision making is effective and has integrity, notably through its strategic, collaborative and integrated approach.
8. The Government appointment of Commissioners is recognised as a successful intervention which has resulted in considerable momentum in the area of water management. The Canterbury Mayoral Forum has acknowledged the success of the Commissioners as they have addressed the Mayors' previous concerns.⁴ These successes are also evident through the Commissioners' many water management milestones, the significant progress implementing the Canterbury Water Management Strategy (CWMS), developing planning frameworks and the observations of key stakeholders, including Ngāi Tahu.
9. The Crown's statutory intervention in ECan's governing body and the Commissioners' terms are to end at the local authority elections in October 2013. Without regulatory change, ECan will return to a fully elected governing body.

Natural resource management: Significance of the Canterbury region in a national context

10. The Canterbury region has an estimated 2.62 million hectares of land in agricultural and horticultural production. The region has 50 per cent of New Zealand's grain, seed and fodder crops, 44 per cent of tussock lands and 15 per cent of all grasslands. Canterbury has the second largest number of dairy cows of any region and has experienced the greatest increase in dairy cows since 2002.
11. A 2006 survey by the Ministry for the Environment found that ECan granted two-thirds of all irrigation consents nationwide (equivalent to 647,000 hectares). A Ministry of Agriculture and Forestry study in 2004 (Technical Paper 04/01) calculated the net (farm gate) value of irrigation in Canterbury at \$335 million (or \$1,170 per hectare) in the 2002/03 season. This figure was over and above the value that would have been produced without irrigation, and was based on a milk payout of just over half of current levels. Analysis completed for the Canterbury Water Management Strategy (CWMS) updated the (farm gate) contribution of irrigation to New Zealand's gross domestic product (GDP) to \$1,700 per irrigated hectare (or \$800 million total). Agriculture's contribution to New Zealand's GDP in 2008 was \$11.23 million (SONZAF, 2009) and the output from irrigated agriculture in Canterbury contributed approximately seven per cent of total GDP.
12. Irrigation is expected to grow the New Zealand economy and Canterbury is a significant contributor to this goal. The New Zealand Institute of Economic Research (NZIER) reported that Canterbury production is likely to increase from \$1,000 per ha

⁴ The Canterbury Mayoral Forum acknowledged the Commissioners' success in their letter to the Minister of Local Government of 28 May 2012.

to \$7,000 per ha with the irrigation initiatives underway⁵ (a 170 per cent increase in productivity). This includes significant investment in infrastructure in the region that will lead to national benefits to GDP of 1 per cent growth.

13. While Canterbury has sufficient water resources in total to support this level of irrigation, climate patterns undermine the reliability of supply during the mid-to-late summer period. The region also experiences prolonged dry periods and the effects of climate change are predicted to exacerbate the current situation.
14. The Canterbury region has around 34 per cent of New Zealand's hydro-generation capacity and electricity generated in the region accounts for approximately 18 per cent of New Zealand's total generation (based on a relatively normal hydrological year). Most of this generation capacity is in the Waitaki catchment, which also provides around 70 per cent of New Zealand's generation storage.
15. The cultural value of Canterbury's fresh water to both Ngāi Tahu and all New Zealanders is particularly high. The ecological values of the region's many braided rivers are both individually and collectively nationally significant. Canterbury's network of braided rivers, approximately 60 per cent of the national total, are ecosystems of national importance. They provide links between the mountains and the sea and a habitat for a diversity of bird species including several threatened species. Canterbury has around eight per cent of the remaining national inland wetlands, and just over 10 per cent of its remaining historic wetlands. Canterbury also has several nationally and internationally recognised water-dependent geodiversity and geothermal features of national importance.
16. The region's freshwater resources are similarly significant as a destination for national and international tourism and recreation. It is estimated the approximate 60,000 recreator-days per year on the lower Waitaki River alone contribute annual recreation benefits of \$2 million.

Planning framework: Canterbury Water Management Strategy and Land and Water Plan

17. The Review Group led by the Rt Hon Wyatt Creech observed that:

*RMA Planning at ECan [was] a significant weakness. In [its] opinion this has driven many of the observed current RMA-related problems. ECan has created real policy confusion and inertia, particularly in relation to water.*⁶

18. ECan, under the Commissioners, has been successful in addressing this weakness, and as noted above were provided broader statutory powers to assist. ECan is currently working on a second generation Land and Water Regional Plan to give effect to the National Policy Statement on Fresh Water Management and to implement the CWMS.⁷ This will replace the fragmented planning approach that exists (in the Canterbury Natural Resources Regional Plan, which became operative in June 2011).

⁵ NZIER Report: The Economic Impact of Increased Irrigation, November 2010.

⁶ Investigation of the Performance of Environment Canterbury under the Resource Management Act & Local Government Act, February 2010, Rt Hon Wyatt Creech et al.

⁷ The CWMS was adopted in November 2009 and sets out a vision, principles and targets for the sustainable management of water resources across Canterbury. The CWMS has a high-level of support from its partners, including ECan, territorial authorities and Ngāi Tahu.

19. Under the CWMS, 10 zone committees have been established. The zone committees work together to develop zone water management implementation programmes (ZIPs). The outcomes from the ZIPs will support the development of the Land and Water Regional Plan.
20. The development of ZIPs is well underway. ECan and the relevant territorial authorities have received five of the 10 ZIPs. Another two committees have finished consulting and are close to finalising their programmes. The remaining three are scheduled for completion in September 2012. Attention is now shifting to the structure and resourcing of implementation and there is a desire for strong leadership in local catchment initiatives and implementation.
21. The Land and Water Regional Plan is not expected to be adopted by late-2013, nor will the CWMS be fully implemented. A number of sub-regional plan changes will also be required after the Land and Water Regional Plan is adopted to give effect to it.
22. Decisions of local authorities can be appealed to the Environment Court (the Court) on issues of merit as well as law. The Court can review Council decisions on a *de novo* basis, meaning the Court is not limited to the issues and facts the local authority considered when making its decision. However, under the Act, appeals are limited to points of law for significant planning decisions and ECan's recommendations on water conservation orders (WCOs) (discussed below).

Water Conservation Orders

23. The Act provides that any new applications for WCOs or amendments to existing WCOs in the Canterbury region would be considered by the ECan Commissioners rather than by a special tribunal. The decision making framework that applied was Part 2 of the RMA rather than Part 9, with particular regard having to be had to the visions and principles of the CWMS. To ensure timely decision making, in line with the plan making provisions, the Act provided that the report and recommendations of the ECan Commissioners on a WCO application (or amendment application) would be able to be appealed only to the High Court on points of law and not to the Environment Court.

Status quo

24. ECan is currently governed by seven appointed Commissioners. Under the Act and without regulatory change, regional councillors are to be elected to govern ECan at the triennial local authority elections on 12 October 2013. The Commissioners' terms expire on the day the regional councillors are declared elected. The Act's provision for limited rights of public appeal to the High Court against significant RMA decisions and water conservation order processes will also expire at the end of the Commissioners' terms.
25. Without any regulatory change, ECan would revert back to operating under the standard governance and representation frameworks for regional councils of Local Government Act 2002 (LGA02) and Local Electoral Act 2001. Under those frameworks ECan is to have a governing body comprising entirely of democratically elected regional councillors, arrangements applying to all other councils. Those were the arrangements under which ECan previously failed.
26. Despite the return to status quo provided for by the Act, the Commissioners' Terms of Reference required them to contribute to the Government consideration of long-term regional governance and institutional arrangements (for Canterbury). This gave a clear indication of the Government's intention to review Canterbury's regional

governance arrangements before the expiry of the current arrangements. On 3 April 2012, the Commissioners reported to Government with following proposals for regional governance after their terms expire:

- i. a mixed model transitional governing body comprising elected and Government appointed members;
- ii. retaining the existing local government structure for Canterbury comprising a regional council (i.e. ECan) and ten territorial authorities within existing boundaries;
- iii. retaining limited rights of appeal to points of law only to the High Court against ECan's resource management planning and policy decisions (provided for in the Act); and
- iv. extending ECan's functions to include regional strategic planning and some territorial authority functions.⁸

27. Points i to iii of the Commissioners' proposals have been developed in this RIS to form the basis for Option One later in this RIS.

Problem

28. The governance of water and land resources and environmental management are core and critical functions of regional councils. Canterbury's vast and valuable water resources, its significant capacity to support efficient and sustainable agriculture, its size, and a history of competing interests for resources set the challenges of its regional governance apart from other regions.
29. The Commissioners' extensive expertise will be lost to ECan at the 2013 local authority elections under the status quo.
30. Since the Act (and the return to status quo position therein), the Canterbury earthquakes have significantly changed the social, economic and governance situation in Canterbury. This has resulted in an increased need to ensure stable regional governance and effective leadership, particularly during the early critical period of recovery. Christchurch was the third-largest economic centre in New Zealand before the earthquakes of 2010 and 2011 (after Auckland and Wellington). 70 percent of regional employment is in Christchurch which provides important services to the surrounding region.
31. There are a number of initiatives and frameworks critical to Canterbury's environment and economy that will be either incomplete or in progress by the expiry of the Commissioners' terms. The second generation Land and Water Plan and other plans will not be adopted by late-2013, nor will the CWMS be fully implemented. These are key components of comprehensive and collaborative regional freshwater decision making and management. ECan is an important partner in Canterbury earthquake recovery, for example through its civil defence coordination, infrastructure and public transport roles.
32. Continued momentum, effective ongoing regional governance and collaborative and integrated regional decision-making are critical for Canterbury's residents, its unique environment and its significant capacity to grow its contribution to New Zealand's economy in an environmentally sustainable manner. Effective governance is critical to ensure:

⁸ Such as rural land use planning, civil defence emergency management, and transport functions.
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- the adoption of a comprehensive resource management planning framework to manage Canterbury's nationally significant water resources (it has a strong cultural importance for Ngāi Tahu, and has over 68 per cent of the nation's allocated freshwater) and prevent longer, more litigious and costly, consenting and planning processes;
 - limiting of environmental risks, such as decreasing water quality and over-allocation costs;
 - robust decisions and partnerships between local and central government on crucial matters, such as:
 - relating to earthquake recovery and regional economic growth;
 - affecting Crown investments in the recovery and irrigation acceleration, such as the Irrigation Acceleration Fund Initiative and the Fresh Start for Freshwater Clean-Up Funding;
 - the Government's Business Growth Agenda;
 - ECan's relationships with territorial authorities and the partnerships with Canterbury Earthquake Recovery Authority (CERA) are maintained; and
 - Canterbury's long-term growth, prosperity and social well-being.
33. Many of the Commissioners' achievements will be structural and self-sustaining, and important work is still in progress. Some improvements to ECan's arrangements have taken longer than originally anticipated because of unexpected disruptions to the region as a result of four separate earthquake events.
34. The potential benefits available from enhanced water management and progress on earthquake recovery are wide ranging and can significantly contribute to the growth of the region and wider New Zealand. The initiatives and frameworks that will lead to these benefits are in progress, but incomplete.
35. However, even with the completion of the critical frameworks, there is a risk ECan will revert to its irreconcilable and long-standing political divisions that emerge from the representational split of urban and rural populations and Christchurch interests and those of the wider region. Political divisions could return and prevent ECan from acting as an effective decision-making body, which is required for effective governance and delivery of natural resource management and policy outcomes.
36. A return to deadlocked decision making of the past could lead to increased environmental risks. For example, the anticipated of dairying growth will require robust management and monitoring, without which land use changes could adversely increase nitrogen levels in water to unacceptable levels. Ineffective decision making would adversely affect ECan's ability to deliver national policy outcomes, for example, ability to implement potential policy changes as a result of Phase Two of the Resource Management Reforms is an unacceptable risk at this time. To mitigate environmental risks, ensure implementation of the Government's reforms and manage Canterbury's unique and important natural environment, ECan needs a stable, effective, skilled and value added governance structure.

Links with government reforms

37. There are links between Canterbury's future governance arrangements and the Government's Better Local Government reform programme being led by the Minister of Local Government and the resource management reforms being led by the Minister for the Environment. In particular, the Government's intervention in 2010 has parallels with the proposed powers of assistance and intervention in the Local Government Act 2002 Amendment Bill (the Bill). However, these proposed general powers were not intended to apply to ECan's specific circumstances. Resolving Canterbury's regional governance is time critical and the problem described in this RIS is distinct to ECan and arises from its past history of poor performance. The preferred option in this RIS is consistent with the principles underpinning the reform programme and the desire for better local government.

Cost of not addressing the problem

38. Not addressing the problem would result in a complete and abrupt change in ECan's governance arrangements without succession or Crown support. This would put ECan's decision making momentum at considerable and unprecedented risk. The risks of any loss of momentum include:
- a risk of ineffective governance after the expiry of the Commissioners' terms;
 - political divisions re-emerging with dead-locked decision making leading to delays in, for example, achieving a fully operative planning framework; and
 - a continued risk of poor decision making affecting the region's growth and prosperity, including risks to environmental integrity.
39. The costs of a loss of momentum and not addressing the problem include:
- adverse environmental outcomes;
 - constrained regional economic growth; and
 - an uncertain regulatory environment for businesses and investors.

Framework for Regulatory Impact Analysis

40. The framework on the following page provides a basis for the analysis in this RIS.

Framework for Regulatory Impact Analysis

Objectives for Canterbury

- Maintain the governance and decision-making momentum the Commissioners have created on organisational performance and freshwater management.
- Provide stability in the Canterbury region for earthquake recovery and infrastructure rebuild objectives.
- Limit risks to environmental integrity.



Evaluation criteria to assess options

- Administrative practicality.
- Capacity to provide democratic, local and balanced decision making that meets the needs of the region's communities.
- Capacity to provide effective governance outcomes, including the full implementation of comprehensive regional planning framework.
- Capacity to mitigate economic and environmental risks, including risks to ECan's significant achievements and continued momentum.
- Facilitating the earthquake recovery process by ensuring that relationships



Desired outcomes for Canterbury

- Canterbury's natural resources are managed in a comprehensive and holistic manner, which results in resilient outcomes that effectively balance social, cultural, economic and environmental outcomes.
- The institutional framework for managing natural resources in the Canterbury region is integrated, effective, transparent and supports robust decision making.
- Efficient and enduring planning framework in Canterbury, which facilitates good-quality, cost-effective and timely decisions that effectively balance social, cultural, economic and environmental outcomes.
- Transitioning to enduring, effective and self-sustaining regional governance arrangements for Canterbury.

Regulatory impact analysis

41. Five options for addressing the problem are identified and analysed in this regulatory impact statement:
- **Option One:** Legislation to establish a transitional mixed governing body for ECan (with provision for Minister of Local Government to review the arrangements by 2017);
 - the intention of Option One is that ECan will return to a fully locally elected democratic body under a transitional plan detailing the succession process;
 - **Option Two:** Legislation to establish a permanent mixed governing body for ECan;
 - the intention of Option Two is to establish a permanent mixed model governance arrangement for ECan;
 - **Option Three:** Legislation to extend or entrench a governing body for ECan of appointed Commissioners;
 - **Option Four:** Status quo - returning to a fully elected governing body under the Local Government Act 2002 and Local Electoral Act 2001; and
 - **Option Five:** Ministerial direction for an independent review of matters relating to ECan governance, representation and establishing a mixed governing body.
42. Option One is the preferred option in the RIS. The attached appendix contains a diagram showing the key features of Options One and Two.

Other matters out of scope of Options One to Five

43. The limitation of High Court appeal rights to questions of law only on certain RMA planning decisions are to continue for the duration of the preferred option.
44. The analysis does not include options for extending ECan's functions and powers recommended by the Commissioners. A number of the extended functions and powers requested can be achieved voluntarily under existing legislation, particularly the RMA, and through negotiations with regional territorial authorities in relation to transferring local council functions. Others are being considered as part of the resource management reforms underway. It is not clear that the proposed extension of powers is desirable and the proposed extension of powers could undermine the need for stability.
45. The WCO processes are set to return to those in the RMA (the special provisions are scheduled to lapse at the expiration of the Act). ECan has advised that it does not expect any more amendment applications with respect to the existing Canterbury WCOs and is not aware of any new applications for WCOs in the Canterbury region. On this basis the Ministry for the Environment, the Department of Internal Affairs and the Ministry of Primary Industries consider there is insufficient justification for continuing special provisions for WCOs in the Canterbury region.

Table I: Summary of Options One to Four and assessment criteria

	Option	Criterion 1: Administrative practicality	Criterion 2: Democratic local decision-making	Criterion 3: Effective governance outcomes	Criterion 4: Mitigates economic and environmental risks	Criterion 5: Facilitates earthquake recovery	Risks
1	Transitional mixed governing body (with provision for Ministerial review by 2017) (preferred)	Strongly meets criterion	More fully meets by providing partial local democratic representation, phasing to full elected representation	Strongly meets criterion	Capacity to meet economic growth and prosperity objectives	Strongly meets criterion	<ul style="list-style-type: none"> • New and untested governance arrangement, could generate uncertainty • Significant intrusion into local government powers; risks of blurred or unclear accountability • Tension between elected members' requirement to act in local interest and being required to deliver outcomes in the national interest • Uncertainty around duration of arrangement and arrangement after the transition period
2	Permanent mixed governing body	Strongly meets criterion	Meets criterion by providing ongoing partial local democratic representation	Strongly meets criterion	Strong capacity to meet economic growth and prosperity objectives	Strongly meets criterion	<ul style="list-style-type: none"> • Risks same as first three bullet points for Option One above • Potential barrier to nationally consistent governance and resource management frameworks for regions (potentially reducing overall local government system regulatory efficiency)
3	Extend Commissioners' terms	Meets criterion	Does not meet criterion	Meets criterion	Strong capacity to meet economic growth and prosperity objectives	Meets criterion	<ul style="list-style-type: none"> • Conflicts with key principle of local government: communities decide their local affairs through local representatives
4	Status quo (return to a fully elected governing body)	Strongly meets criterion	Strongly meets criterion	Meets criterion	Uncertain capacity to meet economic growth and prosperity objectives	Partially meets criterion	<ul style="list-style-type: none"> • Would create governance arrangements with a lack of institutional knowledge, ownership of current work programmes • Potential for political divisions to return that would limit its ability to operate effectively • Environmental and economic risks with a lack of fully operative planning framework

The regulatory impact analysis below contains an assessment of Option Five (review of matters relating to ECan governance).

Option One: Legislation to establish a transitional mixed governing body for ECan (with provision for Minister of Local Government to review these arrangements by 2017 (preferred option)

Description of option

46. In this option, legislation would give effect to governance arrangements largely based on the ECan Commissioners' proposal. Key features of the proposal are to provide for, through legislation:
- a transitional mixed governing body for ECan comprising (initially seven) elected regional councillors and (initially five) government-appointed members;
 - a chairperson either elected by the governing body or appointed from its members;⁹
 - collective responsibility and accountability among (elected and appointed) members for the decision making and the exercise of governing body powers and functions;
 - recognition of iwi interests;
 - appointment of government members on the basis of their collective expertise relevant to their role on the governing body (for example, expertise in fresh water management, local authority governance and management, tikanga Māori and familiarity with the Canterbury region and its people);
 - Local Government Commission determination of the representation arrangements of elected members (with discretion to balance rural and urban interests);
 - commencement of arrangements from the day on which new members are sworn into office following the 2013 local authority elections (with regulatory mechanisms to alter representation arrangements and to reduce government appointees and increase elected members at subsequent elections);
 - members to provide a succession plan for ECan to Ministers after the 2016 local authority elections; and
 - Ministerial review of the arrangements in 2017.
47. The intention of Option One is that ECan will return to a fully locally elected democratic body under a transitional plan detailing the succession process. The option would include provision for the Minister of Local Government to review against the succession plan, and to determine if further progress is required or that the transitional arrangements are to cease.
48. The option could be developed not to preclude locally-initiated re-organisation proposals in Canterbury, as described in the Government's Better Local Government reform programme.

⁹ The election of a chairperson by the governing body would be consistent with the LGA02. Schedule 7 of the LGA02 provides that regional council chairs are elected by governing body in one or more rounds of voting. When an election results in a tie for the position of a chair, the tie is resolved by lot.

Assessment against evaluation criteria:

Administrative practicality (strongly meets criterion)

- 49. This option would require the swift passage of legislation for this to be in place by early March in time for the 2013 local authority elections on 12 October that year. The option would require post implementation monitoring, oversight and a level of support for the arrangements by the Crown.
- 50. The review and end provision in Option One provides the potential for a staged removal of the direct intervention by the Crown in ECan's governance arrangements and pathway to return ECan governance to the standard arrangements for regional councils.
- 51. District Health Boards (DHBs), which are established under the Health Act 2002, provide a precedent for this model. The Minister of Health may appoint up to four members to the Boards. The Ministerial appointments are used to balance the DHBs' elected membership in terms of skills and, where relevant, representation of ethnic, gender and geographic groups. The Minister may only appoint persons who, in the Minister's opinion, have the appropriate knowledge, skills and experience to assist the DHB in question to achieve its objectives. However, DHBs are central government bodies and are not accountable directly to local ratepayers.

Capacity to provide democratic, local and balanced decision making that meets the needs of the region's communities (meets criterion)

- 52. Option One would include a significant democratic local decision making dimension. It would allow for electors to democratically elect representatives to ECan's governing body and provide for an elected member majority on the governing body. This is broadly consistent with the fundamental principles applying to local governance in the LGA02. The government appointees on the governing body would be ultimately accountable to Ministers and would add value to its decisions through critical specialist expertise and impartiality to balance the particularly strong regional interests.
- 53. Option One would provide a democratic local decision making element and a pathway to a withdrawal of the intervention in time, and restoration of full democratic participation. The features of the option that balance elected and appointed members and urban and rural elected members would ensure deadlocked decision making of the past does not return.

Capacity to provide effective governance outcomes to mitigate economic and environmental risks (strongly meets criterion)

- 54. Option One would provide stability, certainty and strategic oversight, with investment decisions able to be managed with greater certainty. This option has a strong capacity to provide effective governance outcomes and to mitigate economic and environmental risks. An abrupt and complete change with a resulting lack of continuity and institutional knowledge on ECan's governing body would put ECan's momentum at risk. There is a real need for ECan's governing body to retain specialist expertise and institutional knowledge and prevent the return to deadlocked decision-making.
- 55. The option would support good governance arrangements that are enduring, effective and self-sustaining and will facilitate the growth of Canterbury and the New Zealand economy. A return to deadlocked decision-making or unstable governance arrangements could affect productivity growth in the region and the national benefits of such growth. A transitional and effective governance arrangement for ECan specifically tailored to Canterbury's governance needs will mitigate risks to these initiatives and the growth for Canterbury and New Zealand.

56. The transition period will allow for the Land and Water Plan to be finalised and any subsequent regional plan changes to be made in an expedient manner with limited costs and delays to Canterbury. It will also allow full appeal rights and judicial review mechanisms to return after this time.

Facilitates earthquake recovery processes (strongly meets criterion)

57. This option will likely prevent a return to a politically divided council. A fully functioning council with the ability to make unified decisions will provide the stability needed to support the territorial authorities and CERA in the earthquake recovery process.
58. Additionally, this option would likely prevent a complete turn-over of ECan's membership and, therefore, ensure that relationships the Commissioners have built up with the territorial authorities and CERA are maintained.
59. The option would provide certainty for the agencies and bodies engaged in the recovery process for the length of that process. It provides for a stronger relationship and partnership with central government for the delivery of both regional and national earthquake recovery objectives. The arrangements would be in place during what is likely to be the most critical and intense period of the recovery.
60. The duration of the option could potentially be linked with earthquake recovery processes (for example the presence of CERA in Canterbury).

Table II: key costs, benefits and net benefits (relative to status quo) for Option One

	Costs	Benefits	Net benefits
Canterbury Communities	Reduced democratic input (for a limited period) Mitigates political divisions for duration of arrangement only	Opportunity to revert to full locally elected council, subject to Ministerial reviews	Representation balanced with specialist expertise and stronger linkages with central government, but for a limited period
Government	Potential barrier to consistent frameworks and ability to roll out upcoming reforms	Specific framework for unique Canterbury challenges	Responds to time-critical need for unique arrangements for Canterbury with ability to return to standard governance framework when appropriate
Local Government	Uncertainty that governance arrangements will change	Ability to complete critical frameworks, such as a comprehensive resource management planning system	Improved resource management system for region and facilitation of earthquake recovery processes

Option costs

61. The direct costs of implementing the proposal for the composition of the governing body in Option One would be incurred by ECan in the form of remuneration, fees and payments to the governing body. The appointed members may command higher levels of remuneration than elected members on the basis of their skills and expertise. This may result in higher overall remuneration costs for ratepayers than would have applied if there were to be a fully elected council. Representational arrangements review costs would fall to central government.
62. The Crown would incur costs implementing and administering the legislative framework for the option and monitoring its operation, including regular appointment decisions. The Crown would have a greater involvement in regional-level decision making, which would have time and resource implications for central government.

Option risks and mitigations

63. Option One entails risks because of the employment of new governance arrangements in the local government context. Risks remain that the electoral outcomes and appointment processes could generate uncertainty around the roles and responsibilities of elected and appointed members, or of dysfunction arising in the governing body. However, those risks could be mitigated through representation arrangements that appropriately balance urban and rural interests and clear definition of roles and responsibilities and dispute resolution processes.
64. The framework for local government in New Zealand is designed to align representation with areas of interest, decision making, funding and accountability. Funding is almost entirely derived locally, but central government appointees will have a large say in how the money is spent.
65. Appointed membership on ECan's governing body risks being viewed as an intrusion into local government powers and to undermine a key principle of the local government system that communities have the right to decide their local affairs and pay for them through their elected representatives. There is a risk the Canterbury community will perceive Option One as reducing their capacity to choose and replace elected representatives.
66. Direct intervention through new legislation potentially disrupts the integrity of the parent legislation (the RMA and LGA02) at a time when reforms to both Acts are underway. This creates a potential risk that Option One may constrain the implementation of wider reform in the Canterbury region.
67. Elected members are required to act in the interest of their regions. Schedule 7 of the LGA02 requires regional councillors, after being elected, to declare that they will act in the best interests of the region.
68. There is a potential tension between elected members' requirement to act in the local or regional interest, and being required to deliver outcomes in the national interest. There are risks of blurred or unclear accountability and a lack of certainty around the governing body's accountability. There are also inherent tensions between the dual accountabilities of the appointed members to the Ministers who appoint them and the ratepayers that pay for them.
69. Government intervention could increase the number of formal requests for intervention in other regions. This intervention could also set a precedent for an untested form of governance, further creating a risk of having numerous unique governance arrangements in different parts of the country. However, the 'Assistance and Intervention Framework' in the Local Government Act 2002 Amendment Bill will provide guidance and mechanisms to assess and address future requests for intervention.

70. These risks must be balanced with the need to build and maintain ECan's capability and performance and address the challenges of governing the Canterbury region. This balance is particularly important after a period of dysfunction and poor performance, and the undue disruption from the series of earthquakes in the region. The anticipated net benefits of Option One are discussed in further detail below.

Net benefits of option (relative to status quo)

71. The net benefits of Option One are its distinct governance arrangements tailored to manage the significant challenges of governing this unique region and managing its valuable natural resources, and where the standard governance arrangements in the LGA02 have failed in the past. It will prevent a return to the politically divided council after the Commissioners' current terms. It will provide the mix of democratic representation and specialist skills on the governing body necessary to ensure ECan operates as a fully-functioning council and can make unified and strategic decisions on matters of regional and national importance.
72. Under Option One, ECan would have the capacity to act as a leader on resource management matters and ensure stability in the region to support the territorial authorities and CERA in the earthquake recovery process.

Option Two: Legislation to establish a permanent mixed governing body

Description of option

73. This option would include the key design features of Option One described above, but the intention of Option Two is to establish a permanent mixed model governance arrangement for ECan. There would be provision for a review of the arrangements at least every six years. The review would consider whether to alter representation arrangements or reduce the proportion of Government appointed members to elected members for example.

Assessment against evaluation criteria:

Administrative practicality (strongly meets criterion)

74. A successful implementation of Option Two would be subject to the swift development, introduction and passage of legislation. The option may only be provided for by legislation. The option would require ongoing post-implementation monitoring and oversight of the arrangements by the Crown.

Capacity to provide democratic, local and balanced decision making that meets the needs of the region's communities (meets criterion)

75. Option Two represents a return to a form of democratic representation in Canterbury after a period of Commissioner governance, while ensuring the gains in governance capability in ECan are sustained over the long term. Option Two would provide a democratic local decision making element, but without a pathway to a withdrawal of the intervention, and restoration of full democratic participation, described in Option One. The Option may therefore be controversial.

Capacity to provide effective governance outcomes to mitigate economic and environmental risks (strongly meets criterion)

76. There is a real need for ECan's governing body to retain specialist expertise and institutional knowledge after the expiry of the Commissioners' current term. The option would provide for continued specialised governance and ensure a high skill base and expertise on the governing body.

77. This option ensures stable and effective governance by ECan for the long term. It is expected that it would facilitate the productivity growth and national benefits predicted by NZIER's report (introduced in the Context section above). There would certainly for stakeholders and investors in the region that ECan's broader governance arrangements would not change.

Facilitates earthquake recovery processes (strongly meets criterion)

78. As with Option One, this option will likely prevent a return to a politically divided council. A fully functioning council with the ability to make unified decisions will provide the stability needed to support the territorial authorities and CERA in the earthquake recovery process.
79. Additionally, this option would likely prevent a complete turn-over of ECan's membership and, therefore, ensure that relationships the Commissioners have built up with the territorial authorities and CERA are maintained.

Table III: Key costs, benefits and net benefits (relative to status quo) for Option Two

	Costs	Benefits	Net benefits
Canterbury Communities	Reduced democratic input	Assures improved governance outcomes Mitigates political divisions	Democracy balanced with specialist expertise and stronger linkages with central government
Government	Potential barrier to consistent frameworks	Specific framework for unique Canterbury challenges	Responds to time-critical need to set arrangements for Canterbury
Local Government	Potential to reduce capacity for locally initiated reorganisation	Stable, strategic governance and inter-council relationships	Opportunity to build stronger local governance in Canterbury

Option costs

80. The direct costs of implementing the proposal for the composition of the governing body in the Option Two would be incurred by ECan in the form of remuneration, fees and payments to the governing body.
81. This intervention could be disruptive for staff and initiatives underway (compared to Option One), but it is likely to be less disruptive than if ECan reverted back to a fully elected body at the expiration of the Commissioners' terms in 2013 (Option Four).
82. Additional resources could be required from the Ministry for the Environment, the Department of Internal Affairs and the Ministry of Primary Industries to assist with ECan's transition (although the resourcing requirement is likely to be relatively minor).

Option risks

83. Risks include the potential to:

- disrupt local government and RMA frameworks;
- be contentious; and
- destabilise relationships with other territorial authorities and stakeholders in the region.

Net benefits of option (relative to status quo)

84. The net benefits of the option are similar to those described for Option One above. The net benefits centre on longer-term economic growth and stability. However, the option would, over the long term, prevent aligning ECan with the standard arrangements for regional councils and electors' capacity to elect their representatives (relative to all other local authorities).

Option Three: Legislation to extend the existing governance by Commissioners

85. The current governance arrangements for ECan in the Act could be extended for a further period beyond the current expiry in October 2013 through legislation. The option would maintain a governing body for ECan of appointed Commissioners. The WCO and moratoria provisions in the Act would expire with the Act (as anticipated by the Act).

Assessment against evaluation criteria:

Administrative practicality (meets criterion)

86. The option would be practical to implement subject to the swift enactment of supporting legislation. The option may only be provided for by legislation and would require an amendment to the Act to extend the terms of the Commissioners. It would be easier to implement this option from an administrative perspective, than Options One and Two, which have representation issues to consider. Governance of ECan by Commissioners has been successful intervention (for example, it has been tested, whereas Options One and Two are new in the local government context).
87. It would involve continued and significant intervention by Government in ECan's governance. It defers resolution of the current problems as it provides no clear exit mechanism from the intervention.
88. Extending or entrenching the existing arrangements would mean that the region's electors would not have the opportunity to democratically elect members to ECan's governing body, inconsistent with the principles relating to local government in the Local Government Act 2001.
89. The existing governance arrangements for ECan under the Act expire the day on which newly elected members take office after the 2013 local authority elections. The option would therefore require legislation to extend, or entrench, the arrangements. The success of the legislative framework for the option is dependent the swift passage of legislation for this to be in place by early March 2013 in time for the 2013 local authority elections on 12 October 2013.

Capacity to provide democratic, local and balanced decision making that meets the needs of the region's communities (does not meet criterion)

90. The option has limited capacity to provide democratic or local decision making on the governing body. However, the collaborative nature of resource management planning under the CWMS means that the community's views are incorporated to some extent in decision making.

Capacity to provide effective governance outcomes and to mitigate economic and environmental risks (meets criterion)

91. Option Three has the capacity to provide effective governance outcomes and to mitigate economic and environmental risk based on the success of the Commissioners. It would again delay Canterbury electors' ability to elect any representatives to ECan.
92. This option would lead to effective and enduring governance arrangements for Canterbury that will likely facilitate Canterbury's growth and contribute to New Zealand's welfare and GDP growth as predicted by NZIER.
93. This option would support achievement of a fully operative planning framework. If the current Commissioners were reappointed, institutional knowledge would be retained for the critical initiatives underway. There would also be limited disruption to staff and the organisation that are familiar with the Commissioner model of governance.

Facilitates earthquake recovery processes (meets criterion)

94. The Commissioners have demonstrated an ability to build strong relationships with CERA and Selwyn District Council and Waimakariri District Council on earthquake response and recovery matters. It is likely that Option Three will continue to support those critical relationships. The Commissioners have noted the relationship with Christchurch City Council needs further development and this option would allow for the strengthening of this relationship.
95. It would limit local democratic involvement in earthquake recovery processes.

Table IV: Key costs, benefits and net benefits (relative to status quo) for Option Three

	Costs	Benefits	Net benefits
Canterbury Communities	Limited opportunity for local democratic decision-making	Assures governance outcomes Mitigates political divisions	Decision making certainty but with reduced capacity for democratic input.
Government	Potential barrier to consistent, national frameworks	Specific framework for unique Canterbury challenges Ability to build strong local-central govt relationships	Responds to time-critical need to set arrangements for Canterbury, but the extent of intervention could be excessive
Local Government	Compromises fundamental principle of local government	Ability to complete critical frameworks, such as a comprehensive resource management planning system	Lacks ability for local representatives to set policy direction

Net benefits (relative to status quo), Costs and risks

96. The monetary costs of the option would be similar to the existing costs. The Commissioners would be remunerated by ECan at a rate set by joint Ministers. However the option would have opportunity costs, for example the inability of candidates to stand for election and participate in local decision making. There would be stability and continuity on the governing body, but no clear withdrawal from the intervention.
97. The extension of the Commissioners' terms would continue to deny Canterbury residents the opportunity to vote for representatives on ECan. Also, given the progress made by the Commissioners, there is no apparent reason for continuing this level of intervention, which was used in response to ECan's previous serious and systemic dysfunction.
98. The net benefits of Option Three are its distinct governance arrangements tailored to manage the significant challenges of governing this unique region and managing its valuable natural resources, and where the standard governance arrangements in the LGA02 have failed in the past. It will prevent a return to the politically divided council. It will provide the necessary specialist skills on the governing body to ensure ECan operates as a fully-functioning council and can make unified and strategic decisions on matters of regional and national importance.
99. It will have the capacity to act as a unified leader on resource management matters and ensure stability in the region to support the territorial authorities and CERA in the earthquake recovery process.

Option Four: Return to Local Government Act 2002 regional council governing body arrangements (status quo position in ECan Act)

100. Option Four would return ECan to the standard governing body arrangements for local authorities in the LGA02.
101. These arrangements involve a governing body comprising members elected under the Local Electoral Act 2001, and a chair elected by and from the members. The option could be substantively implemented without the need for legislation, although a new process may be required to determine ECan's representation arrangements for the 2013 local authority elections.
102. Option Four would bring the governance arrangements for ECan back into line with those applying to all other regional councils under the LGA02. It would return ECan's governance arrangements to the arrangements that applied before the intervention of the Act. This option would provide the region's electors the opportunity to elect all representatives to ECan. The option is consistent with the position in that Act, and its purpose of enabling a temporary statutory intervention in ECan's governance and the appointment of Commissioners.¹⁰

Assessment against evaluation criteria:

Administrative practicality (strongly meets criterion)

103. Option Four would meet the objective of administrative practicality as it reverts to standard governance provisions and involves a clear exit from the intervention. It could be implemented under the existing legislative frameworks for local government. But a new statutory process

¹⁰ The purpose of the Act in section 3 (a) is to provide for the replacement of the elected members of the Canterbury Regional Council with Commissioners who will act as ECan's governing body until new elected members come into office following the next election.

would likely be required to set the representation arrangements for the 2013 local authority elections.

Capacity to provide democratic, local and balanced decision making that meets the needs of the region's communities (strongly meets criterion)

- 104. The option meets the objective of providing capacity for democratic or local decision making on the governing body. The governing body would comprise a fully democratically elected governing body of representatives elected from constituencies.
- 105. Returning to an elected governing body, without transitional Crown support, would represent a return to a normal state of affairs for ECan, and would bring its governing body into line with those of all other regional councils.

Capacity to provide effective governance outcomes and to mitigate economic and environmental risks (uncertain capacity to meet criterion)

- 106. The capacity of the option to meet the objective of providing effective governance outcomes and mitigate economic and environmental risk is unclear and uncertain.
- 107. An elected body with no further Crown support has disadvantages. This option would involve a complete and abrupt change in governance arrangements. This option would create governance arrangements with a lack of institutional knowledge, ownership of current work programmes, and continuity on the governing body after the expiry of the Commissioners' current term. There is also, without political succession, a higher risk of political divisions returning to ECan that would limit its ability to operate effectively.
- 108. This option could risk the economic growth in Canterbury and limit the ability of the region to contribute to New Zealand's GDP and wealth growth as predicted by NZIER. A return to deadlocked decision making and ineffective governance arrangements for ECan could ECan's ability to facilitate such growth and could reduce investment certainty in the region.

Facilitate earthquake recovery processes (partially meets criterion)

- 109. This option could disrupt ECan's ability to support the earthquake recovery processes. The potential for ECan to return to deadlocked decision making could lead to a breakdown in relationships with territorial authorities and CERA, who could lose confidence in ECan.
- 110. The inherent issues with this option (as described above) make its capacity to support earthquake recovery uncertain at this critical phase in the recovery. Christchurch City Council recently experienced a phase of dysfunction and required central government support to improve internal relationships and decision making capabilities. This intervention was necessary to enable Christchurch City Council to carry out its functions, including response to earthquake recovery issues.

Costs, benefits and risks

- 111. The monetary costs of the option would be in line with the current costs of Commissioner-led governance.
- 112. Statistics held by the Department for the 2010 local elections confirm that incumbent members generally have a higher chance of being elected than new candidates. Incumbent members of regional councils comprised 75 per cent of total members elected at the 2010 local authority elections. There were no elections to ECan and consequently no incumbents. Incumbency means that skills acquired on the governing body are retained.
- 113. An abrupt and complete change with a resulting lack of continuity and institutional knowledge on ECan's governing body would put the Council's momentum at risk. The Department and

Ministry's assessment is there is a strong need for ECan's governing body to retain specialist expertise and institutional knowledge after the expiry of the Commissioners' current term.

Option Five: Ministerial direction for an independent review of matters relating to ECan governance, representation and establishing a mixed governing body.

114. Option Five would involve the adoption in principle of mixed model governance for ECan and the direction for a full review of its governance arrangements including the balance of elected and appointed members on the governing body and other relevant matters. Any review would be independent (for example undertaken by the Local Government Commission under the LGA02¹¹). The review could report to Ministers for a legislative response by the Government.

Assessment against evaluation criteria:

115. The option may be more administratively complex than other options analysed in the RIS as it would involve a detailed review, government response and implementation. It would likely require an interim intervention at the 2013 local authority elections. It is unlikely to be practicable to implement in advance of the elections. Option Five has significant capacity to provide democratic, local and balanced decision making that meets the needs of the region's communities, in particular through the opportunities it would provide for input into the representation process. The option may leave an unreasonable level of uncertainty around governance outcomes and for earthquake recovery processes.

Costs, benefits and risks

116. The monetary costs of the option would be uncertain. The key cost of Option Five is that it would not result in the timely resolution of ECan's governance arrangements, which is time critical as noted above. It would leave ECan's governance arrangements uncertain until the completion of a review and the implementation of the Government's response.
117. The key benefits of Option Five are that it could provide greater opportunities for public engagement in the process for determining ECan's governance arrangements.
118. The risks are as above and centre on not implementing the option in a timely manner. It may necessitate an interim intervention to either postpone the 2013 local authority elections for ECan or establish interim arrangements until the option is implemented.

Consultation

119. This regulatory impact assessment was developed by the Department of Internal Affairs and the Ministry for the Environment. The following agencies have been consulted in the preparation of this paper: the Treasury, the Ministry of Primary Industries, the Ministry for Business, Innovation and Employment, the Ministry of Health, the Ministry of Justice, the Department of Conservation, Te Puni Kōkiri and the Canterbury Earthquake Recovery Authority. The Department of Prime Minister and Cabinet has been informed.
120. The Treasury supports providing continuity in ECan's governance arrangements in the form of a transitional arrangement, noting the unique demands placed on ECan following the Christchurch earthquake. It notes the permanent proposal in Option Two is a significant

¹¹ Section 31 provides that the Local Government Commission may report to the Minister of Local Government on matters relating to local government.

departure from Part 10 and schedule 7 of the LGA02. Its view is that adequate analysis has not been undertaken to support a permanent mixed governing body being implemented. The implications of a permanent structure, including limiting community and stakeholder participation in the decision-making process have not been fully assessed. Stakeholders would expect to be consulted on such proposals, given the likely limitations on their future involvement. It is also unclear how this proposal sits within the wider local government, resource management and water regulatory reforms. Any permanent decisions made on the governance structures for ECan may be viewed as a blueprint for these wider reforms, to the detriment of the relevant reform consultation processes.

121. The Treasury also expressed concern over the lack on consultation with departments, and more importantly with stakeholders given this is a significant change in democratic practices and a strong departure from the standard arrangements for regional councils.
122. Consultation on this RIS has been limited to key Government agencies and concerns were expressed that sufficient consultation was not undertaken. As noted in the Agency Disclosure Statement, we recognise that there has not been a Crown led public consultation process with Canterbury stakeholders and communities on the options in the RIS. This limits our ability to reflect community views in this analysis. However, we note that the preferred option is based on proposals from ECan which were informally and generally discussed with, and received broad support from, key regional stakeholders.
123. The Canterbury Mayoral Forum has noted the uncertainty Canterbury is facing from prolonged seismic activity, global economic disruption and the Better Local Government reforms. Collectively, it does not have a preferred option for ECan's future governance arrangements, but highlights the importance of balanced representation for rural and urban parts of the region. However, we understand that a clear majority of Mayors supported the option of ECan's future governing body comprising one third government appointees, one third rurally based elected representatives and one third urban based elected representatives.
124. The preferred option would require legislation. In our view, it would be appropriate for further specific consultation to be undertaken with ECan, Canterbury's territorial authorities, Local Government New Zealand and Ngāi Tahu on aspects of proposed arrangements before any legislation is introduced to the House of Representatives. Any legislation would provide substantive opportunities for public and stakeholder input through select committee, representation review and appointment processes.
125. In our view, it would be appropriate for further specific consultation to be undertaken with ECan, Local Government New Zealand and Ngāi Tahu before any legislation is introduced to the House. Any legislation would provide substantive opportunities for public and stakeholder input through the select committee process.

Conclusions and recommendations

126. In the Department and Ministry's view, Options One and Two have strong merit as options for addressing the problem described above in a timely manner. The net benefits of the options, when measured against the status quo (a return to a fully elected governing body for ECan at the 2013 local authority elections) are finely balanced. The choice between the two options essentially comes down to the relative weight attached to democracy versus stability. Both provide distinct governance arrangements tailored to manage the significant challenges of governing this unique region and managing its valuable natural resources.
127. Option One will prevent a return to the politically divided council of the past. It will provide the necessary specialist skills on the governing body to ensure ECan operates as a fully-functioning council and can make unified and strategic decisions on matters of regional and national

importance. It will have the capacity to act as a unified leader on resource management matters and ensure stability in the region to support the territorial authorities and CERA in the earthquake recovery process. The mixed model in Option One retains a significant element of democratic governance and appropriate skills and knowledge on ECan's governing body to ensure the Commissioners' momentum is carried forward and certainty for the region's return to a position of economic growth and prosperity. However, it would represent a significant and permanent departure from the governance arrangements for regional councils in the LGA02.

128. Option One provides flexibility for the eventual reinstalment of standard governance arrangements for ECan, and a withdrawal of the intervention and is preferred.

Implementation

129. The preferred option would, if agreed by Cabinet, be given effect through a proposed Environment Canterbury (Governance) Bill.
130. If these amendments are progressed later in the 2012 calendar year, they could come into force early in the 2013 calendar year, in time for the 2013 local authority elections. There is a risk to the commencement of the options in advance of the 2013 elections if sufficient progress is not made later in the 2012 calendar year.

Monitoring, evaluation and review

131. The Department and Ministry would monitor any new legislative and regulatory arrangements and ECan's performance. Given the preferred option involves ongoing Crown intervention and involvement in ECan's governance, there will be an ongoing monitoring, support and evaluation role for the Crown. Subject to Government policy decisions, the Minister of Local Government would be responsible for the legislation.
132. Terms of Reference containing performance measures relating to the objectives for ECan governance will be provided to governing body members. These will provide objective measures for agencies and the responsible Minister against which to measure performance against. Monitoring would be supported by regular reporting to Ministers by the Governing body. Where performance issues or disputes arise it is intended that additional Crown assistance would be available to resolve these. The Minister would also have the ability to remove and replace appointed members.

