

13 October 2011

Sir John Hansen  
Convenor  
Canterbury Earthquake Recovery Review Panel  
c/- Canterbury Earthquake Recovery Authority  
Private Bag 4999  
**CHRISTCHURCH 8140**

Dear Sir John

## **Canterbury Earthquake (Local Government Act 2002) Order (No 2) 2011**

### **1 Proposal**

1. I attach for your advice, under section 73 of the Canterbury Earthquake Recovery Act 2011 (the Recovery Act), the draft Canterbury Earthquake (Local Government Act 2002) Order (No) 2 (the draft Order). The Local Government Act 2002 (LGA) requires each council to prepare a long-term plan every three years. The next long-term plan must be adopted no later than 30 June 2012. Broadly, the draft Order permits the four councils in greater Christchurch to defer the preparation of that long-term plan by one year and makes consequential modifications to the operation of the LGA for any council that chooses to defer.
2. A copy of the draft Order in Council is attached.

### **2 Background**

3. The Christchurch City Council resolved on 31 March 2011 to seek a deferral by one year of the timeframe for preparing its next long-term plan. Three reasons why the Department considers the deferral to be desirable are:
  - deferring the long-term plan will allow better alignment between the recovery strategy and recovery plans prepared under the Recovery Act and the long-term plan;
  - long-term plans have, as a key foundation, asset management plans. Christchurch City's engineering and community infrastructure is so damaged that it is not practical to prepare new asset management plans in time for a 2012 long-term plan; and

- Christchurch City Council staff who would normally prepare a long-term plan are committed to preparing a CBD recovery plan and engaging with the Canterbury Earthquake Recovery Authority on the recovery strategy. They are also assisting the community to prepare recovery plans for other areas of Christchurch.
4. Given these circumstances, the Department considers it impracticable for Christchurch City Council to prepare a 2012/22 long-term plan.
  5. The Department has also consulted the Waimakariri and Selwyn District Councils and Environment Canterbury. Each of these councils has advised that it intends to produce a long-term plan in 2012, but would like the option to defer its plan for one year if circumstances change. We understand the concern relates primarily to the risk of another major aftershock disrupting council operations and making it difficult for these councils to complete a long-term plan in 2012.
  6. The Department considers the draft Order is reasonably necessary or expedient to meet two of the purposes listed in sections 3(a) to 3(g) of the Recovery Act. The first is section 3(b) of the Recovery Act. The next long-term plan will provide a useful forum for councils to engage with their communities about the overall impact of the earthquakes and the councils' plans for recovery. However, the forum will only be useful to the extent that councils are able to put adequate plans in front of communities for consultation. For Christchurch City Council, it is clear this cannot happen until 2013. For the other councils, the draft Order allows them to make a judgement about that according to their circumstances.
  7. The second is section 3(f) of the Recovery Act. The draft Order will assist to co-ordinate planning for the recovery of the affected communities. It will achieve this by allowing better alignment between long-term plans and the recovery strategy and recovery plans prepared under the Recovery Act.

### **3 Policy Objective**

8. As outlined above, the major policy objective is to provide a workable long-term planning system for local government in Christchurch that supports the recovery processes provided for in the Recovery Act.
9. In addition, the draft Order sets out consequential modifications to the operation of the LGA for any council that elects to defer its long-term plan for a year. These modifications are in clauses 7 to 11 of the Order. Section 93(3) of the LGA means the 2009/19 long-term plan ceases to have effect from 1 July 2012. The modifications fill the void created because there will be no long-term plan in effect.
10. The modifications would continue in force existing council policies, contained in the 2009/19 long-term plan, relating to:
  - council-controlled organisations;
  - development of Māori capacity to contribute to decision-making; and
  - funding and financial policies.

The effect of this modification is to continue in effect the policy content of the 2009/19 long-term plans but to set aside the budgets and work programmes contained in them.

11. The Local Government Act 2002 Amendment Act 2010 (the Amendment Act) introduced changes to the required content of local authority long-term plans, annual plans and annual reports. These changes are inter-related and designed to commence with the first long-term plan after the Amendment Act was passed. Clauses 9(1), 11(1) and 11(2) of the draft Order are designed to defer the implementation of the Amendment Act by one year where a council chooses to defer its long-term plan to 2013.
12. Local government planning and reporting documents contain both financial and non-financial information. Non-financial information is in the form of performance targets and measures to maintain accountability for the quantity and quality of services delivered for the funding provided. These performance measures and targets are contained in the long-term plan.
13. Clauses 9(2) and 11(3) of the draft Order recognise that the performance measures and targets contained in the 2009/19 long-term plan will no longer be relevant in greater Christchurch. They require councils deferring their long-term plan to 2013 to include appropriate performance measures and targets in their 2012/13 annual plan and to report against them in their 2012/13 annual report.
14. Finally section 97 of the LGA sets out decisions that a council may not make unless it has provided for those decisions in a long-term plan. Clause 10 preserves the intent of section 97 by requiring a council wishing to make such a decision to either include the decision in its 2012/13 annual plan, or to undertake specific consultation with the public on its proposal.

#### **4 Timing**

15. While long-term plans do not need to be formally adopted until 30 June 2012, it is important that affected councils know early whether they can defer the plan. The plans are presented to the public in draft form for consultation. Usually the draft plans are publicly advertised in February or March, although some will be advertised as early as December 2011. The draft plans must be audited by the Auditor-General as must the final plans that are adopted after the public consultation process. This means that councils must devote considerable resources to plan preparation from about October in the year prior to the plan's adoption.
16. For these reasons, it is important that final decisions about the draft Order are made prior to the general election and communicated to the affected councils.

#### **5 Preferred Option**

17. The options available for dealing with this problem are very narrow. For the reasons outlined, the status quo is unsatisfactory and the only alternative is some

form of regulatory intervention. There were some choices within the option of regulatory intervention. These choices were:

- mandatory or optional deferral of the long-term plan;
  - deferral for one year or a longer period; and
  - where deferral occurs, to either:
    - continue the existing long-term plan in force; or
    - continue relevant parts of the existing long-term plan in force with modifications to annual plan and decision-making provisions.
18. The Department recommended optional deferral of the long-term plan as a more flexible way to deal with the situation faced by the Waimakariri and Selwyn District Councils and Environment Canterbury. There are mechanisms for those councils to voluntarily amend their 2012/22 long-term plans if a future recovery plan makes that desirable. There are also powers in sections 26 and 27 of the Recovery Act for the Minister for Canterbury Earthquake Recovery to direct those councils to amend their 2012/22 long-term plans if that is necessary.
19. The Department considers that deferral should be limited to one year. While the recovery strategy and recovery plans will set out priorities and directions for recovery, each council's long-term plan will outline how the costs of recovery will be funded by that council, and how each council will integrate its recovery effort with its "business as usual" effort. The Department considers this is an important debate for each community to have. Since 2013 is election year for local authorities, the Department considers, on both grounds of public accountability and prudent management, that a long-term plan should be prepared no later than that year.
20. The Department recommended against continuing the 2009/19 long-term plans in force as events had rendered the programmes and budgets contained within them irrelevant.
21. The preferred option therefore represented the best available method of addressing the practical difficulties councils in greater Christchurch face in:
- fulfilling their long-term planning responsibilities;
  - integrating those responsibilities with the recovery processes in the Recovery Act; and
  - maintaining the policy framework of the LGA.

## **6 Costs and Benefits**

22. The fiscal, economic and compliance impacts of this proposal are low since they only change the time at which certain events happen. Arguably they lower the fiscal and compliance costs to Christchurch City Council. The following table summarises the benefits and costs to affected parties.

Party	Benefits and Costs
For councils deferring their long-term plan	<p>Benefits</p> <ul style="list-style-type: none"> <li>• Better alignment of their long-term plan with the recovery strategy and recovery plans;</li> <li>• better information about recovery costs upon which to base the long-term plan; and</li> <li>• staff resources focused on immediate recovery needs.</li> </ul> <p>Costs</p> <ul style="list-style-type: none"> <li>• Risks strategic decisions being made outside a clear long-term framework.</li> </ul>
Residents and businesses	<p>Benefits</p> <ul style="list-style-type: none"> <li>• Higher quality plans are ultimately presented for them to consider; and</li> <li>• more orderly consultation processes occur.</li> </ul> <p>Costs</p> <ul style="list-style-type: none"> <li>• Opportunity to participate in long-term direction of their community is deferred for a year.</li> </ul>
CERA and the Government	<p>Benefits</p> <ul style="list-style-type: none"> <li>• Council resources are not diverted from immediate recovery work; and</li> <li>• reduced likelihood of need for Government intervention in council long-term plans.</li> </ul> <p>Costs</p> <ul style="list-style-type: none"> <li>• Some people may criticise the Government for allowing councils to defer long-term plans.</li> </ul>

## 7 Risks

23. The main risk associated with the draft Order is an unintended consequence of having no long-term plan in force for the period from 1 July 2012 until 30 June 2013. However, councils will still have to consult the public on and adopt an annual plan for that year. The Department has also recommended consequential modifications to the operation of the LGA to manage that risk.

## 8 Other relevant matters

24. This matter is not linked to other proposals and stands alone.

## 9 Consultation

25. The Canterbury Earthquake Recovery Authority and the Office of the Auditor-General were consulted on and agree with this proposal.

26. The four councils in greater Christchurch were consulted. There has been substantial engagement with the Christchurch City Council, which agrees with the proposal. The appropriate contact for that council is Ian Thomson, Solicitor, (ph 03 941 6343, email [Ian.Thomson@ccc.govt.nz](mailto:Ian.Thomson@ccc.govt.nz)).

27. Our contacts with the three other councils are:

Waimakariri District Council

Mr Jim Palmer  
Chief Executive  
Email: [Jim.Palmer@wmk.govt.nz](mailto:Jim.Palmer@wmk.govt.nz)  
Ph 03 313 6136

Selwyn District Council

Mr Paul Davey  
Chief Executive  
Email: [Paul.Davey@selwyn.govt.nz](mailto:Paul.Davey@selwyn.govt.nz)  
Ph: 0274 986 267

Environment Canterbury

Mr Bill Bayfield  
Chief Executive  
Email: [Bill.Bayfield@ecan.govt.nz](mailto:Bill.Bayfield@ecan.govt.nz)  
Ph 03 353 9007

## 10 Profile of draft OIC & proposed publicity

28. The Department does not consider this proposal will be controversial. Some people may see it as reducing the ability of ratepayers and residents to influence council affairs. However, ratepayers and residents are being extensively consulted about recovery plans, and any council choosing to defer its long-term plan will still have to prepare and consult with its stakeholders on an annual plan for 2012/13. We do not anticipate substantial publicity about the proposal.

## 11 Conclusion

29. We look forward to receiving your recommendations so that regard can be had to them before the Minister makes a recommendation on the draft Order. The key contact for this item of work is Keith Miller, Principal Policy Analyst, email [keith.miller@dia.govt.nz](mailto:keith.miller@dia.govt.nz), ph 04 494 0538.

Yours sincerely



Marilyn Little  
Acting General Manager Policy

# IN CONFIDENCE

## Canterbury Earthquake (Local Government Act 2002) Order (No 2) 2011

Governor-General

### Order in Council

At Wellington this                      day of                      2011

Present:  
in Council

Pursuant to section 71 of the Canterbury Earthquake Recovery Act 2011, His Excellency the Governor-General makes the following order, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the relevant Minister following the Canterbury Earthquake Recovery Review Panel's review of the draft order.

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## Order

- 1 Title**  
This order is the Canterbury Earthquake (Local Government Act 2002) Order (No 2) 2011.
- 2 Commencement**  
This order comes into force on the 28th day after the date of its notification in the *Gazette*.
- 3 Expiry**  
This order expires on the close of 1 July 2015.
- 4 Interpretation**  
(1) In this order, unless the context otherwise requires,—  
**2009/19 long-term plan** means a council’s long-term plan for the 10 or more financial years starting on 1 July 2009  
**2012/13 annual plan** means a council’s annual plan for the financial year starting on 1 July 2012  
**2012/13 annual report** means a council’s annual report for the financial year starting on 1 July 2012  
**2012/22 long-term plan** means a council’s long-term plan for the 10 or more financial years starting on 1 July 2012  
**Act** means the Local Government Act 2002



**Amendment Act** means the Local Government Act 2002 Amendment Act 2010

**council** means the Christchurch City Council, the Canterbury Regional Council, the Selwyn District Council, or the Waimakariri District Council

**long-term plan** means a long-term plan adopted under section 93 of the Act.

- (2) The modifications to the Act made by this order do not affect the text of the Act but require it to be read as if it had been amended in the manner indicated in this order.

**5 Application of clause 6**

Clause 6 applies to the Christchurch City Council, the Canterbury Regional Council, the Selwyn District Council, and the Waimakariri District Council.

**6 Council may choose not to prepare 2012/22 long-term plan**

- (1) A council may decide not to adopt a 2012/22 long-term plan in 2012.
- (2) If a council makes a decision under subclause (1) not to adopt a 2012/22 long-term plan, clauses 7 to 11 apply to the council.

**7 Modification of requirement to adopt long-term plan**

- (1) Section 93(1) of the Act does not apply to a council from 1 July 2012 until the close of 30 June 2013.
- (2) Section 93(3) of the Act does not require the council to adopt a long-term plan in 2012, but applies to the council's long-term plan to be adopted in 2015 and later years.
- (3) Instead of complying with section 93(3) of the Act in 2012, the council must prepare and adopt a long-term plan before 1 July 2013 covering a period of not less than 9 years starting on that date.
- (4) The long-term plan adopted under subclause (3) continues in force until the close of the second consecutive year to which it relates.

- (5) Section 93 of the Act, other than subsections (1), (3), and (7)(a), applies to the long-term plan prepared and adopted under subclause (3).

*2009/19 long-term plan*

**8 Requirements for 2009/19 long-term plan**

- (1) The provisions of the 2009/19 long-term plan specified in subclause (2) continue in force until the close of 30 June 2013.
- (2) The provisions are those that address the requirements of clauses 4, 5, and 6 of Schedule 10 of the Act as it was before it was amended by the Amendment Act.

*2012/13 annual plan*

**9 Modification of requirements for 2012/13 annual plan**

- (1) The amendments made by the Amendment Act to section 85(2)(a) and Schedule 10 of the Act do not apply to a 2012/13 annual plan.
- (2) The 2012/13 annual plan must include the information specified in clause 2(2) of Schedule 10 of the Act (as it was before it was amended by the Amendment Act) for the year covered by the 2012/13 annual plan.

**10 Modification of section 97 of Act**

- (1) Section 97(2) of the Act does not apply to a decision described in section 97(1) of the Act.
- (2) A council may make a decision described in section 97(1) of the Act only if the circumstances in subclause (3) or (4) apply.
- (3) The council may make a decision if the decision—
- (a) is expressly provided for in the 2012/13 annual plan; and
  - (b) was included in the statement of proposal prepared under section 85 of the Act in relation to the 2012/13 annual plan.
- (4) The council may make a decision if it has used the special consultative procedure in considering whether to make the decision.

*2012/13 annual report*

**11 Modification of requirements for 2012/13 annual report**

- (1) The amendments made by the Amendment Act to Schedule 10 of the Act do not apply to a 2012/13 annual report.
- (2) The amendments made by the Amendment Act to section 99 of the Act do not apply to the auditor's report on the 2012/13 annual report.
- (3) Clause 15(e) of Schedule 10 of the Act (as it was before it was amended by the Amendment Act) applies to the 2012/13 annual report as if the reference in subparagraph (i) to the long-term council community plan in respect of that year were a reference to the 2012/13 annual plan.

Clerk of the Executive Council.

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**Explanatory note**

*This note is not part of the order, but is intended to indicate its general effect.*

This order, which comes into force on the 28th day after the date of its notification in the *Gazette* and expires on the close of 1 July 2015, allows each of the Christchurch City Council, the Canterbury Regional Council, the Selwyn District Council, and the Waimakariri District Council to decide whether to adopt a long-term plan in 2012 for the 3 years starting on 1 July 2012. In accordance with the existing planning cycle, the councils' current long-term plans will expire on 30 June 2012 and they would have to prepare and adopt a new long-term plan before 1 July 2012.

If a council decides not to adopt a long-term plan in 2012,—

- it must adopt a long-term plan in 2013 for a period of at least 9 years starting on 1 July 2013; and
- certain provisions of the council's 2009/19 long-term plan continue in force until it adopts a long-term plan in 2013, namely provisions relating to—
  - council-controlled organisations:

- the development of Māori capacity to contribute to decision-making processes:
- funding and financial policies; and
- Schedule 10 of the Local Government Act 2002 (the **Act**) as it was prior to its amendment in 2010 applies to the council's 2012/13 annual plan and annual report with the following modifications:
  - the council's 2012/13 annual plan must include the information specified in clause 2(2) of Schedule 10 of the Act (prior to its amendment in 2010). The information relates to levels of service provision for groups of activities, including performance targets and measures. That information would normally be included in the council's long-term plan starting on 1 July 2012:
  - clause 15(e)(i) of Schedule 10 of the Act (prior to its amendment in 2010) applies to the council's 2012/13 annual report as if the reference to the long-term council community plan were a reference to the council's 2012/13 annual plan. This change reflects the change to the requirement in relation to the 2012/13 annual plan; and
- section 97 of the Act is modified so that a major decision described in that section cannot be made unless it is explicitly provided for in the annual plan and was explicitly provided for in the draft annual plan (in usual circumstances the decisions cannot be made unless provided for in the long-term plan and draft long-term plan) or the council uses the special consultative procedure in considering whether to make the decision.

This Order in Council is made under the Canterbury Earthquake Recovery Act 2011 and its effect is temporary.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*:

This order is administered by the Department of Internal Affairs.

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