

Impact Summary: Kaikōura District Council Long-Term Plan Order in Council

Section 1: General information

Purpose
<ol style="list-style-type: none"> 1. The Department of Internal Affairs (the Department) is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. 2. This analysis and advice has been produced for the purpose of informing Cabinet on a decision to agree to an Order in Council (OIC) that allows Kaikōura District Council to produce a three-year plan in place of a long-term plan.
Key Limitations or Constraints on Analysis
<ol style="list-style-type: none"> 3. The time available to prepare this analysis is constrained by the need for a prompt decision. The empowering legislative instrument for creating an exemption to the planning requirements, the Hurunui/Kaikōura Earthquakes Recovery Act 2016 (the Recovery Act), is set to expire on 1 April 2018. This requires any proposed OICs to be in effect by 31 March 2018. 4. The time available is also constrained by the Council’s need for sufficient notice of any changes in planning requirements to allow time to prepare, consult and adopt a long-term plan (or its substitute) by the statutory deadline of 30 June 2018. 5. This analysis is reliant on the information that the Kaikoura District Council (the Council) and the National Recovery Office (Ministry of Civil Defence & Emergency Management, Department of the Prime Minister and Cabinet) have provided to the Department. The Department is confident that this information is accurate. 6. The Department has conducted its analysis of the challenges the Council faces in the context of the earthquake and has reserved commentary on pre-existing organisational issues. If required, any outstanding organisational matters would be the subject of separate advice. 7. The situation is evolving and the availability of quality information is improving as the financial implications of the earthquake damage become clear. The Department has conducted this analysis based on the limited information that is available and the identifiable gaps in information that would support the Council’s decision making processes. 8. The Department does not have any available baseline funding to assist the Council to produce its long-term plan.
Responsible Manager (signature and date):
<p>Raj Krishnan General Manager Policy Department of Internal Affairs</p>

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

Context

Local authorities must have a long-term plan at all times

9. Under the Local Government Act 2002 (the Act), local authorities must have a long-term plan covering 10 consecutive years at all times. The long-term plan sets a council's strategic direction in service provision, financial, infrastructure and asset management, and provides the basis for council decisions.
10. The purpose of a long-term plan, as set out in section 93 of the Act, is to:
 - describe the activities of the local authority;
 - describe the community outcomes of the local authority's district or region;
 - provide integrated decision making and coordination of the resources of the local authority;
 - provide a basis for accountability of the local authority to the community; and
 - provide an opportunity for participation by the public in decision making processes on activities to be undertaken by the local authority.
11. The plan must contain extensive financial information, a financial strategy and an infrastructure strategy covering at least 30 consecutive financial years.

All councils are required to adopt a 2018-2028 long-term plan by 30 June 2018

12. Councils prepare and adopt a long-term plan, in consultation with their communities, every three years. This planning cycle is set to end on 30 June 2018. New long-term plans must be adopted to come into effect on 1 July 2018.
13. The timing of the planning cycle is designed to reflect other key considerations and processes for local authorities, such as the electoral cycle.
14. The planning process can typically take a year to complete. Councils are required to consult their communities on key issues that are proposed for inclusion in the long-term plan. They must produce a consultation document for this purpose. The consultation document and final long-term plan are audited and must include a report from the Auditor General.

The Hurunui/Kaikōura Earthquakes Recovery Act 2016 (the Recovery Act)

15. On 14 November 2016, a 7.8 magnitude earthquake occurred in Kaikōura. The size and scale of the earthquake caused widespread damage throughout the region. The Government response included introducing the Recovery Act to allow central government to support the earthquake affected areas by removing bureaucratic barriers to recovery. The Recovery Act expires on 1 April 2018, although any Order in Council which might be introduced before that date, where it applies to the Local Government Act 2002 and the Local Government (Rating) Act 2002, can remain in force until 30 June 2021.

Problem

16. The earthquakes caused extensive damage to many of the Council's assets such as roading and water infrastructure. While many councils experience earthquakes, the damage has been significant for the Council, due to its small size and limited

resources.

17. The Council is required under the Act to prepare, consult on and adopt a long-term plan. Due to the earthquake damage the Council lacks key planning information around the extent of infrastructure damage and funding support for recovery repair and replacement work.
18. Providing for Kaikōura's recovery from the earthquake's damage is requiring all of the Council's resources and will be the Council's focus for years to come. The Council does not have the capability or capacity to progress its statutory long-term planning requirements without diverting resources from the recovery effort. The Council has 27 staff and 1,411 ratepayers (compared with Christchurch City Council which has over 2,000 staff and 148,582 ratepayers). This creates resource limitations, even under normal circumstances. It is also at the beginning of a process of working with the Department on transitioning over the next three years to a new operating model.
19. There is an opportunity to reduce the strategic planning burden on Kaikōura District Council to support its recovery efforts, but still provide clear strategic direction for the Council and community.

Consequences

20. If the Council is required to meet the full extent of the current statutory planning requirements, community participation and the usefulness of the adopted plan could be compromised. The Council would need to prepare a long-term plan based on large assumptions and poor quality information. This could negatively affect the legitimacy of the Council's future decision making, and may deter the public from future participation.
21. The community may not have the resources to be involved in a full long-term planning consultation, given that it is also involved heavily in ongoing consultation around the Council's earthquake recovery efforts. Much of the community may also be focussed on solving personal issues that arose from the earthquake. A full long-term planning process may divert the community's efforts away from earthquake recovery. Conversely, without meaningful participation, the community may not see the long-term plan as a legitimate community document.
22. To produce the long-term plan the Council would need to divert resources, staff time or council funds, away from the recovery. This could cause recovery progress to slow down or stagnate.
23. If the Council were unable to produce a long-term plan that meets the statutory requirements it may be unable to strike its rates under the Local Government (Rating) Act 2002. This will mean the Council will be unable to meet the costs and service debt associated with the recovery and general operations. This will have implications for the future financial health of the Council, and may place an unfair financial burden on future ratepayers.

Why does it need to be addressed now?

24. The Recovery Act, which enables an OIC, expires on 1 April 2018. This means an OIC under this Act must be in effect by 31 March 2018, requiring urgent attention now.
25. The Council is expected to deliver a long-term plan by 1 July 2018. If an OIC is progressed to alter the content of these requirements the Council will still need adequate time to produce and consult on the strategic direction. The Council would need a minimum of three months to develop, consult and finalise an alternative plan.

Confidence in the evidence:

26. Kaikōura was particularly hard-hit by the earthquake. 100 per cent of homeowners lodged insurance claims for building damage compared with 20 per cent in Marlborough. Kaikōura's claims are also for a higher level of damage, on average.

There have been 2,159 claims in the Kaikōura District in 2017. 45% of these are yet to be settled. Less than 5% are yet to be assessed. Given this, much of the community is unlikely to have the resources to meaningfully engage in a long-term planning process.

27. The Department has looked into the Council's resource and information gap issues, with support from the National Recovery Office. However, there is a lack of information about the extent of the damage, and the Council's capability to produce a long-term plan is constrained at this point in time. The Department agrees with the Council's assertions that it cannot gather the necessary information to fill current gaps to complete the statutory planning requirements.

Objective

28. The objectives are to ensure that:
- the Council can continue to exercise compliant decision-making that gives the community access and engagement in its strategic intent over the short to medium term; and
 - the Council can continue to focus on, and not divert resources away from, earthquake recovery efforts.
29. Accordingly, the Department considers that any OIC should depart from the present long-term planning process as little as possible, and as briefly as possible.
30. There are no non-regulatory options available to achieve the objectives set out above, as the competing resourcing requirements facing the Council cannot be solved.

2.2 Who is affected and how?

31. The identified affected parties include:
- the Council;
 - Kaikōura communities, rate payers, local businesses;
 - iwi, hapu and Māori, specifically Ngāi Tahu; and
 - recovery agencies and funders, for example insurance providers and the National Recovery Office.
32. The Council and its communities are those primarily affected. Strategic planning gives the Councils objectives that are consulted on with its communities and shapes decision making going forward. Alterations to the strategic planning process and plan affects both the Council decision making and community participation in decision making.
33. The Council does wish to complete some form of strategic plan within its constraints, and is confident it can produce a reduced plan that reflects the medium-term strategic direction of the district.
34. Full consultation on the proposal has been undertaken, and no further affected parties were identified.

2.3 Are there any constraints on the scope for decision making?

35. Section 7 of the Recovery Act empowers the Governor-General to make Orders to grant exemptions from, modify, or extend any provisions of specified enactments in connection with the whole or a part of the earthquake-affected area. This power can only be exercised for the purposes of modifying enactments that may divert resources away from the recovery efforts or may not be reasonably capable of being complied with due to the circumstances resulting from the earthquakes.
36. Section 8 provides that OIC must be necessary or desirable for the purpose of the Act, which is to assist the earthquake-affected area and its councils and communities to respond to, and recover from, the impacts of the Hurunui/Kaikōura earthquakes. Section 8 also provides that an OIC cannot be broader than is reasonably necessary to address the matters involved.
37. The provisions in the Recovery Act that allow for an OIC expire on 31 March 2018. This restricts the time available to enact an OIC for the Council. This also means that we cannot delay the Council's planning requirements in the hope better information will be available within a short period of time as future Orders cannot be passed if problems persist.
38. This is a discrete request from one Council. The primary link with the wider regulatory system will require a modified application of provisions in the Local Government (Rating) Act 2002 to allow the Council to strike its rates in the absence of a traditional long-term plan.

Section 3: Options identification

3.1 What options have been considered?

Assessment criteria

39. The criteria used to assess the options are:
 - a. The Council can continue to exercise decision making
 - b. There is a strategic framework to guide the Council's decision making
 - c. The Council can maintain its focus on earthquake recovery efforts and planning
 - d. The community can maintain its focus on earthquake recovery efforts
 - e. The Council will provide clear statements of the key strategic and operational decisions that will be made by the Council over the short to medium term
 - f. The community will be able to engage in setting the strategic direction of the Council for the short to medium term

Options

Option One: The status quo

Explanation

40. Kaikōura District Council would be required to produce a long-term plan with full consultation.

Impact on Kaikōura District Council

41. A long-term plan would provide the Council with a strategic framework to guide its earthquake recovery.
42. However, If the Council were to produce a traditional long-term plan within current constraints it would neither be able to meet the consultation requirements for a long-

term plan, nor have meaningful content. A plan produced at this time would be based on incomplete information and therefore the Kaikōura communities would be unable to meaningfully engage with, or evaluate the viability of, the proposed content of the plan.

43. Furthermore, producing a long-term plan so late in the planning cycle would come at a substantial cost to the Council and would require the Council to divert resources from the recovery. That would not be justified by the compromised quality and utility of a long-term plan that could be produced.

Does it meet the criteria?

44. The status quo does not meet the criteria, in particular, (c) and (d).

Option Two: A reduced three-year plan in place of a 10 year plan, and waived audit requirement (Recommended Option)

Explanation

45. This option would require an OIC to allow the Council to deliver a three-year plan in place of the 10 year long-term plan. This would also waive the audit requirements due to the unreliability of information being audited (the audit fee for 2015 was \$55,000).
46. This option will retain community consultation on the Council's intended direction for the coming three years. This is an interim measure that would enable the long-term plan to be refreshed in three years' time, when there is better information available on funding, the state of Council assets and the Council's new operating model.

Impact on Kaikōura District Council

47. This enables the Council to remain consistent with the planning cycle of all other territorial authorities and the area's recovery plan produced with the National Recovery Office. This would still provide a strategic direction and basis for decision-making, but over the medium-term.
48. Producing a plan with a three year horizon is less resource intensive than a plan with a 10 year horizon. Removing the audit requirement will allow the Council to discuss the intended direction of planning despite uncertainty of funding and insurance arrangements.
49. The first year of the three-year plan would also constitute the Annual Plan for 2018/19 which is consistent with the approach with long-term plans.

Does it meet the criteria?

50. This option meets the criteria.

Option Three: Defer long-term plan for one year

Explanation

51. This option would require an OIC to allow the Council to produce an annual plan for 2018/19 rather than a long-term plan, and produce a nine year plan by 30 June 2019 for 2019-28. This would carry over the previous long-term plan for the next year, while the Council gains more certainty on planning and funding arrangements. In 2019, the Council would set a nine year long-term plan that would be updated in cycle with other councils in 2021.

Impact on Kaikōura District Council

52. We do not have certainty that the Council will have the information required to produce

a nine-year long-term plan in only one year. Further we cannot be certain the Council will be in a position to balance its resources with recovery efforts at this time either. Therefore this option has the risk of delaying the problem for the Council only to find it is in a similar position again next year (at which point the ability to use an OIC to address this will no longer exist).

53. This option leaves the Council and its communities without a long-term strategic vision that reflects the earthquake related challenges for a year.

Does it meet the criteria?

54. This option partially meets the criteria.

Option Four: Waive the audit requirement and modify specific content of the long-term plan

Explanation

55. This option would introduce an OIC to modify the content of the long-term plan to remove/replace parts of the plan that the Council cannot achieve at this stage, but retain the ten year horizon for other aspects of the plan. This option would also remove the auditing requirements on the plan.
56. This option is similar to option two however it will retain some aspects of the ten year horizon where possible. This option would have a higher level of complexity with regard to the content of the remaining long-term plan.

Impact on Kaikōura District Council

57. Communities may not feel fully informed by a long-term plan that contains information on only some aspects of the long-term direction of the Council's and it may be difficult to fully understand the implications of those aspects that were not contained in the plan. This may have the effect of only providing part of the strategic picture to communities.
58. The Council is still unlikely to have the required information and resourcing to adequately produce a plan that meets the requirements for those aspects remaining.

Does it meet the criteria?

59. This option partially meets the criteria.

Discounted options

Non-regulatory

60. The following non-regulatory options were considered early in the analysis, but discounted because they did not meet the criteria.
- **Financial assistance to meet the costs of an external audit of the long-term plan:** The Council will still need to produce a long-term plan, which will continue to divert resources away from earthquake recovery.
 - **Adoption of a 'best-efforts' long-term plan for now, with an expectation for it to evolve over the next three years as better information becomes available:** This does not allow the Council to maintain its focus on earthquake recovery. There is a risk that a 'best-efforts' long-term plan becomes a poor framework for the Council's future decision making.

Regulatory

61. The following regulatory options were considered early in the analysis, but discounted because they did not meet the criteria:
- **Extending the deadline for the Council to adopt its long-term plan until August 2018:** This option may affect the Council's ability to maintain its focus on earthquake recovery.
 - **Requiring the Council to adopt a long-term plan, but waiving the audit requirement:** This option may affect the Council's ability to maintain its focus on earthquake recovery.

3.2 Which of these options is the proposed approach?

Option Two: Produce a reduced three-year plan in place of a 10 year plan

62. We are confident that requiring the Council to produce a three-year plan in place of a 10 year plan is the most effective option.
63. The preparation of a customised three-year plan in place of the standard long-term plan is considered necessary given the high level of information uncertainty and demand on Council resources inherent in the recovery
64. The ten-year period of the long-term plan is not a realistic financial planning horizon for the Council given the scale of infrastructure damage and subsequent funding uncertainties.
65. A reduced three-year plan designed to reflect the recovery is more achievable with the Council's limited resources and information. It will allow for planning and recovery to continue to progress, and for the Council to engage with its communities on its intent. Consultation for the plan, as prescribed under the Act, would ensure that the Council remains accountable to the community over the next three years.
66. This can happen while the Council continues to focus on earthquake recovery. The Council will be relieved from the costs of having its long-term plan externally audited. This resource could instead be used for earthquake recovery activities.
67. The three year timetable enables the Council's planning cycle to remain consistent with other local authorities and a long-term plan to be implemented from 1 July 2021, when this OIC would expire. Aside from the status quo, this option fits best in regard to consistency with the current system as it maintains consistent timing and alignment that will have lower transaction costs and regulatory complexity.
68. A three-year plan will provide the community with the best information available, and allow it to participate in strategic planning for the district, while the Council can continue to focus on recovery efforts.
69. It also recognises that the community may not have the resources to fully engage with a long-term plan at present, due to personal issues that arose from the 2016 earthquakes.
70. In three years' time, the Council is expected to have greater certainty over its infrastructure and financial information and to have transitioned to a new operating model that will address capability and capacity challenges.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties <i>(identify)</i>	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>
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Additional costs of proposed approach, compared to taking no action

Regulated parties	This option does not increase Kaikōura District Council's spending. There is a risk that the Council may make less sound investment decisions due to a lack of long-term modelling on key decisions.	nil
Regulators	This option will not impose any additional costs on regulators. The Department may save resources by not having to remediate an incomplete or non-compliant long-term plan from Kaikōura District Council.	nil
Wider government	The approach will require resources from the Department, the Parliamentary Counsel Office and the Executive Council to produce and enact an OIC that waives the requirement to produce a long-term plan. There will also be costs involved for policy advice provided by the Department.	Within baselines
Other parties	-	-
Total Monetised Cost	<i>None identified</i>	<i>None identified</i>
Non-monetised costs	<i>None identified</i>	<i>Low</i>

Expected benefits of proposed approach, compared to taking no action

Regulated parties	The Council can continue to focus on earthquake recovery in the region. The Council will save money by not needing an external audit of its long-term plan. Were the Council to do a long-term plan it may have to contract external expertise at additional cost, which the Council will save in producing a plan within current constraints.	
Regulators	There is no monetised benefit to the Department.	
Wider government	There is no monetised benefit to the Department.	
Other parties	Were the Council to have to resource a	

	long-term plan this could transfer costs to its rate payers through a rate increase.	
Total Monetised Benefit	<i>None identified</i>	<i>None identified</i>
Non-monetised benefits	<i>None identified</i>	<i>High</i>

4.2 What other impacts is this approach likely to have?

71. There may be a precedent set for other local authorities affected by future earthquakes or other major natural disasters.
72. The Government's actions to support the Christchurch City Council following the 2011 Canterbury earthquakes could be viewed as a precedent for Kaikōura District Council's request for assistance. In 2013, the Government approved the Canterbury Earthquake (Local Government Act 2002—Christchurch City 3-Year Plan) Order in Council. This temporarily removed Christchurch City Council's requirement to have a long-term plan in place. Instead, the Council was required to have a three-year plan in place. The OIC prescribed the content of the three-year plan.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

73. The Department of Internal Affairs has consulted with Land Information New Zealand, New Zealand Transport Agency, Te Puni Kōkiri and National Recovery Office (Ministry of Civil Defence & Emergency Management, Department of the Prime Minister and Cabinet) on the preparation of this RIA.
74. All agencies consulted fully supported the proposal.
75. The Office of the Auditor General, the Department of the Prime Minister and Cabinet, and Treasury have been informed.
76. Following Cabinet approval, the Department undertook consultation with the affected parties, as provided for under the Recovery Act.
77. There were three submissions received on the proposal. They were received from:
 - Kaikōura District Council
 - East Coast Community Organisation
 - Bill Bayfield (Chief Executive of Environment Canterbury)
78. All three submissions strongly support the proposal.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

79. The proposal will be implemented by an OIC under section 7 of the Recovery Act.
80. The OIC will exempt the Council from having to comply with section 93 of the Local Government Act 2002 and may modify elements of schedule 10 to allow the Council to produce a three-year plan in place of a long-term plan.
81. The OIC will expire on 30 June 2021. The Council will then be required to return to the requirements of the Local Government Act 2002 to have a long-term plan in place by 1 July 2021. This will return the Council to the same planning cycle as all other local authorities.
82. The Department will work with the Council to ensure appropriate quality assurance is given to the plan given the absence of a required audit opinion.
83. Risks associated with implementation will be mitigated by consulting fully with affected parties on the draft Order in Council.
84. A further risk is that the public will not understand or accept the rationale for the OIC. The Department and the Council worked together to provide clear and consistent messaging to ratepayers about the reasons for the OIC during the consultation period.
85. No enforcement strategy is needed for the regulations since they are in alignment with the requests of the Council and reduce, rather than impose, requirements.
86. For Kaikōura, references to 'long-term' plan in the Local Government Rating Act 2002 will be treated as if they are references to the three-year plan.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

87. Data does not need to be gathered to assess the effectiveness of the OIC as the proposed approach is temporary, any review will be limited to determining whether further or prolonged government support is necessary.

7.2 When and how will the new arrangements be reviewed?

88. As the regulations will be time limited there is no need for ongoing reviews, after three years, the Council will resume normal planning processes.
89. During the three years, the Department will maintain informal contact with the Council to ensure the OIC is operating as intended.