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ECO Submission on the Environment Canterbury (Temporary Commissioners and Improved Water Management) Amendment Bill 2012

1. Introduction

[1.1] ECO is an organisation of around 50 member organisations and several hundred Friends of ECO. We welcome this opportunity to make a submission on the Environment Canterbury (Temporary Commissioners and Improved Water Management) Amendment Bill 2012. ECO has been involved in issues of resource management and open government since its formation 40 years ago.

[1.2] This submission has been prepared by members of ECO Executive and is in line with ECO Policy that was developed in consultation with ECO member bodies and endorsed by our June 2012 AGM.

[1.3] ECO is concerned about the implications of this Bill for participative democracy, resource management and sustainable development.

[1.4] **ECO wishes to be heard in support of this submission.** It has members in Christchurch and could be heard there if this is the only opportunity.

2. Democracy and democratic rights of Cantabrians

[2.1] ECO believes that local decision making, consultation and support for what is valued by local communities is ultimately crucial to effective and efficient government. It is ultimately crucial to a fully operating democracy. This Bill continues to deny the right of Cantabrians to the kind of democracy that is availed to other citizens in New Zealand.

[2.2] **ECO opposes** this Bill because it extends the suspension of regional Council elections for Cantabrians for a total six years – as described in the Christchurch Press *“the most radical denial of voting rights that this nation has experienced in recent times – a fact that disadvantages Cantabrians and besmirches the*

Government". In fact this goes beyond besmirching Government to mortifying and shaming every single New Zealander that understands the implications of this Bill in a democratic society. This perpetuates taxation without representation.

[2.3] This Bill perpetuates a constitutional affront because the current Act breached the rule of law that requires that 1) legislation is general in its application - but the ECAN law is not general but rather specific to the WCA application by Fish and Game on the Conservation Order for the Hurunui River 2) laws to be prospective but the Act was retrospective because it cut the Hurunui WCO process (one that ECO members were involved in) off at the point the application was to go to the Environment Court 3) citizens must have equal access to courts – but the Act removed access to the courts to appeal regional plans and the Regional Policy Statement for Cantabrians, and within certain limits the Act gave the Minister the right to suspend the RMA in Canterbury as he wishes.

[2.4] **ECO opposes the Bill** because it perpetuates the weakening of water conservation orders in Canterbury and the local knowledge and input of democratically elected councillors and consultative processes in resource management matters, and denies recourse to the Environment Court and its scrutiny of decisions available to other citizens of New Zealand

[2.5] In passing the original Act the Government promised to reinstate democratic rights for Cantabrians for 2013 Local Government Elections. This promise is now to be broken for insufficient and unacceptable reasons. It is notable that in the Regulatory Impact Statement that the Ministry for the Environment and the Department of Internal Affairs found that "there has not been a Crown led public consultation process with Canterbury stakeholders and communities on the options" and "insufficient justification for continuing special provisions for water conservation orders in Canterbury"

[2.6] It is to be noted that the Government's own appointed Environment Canterbury Commissioners have not recommended this course, but that they be replaced by a mix of a majority of elected regional Councillors and appointed Commissioners.

3. This Bill goes against international norms and best practice

[3.1] ECO supports an open, participatory sustainable development approach to frame our governance in local and central Government. Such an approach is now consistent with international agreements and norms, such as the 1992 United Nations Conference on Environment and Development (UNCED), 2002 World Summit on Sustainable Development (WSSD) and 2012 United Nations Conference on Sustainable Development (UNCSD) Agreements and the Aarhus Convention.

[3.2] This Bill goes against international best practice where local authorities uphold the principles of sustainable development and strive to strengthen their communities and democracy by making government more relevant, participative and inclusive. ECO opposes these changes.

[3.3] **ECO opposes** this Bill which undermines the building and maintenance of responsive, democratic and open government and the support of best practice.

[3.4] Local councils are in a better position to determine and respond to local needs than central government (or the private sector) or unelected Commissioners. Elected councillors bring both local knowledge and current understanding because, being

accountable to their constituents, they are constantly being appraised of what is happening in their constituencies. Appointed commissioners lack this daily link to natural resource management throughout Canterbury.

[3.5] The Act and the amending Bill undermine the very approach that the New Zealand Government has so recently agreed to in signing on 22 June 2012 the “The Future We Want” Outcomes Agreement from the United Nations Conference on Sustainable Development UNSD or Rio+20.

[3.6] Sustainable development depends on a much more holistic approach integrating economic, social, environmental and cultural policies and outcomes, and recognises the need to involve and consult with communities at all levels.

[3.7] In 1992 when the New Zealand Government signed at UNCED (United Nations Conference on Environment and Development) the Agenda 21 with its Chapter 28 statement on Local Authorities, it recognised Local Authorities “*as the level of governance closest to the people, they play a vital role in educating, mobilizing and responding to the public to promote sustainable development*”

[3.8] At Rio+20 June 2012 the New Zealand Government reaffirmed this principle in Paragraph 43

“we reaffirm the key role of all levels of government and legislative bodies in promoting sustainable development ...recognize the important role that such authorities and communities can play in implementing sustainable development, including by engaging citizens and stakeholders ...”

[3.9] Furthermore Paragraph 98 of the Rio+20 agreement states: “**We encourage regional, national, subnational and local authorities as appropriate to develop and utilize sustainable development strategies as key instruments for guiding decision-making and implementation of sustainable development at all levels, and in this regard we recognize that integrated social, economic and environmental data and information, as well as effective analysis and assessment of implementation, is important in decision-making processes.**”

[3.10] Integral to this is the recognition in Paragraph 43: “**We underscore that broad public participation and access to information and judicial and administrative proceedings are essential to the promotion of sustainable development. ...we agree to work more closely with Major Groups and other stakeholders and encourage their active participation, as appropriate, in processes that contribute to decision making, planning and implementation of policies and programmes for sustainable development at all levels.**”

[3.11] This Bill together with changes identified the Local Government Act 2002 Amendment Bill 2012 will restrict the very activities and functions which promote ‘broad public participation’ and access to judicial and administrative proceedings ‘essential to the promotion of sustainable development’ and the agreement to work more closely with Major Groups¹ and ‘encourage their active participation’.

¹ Major Groups as identified in Agenda 21 and subsequent agreements to include” civil society organisations, including business and industry, have been represented Women, Children and Youth, NGOs, Indigenous Peoples, Business and Industry, Local Governments, Workers and Trade Unions, Science and Technology, Farmers, and have been recognised as playing important and increasing roles as partners in sustainable development.

4. Reorganisation proposals

[4.1] ECO is concerned about the direction towards greater amalgamation and loss of participation in our democracy through losing local representation and involvement. The Auckland model is not yet proven and is unlikely to fit the rest of the country where the current structure (regional and district council and community boards) with its tiered instruments provides checks and balances that might not otherwise be there.

[4.2] Local authority amalgamations into increasingly larger units result in the ordinary residents and their communities being distanced still further from local authority contact and so their ability to participate and influence local government. Already New Zealand has larger local government units than many OECD countries.

[4.3] ECO considers that any proposed changes in the processes for reorganization of political boundaries could undermine the principles of inclusive and participative democracy and without elected Regional Councillors Cantabrians will have a lesser say on proposals that may come to be debated before 2016. So the continuation of the Commissioners also reduces the ability of Cantabrians to have full and effective input on council amalgamation and reorganisation.

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Supplementary material presented to the Select Committee:

5 November 2012

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Supplementary Information - ECO Submission on the Environment Canterbury (Temporary Commissioners and Improved Water Management) Amendment Bill 2012

We thank the Committee for the opportunity to present our submission and in speaking to it, we provide this further explanatory material.

In ECO's Submission our concern is expressed that this Bill goes against international norms and best practice in governance, and reference is made to the Aarhus Convention. **ECO wishes to expand on this and bring information on the Aarhus Convention.**

There is now the international norm that civil society is included in the development of policy, law, practice, and often in implementation.

- Agenda 21 (the Agenda for the 21st Century) – from Rio, affirmed public participation in a country's development.

NZ would consider itself a participatory democracy and generally follows, sometimes leads, international norms. Election of local authorities which manage natural resources (and rate communities in order to do this) is a tenet within participatory democracy, as is consultation on the management of resources and equal access to the law and justice. This is why this Bill is disturbing and unacceptable.

New Zealand natural resource management practice and current issues – the context for this Bill

- The Resource Management Act 1991 established the law of equal participation – all have standing. RMA practice and recent reforms have somewhat eroded on this including the presumption of public notification. In policy local government, business and iwi are usually consulted, but public and civil society is frequently excluded or marginalised e.g. in the list of consultees with the Ministry of Science and Innovation, and the EEZ&CS and Crown Minerals Act – where there is some public notification but business, iwi, local government have privileged access.
- Local Govt Act 2002 – Put community central to council plans with its tenets of four wellbeings – environmental, social, cultural and economic. This is also no longer secure.
- There are several cases of overriding due process and/or centralisation of Ministerial power including the use of Urgency in Parliament, suspension of the rule of law in Canterbury, dismissal of the Environment Canterbury Council, and suspension of Regional Coastal policy statements in Waikato

and Tasman and the moves to give Economic Ministers given extra powers over colleague portfolios – eg Mining on conservation land with the MED Minister powers increased.

Public participation in Environmental Policy – why an issue?

- Public participation, including through election of and one's elected representatives, is intrinsically valuable for democratic reasons, for policy quality reasons, for checks and balances on power – eg as “sunlight” the best disinfectant against corruption, and it can enhance quality of policy.
- Public participation gives expression to ethical, cultural and other non-market values: helps government understand demand for environmental policy action, improve problem definition, agenda setting, analysis, and implementation – ie supply.
- Public participation improves regulatory and policy quality, aids problem definition, understanding of scope, options, solutions, implementation and provides information not otherwise available to policy makers. It identifies who is affected.
- Public participation in a functioning democracy may help in other ways too eg people are more ready to comply – i.e. it is governance with “the consent of the governed”, hence less active enforcement is needed, as it may motivate more monitoring and surveillance, reporting and compliance – eg, strong reciprocators are more willing to act, report, and sanction non-compliers.

Voting for governments is an important part of democracy as it gives opportunity for discussion of policy proposals via elections which are often preceded by deliberation, and coalition building, so generating new rounds of negotiations and deliberation between interested parties and candidates that represent their views..

Environmental Democracy

New Zealand's economy depends on its natural resources, and we cannot build a productive nation with good environmental information. It is now common to look at the issue of environmental information under the heading of *environmental democracy*. This concept is generally understood to embrace three distinct aspects, to wit:

- Provision of and access to environmental information, i.e., the right of everyone to receive environmental information held by public authorities. This can include information on the state of the environment, but also on policies or measures taken, or on the state of human health and safety where this can be affected by the state of the environment.
 - Public participation in environmental decision-making, i.e., the right to participate in environmental decision-making. Arrangements are to be made by public authorities to enable the public affected and environmental non-governmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment, these comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it.
 - Access to justice in environmental matters, i.e., the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general.
- New Zealand could have claimed it has already provided for each of the three above matters, but now this claim is contentious in face of the erosions mentioned

about. And how do we stack up compared to other countries? International best practice is now very much set by the **1998 UNECE (Aarhus) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters**². Parties to the Convention benefit from regular performance reviews (i.e. examination of a country's practices under each of the Convention's clauses) carried out by the UNECE secretariat. Best practice, of course, evolves over time and the UNECE reviews remind countries where they fall short by today's standards. Countries outside the UNECE region can become party to the Aarhus Convention (Art 19) so there is an opportunity here for New Zealand to show its environmental practices meet world standards. There are also countries that are not a party to the Convention, but that have used it as a template for their own environmental democracy laws.

- Should the Government be uninterested in joining Aarhus, there is also an OECD Council recommendation³ on environmental information very similar to the Convention to which New Zealand has already signed up to. The OECD adopted a recommendation⁴ on this topic, one that endorsed by all OECD environment ministers, including New Zealand's in 2004.

ECO opposes this Bill which undermines the building and maintenance of responsive, democratic and open government and the support of best practice such as found in the Aarhus Convention.

ECO's submission outlines the historical development of the international norm which holds that *“Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.*

Over time this has culminated in the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

The **Aarhus Convention upholds the three pillars of environmental democracy**

- Joins people, governments and the environment
- Enhances government accountability and transparency.
- Joins environment and human rights by linking access to information, public participation, and access justice with environmental protection.

²<http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention.html>

³ OECD Council recommendation C(98)67/FINAL.
<http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=C%2898%2967/FINAL&docLanguage=En>

⁴ OECD Council recommendation C(98)67/FINAL.
<http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=45&Lang=en&Book=False>

In passing this Environment Canterbury (Temporary Commissioners and Improved Water Management) Amendment Bill 2012 New Zealand would be undermining the intentional accepted norms including the right of public participation where

- The public have a right to elect their own representatives and the principle of no taxation without representation is upheld
- The public throughout a country are treated equally
- Public who may be affected /are interested in decision-making about an activity have a right to be heard and have their views taken into account in the development of plans, programmes and policies relating to the environment
- Public participation and access to justice is ensured in the preparation of legislation and regulations and legal means to seek redress for environmental concerns with adequate and effective remedies that are timely, fair and equitable and not prohibitively expensive.