

Regulatory Impact Statement

Proposed Order in Council to modify planning and accountability provisions for Christchurch City Council and Council-owned entities

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Department of Internal Affairs. It provides an analysis of options to address the challenges faced by Christchurch City Council in meeting certain legislative requirements, following the Canterbury earthquakes, while continuing to provide for transparency, accountability, and public scrutiny.

Christchurch City Council is seeking an Order in Council to modify some Local Government Act 2002 provisions for annual planning and reporting for 2010/11 and 2011/12. In assessing this request, we have considered whether it is practicable and/or useful for the Council to comply with these provisions, given the situation it is facing and the desirability of not diverting resources away from reconstruction and recovery efforts. We have then identified and considered alternative provisions that could help to maintain transparency and accountability, enable continued public oversight and scrutiny, and enable the Council to work proactively, cooperatively, and efficiently with the Canterbury Earthquake Recovery Authority.

The Council is also seeking to defer the dates by which:

- its council-controlled organisations deliver their 2011/12 statements of intent, under the Local Government Act 2002; and
- Orion New Zealand, the local electricity lines company, delivers its 2011/12 statements of corporate intent, and 2010/11 operations report and financial statements, under the Energy Companies Act 1992. Thus, the proposed Order would also need to modify provisions under this enactment.

None of the policy options impose compliance costs on business or affect fundamental common law principles or individual property rights.

Carolyn Risk, Chair, Regulatory Impact Assessment Panel

Date: 20 May 2011

Status quo and problem definition

Introduction

1. The Local Government Act 2002 (LGA) makes a number of provisions for planning and accountability. These include requirements for each local authority to develop and adopt an annual plan and an annual report, with a specified purpose and content. The special consultative procedure must be used as part of the process for adopting the annual plan.
2. Following the earthquake of 22 February 2011, Christchurch City Council (the Council) raised doubts about its ability to meet some of the LGA planning and accountability requirements for its 2010/11 annual report and 2011/12 annual plan. It also noted that some Council-owned entities needed additional time to prepare and update their 2011/12 statements of intent, in a post-earthquake environment. It approached the Department about developing an Order in Council to:
 - relieve the Council from legal obligations to include certain information in the 2010/11 annual report and 2011/12 annual plan;¹
 - relieve the Council the obligation to use the special consultative procedure to adopt the 2011/12 annual plan;
 - defer the date by which council-controlled organisations are required to deliver their 2011/12 statements of intent; and
 - defer the dates by which Orion New Zealand is required to deliver its 2011/12 statement of corporate intent, and 2010/11 operations report and financial statements, under the Energy Companies Act 1992.
3. A full list of the LGA annual planning and reporting provisions, and the amendments requested by the Council, are included in Appendix One (annual report) and Appendix Two (annual plan). These are also summarised below.
4. The consequences of not meeting these legislative requirements are not spelled out. If ratepayers want to challenge a council's actions or decisions (or lack thereof), their ultimate recourse is through the courts. However, the Local Government Act 2002 is based on the premise that councils are accountable to their ratepayers, and they generally take these responsibilities and their legal obligations seriously. Hence the Council is proactively seeking to be relieved of certain obligations, based on a realistic assessment of what it is, and is not, able to do in the circumstances, and how best to use its resources.
5. As well as risks to the Council's reputation, not complying with the law could have other significant consequences. In particular, the draft annual plan is the vehicle for setting out, and seeking feedback on, the Council's funding impact statement. This includes its proposed rates and other funding sources, and explains how it expects to spend these funds. Not consulting on these proposals (without an appropriate mandate) raises the risk that the validity of the Council's rates might be challenged. Putting this right at a

¹ For the annual report, this relates to LGA requirements for comparisons between actual and intended activities, performance, and service levels, and progress with community outcomes, as provided for in section 98, and clauses 15 and 16 of Schedule 10. For the annual plan, this relates to information that supports and explains variations from the long-term plan, as provided for in sections 95(5)(b) and (c), 95(6)(a) and (b), and clauses 13(c) and (d) in Schedule 10.

later date would be time consuming, and not a good use of the Council's resources. Council spending could be impeded while this matter was being resolved.

Annual report 2010/11

6. Section 98 of the Local Government Act requires that an annual report must be adopted within four months of the end of the financial year to which it relates. Section 99 and clauses 15 to 21 of Schedule 10 set out the purpose and content of the report, and related audit requirements. In summary, the purpose of the annual report is to compare actual activities and performance with the intentions set out in the annual plan and long-term plan, and to promote accountability for Council decisions.
7. The Council has requested exemptions from requirements to include comparisons between actual and intended activities, performance, and service levels. Making such comparisons would be difficult, and is unlikely to be meaningful, given that the 22 February earthquake has rendered many of the programmes and projects in the annual and long-term plans irrelevant.

Annual plan 2011/12

8. The Local Government Act requires that an annual plan be adopted before the start of the year to which it relates (i.e. by the end of June each year), and specifies the plan's purpose and content. In summary, the purpose of the annual plan is to:
 - contain the proposed funding impact statement for the year, which includes the rating systems to be used;
 - contain the proposed annual budget;
 - explain variations from financial statements and funding impact statement in the long-term plan;
 - support the long-term plan with integration and coordination of resources;
 - contribute to the council's accountability to the community; and
 - extend opportunities for public participation in decision-making processes relating to costs and funding of activities.²
9. The Council believes it can produce a substantial annual plan, but is seeking exemptions from some content and purpose provisions that require the annual plan to support, and explain variations from, the long-term plan. As many of the programmes and projects in the long-term plan have ceased to be relevant, this would be an unproductive use of the Council's resources.
10. Ordinarily, the special consultative procedure must be used as part of the annual plan adoption process. This takes approximately eight weeks, including advertising for, and consideration of, submissions, and public hearings. However, the Council considers it is not feasible to consult on the draft plan, and is seeking exemptions from requirements to use the special consultative procedure.³ It says it needs to use the time that would normally be spent on the special consultative procedure to revise budgets, and to review the capital works programme and changes to levels of service.

² Section 95(5) of the LGA sets out the purpose of the annual plan.

³ Section 95(2) of the LGA requires councils to use the special consultative procedure in adopting an annual plan.

11. The proposed exemptions are based on the assumption that the Council will be able to prepare forecast financial statements and a funding impact statement, adopt the plan by resolution by 30 June 2011, and make it publicly available. It is also proposing to enable limited public feedback on the draft plan, and to use quarterly performance reports to update the public on progress against the plan throughout the year. According to the Council, any changes to the annual plan would use normal processes, and would be subject to Council resolution and the provisions of its Policy on Determining Significance.

Statements of intent 2011/12

Council-controlled organisations under the Local Government Act 2002

12. The Local Government Act 2002 requires council-controlled organisations to deliver statements of intent to shareholders annually. The statutory timeframes, as specified in Schedule 8, are for draft statements to be delivered by 1 March, for the organisation's board to consider comments on those drafts within two months, and for completed statements to be delivered by 30 June each year.
13. The Council fully or partly owns a number of council-controlled organisations, either directly or through its investment arm, Christchurch City Holdings Limited. These include Christchurch International Airport Limited, and Vbase.⁴ An organisational chart is provided in Appendix Four.
14. The Council has advised the Department that Christchurch City Holdings had submitted a draft statement of intent before the 22 February earthquake, but several of its subsidiary companies had not completed their own statements by that date. Moreover, the forecasts contained in the draft statements of intent are now largely irrelevant. The Council considers it impracticable to expect its council-controlled organisations to deliver meaningful statements of intent by 30 June 2011. It is seeking extensions to the statutory timeframes in Schedule 8, as follows:
 - in clause 2, defer delivery of the draft statements of intent from 1 March to 1 August 2011;
 - in clause 3(a), extend the deadline by which a council-controlled organisation's board must consider comments on the draft statements from 1 May to 1 October 2011;
 - in clause 3(b), defer delivery of the completed statements of intent from 30 June to 30 November 2011.
15. Christchurch International Airport also falls under the Airport Authorities (Airport Companies Disclosure Information) Regulations 1999, which include requirements for the completion of disclosure financial statements. The Airport is due to produce its next statements by the end of November 2011. Neither the Council, nor Christchurch City Holdings (which holds the shares in the Airport), have requested any extensions to the timeframes for these statements.

Other Council-owned entities

16. The Council is also a shareholder in Orion New Zealand (the local electricity lines company) and the Lyttelton Port Company. Neither entity is a council-controlled

⁴ Christchurch City Holdings holds shares in eight trading companies and monitors two further Council-owned organisations. Vbase owns the Convention Centre, CBS Arena, AMI Stadium and Town Hall.

organisation for the purpose of the Local Government Act; they fall under the Energy Companies Act 1992 and the Port Companies Act 1988 respectively.⁵ This legislation has similar requirements in terms of statements of intent, though, and the amendments proposed for council-controlled organisations have been considered for these entities as well.

17. The Council has requested amendments to Orion's statement of corporate intent and financial reporting obligations.⁶ The statutory timeframes for this year's statement of corporate intent are: draft version by 1 May 2011, and final version by 1 July 2011. In addition, Orion is required to deliver to its shareholders a report of its operations and audited consolidated financial statements for 2010/11 within three months of the end of its financial year (which is 31 March 2011).
18. The Council and Orion are asking for a three month extension to the deadlines for the 2011/12 draft and completed statement of corporate intent, and a two month extension to the deadlines for the 2010/11 operations report and financial statements, to be included in the Order in Council. As such, amendments to the reporting provisions of the Energy Companies Act 1992 would be required.
19. The statutory timeframes for Lyttelton Port Company's statement of corporate intent are: draft version by 1 August 2011, and final version delivered to shareholders by 1 October 2011. As these dates are later than those in the Local Government Act, an extension has not been sought.

Objectives

20. The Canterbury Earthquake Recovery Act 2011 is founded on the need for community participation in decision-making processes, balanced against the need for a timely and coordinated recovery process.⁷ This fundamental premise has formed the basis of our approach to the proposed Order in Council.
21. When considering the Council's requests for modifications/exemptions, we have asked the following questions:
 - Is it practicable for the Council to comply with this provision? That is, does the Council have the capability, capacity, and/or information required to meet the requirements?
 - Under the circumstances, is this provision useful for the Council and its communities? In this sense, 'usefulness' is based on whether the provision:
 - helps the Council manage the situation it is facing;
 - provides information to the public that helps them assess the Council's management of that situation; and/or

⁵ Section 6 of the LGA defines council-controlled organisation and council organisation. It specifies that certain entities are not a CCO, including energy and port companies. The Council owns 89.3 per cent of Orion and 78.9 per cent of the Lyttelton Port Company.

⁶ Statements of corporate intent are provided for in section 39 of the Energy Companies Act 1992. Reports and accounts are in section 44, which requires that within three months of the end of each financial year the company's directorate must deliver to shareholders a report of the operations of the company and its subsidiaries, and audited consolidated financial statements.

⁷ This was stated in the explanatory note to the Canterbury Earthquake Recovery Bill 2011.

- does not divert resources away from reconstruction and recovery efforts.
22. If a provision appears neither practicable nor useful, we have then considered whether there are alternative requirements that would:
- help to maintain or enhance transparency and accountability;
 - enable continued public oversight and scrutiny of, and/or involvement in, Council decisions;
 - not require the Council to divert resources from recovery work; and
 - enable the Council to work proactively, cooperatively, and efficiently with the Minister for Canterbury Earthquake Recovery and the Canterbury Earthquake Recovery Authority (CERA).

Regulatory impact analysis

23. When examining the Council's request for an Order in Council, we have considered the following issues:
- Could an Order in Council be used to achieve the amendments and other objectives sought, or could provisions in the Canterbury Earthquake Recovery Act be used as well or instead?
 - If an Order in Council is made, what would it include? Are all of the exemptions requested by the Council acceptable? What alternative provisions could be made for transparency, accountability and public scrutiny?
24. These issues, and options for addressing them, are explored further below.

Provisions under the Canterbury Earthquake Recovery Act 2011

25. The Canterbury Earthquake Recovery Act enables the Governor-General to make Orders in Council for the purposes of the Act, on the recommendation of the relevant Minister. The Act allows Orders to grant an exemption from, modification of, or extension of provisions in other enactments, including the Local Government Act.⁸ Thus, it appears feasible for an Order to be made to cover the exemptions and modifications requested by the Council.
26. The Act sets out measures to enable the Minister for Canterbury Earthquake Recovery and CERA to facilitate and direct, if necessary, greater Christchurch and its communities to respond to, and recover from, the effects of the earthquakes. Amongst other things, the Act:
- empowers the Minister for Canterbury Earthquake Recovery to suspend, amend, or revoke annual plans made under the Local Government Act;
 - empowers the CERA chief executive to direct councils to take or stop taking any action, or to make or not to make a decision; and

⁸ This is provided for under section 71 of the Canterbury Earthquake Recovery Act. Section 71(4) allows such exemptions, modifications, and extensions to be absolute or subject to conditions, and made by stating alternative means of complying with provisions. Under section 71(5), they can be made for the purpose of relaxing or suspending provisions that may divert resources away from responding to the earthquakes, or may not be reasonably capable of being complied with due to the circumstances resulting from the earthquakes.

- requires councils to amend an annual plan to give effect to the provisions of a Recovery Plan, if required to do so in that Plan.⁹
27. It is possible that these provisions might enable some of the exemptions requested by the Council, and/or the additional measures we are proposing below. However, these are intended to be reserve powers, only to be used by the Minister and CERA if they are necessary. A collaborative approach between central and local government is preferable, wherever possible. It is desirable, therefore, for the Council to have the power to voluntarily amend its annual plan, rather than for this to be done by the Minister or specifically required in a Recovery Plan.
28. In the Department's view, it is likely to be more efficient if the Council is given flexibility to work proactively and cooperatively with CERA. This would reduce the need for the Minister/CERA to intervene or issue directions (or for the Department and/or Council to ask them to do so), and for processes to be developed on an ad hoc basis. In addition, the Canterbury Earthquake Recovery Act does not appear to allow the Minister or CERA to direct the Council to circumvent legislative requirements, such as use of the special consultative procedure to adopt the annual plan.
29. We consider it necessary, therefore, that an Order in Council be prepared to deal with this matter. This would provide both the Council and its communities with greater certainty about what will, and will not, be required during 2011/12 in terms of annual reporting and annual planning. It should help to reassure the public that there will be formal processes for amending and updating Council information, which will provide opportunities for oversight and scrutiny.

Possible contents of an Order in Council

30. The Council has asked for an Order in Council to relieve it from some legal obligations, as considered below. However, if these requirements are to be taken away, albeit temporarily, then there is a need to consider what might take their place. We have, therefore, identified alternative mechanisms that could provide for transparency, accountability, and scrutiny.
31. In relation to the annual plan, the options are to:
- delay the date by which the annual plan is to be adopted;
 - specify a minimum time period in which written feedback on the proposed content of the annual plan can be provided by the public;
 - enable the Council to formally amend the annual plan during the year, in public, to allow for information to be updated; and/or
 - require the Council, at intervals of not less than four months, to receive and consider reports, in public, on progress against the annual plan.
32. For the annual report, the Council could be required to describe the effects of the earthquake on the assets it uses to deliver groups of activities and on its ability to deliver services in each group, as well as the effects on each of its council-controlled

⁹ These powers are provided in sections 27(1)(b), 48, and 26(4) of the Canterbury Earthquake Recovery Act 2011, respectively.

organisation's assets and service delivery capability. A cost of service statement could also be required, in the same format as contained in the previous annual report.

Annual report 2010/11

33. We view the exemptions requested by the Council to be reasonable. Detailed commentary on each of the specific exemptions is provided at Appendix One. In short, providing comparative service performance information is not deemed to be useful, given there are likely to be significant variations from the annual and long-term plans, and the reasons should be clear to ratepayers. Much of the information required by the Local Government Act is based on the assumption that councils are operating under business as usual conditions, which is not applicable to Christchurch at the moment.
34. We consider that a more useful requirement would be for the Council to describe the effects of the earthquake on:
 - the assets it uses to deliver each group of activities, and the condition of those assets at 30 June 2011;
 - other factors affecting its capability to deliver the service from 30 June 2011; and
 - each council-controlled organisation's assets and service delivery capability.
35. The report could also include a cost of service statement (in the same format as in its annual report for the 2009/10 financial year) and a description of the impact of the earthquake on the Council's ability to deliver services in each group of activities. The latter would help to provide ratepayers with contextual information about service levels over the past year.
36. The Council should be able to produce this information. It has already said it intends to include an indication of the damage to its assets and the estimated time and cost of repairs in the 2010/11 annual report. Specifying requirements in the Order in Council would provide ratepayers with greater certainty about the content of the report, as well as clarifying for the Council that the information is to be descriptive.

Annual plan 2011/12 – adoption process and content

37. In the circumstances, the annual plan will be an interim budgeting mechanism until the next long-term plan, and proposed Recovery Strategy, are in place. Information on, or cross-references to, an outdated long-term plan does not seem to be useful to the Council or its ratepayers. Therefore, we consider it appropriate that the Council is not required to include this information in its 2011/12 annual plan. Further details on specific Local Government Act provisions and the exemptions requested are at Appendix Two. Annual reporting requirements for 2011/12 will also need modification to be consistent with annual planning requirements. Some links with, and possible implications for, the 2011/12 annual report are considered in Appendix Three.
38. The Local Government Act requires the special consultative procedure to take not less than one month, after which submissions need to be considered and public hearings held. In practice, this means draft annual plans would usually need to be out for consultation around the end of March. However, the Council has not been able to follow this process for its 2011/12 draft annual plan. Initially, work on the plan ceased while the Council responded to, and started to recover from, the 22 February earthquake. Since

then it has needed to use the time and resources usually taken up by the special consultative procedure to do further recovery-related work, such as revising its budgets and reviewing its capital works programme and service levels.

39. Using the special consultative procedure has not been practicable, for both timing and resourcing reasons. In addition, the 2011/12 annual plan will provide less certainty than usual and is likely to require regular updating, making consultation on the draft less useful than it would normally be. Therefore, we consider it appropriate to include an exemption from the special consultative procedure in the Order in Council, and to have this apply retrospectively.
40. To off-set a reduction in formal consultation it will be important for the public to have greater oversight and scrutiny of the draft annual plan and how it is implemented and amended by the Council. While it is for the Council to decide how to engage with its communities, measures in an Order in Council could enhance transparency and accountability and enable an appropriate level of public scrutiny to occur.
41. One such measure would be to delay adoption of the 2011/12 annual plan. This would enable additional public oversight and feedback, and reduce pressure on the Council to finalise the draft plan before the end of June. It would also help the Council to fulfil requirements for accountability and public participation in decision-making processes.¹⁰
42. However, this is the most problematic of the options identified because it affects rate setting processes and billing timeframes. The Council does not consider it practicable to defer decisions on the annual plan beyond 30 June 2011 because:
 - the first rates instalment for the 2011/12 year is due for payment by 15 August 2011, in accordance with current rating policy;
 - to be fair and consistent with that policy, invoices for the first instalment must be with ratepayers by 15 July 2011;
 - it takes about 10 days to produce and check the rating database before assessments and invoices can be sent out;
 - the Council has a contract with Environment Canterbury for the issue of assessments and invoices, and the collection of that Council's rates in accordance with this timetable; and
 - any delay would create uncertainty, with both councils starting the new financial year without their major source of income locked in place. This could affect cash flows. It would also mean the Council would have no formal mechanism for budget or service accountability.
43. Delays would also have an effect on ratepayers, particularly those on fixed incomes, who need certainty about billing dates for their household budgeting.
44. Although the Council has resolved to invite written feedback on the proposed content of the annual plan, this would only be for a short, unspecified period. A more useful approach could be for the public to be given more reassurance about this process

¹⁰ These relate to the purpose of the annual plan, under sections 95(5)(d) and (e) of the LGA.

through a set timeframe for feedback. After discussion with the Council, we propose a minimum period of two weeks be specified in the Order.

Annual plan 2011/12 – amendments and scrutiny during the year

45. Further transparency and accountability could be achieved by requiring the Council to receive and consider reports, in public, on progress against the annual plan. These would include revised financial projections and progress on restoring services and infrastructure. To give the Council some flexibility, we propose these progress reports be produced at intervals of not less than four months.
46. These reports should not be onerous for the Council to prepare, and would not create additional compliance costs or require resources to be diverted from recovery-related tasks. The Council should have this information for internal use anyway, and it is standard practice for staff to provide councillors with quarterly performance reports.
47. We acknowledge that quarterly reports are made public as a matter of course, and that the Council has said these reports will continue and could deal with changing circumstances throughout the coming year. However, while we would expect the Council to carry on following good practice, it would be preferable if the Order in Council required the production of reports and specified certain content, rather than relying on a voluntary approach. Members of the public need a guarantee that information will be made available and reports will be considered in open meetings, in order to assuage concerns that the Council may choose to consider some content behind closed doors. This could help to provide some certainty in an otherwise unpredictable year, and off-set less involvement in the development of the draft annual plan.
48. Changing circumstances in Christchurch will mean the Council's budget is likely to need updating during the year, but the Local Government Act makes no provision for amending the annual plan. Although some amendments to the annual plan could be made by the Minister of Canterbury Earthquake Recovery, under the Canterbury Earthquake Recovery Act, or could be required in a Recovery Plan, we consider it desirable for the Council to be enabled to do this on its own. This would be a more flexible and efficient method, as it would not rely on decisions being made by the Minister and the amendments would not have to link directly to provisions in a Recovery Plan. It would allow the Council to be responsive to change, including its role in developing and implementing the Recovery Strategy and Recovery Plans.
49. The Order in Council could enable annual plan amendments to be made during 2011/12, if the Council wants to do so. This would allow for financial information to be updated as it becomes available during the year and for programmes and projects to be modified to reflect developing approaches to recovery (though not for changes to rates, which would have been made by resolution at the start of the year). The amendments would be agreed by the Council at an open meeting, allowing them to be scrutinised by members of the public. Formal consultation or engagement with communities would not be required, though, as this could be time consuming and divert Council resources away from recovery-related work.

Council-controlled organisations' statements of intent 2011/12

50. The extensions to the deadlines requested by the Council and its council-controlled organisations appear to be reasonable. The Council considers it impracticable to expect meaningful statements of intent for 2011/12 by 30 June 2011. The organisations would

benefit from extra time to prepare and update their statements of intent in a post-earthquake environment, particularly given that the forecast information originally prepared for the draft statements is now largely irrelevant.

51. According to the Council, the initial dividend intentions of its trading council-controlled organisations should be known by the time the draft 2011/12 annual plan is completed. Therefore, deferring delivery of the statements of intent should not have a negative impact on the annual plan.
52. As the Council is not the only shareholder in some council-controlled organisations, it informed the other shareholders of the proposal. We are not aware of any concerns on their part.

Orion New Zealand

53. The amendments requested by the Council in relation to Orion also seem appropriate, for similar reasons to those set out above. The Ministry of Economic Development, which administers the Energy Companies Act 1992, supports the proposals, and that they be included in the same Order in Council as the provisions affecting the council-controlled organisations. Selwyn District Council, the other shareholder in Orion, has not raised any concerns about the proposals.
54. Although the Canterbury Earthquake Recovery Act does not specifically include the Energy Companies Act in the list of enactments that may be the subject of an Order in Council, section 71(3) includes the words “without limitation” in relation to that list. As such, we consider the Order could include amendments to that Act.

Consultation

Christchurch City Council

55. The Council was consulted about the contents of this paper and proposals for alternative mechanisms to provide for transparency, accountability, and public scrutiny. It accepts the proposed mechanisms to allow amendments to the annual plan, and to require reporting at not less than four-monthly intervals. It notes, though, that its current quarterly performance reports are made public as a matter of course.
56. Following feedback from the Council, we are recommending a minimum period of two weeks in which the public can comment on the proposed content of the annual plan. We are not recommending deferring the date for adopting the annual plan, due largely to the reasons put forward by the Council.

Waimakariri District Council and Selwyn District Council

57. Both Councils were asked whether any of the modifications/exemptions requested for Christchurch might need to apply to their districts as well (as councils that are also covered by the Canterbury Earthquake Recovery Act). Waimakariri District Council confirmed it does not need to be covered by the proposed Order. Selwyn District Council has not asked to be included. Both councils, and Environment Canterbury, have been able to prepare and consult on draft annual plans for 2011/12.

Consultation with other agencies

58. The Office of the Auditor-General, Department of Building and Housing, Ministry for the Environment, Treasury, Department of the Prime Minister and Cabinet, Land Information

New Zealand, Ministry of Economic Development and the Canterbury Earthquake Recovery Authority were provided with a copy of this paper.

59. Treasury's Crown Ownership Monitoring Unit was asked specifically about proposals to defer the delivery of Christchurch City Holding's draft and completed statement of intent, as the Crown is a shareholder in Christchurch International Airport Ltd. The Unit is comfortable with the new deadlines proposed.
60. As noted above, Orion NZ falls under the Energy Companies Act 1992. As this Act is administered by the Ministry of Economic Development, it was consulted on the Council's request to extend Orion's statement of corporate intent and financial reporting deadlines. The Ministry supports the proposals and agreed to these changes being made in the same Order in Council, rather than drafting one to deal solely with the Energy Companies Act.

Conclusions and recommendations

61. In the Department's view, all of the exemptions requested by the Council appear reasonable and should be included in the Order in Council. However, we consider that these exemptions need to be balanced by alternative measures to guarantee public scrutiny of the Council's intentions, progress, and changes to the annual plan during 2011/12. In summary, we have reached this view because:
 - the 2011/12 annual plan cannot provide the usual level of certainty about the Council's intentions and may need to be changed during the year;
 - the annual plan will need to allow for the implementation of the Recovery Strategy and Recovery Plans made under the Canterbury Earthquake Recovery Act;
 - it is logistically impractical to use the special consultative procedure to consult on the draft annual plan;
 - long-term plan comparisons are no longer relevant and, therefore, are not usefully included in the annual plan or annual report; and
 - standard performance reporting is now secondary to reporting on progress with recovery and reconstruction.
62. Several mechanisms have been considered to address the above issues, and to provide for transparency, accountability, and scrutiny. For the 2010/11 annual report, we recommend requiring the Council to describe the effects of the earthquake on the assets it uses to deliver groups of activities, their condition as at 30 June 2011, and other factors affecting its capability to deliver services. The report could also include a cost of service statement and a description of the impact of the earthquake on the Council's ability to deliver services in each group of activities.
63. In relation to the 2011/12 annual plan, we recommend the following options are included in the Order in Council:
 - a minimum time period, of two weeks, in which written feedback on the proposed content of the annual plan can be provided by the public;
 - require the Council, at intervals of not less than four months, to receive and consider reports, in public, on progress against the annual plan; and

- enable the Council to formally amend the annual plan during the year, in public (but without consultation), to allow for information to be updated and programmes and projects to be modified.
64. We do not recommend deferring the date by which the annual plan is to be adopted. We appreciate the reasons put forward by the Council, and consider it is important to ratepayers that there is clarity and certainty about rate billing dates and processes.
65. We recommend deferring the Local Government Act 2002 deadlines for statements of intent requested by the Council and its council-controlled organisations. This would mean the draft statements of intent would be delivered to shareholders by 1 August 2011, and completed statements would be delivered by 30 November 2011. We also recommend, with the agreement of the Ministry of Economic Development, that the Order in Council extends Orion New Zealand's deadlines under the Energy Companies Act 1992. This would extend the dates by which its 2011/12 draft and final statements of corporate intent are delivered by three months, and its 2010/11 operations report and financial statements by two months.

Implementation

66. The proposals would be given effect through an Order in Council made under the Canterbury Earthquake Recovery Act 2011. We suggest that the Order is drafted to set out what the Council will be required to do in relation to its annual report and annual plan, as well as exemptions. We consider this will be clearer to the Council (and others reading the document) and, therefore, more straightforward to implement.

Monitoring, evaluation and review

67. The impact of the proposed exemptions, modifications, and additional requirements will be monitored through discussions with the Council. The content of publicly available documents, such as progress reports and quarterly performance reports, will be reviewed throughout the year. During this process, we will consider whether any of the provisions in the Order in Council might need to be extended beyond 2010/11 and 2011/12.

Local Government Act 2002 (LGA) provisions for annual reports, and proposed exemptions for Christchurch City Council for 2010/11

Item	LGA provision ¹¹	Exemption sought by Council	Departmental commentary
Annual report for year ending 30 June 2011 – timing and purpose			
1	<p>Section 98 – annual report must be prepared, and adopted within four months of end of financial year.</p> <p>Its purpose is (a) to compare actual activities and performance with intentions in annual plan, and (b) to promote accountability for decisions.</p> <p>The annual report, and a summary of the information it contains, must be made publicly available within one month of its adoption.</p>	<p>The Council does not need to extend the deadline, but is seeking exemption from section 98(2)(a) for the 2010/11 annual report. This relates to comparisons between the actual activities and performance and those intended in the long-term and annual plans.</p>	<p>The exemption from section 98(2)(a) is appropriate – comparisons are unlikely to be meaningful, given that much of the annual plan for 2010/11, and the long-term plan, will no longer be relevant.</p> <p>We will need to consider whether the Council should still be required to produce a summary of the information in the annual report, given the report is likely to be much shorter than usual.</p>
Annual report for year ending 30 June 2011 – content and auditing requirements			
2	<p>Section 99 – the annual report must contain auditor's report on financial statements and compliance with applicable requirements in Schedule 10.</p>	<p>No exemption requested.</p>	
3	<p>Schedule 10, clause 15 – annual report</p>	<p>The Council is assuming the usual group of</p>	<p>All of the substantive information required by</p>

¹¹ Note that the Local Government Act 2002 Amendment Act 2010 made a number of amendments to Schedule 10, but these do not come into effect until 1 July 2012. Therefore, the provisions referred to in the table relate to the earlier version of the LGA (which is not the current version on the Legislation website).

	<p>must contain information about groups of activities. This includes:</p> <p>(a) identifying activities within the group activities;</p> <p>(b) identifying community outcomes to which the group of activities contributes;</p> <p>(c) results of any measurement of progress with community outcomes</p> <p>(d) the effects of activities on community well-being;</p> <p>(e) an audited statement comparing actual and intended levels of service, and explaining an significant variations; and</p> <p>(f) an audited statement describing significant acquisitions and replacement of assets, and the reasons for this.</p>	<p>activity reporting is achievable, but is seeking exemptions from subclauses 15(c) and 15(e).</p>	<p>clause 15, subclauses (c) to (f) is based on the assumption that the council provides service very much on a business as usual basis, and is inapplicable in this situation. Therefore, we consider the Council could be exempt from subclauses (c), (d), (e), and (f).</p> <p>A more useful alternative requirement would be for the Council to report on the effect of the earthquake on:</p> <ul style="list-style-type: none"> • the assets it uses to deliver each group of activities and the condition of those assets at 30 June 2011; • other factors affecting its capability to deliver the service from 30 June 2011; and • the revenues and expenses for each group of activities in the same format as in its annual report for the year ended 30 June 2010. <p>The report could also include a description of the impact of the earthquake on the Council's ability to deliver services in each group of activities, to put this into context for ratepayers.</p>
<p>4</p>	<p>Schedule 10, clause 16 – information on council-controlled organisations.</p>	<p>The Council is seeking an exemption from reporting achievement of council-controlled organisation objectives and performance against the long-term plan.</p>	<p>The exception seems appropriate, for similar reasons to those for item 1 above. However, information on the effect of the earthquake on council-controlled organisation assets and service delivery capability would be desirable as an alternative.</p>

5	Schedule 10, clause 17 – annual report must contain (a) audited financial statements; (b) audited consolidated statements; and (c) other information that is necessary to enable an informed assessment of the operations of each entity reported on.	No exemption requested.	
6	Schedule 10, clause 18 – remuneration issues.	No – Council is assuming this information is available.	
7	Schedule 10, clause 19 – severance payments.	No – Council is assuming this information is available.	
8	Schedule 10, clause 20 – statement of compliance.	No – Council is assuming this information is available.	
9	Schedule 10, clause 21 – Māori contributions to council decision-making processes.	No – Council is assuming this information is available.	

Local Government Act 2002 (LGA) provisions for annual plans, and proposed exemptions for Christchurch City Council for 2011/12

Item	LGA provision ¹²	Exemption sought by Council	Departmental commentary
	Date of adopting annual plan		
1	Section 95(3) – an annual plan must be adopted before the start of the year to which it relates (i.e. by 30 June 2011).	No exemption sought – the Council considers it can finalise and adopt the plan before the end of June 2011.	While the Council considers it can adopt the plan by the usual deadline, this will allow for little public consultation. It is desirable, therefore, to give the Council the option of delaying adoption of the plan for a month to enable additional public oversight and feedback, and to reduce pressure to finalise the plan by the end of June. We note, however, that regularity of rate billing is important to ratepayers and the Council may not be able to defer adoption for a full month if it is to meet its rate setting timetable.
	Consultation on annual plan		
2	Section 95(2) – a local authority must use the special consultative procedure	Yes, an exemption has been sought. The Council does not consider it feasible to use	An exemption is appropriate, given the fluidity of the situation and the level of consultation

¹² Note that the Local Government Act 2002 Amendment Act 2010 made a number of amendments to Schedule 10, but these do not come into effect until 1 July 2012. Therefore, the provisions referred to in the table relate to the earlier version of the LGA (which is not the current version on the Legislation website).

	in adopting an annual plan.	the special consultative procedure to consult on the annual plan. However, it has resolved to invite written feedback on the draft plan, probably over a two week period.	usually required by the special consultative procedure. This can take up a lot of time and resources, which the Council needs to use to revise budgets and review its capital works programme and service levels. Furthermore, as the annual plan will have a high level of uncertainty associated with it until a Recovery Strategy and Recovery Plans are prepared under the new legislation, public consultation will have less value than usual. Notwithstanding these factors, allowing adoption after 30 June 2011 would permit greater public scrutiny of the plan (as opposed to consultation on the plan). Another safeguard of public scrutiny would be to specify a minimum time period in which feedback on the draft plan could be provided by the public. We understand the Council has a process like this in mind, but it would give the public reassurance if that process was required by Order in Council.
	Purpose of the annual plan		
3a	Section 95(5)(a) – the purpose of the annual plan is to contain the proposed funding impact statement for the year.	No exemption sought – the Council considers it can prepare a funding impact statement setting out revenue and financing mechanisms and full details of proposed rates.	The funding impact statement needs to be produced and included in the plan.
3b	Section 95(5)(a) – the purpose of the	No exemption sought.	A budget should be included in the plan.

	annual plan is to contain the proposed annual budget.		<p>However, evolving circumstances mean the budget is likely to need updating and amending during the year. The Local Government Act provides no provision for amending the annual plan. In this case, such a mechanism is desirable to accommodate the Council's role in implementing the Recovery Strategy and Recovery Plans and to allow for improved information becoming available during the year.</p> <p>The Order in Council could permit the Council to amend the annual plan and require the Council, at intervals of not less than four months, to receive and consider reports on progress against the annual plan, including revised financial projections and progress on restoring services and infrastructure.</p>
4	Section 95(5)(b) – the annual plan is to explain variations from financial statements and funding impact statements in long-term plan.	Yes, the Council is seeking an exemption from this subclause.	This exemption is appropriate. The earthquakes have rendered much information in the long-term plan irrelevant. Reasons for variations are likely to be clear to ratepayers.
5	Section 95(5)(c) – the annual plan supports long-term plan with integrated decision making and coordination of resources.	Yes, the Council is seeking an exemption from this subclause.	The exemption is appropriate – see comments under item 4. The annual plan is an interim budgeting mechanism until the next long-term plan (and proposed Recovery Strategy) are in place.
6	Section 95(5)(d) – the annual plan is to contribute to the council's accountability to the community.	No exemption sought.	

7	Section 95(5)(e) – extend opportunities for public participation in decision-making processes relating to costs and funding of activities.	Yes, the Council is seeking an exemption from this subclause.	This exemption does not seem to be necessary. Although there will be no public hearings, the Council has resolved to invite written feedback on the contents of the draft plan, and to allow community boards to speak when the plan is adopted. Note also our comments under item 2, about a minimum timeframe for public feedback.
8	Section 95(6)(a) and (b) – annual plan must be prepared in accordance with principles applying to preparation of financial statements and funding impact statements in long-term plan, and must contain references to long-term plan regarding activities for that financial year.	Yes, the Council is seeking an exemption from both these subclauses.	These exemptions are appropriate – see comments under items 4 and 5.
Content of annual plan			
9	Schedule 10, clause 12 – annual plan must include forecast financial statements for the council (and may include this for any council-controlled organisations or other entities under its control).	No exemption sought – the Council considers it can prepare information that amounts to forecast financial statements for the year.	See comments under items 3b and 6.
10	Schedule 10, clause 13(a) – annual plan must include a funding impact statement, which lists the revenue and financing mechanisms to be used to	No exemption sought – the Council considers it can prepare a funding impact statement setting out revenue and financing mechanisms and full details of proposed	This information should be included in the plan.

	cover estimated expenses.	rates.	
11	Schedule 10, clause 13(b) – the funding impact statement must explain the nature or, and reasons for, departure from the funding impact statement in the long-term plan that relates to that year.	Yes, an exemption is being sought.	This exemption is appropriate – see comments under item 4.
12	Schedule 10, clause 13(c) and (d) – the funding impact statement must include information about any general rate and each targeted rate the Council plans to use.	No exemption sought – the Council considers it can prepare a funding impact statement setting out revenue and financing mechanisms and full details of proposed rates. However, although the Council expects to be able to <i>set</i> rates in the normal way (by adopting the funding impact statement and by resolution), it has requested the ability to assess rates using an alternative mechanism because it may not have an up to date and reliable district valuation roll. ¹³	This information should be included in the plan. The issue of how the Council will assess its rates for 2011/12 has been explored with Land Information New Zealand. Proposals are to be included in a separate Cabinet paper.
13	Section 85(2)(a) and (b) – use of special consultative procedure in relation to annual plan (content requirements). Where the special consultative	Yes, an exemption is being sought.	The exemption is appropriate. This information has been excluded from the annual plan by other changes (above) and the retention of section 85 would be inconsistent with these primary exemptions.

¹³ Rates are set under clause 10 of Schedule 10 of the LGA and section 23 of the Local Government (Rating) Act 2002. They must be assessed in accordance with rateable values or other factors relating to a rating unit that are set out in the rating information database. This database must include information from the council's district valuation roll in relation to each rating unit.

	<p>procedure is used, this must include a statement of proposal. There are specific information requirements when it is used for the annual plan (set out in clause 2(2) of Schedule 10).</p> <p>This information relates to levels of service for groups of activities, associated performance measures, estimated expenses, revenue levels, and sources of funding.</p> <p>The statement of proposal should also explain why information in the draft annual plan departs from information about that year in the long-term plan.</p>		
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Appendix Three

Local Government Act 2002 (LGA) provisions for annual reports, and possible exemptions for Christchurch City Council for 2011/12

Item	LGA provision ¹⁴	Might an exemption be required?	Departmental commentary
Annual report for year ending 30 June 2012 - timing and purpose			
1	<p>Section 98 – an annual report must be prepared, and adopted within four months of end of financial year.</p> <p>Its purpose is to compare actual activities and performance with intentions in annual plan, and to promote accountability for decisions.</p>	The exemption from section 98(2)(a) requested by the Council for 2010/11 may be appropriate for 2011/12 as well.	A purpose to compare actual outcomes with the planned outcomes in the long-term plan is no longer relevant.
Annual report for year ending 30 June 2012 – content and auditing requirements			
2	Section 99 – the annual report must contain auditor’s report on financial statements and compliance with applicable requirements in Schedule 10.	An exemption was not requested for 2010/11.	

¹⁴ Note that the Local Government Act 2002 Amendment Act 2010 made a number of amendments to Schedule 10, but these do not come into effect until 1 July 2012. Therefore, the provisions referred to in the table relate to the earlier version of the LGA (which is not the current version on the Legislation website).

3	<p>Schedule 10, clause 15 – annual report must contain information about groups of activities.</p> <p>This includes information about the measurement of community outcomes and the effects of activities on well-being. It also includes audited statements comparing actual and intended levels of service, and describing significant acquisitions and replacement of assets.</p>	<p>This exemption could continue, and might also be extended to cover clause 15(f).</p>	<p>See comments under item 13 of Appendix Two. The annual reporting requirement needs to link up with the related annual planning requirement.</p>
4	<p>Schedule 10, clause 16 – information on council-controlled organisations.</p>	<p>Continuing this exemption may need to be considered.</p>	
5	<p>Schedule 10, clause 17 – annual report must contain (a) audited financial statements; (b) audited consolidated statements; and (c) other information that is necessary to enable an informed assessment of the operations of each entity reported on.</p>	<p>No exemption required.</p>	
6	<p>Schedule 10, clause 18 – remuneration issues.</p>	<p>No exemption required.</p>	
7	<p>Schedule 10, clause 19 – severance payments.</p>	<p>No exemption required.</p>	
8	<p>Schedule 10, clause 20 – statement of compliance.</p>	<p>No exemption required.</p>	

9	Schedule 10, clause 21 –Māori contribution to decision making.	No exemption required.	
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Christchurch City Council council-controlled organisations

Group structure

