

Regulatory Impact Statement

Christchurch City Council rating powers

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Department of Internal Affairs (the Department).

It provides an analysis of a request from the Christchurch City Council (the Council) for an Order in Council under the Canterbury Earthquake Recovery Act 2011 to provide the Council with additional rating powers beyond those provided in the Local Government (Rating) Act 2002.

The analysis undertaken relies on information provided by the Council, especially in terms of additional rating revenue likely to be generated if the proposal proceeds. Additional revenue is contingent upon the pace and level of redevelopment that occurs in the Council's district. However, there is considerable uncertainty about the speed of redevelopment. The likely effect on the Crown as a ratepayer cannot be quantified as the Crown's own investment plans and property purchase plans in the City are not yet sufficiently clear for an estimate to be made.

The proposal has one effect that the government has said will require a particularly strong case before regulation is considered. That is that it will impose additional costs on businesses investing in Christchurch, although the magnitude of these costs is likely to be relatively small.

The proposal will not:

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

The Department is of the view that the proposed Order will meet the purposes of the Canterbury Earthquake Recovery Act 2011 and therefore recommends that it proceed.

Paul James, Chair, Regulatory Impact Assessment Panel

16 April 2012

Status quo and problem definition

Proposal

1. The Council has requested regulations be made under the Canterbury Earthquake Recovery Act 2011 (the Recovery Act). The regulations would enable it to immediately reassess rates on any property where the values entered on the district valuation roll¹ (the valuation roll) changed during a financial year.² The regulations would take effect from 1 July 2012 and cease on 31 March 2016.
2. The Council collects rates on behalf of Environment Canterbury. The proposal would also apply to those rates as it is not practicable to treat the two organisations' rates separately for this purpose
3. The proposal would result in an immediate reduction in rates for properties where demolition resulted in a loss of value, and an immediate increase in rates where construction or subdivision resulted in an increase in value. Under current legislation these changes would not affect rates until the commencement of the next financial year.

Status Quo

4. Section 43 of the Local Government (Rating) Act 2002 (the Rating Act) requires councils to set rates according to the rating units and rateable values in the rating information database (RID) at 30 June in the financial year prior to the year for which the rates are assessed. Effectively this is the day before the rating year starts. It states that once rates are assessed for a rating unit, a change in that rating unit's value has no effect on rates until the following financial year.
5. Section 27(4) of the Rating Act requires the RID to include all the information for each rating unit that is included in the valuation roll. Therefore a change in the valuation roll automatically creates a change in the RID, but because of section 43 a change only affects rates charged in the following financial year.

Effects of the Canterbury earthquakes on rating and valuation practices

6. The widespread damage in Christchurch City caused by the Canterbury earthquakes has significantly affected the operation of the valuation and rating system. The Canterbury Earthquake (Rating Valuations Act – Christchurch City Council) Order 2011 dealt with some of these effects. It:
 - deferred the effective date for the next general revaluation of Christchurch City until no later than 1 December 2013;
 - prohibited property owners from requiring a revaluation of their rating unit before the next general revaluation takes place; and
 - limited the circumstances in which the Council could revalue a property if it chose to.

¹ The district valuation roll is a register of all property values in a district prepared under the Rating Valuations Act 1998. Its primary use is to provide the property values upon which rates are set and assessed.

² The financial year commences on 1 July and ceases on 30 June of the next calendar year.

7. The effect of these changes was to:
 - preserve the pre-earthquake valuations unless buildings had been demolished or ordered to be demolished; and
 - ignore the effect of repair and rebuilding work unless it increased property values to a level higher than those already on the valuation roll.
8. In addition, the Council has widened its rates remission policy under the Local Government Act 2002. The Council is offering a 40 per cent rates remission to residential properties that are unable to be occupied; a 30 per cent remission to businesses in the cordoned red zone and a 30 per cent remission for other businesses in buildings that cannot be occupied because they are adjacent to dangerous buildings.
9. The effect of these matters on the Council's finances is that it is losing rates income where buildings are demolished and where rates are being remitted. The Council forecasts the cost of rate remissions for the 2011/12 financial year to be \$7 million. At the same time the Council's rate arrears have increased from \$0.902 million at 1 July 2010 to \$4.589 million at 12 March 2012.
10. The proposal is designed to provide the Council with some additional rates income to offset these losses.
11. Underlying the problem is that existing disaster funding mechanisms make no direct provision either to compensate councils for lost rates income in a disaster, or to assist in funding rate remissions that a council may wish to provide ratepayers. Councils cannot insure for these costs and they are not directly provided for in the Guide to the National Civil Defence and Emergency Management Plan.

Objectives

Christchurch City Council objectives

12. The Council has advised that its objectives for the proposed Order are:
 - to provide an incentive for owners of damaged or unsafe buildings to either demolish them, or to repair and reoccupy them;
 - to assist in maintaining the equity of the rating system;
 - to provide a publicly acceptable source of income that would allow the Council to be more generous in reducing rates on properties where demolition has taken place; and
 - to minimise its reliance on central government for disaster recovery funding.

Crown objectives

13. The primary Crown objective is to expedite the recovery of greater Christchurch from the earthquakes. An important element of that overall objective is to encourage rebuilding and investment to provide people with employment and adequate housing.
14. An Order can only be made if it will meet one or more of the purposes of section 3(a) to 3(g) of the Recovery Act. These are:

- (a) to provide appropriate measures to ensure that greater Christchurch and the councils and their communities respond to, and recover from, the impacts of the Canterbury earthquakes;
 - (b) to enable community participation in the planning of the recovery of affected communities without impeding a focused, timely, and expedited recovery;
 - (c) to provide for the Minister and CERA to ensure that recovery;
 - (d) to enable a focused, timely, and expedited recovery;
 - (e) to enable information to be gathered about any land, structure, or infrastructure affected by the Canterbury earthquakes;
 - (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;
 - (g) to restore the social, economic, cultural, and environmental well-being of greater Christchurch communities.
15. In order to avoid retrospective taxing regulation, it is necessary that any Order in Council be made in time to commence operation on 1 July 2012.
16. Achievement of the Crown objectives is the primary determinant of whether the Order should proceed. The Council's objectives are included to assist in understanding the motive for the request and how the Council views the benefits to it of the proposed Order being made.

Regulatory Impact Analysis

Options

17. Options need to be divided between options available to the Council and options available to the Crown. They also need to be split between options available to reduce rates on properties that have been demolished (the problem), and options for funding the foregone income that arises as a consequence.

Christchurch City Council options

18. The Council could reduce rates on demolished properties without any regulatory intervention. It could achieve this by remitting the rates concerned. The Canterbury Earthquake (Local Government Act 2002) Order 2010 permitted the Council to amend its rates remission policy without public consultation to expedite that type of decision by the Council. However, that Order expired on 31 December 2011. This does not prevent the Council from amending its rates remission policy in the future – it simply requires it to undertake a public consultation process before amending the policy.
19. Hence the key issue for the Council is how to fund the rates income foregone if rates on demolished properties are reduced (either by remission or reassessment). The Council could fund the foregone income in four ways. These are:
- from existing rates income;
 - by reducing other expenditure;

- by borrowing; or
- from new rates income as described in the proposal.

The first three options spread cost across all ratepayers, while the Council's preferred option focuses on ratepayers that are enjoying council services at a cost lower than other ratepayers are paying.

20. In practice it would be coincidental if rates from new development matched rates foregone on demolished properties. At least one of the other methods might be required in some years. In other years, the new income generated might exceed the rates foregone.

Crown options

21. The Crown has three options. The first is some form of regulatory intervention to permit the proposal to proceed (in whole or part). Within the regulatory option proposed there are choices to be made about:
- when an Order should cease to have effect; and
 - whether the Order should apply to all rateable properties or to just a subset of rateable properties.
22. The second Crown option would be to provide direct financial assistance to the Council to deal with the issue. Evaluating the second option is beyond the scope of this RIS. Crown funding for this matter would need to be assessed against other competing priorities for earthquake recovery funding.
23. The third option is to leave the status quo.

Evaluation criteria

24. In considering Crown regulatory intervention the following criteria are relevant:
- 24.1 conformity to the purposes of the Recovery Act;
- 24.2 administrative practicality, including a clear exit mechanism from the intervention; and
- 24.3 adherence to principles of good taxation law.

Options analysis

25. Effectively there is one regulatory option to consider. That is an option where the Council is permitted to immediately reassess rates on properties where subdivision, new development or demolition takes place. The proposal is described in full in Appendix One. Key features are:
- The proposal applies to rates assessed by the Council and to rates collected by the Council on behalf of Environment Canterbury;
 - The proposal would commence on 1 July 2012 and terminate on 31 March 2016;
 - Where development, subdivision, or demolition takes place the changes in property values would be entered directly into the rating information database. These values would be assessed as they would have been if they had been entered on the valuation roll on the last day of the previous financial year; and

- Reassessed rates (both decreases and increases) would be calculated pro-rata from the beginning of the month after the rating information database was updated.
26. This option has a range of impacts which fall into four groups:
- impact on the Council's income;
 - impact on the Council's costs;
 - impact on ratepayers directly affected; and
 - impact on the Crown as a ratepayer.

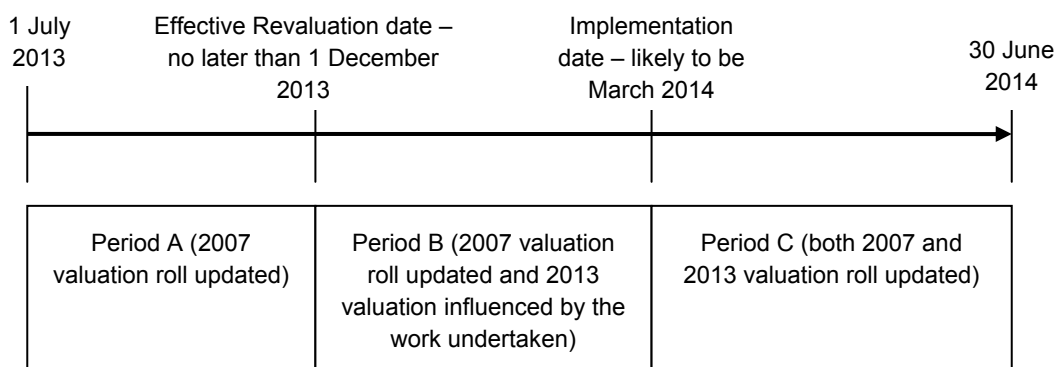
Impact on the Council's income

27. The impact on the Council's income is difficult to forecast as it is contingent on the speed and level of the recovery. The Council has estimated that the proposal, if it commenced on 1 July 2012 is likely to generate an additional \$8 million in rates income over its life. The Council's budgeted rates income for the 2011/12 financial year is \$287 million.

Impact on the Council's costs

28. The Council will incur some extra costs in administering the proposal. There will be an overlap period where its valuers have to calculate two values for affected properties (periods B and C in Figure One following). This is for the period between the effective date of a general revaluation and the period when that general revaluation is applied to rates set. The effective date for a revaluation is routinely set by councils at a date in the first half of the financial year. This allows the Council to analyse the effect of the valuation on ratepayers and make any adjustments it believes are appropriate to its rating policy. It also allows as many objections as possible to the valuations to be resolved before rates are set, thus minimising uncertainty as to the size of the rating base.
29. It would be unfair to reassess rates on a basis different from that used for setting rates in the first place. Therefore in the overlap period the Council would have to assess two values on properties affected by subdivision, demolition or development:
- one based on the 2007 general revaluation for use in reassessing rates for the current financial year; and
 - one based on the most recent general revaluation date for use in subsequent financial years.
30. Figure One below illustrates this, assuming that the 2013 general revaluation takes place on the last possible day permitted under the Canterbury Earthquake (Rating Valuations Act – Christchurch City Council) Order 2011.

Figure One: Timeline for transition from one general revaluation to another



Although the effective revaluation date is 1 December 2013, because the revaluation has to be audited and needs to take account of property sales right up to the effective date, the revaluation is implemented at a later date from the effective date. It is expected that the implementation date for the Council's next revaluation will be around March 2014.

31. In addition, the Council will incur some extra administrative costs in carrying out the reassessment and advising ratepayers of the reassessment. The Council has not provided any estimate of these costs, but considers they are minimal.

Impact on ratepayers

32. The impact on affected ratepayers will vary according to the value and rating classification of the property and the time of year at which the work on their property is undertaken. Table One illustrates the possible impacts on ratepayers with properties of different values in the 2012/13 financial year. Actual impacts will vary according to:
- the final rates set by the Council and Environment Canterbury through their annual plan processes;
 - the effect of uniform charges, which will apply to new rating units but will not change for existing rating units on which development or demolition takes place; and
 - liability for targeted rates, which may vary according to factors such as location in the City.

Table One: Indicative impact of proposal on rates for individual properties in the 2012/13 financial year

Property Group and Value Change	Approximate Rating Impact per month (GST inclusive and including both Council and Environment Canterbury rates) for every \$100,000 of value changed
Residential	\$41
Business	\$54
Rural	\$22

Source: Data supplied by Christchurch City Council

33. In dollar terms the most significant impact will be on major business developments. For example:
- a \$20 million business development entered on the RID in September would be charged approximately \$97,000 in additional rates for the balance of that financial year³; and
 - a new home valued at \$300,000 entered on the RID in September would be charged approximately \$1,100 in additional rates for the balance of that financial year.⁴

Impact on the Crown

34. The Crown is a ratepayer on many properties. These include residential red zone properties it is acquiring in Christchurch, Housing New Zealand residential properties, and operational properties such as courts, police stations, and office buildings. Some Crown properties are exempt from rates. The major exemptions relate to properties used for health, education and conservation purposes. The Crown will benefit from the Order where it demolishes properties, such as in the residential red zone. However, where the Crown rebuilds properties that are rateable, it will also be liable for additional rates that would not otherwise have been payable. It is not possible to quantify whether the Order will result in an overall saving or cost to the Crown. However, since the total additional revenue to the Council is expected to be about \$8 million over the period of the Order, the cost, if any, to the Crown will be a significantly lesser part of that sum.

Assessment against criteria

Conformity to the Purposes of the Recovery Act

35. The preceding impact assessment helps to determine whether the proposal conforms to the purposes of the Recovery Act. Overall the proposal contributes to achieving the purposes of the Recovery Act. This is because it

³ Calculated as follows: \$20,000,000 / \$100,000 * \$54 * 9 = \$97,200.

⁴ Calculated as follows: \$300,000 / \$100,000 * \$41 * 9 = \$1,107.

assists the Council to respond to and recover from the earthquakes and because it does to a help enable the recovery to proceed.

Administrative practicality

36. In terms of administrative practicality, two features of the proposal are clumsy but workable. The first is that there are several months in the three yearly revaluation cycle where two values have to be assessed whenever a property has activity which affects its value.
37. The second is determining an appropriate point in time at which to exit the proposal. In the proposal this is governed by the expiry of the empowering legislation. In practice, the ideal exit point is when the majority of the rebuilding process has been completed and development is returning to a normal cycle. Whenever the exit occurs the Council will, in the following financial year, need a small but appreciable rates increase to make up for the lost additional revenue. This is because, in addition to rates on earthquake recovery rebuilding, the Council will be collecting additional rates from “business as usual” construction and development.

Adherence to principles of good taxation law

38. In terms of adherence to principles of good taxation law, at the national level, section 22 of the Constitution Act prohibits the Crown from levying a tax except by or under an Act of Parliament. In the local authority context, the power to set and assess rates is set out in the Rating Act 2002. The Act does not delegate any power to the Crown to vary the manner in which councils can set rates – any change to local authority rating powers requires an amendment to the Rating Act by Parliament. The Department took advice from the Crown Law Office as to whether the Recovery Act authorised an Order in Council that would create a new taxing power for the Council. The Crown Law Office’s advice was that it did.
39. The timing of the Council’s original request in July of 2011 meant that by the time an Order in Council had been approved, it would have created a retrospective taxing power for the Council. There are strong conventions against retrospective taxation. The Council has since modified its request and asked for the power to commence from 1 July 2012. It is important that any decision to proceed with an Order is completed by 1 July 2012 to avoid issues of retrospective taxation arising.
40. As noted in paragraph 21 if an order is made there is a choice as to whether it applies to all rateable properties or only to a subset of those properties. Applying the Order to a subset creates definitional and administrative risks, for example, how is the subset defined and how can the public have assurance that the Order is being applied to the correct properties. Nor does there appear to be any convincing policy reason if the Order proceeds for applying it only to some properties. For these reasons it is proposed that any Order should apply to all rateable properties in the City. While the Council would be provided with a choice as to whether it proceeds with the scheme, if it elects to proceed it must apply it to all properties and for a full financial year.

Consultation

41. A draft of this statement was provided to Land Information New Zealand (LINZ), the Canterbury Earthquake Recovery Authority, Treasury, the Department of Prime Minister and Cabinet, the Christchurch City Council and Environment Canterbury. No consultation was undertaken directly with the Christchurch public. However, the Christchurch City Council included the proposal in its 2011/12 Annual Plan which was subject to limited public consultation.
42. The original proposal suggested that in the overlap period where two values are necessary that there be no appeal right to the Land Valuation Tribunal for the value that related to the 2007 general revaluation. LINZ was of the view that this appeal right should be preserved and the Department has altered the proposal to incorporate that view.
43. The Council expressed some concern about the proposed operation of invoicing requirements where rates are reassessed. These have been revised to be more flexible. However, the Department considers that where the final invoice for the year has already been posted to ratepayers, if a reassessment occurs after that date, then an amended invoice should be delivered to the affected ratepayer. The Department understands that the Council was proposing to incorporate any adjustment in the first invoice for the subsequent financial year. This practice would result in the amount being invoiced in one financial year being inconsistent with the amount of rates assessed for that year. This would be confusing for ratepayers and make it difficult for them to confirm that they had been accurately invoiced by the Council.
44. LINZ and the Canterbury Earthquake Recovery Authority queried whether the proposal should also extend to the Waimakariri and Selwyn district councils. Neither council has indicated to the Department that they have any concern about the adequacy of their rating powers. Waimakariri predominantly rates on land value. Land value rates are unaffected by either the addition or removal of improvements from properties, so the provision of this power to the Waimakariri District Council would provide it with much less benefit than the Christchurch City council would obtain. Selwyn District Council has suffered much less damage to its services than the other councils and therefore is under much less financial pressure to fund recovery activities.

Conclusion

45. The proposal will have a small benefit to the Council in terms of funding the redevelopment and enabling the Council to be more generous to owners of damaged properties. It has some administrative costs and it imposes some additional taxes on ratepayers investing in the rebuilding of the city. However, those ratepayers are enjoying the full benefit of council service at a lower cost than other ratepayers. The Department is of the view that the proposal helps to achieve the purposes of the Recovery Act and recommends that the proposal proceed.

Implementation

46. The proposal will be given effect by an Order in Council under the Recovery Act which modifies the operation of the Rating Act in Christchurch City. No transitional requirements will be provided, but it is important that the Order in

Council is in place by 1 July 2012 so that it does not authorise retrospective taxation.

47. The Order in Council will enable rather than require the Council to proceed with the scheme on an annual basis. If implementation problems arise the Council will be able to make a judgement about whether it should continue to apply the scheme in subsequent financial years.
48. The scheme is inherently designed with as low a compliance cost as possible given its objective. If compliance costs prove to be higher in practice than expected, the Council will have the option of not applying the Order in Council. The scheme modifies the Rating Act and interacts with the Rating Valuations Act 1998. There is no opportunity to reduce or remove any existing regulations as the proposal is a temporary measure to facilitate earthquake recovery in Christchurch City. The scheme is not of a nature that requires an enforcement strategy.

Monitoring, evaluation and review

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

Appendix One: Detailed proposal

Scope:

50. The proposal applies to rates assessed by the Christchurch City Council and to rates assessed by Environment Canterbury (the Canterbury Regional Council) within the area of Christchurch City. Territorial authorities in Canterbury collect rates on behalf of Environment Canterbury. It is not practicable to apply the proposal only to rates assessed by Christchurch City Council.

Commencement and conclusion

51. The proposal would commence from 1 July 2012 and cease on 31 March 2016. Cessation is determined by the cessation of the Canterbury Earthquake Recovery Act 2011. The Recovery Act expires on 19 April 2016.

Procedure

Background

52. Currently, when development or subdivision takes place on a property amendments are first made to the district valuation roll (valuation roll), which is prepared under the Rating Valuations Act 1998 and the Rating Valuations Rules made under that Act. Amendments to the rating valuation then flow into the Council's rating information database (RID). Rates are assessed according to the information contained in the RID.

Maintenance of the rating information database

53. To enable the proposal, the Council will be required to include as additional information in the RID:
 - information on new rating units created during the financial year; and
 - a separate record of changes to values of existing rating units that have occurred during the year and the date on which those values were entered into the RID.
54. This information may be entered directly to the RID, whether or not it has been entered on the valuation roll. The values must be assessed as they would have been if they had been entered on the valuation roll on the last day of the previous financial year. This is necessary for the situation where a general revaluation takes place during the year. It would be inappropriate for rates to be reassessed according to property values that were not comparable with the values on which other properties were being rated.
55. Where a new value is entered in the RID, assessed at a date other than that of the most recent revision of the district valuation roll, it must be assessed as at the date of the previous revision of the district valuation roll. If a new value is assessed under this provision, then the objection and appeal procedures in Part 4 of the Rating Valuations Act would apply.

Obligation to reassess rates

56. Despite sections 43(2) and (3) of the LGRA, where a new rating unit is created or the rateable value of a rating unit is changed in the rating information

database, the Council must reassess the rates for which the rating unit is liable.

Amount by which rates are reassessed

57. Where a new rating unit is created the Council must:
- apportion the rates originally assessed on the rating unit from which the new unit was created (the original unit) and the new rating unit; and
 - apportion any rates paid in respect of the original rating unit prior to the creation of the new rating unit between the new rating unit and the balance of the original rating unit.
58. Where the rateable value of a rating unit is changed, the Council must reassess the rates assessed on that rating unit.
59. The amount by which the rates assessment is increased or decreased shall be the difference between the original rates assessed and the new rates assessed, pro-rated for the number of complete months of the financial year remaining after the information in the rating information database is changed.

Notification of reassessed rates

60. The Council must issue a revised rates assessment to the ratepayers of the rating units affected. Sections 41A of the Rating Act will not apply to an amended rates assessment issued under the Order, except in the case where after issuing an amended assessment, the value of the rating unit is further changed as a result of an objection to the valuation.

Invoicing of reassessed rates

61. Where the revised rates assessment results in increased rates, the Council must, if the final invoice for the year has already been delivered to the ratepayer, issue an amended rates invoice as if section 47 of the Rating Act applied.
62. Where the revised rates assessment results in a decrease in rates, the Council must, if the final invoice for the year has already been delivered to the ratepayer, issue a credit note to the ratepayer and, if requested, refund any excess rates paid.