

Regulatory Impact Statement

Financial planning by the Crown and Christchurch City Council for the recovery in Christchurch City

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Canterbury Earthquake Recovery Authority and the Department of Internal Affairs.

It provides an analysis of regulatory and non-regulatory options to manage the Christchurch City Council long-term plan and to expedite financial planning for the infrastructure and asset rebuild of Christchurch City.

Christchurch City Council is currently obliged under the Local Government 2002 (LGA02) legislation to produce a long-term plan (LTP) covering a period of ten years, by June 2013. The Council is not in a position to prepare a robust, reliable and accountable LTP that covers this timeframe and the level of detail required, due to the continuing environment of uncertainty and financial pressure in Christchurch as a result of the earthquakes. The LTP needs to be substituted with another plan, which can:

- provide a framework for strategic earthquake recovery decisions without being required to report on a ten-year horizon, and meet some of the requirements of the long-term plan process; and
- reflect joint Crown and Council cost-sharing and governance arrangements.

The Canterbury Earthquake Recovery Authority and the Department of Internal Affairs have been advised that the Christchurch City Council has passed a resolution to support the Minister for Canterbury Earthquake Recovery and the Minister of Local Government developing an Order in Council under urgency to suspend the need for a long-term plan in 2013 and require a three-year plan (TYP) to be adopted for Christchurch City. In this continued environment of uncertainty and financial pressure, the Council is severely constrained in its ability to develop a robust long-term plan that will expedite the progress of the rebuild and recovery.

The preferred option identified will not:

- impose additional costs on business;
- impair private property rights, market competition, or the incentives on businesses to innovate and invest; or
- override fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee Guidelines).

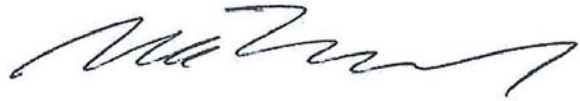
It should be noted that due to the compressed timeframes under which this cabinet paper and order needed to be progressed, analysis has been restricted to only two options.

The Treasury has advised that a Regulatory Impact Statement is required but that the policy proposal does not trigger the significance criteria so will not be quality assured by the Regulatory Impact Analysis Team.



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Date: 12.2.13



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Date: 12.2.13

Introduction

1. Christchurch City Council is currently obliged under legislation to approve a long-term plan (LTP) covering a period of ten years, by 30 June 2013. The Council is not in a position to prepare a robust, reliable and accountable LTP that covers this timeframe in the level of detail required, due to the continuing environment of uncertainty and financial pressure in Christchurch as a result of the earthquakes. The LTP needs to be replaced by another plan, which can:
 - provide a framework for strategic earthquake recovery decisions without being required to report on a ten-year horizon, and meet some of the requirements of the long-term plan process; and
 - reflect joint Crown and Council cost-sharing and governance arrangements.
2. The Minister for Canterbury Earthquake Recovery has directed that CERA engage with the Christchurch City Council to agree cost-sharing and governance arrangements for horizontal infrastructure and major anchor projects in the Central City. The outcomes of these cost-sharing agreements will be reflected in the three-year plan for Christchurch City (TYP), a statutory document that will replace the LTP for the next three years.
3. This regulatory impact statement considers options for managing the Christchurch City Council's (the Council) LTP for 2013-22, and mitigating the risks of producing a LTP.

Background and problem definition

Background

Long term plans as a financial planning tool

4. LTPs are the chief planning, accountability and decision-making document for councils under the LGA02. Councils are required to have a long-term plan at all times. LTPs must cover a period of at least ten consecutive financial years, and they remain in force for three years. They cover strategic, long-term matters including types and levels of

services provided to communities and financial forecasts for a minimum of ten years. They include rates and debt projections and contain detailed description of the rating system to be used for the coming years.

5. In 2011, an Order in Council (2011/402) under the CER Act allowed the Council to delay adoption of a LTP from June 2012 until June 2013. This was to manage issues with developing a LTP in an environment of incomplete and inaccurate information about the extent of damaged infrastructure and costs involved in the recovery effort.
6. The Council is required to adopt a long-term plan for 2013-22 by 30 June 2013. To meet this timeframe, it must have a draft LTP prepared for audit by March 2013 and for public consultation by April 2013.

Crown and Council funding strategy for the rebuild

7. There continues to be high levels of uncertainty about the scale and cost of the repair and replacement of the Council's infrastructure and other assets. The Crown and the Council are currently in discussions regarding the extent and nature of the Crown's contribution to the rebuild. This includes decisions on the total scope and cost of projects, how costs will be shared between the Crown and the Council, and the long term ownership of jointly funded assets. These decisions are needed across a range of recovery expenditures, so both the Crown and the Council are aware of respective liabilities when making future spending decisions.
8. The aim is to ensure that the Crown's contribution is balanced by the Council fully contributing to the costs of the recovery, whilst ensuring the Council's ongoing financial sustainability, having regard to the position of current and future ratepayers. A final agreement on cost-sharing arrangements between the Crown and the Council will be reached by April 2013. Once a formal cost-sharing agreement is reached, the existing indemnity issued by the Minister of Finance in May 2011 to the Council will be cancelled.

Problem definition

9. The Council is currently obliged under the LGA02 to produce a LTP covering a period of ten years, by 30 June 2013. The Council is not in a position to prepare a robust, reliable and accountable LTP that covers a ten-year timeframe with the level of detail required in a standard LTP, due to the continuing environment of uncertainty and financial pressure in Christchurch as a result of the earthquakes. The LTP needs to be substituted with another plan, which can:
 - provide a framework for strategic earthquake recovery decisions without being required to report on a ten-year horizon, and meet some of the requirements of the long-term plan process; and
 - reflect joint Crown and Council cost-sharing and governance arrangements.
10. In this continued environment of uncertainty and financial pressure, the Council is severely constrained in its ability to develop a robust LTP that will expedite the progress of the rebuild and recovery. In particular, it is constrained in its ability to forecast its capital and operating expenditure and sources of funding for the recovery, alongside business-as-usual operations. The ten-year period of the LTP is not a realistic financial planning horizon given the uncertainty about the scale and cost of the repair and replacement of the Council's infrastructure and other assets.
11. Furthermore, the financial forecasts in a LTP, based on funding assumptions that have not been endorsed by the Crown, may be in conflict with, or inconsistent with, the

funding arrangements on which the Council and the Crown are intending to agree. The Audit opinion on such a document would necessarily be qualified, which could increase community and market uncertainty. A lack of robust information could create business risks for the private sector, communities and individuals who are relying on the information for their own financial planning purposes. This could in turn affect the level of investment into the rebuild and confidence in the recovery.

12. In the time available, analysis has been restricted to the two options outlined below.

Regulatory impact and options analysis

Option One: Status Quo - LTP with active monitoring

Description

13. This is the status quo option which requires the Council to continue to develop, consult on, and adopt its 2013-2022 LTP by 30 June 2013. Officials would work closely with the Council to monitor the development of the LTP for the purpose of reducing or mitigating risks, and identifying any conflicts or inconsistencies with the funding strategy. There is no regulatory intervention.
14. Proactive communication by the Crown during the long-term plan process would be required to ensure the Crown position on funding assumptions in the LTP is identified to the public.
15. Statutory audit requirements for LTPs would ensure that where the Auditor-General identifies issues or inconsistencies with forecasting assumptions in the LTP, these will be identified and require qualification. This provides independent quality assurance that is transparent and can be relied on by the public.

Benefits

16. The main benefits of Option One are that it:
 - allows for the operation of the local government accountability, planning and decision-making framework under which all councils operate. This includes full implementation of the 2010 and 2012 local government law reforms;
 - provides Christchurch residents with the opportunity to contribute to and influence the Council's long term decisions and priorities through the transparent, statutory long-term plan process, under which Council's are required to consult through the special consultative procedure;
 - provides local electors with key tools for assessing the quality, performance and future direction of the Council at the 2013 local authority elections. These are the LTP itself and the pre-election report¹ which is largely based on the LTP.
17. Once a LTP is adopted by the Council, there is no legislative requirement that a LTP must be complied with, as long as there is adequate justification for not following it.

¹ A major change contained in the 2010 Local Government Act amendments was a requirement for each local authority's chief executive to produce a pre-election report in the lead up to the local authority elections. The first part of the pre-election report outlines the performance of the local authority over the three previous years. The second part of the report, being the larger part, is to comment on the issues that the incoming council would face, as identified in the local authority's long-term plan.

Changes to assumptions around Crown funding would qualify as adequate rationale for not following a LTP.

Risks

18. The key risks with this option are:

- the Council is not in a position to prepare a robust, reliable and accountable LTP that covers the ten year timeframe and the level of detail required, due to the continuing environment of uncertainty and financial pressure in Christchurch as a result of the earthquakes. Production of a LTP may distract time, resources and public attention away from development of a permanent Crown and Council cost-sharing arrangement. If the LTP were it to be produced, would be likely to contain incorrect and misleading financial information;
- the publication of financial forecasts in a LTP based on funding assumptions that have not been endorsed by the Crown could be in conflict with, or inconsistent with, the shared funding strategy;
- there may be more costs associated with managing a fundamentally unreliable LTP in an environment of continual change; and
- the potential for the publication of inconsistent or conflicting information about shared costs and how these will be shared could generate public confusion and ongoing uncertainty about the plans for Christchurch's recovery, which may increase the cost of borrowing for the Council, create business risks for the private sector, and could adversely affect the level of investment into the recovery.

Option Two: Order in Council to suspend the long-term plan requirements between June 2013 and June 2015 and require a three year plan to be adopted for Christchurch City (preferred option)

Description

19. Option Two proposes that an Order in Council be prepared, under section 71 of the CER Act, that will suspend the requirement under section 93(1) of the LGA02 for the Council to have a LTP between 30 June 2013 and 30 June 2015. The requirement under s95 of the LGA02 to prepare and adopt an annual plan for each financial year would remain.
20. This option is in alignment with the Council's passing of a resolution to support the Minister for Canterbury Earthquake Recovery and the Minister of Local Government developing an Order in Council under urgency to suspend the need for a LTP in 2013 and require a TYP for Christchurch.
21. In order to manage the absence of a long-term plan, the Order in Council would also require that a TYP is adopted for Christchurch City that will focus on managing the ongoing uncertainty around financial planning for the infrastructure and asset rebuild of Christchurch City. A number of amendments through the Order in Council to the requirements under the LGA02 are required to enable the Council to continue to operate effectively in the absence of a LTP and to enable aspects of a LTP to be included in the TYP and subsequent annual plans.
22. The TYP will cover 2013/14 - 2015/16, will replace aspects of the LTP, will outline a financial plan for the rebuild of Christchurch City, and will act as an annual plan for

- 2013/14. The TYP will reflect the Council's implementation of the joint Crown and Council cost-sharing framework.
23. The TYP will provide information to the community about the Council's three-year planning goals and its intended capital works programme and levels of service and will set out the Council's financial strategy, as well as updating those financial policies that need revision. The financial strategy contained in the final TYP will reflect the outcome of the cost-sharing agreement between the Crown and the Council. The community will be able to comment on the Plan through the Special Consultative Procedure as defined in the LGA02. The detailed content of the Order in Council will be developed in consultation with the Council.
 24. There will be no audit requirement for the TYP prior to public consultation. The document available for public consultation will make it clear that the financial commitments signalled in the final document will reflect the outcomes of cost sharing arrangements between Crown and Council. These agreements will be in place by April 2013, in time for Council to strike rates for the coming year.
 25. The TYP will act as the annual plan for the upcoming fiscal year (2013-14), much as a LTP constitutes an annual plan in the year of its adoption. The annual plan adopted in June 2014 will report on the remaining two years of expenditure, under the TYP. The Council will re-join the standard LGA02 long-term plan process in 2015. It is expected that the Council would be in a better position to produce a financially robust long-term plan with greater forecasting certainty by 2015.
 26. Councils are next required to produce a LTP in 2015. A two-year deferral of the long-term plan is needed to realign the Council's long-term plan obligations with all other councils and with requirements of the LGA02.
 27. Under this option, an Order in Council will need to come into force as soon as practicable — ideally by the end of February, but at the latest by the first week of March, to ensure the Council can stop its LTP process prior to completing its audit process and commencing public consultation in April/May 2013. To facilitate this, approval will be sought to submit the draft Order in Council to Cabinet without consideration by a Cabinet Committee

Benefits

28. The key benefits of Option Two are that:
 - it would provide a framework for strategic earthquake recovery decisions without being subject to the ten-year planning horizon and the detailed requirements of the LTP;
 - It would reflect joint Crown and Council cost-sharing and governance arrangements;
 - a three year planning document will provide the community with more meaningful information;
 - delivering a TYP that reflects joint Crown and Council cost-sharing and governance agreements would mitigate risks around the publication of conflicting or inconsistent financial forecasts and funding assumptions. This will reduce business risks and uncertainty for the private sector, communities and individuals who will be relying on this information for their own financial planning; and

- it would contribute to more focussed and expedited rebuild and recovery planning.

Risks

29. The key risks of Option Two are that:

- the Council is obliged to continue to develop and consult on its 2013-22 LTP, and incur costs accordingly, until its legal obligations are suspended under the proposed Order in Council when it comes into force. This risk would be mitigated by the urgent timeframe under which the proposed Order in Council would be developed;
- some sectors of the community may see the suspension of the LTP requirements as an infringement of the democratic process and that the role of the Crown in suspending the LTP process is “heavy-handed”. However, this risk could be mitigated by the release by the Council of the information that will be available from the TYP. Also, the Council would be required to maintain a transparent consultation process through the special consultative procedure; and
- it would not be possible to prepare a pre-election report that meets the legislative requirements of the LGA02 in advance of the local authority elections in October 2013, as the pre-election report relies heavily on information contained within the LTP. This risk would be mitigated, however, as the Order in Council would require the Council to issue a modified pre-election report developed based on the TYP and annual plan information, thereby providing electors with a tool for assessing the performance and future direction of councils and councillors and for making electoral choices. Nonetheless, some sectors of the community may view a lack of a pre-election report based on the LTP as undermining local democracy.

Objectives

30. The options have been evaluated against the following objectives:

- to minimise the risks of uncertainty, or conflicts around financial planning for the asset and infrastructure rebuild of Christchurch City;
- to expedite focussed and robust financial planning for the rebuild and recovery of Christchurch City;
- to maintain transparency, accountability and participation from the people of Christchurch;
- conformity to the purposes of the CER Act;
- administrative practicality, including a clear exit mechanism from the intervention; and
- the degree of support for each option by the Christchurch City Council.

31. Option Two best aligns with these objectives, as it would reduce the risk of uncertainty and confusion that could be generated by issuing conflicting information and expedite the rebuild and recover of Christchurch City by providing the most reliable financial planning information that can be prepared under Christchurch’s special circumstances. Option Two would also meet the objectives of conformity with the purposes of the CER Act and provide for public consultation through the special consultative procedure. It is supported by the Council, and would help ease the administrative difficulties associated with the requirements of a LTP process.

Legal considerations

32. An Order in Council will need to be made under section 71 of the Canterbury Earthquake Recovery Act 2011 (CER Act) to implement Option Two.
33. Section 71 of the CER Act enables Orders in Council to be made for the purposes of the Act and allows for the exemption from, modification of, or extension to powers in other enactments. They can only be made by the Governor-General where they are reasonably necessary or expedient for one or more purposes of the Act under sections 3(a) to 3(g).
34. A key purpose of the CER Act is to enable a focused and expedited recovery. If a long-term plan was consulted on and put in place with the current level of uncertainty about the funding of the recovery, the funding allocations in the long-term plan could not be accurately forecasted.
35. This uncertainty would negatively impact the recovery because it would be impossible for the Council or the Crown to plan ahead of the shared funding arrangement being agreed to. It is critical to have clear and consistent messages for the people and business of Christchurch about the funding of the recovery to facilitate their planning and investment into the rebuild.
36. The CER Act also provides for the co-ordination of planning and rebuilding. If a long-term plan is put in place now, which is later inconsistent with the Council and Crown arrangements, it would not help the co-ordination and facilitation of the rebuild.
37. The proposed Order in Council is reasonably necessary to facilitate the expedient delivery of a single joint Crown and Council funding strategy for the asset and infrastructure rebuild of Christchurch City. This in turn will assist to restore the economic well-being of Christchurch communities. It would assist the Crown and the Council to fulfil the purposes of the CER Act under:
 - section 3(d) - to enable a focused, timely, and expedited recovery;
 - section 3(f) - to facilitate, co-ordinate, and direct the planning, rebuilding, and recovery of affected communities, including the repair and rebuilding of land, infrastructure, and other property; and
 - section 3(g) – to restore the social, economic, cultural, and environmental well-being of greater Christchurch communities.
38. It is noted that section 3(b) of the CER Act provides that a purpose is “to enable community participation in the planning of the recovery of affected communities without impeding a focused, timely, and expedited recovery”. It is arguable that the Order in Council may negatively impact on community participation even though provision is to be made for the special consultative procedure. Even if this purpose is not met, there is no requirement that all purposes in section 3 have to be met by any Order in Council.

Consultation

39. This is a joint paper by the Canterbury Earthquake Recovery Authority and the Department of Internal Affairs. The Treasury has been consulted on this paper. The Office of the Auditor General and the Department of Prime Minister and Cabinet have been informed.

40. The Christchurch City Council has requested that the Minister for Canterbury Earthquake Recovery and the Minister of Local Government develop an Order in Council under urgency to suspend the need for a LTP in 2013, and require the development of a three year plan for Christchurch City (Option Two).
41. Section 73(2) of the CER Act requires the Canterbury Earthquake Recovery Review Panel to review all draft Orders in Council before they are recommended under section 71. The Review Panel would be consulted once an Order in Council has been drafted based on the policy position agreed to by Cabinet.

Conclusions and recommendations

42. After assessing the options against the objectives outlined above, the Canterbury Earthquake Recovery Authority and the Department of Internal Affairs have identified Option Two as their preferred option.
43. A key purpose of the CER Act is to enable a focused and expedited recovery. If a LTP was put in place while much uncertainty remains about the cost-sharing of the recovery, the funding allocations in the LTP cannot be accurately forecasted. That would undoubtedly lead to a recovery that was less focused than if the LTP is consistent with the Council and Crown shared funding arrangements when those are finalised through the TYP for Christchurch City that is proposed. The Act also provides for the co-ordination of planning and rebuilding.
44. Given the importance of the LTP to the accountability and decision making functions of local authorities, and the situation remaining uncertain around how the recovery will be implemented, it appears it is reasonably necessary that the long-term plan requirement be suspended until 2015 and replaced with a TYP to ensure a focused and co-ordinated recovery.
45. Option One presents a substantial risk due to the potential for conflicting or inconsistent forecasts and funding assumptions being published if a LTP were to be released by the Christchurch City Council prior to the development of the TYP for Christchurch City.
46. The agencies' preferred option, Option Two, is the most likely to best meet the desired objectives. The Council concurs with the proposal. Its success is dependent on the successful and timely completion of the TYP.
47. The Canterbury Earthquake Recovery Authority and the Department of Internal Affairs consider that such an Order in Council can be made under section 71 of the CER Act and that it will assist the Crown to fulfil the purposes of the CER Act under sections 3 (d) and (f).

Implementation

48. The proposal will be given effect by an Order in Council under the CER Act. No transitional requirements are required. The Order in Council will need to address consequential aspects of not having a LTP, for example, the requirement to have a pre-election report.

Monitoring, evaluation and review

49. No formal monitoring and review process is proposed as the intervention is temporary.