

## Regulatory Impact Statement

### **Options for Expediting RMA Consent Application Processes for Land Remediation in Canterbury under the Canterbury Earthquake Response and Recovery Act 2010**

#### **Agency Disclosure Statement**

This Regulatory Impact Statement (RIS) has been prepared by the Ministry for the Environment. It provides an analysis of options to be included in an Order in Council (OIC) aimed at speeding up the processing of resource consent applications to avoid delays to land stabilisation and remediation works required after the Canterbury Earthquake of 4 September 2010 and following aftershocks.

This RIS was prepared prior to the further Christchurch Earthquake aftershock event on 22 February 2011 where there was significant damage, particularly in Christchurch and Lyttleton. All information and analysis provided and consultation undertaken reflects the situation prior to 22 February 2011.

The analysis undertaken prior to 22 February 2011 reflects the outcome of consultation with affected councils and the Earthquake Commission's (EQC) engineering consultants, Tonkin and Taylor. Analysis of reports prepared by Tonkin and Taylor in respect of remediation work at Spencerville and broad level information about the type and location of remediation works (Darfield Earthquake 4 September 2010 Geotechnical Land Damage Assessment and Reinstatement Stage 1 and Stage 2 Reports) were also undertaken to inform policy options. At this stage damage from the event of 22 February 2011 appears to be more diverse and widespread than the damage from the 4 September 2010 event, however, detailed information is not available at this time.

It has not been possible to contact EQC or the affected councils following the event of 22 February 2011 to discuss the policy options further with them.

As required by the Canterbury Earthquake Response and Recovery Act 2010 (CERRA), consultation with the Canterbury Earthquake Recovery Commission on the options proposed was scheduled for 23 February 2011, however, this was unable to take place due to the event of 22 February 2011. It is expected that consultation with the Commission will be undertaken before the OIC is submitted to Cabinet.

This RIS has been developed in the knowledge that the information available at the time it was prepared does not provide the full and final details of the design of the proposed land remediation works and their exact location. Detailed analysis of the costs of the works, their financial benefit and mitigation measures to address adverse effects were also not available. Some figures used in this analysis represent estimates based on the information that is currently available, and in other instances proxy figures (based on broadly comparable events or circumstances) have been used to indicate the scale of the effects.

The physical land remediation works were expected to commence in May 2011, however, following the event of 22 February 2011, proposed land remediation works will need to be reassessed and new priorities established. However, delaying policy approval to allow more time for the provision of information to feed into the preparation of the RIS is not desirable or practical.

We do not expect that the policy options proposed will impose additional costs on businesses, impair market competition, or impair incentives on businesses to innovate or invest. The preferred option is for land remediation and associated works to be non-notified under the RMA, with councils having the discretion to consult with affected parties as required. Fundamental common law principles around access to the Courts are retained through judicial review, despite written approval requirements, notification, objection and general appeal rights under the Resource Management Act 1991 being restricted.

Kevin Currie, Director – Environmental Protection

Date

## 1.0 Status quo and problem definition

- 1.1 The Canterbury Earthquake on 4 September 2010 and its following aftershocks caused extensive land liquefaction and subsidence in areas of Christchurch City and Waimakariri District. The liquefaction resulted in major ground settlement, lateral spreading<sup>1</sup>, and to a lesser degree, foundation support failure with consequential land and building damage.
- 1.2 As a result of the earthquake of 4 September 2010, many people have been displaced from their homes or have had their living conditions significantly impaired. It is estimated that approximately 3,300 properties have suffered very severe or major land damage. Of this, approximately 1100 properties are in Waimakariri District and 2200<sup>2</sup> properties are in Christchurch. Council infrastructure, public land, and commercial and industrial properties have been damaged by the Canterbury Earthquake and following aftershocks. No data is yet available for the aftershock event of 22 February 2011.
- 1.3 The economic costs of the earthquake are not fully known, but it is reasonable to assume that the costs to communities and the economy in general to remediate damage caused will escalate significantly with time. A report prepared by Goldman Sach "Construction Sector Update - Rebuilding Canterbury" notes that the cost of the Canterbury Earthquake is likely to reach around \$4.9 billion, with around \$2.5 billion worth of damage estimated to have been done to residential assets alone. As at 14 February 2011, EQC had received 180,280 claims and paid out a total of \$726.49 million to claimants.
- 1.4 To minimise further cost and disruption to communities, and to mitigate the risk of damage to buildings and assets from future earthquakes, land remediation works to repair damaged land are being given urgent priority by EQC and central government. This work aims to restore affected sites and communities to pre-earthquake condition as quickly as possible with the least cost and delay.
- 1.5 The land remediation works required will involve complex, area wide, multi-scale and multi-party engineering solutions at a significant scale.

### ***Problem to be solved***

- 1.6 Housing is a basic human need that impacts on health and wellbeing. To reduce cost and disruption to residents and businesses in Canterbury, it is essential that land and buildings are returned to a useable and safe state as quickly as possible. There are more than 3,300 private properties which are severely damaged or sit on land affected by liquefaction and shaking from the earthquake of 4 September 2010. This is in addition to council infrastructure, public land, and commercial and industrial properties that have also been affected.
- 1.7 For those that have been displaced from their homes, insurance coverage for alternative accommodation will not last in perpetuity. It is advised that insurance companies generally provide an accommodation allowance for a fixed amount over a period of time (for example \$20,000 over a 12 month period). Therefore, it is

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<sup>1</sup> Lateral spreading is where land has been able to move horizontally due to its proximity to open channels or dips. The land is unconstrained and moves towards these channels. In moving, cracks parallel to the channel can open up and the surface of the land can drop.

<sup>2</sup> Approximations provided in discussions with Tonkin and Taylor

imperative to restore land as quickly as possible to allow repairs and rebuilds to commence without delay.

- 1.8 A contributor to delays in commencing land remediation works are the processes that need to be followed to obtain required resource consents and permissions. The Resource Management Act 1991 (RMA) is the primary statute that governs the management of the use and development of New Zealand's natural and physical resources (including land).
- 1.9 Current proposals for land remediation works include EQC's proposed perimeter treatment works, which involve the construction of underground remedial structures to stabilise the land in Waimakariri District and Christchurch City.
- 1.10 Land remediation works are intended to include any works applied for by EQC, affected councils, department of the Crown or Crown agent to stabilise or remediate land affected by the Canterbury Earthquake and its following aftershocks, for the purpose of enabling the use of land, or adjacent land to be resumed, or to protect land, or adjacent land, from further damage.
- 1.11 Perimeter treatment works proposed by EQC for Waimakariri District are estimated to be three kilometres in length and in Christchurch City nine kilometres in length<sup>3</sup>. Indicative figures show that approximately 71 private properties in Waimakariri District and approximately 427 private properties in Christchurch City will be potentially directly affected by the proposed perimeter treatment works. It is expected a large number of additional properties will be affected by the proposed works (e.g. impacts from noise, dust and traffic movements during construction).
- 1.12 Given the scale and the number of private properties potentially directly affected by the proposed works, a range of consents are likely to be required under the RMA to undertake the proposed land remediation works. Under current RMA provisions the timeframes for obtaining these necessary resource consents are likely to prolong the commencement of the land remediation works.

### ***Problem Scale***

- 1.13 Resource consents are required under the RMA when the environmental effects of a proposed activity cannot meet the standards of the relevant city/district or regional plan. The scale of the environmental effects generated by a proposal determine whether a council would require a resource consent to be non-notified, limited notified (where only those affected persons who are notified can make a submission) or publicly notified (anyone can make a submission). Different timeframes are set under the RMA according to the type of notification process that must be followed.
- 1.14 Timeframes prescribed for processing resource consents as set out in the RMA and associated Resource Management (Discount on Administrative Charges) Regulations 2010 are as follows:

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<sup>3</sup> Proposed perimeter treatment works in these areas involve the construction of stone columns (numbers to be confirmed) of approximately 600 – 1200mm diameter to a depth of 5 – 10 meters. The extent of the works varies between locations.

<b>Application</b>	<b>Working days</b>
Non-notified (no hearing)	20
Publicly or limited notified (no hearing)	50
Publicly or limited notified (hearing and no pre-circulation of evidence)	70
Publicly or limited notified (hearing with pre-circulation of evidence)	85

However, in reality the timeframes can be much longer than this. The timeframes listed do not take into account periods where councils are waiting on further information requested from consent applicants, or the time associated with hearing an application. Councils may also extend timeframes (with the permission of applicants or where special circumstances apply). Including these additional timeframes means that the actual notified resource consent application process can generally take in excess of three months, and is more likely to take more than six months for complex works (such as the proposed land remediation work). The RMA enables the applicant and any person who made a submission the right to appeal the council's decision to the Environment Court. Appeals, although not counted in the timeframes listed above, add the potential for significant further delays of six months to a year or more to resolve.

- 1.15 The councils severely affected by the Canterbury Earthquake (Environment Canterbury, Christchurch City Council and Waimakariri District Council) have indicated that some resource consent applications (i.e disturbance in a river bed and on the banks, large scale land disturbance, and removal of protected trees) associated with land remediation works are likely to be publicly notified. These are likely to present significant time delays to the physical land remediation works, which Tonkin and Taylor intend to commence in May 2011 using a staged approach (the exact sequence and location of the works is not known at this stage).
- 1.16 Figures provided by Environment Canterbury for their average processing time for notified applications indicate it can take up to 384 working days<sup>4</sup> for a decision to be issued and can cost in excess of \$10,360 per application for the council to process. Notified applications received by Christchurch City Council take on average 70 working days and can cost in excess of \$28,858 to process. These figures help to illustrate how significantly a notified consent process could impact on the timing and cost involved in commencing the land remediation works.
- 1.17 On average, Environment Canterbury processes non-notified resource consents in 20 working days, with an average processing cost of \$1561 and Christchurch City Council processes non-notified applications on average in 20 working days, with an average processing cost of \$1815. These figures indicate that a non-notified consent process involves significantly less time and cost. In terms of the commencement of the land remediation works this is significant. Each day of delay to the commencement of land remediation works will have ongoing costs including the costs for alternative accommodation for those displaced.

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<sup>4</sup> These are generally large scale water take related applications or applications of a similar complexity or public interest

1.18 At this stage detailed design of proposed land remediation works are still being undertaken, sufficient information about the works is currently unavailable, including their exact location, their environmental effects or the proposed mitigation measures to understand better the likely number of notified resource consent applications required. However, there may be numerous occasions where the effects of the proposals and/or the inability to get land owners approvals will trigger notification, as has been highlighted by the local authorities in discussions to date. This could be an unknown subset of approximately 498 private property owners who will be potentially directly affected by the proposed perimeter treatment works, and from an unknown number of resource consent applications.

### ***Decisions already taken and legislative and regulatory powers available***

1.19 In response to the exceptional circumstances associated with the Canterbury Earthquake, Parliament passed the Canterbury Earthquake Response and Recovery Act 2010 (CERRA) on 14 September 2010. Amongst other things, CERRA allows Orders in Council (OIC) to be made to achieve the purpose of the Act. These OIC can provide for the exemption, modification or extension of statutory provisions.

1.20 On 6 December 2010, Cabinet noted that preliminary scoping work suggested an OIC is required to expedite consent application processes under the RMA for land remediation works. Cabinet also invited the Minister for the Environment to report to Cabinet with a proposal for a draft OIC that takes the following matters into consideration, where relevant:

- a shortened application processing timeframe
- a definition of land remediation which would qualify for an OIC
- any consultation and/or written approval requirements
- limiting or removing the ability for judicial review and/or appeal rights

## **2.0 Objectives**

2.1 To provide tools by way of an OIC to expedite resource consent application processes under the RMA for land remediation works that are consistent with the purpose of CERRA including enabling the relaxing or suspension of provisions in enactments that may divert resources away from the effort to:

- efficiently respond to the damage caused by the Canterbury Earthquake;
- minimise further damage.

2.2 It is intended the proposed OIC will only be in force until 31 March 2012 (consistent with the duration of CERRA). Consent applications for land remediation work will only have access to the process provided for by way of any OIC.

2.3 The options proposed for inclusion in an OIC have been assessed against the following criteria. The first criteria, to minimise delay, is the priority for an OIC for land remediation works. The subsequent three criteria are not weighted and their relative importance depends on judgement in each case. Assessment criteria include:

- minimise delay to the commencement of land remediation works from resource consent processes

- ensure that local authorities can still require activities to be managed in such a way as to adequately avoid, remedy or mitigate the adverse effects of land remediation activities on the environment<sup>5</sup>
- preserve opportunities for public participation, where possible, under the RMA
- be equitable by providing a consistent approach across all three affected councils

### 3.0 Regulatory impact analysis

#### ***Options for the formulation of an Order in Council***

3.1 Four approaches have been identified and assessed for possible inclusion in an OIC to expedite the resource consent application process. These include:

- Option 1 – Non-notified with [mandatory consultation with land owners and] discretion to consult with affected persons
- Option 2 – Non-notified with no consultation with affected parties
- Option 3: Non-notified with no consultation with affected parties – controlled activities
- Option 4: Deemed consent / permitted activities

#### ***Option 1: Non-notified with [mandatory consultation with land owners and] discretion to consult with affected persons***

3.2 This option proposes that all resource consents for land remediation works proposed by EQC and the councils be processed as non-notified. Written approvals from affected parties would not be required nor the opportunity for formal public notification, submissions and appeals. Councils would have the discretion to consult with persons they consider to be affected (for example where there are significant adverse effects), prior to making the decision. The manner in which council would consult would be at its discretion.

3.3 Should works involve significant adverse effects, councils could seek written views and hold a hearing if requested to resolve any concerns, however, they will not face protracted delays of any appeals. With no notification provisions, there are no submitters. Therefore, the ability to object to a certain decision, or to appeal a decision to the Environment Court, would be restricted to the applicant only. However, the ability to apply for judicial review would be retained. There would be no ability for any person (other than the council) to take enforcement action.

3.4 Changes would be required to the decision making provisions under section 104D (for non-complying activities) of the RMA to enable the councils to grant resource consents contrary to the objectives and policies in plans and where the effects are more than minor, in circumstances where the plans do not provide for such activities. Given the plans were written without the exceptional circumstances resulting from the earthquake in mind, it is necessary to ensure delays are not incurred from applications that have more than minor effects and are inconsistent with the plan, being declined.

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<sup>5</sup> The definition of environment under the RMA includes people and communities

## *Benefits*

- This option will provide for a prompt resource consent process for the commencement of the land remediation works. It provides for the council to consider and avoid, remedy or mitigate environmental effects, and apply conditions on a case by case basis, rather than having to anticipate all effects in advance.
- Retaining the ability for councils to obtain affected party feedback into the resource consent process promotes well informed decision making, albeit in a restricted manner. It provides an opportunity for affected parties to have a say and have their views considered before a decision on an application is made.
- Removing the requirement for written approvals and opportunities for wider public notification, reduces the burden on councils if they were required to follow standard processes (i.e. reducing council staff involvement in extensive negotiations, administration and support associated with hearings).
- This option also reduces potential delays and costs that could arise from appeals by affected parties being made to the Environment Court.

## *Costs / Limitations*

- Reducing the opportunity for public involvement could prevent the correction of factual or legal errors. If adverse effects subsequently prove to be more widespread or severe than expected this might be an issue. The risk of a council failing to identify all adverse effects is mitigated by council's ability to consult, in the most practical manner. An OIC prepared using this option would enable this to happen.
- Affected parties are not asked to give their written approvals, rather to provide comments. Whilst their concerns can be taken into account in the decision making process their only right to challenge the decision made is through a judicial review (restricting them to challenges on points of law).
- Judicial reviews of decisions can significantly impact on the time and cost of obtaining a resource consent. Should any judicial review arise, this will be an additional expense on councils. The risk of judicial review can be reduced by councils using consultation opportunities provided by an OIC developed using this option. There is potential for the OIC itself to be challenged as to its reasonableness under CERRA.

### ***Option 2: Non-notified with no consultation with affected parties***

3.5 Under this option all resource consent applications for land remediation works proposed by EQC and the councils would be dealt with as non-notified applications. Written approvals from affected parties, the opportunity for a hearing, objections and appeals would be removed. All RMA provisions relating to notification, including triggers where the effects are considered to be more than minor, or the applicant has been unable to obtain written approval from affected parties, would not apply. There would be no statutory requirement for consultation in any circumstance.



## *Benefits*

- Enabling all resource consents for land remediation works to be processed as non-notified and removing any triggers for notification would meet the objective of reducing time and cost. Processes including calling-for and analysing submissions, considering objections and the processes for appeals to the Environment Court, associated with notified resource consent applications, can cause significant delays. A time saving of approximately 50 working days (for those applications that would have been notified) will be made with this option.
- The ability for the decision maker to prescribe conditions of consent is retained. This enables the consent authority to appropriately avoid, remedy or mitigate actual or potential environmental effects of the proposed land remediation works.
- The ability of the decision maker to decline the application is retained if the adverse effects are considered too great. This also provides incentive for the applicant to provide quality applications and sufficient information for the decision maker to make more informed decisions.

## *Costs / Limitations*

- Under the RMA public participation is a key means by which councils identify adverse effects arising from an activity and negotiate with the community acceptable ways of managing these effects. Removing public participation means persons affected by the proposed land remediation works will not get an opportunity to have a say in the activities that impact on them (i.e. noise, dust and vibration associated with remediation works, heavy vehicle movements in residential areas etc).
- Removing public (or affected party) participation can impact the correction of factual or legal mistakes, particularly if the adverse effects prove to be more widespread or severe than expected. Public participation can assist in the identification of environmental effects.
- Removing public participation heightens the risk for judicial review including possible challenge to the OIC itself on the grounds of reasonableness.

### ***Option 3: Non-notified with no consultation with affected parties – controlled activities***

3.6 Under this option all types of land remediation works would be non-notified and would be deemed to be a controlled activity. This option removes the ability for the council to decline an application should it consider it necessary to do so (i.e. in circumstances where adverse effects cannot be mitigated). The OIC would override any district council and regional plan rules. The provisions of the OIC would have to be very specific about what matters control would be exercised over.

## *Benefits*

- A controlled activity status would provide greater certainty for the applicant as it removes any doubt about whether an application would be granted consent or not, which means the land remediation works could essentially start without undue delay.

- There is potential time and cost savings for the applicant in commencing land remediation works.
- A resource consent is still required for land remediation works and councils are still able to impose conditions of consent to manage adverse effects of activities.

#### *Costs/limitations*

- Likely to be inappropriate for the scale of works proposed (some works extend along 3 kilometres of reserve or riverbank, or involve tens of thousands of cubic metres of material to be excavated and moved by thousands of truck movements over a potentially long period of time). This option is unlikely to adequately avoid, remedy or mitigate adverse effects on the environment.
- Controls in the OIC are unlikely to be sophisticated enough to adequately anticipate and manage the wide range and variability in the types of works, variations in the environment where they are to take place, the scale of the works and the range of environmental effects generated. Such variation is better managed by a full resource consent process where the council has the discretion to manage all the effects and to decline an application, if it is considered necessary to do so.
- Persons severely affected by the application would have a limited opportunity to be part of the resource consent process as there would be a reduced requirement to consult with affected landowners, or to consult at all with the wider community.
- A controlled activity option could potentially favour the applicant as local authorities would have no ability/discretion to decline an application.
- The long term responsibility for the management of the land and resources in the Canterbury region rests with the affected councils. It is important for the councils to retain an element of leadership and control over the long term environmental management of their region. If all consents are controlled, councils would not have the ability to decline an application if it was likely to have significant long term environmental effects.

3.7 This option is preferable from EQC's perspective as it removes the risk of an application being declined. However, it is not supported by officials from any of the affected councils as it removes the council's discretion to decline an application should it consider it necessary to do so i.e. in circumstances where significant adverse effects cannot be mitigated. The affected councils were also concerned that this option could restrict them if an incomplete application is lodged or insufficient information is provided.

#### ***Option 4: Deemed consent / permitted activities***

3.8 Under this option all land remediation works would be treated as a permitted activity where no resource consent would be required. This option would be reliant on the applicant clarifying what activities are proposed and how the effects are going to be managed (i.e. minimum performance standards). The OIC would override any council district and regional plan rules that would otherwise have required resource consent to

be obtained. To avoid other activities being inadvertently deemed, the provisions of the OIC would have to be very specific.

### *Benefits*

- A deemed activity status would provide greater certainty as it removes any doubt about whether an application would be granted consent or not, which means the land remediation works could start without undue delay. There is potential time and cost savings for the applicant associated with the need to prepare comprehensive resource consent applications and it removes burden on the local authorities to undertake an assessment of these applications.
- There is a possibility that a deemed activity status could be used in the future once more information comes to hand from EQC about the exact extent and scale of the land remediation works, including their effects.

### *Costs/limitations*

- It is unclear how this approach would work in practice. It is assumed this option would be reliant on the applicant clarifying what activities are proposed and how the effects would be mitigated i.e. setting minimum performance standards. This option does not account for evolving design, as much of the information would need to be provided upfront. EQC do not have this detailed information available at this stage. Furthermore, such an approach may be less flexible than a consenting approach as failure to comply with any set standards would trigger the requirement for a consent anyway.
- Likely to be inappropriate for the scale of works proposed (some works extend along 3 kilometres of reserve or riverbank, or involve tens of thousands of cubic metres of material to be excavated and moved by thousands of truck movements over a potentially long period of time). This option is unlikely to adequately avoid, remedy or mitigate adverse effects on the environment.
- Controls in the OIC are unlikely to be sophisticated enough to adequately anticipate and manage the wide range and variability in the types of works, variations in the environment where they are to take place, the scale of the works and the range of environmental effects generated. Such variation is better managed on a case by case basis, as provided for by a full resource consent process where the council has the ability to consult with affected parties and undertake a full assessment of the application.
- If details of the nature of activities and performance standards are needed to be provided for in an OIC, it is unlikely this level of detail will be available within the timeframes required for the drafting of this OIC.
- Persons severely affected by the application would not get an opportunity to be part of the resource consent process as there would be no requirement to consult with affected parties.

## 4.0 Consultation

- 4.1 Prior to the event of 22 February 2011, discussions were held with officers from Environment Canterbury, Christchurch City Council and Waimakariri District Council about the options for expediting consent processes. All of the council officers agreed with the option of non-notified with council discretion to consult with affected persons (Option 1), where council still retains the discretion to decline an application. Notably the council officers were opposed to the controlled activity option.
- 4.2 Preliminary discussions with council officers and legal representatives, following the event of 22 February 2011, concerns were expressed about the proposed discretion for consultation both in terms of the draw on council resources and the risk of judicial review. A definition of consultation and the statement of the minimum requirements could be introduced that may help to address that risk. It is thought that the minimum of obtaining written comments is a manageable process. Councils would be required to summarise the views and take them into account in decision making but would not be required to hold a hearing with those consulted.
- 4.3 EQC and their consulting engineers, Tonkin and Taylor, were also involved in discussions about the options for expediting consenting processes prior to the event of 22 February 2011. EQC had a preference for the activities being made controlled (Option 4) or permitted (Option 5), however, they were not adverse to the option of non-notified with no written approvals (Option 1) and council retain the ability to decline.
- 4.4 The Department of Building and Housing, Department of Conservation, Department of Internal Affairs, Land Information New Zealand, Ministry of Agriculture and Forestry, Ministry of Culture and Heritage, Ministry of Economic Development, Ministry of Education, Ministry of Health, Ministry of Justice, Ministry of Transport, New Zealand Defence Force, Te Puni Kokiri, and Treasury have also been consulted. The Department of Prime Minister and Cabinet have been informed about the proposed OIC.
- 4.5 As required by CERRA, consultation with the Canterbury Earthquake Recovery Commission on the proposed options was scheduled for 23 February 2011, however, due to the aftershock event of 22 February 2011, this was unable to take place. It is expected consultation will be undertaken with the Commission before the OIC is submitted to Cabinet.

## 5.0 Conclusions and recommendations

- 5.1 The table below summarises the discussion in section 3 above and shows how each of the options considered meets (or does not meet) the objectives of the OIC.

Issue:  Options for formulation of an OIC	Objectives			
	Minimise delay	Avoid, remedy or mitigate adverse effects on environment	Preserve opportunities for public participation	Be equitable (consistent approach)
Option 1: Non-notified with [mandatory consultation with land owners and] discretion to consult with affected persons	✓	✓	✓	✓
Option 2: Non-notified with no consultation with affected parties	✓	✓ / X	X	✓
Option 3: Non-notified with no consultation with affected parties – controlled activities	✓	✓ / X	X	✓
Option 4: Deemed consent / permitted activities	✓	✓ / X	X	✓

5.2 The preferred option for an OIC is for all resource consent applications for land remediation to be processed as non-notified [with mandatory consultation with landowners] and to provide for a consultation process with affected parties at the discretion of councils (Option 1).

5.3 Proceeding with Option 1 could result in a time saving of 50 working days (for those applications that would have been notified). It also retains a process whereby affected parties identified by the council are able to have their concerns addressed retained.

## 6.0 Implementation

6.1 The proposed OIC will only be in force for a set period of time (for the duration of CERRA). An expiry date will be included to ensure that consent applications are unable to use the OIC provisions in perpetuity where such an ability cannot be justified.

6.2 The physical works are intended to commence in May 2011. Therefore an OIC needs to be in place as soon as possible so decisions can be made ready for works to commence.

6.3 It is proposed that normal RMA enforcement provisions will apply in regard to any resource consent issued under a non-notified consent process. Affected local authorities would retain responsibility for ensuring any resource consents issued are

monitored and works are carried out in accordance with conditions. Failure to comply with conditions of the consent, and any other plan rules that are breached could result in enforcement action.

- 6.4 Some of the work needed for earthquake recovery (particularly following the event of 22 February 2011) is temporary and/or urgent in nature and needs to be progressed without any delay. Some of these activities have already been undertaken under the emergency works provisions in the RMA. A separate cabinet paper proposing an OIC to provide for urgent or temporary activities, such as temporary accommodation, authorised by the Crown or council has been drafted. These works include temporary accommodation, depots and storage facilities associated for land remediation works to be undertaken without the need for resource consents under the RMA, subject to the requirements or standards set by the council.
- 6.5 Although the majority of the land remediation works are expected to be undertaken on public land (council owned and administered), it is anticipated that some encroachment onto privately owned land will be necessary. There is a risk that delays could be incurred to land remediation works where works are required on privately owned land and access has been refused. The Department of Internal Affairs is currently considering a separate OIC under the Local Government Act 2002 to address potential land access issues.
- 6.6 The Department of Conservation are analysing the impact of the works on reserve land and the need for a separate OIC under the Reserves Act to avoid delays.
- 6.7 The combined effect of all these OIC's is that they will reduce the usual opportunities for land owners and affected parties to participate in statutory approval processes and to remove, or restrict, any rights of appeal. While such restrictions are not desirable, they are considered necessary to ensure land remediation works can get underway as soon as possible and the public benefits from land restoration and rebuilding can be realised.

## **7.0 Monitoring, evaluation and review**

- 7.1 Ministry for the Environment officials will monitor the effect of the OIC by liaising with the three affected local authorities to see if the OIC is being used, whether it has been successful in shortening RMA consent timeframes, and to determine the level of community concern over the use and effect of the OIC.
- 7.2 There is also expected to be a need to determine how to best manage the pressure local authorities are already under in dealing with the implications of the earthquake.
- 7.3 During the life of the OIC, monitoring and liaison will be undertaken with the affected local authorities and if any issues are found regarding its implementation, consideration will be given as to whether an amendment is required.