



Department of Conservation
Te Papa Atawhai



Department of
Building and Housing
Te Tari Kaupapa Whare

27 September 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 (Reserves Legislation) Order (No 2) 2011

Proposal

- 1 We seek a review by the Canterbury Earthquake Recovery Review Panel, of the draft Canterbury Earthquake (Reserves Legislation) Order (No 2) 2011 (the draft Order), under section 73 of the Canterbury Earthquake Recovery Act 2011.
- 2 The draft Order will repeal and replace the Canterbury Earthquake (Reserves Legislation) Order 2011 (the original Order), to extend the timeframe for powers provided to councils to permit reserves to be used for earthquake response and recovery efforts.
- 3 The powers remain the same as the original Order.
- 4 A copy of the draft Order is attached as Appendix 1.

Background

- 5 Reserve land is land set apart for any public purpose and administered under the Reserves Act 1977 (and includes other land owned or vested in the Crown under other enactments as a reserve).
- 6 Among other things, the Reserves Act provides for the control, management and use of reserves. This includes the powers of local authorities and other administering bodies who administer reserve land in their territory.

- 7 Some reserve land in Canterbury was identified as being appropriate for aspects of the earthquake response, for example, for temporary accommodation for residents displaced by the earthquakes.
- 8 As we move into the recovery and reconstruction phase, reserve land has been identified as useful for other purposes, for example, recycling or demolition waste facilities.
- 9 The powers under the Reserves Act are not sufficient to allow councils to permit reserve land to be used for these, and other, activities.
- 10 The original Order was passed in March 2011 to widen the powers available to specified councils¹ in relation to the use of reserves, allowing them to:
 - carry out remedial works on a reserve
 - use a reserve as a depot or other storage facility for demolition waste or building or other materials
 - erect temporary housing on a reserve, including sanitary and other ancillary facilities
 - erect emergency medical facilities on a reserve
 - use a reserve for the landing and taking off of aircraft
 - use a reserve for other types of structures or purposes, if necessary to respond in a timely manner to any urgent circumstances resulting from the Canterbury earthquakes
 - prohibit persons from entering or remaining on a reserve
 - require persons to leave a reserve.
- 11 The original Order expires on 31 March 2012. The Ad Hoc Cabinet Committee on Canterbury Earthquake Recovery agreed that it be remade so councils can continue to access these powers.
- 12 Following consultation, the Christchurch City Council suggested that the current powers to “store” demolition waste or building or other materials could usefully be expanded to allow for “processing, sorting and recycling,” in particular for the Burwood Resource Recovery Park operation based at Bottle Lake Forest Park where this already occurs.
- 13 The Christchurch City Council no longer consider that an express power in relation to the activities of “processing, sorting and recycling” is necessary as it authorised by the general power contained in clause 5(c) of the Order so these activities do not need to be specified in the draft Order.

¹ Christchurch City Council, Waimakariri District Council and Selwyn District Council.

14 Accordingly, the draft Order will extend the timeframe for the powers given to councils under the original Order. The Ad Hoc Committee on Canterbury Earthquake Recovery agreed the draft Order will expire on the same date as the Canterbury Earthquake Recovery Act 2011, currently 19 April 2016 [ACE Min (11) 20/2].

Policy Objective

Temporary accommodation in Canterbury

15 The establishment of temporary accommodation has already started on two reserve land sites in Canterbury:

- a) Kaiapoi Domain - 22 houses are completed
- b) Linwood Park – 42 houses are completed.

16 Houses on these sites will be available for people whose houses are uninhabitable and cannot be occupied until remedial work can be completed to make them safe to live in.

17 Seventy-six houses proposed for Rawhiti Domain are on hold, pending an increase in demand for temporary accommodation.

18 The councils have agreed that a further reserve or park in the Burwood area may be used for temporary accommodation if required.

19 Councils' permission to use reserve land for temporary accommodation was obtained under the powers in the original Order.

The future demand for temporary accommodation

20 The level of demand for temporary accommodation cannot currently be accurately quantified. A number of factors must be considered:

- a) it has been confirmed that approximately 6,000 houses in the red zone will not be rebuilt. Final decisions about the future housing needs of owners and/or occupiers of red zone houses are not yet known
- b) further information is required before the future of approximately 10,000 houses in the orange and white zones is known
- c) about 100,000 houses in the green zone have been identified. Some residents from these houses may need temporary accommodation during rebuilding.

21 Therefore, estimates could either exceed actual demand (meaning less reserve land is required for temporary accommodation) or they could under-estimate actual demand (meaning that more reserve land may be required for temporary accommodation).

22 Since it was set up, more than one thousand people have contacted CETAS (Canterbury Earthquake Temporary Accommodation Service) indicating they may need housing assistance. As at September 22, CETAS was working with 384 households to assess their accommodation needs and source best available accommodation options.

23 Government investment in supply of temporary accommodation as of 30 June 2011 was \$7.7 million (including 20 completed Jennian units that were yet to have sites identified and the then uncompleted villages at Linwood and Kaiapoi).

Remaking the Canterbury Earthquake (Reserves Legislation) Order 2011

24 The uncertain environment reinforces that local authorities will continue to require an exception to the Reserves Act that enables them to act quickly and to use the reserves at their disposal for response and recovery if a need arises.

25 If the original Order lapses, the ability to use reserve land for response and recovery efforts past March 2012 will be limited:

- a) The councils will no longer have the power to permit reserve land to be used for the placement of temporary accommodation and other earthquake response activities, such as the processing of demolition waste.
- b) The current temporary accommodation will not be able to remain as this will be unlawful use of the reserve. The Department may be forced to evict residents. Houses will have to be relocated.
- c) The uncertain tenure of the accommodation into the future could have a detrimental impact on negotiations to sell the houses and set up a lease-back arrangement (as part of the agreed exit strategy for Government).
- d) Much of the Government's investment to date in setting up temporary accommodation would be wasted.

26 The overall outcome if the original Order expires could be that the Government is less able to provide temporary accommodation for those severely affected by the Canterbury earthquakes.

27 Remaking the original Order will empower councils to continue to carry out or permit others to carry out necessary work and activities on reserves as part of the overall earthquake response and recovery.

28 How long the powers are needed for is currently difficult to quantify. The earthquake aftershocks are a series of unpredictable events, rather than a single disaster. It cannot be predicted with any certainty whether future aftershocks will cause further damage, potentially requiring use of reserve land and the powers available under the original Order.

29 The Minister of Conservation has the power to require a work or activity on a Crown reserve to be stopped if necessary. This power provides a "check" on councils, should their actions be considered unreasonable. The power of the

Minister of Conservation to require work or activity be stopped does not apply to reserves vested in councils.

Costs and benefits

30 The proposed option will help councils and Government to deal with ongoing earthquake response issues promptly and effectively. It will also help to ensure that people in Canterbury are adequately protected from public health and safety risks following the Canterbury earthquakes, and ensure that recovery activities are facilitated.

Government	
<i>Costs</i>	<i>Benefits</i>
<p>Planned investment in temporary accommodation can proceed (expected to be in the order of \$16.9 million)</p> <p>Giving largely unfettered power to councils with vague or uninformed limits to the exercise of that power</p>	<p>Recognises that flexibility is essential to permit an appropriate response from the community across all sectors (e.g. medical, housing, deconstruction/reconstruction) following an emergency</p> <p>Investment in temporary accommodation to date is preserved (\$7.7 million as of 30 June 2011)</p> <p>Planned investment in temporary accommodation can proceed (expected to be in the order of \$16.9 million)</p> <p>Options currently under way to finalise the Government's exit strategy from providing temporary accommodation can proceed unimpeded</p> <p>Provision of temporary accommodation units to households who have housing need</p>
Industry/Sector: Councils	
<i>Costs</i>	<i>Benefits</i>
<p>Potential public criticism where:</p> <ul style="list-style-type: none"> • reserve land is used for response and recovery efforts, rather than as public recreation facilities • the public is not given the right to object to reserve land being used for response and recovery efforts • potential loss of amenity value if councils choose to undertake any works with longer-term impact 	<p>Wider, more appropriate powers to use land within their territory for response and recovery</p> <p>The powers themselves are broad, enabling a quick and flexible response to emergency situations or recovery efforts as they arise</p> <p>Relative proximity of sites to affected areas within the city enhances ability to expediently remove demolition materials to storage (and subsequent processing and sorting) thus</p>

	<p>promoting the reconstruction effort</p> <p>Recognises the paucity of large flat areas accessible to the city, and negates need to use others which are potentially more disruptive (e.g. playgrounds which could interfere with education and other school uses)</p> <p>Enables councils to properly remediate reserve land</p>
Society: residents of Canterbury	
<i>Costs</i>	<i>Benefits</i>
<p>In some cases, restricted access to public (reserve) land</p> <p>In all cases, no ability to object to reserve land being used for response and recovery efforts</p> <p>Possible other negative consequences for those that neighbour reserve land, such as:</p> <ul style="list-style-type: none"> • an increase in number of people using reserve land • strain on existing infrastructure and services • increase in neighbour annoyance incidents 	<p>Access to temporary accommodation units provided by Government, for those that cannot inhabit their homes</p> <p>Reserve land would be remediated (if it has been damaged by the earthquakes), meaning restored public enjoyment of the land in the future</p> <p>For the most part, reserve land will only be used for response and recovery efforts temporarily. Reserve land would revert to its original use when the remade Order expires</p>

Risks

31 We do not consider there to be significant risks in proceeding with the draft Order.

Timing and commencement of the Order in Council

32 It is proposed the Order will commence 28 days after it is Gazetted and expire on the same date as the Canterbury Earthquake Recovery Act 2011, currently 19 April 2016 [ACE Min (11) 20/2]. The maximum period is necessary because temporary accommodation will be required for as long as people need it – because their homes are uninhabitable either due to damage or are in the process of being repaired or reconstructed elsewhere. Similarly, the need for areas to store demolition waste and processing centres will be required as long as the reconstruction takes. Corollary powers to ensure public safety and security are therefore required.

Consultation

- 33 The following Government agencies were consulted: Department of Internal Affairs, Ministry of Civil Defence and Emergency Management, Ministry of Justice, Ministry for the Environment, The Treasury, Ministry of Economic Development, Land Information New Zealand, and Canterbury Earthquake Recovery Authority. The Department of the Prime Minister and Cabinet have been informed.
- 34 The following agencies have been consulted on the draft Order: Christchurch City Council, Waimakariri District Council, Selwyn District Council and Environment Canterbury.
- 35 The draft Order has also been reviewed by the Parliamentary Cross-Party Forum. A suggestion was received from Labour MP, the Hon Clayton Cosgrove, regarding clause 6(2)(b). This clause requires the council to reinstate a reserve as closely as practicable to its prior condition where work has been carried out under clause 5 of the Order. The proposal was that the clause be strengthened and made into a stand-alone clause with the title 'reinstatement of reserve'.
- 36 The Department of Conservation considers the proposal, that clause 6(2)(b) needs strengthening, to be unnecessary and impracticable because clause 6(2)(b) is not to be read in isolation from clause 6(2)(a). Paragraph (a) already requires the council to take all reasonable steps to protect the integrity of the reserve.
- 37 If more were to be expected of a council it would impose unreasonable expectations. Moreover, the standard set by clause 6(2)(b) is already high. Any higher standard (an absolute requirement to recreate exactly how the reserve was before the earthquake) would require a council to go beyond what is practicable and may also have the perverse effect of requiring reinstatement to a less suitable state than might be achieved if the council had some flexibility to make improvements to the reserve.

Publicity

- 38 The Order will be published in *The New Zealand Gazette*. Any other publicity around the Order will be undertaken as part of the wider communications strategy for the Canterbury earthquake recovery.

Conclusion

39 We look forward to receiving your recommendations so that Ministers can consider them before they make a recommendation on the Order.

40 The key contact for this item of work is Amy Moorhead, who can be contacted at 04 817 4283 or amy.moorhead@dbh.govt.nz.

Yours sincerely



Ann Clark Acting Deputy Chief Executive, Sector Policy Department of Building and Housing Date: 26 / 09 / 11	Doris Johnston Deputy Director-General, Policy, Department of Conservation Date: 26 / 09 / 11
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