

**FUNCTIONAL
RELATIONSHIPS**

BETWEEN

**THE CANTERBURY
REGIONAL COUNCIL
(ENVIRONMENT
CANTERBURY)**

AND THE

**TERRITORIAL
AUTHORITIES**

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FUNCTIONAL RELATIONSHIPS BETWEEN THE CANTERBURY REGIONAL COUNCIL AND THE TERRITORIAL AUTHORITIES

1. OVERVIEW

1.1 The Brief

The brief for this report is appended as Attachment 1. The task has been to identify and examine the functional relationships between the Canterbury Regional Council (Environment Canterbury, ECan) and the 11 territorial authorities (10 district councils and the Christchurch City Council) in the Canterbury Region. The boundaries of the Region and constituent territorial authorities are shown in Attachment 2.

I prepared a similar report for a Joint Committee of the Regional Council and the Christchurch City Council in August 1997, limited to the functions of those councils. This report is essentially an update of that report, extended to also consider the 10 district councils.

The pattern of local government in Canterbury was established through the major nation-wide re-organisation in 1989. The territorial authorities were formed from amalgamation of former territorial authorities (boroughs, counties and cities), while the Canterbury Regional Council (Environment Canterbury) was formed from thirty-three different bodies with regional and resource management roles.

The focus of this report is the areas of activity where the work of Environment Canterbury ("ECan") affects the work of territorial councils and vice versa. It does not comprehensively address all district council and City Council functions because there are some, such as library services, that have little bearing on the work of Environment Canterbury. On the other hand virtually everything Environment Canterbury does has some relevance to the territorial authorities because at the least it involves some activity within their territories. As discussed below, the functional relationships are often much more significant than that.

In addition to setting out the functions of Environment Canterbury in relation to the territorial authorities, this report provides some perspectives on how the councils operate in practice in areas of their work where there is a mutual interest and the potential for conflict. It should be emphasised that these perspectives are just the author's. Although I have had the benefit of consultations with quite a number of senior council officers and a few councillors from throughout the region, the conclusions I have drawn are my own. I have appreciated the input from those people. It is fair to say there are some unresolved conflicts in a few of the functional relationships examined in this report, but my impression is that there is an overall will to learn from difficulties in the past and to resolve any continuing problems.

1.2 Legislative Basis for Functions

Local authorities (regional, unitary, city and district councils) are creatures of statute. That is, they exist only because they are authorised by Acts of Parliament. Those Acts of Parliament define what they may do; they may not do anything else.

Functions involve “powers” and “duties.” Powers are things councils may do; duties are things councils must do. The distinction is important and is quite clear from the language in the legislation.

The functions allocated to regional councils and territorial local authorities (city and district councils) have changed, even since the major reorganisation of local government in 1989. In particular, the 1992 amendment to the former Local Government Act 1974, and the current Local Government Act 2002 altered the scope of functions and the way functions can be delegated between councils. The allocation of functions set out in the present legislation and described below should not therefore be regarded as immutable - the rules have changed often in the past and will change again. Special arrangements have been made for certain functions in some regions and it is possible that if a problem particular to Canterbury arose, legislation could be amended to resolve it.

2. THE LOCAL GOVERNMENT ACT 2002

2.1. Purpose of the Act

The central legislation to examine when considering the functions of Environment Canterbury and the City and District Councils in the Region is the Local Government Act 2002. This sets out the broad scope of council functions, while the powers and duties in relation to particular functions are prescribed in various Acts that will be discussed under headings for particular functions later in this report.

The Local Government Act 2002 (“LGA”) replaced the Local Government Act 1974, and came into force in full on the 1st of July 2003. The Act aims to advance some objectives that were set out in the General Policy Statement of the Local Government Bill 2001:

- *“express a coherent view on the role and purposes of local government;*
- *shift from a detailed and prescriptive style of statute (that focuses councils on compliance with detailed legislative rules) to a more broadly empowering legislative framework that focuses councils on meeting the needs of their communities;*
- *provide the necessary flexibility for councils to work co-operatively and collaboratively with other public bodies and private concerns with common interests in advancing community goals; and*
- *clarify the relationship between local government and the Treaty of Waitangi.”*

Section 3 states the purpose of the Act to be to *“provide for democratic and effective local government that recognises the diversity of New Zealand communities”* by encouraging local authorities to take a *“broad role in promoting the social, economic, environmental and cultural well-being of their communities”*.

Section 12 of the Act (reproduced as Attachment 3) provides what is known as a *“power of general competence”* to regional councils and territorial authorities, giving them *“...full capacity to carry on or undertake any activity or business, do any act, or enter into any transaction...”*. This is subject to specific restrictions in this and other Acts, and subsection 4 of section 12 restricts councils to exercising these powers wholly or principally for the benefit of their districts or regions, but the starting point in considering the activities of councils is that under section 12 of the LGA they can do almost anything.

2.2 General Directives

The Local Government Act provides some general directives to councils. Section 11 of the Act states that it is the role of a local authority to perform the duties and exercise the rights conferred on it by any enactment in order to give effect to the purpose of local government outlined in section 10. That purpose is:

“(a) to enable democratic local decision-making and action by, and on behalf of, communities;

(b) To promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.”

Section 14 sets out some principles to be followed by local authorities in exercising their functions, including:

“(e) A local authority should collaborate and co-operate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources;”

One more provision of the Local Government Act should be mentioned. Section 16 (reproduced as Attachment 4) specifies some constraints and consultation requirements where a regional council proposes to undertake any *“significant new activity.”*

3. LOCAL GOVERNMENT FUNCTIONS

3.1 The Allocation of Functions

Before discussing the specific functional relationships, some general points should be made.

There is always a problem allocating and coordinating who does what between and within large organisations. Prior to the 1989 local government reorganisation, the Local Government Commission conducted a major consultation with the then existing councils, inviting them to consider from “first principles” which public sector functions would be best allocated to central

government, regional councils and territorial authorities (cities and districts). This exercise drew a great diversity of opinion and although there was never any hope of reaching universal agreement, at least there was an increased appreciation that the allocation of functions between different sectors of government is a very complex and to some degree insoluble problem. There are quite different allocations of functions between levels of government in other countries.

Centralisation is not a solution. Large organisations for practical reasons have to be broken down into operational sections on a functional, service, process and/or geographical area basis and then arrangements have to be made about what will be handled by the central organisation and what will be handled by sections/branches. The Christchurch City Council for example has recently undertaken a structural review and the role of that Council's Service Centres has evolved since they were set up. One issue raised in discussions I have had with district council managers in South Canterbury is the role of Environment Canterbury's office in Timaru. Officers find it useful to have an Ecan office in that part of the Region, and some expressed the view that the role and capacity of that office should be expanded.

As soon as an organisation is divided for practical operational reasons, there is an issue of internal coordination and co-operation because the activities of one division affect others. The allocation of functions between and within organisations is inevitably complex and the existence of problems, such as those outlined in this report, does not necessarily mean that there is a better way of doing things. There will always remain the need for co-ordination and co-operation. The unitary authorities such as Tasman District Council and Marlborough District Council illustrate this: they still have to ensure communication and a division of responsibilities between operational divisions carrying out regional and territorial functions. For any organisation the wider the range of potentially conflicting activities, the greater the need for co-ordination and co-operation.

For some functions there appears to be a continuum from aspects which are clearly regional matters through to aspects which are clearly of concern to only one territorial authority. There has to be a demarcation, but whenever it is drawn there will always be a "grey area" of possible overlap where there is a need for co-operation. I suggest it is better to have overlaps than gaps. The same applies to physical boundaries - the fact that there can be problems at boundaries, such as the mean high water springs boundary, does not necessarily mean that moving a boundary would solve all potential problems.

A further general comment is that in my view it is not necessarily a bad thing for both ECan and the territorial councils to have an interest in the same resource or subject matters. While obviously every effort must be made to avoid duplication and waste of effort as discussed below, there is a tendency for any organisation (public or private) with a monopoly to lose its "cutting edge". There can be some positive energy and value in the exchange of ideas where officers in different organisations have an interest in the same thing, but from a different perspective - for example where the Regional Council has a policy role and the territorial authorities have a service delivery role (e.g. potable water supplies), or where the Regional Council has a region-wide perspective and the territorial authorities

have an interest in their districts (e.g. urban growth strategies). In these situations some overlap of interests may represent complementarity rather than duplication.

3.2 Regulatory Compared to Service Delivery Functions

As will be described in this report, some functional areas involve both policy/regulation and service delivery. It has been an important element of local government reorganisation to clearly separate these elements so as to achieve better transparency and efficiency, for example in requiring competitive tendering for bus services.

Separation of regulation and service delivery is achieved by clear boundaries within council organisations (e.g. separate committees and departments). This is generally easier to achieve in a larger organisation where there is less potential for individual staff members to have both regulatory and service delivery roles.

There is a potential for fundamental conflict of interest for both ECan and the territorial authorities where the councils' service delivery activities require resource consent from the same council. This is dealt with by delegating these decisions to independent hearings commissioners. I have acted for all the councils in the region in that role.

For some functions the separation of regulatory and service delivery activities is achieved by the allocation of the regulation function to ECan in relation to activities where territorial authorities are involved in service delivery (e.g. public transport, water supply, refuse disposal). While this inevitably creates the potential for some tension between ECan and the territorial authorities, it is not duplication of effort and can be viewed as necessary for the separation of functions model to operate.

Both regulatory and service delivery functions involve policy development and monitoring. Generally it is the regulatory activities, particularly the development of Resource Management Act plans and policy statements that generate major policy development exercises with public participation, but in recent years there has been an increasing requirement to systematically evaluate proposals for service delivery. The latest requirement is the Long Term Council Community Plans, discussed below. The involvement, both informal and formal, of ECan in territorial authorities' plans, and vice versa, is a major area of interaction.

The conceptual distinction between regulatory and service delivery functions can become blurred however – for example, the territorial councils regulate what discharges they will accept into their stormwater and sewerage systems, and the provision of reserves involves regulation of activities permitted on those reserves.

3.3 Transfer/Delegation of Functions, Powers or Duties

The two main Acts conferring functions on regional and territorial councils -the Local Government Act 2002 (“LGA”) and the Resource Management Act 1991 (“RMA”) - both provide for the transfer of powers and duties.

Section 17 of the Local Government Act 2002 (appended as Attachment 5) allows a regional council and a territorial authority to transfer responsibilities between them by agreement, subject to some limitations in section 33 of the Resource Management Act 1991. Under the previous Local Government Act 1974, there was provision for transfer of responsibilities in one direction only – from regional councils to territorial authorities. There was no equivalent power to transfer responsibilities from territorial authorities to regional councils.

Section 17(4) of the Local Government Act requires that a proposal to transfer a responsibility between councils, or reverse a transfer, is preceded by either the special consultative procedure set out in section 83 of the Act, or provision for the transfer in both councils' Annual Plans or draft Long Term Council Community Plans. Although that would not present much difficulty or delay, it is interesting that a public process is required.

The equivalent provision in the former Local Government Act 1974 (section 37sc) provided that “*A regional council that transfers any function, duty, or power under this section shall continue to be responsible for the exercise of that function, duty or power.*” In my 1997 report on functional relationships I raised the question of what that meant - what level of responsibility (legal liability?) would remain. That complication is now removed.

Section 33 of the Resource Management Act 1991 (appended as Attachment 6) provides for a “*local authority*” (defined in section 3 as a regional council or a territorial authority) to transfer “*functions, powers, or duties*” to another “*public authority*” (defined as including a local authority, iwi authority, board of a foreshore and seabed reserve, Government department, statutory authority, or a joint committee). Clearly a wider range of bodies are eligible for delegation of RMA responsibilities than responsibilities under the LGA. Any transfer requires agreement between the parties and has to be preceded by the special consultative procedure set out in section 83 of the Local Government Act. Under section 33(8) a transfer can be simply revoked by the transferring council giving notice, without the public process required to revoke a transfer under the LGA. Again, if a function is transferred, the transferring council does not retain any responsibility for that function.

The discussion above focussed on the legal transfer of functions between councils. This should be distinguished from contracting out activities. ECan and the territorial authorities contract out all kinds of things to contractors and consultants, including other councils. The largest contract between councils I am aware of is the present arrangement whereby the Christchurch City Council contacts Environment Canterbury to provide the Civil Defence (Emergency Management) service for the City area for something over \$600,000 per year. The fundamental difference between transferring and contracting out activities is that with the latter the council retains full policy control. Contracts can specify exactly what service will be provided, without any loss of political control, whereas transfers carry the possibility that the council taking on the activity will administer it in a different way or with different priority. As discussed below, I believe there is scope for additional contracting out arrangements between

councils, but my impression is that there is little justification or enthusiasm for the legal transfer of functions in either direction.

In the case of both delegations and contracting out there could be some reluctance by councils to administer a function where the council had not been involved in formulating the policy on how that function is to be administered. It is certainly possible to envisage situations where officers could be less motivated to carry out unpopular tasks in relation to the public because they would not have the same level of loyalty to the policy-making body. This is a good reason for the joint approach currently being applied to, for example, the Christchurch Urban Growth Strategy planning.

Contracting has the advantage of leaving the council with the statutory function still firmly in control. It can have the disadvantage however of putting council officers in the difficult position of having to justify to the public policies which are not even those of their employer, but that is a problem which already exists when council officers have to administer requirements of central government legislation.

3.4 The Christchurch City Council Compared to other Territorial Authorities in Canterbury

The Christchurch City Council is one of the largest local government organisations in New Zealand and is by far the largest within the Canterbury region. While the City Council has in-house expertise relevant to several of the Regional Council's functions, that is certainly not the case with the smaller territorial authorities.

This raises a complication when considering whether some Regional Council functions could easily be transferred, delegated, or contracted to the territorial authorities. Where activities require specialised expertise delegations might be practical only in the case of the Christchurch City Council, and perhaps some of the larger district councils, leaving the Regional Council with an additional complication (boundary issues etc) of administering these functions over only part of the Region. Again, these matters are not simple and trade-offs are inevitable.

3.5 Local Governance Statements and Triennial Agreements

Section 40 of the Local Government Act 2002 requires each local authority to prepare and make publicly available a "*Local Governance Statement*" setting out information about, *inter alia*: "*the functions, responsibilities, and activities of the local authority*". This was not a requirement of the previous legislation and can be seen as recognition of the importance of clarity about what each council is involved in – for the benefit of councillors and officers as well as the general public.

Of particular relevance to this report is the requirement under section 15 of the Local Government Act 2002 for the local authorities in each region to enter into a

“Triennial Agreement” containing protocols for communication and co-ordination between them during the period up to the next triennial general election of members. Again this is a new requirement, so can be assumed to be intended as a remedial measure. The Canterbury Triennial Agreement states that each local authority will ensure:

- *Early notification to affected local authorities party to this agreement through the distribution of draft documentation, of major policy initiatives or proposals which may have implications beyond the current geographic boundaries (or for constituent authorities) of the decision-making authority;*
- *Opportunities for involvement by affected local authorities in the development of policies or plans that have inter-jurisdictional or cross boundary implications;*
- *The application of a “no surprises” policy whereby early notice will be given of potential disagreements between local authorities;*
- *That where practicable, processes for engaging with communities and agencies in order to identify community outcomes, and prioritise these outcomes, are undertaken jointly or in a collaborative manner.”*

The Canterbury Triennial Agreement places emphasis on the Canterbury Mayoral Forum, which normally meets three monthly, as an important vehicle for communication and co-ordination between local authorities in the region. While communication between elected members must be useful in ensuring the intentions of the Triennial Agreement are met, it seems to me that for most purposes it is the communications between councils at officer level that are more important. The Triennial Agreement simply records that the communication through the Mayoral Forum will be “...supported by...meetings between staff as necessary.”

It might be difficult to record anything more specific than this because at any one time there are various working parties and informal discussions taking place between officers, but as it stands the Triennial Agreement does not really ensure proper communication and co-ordination at officer level. Perhaps it ought to at least record agreement for scheduled meetings between the chief executives to discuss the communications that will be necessary for the Regional Council’s annual work programme.

Since I reported on the functional relationships between the Regional Council and the Christchurch City Council in 1997, the level of regular communication between the senior managers of the two councils has apparently increased markedly. The situation that arose over the Aidenfield development should not in my view be seen as symptomatic of difficulties between the two councils. Even the Aidenfield experience resulted in a set of agreed protocols and commitments of general application to future subdivisions with potential for sediment runoff.

3.6 Long Term Council Community Plans

One other Local Government Act requirement should be mentioned. Section 93 of the LGA requires the Regional Council and each territorial authority to prepare a “Long Term Council Community Plan” (“LTCCP”). There is no need to describe the content and procedural requirements here, but it can be noted that the desired “*community outcomes*” recorded in the LTCCPs are wide-ranging. Although they are generally rather broad, these community outcomes clearly refer to things that are beyond the scope of the activities of the councils producing them. This raises a couple of issues.

Firstly, the LTCCPs may be raising expectations and fuelling misunderstandings about what functions councils have under the various Acts. Secondly, and more positively, the LTCCPs can be seen as providing a mandate for both the Regional Council and the territorial authorities to promote these community outcomes through other bodies. For example, a territorial council LTCCP that indicates that clean air is viewed as a priority in that district, could be seen by that council as indicating that the territorial council should be advocating for stronger clean air promotion by Environment Canterbury. It could also be seen as a mandate to enter into some sort of partnership with Environment Canterbury to share the costs of something like a subsidy scheme for the replacement of polluting home heating appliances. The LTCCPs can be regarded as potentially complicating the functional relationships between ECan and the territorial authorities, but on the other hand they present an opportunity for co-operation firmly based on local community priorities.

Another implication of the LTCCPs should be mentioned in this context. Section 97 of the LGA elevates the importance of the LTCCPs by fettering councils from making certain decisions unless they are foreshadowed in the LTCCP. Relevant to this report is: “*A decision to alter significantly the intended level of service for any significant activity undertaken by or on behalf of the local authority, including a decision to commence or cease any such activity.*”

4. ENVIRONMENT CANTERBURY FUNCTIONS

Environment Canterbury’s functions and the activities carried out under each function can be categorised in various ways. The Council’s “Local Governance Statement” prepared to meet the requirements of section 40 of the Local Government Act summarises the Council’s functions as follows, and it will be convenient to use this set of headings in the discussion of particular functions in the next section of this report.

FUNCTIONS, RESPONSIBILITIES AND ACTIVITIES

The purpose of Environment Canterbury is to promote the social, economic, environmental and cultural well-being of communities, present and future, and to enable local decision-making and action, by, and on behalf, of those communities.

In meeting its purpose Environment Canterbury has a variety of roles:

Air Quality

Environment Canterbury is responsible for maintaining and improving our region's air quality to ensure there is not a danger to people's health and safety.

Activities:

- Air quality in Christchurch
- Air quality in Timaru and other towns
- Other emissions, including outdoor burning, odour, dust and spraydrift
- Hazardous air pollutants

Coastal Environment

Environment Canterbury is responsible for managing the coastal marine area, ensuring the natural character and natural processes, including coastal land forms and landscapes, and heritage values are protected or enhanced.

Activities:

- Coastal ecosystem health
- Production from the coastal environment
- Coastal hazard reduction
- Coastal recreation and amenity

Emergency Management

Environment Canterbury works to ensure the impact of civil defence disasters is lessened. Through planning, education, and training we are aiming to reduce injury and the loss of life that can be caused by natural disasters.

Activities:

- Civil defence emergency management services
- Regional civil defence emergency management

Energy

Environment Canterbury works to improve energy efficiency and the adverse effects from energy use are reduced to acceptable levels.

Activity:

- Energy efficiency

Hazards

Environment Canterbury collects information about natural hazards and makes information available to the public and territorial authorities to aid land use planning. Flooding strategies for addressing the risk are developed with the community and reduction measures implemented.

Activities:

- Flood protection
- Earthquake and geological hazards

Land

Environment Canterbury is responsible to manage land use for the purposes of soil conservation, the life-supporting capacity of soils and ecosystems, the maintenance of water quality and quantity, the protection of areas with significant indigenous vegetation and habitats of indigenous fauna as a matter of national importance.

Activities:

- Living Streams
- Soil quality and loss
- Habitat protection, wetlands and regional identity
- Settlement and built environment

Navigation Safety

Environment Canterbury prepares navigation safety bylaws to promote a safe environment for both commercial and recreational activities.

Activity:

- Navigation Safety

Pests and Biosecurity

Environment Canterbury is responsible for managing both plant and animal pests and prepare strategies on the management and control of pests.

Activities:

- Bovine Tb control
- Animal and plant pest threats to production
- Animal and plant pest threats to biodiversity
- Surveillance for new pests

Public Passenger Transport

Environment Canterbury has responsibility for reviewing the quality, frequency and location of bus routes and contracting service providers to supply these services within Christchurch and Timaru.

Activities:

- Metro – public transport to greater Christchurch
- Total mobility – alternative public transport for people with disabilities
- Public transport for South Canterbury

Regional Land Transport

Environment Canterbury addresses the issues of transport systems – actions to improve transport infrastructure, land use planning, travel demands and improved road safety to ensure the land transport system is consistent with a healthy, pleasant and pollution-free environment.

Activities:

- Sustainable transport
- Road safety

Waste, Hazardous Substances and Contaminated Sites

Environment Canterbury has specific responsibilities to manage the effects of use, storage, disposal and transportation of hazardous substances and waste.

Activities:

- Contaminated sites
- Regional waste
- Hazardous substances

Water Quality, Quantity and Ecosystems

Environment Canterbury has responsibility to manage water resources – rivers, lakes and groundwater. Issues include impacts from land uses, contaminant discharges, over-all health of freshwater aquatic ecosystems and water bodies' natural character.

Activities:

- Water availability and allocation
- Effects of land management practices on water
- Water quality, aquatic health and kai awa mahinga kai
- Rivers and aquifers

5. AREAS OF COMMON INTEREST

5.1 Introduction

Most of the activities of the Regional Council relate to the territorial authorities' responsibilities or interests to some extent, but some to a far greater extent than others. Similarly, the territorial authorities' activities relate to Regional Council concerns within their districts. The following is a summary of these interactions, drawn from discussions I have had with senior staff of ECan and the territorial authorities, using the categories of ECan functions quoted above.

In accordance with convention, references to the relevant Acts below include amendments to those Acts.

5.2 Air Quality/Air Emissions

Resource Management Act 1991
Health Act 1956
Building Act 2004
Local Government (Rating) Act 2002

The Regional Council has specific responsibility for the control of discharges of contaminants into air under section 30(1)(f) of the Resource Management Act 1991. This responsibility is carried out through the Proposed Natural Resources Regional Plan which was notified in June 2002. The Plan addresses general air quality issues associated with odours, dust, smoke, agricultural sprays and other discharges to air, and addresses the particular issue of wintertime air

pollution in Christchurch from combustion processes. Variations to the Plan are being considered to more specifically address wintertime air pollution in other centres. In addition to this regulation, in Christchurch ECan is encouraging the conversion of home heating systems through the Clean Heat Project.

In my 1997 report on council functions I noted that at that time there was some duplication of Resource Management Act control in Christchurch City in the form of a set of rules in the City Plan Health and Safety chapter regulating air discharges from certain industrial processes. That overlap has been removed through the deletion of those rules.

The Christchurch City Council has had a long history of dealing with some key aspects of air pollution control - technical considerations relating to the assessment of domestic solid fuel heating appliances. Although air quality is clearly a regional function under the Resource Management Act, the City Council retains an overall public health responsibility under the Health Act 1956. The Regional Council has contracted the City Council and consultants to undertake the initial assessment of new domestic solid fuel appliances. Following Regional Council approval of models, the City Council controls installation of appliances under the Building Act. I understand that in theory there is an anomaly in that the City Council could not refuse a building consent for a non-approved type of appliance that meets Building Act requirements, even though it could not legally be used.

In Ashburton it is apparently easy to buy solid fuel heaters that are not on the approved list for use in the town, and this has created difficulties for the District Council. Project Information Memoranda can be tagged with a warning that Ecan consent is required to use a non-complying appliance and Ecan can be informed, but enforcement action can be difficult. There appears to be a need to raise the awareness of retailers about which appliances are approved for use in Ashburton.

Many activities within Christchurch City and the district council areas operate under air discharge consents issued by the Regional Council in addition to being subject to land use consents and/or licences under the Health Act administered by the territorial authorities. These activities have to be monitored and there could be efficiencies in adding at least routine air discharges to the range of matters (noise, access, signs, landscaping, health requirements etc) monitored by territorial authority officers. For example, in the course of checking premises with minor discharges for compliance with health requirements, the extractor systems could be checked for compliance with Regional Council rules or resource consent conditions.

One option would be for this type of compliance monitoring to be undertaken on a contractual basis. Another option would be to at least co-ordinate compliance monitoring schedules to minimise any public perception of duplication. It should be noted that some types of discharges require specialised monitoring expertise and equipment which at present is available only within the Regional Council. While it is possible for such resources to be relocated, there is a danger of creating duplication and losing any advantage of changing present arrangements.

A more significant change which could be considered would be a delegation/contracting out of the administration of discharge to air consents. This would probably be practical only in the case of the Christchurch City Council. The advantage of this would be a “one-stop shop” for applicants. The disadvantage would be that it would introduce a different system for one part of the region. The smaller territorial authorities do not have staff with the necessary expertise in air discharge matters to assume this role and even the City Council would have to build up expertise in air quality modelling to process major applications. Having sat as a commissioner on joint hearings, in particular the hearing of land use and air discharges for the new Art Gallery, my impression is that the present system does not overly complicate the process. Delegation of the statutory responsibility would obviously be a much bigger step than contracting out compliance monitoring.

My perception is that there is otherwise no significant issue with Environment Canterbury’s exercise of the regulation of air discharges around the region. Certainly among people involved in development there is generally a clear understanding of the division of responsibilities.

5.3 Coastal Environment

Resource Management Act 1991
Local Government Act 2002
Reserves Act 1977
Maritime Transport Act 1994

Under Section 30 of the Resource Management Act (see Attachment 7) the Regional Council is responsible (in conjunction with the Minister of Conservation) for the “Coastal Marine Area”. The extent of the Coastal Marine Area is defined in quite a complicated way in the Act and interpretation of this in the Christchurch context was resolved by the former Planning Tribunal. The jurisdictional boundary is the mean high water springs line and the tidal areas of Brooklands Lagoon and the Avon/Heathcote Estuary are included within the Regional Council’s jurisdiction for Resource Management Act 1991 purposes.

As noted earlier, boundaries always create potential for problems. Activities and developments extend across the mean high water springs boundary, especially in Christchurch but also in other built up coastal areas, creating a need for land use consents from both Councils. The joint hearing mechanism is available for this situation but there is potential for some duplication of staff effort in investigations and reporting, and the complication for applicants of dealing with two authorities for what in some cases such as boatsheds are only minor structures. I dealt with what is probably the most significant structure across this boundary - the New Brighton Pier – as a hearings commissioner and a retrospective application for a reclamation currently before the Environment Court was also heard by a commissioner appointed by both ECan and the territorial authority.

There does not appear to be any voiced dissatisfaction with the present arrangements for dealing with developments in the coastal environment. The

aims of ECan and the territorial authorities for coastal areas can be expected to be similar although the interests of territorial authorities in land immediately behind the Coastal Marine Area, especially reserves, may lead to different perspectives.

At a day-to-day management level, there is potential for duplication of effort, particularly in Christchurch, for example over the control of launching and use of boats. Much of the land immediately inland from the Coastal Marine Area in Christchurch City is controlled by the City Council under the Reserves Act 1977 or as roads administered under the Local Government Act and much of this is used for public access to the Coastal Marine Area. This involves planning and day-to-day management and supervision by City Council officers. The boundaries of the City defined in 1989 include beaches so the City Council controls some activities such as the lighting of fires and the management of dogs within these areas under Local Government Act bylaws, although the strip below mean high water springs is under Environment Canterbury jurisdiction for Resource Management Act purposes.

The particular parts of the Region's Coastal Marine Area that are within the City and some coastal areas in other districts that are intensively used for recreation are something of a special case. There may be scope for contracting of the day-to-day management of recreational activities in these areas, bearing in mind that the councils have staff managing immediately adjoining areas. The issue of vehicle access to beaches in the Christchurch City, Waimakariri District and Hurunui District has been addressed in the joint Pegasus Bay Access Strategy exercise.

The Building Act 2004 has removed a possible complication relating to coastal structures such as jetties that may be only partly within the coastal marine area (below mean high water springs) administered by Ecan by making the territorial authorities responsible for Building Act controls out to the limit of the territorial sea.

Both ECan and territorial authorities also have an interest in the coast from the perspective of addressing the natural hazard of inundation and erosion by the sea. The natural hazards function is discussed separately below, but this illustrates how there are interactions between functions and the need for an integrated approach.

Navigational safety and the control of activities on the surface of water (lakes and rivers as well as the sea) are discussed separately below..

5.4 Emergency Management

Civil Defence Emergency Management Act 2002

The Regional Council and the territorial authorities share joint responsibilities under the Civil Defence Emergency Management Act 2002. As required by the Act, a Civil Defence Emergency Management Group has been set up, in this region comprising the chairperson of the Regional Council and the mayors of the

territorial councils. Waitaki District Council, which is largely within the Otago Region, is a member of the Otago Civil Defence Emergency Management Group.

Environment Canterbury maintains and staffs a regional civil defence headquarters and provides co-ordination such as training, while the territorial authorities continue to be responsible for civil defence arrangements in their districts. The exceptions to this are Banks Peninsula District Council and the Christchurch City Council, which presently contract to Environment Canterbury to provide the civil defence preparations in their territories.

Given the scale of Christchurch this is a major undertaking, costing over \$600,000 per year. I understand this arrangement is currently under review. I have not tried to investigate the reasons for this or the advantages/disadvantages of the present arrangement as this will no doubt be the subject of full investigation and discussion before anything changes. Again, because Christchurch is so much larger than any other centre in the region, the best arrangements for Christchurch may well be different from what I am told in other districts is working well elsewhere in the region.

5.5 Energy

Resource Management Act 1991

The mandate for Environment Canterbury's interest in energy efficiency and minimising the adverse effects of energy use is section 30 of the Resource Management Act. Section 30(1)(a) charges the Council with responsibility for:

"The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region."

"Natural and physical resources" are defined in section 2 of the Act as including energy. Chapter 14 of the Regional Policy Statement sets out objectives and policies for energy and notes the opportunities the Council has to promote these through the Council's functions in transport planning, public transport, and land use (all discussed below). Ecan has produced a Draft Energy Strategy and has been consulting about this through a series of seminars.

Territorial authorities have a similar obligation in relation to energy imposed by section 31 of the Resource Management Act – reproduced in Attachment 8. Energy use and the effects of energy use are central to many resource management issues throughout the region, including the activities of councils themselves. There is therefore plenty of scope for tension if Environment Canterbury and a territorial authority have a different perspective on something. An example of this was the Pegasus Bay New Town proposal (I declare an interest here in that I assisted the District Council at the appeal). The Pegasus Bay experience does not in my view show that there is a fundamental problem with both Environment Canterbury and the territorial authorities having responsibilities relating to energy. Given the pervasive importance of energy it would be artificial to restrict the function to one type of council. For the same

reason I see no practical way of delegating this function either. I suggest this is just an area where councils need to be aware of the potential for conflict and simply attempt to minimise it through communication.

5.6 Natural Hazards

Resource Management Act 1991
Soil Conservation and Rivers Control Act 1941
Local Government Act 2002
Waimakariri River Improvement Act 1922
Ashley River Improvement Act 1925
South Canterbury Catchment Board Act 1946
Christchurch District Drainage Act 1951

One of clearest overlaps of responsibilities is in the field of natural hazards. Section 30(1)(c)(iv) of the Resource Management Act gives the Regional Council responsibility to

*“... control the use of land for the purpose of -
iv) the avoidance or mitigation of natural hazards.”*

Section 31 of the Resource Management Act gives the territorial councils responsibility for

*“The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of –
(i) the avoidance or mitigation of natural hazardous...”*

The ability of both regional and territorial authorities to introduce land use controls relating to natural hazards has been tested in the Courts. A declaration made by the Court of Appeal in decision CA99/95 determined that the control of the use of land for the avoidance or mitigation of natural hazards is within the powers of both regional councils and territorial authorities.

The most significant natural hazards facing the built resources of the region are earthquakes and flooding. With the exception of relatively minor works carried out by the Christchurch City Council under the Christchurch District Drainage Act 1951, river engineering to prevent flooding is carried out by Environment Canterbury.

Environment Canterbury has been preparing a series of Floodplain Management Strategies for the rivers that present a flood risk and these are at various stages. While there has apparently been some debate between ECan and affected territorial authorities as these strategies have been developed, there appears to be a clear division of responsibilities. Key issues are funding of new works and maintenance, and the appropriate provisions to be included in district plans dealing with matters such as minimum floor heights of new building in some areas.

In addition to addressing the flooding issue, ECan has completed a draft overall Natural Hazards Strategy, and recently provided or assisted with studies of active faults in the region, the tsunami risk for Kaikoura, and the liquefaction risk in Christchurch.

From my discussions with territorial authority managers I gather there has been some dissatisfaction with the timeliness of the provision of information by ECan about hazards, but there does not appear to be any dispute that it is appropriate to address the important matter of natural hazards through provisions in the district plans.

5.7 Land

Resource Management Act 1991

This is a broad category of functions, and one which both Environment Canterbury and the territorial authorities share. There is potential for overlap and tension because in addition to specific responsibilities for controlling discharges, Environment Canterbury also has broad resource management responsibilities under the Resource Management Act. There is a view that Environment Canterbury should restrict its resource management activities to those core RMA responsibilities, but whether right or wrong the Act clearly gives regional councils a wider function than that.

Under section 30 of the Resource Management Act (see Attachment 7), the Canterbury Regional Council has responsibility for managing a range of environmental issues, including:

- the integrated management of the natural and physical resources of the Region as a whole,
- the effects of use, development and protection of land of regional significance,
- the control of the use of land for the purposes of soil conservation,
- quantity and quality of water bodies and coastal water,
- the avoidance and mitigation of natural hazards,
- the prevention or mitigation of adverse effects from hazardous substances,
- the Coastal Marine Area (i.e., below mean high water springs),
- the taking, use, damming and diversion of water,
- the control of water quality, levels and flows,

- the discharge of contaminants into air, land or water,

Section 31 (see Attachment 8) sets out the resource management functions of the territorial authorities including:

- the integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district.
- the control of the effects of the use, development or protection of land, including the avoidance or mitigation of natural hazards and the prevention or mitigation of adverse effects from hazardous substances.
- the control of subdivision of land.
- the control of noise emission and mitigation of noise.
- the control of the effects of activities on the surface of water in lakes and rivers.

Generally the Resource Management Act functions of the Regional Council can be clearly distinguished from those of the territorial authorities. The Regional Council deals with all discharges (except noise), the management of water resources, and the area below the high tide mark (“mean high water springs”), while the territorial authorities deal with most land use matters, Designations, subdivision, etc.

There is overlap however in that both section 30 (regional council functions) and section 31 (territorial authority functions) require consideration of the “integrated management” of natural and physical resources, and both refer to natural hazards and hazardous substances. Staff discussions have been held on how these potential overlaps will be dealt with in Canterbury, and most of these matters have been resolved.

The Regional Council’s broad responsibility for the “*effects of the use, development, or protection of land*” (section 30(l)(b)) is limited to issues of “*regional significance*.” What is of “regional significance” is a matter of potential debate and in discussions with territorial authority managers the appropriateness of ECan involvement in several matters such as landscape protection was questioned. My impression though is that the real concern is the way some of this involvement has been handled, rather than questioning, in the case of landscape protection for example, that this can ever be of “regional significance”.

Although as described above the Resource Management Act generally allocates functions separately to regional and territorial authorities, the Act does specify a clear hierarchical relationship between the statutory plans and policy statements. This hierarchical relationship has been strengthened by the 2005 Amendment Act. Section 62(3) and provides that regional policy statements “. . . *shall not be inconsistent with* national policy statements and water conservation orders. Section 67(3) now requires that regional plans “*must give effect to*” national policy statements and the relevant regional policy statement. The equivalent

requirements for district plans are set out in section 75(3) and 75(4), which now require that district plans “*must give effect to*” national policy statements and the regional policy statement, and “*shall not be inconsistent with*.” a regional plan. Environment Canterbury is about to embark on the review of the operative Regional Policy Statement and this enhanced status for Regional Policy Statements, together with the knowledge that Regional Policy Statements can validly include quite detailed and specific provisions (although not rules) will be likely to raise disputes between ECan and some territorial authorities. The challenge is to persuade territorial authorities to regard the Regional Policy Statement as a jointly agreed strategy for Canterbury, rather than something imposed from above.

A particular issue will be whether, and if so how, to incorporate the outcomes of the Greater Christchurch Urban Development Strategy. It was established by the Court of Appeal in the case of Auckland Regional Council v North Shore City Council CA29/95 that a Regional Policy Statement may include policies on metropolitan limits expressed as lines on a map, but there would be debate over whether that is desirable in Canterbury.

The Regional Council’s concerns under this broad “land” function are embodied in the Regional Policy Statement. Some are pursued further through the various sections of the Natural Resources Regional Plan. There is an important issue in whether particular matters of regional concern should be controlled through the Regional Plan or through district plans. The advantage of using district plans is that these are the documents that the public is most familiar with and the document that controls most aspects of development already. It is particularly important to avoid different standards for the same matter, such as minimum setbacks from waterways. That problem has been avoided, but I gather there are on-going discussions about whether particular matters of regional interest in individual districts can and should be dealt with through district plan provisions.

The issue is even more potentially fraught in relation to matters of regional interest that can only be controlled through district plans, such as the preservation of landscapes of regional significance. Here there is considerable potential for tension between ECan and territorial authorities. One way to reduce this is for ECan to get involved as early as possible, bearing in mind that ECan and the territorial council’s interests should be roughly parallel, and assist positively such as providing information and expertise.

Another facet of the function the Region Council has categorised as “Land” is soil conservation. All councils have an interest in soil conservation under the Resource Management Act. The Regional Council’s responsibility is set out in section 30(1)(c):

*“the control of the use of land for the purpose of
(i) soil conservation.”*

Under section 5(2)(b) of the Resource Management Act all councils have to safeguard the life-supporting capacity of soil (among other things) because this is specified as part of “*sustainable management*” which is the stated purpose of the Act.

There is a difference in view on the extent to which the Regional Council ought to be involved in protecting versatile soils, particularly from urban development. This has been partly resolved through submissions on district plans and major applications, but there will always be potential for tension between ECan and territorial authorities over this. The Courts have made it clear that protection of versatile soils is not an absolute imperative and territorial authorities can have a different mix of considerations from ECan.

5.8. Navigation Safety

Maritime Transport Act 1994

This function sits squarely in the Regional Council's court. No particular issues or concerns have been brought to my attention, and a couple of territorial authority managers mentioned that the consistent approach of Ecan to the control of powered boats on lakes and rivers has been beneficial.

This is a function that can be delegated (the Otago Regional Council delegates navigation safety on Lake Wakatipu and Lake Wanaka to the Queenstown Lakes District Council) but the Canterbury territorial authorities appear to be comfortable with something that requires specialist expertise remaining a Regional Council responsibility.

Territorial authorities are affected by ECan's navigation safety activities in two ways: the activity is carried out within their districts, and the activity is related to territorial authorities' responsibilities under section 31(1)(e) of the Resource Management Act for "*The control of any actual or potential effects of activities on the surface of water in rivers and lakes;*" The latter function creates a need to co-ordinate controls, such as speed limits for powered vessels if considered necessary.

5.9 Pests and Biosecurity

Biosecurity Act 1993

The Biosecurity Act sets out the powers and duties of both regional councils and territorial authorities in relation to the management of plant and animal pests. The powers of the territorial authority are designed to support the management functions of the regional councils by undertaking any action required under a Pest Management Strategy (sections 13, 14). A local authority is able to transfer powers under the Act to another local authority (section 15).

The Regional Pest Management Strategy (2005) has recently become fully operative after appeals to the Environment Court were resolved by consent. There is some potential for tension between Ecan and territorial authorities in that Ecan may have occasion to exercise the regulatory part of the biosecurity function against territorial authorities as landowners/land managers.

5.10 Public Passenger Transport

Transport Services Licensing Act 1989
Transit NZ Act 1989
Land Transport Act 1998
Local Government Act 2002
Land Transport Management Act 2003

In this area there is a clear legal separation of functions: the Regional Council is responsible for the provision of public passenger transport, achieved principally by planning the services required and operating a competitively tendered contract system for bus (and in the case of the Total Mobility service, taxi) operators on each route. Services are operated in Christchurch and Timaru; in the case of Christchurch extending into adjoining districts and in the case of Timaru extending to services linking Temuka and Twizel. Christchurch City Council independently operates the free central city loop service.

The territorial authorities have responsibility for the roads within their districts (apart from State Highways, which are under Transit New Zealand's control) and are responsible for facilitating the needs of all road users, including buses. This involves such things as providing kerb alignments for bus stops, signs, seats and shelters for bus users, and the regulation of carparking.

Although the interests of the councils involved are broadly parallel - all seek convenient, safe and efficient public transport - there is potential for the roading authorities' activities to affect the achievement of the Regional Council's objectives. The roading authorities try to facilitate the movement of buses by ensuring adequate road geometry when bus route streets are altered, but there is always going to be competition for road space between modes of transport – obviously the roads are not just for buses. There are continuing discussions between Ecan and Christchurch City Council officers over the difficult question of giving buses more priority on certain routes, for example through the provision of bus lanes.

Other functions of the territorial authorities can affect the Regional Council's public transport objectives. Issues may arise in relation to the design and location of new residential areas and new retail developments (particularly bus access to suburban malls), but again the interests of the councils are broadly parallel.

The low population density of Christchurch and Timaru and the ease of travel by private car mean that the bulk of trips within the centres are made by car. In Christchurch though, the use of public transport has increased by 70% since the 1997/1998 year. This has required acceptance of some ratepayer subsidy (about \$10 million a year) and the application of the latest technology. The new central city bus terminal illustrates the joint commitment to public transport and co-operation between ECan and the City Council – the City Council built the terminal, while ECan operates the services from it.

Spending on roading, primarily to cater for ever-increasing volumes of private car traffic, makes up a significant part of the territorial authorities' budgets. It can be argued that more effective long-term solutions lie in better public transport, if necessary subsidised to a greater extent. The fact that the providers of roading and the providers of public transport are different authorities can be viewed as an impediment to integrated management of public transport and roading resources – something the Regional Land Transport Strategy (discussed below) attempts to address.

While this may be a factor in the apparent lack of transparency in the trade offs being made between public transport and roading improvements, in my assessment the real problems are the way the Land Transport NZ system operates and the inevitably political question of the appropriate level of public funding support (both national and local) for public transport. These big questions would not be automatically resolved by bringing public transport and roading funding under the same authorities at local level.

In the Christchurch area most (93%) of the trip origins and trip destinations of the bus patrons are within the Christchurch City Council area. The exceptions are the commuters from places like Lyttelton, Kaiapoi and Rolleston. Most regional ratepayer subsidised bus services are therefore “metropolitan” activities. Rates are drawn from the areas of benefit and ECan consults the territorial authorities about the level of rating and corresponding level of public transport service. Outside Christchurch ECan has undertaken reviews such as the recently initiated a review of services to the Waimakariri District, surveying all households and indicating the rating implication of providing an upgraded, City-type service.

Central government has a clear preference for a split between the organisation allocating funds and the service providers in public transport (and other public sector activities like health). At present the City Council owns the largest of the bus operating companies. While this excludes the City Council from assuming any role in administering the competitive tendering process, it does not exclude the City Council officers from what I understand is close collaboration with ECan staff in the planning of the public transport system servicing Christchurch (route structures, frequencies, vehicle quality, Passenger Transport Plan, etc.).

As already noted, the City Council owns a bus company. If this was sold the present barrier to involvement in the allocation of routes and subsidies to transport operators would be removed. The issue would then come down to whether it would be better for one organisation (the City Council) to deal with all aspects of metropolitan public transport, (except the strategic planning required of the Regional Council in the form of the Regional Land Transport Strategy discussed below). One difficulty with this would be the splitting of the present single system in the Region for the tendering process. There may be efficiencies in this which would be lost if the major component (metropolitan Christchurch) was removed and the remainder (primarily Timaru) was dealt with separately by the Regional Council or perhaps by the Timaru District Council (which does not own buses).

My impression is that the initial confusion on the part of the general public over why something so clearly metropolitan as the Christchurch bus system is

administered by the Regional Council has passed. This is no longer a significant disadvantage of the way the function has been allocated. The strong interest of the City Council (and probably the Timaru District Council) in the services does mean however that there is a need for ECan to provide every opportunity for communication and co-operation with the affected territorial authorities.

5.11 Regional Land Transport

Land Transport Act Management Act 2003
Transit NZ Act 1989
Local Government Act 2002
Resource Management Act 1991

Regional land transport is another functional area where Environment Canterbury and the territorial authorities both have statutory roles, co-ordinated by a planning document that Environment Canterbury is required to prepare. The Regional Land Transport Strategy 2005 has been approved.

The transport network is a key element in resource management planning within Christchurch City and the district council areas because it is essential for the economy of each area and because it affects and is affected by other important resources such as energy, the amenities of residential areas, and rural resources.

Although there is potential for considerable overlap in transport planning activities, our understanding is that, unlike the former Canterbury Regional Planning Authority and Canterbury United Council, the Regional Council sees its transport planning role as limited to strategic issues. The Christchurch City Council has an interest in strategic issues affecting Christchurch but there is no longer much overlap in practice because all detailed roading planning within the City area is carried out by the City Council. Liaison at staff level appears to provide the necessary co-ordination.

In other territorial authority areas the interaction with Transit New Zealand appears to be more important than the interaction with Environment Canterbury.

One concern raised is Environment Canterbury's advocacy of cycleways. This is an example of the delicacy of promoting things that are seen as a local matter, with local cost implications. That is not to say I believe it is inappropriate for ECan to champion cycleways – there is foundation for this in both the Regional Land Transport Strategy and the Regional Policy Statement. The point is that it is the sort of thing where effort would be better received if it was in the form of practical assistance rather than any sort of adversarial involvement.

5.12 Waste, Hazardous Substances and Contaminated Sites

Resource Management Act 1991
Building Act 2002
Health Act 1956

Hazardous Substances and New Organisms Act 1996

The management of hazardous substances is an example of a functional area where there is overlap between the responsibilities of the Regional Council and the territorial authorities, but at the level of day-to-day action good working arrangements appear to have been devised. For example, in Christchurch protocols for dealing with spillages into urban waterways, and if necessary prosecutions, are now in place.

Environment Canterbury has worked with the territorial authorities to develop the Canterbury Hazardous Waste Management Strategy. The Canterbury Hazardous Waste Working Party has overseen various studies of regional interest such as investigating plastic farm waste and the collection of hazardous waste.

Territorial authorities have various rules in their district plans controlling hazardous substances and have responsibilities under other legislation such as the Health Act 1956. The focus of district plan rules is public safety whereas the focus of the Regional Council's concern is mainly the need to avoid contamination of land, air and water.

There is also a common interest in the management of contaminated sites. Discharges from such sites are a regional responsibility under the Resource Management Act, but the territorial authorities have public health responsibilities under the Local Government Act and the Health Act and responsibilities under the Building Act. Again, the interests of the Councils in this matter are broadly parallel and the issue is how to most efficiently share information and deal with particular situations.

The 2005 amendment to the Resource Management Act amended section 30 of the Act by adding as a regional responsibility:

“(ca) The investigation of land for the purposes of identifying and monitoring contaminated land.”

While Environment Canterbury has already done work in this area, there is a practical issue of ensuring all relevant information is readily available to the territorial authorities in a form that can readily be included in Land Information Memoranda.

5.13 Water Quality, Quantity and Ecosystems

Resource Management Act 1991
Christchurch Drainage Act 1951
Land Drainage Act 1908

Under the Resource Management Act (sections 13, 14 and 15) the Regional Council authorises structures in waterways, diversions and taking of water, and discharges into water including stormwater discharges from the territorial authorities' stormwater systems. Some activities are permitted under the

Transitional Regional Plan, Regional Plans relating to some rivers, and the Proposed Natural Resources Regional Plan – Chapter 4 Water Quality and Chapter 5 Water Quantity. Most activities involving effects on natural water require resource consent from Environment Canterbury. There is an anomaly in that within the Kaikoura District some rules from the Transitional Nelson-Marlborough Regional Plan still apply.

Territorial authorities interact in a significant way with Environment Canterbury as major users of water for potable supplies and as operators of most of the major wastewater treatment plants in the region, which discharge into land or water. Territorial authorities and their contractors are also major users of road metal, much of which is extracted from river beds under ECan control. The obligation for territorial authorities to obtain consents from Environment Canterbury in the same way as any other water user is a potential source of conflict, but it is in line with the prevailing central government preference for the separation of regulators of resources from users of resources. Difficulties in determining exactly what consents are needed (when is a drain a waterway? etc) are problems with the Act, not problems caused by this separation of functions.

Similarly criticisms of the way ECan administers territorial authority consents, in particular monitoring and enforcement activities, are a reflection of perceived deficiencies in ECan systems and practices, rather than an indication that there is a fundamental problem with these responsibilities being regional functions. Some territorial authorities believe ECan is too rigorous in enforcing conditions on consents held by the councils, but the response of ECan managers when I raised this is that the territorial authorities are responsible for a disproportionately high (37%) number of non-compliances in the Region. There is clearly a need for some discussions at senior management level to try to reconcile the quite different perceptions. ECan has a statutory responsibility to monitor consents and enforce conditions, but there may be scope to review the way in which this is done so as to minimise the potential for actual and perceived conflict.

The 2005 amendment to the Resource Management Act amends section 30(1) of the Act by adding the following responsibility for regional councils:

“(fa) If appropriate, the establishment of rules in a regional plan to allocate any of the following:

(1) the taking or use of water (other than open coastal water).”

This clarifies that regional plans can actively prioritise water use through rules in regional plans, as well as setting standards and permitting water abstractions on a first come/first served basis.

In rural areas the district councils' functional interest in waterways is focused particularly on the few sections of waterways that provide a source of water or a disposal point for treated effluent. In built up areas however virtually every metre of waterway is important for amenity, stormwater disposal and in some places for potential flood risk. There are also far more structures within waterways in built up areas. This raises the question of whether the division of responsibilities that works in rural areas is best for the circumstances of, in particular, Christchurch City.

Christchurch is however an anomaly anyway because the City Council acquired the responsibilities of the former Christchurch Drainage Board when the present Council was established in 1989. A recent report prepared for Environment Canterbury, "*Management of the Waterways within Christchurch City*" by Response Planning Consultants Ltd, discusses these special arrangements in detail and concludes that generally the allocation of responsibilities works satisfactorily.

There is a particular current issue with sedimentation particularly from earthworks during land development within the City. Under the Land and Vegetation Management Regional Plan earthworks are permitted if they are associated with a subdivision consent or building consent granted by the City Council, on the assumption that conditions normally attached to subdivision approvals will address the potential for sediment to be washed into waterways. Regional Council staff have questioned whether this is sufficient, and also noted that this does not deal with sedimentation during the later development of individual sites. I understand this is being addressed by managers and staff of the two Councils and a series of protocols are being developed jointly. The other current issue relating to water quality in Christchurch is a proposal by ECan to directly control land use in the area defined as Groundwater Recharge Zone 1 to the west of the City. At present under the Natural Resources Regional Plan the Christchurch City Council and the Selwyn District Council are required to control new residential and industrial development in this area through their district plans, but ECan is questioning whether this is sufficient and is considering other options. This is controversial and is an example of the situation that can arise if it is considered that the duties of the Regional Council cannot be fulfilled through the method adopted in many instances of relying on district plan provisions.

In addition to these specific current concerns, the Regional Council's responsibilities for water quality create a general ECan interest in land use impacts on water quality, such as the effects of nitrate leaching and the protection of water supply catchments. This concern, while shared by the territorial authorities, has the potential to lead to tensions if Ecan and territorial councils adopt different priorities.

6. MANAGEMENT ISSUES

This part of the report discusses a number of matters raised by officers of the Councils which relate to the administration and management of functions rather than the functions themselves.

6.1 Interaction Between Councils

A number of territorial authority managers made the comment to me that while communication has improved between ECan and the territorial authorities, there is still a perception that ECan officers are sometimes remote from the "coalface". It is not possible for me to really assess whether this is a valid criticism, but I can report that there appears to be confusion in some instances about which officer(s) in ECan territorial authority officers should deal with about particular

matters, and there is a perception that ECan officers sometimes see their role more as persuaders rather than equal partners in finding solutions.

There is also some resentment that ECan has become involved in litigation with territorial authorities, specifically appeals to the Environment Court, in situations that could perhaps have been resolved in other ways. Again, I am not sure if this is a valid criticism; ultimately ECan has to be able to pursue matters that are seen as of regional significance through the Courts, but it is clearly a method that has negative side effects. In the case of small councils, the cost of even straightforward appeals is significant.

Litigation between councils in the Region has not always been instigated by ECan – the territorial authorities have also taken disputes about the Regional Policy Statement and some of the Regional Plans to the Courts. Again, this is better avoided if at all possible because of the cost, the public perception and the potential for disputes to taint wider relationships between the councils. On the positive side, there have been many other court cases where ECan and territorial authorities have been on the same side.

On the other hand, I have heard positive things about the many joint projects that ECan is involved in. Although joint working parties may be cumbersome, there are clearly benefits for the general working relationship between ECan and the territorial authorities.

6.2 Administration of Consents held by Territorial Authorities

As discussed above, the territorial authorities undertake some activities such as the supply of potable water and the disposal of treated effluent under resource consents granted by the Regional Council. There is an obligation to monitor these consents. A couple of district council managers expressed the view to me that the ECan response to any deficiency found through monitoring is rather formal and inflexible. ECan does of course have to be seen as even-handed in dealing with all consent holders, but there may be scope for more communication about problems, in both directions.

6.3 Enforcement/Complaints from the Public

On a day-to-day basis all councils receive a considerable number of inquiries and complaints and many of these deal with matters where both ECan and the territorial councils have an interest. The general public often do not understand the divisions of functional responsibilities. For example, the Regional Council is responsible for air quality and the water quality of the Avon–Heathcote Estuary, while the City Council's sewage treatment plant may be the cause for complaints. There is potential for public inquiries/complaints to be shunted from one Council to another although I am not aware of any instances of this happening.

6.4 Monitoring of Resource Consents

Many activities operate with resource consents from both ECan and a territorial council. There is a legal obligation for councils to monitor consents and this raises the potential for an apparent overlap. The matters being monitored or checked will mostly be different, but there can be a public perception of duplication and inefficiency. The solution to this appears to be co-ordination of monitoring/checking programmes, in some instances contracting of monitoring, and the co-ordination of conditions on consents such as the specified period when reviews of conditions may be undertaken.

6.5 Technical Resources

As the largest local government organisation in the South Island the City Council has considerable technical resources, but the smaller territorial authorities are in a position where technical assistance from Environment Canterbury relating to functions of common interest can be very useful. My perception is that where this is the case some productive relationships have been developed through things like joint working parties and research provided by or commissioned by ECan. For example if ECan wishes to have setback for watercourses rules in district plans, it is more productive to provide the research to justify this while a district plan or change/variation is first being discussed, rather than providing that evidence at the stage when the provisions are being contested formally.

7. SUMMARY AND CONCLUSIONS

In quite a number of functional areas, as outlined in this report, the territorial authorities have an interest in the way the Regional Council manages its functions within their districts, and vice versa. In some cases the territorial authorities have powers and duties which overlap the Regional Council's (such as natural hazards); in others the actions of one council directly affect the interests and activities of the other council (for example, where ECan has a regulation role affecting territorial authorities' service delivery roles).

Inevitably there is potential for tension and duplication, and a need for co-operation. My impression from discussions with senior officers from all the councils in the region is that there is an awareness of the issues and a general willingness to work together. There are now many examples of successful co-operative action, and it is unfortunate that the few examples of serious difficulties such as the litigation over the Aidenfield development and the Pegasus Bay New Town receive so much publicity.

Involvement of the territorial authorities (at both officer and member levels) in the formulation of Regional Council policy documents is essential to securing region-wide commitment to these instruments. This is particularly important in the functional areas such as urban development strategies and rural landscape protection where there is overlap with the territorial authorities' functions. The Regional Council has begun the important task of reviewing the Regional Policy

Statement. This will involve consideration of how best to achieve regional imperatives, and in some of the functional areas discussed in this report it may well be that alternatives to ECan regulation such as delegation, contracting out, promotion, incentives and direct action will be advanced. What is best will depend partly on the level of support and co-operation ECan can obtain from the territorial authorities.

The Local Government Act now provides a broader mandate for local government activities, and greater requirements for consultation between councils through mechanisms such as the Triennial Agreement between councils in the region and the Long Term Council Community Plans. The Act also now provides for delegation of functions in both directions between the Regional Council and the territorial councils. Delegation of functions is an option, but the broad allocation of functions between Environment Canterbury and the territorial authorities now appears to be established and accepted so that the potential for efficiencies and rationalisation is most likely to be found in small adjustments. In particular there may be scope for delegations, or contracting out arrangements where the territorial authorities have people on the ground who could pick up additional responsibilities such as monitoring compliance with ECan consents while monitoring land use consents.

It is inevitable that there will be some tensions between the Regional Council and the territorial councils, just as there are tensions between local government and central government. This can be minimised by the Regional Council attempting as far as possible to pursue its powers and duties through co-operation and co-ordination with the territorial authorities, using litigation only as a last resort. There are now some good models of information sharing and joint working parties to follow.

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The assistance given by senior officers and some councillors in preparing this report is acknowledged, and has been appreciated.

Disclaimer

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ATTACHMENT 1
The Brief

ATTACHMENT 2
Council boundaries map

ATTACHMENT 3
Local Government Act 2002, section 12

ATTACHMENT 4
Local Government Act 2002, section 16

ATTACHMENT 5
Local Government Act 2002, section 17

ATTACHMENT 6
Resource Management Act 1991, section 33

ATTACHMENT 7
Resource Management Act 1991, section 30

ATTACHMENT 8
Resource Management Act 1991, section 31